



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

GREG COX
First District

DIANNE JACOB
Second District

PAM SLATER-PRICE
Third District

RON ROBERTS
Fourth District

BILL HORN
Fifth District

DATE: January 9, 2011

05

TO: Board of Supervisors

SUBJECT: APPROVAL OF INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY AND THE SYCUAN BAND OF THE KUMEYAAY NATION AND THE SYCUAN TRIBAL DEVELOPMENT CORPORATION FOR LAND TRUST MITIGATIONS (DISTRICT: ALL)

SUMMARY:

Overview

San Diego County is home to 19 Indian Reservations and 18 Tribal governments. The federal government has the authority to take lands into federal trust on behalf of Native American tribes as governed by the Indian Reorganization Act of 1934. Trust acquisitions impact local land use authority and result in a loss of property and sales tax.

Your Board has a longstanding policy in support of intergovernmental agreements between local governments and tribes to mitigate fiscal impacts on local governments and significant off-reservation environmental, infrastructure, health, safety, and other impacts. This is a request to approve an inter-governmental agreement with the Sycuan Band of the Kumeyaay Nation and the Sycuan Tribal Development Corporation that sets forth the commitments of the Sycuan Band to mitigate impacts of placing 1,357 acres of land into federal trust.

Recommendation(s)

CHIEF ADMINISTRATIVE OFFICER

1. Find that the proposed agreement is exempt from CEQA pursuant to section 15378(a)(1) because it is not an activity directly undertaken by the County, but is an agreement between two governmental agencies to mitigate certain impacts from a proposed federal action to take land into federal trust.
2. Approve and authorize the Clerk of the Board of Supervisors to execute four originals of the Intergovernmental Agreement between the County of San Diego and the Sycuan Band of the Kumeyaay Nation and the Sycuan Tribal Development Corporation for impacts associated with the expansion of Sycuan Reservation

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placing land into federal trust.

3. Authorize the Chief Administrative Officer to negotiate and execute amendments or revisions, including extension of the agreement that do not materially impact or alter either the program or funding
4. Authorize the Chief Administrative Officer to receive, file and execute any documents necessary to administer this Agreement.
5. Direct the Auditor and Controller to establish a trust fund for the deposit of the mitigation funds to be received from this agreement. Funds will be used for projects, programs and services that benefit the Crest - Dehesa - Harbison Canyon - Granite Hills Sub-region.

Fiscal Impact

If approved, this request will result in the loss of approximately \$321,000 annually of property tax (\$123,928), transient occupancy tax (\$149,825) and sales tax revenue (\$47,479) as a result of 1,357 acres of land being taken into federal trust on behalf of Sycuan. The approval and execution of the proposed Agreement mitigates this loss through the receipt of approximately \$321,000 annually over a seven-and-a-half year period. Transient occupancy tax and sales tax revenue will be adjusted annually with a 2% cost of living adjustment. These funds will be deposited into a non-interest bearing trust fund to be used for services, programs, and projects. The Agreement also provides for the payment of \$800,000 for Dehesa Road improvements, full construction costs of two new left turn pockets on Dehesa Road, and a \$162,520 payment to the Transportation Impact Fee program. Staff will return to your Board to appropriate funding for the Dehesa Road improvements and request authority to advertise and award this project. There will be no additional staff years.

Business Impact Statement

N/A

Advisory Board Statement

N/A

BACKGROUND:

San Diego County is home to 19 Indian Reservations and 18 Tribal governments, more than any other county in the nation. The County has opposed the expansion of tribal lands and Indian gaming activities where mitigation for resulting impacts are not sufficiently addressed. The County also has a policy to oppose efforts that impede local land use authority. The County reaches out to Tribal Nations to enter into discussions to lessen impacts to the community

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relating to traffic and circulation, the environment, public safety, and tax losses, and to mitigate these impacts through a binding agreement.

The Sycuan Band of the Kumeyaay Nation (Sycuan Band) and the County have met and negotiated an agreement to mitigate the significant off-reservation environmental impacts as well as the loss in revenue from property taxes, transient occupancy taxes and sales taxes that will result from Sycuan Band's pending 1,357 acre trust acquisition. This is a request to approve an intergovernmental agreement with the Sycuan Band of the Kumeyaay Nation and the Sycuan Tribal Development Corporation that sets forth the commitments of the County and the Sycuan Band to address impacts of placing the land into federal trust.

Tribal Obligations

The following is a description of the obligations the Sycuan Band would agree to as part of the Intergovernmental Agreement:

- **Security and Law Enforcement.** The Sycuan Band will work with the County to apply for and secure grant funding to provide security and law enforcement on and in the vicinity of the Sycuan Reservation.
- **Public Health and Safety.** The Sycuan Band will prepare a geotechnical investigation and report by a California Certified Engineering geologist to evaluate the slope stability on the north shore of Lake Emma, and to implement the recommended mitigation measures to ensure erosion does not damage Dehesa and Sloan Canyon Roads, threaten property, or lives.
- **Public Trail.** The Sycuan Band will execute an Option Agreement granting an option to the County for future siting and dedication of a public trail on the Sycuan Property.
- **Transportation and Circulation.** The Sycuan Band will work with the County to apply for and secure grant funding, through local, state or federal funding sources, to provide transportation and circulation improvements in the vicinity of the Reservation. The Sycuan Band will also agree to pay for specific transportation projects and remedial measures to mitigate direct and indirect impacts as follows:
 - Pay the County a total sum of eight hundred thousand dollars (\$800,000) to be used to construct a northbound right-turn lane on Dehesa Road at Harbison Canyon Road. The Sycuan Band also agrees to provide any needed right-of-way on its property to the County for the northbound right-turn lane.

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- Dedicate the road right of way to the County and fully fund and construct new left turn pockets on Dehesa Road at the primary entrance to both the Dehesa Housing and the entrance to the Outdoor Events Center/RV spaces.
- Pay the County a one-time Transportation Impact Fee (TIF) payment of \$162,520.
- **Property Taxes / Transient Occupancy Taxes / Sales Taxes.** To mitigate for the tax losses on the 1,357 acre property being taken into federal trust, the Sycuan Band shall pay the County the following payments for a period of seven and a half years. In addition, for the transient occupancy tax and the sales tax items, there will be an annual Cost of Living Adjustment (COLA) in the amount of 2% each year on the anniversary date of this Agreement.
 - The sum of \$123,928 to mitigate lost revenues from property taxes.
 - The sum of \$149,825 to mitigate lost revenue from transient occupancy taxes with the annual COLA.
 - The sum of \$47,479 to mitigate lost revenues from sales taxes with the annual COLA.
 - Funds will be deposited into a Trust Fund to ensure that they are being spent for projects, programs and services that benefit the Crest – Dehesa - Harbison Canyon - Granite Hills Sub-region.
- **Mitigation for Currently Unanticipated Uses.** The Sycuan Band agrees that if it changes the uses of the property being taken into trust from those described in its amended application dated May 2011, it will mitigate the impacts from such proposed uses by, notifying the County in advance of proposed project changes, and the parties will commence discussions and negotiations to determine if such changes trigger the need for further analysis of off – Reservation impacts. If the County determines that there is a need for further analysis, the Sycuan Band will conduct the necessary analysis and enter into good faith negotiations with the County to mitigate any identified off-reservation impacts.
- **Ball Fields for Community Use.** The Sycuan Band agrees to allow the community of Dehesa to use the ball fields and recreation center to be constructed on the Spinalli property.

County Obligations

The following is a description of the obligations that the County would agree to as part of the Intergovernmental Agreement:

- Within fourteen (14) days of the effective date of this Agreement, the County agrees to withdraw its opposition to Sycuan’s Amended Application to take 1357 acres into trust by submitting a letter to the Bureau of Indian Affairs.

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- The County agrees not to file an appeal or any other type of challenge to any decision by the Bureau of Indian Affairs, to take the 1357 acres into federal trust.
- The County agrees to withdraw the Civil Penalty Notice of Order related to the Sloane Canyon mine properties initiated on or about August 18, 2011 forthwith.
- The County agrees not to file any further administrative, civil or other action related to the Sloane Canyon mine properties, including any civil penalties or any other type of fine.
- The County agrees to assist Sycuan in processing a boundary adjustment regarding the legal lot(s) for the land being sold to KDLC as open space.
- The County agrees to process Sycuan's requests to vacate the following title restrictions:
 - Open space easement recorded April 28, 1997, Document No. 1997-0194622;
 - Conditional Irrevocable Offer to Dedicate Real Property to County of San Diego SPA 88-007 Planning Areas IA and IB, recorded April 28, 1997, Document No. 1997-0195623; and
 - Any other open space restrictions which were similarly recorded to run for the period of the operations of the sand mining or until 2017, whichever comes first; provided, however, that Sycuan agrees to reimburse the County for all reasonable costs the County incurs to process said vacations.
- If the Tribe applies to annex to the Otay Municipal Water District, and without in any way limiting the County's discretion to support or oppose the Tribe's proposal, the County agrees to cooperate with the Tribe in its review and comment on the application.

Linkage to the County of San Diego Strategic Plan

The County of San Diego's 2011-2016 Strategic Plan includes a Safe and Livable Communities Initiative with an objective to develop and support services, programs, and initiatives that enrich or protect our residents' quality of life. This agreement will help fulfill this objective mitigating land trust acquisition related impacts.

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Respectfully submitted,

A handwritten signature in cursive script that reads "Sarah Aglassi".

SARAH E. AGHASSI
Deputy Chief Administrative Officer

ATTACHMENT(S)

A - Intergovernmental Agreement Between the County of San Diego and the Sycuan Band of the Kumeyaay Nation, and Sycuan Tribal Development Corporation Concerning Sycuan's Request to Place 1357 Acres into Federal Trust

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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED
 Yes No

PREVIOUS RELEVANT BOARD ACTIONS:
N/A

BOARD POLICIES APPLICABLE:
N/A

BOARD POLICY STATEMENTS:
N/A

MANDATORY COMPLIANCE:
N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):
N/A

ORIGINATING DEPARTMENT: Land Use and Environment Group

OTHER CONCURRENCE(S): N/A

CONTACT PERSON(S):

Teresa Brownyard	_____	_____
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