

# The City of Barstow

## AGENDA MATTER:

Disposition and Development Agreement between the City of Barstow and Barwest, L.L.C.

## EXECUTIVE SUMMARY:

On March 1, 2004, the Exclusive Negotiating Agreement (ENA) between the Agency and Barwest, L.L.C. (Developer) was assigned from the Agency to the City Council (Council) and extended for a period of three months. The ENA provided time for Developer, the Los Coyotes Band of Cahuilla and Cupeno Indians (Tribe) and the City to negotiate a Municipal Services Agreement (MSA). Staff anticipates that an agreement on the MSA will be reached by June 7, 2004. Once the MSA is signed by Council, the ENA sunsets. Once the ENA sunsets, Barwest loses any exclusivity for project development that is provided for in the ENA. It is important to the City that Developer remain an active participant in this development. To facilitate this, a Disposition and Development Agreement has been drafted between Developer and the City and included as part of this Agenda item.

## DISCUSSION:

On June 2, 2003, the Redevelopment Agency for the City of Barstow entered into an Exclusive Negotiating Agreement with Barwest, L.L.C. (Developer). On March 1, 2004, the ENA was assigned from the Agency to the City and extended for a period of three months, with additional extensions available according to the terms of the document. The ENA provides for a period of exclusive negotiations between the Agency and Developer to reach a Disposition and Development Agreement that, among other things, would provide for the establishment of exclusive rights of Developer to develop a first-class, high-quality destination resort, including hotels, restaurants, hospitality services

(Continued on Page 2)

## RECOMMENDED ACTION:

Authorize the Mayor to sign the Disposition and Development Agreement between the City of Barstow and Barwest, L.L.C.

PROPOSED BY	FUNDS BUDGETED	FUNDS REMAINING	MEETING DATE
Ron Rector <i>RR</i>	N/A	N/A	June 7, 2004
C.M. APPROVAL	AMOUNT REQUIRED	CATEGORY	ITEM NUMBER
F.M. Stewart <i>FMS</i>	N/A	Economic Development	23

**Municipal Service Agreement:**

The City Council directed due diligence to be carried out on the Chemehuevi and Big Lagoon tribes. From that, Council would decide whether to proceed with preparing a Municipal Service Agreement (MSA) with one or both tribes. Specifically, for the City Council's discussion and direction to staff is whether to submit a proposed MSA to the Chemehuevi Tribe for their review and execution. It is further proposed that the City request that the Chemehuevi Tribe submit the executed MSA to the City by no later than 5:00 p.m. on Monday, July 18, 2005. The MSA would be prepared and brought back to the City Council for approval/authority to execute after conducting a hearing and reviewing all due diligence reports. The same procedure would be followed with the Big Lagoon Rancheria Tribe once the City receives the due diligence information and a check for the costs of the due diligence research. Each tribe would be responsible for all costs relative to the preparation of their respective Municipal Services Agreement.

It is further requested that the due diligence process be completed prior to approval of any State compact.

**Determination of City Council and Local Support for Indian Gaming:**

This agenda item also requests the City Council to take formal action as to whether it supports a gaming casino project in the City of Barstow. The City Council will discuss this issue and take the appropriate action.

With respect to local support for a gaming casino in the City of Barstow, the City may place a Ballot Initiative before the electorate at a local election. According to the City Attorney, the City must place such a ballot measure at least 88 days prior to the date of the November 2005 election; the deadline of which will be confirmed by the County to the City Clerk. The City Clerk would need to provide a cost estimate for carrying out this action.

**General Plan/Zoning for gaming casino:**

Generally, local land use/zoning regulations have no force or effect on land taken into Federal trust for an Indian reservation (due to sovereign immunity), but it does apply to all other portions of a "casino project" not contained on Federal lands (e.g., hotel and ancillary activities). In addition, the current MSA with the Los Coyotes Tribe provides a limited waiver of sovereignty to allow certain City land use/building regulations to apply on Federal lands. In either case, there is some value to creating the regulations.

The first question is the timing of enacting the regulations. They could be established in two ways: 1) In advance of Federal action, the City could dictate an area or areas of the City where it wishes Indian gaming to be restricted to, or 2) the City could establish the general plan/zoning regulations after the site or sites are established. Staff recommends the latter option because it provides more flexibility to project proponents, and it also minimizes the amount of land designated that will actually be used for gaming.

The three necessary actions to carry this out are: 1) Preparing an Ordinance Amendment to create a Barstow Municipal Code Zoning Chapter ("Indian Gaming Casino Zone" or similar title); 2)

Preparing a General Plan Amendment to a comparable General Plan Land Use designation comparable to the new zoning, and identifying the land use in all affected General Plan Elements, and 3) Preparing a Zone Change to classify the property to be affected. Environmental documentation will also be needed for all three actions. Staff estimates the time to carry out this process is 120-150 days.