

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

363



FROM: County Counsel/TLMA
Planning Department

SUBMITTAL DATE:
April 15, 2011

SUBJECT: Agreement for Establishing Procedures for the Administration of a Cooperative Land Use Planning Program between the Torres Martinez Desert Cahuilla Indians and Riverside County.

RECOMMENDED MOTION: That the Board approve and execute the attached agreement between the Tribe and the County and authorize the Chairman to execute the same.

BACKGROUND: Beginning in approximately 2003, the County's 4th District Supervisor and the Tribe were approached by representatives of non-Indian landowners who owned fee lands located within the exterior boundaries of the Tribe's Reservation. These representatives sought to obtain greater clarification with regard to each government's jurisdiction in connection with regulating growth and making land use decisions on submitted applications for such non-Indian owned fee lands. The parties subsequently engaged in a series of meeting discussions and determined that it would be desirable for administrative procedures to be established that involve joint review and consultation between the County and the Tribe so that decisions made by either government will acknowledge the interests of the Tribal and non-Tribal communities as well as providing informed decisions relating to land use planning on non-Indian owned fee lands located within the Tribe's Reservation. The attached agreement contains the relevant administrative procedures that have been developed as a result of the above-referenced discussions. This matter is considered exempt from the provisions of the California Environmental Quality Act (CEQA) as provided in Title 14 Cal. Code of Regs. § 15061(b)(3).

Carolyn Syms Luna
Carolyn Syms Luna, Planning Director

FORM APPROVED COUNTY COUNSEL
BY: *David H.K. Huff* 4/21/2011
DATE: *4/21/2011*
Department Concurrence

FINANCIAL DATA

Current F.Y. Total Cost: \$
Current F.Y. Net County Cost: \$
Annual Net County Cost: \$

In Current Year Budget:
Budget Adjustment:
For Fiscal Year:

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Tina Grande*
Tina Grande

County Executive Office Signature

Dep't Recomm.: ☐ Consent ☐ Policy ☒
Per Exec. Ofc.: ☐ Consent ☐ Policy ☒

Prev. Agn. Ref.:

District: All

Agenda Number:

3.55

**AGREEMENT
FOR ESTABLISHING PROCEDURES FOR THE ADMINISTRATION OF
A COOPERATIVE LAND USE PLANNING PROGRAM BETWEEN
THE TORRES MARTINEZ DESERT CAHUILLA INDIANS
AND RIVERSIDE COUNTY**

The County of Riverside, a political subdivision of the State of California ("County") enters into this ("Agreement") with the Torres Martinez Desert Cahuilla Indians, a sovereign government and federally-recognized Indian tribe, ("Tribe") to confirm the inter-governmental understanding of the County and Tribe ("Parties" or "Governments") regarding land use regulations for fee lands owned by non-Indians and located within the exterior boundaries of the Torres Martinez Indian Reservation ("Reservation").

This Agreement represents good faith commitments which are being made by the Parties in a spirit of cooperation and accommodation. The Parties are motivated by the belief that these commitments will benefit both Parties and the residents and landowners of the Torres Martinez Reservation.

RECITALS

WHEREAS, portions of the Torres Martinez Reservation were allotted to individual Indians by the United States, and in subsequent years some of this land passed out of Indian ownership into the hands of non-Indians, who now hold such lands in fee simple ownership;

WHEREAS, the exterior boundaries of the Torres Martinez Reservation are intact for all legal and political purposes, notwithstanding the allotment and acquisition of particular parcels by non-Indians;

WHEREAS, portions of the Torres Martinez Reservation physically lay within the asserted boundaries of the County of Riverside as designated under California law;

WHEREAS, because of physical proximity and the presence of non-Indians within the exterior boundaries of the Torres Martinez Reservation, the Tribe and the County share a common interest with respect to growth management, zoning, and land use regulation and they recognize that cooperation, facilitation, and good will are important for meeting their goals in growth management and land use regulation;

WHEREAS, pursuant to its inherent sovereign powers, the Tribe asserts regulatory jurisdiction and authority over all lands within the exterior boundaries of the Reservation, and the County asserts partial regulatory authority over property held in fee simple title by non-Indians within the exterior boundaries of the Reservation;

WHEREAS, as a sovereign government, the Tribe has environmental, economic, social, cultural and political interests in all lands within the exterior boundaries of the Reservation as well as all lands that have been or may be acquired by the Tribe or on behalf of the Tribe that are within Indian country as that term is defined in federal law;

WHEREAS, each Party is concerned that activities on lands under the other Party's exclusive jurisdiction may have an impact on its own lands and interests;

WHEREAS, the Tribe and County agree that, in order to avoid jurisdictional disputes, they should seek to jointly address issues that may arise in managing growth and administering/implementing land use regulations, and that an administrative procedure should be adopted that involves joint review and consultation regarding proposals for land use actions so that decisions made by either party will acknowledge the broad interests of the Tribal and non-Tribal communities;

WHEREAS, the Tribe and the County affirm that cooperative problem solving and joint decision-making is the preferred means of reaching informed decisions relating to growth management, zoning, and land use planning on lands not subject to federal restrictions against alienation within the exterior boundaries of the Reservation;

WHEREAS, the Tribe has inherent sovereign authority over the conduct of non-Indians on fee lands within its Reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe, or where such non-Indian has entered into a consensual relationship with the Tribe;

WHEREAS, the Tribe has established a Planning Commission in which non-Indian Reservation residents may participate in decisions of Tribal government related to land use regulation;

WHEREAS, the County has been collecting property taxes on non-Indian fee lands within the exterior boundaries of the Reservation; however, because of the remoteness of the Reservation to County facilities, historically the County has been able to provide only minimal services including the issuance of building permits, issuance of land use permits, public safety services, fire protection services, emergency medical services, and County road maintenance on fee lands;

WHEREAS, the Parties recognize and acknowledge that this Agreement is an important step in furthering a relationship founded on trust, mutual respect and cooperation intended to benefit the Tribe and the eastern Riverside County communities;

WHEREAS, the Parties understand and agree that this Agreement shall become a public document upon its execution

NOW, THEREFORE, the Parties agree as follows:

I. SCOPE AND DURATION OF AGREEMENT

A. This Agreement applies only to fee lands owned by non-Indians located within the exterior boundaries of the Reservation and off-site impacts from activities occurring on such lands.

B. This Agreement shall be effective from the date of its approval by both the County and the Tribe for a term of two (2) years, unless terminated or a subsequently executed Agreement by both Governments extends that date. Either the County or the Tribe may terminate this Agreement by providing thirty (30) days written notice in advance to the other party. Termination of or modifications to this Agreement shall not operate to invalidate Permits duly issued pursuant to this process.

C. Neither the Tribe nor the County concedes that the other Party's position on the scope of its regulatory jurisdiction is correct, but both agree that, to the extent possible, jurisdictional conflicts should be minimized.

D. In order to alleviate the potential conflict that may result from the concurrent application of both regulatory programs within the exterior boundaries of the Reservation, the parties agree to initiate a coordinated land use planning and permitting process for land areas within the exterior boundaries of the Reservation.

II. ESTABLISHMENT OF THE TORRES MARTINEZ-RIVERSIDE PLANNING ADVISORY BOARD

A. A Torres Martinez-Riverside Planning Advisory Board ("Advisory Board") shall be established to facilitate the resolution of disputes stemming from any jurisdictional conflicts related to growth management, land use planning, and related regulatory codes by means of cooperative problem-solving and consensus-based negotiations. The Advisory Board will monitor the progress of the cooperative planning processes and make recommendations to the County Planning Commission and the Torres Martinez Planning Commission regarding land use activities on fee lands within the Reservation to improve the future effectiveness of these processes. If legal authority exists for joint powers agreements between Indian tribes and local units of state government, the Advisory Board will also seek to develop formal joint powers agreements where necessary to support and strengthen the cooperative planning process.

B. The Advisory Board will be comprised of five members, with two appointments made by the Tribe, two appointments made by the County, and one made jointly. The joint appointment shall be an individual who resides within the exterior boundaries of the Reservation and is appointed by agreement of the Tribal Council of the Torres Martinez Desert Cahuilla Indians (Tribal Council) and Riverside County's Board of Supervisors.

III. ADMINISTRATIVE RESPONSIBILITIES FOR PERMIT REVIEW

A. In order to avoid the economic burden on each Government and the general public of independent administration of separate permit review processes, the Parties agree that a joint procedure for the administration of permitting services will be established to provide for coordination of the planning departments of each Government for accepting and administering permit applications. The goal is to achieve the implementation of the shared administrative responsibilities for permit review to reduce

unnecessary duplication in administration while providing for the fullest participation of each Government.

B. As to fee lands owned by non-Indians within the exterior boundaries of the Reservation, application for a land use or building permit initially shall be submitted to the County. If the application satisfies the permitting requirements of the County, then said application shall be considered a complete application and a copy of the entire application file in electronic .pdf document format shall be forwarded by the County to the Tribe within three (3) business days from the date the application is determined to be complete, requesting tribal comments. If the application is determined to be incomplete, and additional information is required, the County shall notify the applicant, copying the Tribe on such notice. Upon receipt of requested information and a determination that the application is complete, the County shall forward a copy of the completed application to the Tribe within three (3) business days of such determination.

C. The Tribe shall have fifteen (15) business days from receipt of an application to provide to the County with comments and recommendations or, if necessary, request additional information from the County and/or the applicant. If the Tribe does request additional information from the applicant, the Tribe shall so notify the applicant, copying the County on such notice. If the Tribe requests additional information, the Tribe shall have an additional fifteen (15) business days from the receipt of such information to provide comments and recommendations.

D. If the County does not receive written comments within 15 business days from the date the application was received by the Tribe, the application will be presumed acceptable to the Tribe, and the County will process the application pursuant to its prescribed procedures.

E. If the Tribe submits comments to the County, the County shall undertake a technical staff review pursuant to Section IV. The County shall consider the Tribe's comments and recommendations in good faith and shall reasonably address them. If concerns cannot be resolved at the technical staff level, the Advisory Board shall review the comments and recommendations pursuant to Section V.

F. To the extent permitted by law, the planning departments of each Party shall enter into subsequent agreements to share permit fee revenues to (a) fairly reimburse each agency for its permit review and (b) to minimize, to the extent possible, the burden of dual application fees to applicants. In addition, the agencies shall jointly develop flow charts to depict the cooperative review process and timelines required for joint review and final decision(s). These charts may be made available to the public to aid public awareness of the permitting process.

IV. CONSULTATION PROCESS

In the event that the Tribe provides written comments or recommendations concerning an application pursuant to Section III.C, a staff-level consultation meeting shall be held within ten (10) business days of receipt of comments. The consultation process shall provide the opportunity for the appropriate staff members of the

Governments to meet to discuss the various issues related to the specific application under review. The intent is to provide a procedural mechanism through which to voice concerns, identify problems, and explore solutions in a professional manner during the early stages of the permit process.

V. RESOLUTION OF DISPUTES

Should agreement not be reached at the staff-level through the consultation process, each Government will prepare a staff report for submittal to the Advisory Board. The Advisory Board shall seek to negotiate a mutually acceptable resolution. The Advisory Board will assist the Governments in their search for agreement and will use conciliation, mediation, fact-finding, or any other method deemed appropriate, to reach a resolution.

If the Advisory Board is unsuccessful in negotiating an agreement, it shall forward its recommendations to the County Planning Commission and the Tribal Planning Commission. Each planning commission will follow its own prescribed procedures for decision-making and will forward its recommendations to its respective Government. Should the recommendations be in conflict, the Tribal Planning Commission and the County Planning Commission may decide to confer on the issue and may call a special meeting for the purpose of resolving the dispute.

VI. TRIBAL VETO POWER AND APPEALS

A. When a proposed project threatens or has some direct effect on the Tribe's political integrity, economic security, or the health or welfare of its members, approval of the Tribal Council is required prior to the County's issuance of any land use permits on fee lands within the Reservation. The Tribe may veto any such project if its impacts are not fully mitigated to the Tribe's satisfaction, and such veto is final unless appealed to the General Council of the Torres Martinez Desert Cahuilla Indians. A Tribal veto shall be based on a written finding by the Tribal Council that the proposed project threatens or has some direct affect on the Tribe's political integrity, economic security, health or welfare of the Tribe or its members and the exercise of said veto shall be consistent with applicable requirements of federal law.

B. Any person aggrieved by the Tribe's action within the scope of this Agreement may appeal for relief in accordance with the terms of the Tribal Land Use Ordinance and other applicable provisions of Tribal and/or federal law.

C. The County shall not approve a proposed project or issue any permit authorizing its construction or development if the Tribe has lawfully exercised its veto power under this section, and the veto has become final as provided herein.

VII. TRIBAL OBLIGATIONS

A. Tribal Review: Upon receipt of an application from the County, the Tribe will review and provide to the County written comments, concerns, and/or recommendations. The Tribe's review of such application will include, but not be limited

to, a determination of its compliance with the Tribe's land use plan and applicable ordinances. The Tribe also will consider cultural implications of the activities addressed by the application.

B. Cultural Resource Consultation: Any adverse cultural impacts must be mitigated to the satisfaction of the Tribe. If such impacts cannot be adequately mitigated, the County agrees to deny the application. The Tribe will enter into an agreement with the developer or project owner to establish the protocols for cultural resource monitoring and the handling of cultural resources that may become uncovered during ground-disturbing activities.

C. Tribal Regulations: Applicants for permits may be subject to Tribal regulations including the Tribal Employment Rights Ordinance (TERO).

VIII. NO WAIVER

Nothing in this Agreement shall limit or waive the regulatory authority or jurisdiction of either Party. Neither party concedes that the other has jurisdiction over the matters addressed in this Agreement. Nothing in this Agreement or any decision made by the Tribe or the County shall give any third party any cause of action or claim not otherwise provided in existing law. This Agreement is not intended to provide any remedy not already provided by law.

IX. INDEMNIFICATION

The Tribe agrees to indemnify and hold harmless the County and its officers, agents, and employees against any suit, action, liability, obligation, loss, injury, damage, penalty, claim, cost, or expense of any kind whatsoever arising from or related to the actions of the Tribe in implementing this Agreement. The County agrees to indemnify and hold harmless the Tribe and its Tribal Council, officers, agents, employees and members against any suit, action, liability, obligation, loss, injury, damage, penalty, claim, cost or expense of any kind whatsoever arising from or related to the actions of the County in implementing this Agreement.

X. SEVERABILITY

The provisions of this Agreement are severable and should any provision be found to be invalid or unenforceable under applicable law, the provision shall be severed from this Agreement, and the remainder of the Agreement shall remain in full force and effect.

XI. NOTICE

All notices between the Parties shall be deemed to have been given when made in writing and delivered or sent by registered or certified mail to the named representative of each Party, or their duly appointed successor, at their respective addresses as follows:

Tribe's Representative: Roland Ferrer, Planning Director
Torres Martinez Desert Cahuilla Indians
Tribal Planning Department
P.O. Box 1160
Thermal, CA 92274
(760) 397-0300

County's Representative: Bob Lyman
TLMA Regional Office Manager
County Administrative Center
4080 Lemon Street, 14th Floor
Riverside, CA 92501
(951) 955-6742

XII. REPORT AND REVIEW

A. The Advisory Board will report to both Governments annually regarding its activities.

B. A joint review of the cooperative planning process will be conducted at least annually. Based on the results of the review, as well as recommendations from the Advisory Board, the process will be refined as may be needed.

XIII. AMENDMENTS

The provisions of this Agreement may be amended by mutual agreement of the parties, as expressed in resolutions of their respective Governments.

XIV. SOVEREIGN IMMUNITY

The Tribe is a sovereign government and immune from suit. Nothing in this Agreement shall be construed to have waived the sovereign immunity of the Tribe or any Tribal entity, department, program, official, employee, member or agent in relation to any action connected to the performance or non-performance of official duties under the terms and conditions of this Agreement. Furthermore, this Agreement shall not be construed to have expressly or impliedly submitted the Tribe to the jurisdiction of any court or administrative body.

XV. GOVERNMENTAL IMMUNITY

The County is a political subdivision of the State of California. Nothing in this Agreement shall be construed to have waived the governmental immunity of the County or any County entity, department, program, County official, employee, or agent from liabilities arising from performance or non-performance of official duties in connection with this Agreement. Furthermore, this Agreement shall not be construed to have expressly or impliedly submitted the County to any Tribal Court's jurisdiction.

XVI. MISCELLANEOUS

The commitments made in this Agreement and the positions of the Parties shall not be regarded as admissions or concessions of law or fact in any judicial or administrative proceeding concerning the nature and scope of the Parties' respective claims to jurisdiction and regulatory authority. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument, notwithstanding that each Party is not a signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their respective authorized officers.

Mary L. "Maxine" Resvaloso, Chairwoman,
Torres Martinez Desert Cahuilla Indians
For the Torres Martinez Desert Cahuilla Indians

Date

Bob Buster, Chairman
Riverside County Board of Supervisors
For Riverside County, California

Date

FORM APPROVED COUNTY COUNSEL

BY: David H.K. Huff 4/21/2011
DAVID H.K. HUFF DATE

CERTIFICATION OF TORRES MARTINEZ DESERT CAHUILLA INDIANS

I, the undersigned, as Chairwoman of the Torres Martinez Desert Cahuilla Indians, do hereby certify that the foregoing Agreement was considered and approved by the General Council at a duly called meeting on the ____ day of _____, 201_, at which a quorum was present, that the same was adopted by a vote of ____ in favor and ____ opposed, and that Mary L. "Maxine" Resvaloso, as Chairwoman, was authorized to sign the Agreement on behalf of the Torres Martinez Desert Cahuilla Indians.

Mary L. "Maxine" Resvaloso, Chairwoman

Attest:

Secretary

CERTIFICATION OF RIVERSIDE COUNTY BOARD OF SUPERVISORS

I, the undersigned, as Chairman of the Riverside County Board of Supervisors (Board), do hereby certify that the foregoing Agreement was considered and approved by the Riverside County Board of Supervisors at a duly called meeting on the ____ day of April, 2011, at which a quorum was present, that the same was adopted by a vote of ____ in favor and ____ opposed, and that Bob Buster, as Chairman, was authorized to sign the Agreement on behalf of the Riverside County Board of Supervisors.

Bob Buster, Chairman

Attest:

Kecia Harper-Ihem, Clerk of the Board