



## County of Sonoma Agenda Item Summary Report

Clerk of the Board  
575 Administration Drive  
Santa Rosa, CA 95403

### Agenda Item Number: 24

(This Section for use by Clerk of the Board Only.)

**To:** Board of Supervisors

**Board Agenda Date:** August 7, 2018

**Vote Requirement:** Majority

**Department or Agency Name(s):** County Administrator's Office  
County Counsel

**Staff Name and Phone Number:**

Marissa Montenegro, 565-3771  
Sita Kuteira, 565-1106

**Supervisory District(s):**

Fourth

**Title:** Amendment to Memorandum of Agreement with Lytton Rancheria

**Recommended Actions:**

Authorize the Chair to execute an Amendment to the Memorandum of Agreement with the Lytton Rancheria to impose a permanent prohibition on gaming activities in Sonoma County upon the enactment of H.R. 597, the Lytton Rancheria Homelands Act.

**Executive Summary:**

In recognition of the need for intergovernmental cooperation and a broken administrative fee-to-trust process that consistently disadvantages counties, the County negotiated and executed the 2015 Memorandum of Agreement (MOA) with the Lytton Rancheria (Tribe) to restrict gaming and ensure that the impacts of development on tribal lands were fully mitigated. Among other provisions, the Tribe agreed to certain gaming and land use restrictions and the County agreed to actively support legislative efforts to take lands located to the southeast of Windsor into trust. The Lytton Rancheria Homelands Act, H.R. 597, is currently in Congress and proposes to take such lands into trust. In exchange for the County's support of the bill, the Tribe has agreed to permanently refrain from gaming anywhere in Sonoma County, exceeding the gaming restrictions imposed by the current MOA or the pending legislation. This item recommends the approval of an Amendment to the MOA to effectuate that permanent prohibition on gaming and gaming activities within Sonoma County upon the enactment of H.R. 597.

**Discussion:**

Background and 2015 Memorandum of Agreement

Originally recognized by the United States with land in the area north of Healdsburg in the 1930's, the tribe now known as the Lytton Rancheria of California was dissolved in 1958 and the land was sold. In 1991, the Tribe was fully restored as a federally recognized tribe. As a part of the 1991 settlement that restored the tribe, some steps were established for the process of taking various lands into trust and the

County made a commitment to assist in helping the tribe find suitable lands for tribal housing and economic development. In 2007, the Tribe applied to the federal government to have 124 acres taken into trust and began the environmental review process under the National Environmental Protection Act (NEPA) to identify any necessary mitigation for the project. Negotiations over appropriate mitigations to address off-reservation environmental impacts led to the development and execution of the Memorandum of Agreement on March 10, 2015. Without the agreement, mitigation commitments made in the NEPA environmental review documents, or elsewhere, would not be enforceable.

Sonoma County has long recognized the importance of relationships between tribal and local governments and has used intergovernmental agreements as a tool to ensure those relationships are mutually beneficial. The County respects tribal sovereignty, understands the significance of a tribe's federal recognition, and acknowledges and respects the need for tribes to preserve their cultural heritage and pursue economic self-reliance, including through the acquisition of trust land. At the same time the County also recognizes that developments on trust land without regard to local land use plans and other laws can result in significant adverse impacts on the County, its citizenry, services, lands, and infrastructure that the County may not have the ability to mitigate. As such, the County has made it a priority to ensure that off-reservation impacts of development on trust lands are fully mitigated and that gaming in the County remain limited. To effectuate this the County seeks opportunities to influence federal and state policy, and perhaps most effectively, pursues intergovernmental agreements with tribes to address issues in the face of an administrative fee-to-trust process that is historically and continually wrought with deficiencies and defects.

The 2015 MOA seeks to mitigate potential impacts that would otherwise be left entirely unaddressed by the federal fee-to-trust process and has been held up as "a model for intergovernmental cooperation" by the California State Association of Counties (CSAC). Some highlights of that agreement include that the Tribe would follow environmental mitigation measures and best management practices in the construction of its residential development and maintain the rural nature of the area through design and screening. Nearly all other development on the 500 acre property would be consistent with the County General Plan and Zoning Ordinance, aside from a potential resort and winery. Additionally, the Tribe has agreed to compensate the County for impacts to roads and parks, among others, and pay in lieu property tax and transient occupancy tax.

The current MOA also includes a commitment by the Tribe not to engage in gaming in Sonoma County during the 22 year term of the agreement.

#### H.R. 597, The Lytton Rancheria Homelands Act

There are three ways land may be taken into trust by the federal government for the benefit of a tribe: legislatively through an act of Congress, administratively through an application to the Department of the Interior, and judicially. While the tribe currently has a pending administrative fee-to-trust application, they have also sought legislative action because the administrative process is lengthy, opaque and uncertain for all parties. As part of the MOA, the County committed to actively supporting federal legislation to take certain lands into trust. In 2015, shortly after the MOA was executed, Congressman Jared Huffman introduced H.R. 2538, the Lytton Rancheria Homelands Act of 2015, to take nearly 500 acres of land outside of Windsor into trust.

In the next congressional session, Congressman Jeff Denham introduced a nearly identical bill, H.R. 597. The bill contains the following gaming restrictions:

- The 500 acres outside Windsor taken into trust under the act will not be eligible for gaming.
- Any other lands taken into trust for the tribe after the enactment of the act will not be eligible for gaming until after March 15, 2037, when the MOA expires.
- No lands in Sonoma County located north of Highway 12 may be taken into trust for the tribe for the purposes of gaming.

Additionally, the bill recognizes and protects the validity of the MOA, which otherwise could be subject to challenge by the Bureau of Indian Affairs (BIA), due to the restrictions it would place on tribal trust land.

#### Proposed Amendment

The proposed MOA amendment would further the Board's goal of limiting casino expansion in Sonoma County by providing an additional gaming restriction. Pursuant to the Amendment and upon the enactment of H.R. 597, the Tribe would be permanently prohibited from conducting gaming anywhere in Sonoma County. While the MOA term is until 2037, this gaming restriction would survive so long as the Tribe had trust lands in the County. Nothing in the amendment would limit the County's ability to object to, or comment on, land being taken into trust in the future.

#### **Prior Board Actions:**

March 10, 2015 – Approval of the Memorandum of Agreement between the County of Sonoma and the Lytton Rancheria of California

#### **Strategic Plan Alignment**      Goal 1: Safe, Healthy, and Caring Community

The proposed Amendment to the Memorandum of Agreement will support a safe and healthy community by permanently restricting gaming throughout Sonoma County.

Fiscal Summary			
Expenditures	FY 18-19 Adopted	FY 19-20 Projected	FY 20-21 Projected
Budgeted Expenses			
Additional Appropriation Requested			
<b>Total Expenditures</b>			
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>			
<b>Narrative Explanation of Fiscal Impacts:</b>			
The MOA includes provisions for mitigation payments from the Tribe to the County to address the off-site impacts of potential future development.			
<b>Staffing Impacts</b>			
Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)
<b>Narrative Explanation of Staffing Impacts (If Required):</b>			
<b>Attachments:</b>			
Attachment A: Amendment to the Memorandum of Agreement between the County of Sonoma and the Lytton Rancheria of California			
<b>Related Items “On File” with the Clerk of the Board:</b>			
Memorandum of Agreement between the County of Sonoma and the Lytton Rancheria of California			

**AMENDMENT TO MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF SONOMA AND THE LYTTON RANCHERIA OF CALIFORNIA**

The County of Sonoma and the Lytton Rancheria of California hereby agree, effective immediately, to amend the Memorandum of Agreement Between the County of Sonoma and the Lytton Rancheria of California regarding Fee to Trust lands entered into as of March 10, 2015 (the "Agreement"), as follows:

1. Section 6.3 of the Agreement is amended to read as follows:

"The Tribe agrees not to engage in any Gaming or Gaming Activities in Sonoma County during the term of this Agreement. Notwithstanding this, upon the enactment into law of H.R. 597, the Lytton Rancheria Homelands Act of 2017, as passed by the U.S. House of Representatives, or any other federal legislation containing substantially identical language to H.R. 597 in the 115<sup>th</sup> Congress (the "Federal Legislation"), the Tribe agrees to a permanent prohibition on engaging in any Gaming or Gaming Activities in Sonoma County. Except with regard to the Federal Legislation, nothing in this provision shall impact or diminish the County's right to object to and/or comment on lands being taken into trust, whether or not for the purposes of Gaming. Any disputes arising under this section are subject to sections II, XI, XIV and XV of this Agreement, which are incorporated by reference.

2. Section 9.1 of the Agreement is amended to read as follows:

"This Agreement shall be in full force and effect for twenty-two (22) years from the Effective Date, provided that Section 6.3, and Sections II, XI, XIV and XV of the Agreement required to enforce Section 6.3, shall survive and continue in full force and effect for so long as the Tribe has Trust Lands in Sonoma County."

3. All other provisions of the Agreement remain in effect and unchanged.

**SIGNATURES ON NEXT PAGE**

IN WITNESS WHEREOF, the Parties execute and enter into this Amendment to the Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

LYTTON RANCHERIA OF CALIFORNIA

Date: 6/16/2018

Margie Mejia  
Margie Mejia, Tribal Chairperson

APPROVED AS TO FORM BY  
LEGAL COUNSEL FOR THE TRIBE

Date: 6/16/2018

By: Larry Stidham  
Larry Stidham, Esq.

COUNTY OF SONOMA

Date: \_\_\_\_\_

\_\_\_\_\_  
James Gore, Chair, Board of Supervisors

APPROVED AS TO FORM BY  
COUNTY COUNSEL

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bruce Goldstein, County Counsel  
Sonoma County Counsel



# LYTTON RANCHERIA • Lytton Band of Pomo Indians



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RESOLUTION OF THE TRIBAL COUNCIL  
OF  
LYTTON RANCHERIA OF CALIFORNIA  
RESOLUTION NO.: 0611618

RE: Approval of Memorandum of Agreement Between the County of Sonoma and the Lytton Rancheria of California.

WHEREAS: The Lytton Rancheria Tribal Council ("Tribal Council") is the governing body of the Lytton Rancheria of California ("Tribe") pursuant to Article III of the Tribe's Constitution; and

WHEREAS: The Tribal Council has the authority and power to negotiate and execute contracts with local governments and waive the immunity of the Tribe pursuant to Article XIII, Subsection 13.1 (a) of the Tribe's Constitution; and

WHEREAS: The Tribal Council has entered into a Memorandum of Agreement between the County of Sonoma and the Tribe addressing trust land acquisition by the Tribe, effective March 10, 2015, ("Agreement"); and

WHEREAS: The Tribal Council has negotiated an Amendment to the Agreement with the County of Sonoma, ("Amendment"); and

WHEREAS: The Tribal Council has determined that it is in the best interests of the Tribe to approve and sign said Amendment; and

WHEREAS: The Tribal Council agrees to waive the immunity of the Tribe to allow enforcement of the terms contained in said Amendment.

NOW THEREFORE BE IT RESOLVED: That the Tribal Council hereby approves the Amendment entitled "Amendment to Memorandum of Agreement between the County of Sonoma and Lytton Rancheria Fee to Trust"; and

BE IT FURTHER RESOLVED: That the Tribal Council waives the immunity of the Tribe pursuant to the terms set forth in the Amendment. The Tribal Council specifically recognizes that exhaustion of administrative remedies including before any Tribal Court, shall not be required prior to proceeding to arbitration or court action; and

BE IT FINALLY RESOLVED: That the Tribal Council authorizes Chairperson Margie Mejia to sign and execute said Amendment on behalf of the Tribe.

CERTIFICATION

On June 16, 2018, the Tribal Council of the Lytton Rancheria of California  
At a duly called meeting at which a quorum was present, did pass the attached Resolution:

RE: Approval of Memorandum of Agreement Between the County of Sonoma and the  
Lytton Rancheria of California.

By a vote of 4 Ayes 0 Nays 0 Abstentions

Margie Mejia  
Margie Mejia, Tribal Chairperson

Bert Steele  
Bert Steele, Tribal Treasurer