



San Bernardino County

Legislation Text

File #: 1439, Agenda Item #: 49

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

December 17, 2019

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

BRENDON BIGGS, Interim Director, Department of Public Works-Solid Waste Management

SUBJECT

Amendment No. 5 to Transfer Agreement with Oso Grande Properties, LLC in the unincorporated area of Big Bear

RECOMMENDATION(S)

Approve Amendment No. 5 to Transfer Agreement No. 05-413 with OSO Grande Properties, LLC (OSO) to extend the term for 12 months for the period from January 1, 2020 through December 31, 2020, which Transfer Agreement, in concept, provides for a transfer of approximately 71 acres of vacant land owned by OSO [Assessor Parcel Number (APN) 0447-071-11] to the County and the County to exchange said land with the United States Forest Service (USFS) for approximately 53 acres of USFS land (APN 0447-161-09 and a portion of APN 0447-161-11), of which approximately 47 acres would be leased to OSO for the installation of a resource recovery industrial recycling and waste disposal facility in the unincorporated area of Big Bear and the remainder would be retained for County use.

(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). There is no cost or revenue associated with the amendment of Transfer Agreement No. 05-413 (Transfer Agreement)

BACKGROUND INFORMATION

The recommended actions will approve Amendment No. 5 to the Transfer Agreement with OSO providing for an extension commencing January 1, 2020 through December 31, 2020, which provides additional time to obtain congressional approval for the proposed land exchange between USFS and the County, and for the County to take title to the USFS land in order to lease a portion of the USFS land to OSO.

Beginning in early 2000, a prolonged drought resulted in a bark beetle infestation, which devastated much of

the tree population in the San Bernardino National Forest (National Forest) and elevated the potential for a massive wildfire throughout the mountain communities. On September 24, 2002 (Item No. 81), the Board of Supervisors (Board) adopted a resolution proclaiming a local emergency on public and private lands located in the National Forest due to this fire danger. Removing the dead and dying trees, estimated to be in the millions of trees, along with thinning the forested land, were the primary approaches for reducing the fire threat to the National Forest. However, staging areas to accommodate the removed trees were not readily available, which was particularly problematic for Big Bear Valley. In October 2003, the "Old Fire" ravaged over 90,000 acres of the National Forest beginning in Waterman Canyon north of the City of San Bernardino, extending through Crestline and Lake Arrowhead to the outskirts of Big Bear Valley. The "Old Fire" destroyed nearly 1,000 residences and millions more of the forest trees. The need for tree removal and forest conservation was compounded and accelerated by this devastation.

The Department of Public Works - Solid Waste Management (SWMD) operates the Big Bear Landfill/Transfer Station (Transfer Station) (APN 0447-161-10) off Holcomb Valley Road in an unincorporated area serving the Big Bear Valley. In 2004, OSO purchased approximately 71 acres of vacant land (OSO Land) contiguous to USFS properties in the National Forest. The OSO Land has limited vehicular access and is adjacent the Pacific Crest Trail. OSO approached the USFS to exchange the OSO Land for approximately 72.83 acres of USFS land (Original USFS Land) adjacent the Transfer Station, which also has better public access. OSO intends to use the USFS Land to stage the felled trees to cut into lumber, firewood, and shavings and to develop a resource recovery industrial recycling and waste disposal facility. The USFS could not easily exchange with OSO because congressional approval is required for an exchange of USFS land, which can be a lengthier process with OSO as a private enterprise. However, the process could be facilitated if the exchange was with a local agency in the vicinity, such as the County, who operates the Transfer Station.

On June 7, 2005 (Item No. 88), the Board approved the Transfer Agreement with OSO, which provided for a term from June 7, 2005 to the earlier of 30 days after the County acquires title to the Original USFS Land, or December 31, 2006, which agreement provided, in concept, for OSO to transfer the OSO Land to the County and the County to exchange the OSO Land with the USFS for the Original USFS Land. The Transfer Agreement further provided the County would then, in concept, lease approximately 67.83 acres of the Original USFS Land to OSO for OSO to sublease as lots for log storage, staging and processing for the Bark Beetle emergency, and to conduct other resource recovery industrial recycling activities. The remaining five acres of the Original USFS Land would be retained by the County for use by SWMD. The Board also approved the Lease Agreement with OSO for a 99-year term, which, in concept, commences on the date the County takes title to Original USFS Land with rent at \$1 per year. The Lease Agreement also provides OSO with a right of first refusal to purchase all or substantially all of the Original USFS Land at the then fair market value if the County decides to sell the Original USFS Land during the term of the Transfer Agreement or the Lease Agreement. These agreements are a preliminary step to encourage exploration or evaluation of a final use of land which, although presently contemplated, is not final and subject to change. The Transfer Agreement is terminable during its term without cause by OSO or the County on 30-days' notice.

On October 21, 2008 (Item No. 42), the Board approved Amendment No. 1 to the Transfer Agreement and Amendment No. 1 to the Lease Agreement. Amendment No. 1 to the Transfer Agreement extended the term six years for the period from January 1, 2007 to December 31, 2012 to allow additional time to obtain congressional approval for the proposed land exchange with USFS and for the County to take title to the Original USFS Land, and revised the acreage of the Original USFS Land from approximately 72.83 acres to approximately 53 acres (Revised USFS Land). Amendment No 1 to the Lease Agreement amended the acreage for the contingent lease to approximately 47 acres of the approximate 53 acres of the Revised USFS Land.

On September 11, 2012 (Item No. 43), the Board approved Amendment No. 2 to the Transfer Agreement to extend the term five years for the period from January 1, 2013 through December 31, 2017 to again allow for additional time to obtain congressional approval of the proposed land exchange with USFS and for the County

to take title to the Revised USFS Land. The Board also authorized the Chairman to execute a deed granting the OSO Land to USFS, which was executed on September 17, 2012, but has not been recorded.

On December 19, 2017 (Item No. 55), the Board approved Amendment No. 3 to the Transfer Agreement to extend the term an additional 18 months to June 30, 2019 to again allow for additional time to obtain congressional approval of the proposed land exchange with USFS and for the County to take title to the Revised USFS Land. The Board also rescinded the deed executed by the Chairman as a result of the Board action on September 11, 2012 (Item No. 43), because the County did not have title to the OSO Land at the time the deed was executed and OSO currently owns the OSO Land.

The Board terminated the bark beetle emergency proclamation on January 29, 2013 (Item No. 36). Though the bark beetle emergency proclamation has been terminated, work on forest thinning to maintain forest health and safety, as well as routine maintenance, construction, demolition and other waste-producing activities throughout the community continues. Further, SWMD is required by state law to meet certain waste diversion rates. Big Bear Valley has limited space for industrial scale storage and processing of various materials, including asphalt and wood waste. Materials that can be recycled or processed for other uses are often stored in areas not permitted for such uses, including residential and commercial areas, violating County Code, posing a safety hazard and impacting the aesthetics of the mountain community. Although SWMD is achieving diversion mandates, conceptually, an additional facility for recycling would create additional opportunities and reduce emissions from trucks and other vehicles, which have to travel off the mountain. Therefore, if completed, a transfer of the OSO Land and a land exchange with USFS for USFS Land would still serve a significant public purpose. There is broad support among agencies in the Big Bear Valley for development of such a facility, though any potential development at this site would likely require the realignment of the Pacific Crest Trail, which meanders through the Revised USFS Land.

On June 25, 2019 (Item No. 47), the Board approved Amendment No. 4 to the Transfer Agreement to extend the term for six months from July 1, 2019 through December 31, 2019, to allow additional time to obtain congressional approval for the proposed land exchange between the County and USFS and for the County to take title to the Revised USFS Land and to revise the rental rate under the contingent lease from \$1 per year to a fair market rent and to update the form of the contingent lease to current County standard. The Board also approved Amendment No. 2 to the Lease Agreement canceling the Lease Agreement because a lease will not be executed until such time that congressional approval for the land exchange with USFS is obtained and the County takes title to the Revised USFS Land.

Approving Amendment No 5 will extend the Transfer Agreement for 12 months commencing January 1, 2020 through December 31, 2020 to allow the USFS additional time to obtain Congressional approval of the land exchange with the County. On Wednesday, November 20, 2019, the House heard the bill proposing the land exchange and unanimously approved it. It is anticipated that the Senate will hear the bill in 2020.

Pursuant to the Board's finding on December 19, 2017 (Item No. 55), the project is exempt under the General Exemption provision of CEQA Guidelines Section 15061(b)(3), as approval of the extension of the Transfer Agreement will have no effect on the environment. The Notice of Exemption was filed by the Clerk of the Board on December 22, 2017. The County will retain full discretion on any future activity or project, and any activity or project proposed in the future will be subject to all applicable laws, regulations and ordinances, including the review mandated by CEQA and NEPA. Thus, any alternatives or mitigation measures could be considered, including the alternative of not going forward with the proposed transfer.

In the event that full congressional approval of the proposed land exchange with USFS for the Revised USFS Land is obtained, the departments will return to the Board to request findings necessary to complete the acquisition of the OSO Land, the acquisition of the Revised USFS Land through an exchange of the OSO Land, and a lease with OSO with a portion of the Revised USFS Land.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Robert Messinger, Principal Assistant County Counsel, Julie Surber, Principal Assistant County Counsel, Bart Brizzee, Principal Assistant County Counsel, and Agnes Cheng, Deputy County Counsel, 387-5455) on November 21, 2019; Department of Public Works, Solid Waste Management Division (David Doublet, Interim Deputy Director, 3877918) on November 21, 2019; Finance (Monique Amis, Administrative Analyst, 387-4883 and Jessica Trillo, Administrative Analyst, 387-4222) on November 26, 2019; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer) on December 2, 2019.

(MJR: 387-5106)