



**CITY OF ENCINITAS
CITY COUNCIL
AGENDA REPORT
Meeting Date: May 19, 2010**

TO: Mayor and City Council

VIA: Phil Cotton, City Manager
Jennifer Smith, Director of Finance

FROM: Bill Dean, ERGA Chair

SUBJECT: Authorize a temporary suspension of the sales tax repayments as outlined in the Encinitas Ranch Development Agreement, and support development of an amendment to the Agreement in which operational and emergency contingency reserve accounts will be established and funded with surplus golf course revenues.

BACKGROUND:

The Encinitas Ranch Golf Course was developed as part of the larger Encinitas Ranch development in 1998. Since that time, the course had been managed by the Encinitas Ranch Golf Authority (ERGA), a joint powers authority established for the purpose of providing a public entity to own, manage, operate and maintain the golf course. ERGA is managed by a board of five (5) directors. The Encinitas Ranch Golf Course is a tremendous community asset and its 11 year operation has proven more than successful and at no cost to the City.

Per the Encinitas Ranch Development Agreement, ERGA's financial obligations are clearly defined. Specifically, golf course gross revenues are used to pay operating and capital expenses, as well as required debt service on golf course and community facilities district (CFD) infrastructure bonds. After meeting those obligations, "surplus" (excess monies after meeting operational, capital and debt service requirements) golf course net revenue is applied in the following order:

1. During the first ten (10) years beginning in 1998, surplus revenue may reduce the developer's obligation to repay sales tax previously advanced by the City (no payments to developer, surplus above repayment is paid to City)
2. For next six (6) years beginning in 2008, any surplus is shared equally between City and developer with developer's share being credited against sales tax advance
3. After sales tax repayment has been made, no further payment to developer until all debt is retired; City receives all surplus revenue.
4. For 25 years after all debt is retired, City and developer share surplus equally.
5. Thereafter, City receives all surplus revenue.

The ERGA Board annually adopts a one-year operating budget. Recently, the Board enhanced long term planning by establishing a six year financial plan (consistent with City practice). The six year plan identifies the need and creates placeholders for operational and emergency contingency accounts. The Board feels strongly about the need to establish these contingency reserves to allow for the continued long term operation of the course and to guard against catastrophic events and/or the realization of lower than anticipated revenues. If ERGA experienced a fiscal emergency today, the Board would have no other option than to request financial support from the City or the developer. Fully funded contingency reserves will ensure ERGA continues its history of financial self-sufficiency.

As part of the Development Agreement, the developer was conditionally advanced by the City, 50% of the net sales tax generated from the Encinitas Ranch Town Center for the years 1996-2001. And as outlined in the Agreement, surplus golf course revenue is to be applied to the sales tax repayment. Surplus golf course revenues made the sales tax payments in both 2008 and 2009.

ANALYSIS:

Per the Joint Exercise Powers of Agreement, ERGA has legal authority to make and enter into contracts for the purpose of operating the golf course, and may amend the existing Agreement to establish and fund operational contingency reserve accounts. However, only the City Council may authorize the temporary suspension of the required sales tax repayment.

The existing Development Agreement does not identify a mechanism or formula to either establish or fund contingency reserves. Were a similar agreement to be developed today, bond counsel would identify the need to establish reserves, and generally accepted accounting principles would support such establishment. The creation of contingency reserve accounts should not be considered a short term reaction to today's economic climate; rather, it is a thoughtful planning mechanism being recommended to help ensure the long term health of the course operation.

FISCAL AND STAFF IMPACTS:

The temporary suspension of repayment of the sales tax advance would have no economic impact on the City of Encinitas. The approximate amount owed is \$760,000, and the full balance is subject to accrued interest charges at a rate equal to the California LAIF fund. Thus, no economic resources are being foregone by the City as a result of any temporary suspension of payments.

There would be a nearer-term impact to the timing of City cash flows, as the current 2009-2010 operating budget anticipates a payment of approximately \$115,000. The proposed 2010-2011 2nd year revise operating budget anticipates a payment of approximately \$135,000. The budgets for both of these years show sufficient resources above and beyond the targeted contingency and budget stabilization reserves, such that the impact of delaying these repayments would not create a need to drawdown any existing reserves.

RECOMMENDATION:

That City Council authorize a temporary suspension of the sales tax repayments as outlined in the Encinitas Ranch Development Agreement, and support development of an amendment to the

Agreement in which operational and emergency contingency reserve accounts will be established and funded with surplus golf course revenues.

ATTACHMENTS:

Documents referenced in this agenda report are available for review by contacting the City Clerks office. Documents include:

- Encinitas Ranch Development Agreement
- Encinitas Ranch Golf Authority Joint Exercise Powers Agreement
- Encinitas Ranch Golf Corporation Articles of Incorporation

ENCINITAS RANCH GOLF AUTHORITY (ERGA)

May 19, 2010

QUESTIONS for Council/Staff

For the Record
5/19/10
City Council
mtg
Item # 7

1. Who sits on the Board of Directors of ERGA currently?
2. Where is the Financial Accounting report to accompany this Agenda item? The Council and public have seen nothing for the last 10 years.
3. Where are the actual revenues and expenses vs those projected over the last 10 years?
 - a) Where is the proof of ERGA Cash Flow?
4. There has been no Contingency Fund, what exactly is triggering this decision to establish one now? This claim needs to be backed up.
5. The dates are a little confusing, but is 2011 when the City and Carlta Corporation and the owners begin to share 50/50 in Net Golf Course Revenues? Is that correct?
6. Are we suspending the Golf Course Sales Tax Credit to build up a contingency Fund of \$250,000 or are we allowing Carlta to get their 50% share of Net Revenue by not paying their obligation under the Development Agreement?
7. We have a \$750,000 short fall in our City Budget and are cutting Citizen services but we are allowing ERGA to **not** pay us the Sales Tax Credit they owe us? Why?
8. For how long is ERGA requesting a Sales Tax Suspension? Just two years 2010 and 2011? They only need \$250,000.00 in their Contingency Fund?
9. When does the suspension end and payment of the Sales Tax Credit Loan resume?
10. On page 20 section 3.2.1.3 d. of the Encinitas Ranch Development Agreement:

It states "As a condition precedent to owner's right to share in Golf Course Net Revenues, Owner shall timely perform its obligation under this Agreement to repay the sales tax advance with interest." Is this what ERGA is asking you to Amend?

During the July 17, 1997 ERGA meeting Minutes, Parks and Recreation Director and ERGA Board member Dave Wigginton asked a question "concerning potential for the City to not receive the 50/50 Net Revenue proceeds on schedule. Asst. City Manager and Board Member Jim Benson responded that the Golf Course would have to be significantly under producing from year 2005 on out ... The only way there would be insufficient excess revenues for the City is if the course under produces during the years 2006 – 2010."

11. Has the Golf Course been under producing? Have you ever seen ERGA Meeting Minutes?

Mr. Chris Calkins, of Carlta Corporation and owners representative and ERGA Board member "Pointed out that the real risk of there not being surplus net revenues at year 2010 falls on Carlta, because their half goes to repay a sales tax advance and if it isn't repaid

five years later, they lose any right to revenues from the golf course in the long term. That five year period wipes out any of the make-ups for any of the remaining CFD. At the end of that 5 year period there is no condition on the City – the City gets 100% regardless of how it (the golf course) is performing.”

12. So, is this request for a Suspension of the Sales Tax Credit owed the City by ERGA an attempt to allow Carltras to collect Surplus Net Revenues instead of paying the Sales Tax Credit? Or is there no money?

In the August 21, 1997 ERGA Board Minutes:

Jim Benson, Asst City Manager stated: “As of the year 2011, when the City and Carltras start sharing Surplus Net Revenue on a 50/50 basis, there is an entire year and a half of cushion where even if the golf course doesn’t perform as well as it should, the money will be available for the City to get its 50% of the Surplus Net Revenue.”

Mr. Calkins of Carltras Corp. said that they are” aware that if the course under performs by 10%, the amount that Carltras fails to get reimbursed is increased. There is a potential of \$3 million, it all flows down to Carltras.”

13. Can the City expect to receive Surplus Net Revenues beginning next year? How much – best estimate? And still receive payment of the Bond Debt?
14. What is the meaning of the \$3 million dollars?
15. Again, where is the Financial Report for the Public and City Council? Including Projections, Budgets and any Amendments?
16. As City Staff are on the ERGA Board, why don’t we have the Financials included in this Agenda packet?.
17. What about Council receiving annual Financial Reports from ERGA?
18. May 2000 was the last Status Report Council and the citizens received on the Encinitas Ranch and ERGA. Why? Do you think its time for another one?

PLEASE DO NOT make a decision without sufficient financial information. Council has a fiduciary responsibility to the people who elected you. Please ask Staff and ERGA to come back with updated Status reports as part of the Agenda packet so that you can make an informed decision.

Sheila S. Cameron