



CITY COUNCIL STAFF REPORT

DATE: February 5, 2014

CONSENT AGENDA

SUBJECT: ADMINISTRATIVE ANALYSIS OF RESIDENTIAL PROJECT ON TRIBAL TRUST LAND CONSISTING OF EIGHTEEN SINGLE FAMILY RESIDENCES ON ROUGHLY 2.3-ACRES OF VACANT LAND LOCATED AT THE SOUTHWEST CORNER OF TWIN PALMS AND SOUTH CAMINO REAL. (CASE 5.1323 MISC.)

FROM: David H. Ready, City Manager

BY: Department of Planning Services

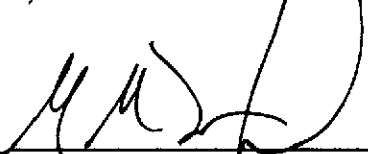
SUMMARY


Under the Tribal / City Land Use Review Agreement ("Agreement"), the City is to prepare an Administrative Analysis and Conformity Report for proposed projects on reservation lands owned by the Agua Caliente Band of Cahuilla Indians (Tribe). A proposal has been submitted for the development of the 2.3-acre, vacant site with (18) single-family residences that are each about 1,800 square feet in size. The project name is 18 @ Twin Palms.

Staff is finalizing the Administrative Analysis portion of the review process and will present it to the Council prior to the meeting of February 5, 2014. The Conformity Report has been tentatively scheduled for review on March 5, 2014.

RECOMMENDATION

1) Receive Administrative Analysis and file.


M. Margo Wheeler, AICP
Director of Planning Services


David H. Ready
City Manager

Attachment:

1. Tribal / City Land Use Review Agreement
2. 18 @ Twin Palms Project Report (on file in the Office of City Clerk)

ITEM NO. 24

**AGREEMENT FOR TRIBAL/CITY
LAND USE COORDINATION ON CERTAIN PARCELS**

THIS AGREEMENT FOR TRIBAL/CITY LAND USE REVIEW ON CERTAIN PARCELS ("Agreement") is made this 15th day of December, 1998 by and between the AGUA CALIENTE BAND OF CAHUILLA INDIANS, acting through its Tribal Council (the "Tribe"), and the CITY OF PALM SPRINGS, CALIFORNIA, acting through its City Council, a municipal corporation (the "City"). This Agreement is made with reference to the following:

RECITALS:

A. WHEREAS, the Tribe is a federally-recognized Indian tribe which exercises its sovereign authority over the lands of the Agua Caliente Indian Reservation according to a Constitution approved by the Commissioner of Indian Affairs, as well as applicable federal law, with portions of the City of Palm Springs located within the boundaries of its federal Indian reservation; and

B. WHEREAS, the City of Palm Springs is a charter city, possessing full powers with respect to municipal affairs to regulate the territory under its jurisdiction and in accordance with the California Constitution, its charter, and State law. The trust lands of the Agua Caliente Indian Reservation are interspersed in a checkerboard pattern within that portion of the City located within the Reservation; and

C. WHEREAS, both the Tribe and the City wish to cooperate in promoting the orderly and expeditious use and development of all lands of the Agua Caliente Indian Reservation to their highest and best use, consistent with principles of sound planning and the sovereignty of the Tribe; and

D. WHEREAS, on July 26, 1977, the Tribe and the City entered into that certain Agreement No. 1324 (hereinafter the "Land Use Agreement"), adopted by City Council Resolution No. 12298. Pursuant to that Agreement, the parties agreed that applications for issuance of permits and development pertaining to any Trust lands would initially be processed through the City, with the City collecting its normal fees and charges. Any party aggrieved by an action of the City Council in any such planning and zoning matters was given the right to appeal any action of the City to the Tribal Council, with the Tribal Council having the ability, following a noticed hearing, to affirm, reverse, or modify any decision of the City Council on any matter affecting Indian Trust Lands, with the decision of the Tribal Council being final, after consideration of the recommendation of the Indian Planning Commission, as well as applicable federal and tribal law; and

E. WHEREAS, the Land Use Agreement has been amended from time to time, by Supplements 2, 3, and 4, and most recently by Supplement No. 5, which would exempt all land acquired by the Tribe from regulation by the City, including: Application of all laws, ordinances, and codes; application of all fees, including drainage, sewer, school, Uniform Transportation Mitigation fees, building and other fees. The taking of title to parcels into trust by the United States for the Tribe would exempt such property from regular City taxes such as property taxes, sales taxes, transient occupancy taxes, and others; and

F. WHEREAS, the Tribe has generally supported development consistent with the City's General Plan and other ordinances and regulations but has the authority to adopt its own land use plan and policies; and

G. WHEREAS, the Tribe has commenced a program, when economically feasible, to reacquire any Trust Land which has been sold in fee. To facilitate Indian development on such Land, the Tribe would like to have an expedited process for City review and comment on said projects. The Tribe is willing to consider such review and comment, if given in a timely manner. The City believes that the opportunity to provide review and comment, but not approval, of such projects would be valuable to assure that such projects are integrated with surrounding development and to assure that the City's and the Tribe's normal development standards are maintained insofar as possible. In addition, both parties believe that all development throughout the City on both Tribal and non-Tribal land should make a fair share contribution in exaction, fees or other consideration to pay for the burdens imposed by the development on the City or for the benefits received by the development from the City.

IN CONSIDERATION OF THE FOREGOING, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Pre-submittal. Prior to the initiation of a Project on Tribal Land and initiation of the process detailed below, the Tribe, where feasible, will consult with the City to determine the scope and significance of the Project and its appropriate level of review. This consultation will normally, but not necessarily, be satisfied by a meeting between the Tribal Planning Department and City Department of Planning and Building.

2. Submission of Report. When any new development or substantial expansion or renovation of a project is proposed on land located within the Reservation and has been acquired by the Tribe, at least ninety (90) days prior to Tribal approval of the project, including preliminary or schematic design, the Tribe shall submit to the City a report on the Project ("Project Report"). As used herein, "Reservation" means those lands whose legal description is set forth in Exhibit A Hereto. The Project Report shall include a description of the Project, the preliminary or schematic plans and drawings for the Project, environmental documents per NEPA, if any, or any equivalent Tribal document, an analysis of the compatibility of the proposed Project with the City's and the Tribe's development standards, an analysis of the fiscal impact of the Project, and a statement identifying any manner in which the Project would be exempt from, or not conform to, any ordinance, rule, regulation, or standards of the City or of the Tribe. The Tribe shall provide any explanation of any of the foregoing, as they shall deem reasonable or necessary. The Indian Planning Commission, and other Tribal bodies, will develop this report in accordance with applicable federal and Tribal law. The level of detail provided in the Project Report should be as follows: if a minor project, then similar to the level of detail normally required by the City for architectural review; if a major project, then similar to the level of detail which would be required by the City for Planned Development District permit. The determination of whether a project is major or minor shall require the agreement of the chief staff planning official of each party but, in the event of a disagreement, the opinion of the Tribe's planning official shall govern. It is the intent of the parties that this process be undertaken, not at the point at which the land is acquired by the Tribe, but when

development is contemplated, and when the development can be described and its impacts forecast

3. Administrative Review. Upon receipt of a Project Report, the City Manager shall distribute the Project Report to appropriate departments, including Police, Fire, Finance, Public Works, Planning and Building, and such other departments as the City Manager shall deem relevant, such as Parks and Recreation, Tourism, Economic Development, and so forth. It shall be the purpose of this administrative review to determine how well the Project conforms with the City's existing rules and regulations; any health and safety, or welfare concerns; the adequacy of police and fire safety services, and other services of the City necessary for the Project; compatibility of the project with surrounding properties; and the fiscal impact of the Project. The purpose of the fiscal impact analysis shall be to determine whether the Project will pay the normal City fees, taxes, charges, and assessments; to the extent that any of such revenues will not accrue to the City, what will be the resulting financial impact therefrom; what other direct and indirect financial impacts, negative or positive, will result; and what the overall economic impact will be of the Project on the City. Within thirty (30) days of the City Manager's receipt of the Report from the Tribe, the City shall prepare the "Administrative Analysis" of the foregoing information and shall submit the Administrative Analysis to the City Council for its review and approval.

4. City Council Conformity Report. The City Council shall have thirty (30) days from the submission of the Administrative Analysis to prepare the City Council's Conformity Report ("Conformity Report"). The Conformity Report shall be adopted by the City Council at a public meeting. At the same time that the City Manager submits the Administrative Report to the City Council, a copy of the same shall be submitted to the Tribe. The Tribe shall have ten (10) days to prepare its comments on the Administrative Analysis for submission to the City Council to be considered at the time the City Council determines the Conformity Report. The Conformity Report shall contain the same subject matter as the Administrative Analysis.

5. Joint Meeting. Upon the City Council's adoption of the Conformity Report, the Project Report shall be immediately submitted to the Tribal Council. Within thirty (30) days, the Tribal Council and the City Council shall schedule a Joint Meeting to discuss the Conformity Report and whether any measures should be taken to make the Project more conforming with the rules, regulations, and ordinances of both the City and the Tribe.

6. Final Tribal Action. At the Joint Meeting, or following the Joint Meeting, the Tribal Council may take any action authorized by its Constitution, Bylaws, rules, and ordinances concerning the Project. The Tribal Council shall be free to disregard any or all comments in the Conformity Report or otherwise made by the City Council and may approve or modify the Project in any way the Tribal Council deems appropriate. It is expressly understood by the parties hereto that the Tribal Council retains full and complete sovereignty to administer Tribal lands in accordance with the Constitution, Bylaws, and Ordinances of the Tribe and applicable federal law. This Agreement deals solely with the consultation process in which the City is being given the opportunity to review and comment on certain projects being undertaken by the Tribe, and the Tribal Council retains full and complete authority to make final decisions concerning the development of Tribal Land under its Constitution and applicable federal and Tribal law.

7. Waiver. With the approval of both parties, any portion of the foregoing process may be waived if the Project is not deemed significant, if the Project is found to be conforming, or if due to the exigencies of time the normal process cannot be accommodated.

8. Amendments. This Agreement may be amended by mutual agreement by the parties, provided that neither party may terminate this Agreement, without prejudice to any legal position thereafter asserted, upon thirty (30) days written notice to the other party.

9. Approval. This Agreement shall be approved by Resolutions of the Tribal Council and the City Council.

10. Lands Located Inside Reservation and Owned In Fee by Parties Other than the Tribe. This Agreement will not affect, alter, increase, or decrease in any way the jurisdiction that either the City or the Tribe may have over the use or development of parcels of land located within the Reservation, which are owned in fee by parties other than the Tribe. The parties recognize that federal law already allocates such jurisdiction over such parcels.

11. Lands Located outside Reservation. The parties recognize that federal law provides to the City notice and an opportunity to express its views on the subject of the proposed taking of title into trust for the Tribe of parcels located outside the Reservation but within the city limits of the City in 25 C.F.R. §151.11(d), as well as time in which to challenge such a proposed action before it occurs, in 25 C.F.R. §151.12(b). Otherwise, this Agreement will not affect, alter, increase, or decrease in any way the jurisdiction that either the City or the Tribe may have over the use or development of such parcels of land. The parties recognize that federal law already allocates such jurisdiction over such parcels.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized officers on the day and year first above written.

CITY OF PALM SPRINGS, CALIFORNIA
a municipal corporation

By: Will Kleindienst
Will Kleindienst, Mayor

Attest:

Judith Sumich
Judith Sumich, City Clerk

Approved as to form:

David Aleshire
David Aleshire, City Attorney

AGUA CALIENTE BAND OF CAHUILLA INDIANS,
a federally-recognized Indian tribe

By: Richard M. Milanovich
Richard M. Milanovich, Chairman

Approved as to form:

Art Bunce
Art Bunce, Tribal Attorney

APPROVED BY THE CITY COUNCIL

BY RES. NO. 19450, 1-6-99

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