



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 2/10/2015

Agenda Placement: 11B

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

**FROM:** Lawrance Florin - Director  
Housing and Intergovernmental Affairs

**REPORT BY:** Michael Karath, STAFF ASSISTANT - BOS - 299-1477

**SUBJECT:** Resolution Endorsing Native American Tribal Fee to Trust Reform

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### **RECOMMENDATION**

Director of Housing and Intergovernmental Affairs, on behalf of the Legislative Subcommittee, requests adoption of a resolution urging Congress to enact a comprehensive fee-to-trust reform that respects tribal sovereignty and recognizes local governments as meaningful and constructive stakeholders.

### **EXECUTIVE SUMMARY**

Fee-to-Trust is a Priority 1 issue in the Board of Supervisor's 2015 Legislative/Regulatory Platform.

In 1968, the Napa County Board of Supervisors had the forethought to preserve open space and prevent further development of agricultural lands by enacting the nation's first agricultural preserve. A group of individuals has brought suit against the Secretary of Interior to seek federal recognition as the Mishewal Wappo Tribe of Alexander Valley and take land within Napa County's exterior boundaries into trust. Federally-recognized Native American tribes possess tribal sovereignty and are not subject to state or county laws. Trust land is exempt from local land use regulations and is eligible for casino operations. Hence, if Napa land is taken into trust, Napa County's agricultural preserve and its economic fabric would be impacted.

The California State Association of Counties is asking counties to support this resolution that urges Congress to enact legislation to fix long-standing deficiencies in the Bureau of Indian Affairs (BIA) fee-to-trust process.

The changes to the fee-to-trust process include:

- I **Notice and transparency:** Local governments should be given immediate notice when an application is filed with the BIA to take local land into trust. Such applications should include a complete description of the uses intended, particularly whether the land is eligible for casino gaming, and the local government and

public should have the right to review the application through the same process as other local land acquisition and use applications.

- I **Consultation:** All local governments that may be impacted by a fee-to-trust land acquisition should be allowed sufficient opportunity to consult with and submit comments to the BIA before the application is officially submitted.
- I **Enforceable Intergovernmental Agreements:** The proposed legislation must ensure that significant off-reservation impacts of a project, including environmental and economic impacts from the transfer of land into trust, are sufficiently addressed through Intergovernmental Agreements between tribes and local governments.

### **PROCEDURAL REQUIREMENTS**

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and vote on the item.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

Fee-to-Trust is a Priority 1 issue in the Board of Supervisor's 2015 Legislative/Regulatory Platform.

In 1968, the Napa County Board of Supervisors had the forethought to preserve open space and prevent further development of agricultural lands by enacting the nation's first agricultural preserve.

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA) to allow gaming on certain Indian trust lands. Although, the IGRA prohibits the Secretary of the Interior from allowing gaming to occur on any land placed in trust for an Indian tribe after 1988, there are a number of exceptions. These exceptions include newly-established reservations of landless tribes and trust lands taken for newly restored tribes.

In 2009, a group calling itself the "Mishewal Wappo of Alexander Valley" (Wappos), brought suit against the Secretary of Interior to seek federal recognition as the Mishewal Wappo Tribe of Alexander Valley and take land within Napa County's exterior boundaries into trust. Federally-recognized Native American tribes possess tribal sovereignty and are not subject to state or county laws. Trust land is exempt from local land use regulations and is eligible for casino operations. Hence, if Napa land is taken into trust, Napa County's agricultural preserve and its economic fabric would be impacted. In its lawsuit, the Wappos are seeking for the court to compel the Secretary to deem lands taken into trust for them to qualify as restored lands. Such action by the Secretary would make these

trust lands immediately available to be developed for casino style gaming purposes.

In addition to casino-styled gaming, the issue of tribal sovereign immunity is also of concern to Napa County. Tribal sovereign immunity means that the tribes (1) may not be sued unless they have consented to be sued (2) are not subject to the laws of another jurisdiction, such as the State of California or County of Napa. The Wappos, if recognized as a tribal sovereign nation, would not be subject to Napa County's Measure J and Measure P, along with its building codes and other local laws. The Wappos businesses, including tribal corporations created under tribal laws, would also be exempt from state and local taxes. In addition, no one would be able to sue the Wappos because of their tribal sovereign immunity unless they consent to being sued.

The California State Association of Counties (CSAC) is organizing counties to pass a resolution it has drafted that urges Congress to enact legislation to fix long-standing deficiencies in the Bureau of Indian Affairs (BIA) fee-to-trust process to give local governments an active voice or "seat at the table" in the review process of such fee-to-trust land acquisitions and proposed development designs and uses of such land acquisitions.

CSAC's proposed changes to the fee-to-trust process include:

- | **Notice and Transparency:** As part of the trust application process, local governments should be given immediate notice when an application is filed and should receive a complete description of the proposed trust land acquisition purposes. This level of disclosure should be commensurate with the public information required for planning, zoning, and permitting at the local level. In addition, counties should receive notice of tribal requests for determinations of whether an acquisition is considered "Indian lands" and therefore eligible for casino gaming.
- | **Consultation:** Provide sufficient opportunity for public comment and consultation. Under Part 151 fee-to-trust regulations, the BIA does not provide notice to or invite comments from non-jurisdictional parties, even though nearby governments and private parties may experience major negative impacts as a result of tribal development. BIA only invites comments from the affected state and the local governments with legal jurisdiction over the land and, from those parties, only on the narrow question of tax revenue loss and regulatory jurisdictional conflicts. As a result, trust acquisition requests are reviewed under a very one-sided and incomplete record that does not provide real consultation or an adequate representation of the consequences of the decision. Consultation should be encouraged to take place before an application is submitted and efforts should be made to include counties in the NEPA process as "cooperating agencies." Counties further should be provided an opportunity to comment on tribal requests for gaming determinations on whether proposed acquisitions qualify as "Indian lands."
- | **Enforceable Intergovernmental Agreements:** Legislation must ensure that significant off-reservation impacts of a project, including environmental and economic impacts from the transfer of land into trust, are sufficiently addressed through Intergovernmental Agreements between tribes and local governments. It should be noted that such an approach is required and working well under recent California State gaming compacts.

## **SUPPORTING DOCUMENTS**

A . Resolution - Fee to Trust

CEO Recommendation: Approve

Reviewed By: Molly Rattigan