

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

157



FROM: TLMA/Planning Department

SUBMITTAL DATE:
May 5, 2011

SUBJECT: Amended and Restated Land Use Contract between the Agua Caliente Band of Cahuilla Indians and Riverside County Concerning Trust Lands of the Agua Caliente Indian Reservation.

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: In 1989, a Land Use Contract was first entered into between the Agua Caliente Band of Cahuilla Indians and the County of Riverside. Under this original Contract, the County processed as the Tribe's agent certain land use proposals relating to allotted trust lands of the Agua Caliente Indian Reservation. The Contract was subsequently amended in 1995 and 2001 to remove certain land previously covered under the original agreement. The proposed Amended and Restated Land Use Contract removes land that was previously covered under the earlier contracts, thereby allowing for processing by the Tribe. In addition, the Tribe has adopted Tribal Ordinance No. 12 which applies the land use controls of the County to allotted trust lands that are part of the County of Riverside which are within the exterior boundaries of the Agua Caliente Indian Reservation and are covered under the Contract. The Contract also provides that any person aggrieved by a final decision of the County in processing a covered land use matter may appeal to the Tribe's Tribal Council for relief in accordance with the provisions of the Tribal Land Use Appeal Ordinance. Approval of this contract is 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
 DATE: 5/10/2011
 Departmental Concurrence

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	N/A

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

Department Recommendation: Consent Policy
 Per Executive Office: Consent Policy

Prev. Agn. Ref.: District: ALL Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

3.49

RIVERSIDE COUNTY/AGUA CALIENTE BAND OF CAHUILLA INDIANS

LAND USE CONTRACT Amended and Restated

This agreement is made this ____ day of _____, 2011 at Palm Springs, California by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe acting through its duly constituted Tribal Council (hereinafter the "Tribe") and the County of Riverside, a political subdivision of the State of California, acting through its duly authorized Board of Supervisors (hereinafter the "County").

RECITALS

- A. The Agua Caliente Band of Cahuilla Indians, in the exercise of its sovereign authority pursuant to its Constitution, has regulated the use of the reservation lands of the Agua Caliente Indian Reservation in the interest of promoting their highest and best use and the health and welfare of the members of the Tribe. The Tribal Council is the legally recognized elected governing body of the Tribe, governing the lands of the Agua Caliente Indian Reservation, with governmental offices at 5401 Dinah Shore Drive, Palm Springs, California 92264. The Tribal Council now acts pursuant to Article V, paragraph a, b, i, and 1, of its Constitution, adopted July 28, 1955, as amended and approved by the Commissioner of Indian Affairs on April 18, 1957.
- B. The County of Riverside is a political subdivision of the State of California, established pursuant to the California Constitution and California Government Code Section 23000, et seq. The County's jurisdiction includes all land within the unincorporated area, except as otherwise provided by federal, state, Tribal or other law, with offices at County Administrative Center, 4080 Lemon Street, Riverside, California 92501.
- C. Within the Agua Caliente Indian Reservation, there are approximately 16,000 acres of Trust lands located within the unincorporated area of Riverside County. The Tribe under its Constitution has the duty of protecting and advancing the interests of its members. The Tribe could establish and impose its own land use controls (e.g., general plan, zoning environmental review, building standards and permits, etc.) on the Trust lands of the Agua Caliente Indian Reservation without consulting the County. The Tribe, however, prefers to coordinate its land use actions with those of the County and surrounding communities as a means of promoting the orderly and expeditious development of those Trust lands. The Tribe hereby seeks to achieve the highest and best use of such Trust lands and adjacent non-Reservation lands in the County of Riverside and through the region.

- D. The County has the responsibility of providing its citizens, particularly those residing in the unincorporated area, an orderly pattern of growth and development consistent with the County's General Plan, land use ordinances, development guidelines, and other applicable laws. The County also wishes to provide a high level of public services and safety to all residents and businesses within its jurisdiction. The County believes that Reservation lands within its boundaries should equally benefit from such a high level of planning, public services and safety.
- E. In October of 1989, the Tribe and the County entered into a "Land Use Contract" whereby the Tribe:
1. Agreed to adopt and to apply to the allotted Trust land of the Agua Caliente Indian Reservation located within the unincorporated portions of the County covered by the Western Coachella Valley Community Plan . . . "all of the laws, ordinances, regulations, codes, rules and similar enactments, with certain exceptions, of the County and State of California as the Band's own;" and
 2. The Tribe designated ". . . the County of Riverside to be and to act as the Band's agent for the enforcement of the said measures on the said lands, subject to appeal to the Tribal Council;" and
 3. The Tribe adopted and made applicable the land use controls to those allotted Trust lands covered only by and included in the Western Coachella Valley Community Plan (Riverside County General Plan Amendment No. 10-84). The remaining allotted Trust land would be subject to the County's General Plan, zoning and related land use controls upon the completion of a "Joint Tribal-County planning effort." Said joint planning effort was never concluded.
- F. In July of 1995, the Tribe and the County amended the "Land Use Contract" to exclude portions of Section 12, Township 4 South, Range 5 East, San Bernardino Base and Meridian, at the request of the allotted Trust Landowners and the approval of the Department of the Interior, Bureau of Indian Affairs.
- G. In July of 2001, the Tribe and the County amended the "Land Use Contract" to exclude the remainder of Section 12, Township 4 South, Range 5 East, San Bernardino Base and Meridian, at the request of the allotted Trust Landowners and the approval of the Department of the Interior, Bureau of Indian Affairs.
- H. This Contract amends and supersedes the 1989 contract. This Contract as amended excludes portions of Section 24, Township 4 South, Range 5 East, San Bernardino Base and Meridian, at the request of the allotted Trust Landowners and with the anticipated approval of the Department of the Interior, Bureau of Indian Affairs.

- I. The Tribe and the County desire to have uniform and unified land planning and land use administration for all lands of and near the portions of Agua Caliente Indian Reservation located within certain unincorporated areas of Riverside County, rather than separate administrations with little coordination between them. The Tribe and the County of Riverside now enter into this contract for their mutual benefit and interest in consideration of the mutual promises and obligations described below:

TERMS OF AGREEMENT

1. **Term.** The term of this contract will be from the date of its execution by both the Tribe and the County until July 4, 2076, unless sooner terminated as provided herein.
2. **Enactment of the Tribal Land Use Control.** On May 22, 2001, the Tribe's Tribal Council adopted Amendment No.1 to Tribal Ordinance No. 12, which applied, and continues to apply, the land use controls of the County to certain allotted Trust lands in the unincorporated area of the County of Riverside which are within the Agua Caliente Indian Reservation. The Tribe will amend Tribal Ordinance No.12 to include only those allotted trust lands that are described in Exhibit "A" attached hereto and which is incorporated herein by this reference. The Tribe will publish this Tribal ordinance once a week for three consecutive weeks in a newspaper of general circulation in the County of Riverside.
3. **Content of the Tribal Land Use Control.** For the allotted Trust lands that are described in Exhibit "A", as the boundary of the unincorporated area of the County now exists or may exist in the future, and located within the exterior boundaries of the Agua Caliente Indian Reservation, the comprehensive set of land use controls consists of all land use related ordinances, resolutions, and similar enactments of the County and the related statutes required to be administered by the County as they existed on the date that Amendment No. 1 to Tribal Ordinance No. 12 became legally effective August 3, 2001.

The aforementioned comprehensive set of land use controls shall include, but not be limited to:

- a. General plans and specific plans;
- b. Zoning;
- c. Variances;
- d. Conditional Use Permits and other similar permits;
- e. Subdivisions;
- f. Building and utility codes, permits and standards;

- g. Enforcement of building and zoning ordinances;
- h. Environmental review – except as pre-empted by the National Environment Policy Act (NEPA); and
- i. Matters directly related to the above, except as noted below.

The Tribe and the County each reserve the right to seek an amendment to this agreement altering any of the above. Notwithstanding any of the above enactments of the County of Riverside, the regulation of off-site outdoor advertising displays on the allotted Trust lands of the Agua Caliente Indian Reservation described in Exhibit “A” will be regulated solely and exclusively by the terms of the Tribal ordinance described in Paragraph 8 below, and any amendments thereto.

- 4. **Designation of County as Tribe’s Agent.** In the Tribal Ordinance described in Paragraph 2 above, the Tribe designated and engaged the County to be and to act as the Tribe’s agent in the enforcement and administration of the measures described in Paragraph 3 above with respect to the allotted Trust lands within the unincorporated area of the County and the boundaries of the Agua Caliente Indian Reservation, described in Exhibit “A”, with full authority to act as the Tribe’s agent, except as noted herein. The County hereby accepts such designation and will be and act as the Tribe’s agent for the enforcement of the measures described in Tribal Ordinance No. 12 on allotted Trust lands described in Exhibit “A” that are part of the unincorporated area of the County of Riverside within the Agua Caliente Indian Reservation as provided above with the exceptions noted herein. The purpose of such agency is to ensure that the County will apply and enforce essentially the same development standards and procedures, except as noted herein, within the unincorporated area of the County, whether on allotted Trust land within the exterior boundaries of the Reservation as the agent of the Tribe or on non-Reservation land under its own authority.
- 5. **Consideration.** The Tribe, for the benefit of the community and in order to assure the highest level of planning and development and in consideration of providing the above services hereby permits the County to collect and retain all fees as they now exist or may exist in the future which provides direct compensation to the County for its actual costs in carrying out its duties as the Tribe’s agent, subject to the limitations described below.
- 6. **Fees for Development Projects.** As used herein, “development fee” means a monetary exaction, other than a tax or special assessment, which is charged by the County to the property owner in connection with approval of a development project for the purpose of defraying all or a portion of the costs of public services and community amenities resulting from the development project, but does not include fees for the processing of County regulatory actions or approvals as described in Paragraph 5. Unless specifically declined by the Tribe, all

development fees shall be applicable to the lands covered by this Contract and may be imposed and collected by the County.

In addition to uniform development fees applicable to development projects in the County, applicants for development may be required to dedicate land as needed, to provide for rights-of-way for street improvements for the term of the lease or permanent rights-of-way with the approval of the Secretary of the Interior. The County will provide to the Tribe, as necessary, a list of needed right-of-way dedications on allotted trust lands. Unless so declined by the Tribe, all listed right-of-way dedications shall be applicable to the lands covered by this contract and may be required by the County as a condition of development approval where it is demonstrated by the County that such a dedication benefits the project or directly mitigates related impacts caused by the project. Such right-of-way dedications shall not conflict with any federal regulations regarding road rights-of-way on Indian land, particularly but not limited to 25 U.S.C. Sections 314, 325 and 357.

Following the execution of this Contract, the County shall provide to the Tribe, notice of any adoption of any new development fee or the increase in any existing development fee, together with a statement justifying such new or increased fee. The County shall also consult with the Tribe prior to the adoption of any such new or increased fee. Within sixty (60) days after receipt of the notice of adoption of such new or increased fee, the Tribe may, by resolution, specifically decline to apply to the allotted Trust lands covered by this Contract any such new or increased fees deemed unjustified by the Tribe. Unless so declined by the Tribe, all such new or increased fees shall be applicable to the land covered by this Contract and may be imposed and collected by the County.

7. **Exception to Scope of Agency.** Nothing in this Contract is intended to, or will in any way, be interpreted or operate to limit or impair the authority of the U.S. Department of the Interior and the Bureau of Indian Affairs to negotiate, execute, or otherwise administer existing and future leases of allotted Trust lands, or to eliminate or substantially impair any existing land use under an approved lease. Since the Tribe cannot substantially interfere with the federal leasing function, it cannot delegate any such authority to the County.
8. **Outdoor Advertising.** The Tribe has adopted Tribal Ordinance No. 13 "Outdoor Advertising Displays." By its execution of this Contract, the County does not become the Tribe's enforcement agent for this Ordinance. Instead, the Tribe will enforce this Ordinance itself. The Tribe agrees to notify the County of permits issued by the Tribe for new outdoor advertising displays.
9. **Immunity.** Nothing in this Contract is intended to, or will in any way, limit or waive the sovereign or governmental immunity from suit enjoyed by either party.
10. **Appeals.** Any person aggrieved by final action of the County in matters within the scope of this agency affecting allotted Trust lands described in Exhibit "A" within the scope of this contract may appeal to the Tribe's Tribal Council for

relief, according to the terms of the Tribal Land Use Appeal Ordinance.

Said Tribal Council, in accordance with the Tribal Land Use Appeal Ordinance, as it now exists or may be amended in the future, after notice and opportunity for hearing and on the basis of the entire record, may affirm, reverse or modify any decision of County on such a matter affecting allotted Trust lands described in Exhibit "A" and as specified in said ordinance, and the decision of the Tribal Council shall be final. In no event shall the Tribal Council act finally on a appeal before meeting jointly with the County to review said appeal, as specified in said ordinance.

11. **Consultation and Cooperation.** In order to facilitate the presentation of the Tribe's views regularly to the County on matters within the scope of this agency and as part of the normal processing of applications and other matters within the scope of this agency, the Tribe and County will develop procedures to give the Tribe's Indian Planning Commission advance notice of all such matters so that the Indian Planning Commission will be able to evaluate all such matters and present its recommendations to the Tribal Council which, in turn, will present its recommendations to the County in time for such recommendations to be considered by the County staff, County Planning Commission, and Board of Supervisors.
12. **Best Efforts.** The parties will exert their efforts to keep this Contract in good standing and to serve as the basis for a mutually beneficial relationship which will encourage and assist the uniform and unified development of all allotted Trust lands of the Agua Caliente Indian Reservation, and adjacent non-trust lands located within the unincorporated area of the County, in an orderly, expeditious, and professionally sound manner.
13. **Joint Interest Regarding Challenge.** If any third party who is a land use applicant with an application involving any of the subject land use controls specified in Paragraph 3 takes formal court action to challenge any action taken by the County as the Tribe's agent or the Tribe or Tribal Council affirming, reversing or modifying any decision of the County, as provided herein, whether with or without an appeal having been filed, as provided herein, the County and the Tribe will immediately consult to develop a unified response. The Tribe and County will take appropriate action to assist and defend against any such challenge, such as providing declarations or copies of documents, assisting legal counsel, preparing and filing a brief amicus curiae, or Tribal intervention as a party in litigation, depending on the nature and scope of this challenge. In any such legal proceedings, the County and the Tribe may each engage and pay for separate or additional legal counsel, at the option of each and, in appropriate cases, may, by separate agreement, agree to engage in joint counsel on terms to be specified in that agreement. It is acknowledged by the Tribe that County routinely imposes as a general land use condition of approval a requirement that the applicant for a land use application indemnify, defend and hold harmless County against any legal action brought by third parties challenging the County's approval of the land use application.

14. **Notice of Appeal Rights.** In order to inform developers and others of the availability of appeals of final County actions to the Tribal Council, as provided in Paragraph 10, and to make clear the nature of the existence of the agency created by this contract, the County will provide notice of the availability of the right to appeal any County actions and that such appeal to the Tribal Council must occur prior to filing any legal challenge to any action undertaken by County. The contents of such notification language will be substantially as agreed upon by Tribal and County representatives.

15. **Termination.** Either party may terminate this Contract, without prejudice to the legal position thereafter asserted, upon thirty (30) days written notice to the other party. In the event of such termination of this Contract, any development project previously granted approval by the County shall continue to be bound by the terms and conditions of such approval.

16. **Approval.** This Contract is subject to the approval of the authorized representative of the Secretary of the Interior under 25 U.S.C. Section 81, and this Contract will not go into effect until and unless either such approval is given or where a written response is received from an authorized representative of the Secretary of the Interior that this Contract does not require approval under 25 U.S.C. Section 81.

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

AGUA CALIENTE BAND OF CAHUILLA INDIANS

 Richard M. Milanovich
 Chairman, Tribal Council

 Date

 Jeff L. Grubbe
 Vice Chairman, Tribal Council

 Date

 Vincent Gonzales III
 Secretary-Treasurer, Tribal Council

 Date

Anthony Andreas III
Member, Tribal Council

Date

Savana R. Saubel
Member, Tribal Council

Date

COUNTY OF RIVERSIDE

Chairman, Board of Supervisors

Date

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

Date

APPROVED AS TO FORM:

PAMELA J. WALLS
County Counsel

By: 

DAVID H. K. HUFF
Deputy County Counsel

May 10, 2011
Date