



## Legislation Text

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**File #:** 24-0779, **Version:** 1

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Chief Administrative Office recommending the Board:

- 1) Approve and authorize the Chair to sign the attached comprehensive response letter that incorporates the assessed impacts if the Federal Government accepts the specified parcels "in trust" for the Shingle Springs Rancheria Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; and
- 2) Authorize transmittal of the letter to the U. S. Department of the Interior, Bureau of Indian Affairs to formally request consideration as outlined in the referenced letter.

**FUNDING:** N/A

### **DISCUSSION / BACKGROUND**

#### **General Timeline of the History of the Tribe**

The Shingle Springs Band of Miwok Indians (Tribe) is a federally recognized Tribe located in El Dorado County, California. In 1970, the Tribe formally organized under their Articles of Association and set up home sites on the Rancheria. In 1976, the Tribe's Articles of Association were approved by the Secretary of the Interior which granted them federal recognition and sovereignty.

In 1995, the Tribe established what is now the Shingle Springs Health & Wellness Center to provide a wide array of medical, dental, and behavioral health services to underserved native and non-native families. The original clinic operated from 1995 until the new location opened on the Tribe's reservation lands in 2011.

The Indian Gaming Regulatory Act, enacted by the United States Congress in 1988, allows gaming as a means of generating revenue for tribes, encouraging economic development and self-sufficiency. On October 8, 1999, the Tribe entered into a Tribal-State Gaming Compact (Compact) with the State of California in order to develop and operate a gaming facility on the Tribe's reservation land. The Compact has further been amended on June 30, 2008, November 15, 2012, and August 3, 2020. Amendments have included such items as updates to the number of gaming devices allowed, types of gaming activities authorized, and updated revenue sharing terms and requirements to the State and non-gaming/limited-gaming Tribes. The 2020 Compact is effective for 25 years following the effective date.

Due to the realignment of U.S. Highway 50 in 1965, the Tribe's reservation lands were landlocked and the only access to the Rancheria was by a narrow, winding, rural road. In 2008, the Tribe opened its overpass in November providing access to the Rancheria, followed by opening the Red Hawk Casino in December.

In 2009, the Tribe established a Tribal Court system to uphold the Tribe's codes and ordinances and enforce state court orders. The Tribal Court hears civil matters, including but not limited to, Casino patron disputes, Casino tort cases, civil harassment, appeals to the governance code, guardianships, legal competency, repossessions, and wage garnishments.

In 2010, the Tribe opened the Shingle Springs Tribal Temporary Assistance for Needy Families (TANF) Program to assist needy tribal families who reside in El Dorado, Placer, and Sacramento Counties.

**Memorandums of Understanding between the Tribe and the County**

The Tribe and the County currently have four Memorandums of Understanding (MOU)/Agreements regarding the Casino, Ambulance Services, the Gas Station tax sharing, and the Entertainment Center.

**Casino MOU/Inter-Governmental Agreement (IGA):**

In 2006, the County and the Tribe entered into MOU in settlement of then-pending litigation related to the Tribe's proposed construction of the Red Hawk Casino on Tribe land. In exchange for the County's agreement to dismiss all pending lawsuits, the Tribe would provide compensation to the County to mitigate anticipated impacts of the casino, including traffic. The MOU was amended in 2012, with Legistar item 12-1409 version 1, to reallocate certain amounts paid by the Tribe to certain other mutually agreed upon uses. In lieu of the High Occupancy Vehicle (HOV) payment under the original MOU, the Tribe will pay \$5.2 million annually for "qualifying public improvement projects" defined in the MOU as road improvements and maintenance within a specific geographic area designated on a map incorporated into the MOU. In consideration of increased expenses to the Tribe's health program, the County will pay the Tribe an annual contribution of \$2.6 million for qualifying healthcare for both tribal and non-members. The amendment resulted in a net payment of \$2.6 million from the Tribe to the County for qualifying public improvement projects.

On June 6, 2017, with Legistar item 12-1409 version 3, the Board amended the MOU a second time to remove the geographic restrictions on the County's use of Tribe funding for qualifying public improvement projects, thus allowing the County to use the funding more effectively and efficiently for the benefit of all County residents.

On November 8, 2022, with Legistar item 22-2020, the third Amendment to the MOU modified and streamlined the County's administrative process for the funding currently paid by the Tribe to the County for qualifying public improvement projects and the County to the Tribe for qualifying healthcare contributions.

The County will receive the following payments from the Tribe in FY 2023-24 based on the provisions in the MOU/IGA:

1. Qualifying Public Improvement Projects - \$2,986,583
2. Compensation for Public Safety/Law Enforcement - \$500,000
3. County Revenue Tax - \$500,000
4. General Discretionary Funds - \$1,300,000
5. General Discretionary Funds (Escalating) - \$2,871,714

Total payments in FY 2023-24 for Casino MOU/IGA: \$8,158,297

**Ambulance Services Funding Agreement:**

Historically, the Tribe has contracted with the County to provide Pre-Hospital Advanced Life Support (ALS) emergency services on tribal land, specifically within County Service Area No. 7, where the Rancheria is located, and the areas surrounding the Rancheria.

On June 28, 2022, with Legistar item 22-1026, the Board approved Agreement 6738 for the County to continue providing Pre-Hospital ALS emergency medical services in response to 911 calls for incidents occurring anywhere on the Shingle Springs Rancheria. In addition to providing Pre-Hospital ALS emergency medical services on the Rancheria, the Tribe shall be responsible for any multi-casualty incident as outlined in the Agreement. The term of the Agreement commenced on July 1, 2022 and terminates on June 30, 2027. The Agreement provides that if the Tribe establishes its own agency to provide emergency medical services on the Rancheria, the Tribe and County shall negotiate and enter into a new agreement, terminating this Agreement and incorporating the Tribe's agency within the County's emergency medical services system.

The funding provided by the Tribe is meant to mitigate the impacts of the casino development and offset the ad valorem property tax revenue and special tax revenue that is not paid by the Tribe.

### **Gas Station Tax Sharing Agreement:**

Through its development corporation, the Tribe owns and operates a gas station on Shingle Springs Drive near Highway 50 that opened in late August 2018. Because the gas station is located on land held in trust by the federal government for the Tribe, it is not subject to state and local taxation and the County lacks the ability to ensure it receives tax revenue from gas station sales, which the County would otherwise receive if the gas station was not operated on tribal trust land.

Before the gas station was constructed, the Tribe made a voluntary commitment to the County to enter a tax sharing agreement to address the loss of tax revenue that the County would likely experience when the gas station opened. This commitment was reaffirmed in the settlement agreement that resolved the legal challenge that El Dorado Council.org and El Dorado Council, Inc. brought based on the County's issuance of an encroachment permit for the gas station. The Tax Sharing Agreement was executed by the Tribe and the County on December 18, 2018, with Legistar item 18-1926. Because the Tribe is currently purchasing gas from a California distributor, it may be paying the applicable state and local taxes. The Agreement was drafted to accommodate this possibility and any changes that may occur in the future.

The primary terms of the agreement are:

1. Term: The agreement will be for an initial term of 10 years and renew every ten years unless the gas station closes, or the County and Tribe agree to amend or terminate the agreement.
2. Support Compact Amendment: The County would support the Tribe's effort to amend its Compact with the state, provided that the amendment does not provide for increased or expanded gaming machines or operations or a limitation in the environmental review for any other Tribal projects.
3. State Taxes: The Tribe would either (1) confirm that it is paying all applicable state taxes that a non-tribal gas station would pay; or (2) remit to the County 0.75% of all gross receipts for the sale of gas and personal property (excluding cigarettes) to the County, which could be used for unrestricted general fund purposes.
4. Local Taxes: The Tribe would either (1) confirm that it is paying all applicable local taxes that a non-tribal gas station would pay; or (2) remit to the County 1.25% of all gross receipts for the sale of gas and personal property (excluding cigarettes) to the County, which could be used for road maintenance, infrastructure development, tribal cultural site protection, and public safety.

### **Entertainment Center MOU/IGA:**

The Tribe expanded its Red Hawk Casino with the addition of a hotel (opened in May 2023) and entertainment center (opened in February 2023). The hotel project was previously addressed in

environmental reviews and is not a subject of this MOU/IGA.

The 75,000-square-foot entertainment center incorporates additional entertainment and dining options, including a bowling alley, virtual reality gaming suites, indoor go-karting, bar, and meeting rooms. Because the entertainment center is located on land held in trust by the federal government for the Tribe, it is not subject to state and local taxation and the County lacks the ability to ensure it receives property and sales and use tax revenue from the entertainment center, which the County would otherwise receive if the entertainment center was not operated on tribal trust land. In compliance with the Compact, the Tribe prepared a Tribal Environmental Impact Report (TEIR) to review off-reservation impacts of the entertainment center project. This MOU/IGA addresses compensation to mitigate the offsite impacts identified in the TEIR and additional payments above and beyond those mandated by the Compact.

The Entertainment Center MOU/IGA was executed on February 22, 2022, with Legistar item 22-0317. The primary terms of the agreement are:

1. Term/Due Dates: The term of this Agreement starts from February 22, 2022, until the earliest of the following: (1) termination pursuant to section K.4; (2) closure of the Entertainment Center Project, defined as cessation of commercial operation for a period of six consecutive months; (3) the Compact expires, is terminated, or otherwise ceases to be in effect; or (4) February 22, 2047.
2. Annual payment of \$250,000, with a 2% escalator to compensate and reimburse the County for any costs of the project, maintain competitive fairness for local business, and support the County's general operations. Payments to begin after opening of the entertainment center.
3. One-time payment of \$500,000 for purchase of specified equipment by Sheriff's Office. Payment to be made no later than the first quarter of Fiscal Year 2022-23.
4. Three annual payments of \$50,000 (total of \$150,000) for transportation-related projects. Payments to begin after opening of the entertainment center.
5. Tribe to provide written report on project consistency with relevant County standards/policies.
6. Tribe to install 10 additional electric vehicle chargers in facility parking lot.
7. Good-faith discussion of health care payment mechanics.
8. Tribe to implement carpooling/ridesharing incentives for project employees.

### **Fee-to-Trust Process**

The Indian Reorganization Act (IRA) allows the Secretary of the Interior the discretion to acquire trust title to land or interests in land for tribes in the U.S. Congress may also authorize the Secretary to acquire title to particular land and interests in land into trust under statutes other than the IRA.

The Fee-to-Trust process begins when a Tribe submits an application to place parcels of land in to trust. The BIA reviews the application to ensure it is complete and meets the requirements of the Fee-to-Trust Handbook. If the application is incomplete, the BIA will notify the Tribe and provide them with 30 days to complete the application. The BIA will then conduct a site inspection and complete a Certificate of Inspection and Possession (CIP). Once the CIP is complete, the BIA will request a Preliminary Title Opinion (PTO) from the Solicitor's Office. The BIA then will send out a Notice of Application (NOA) to inform state and local governments, including Tribal governments, having jurisdiction over the proposed acquisition property and/or any person or entity submitting a written request for notice that they have 30 days to submit comments.

The Secretary bases the decision to make a trust acquisition on the evaluation of the criteria set forth

in Title 25 Code of Federal Regulations (CFR) Part 151 and any applicable policy. With the exception of certain mandatory acquisitions, the decision to acquire title requires Secretarial approval. To assist the Secretary in the exercise of that discretion, the County of El Dorado now has the opportunity to comment on the proposed acquisition. During the County's comment period, the public may provide comment to the Notice as well. The public can provide comment directly to the BIA or to the County; comments provide to the County will be forwarded to the BIA as attachments to the response letter.

In order for the Secretary of the Interior to assess the impact of the removal of the specified parcels from the tax roll, the BIA has requested that the County's comments include information specific to each of the subject parcels, including: the annual amount of property taxes levied on each parcel; any special assessments currently assessed against each the parcels in support of the County; any government services currently provided to each of the parcels by the County; and if the parcels are subject to zoning, how the intended use is consistent, or inconsistent, with current zoning.

After the comment period, the BIA will request an environmental compliance review by the appropriate environmental staff. This part of the process ensures National Environmental Policy Act compliance. The Tribe is then provided copies of all responses to the NOA and allowed response to the comments within 30 days. If there are any objections in the PTO from the Solicitor's Office, the BIA will request from the applicant proof that the objections have been cleared. The BIA will then prepare a Notice of Decision for the application. The Notice of Decision must be sent to all interested parties, including state and local governments having regulatory jurisdiction over the land to be acquired, and noticed in a local newspaper and has a 30-day appeal period. After any appeals are exhausted and the decision is final, the BIA will prepare a Final CIP, process a formal acceptance of conveyance, obtain a Final Title Opinion, and record required documents at the Land Titles and Records Office.

#### **Notice of Non-Gaming Land Acquisition Application Case #55057:**

The County received a Notice of Non-Gaming Land Acquisition Application on April 8, 2024. The Shingle Springs Band of Miwok Indians "Tribe" has submitted an Application (Case #55057, also referred to as the "#7 parcels") to the U.S. Department of the Interior, Bureau of Indian Affairs to have real property accepted into trust for the Shingle Springs Rancheria Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California, by the United States of America. The Application provides the legal land descriptions for the following five parcels: APN's 319-020-007-000 (Manclark 1); 319-020-017-000 (Manclark 2); 319-020-037-000 (Stondell 1); 319-020-023-000 (Stondell 2); and 319-020-025-000 (Stondell 3). These five parcels total approximately 40.606 acres and are defined as located contiguous to the boundaries of the Tribe's existing reservation in Shingle Springs. Per the Notice of Application, the Project Description/Proposed Land Use provides that, "The Manclark 1 and Stondell 1 parcels currently have single family homes on them and will be subdivided to build additional homes. The Manclark 2, Stondell 2, and Stondell 3 parcels are currently vacant and undeveloped; the Tribe will use this area for additional housing."

#### **County's Comprehensive Response Letter:**

The CAO's Office reached out to Department Heads to provide information for the comprehensive response letter. The attached letter has been prepared for Board Chair signature and submittal to the U.S. Department of the Interior, Bureau of Indian Affairs, to relay projected impacts to the County if the subject parcels are approved to be taken "in trust". Public comments received by the County

will be attached to the letter.

### **ALTERNATIVES**

The Board could choose to make changes to the proposed letter, or the Board could choose not to respond.

### **PRIOR BOARD ACTION**

11/13/2012 Legistar item 12-1409  
02/24/2015 Legistar item 15-0238  
06/06/2017 Legistar item 12-1409  
12/18/2018 Legistar item 18-1926  
02/22/2022 Legistar item 22-0317  
06/28/2022 Legistar item 22-1026  
11/08/2022 Legistar item 22-2020  
11/14/2023 Legistar item 23-2062  
12/05/2023 Legistar item 23-2150  
12/12/2023 Legistar item 23-2203  
01/09/2024 Legistar item 24-0019

### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

Planning & Building Department, Assessor's Office, and Sheriff's Office

### **FINANCIAL IMPACT**

There is no financial impact associated with the requested actions.

### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

Clerk to obtain the Board Chair's signature on one original of the attached letter and forward to the CAO's office for transmittal.

### **STRATEGIC PLAN COMPONENT**

N/A

### **CONTACT**

Alison Winter, Principal Management Analyst