



Legislation Text

File #: 23-2150, **Version:** 1

Chief Administrative Office recommending the Board:

- 1) Review the two Notices of Application seeking acceptance of title to real property "in trust" by the United States of America for the Shingle Springs Rancheria Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California;
- 2) Direct staff in cooperation with County Counsel to coordinate, and prepare to submit within the 30-day comment period, a comprehensive response on behalf of the County that incorporates the assessed impacts of the Federal Government accepting the specified parcels "in trust" that includes, but is not limited to, confirmation of the Legal Land Descriptions/Site Locations as provided within the Notices, assessment of the impact from the removal of the specified parcels from the tax roll, impact to surrounding land use and infrastructure, and impact to the delivery of County services; and
- 3) Authorize the Chair to sign a letter to the U. S. Department of the Interior, Bureau of Indian Affairs to formally request an extension on the comment period for the two Notices by an additional 30 days.

FUNDING: General Fund.

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. 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.

Two Notices of Non-Gaming Land Acquisition Application

The County has received from the U.S. Department of the Interior, Bureau of Indian Affairs, via Certified U.S. Mail delivery, copies of two Notices (Case #40317 and Case #40447) of Non-Gaming Land Acquisition Application on November 13, 2023. The County has until December 13, 2023 to respond or request an extension to the comment period for the two Notices. The CAO recommends the Board request a 30-day extension to the comment period in order to work with other County

Departments to draft a thorough and comprehensive response. The Notices were reported to have been provided to agencies and individuals reflected on a "Distribution List" included as attachments to the Notices. This Distribution List included the Assessor, Treasurer-Tax Collector, Planning and Building Department, and Sheriff's Office, as well as the Board of Supervisors.

Per the notice for Case #40317, the Shingle Springs Band of Miwok Indians "Tribe" has submitted an Application 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 10 parcels: APN's 319-110-013 (Detwiler); 319-030-054 (Sommers); 319-081-006 (McNamee); 319-081-031 (Lucy); 319-030-052 (Lazenby); 319-020-031 (Donovan); 319-030-021 (Irwin); 319-030-030 (Whitney); 319-081-017 (Pettibone); and 319-081-018 (Armas). These 10 parcels total approximately 81.718 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 parcels *"are currently used for housing. On September 19, 2023, the Tribe changed the use for the Pettibone and Armas parcels from housing to economic development. Specifically, the Tribe will develop an event center on these parcels, consistent with Tribal land use guidelines and the Tribes agreement, if any, with El Dorado County."*

Per the notice for Case #40447, the Tribe has submitted an Application 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 11 parcels, commonly referred to as the #4 Parcels: APN's 319-020-028 (Erickson); 319-110-009 (Sayles); 319-110-014 (Renfro); 319-110-018 (Renfro 2); 319-110-019 (Renfro 3); 319-210-016 (Fong); 319-030-012 (Pirello); 319-030-020 (Pirello 2); 319-030-019 (Martin); 319-020-014 (Smith); and 319-020-027 (Bilotta). These 11 parcels total approximately 107.305 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 parcels *"are currently vacant and undeveloped. The proposed use for the #4 parcels is to provide additional housing for tribal members."*

Per the direction provided within the Notices, the determination whether to acquire this property in trust will be made in the exercise of discretionary authority, which is vested in the Secretary of the Interior, or her authorized representative, U.S. Department of the Interior. To assist the U.S. Department of the Interior in the exercise of that discretion, the County of El Dorado now has the opportunity to comment on the proposed acquisitions.

In order for the Secretary of the Interior to assess the impact of the removal of the specified parcels from the tax roll, the U.S. Department of the Interior 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.

The CAO recommends the Board provide appropriate direction to staff to ensure that the County provides written comments to the U.S. Department of the Interior, Bureau of Indian Affairs that reflect a thorough and comprehensive analysis of the assessed impacts of the Federal Government accepting the specified parcels "in trust" for the Shingle Springs Band of Miwok Indians. The response, once drafted, will be brought to the Board for approval before it is transmitted to the Bureau of Indian Affairs.

ALTERNATIVES

The Board could choose to direct staff to draft the response without requesting a 30-day extension or the Board could choose not to respond.

PRIOR BOARD ACTION

11/13/2012 Legistar item 12-1409
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

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel

FINANCIAL IMPACT

There is no financial impact associated with this request for extension.

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

Good Governance

CONTACT

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