



DATE: November 19, 2024
TO: Mayor and Members of the City Council
FROM: Gillian Haen, Assistant City Manager
SUBJECT: **ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE SCOTTS VALLEY BAND OF POMO INDIANS OF CALIFORNIA RELATING TO THE PROPOSED APPLICATION TO PLACE LAND WITHIN THE CITY OF VALLEJO IN TRUST FOR THE BENEFIT OF THE TRIBE**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to execute a Cooperative Agreement with the Scotts Valley Band of Pomo Indians of California relating to the proposed application to place land within the City of Vallejo in trust for the benefit of the Tribe.

REASONS FOR RECOMMENDATION

The City may enter into the Cooperative Agreement with the Scotts Valley Tribe to ensure the City interests are protected regarding analysis of impacts from the Proposed Project that includes a gaming casino, Tribal housing and Tribal Administration buildings on 160 acres in the proposed Fee to Trust application located at I-80 and Admiral Callahan. This Agreement would allow the City to continue analyzing the environmental impacts and negotiating with the Tribe, without committing to a position on the project. Since the City has no approval authority over the Proposed Project, it is recommended that we enter into this Agreement to preserve our right to mitigate potential impacts of the potential project.

BACKGROUND AND DISCUSSION

Background

In July 2024, the Bureau of Indian Affairs (BIA) prepared an Environmental Assessment (EA) to analyze the potential environmental consequences of the Scotts Valley Band of Pomo Indians (Tribe) proposed Casino and Tribal Housing Project, which includes the acquisition by the U.S. Bureau of Indian Affairs (BIA) of a 160-acre property into federal trust status for the benefit of the Tribe for gaming purposes. The Project Site consists of four parcels (Assessor Parcel Numbers 0182010010, 0182020020, 0182020080, 0182020010) within the City of Vallejo in Solano County, California. The Project Site is bordered by I-80 to the west; Columbus Parkway and commercial development to the south; undeveloped land to the north; and undeveloped land, City water tank, electrical substation, and Vallejo Fire Station #27 to the east. The Project Site is undeveloped except for several unpaved ranch roads and a horse boarding facility. Following the acquisition of the Project Site into federal trust, the Tribe proposes to develop a casino facility, Tribal housing, a Tribal administration building, and associated parking and infrastructure on the Project Site (Proposed Project). The federal actions necessary to implement the Proposed Project trigger the requirements of the National Environmental Policy Act (NEPA). For the purpose of this EA, the BIA will serve as the Lead Agency for compliance with NEPA and the City of Vallejo is a Responsible Agency. On July 8, 2024, the BIA circulated the NEPA EA for public review.

The City of Vallejo analyzed the document and submitted comments to the BIA on August 22, 2024 regarding potential impacts on the City. City staff also participated in the public hearing on the document on July 23, 2024.

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Prior to the City submitting its comment letter, the Scotts Valley Tribe reached out to City staff to discuss the potential impacts on the City of Vallejo. The Tribe offered to engage with the City to further study and analyze the potential impacts of the Proposed Project and discuss potential mitigation measures for the potential impacts on the City.

Scotts Valley Tribe Proposed Project Process

The Tribe must complete two processes before the Proposed Project can be approved. The Fee to Trust application and then the Gaming Compact negotiation with the Governor if the Tribe chooses to develop a Class III Gaming facility. A class II facility would not require a compact. The City does not hold discretionary approval over either of these processes. The City's role is limited to Responsible Agency status relating to the environmental impact assessment in the Fee to Trust process.

Federal Fee to Trust Application

The Bureau of Indian Affairs (BIA) land-to-trust process, also known as a fee-to-trust land acquisition, which the Tribe has applied for, involves the following steps:

Application: Eligible applicants submit a written request to the BIA's Office of Trust Services. Tribes can use a tribal resolution to meet this requirement.

- **Notice of application:** The BIA Regional Office issues a Notice of Land Acquisition Application.
- **Comments:** The BIA Regional Office collects comments on the proposed transaction for 30 days.
- **Response:** The applicant has 30 days to respond to the comments.
- **Environmental analysis:** The BIA considers the appropriate environmental analysis. This is the step the Tribe is currently taking and the City is involved through the comment process of the environmental document.
- **Decision:** The BIA issues a Notice of Decision within 120 days of notifying the applicant that their application is complete.

Gaming Compact Application

- If the BIA approves the Tribe's Fee to Trust application, the Tribe may submit a request to negotiate a Tribal State Gaming Compact with the California Governor detailing the types of gaming allowed on the reservation, including specific game types and revenue sharing with the State. Without the Gaming Contract, the Tribe's gaming facilities are limited to Class II gaming (card rooms and bingo games).
- **Federal Approval:** The negotiated compact must be approved by the federal government.
- **Tribal Gaming Ordinance:** The Tribe must establish a tribal gaming ordinance outlining how the casino will be operated, including regulations on gaming activities, revenue distribution, and background checks.
- **NIGC Review:** The National Indian Gaming Commission (NIGC) must review and approve the Tribe's gaming ordinance.

Proposed Cooperative Agreement with the Tribe

The Tribe is interested in executing a Cooperative Agreement with the City in order to further discuss and analyze environmental and community impacts from the proposed project. Since the City submitted a detailed

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letter of our concerns with the potential project impacts, the City and the Tribe would like to increase the analysis in the impact areas and discuss potential mitigation to reduce those impacts. This Cooperative Agreement allows for the Tribe to fund further analysis of the impact areas through a Reimbursement Agreement, so that the City can assess what potential mitigations, if any, could mitigate the impacts to our community.

The Cooperative Agreement formalizes the Parties' commitment to initiating discussions and establishing a foundational framework for cooperative negotiations on matters of shared interest relating to the Proposed Project and Project Site. Immediately upon the execution of this Cooperative Agreement, the Parties shall commence diligent and good faith negotiations and shall otherwise use their best efforts to finalize, approve, execute and deliver an Intergovernmental Agreement. The purpose of the Intergovernmental Agreement is to provide for binding and enforceable mitigations of the potentially significant environmental effects of the Proposed Project, including but not limited to:

Water Infrastructure, Easements, Capacity and Supply: Design, connection, and expansion of water services to support the Proposed Project and Project Site's development, including any necessary easements, infrastructure, necessary supply, and capacity expansion.

Sewer, Wastewater and Stormwater: Coordinating with the Vallejo Flood and Wastewater District and the City on the establishment of appropriate easements and infrastructure necessary for wastewater and stormwater services and capacity therefor.

Vehicle and Emergency Access: Ensuring adequate access to the Proposed Project and Project Site for vehicles, including emergency services, to maintain public safety and facilitate emergency response.

Transportation Infrastructure and Capacity: Design, planning and construction of necessary infrastructure for traffic and transportation to address both local and regional impacts.

Public Safety Services: Identifying service level capacity necessary for law enforcement, fire protection, and emergency medical services to be provided in connection with the proposed Project impacts.

Social Impacts: Identifying adequate measures to address social impacts resulting from the Proposed Project, such as gambling addiction, personal bankruptcies, prostitution, drug addiction, and crime are addressed.

Other Impacts: Facilitating discussions of any other impacts identified in the Environmental Assessment or those which may be identified by the Parties during the negotiations contemplated herein.

Benefits and Risks of Entering into the Agreement

The City does not hold any approval authority over the Fee to Trust or the Gaming Compact processes. Approval of this Agreement would allow the City the opportunity to further study the potential impacts of the Proposed Project, the costs of which would be reimbursed through a Reimbursement Agreement with the Tribe, and solidify appropriate mitigation through a future Intergovernmental Agreement. Technical expert consultants would be engaged for this analysis and these studies would create the foundation for the analysis to support potential future mitigation in an effort to protect the City from negative impacts of the Proposed Project.

The benefit of the Cooperative Agreement for the Tribe is, they would be able to document additional analysis necessary to define impacts and mitigations for their proposed project in the BIA environmental document, while directly communicating with City staff and receiving review, input, and facts to support potential project mitigation. The Tribe has also communicated its values related to being a good neighbor and taking care of the City of Vallejo as a priority since they believe their ancestors have historically been in the area. The benefit for the City of the Cooperative Agreement is that the City would be able to ensure our interests are protected through technical consultant expert analysis of the impact areas and input on potential mitigations to ensure

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that if this project moves ahead, the City's needs are protected. Similar examples of mitigation and community benefit contributions for local governments who have entered into similar agreements include one Bay Area county receiving one time fees of over \$5M for impacts and recurring fees of \$17M a year in addition to a community benefit yearly payment towards parks of \$30M per year and \$12M per year in community grants. Another Bay Area city receives \$14M a year in recurring payments for mitigations and community benefits. In contrast, another Bay Area city that chose not to negotiate mitigations receives no recurring payments. The opportunity to work together with the Tribe to ensure the City of Vallejo is protected from the Proposed Project impacts is a positive way to provide safeguards so that if the project moves ahead, the impacts are fairly mitigated.

Risks of not moving forward with the Cooperative Agreement are that the Tribe may proceed in this process without involving the City. The BIA analysis of mitigation may not be the same as the City of Vallejo analysis on appropriate mitigation, therefore we cannot completely rely on the EA process to protect the City's interests. The City water transmission line on the property, the City water tank, and the fact that the hillside is a documented landslide zone are a few of the larger concerns that need further analysis and mitigation relating to potential future project impacts. Since the City does not have approval authority, it is a better position to prepare for the most impactful outcome and protect our City interests.

The City has the right to terminate the Agreement at any time. Signing the Agreement does not commit the City to any position regarding the Proposed Project. If the negotiations are fruitful, the Parties will be working towards an Intergovernmental Agreement to formalize the binding mitigation to protect the City's interests but the overall commitment level at this time is minor since the termination clause allows the City to withdraw for any reason at our sole discretion.

Overall Proposed Project Concerns

Community concerns regarding casinos in general are fairly common. One of the benefits of entering into the Cooperative Agreement is that it provides the City a path to independent analysis of areas of concern that are specific to Vallejo in order to ensure mitigation reduces impacts if the project moves forward and is approved by the BIA.

Next Steps

If the City Council approves the Cooperative Agreement and negotiations are fruitful, the next step is to negotiate an Intergovernmental Agreement. There will be additional opportunities for public input during the Intergovernmental Agreement process.

Given the above information, staff recommends that the City Council enter into the Cooperative Agreement with the Tribe in order to take a proactive approach to this process.

FISCAL IMPACT

There are no budget impacts as a result of this Cooperative Agreement. City staff anticipates that there will be a reimbursement agreement executed between the Tribe and City that will cover all of the City's costs for implementation of the Cooperative Agreement.

ENVIRONMENTAL REVIEW

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This action is not a project pursuant to the California Environmental Quality Act (CEQA) because it is not an action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guidelines section 15378.

ATTACHMENTS

1.	Resolution Authorizing City Manager to Execute Cooperative Agreement with Pomo Band of Indians of California_CAO Stamp
2.	20241113 Cooperative Agreement FINAL
3.	Response to Scotts Valley EA 8-22-24

CONTACT

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