

Approvals

City Attorney

Director of Finance

City Manager



CITY OF TEMECULA  
AGENDA REPORT

TO: City Manager/City Council

FROM: Peter M. Thorson, City Attorney

DATE: August 10, 2010

SUBJECT: Intergovernmental Agreements with the Pechanga Band of Luiseño Indians for the mitigation of off-reservation impacts from the Pechanga Gaming Center pursuant to the Tribal State Compact between the Pechanga Band of Luiseño Indians and the State of California

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PREPARED BY: Peter M. Thorson, City Attorney

RECOMMENDATION: That the City Council approve the following two actions:

1. Allocate \$2 million from the City's General Fund Reserves to fund the revenue shortfall in the City's Fiscal Year 2009-10 Budget resulting from the Tribe's failure to pay the first Annual Mitigation Fee of \$2 million anticipated under the March 9, 2010 Intergovernmental Agreement with the Pechanga Band of Luiseño Indians.
2. Direct the City Attorney to file a legal action against the Tribe and other applicable parties to require the Tribe to mitigate the impacts of the 2006 expansion of the Gaming Center as required by the 2006 Amended Compact.

DISCUSSION:

**Approval of Intergovernmental Agreement with Tribe.**

On March 9, 2010 the City Council approved the "Intergovernmental Agreement" between the Pechanga Band of Luiseño Indians ("Tribe") and the City ("City Intergovernmental Agreement") and also approved the "Memorandum of Understanding Concerning Law Enforcement Services at Pechanga Casino" between the Tribe, City, County of Riverside and the Sheriff of the County of Riverside ("Law Enforcement MOU"), culminating two and one half years of negotiations with the Tribe. The City Intergovernmental Agreement is required by the 2006 Amended Compact between the Tribe and the State of California approved by the voters in February 2008. Copies of both of these agreements and the Agenda Report summarizing the essential terms of the agreements are attached to this Agenda Report.

The City Intergovernmental Agreement provides generally that the Tribe would pay to the City an annual mitigation fee of \$2 million beginning on June 30, 2010 through June 30, 2031 and a Special

Mitigation Fee of \$10 million in 2015 to complete the funding for the construction of the Interstate 15/SR 79S Interchange improvements. These fees would have paid for the mitigation of traffic, law enforcement and fire service impacts to the City arising from the Tribe's February 2006 expansion of the Gaming Center in which 2,200 additional gaming machines were added to the Gaming Center without notice to the City and without compliance with the provisions of the 2006 Amended Compact requiring the mitigation of off-reservation impacts. The Gaming Center includes the Tribe's casino and hotel.

The Law Enforcement MOU provides generally that certain law enforcement services for the Gaming Center and the Pechanga Reservation will be performed by Riverside County Sheriff's deputies funded by the City of Temecula with the annual mitigation fee from the City Intergovernmental Agreement and that certain law enforcement protocols would be in effect for the deputies' entry onto the Pechanga Gaming Center and Reservation.

**City's Intergovernmental Agreement is not yet effective because of the failure of the Tribe and County to reach agreement on a County Intergovernmental Agreement.**

Under Section 13.12, the City Intergovernmental Agreement does not go into effect until the Tribe and the County have entered into an intergovernmental agreement under the 2006 Amended Compact to mitigate the impacts of the Gaming Center expansion in the County of Riverside.

The Tribe and the County have failed to reach agreement on a County intergovernmental agreement. The County intergovernmental agreement would have provided for the mitigation of the impacts of the Gaming Center expansion on the District Attorney's Office, the Public Defender's Office and the Department of Mental Health. Although the Gaming Center is surrounded on three sides by the City of Temecula, the County gains substantial benefits from the City Intergovernmental Agreement because the traffic improvements on Pechanga Parkway, Temecula Parkway and the Interstate 15/SR 79S Interchange will improve traffic flow for the unincorporated County areas and the City will fund the County's existing law enforcement responsibilities for the Gaming Center and the Reservation.

The County has demanded an annual mitigation fee of \$852,000 for the additional costs of the District Attorney's prosecutions, Public Defender's defense obligations and Mental Health's gambling addiction program resulting from the expansion of the Gaming Center. The Tribe has offered an annual mitigation fee of \$500,000 for these services. Thus, the differences between the County and the Tribe are \$352,000 per year. The Tribe and the County have not met to resolve these differences since July 13, 2010.

The City, therefore, has not received the first \$2 million annual mitigation payment under the City Intergovernmental Agreement for the mitigation of the existing impacts from the expansion of the Gaming Center.

The City proposed a First Operating Agreement in which the tribe would advance the first \$2 million annual mitigation fee to the City for these existing impacts. This would have enabled the Tribe and the County to conclude their negotiations and would have enabled the Tribe to preserve the benefits of the City Intergovernmental Agreement. The Tribal Council declined to enter into such an agreement with the City.

**The completion of the Interstate 15/SR 79S Interchange improvements is jeopardized by the failure of the City Intergovernmental Agreement to become effective.**

The proposed improvements to the Interstate 15/SR 79S Interchange ("Interchange") will significantly improve the flow of traffic from Interstate 15 to Temecula Parkway ("SR 79S") and significantly mitigate the traffic impacts from the expansion of the Gaming Center at this critical interchange. The traffic from the expansion of the Gaming Center is a significant contributor to the

poor level of service at this Interchange. The City Intergovernmental Agreement provides for the Tribe to pay a special \$10 million mitigation fee for the Interchange improvements. The \$10 million special mitigation fee is a fair-share contribution from the Tribe to this vital traffic improvement and represents approximately 27% of the total cost of the Interchange Construction of the Interchange is dependent on this special mitigation fee as this is a major part of the financing plan for the Interchange improvements.

**A \$2 million allocation is required from the City's General Fund Reserves to cover the revenue shortfall in the City's Fiscal Year 2009-10 Budget.**

In March 2009, the City and the Tribe reached agreement on the terms of the City Intergovernmental Agreement. The final agreement was then drafted and approved 12 months later in March 2010 by the City and the Tribe. At the time of the approval of the Fiscal Year 2009-10 Budget in June 2009, the City, County and the Tribe were reasonably certain that the County intergovernmental agreement would be in place and that the Tribe would make its first \$2 million annual mitigation fee payment by June 30, 2010. The Tribe and the County did not meet until April 2010 and then only at the insistence of the City. Had there been any uncertainty as to the likelihood of the approval of the County intergovernmental agreement, the Staff would not have anticipated the mitigation fee revenue in the Fiscal Year 2009-10 Budget and would have made appropriate adjustments to the Budget at that time. Therefore the recommended allocation is necessary.

**It is now necessary for the City to pursue litigation to mitigate the impacts of the Gaming Center Expansion.**

Section 10.8 of the 2006 Amended Compact between the Tribe and the State of California requires the Tribe to prepare a Tribal Environmental Impact Report for any activity that serves the Tribe's Gaming Activities or Gaming Operations and that may cause either a direct physical change in the off-reservation environment or a reasonably foreseeable indirect physical change in the off-reservation environment. The Tribe did not prepare a Tribal EIR at that time and elected to negotiate the City Intergovernmental Agreement. Section 10.8.8 requires the Tribe to negotiate with the County and any city located adjacent to the Gaming Center and enter into enforceable written agreements with the City and County providing for the timely mitigation ("EIR") of impacts arising from the gaming operations. Section 10.8.8 of the 2006 Amended Compact specifically provides:

**"Section 10. 8.8. Intergovernmental Agreement.** Before commencement of a Project and no later than when the Tribe issues its Final TEIR, the Tribe shall offer to begin negotiations with the County and any impacted City in which the Gaming Facility is located or adjacent to (hereafter "Impacted City"), and upon the County's and/or any Impacted City's acceptance of the Tribe's offers, shall negotiate with the County and any Impacted City and shall enter into enforceable written agreements with the County and any Impacted City which include all of the following:

- "(i) Provisions providing for the timely mitigation of any Significant Effect on the Off-Reservation Environment (which effects may include, but are not limited to, adverse changes in aesthetics, agricultural resources , air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, water resources, land use, mineral resources, traffic, noise utilities and service systems, and cumulative effects), where such effect is attributable, in whole or in part, to the Project, unless the parties agree that the particular mitigation is infeasible, taking into account economic environmental, social, technological, and/or other considerations.

- “(ii) Provisions relating to reasonable compensation for law enforcement, fire protection, emergency medical services and any other public services to be provided by the County and any Impacted City to the Tribe for the purposes of the Tribe’s Gaming Operation as a consequence of the Project.
- “(iii) Provisions providing for mitigation of any effect on public safety attributable to the Project, including any reasonable compensation to the County and any Impacted City as a consequence thereof.
- “(iv) Provisions providing for reasonable compensation for programs designed to address gambling addiction.”

Given the failure of the Tribe and the County to reach agreement on an intergovernmental agreement and the consequent failure of the City’s Intergovernmental Agreement to become effective, the City has no alternative but to file litigation to protect its rights under the 2006 Amended Compact and applicable law.

The City Attorney estimates that the litigation would be filed in approximately 45 days in order to accommodate notifications to the Governor’s Office.

**FISCAL IMPACT:** The proposed Mitigation Fee under the City Intergovernmental Agreement would have generated a minimum of \$42 million over the term of the Intergovernmental Agreement, less any SDF money received by the City from the state, but with CPI increases each year beginning in the sixth year. Additionally, the City would have received \$10 million towards the I-15/SR79S Interchange either from grants secured by the Tribe or from Tribal funds. The total funds available to the City over the term of the City Intergovernmental Agreement would have been \$52 million with a rough estimate of an additional \$13 million in CPI increases for years six to 21. The City will not receive these funds. The City expects to receive comparable mitigation fees following the successful conclusion of litigation and the resulting Tribal EIR process.

**ATTACHMENTS:**

1. Agenda Report for March 9, 2010 concerning Intergovernmental Agreement and Law Enforcement MOU
2. Executed Intergovernmental Agreement dated as of March 9, 2010
3. Partially executed Law Enforcement MOU dated as of March 9, 2010