

MEMORANDUM

DEPARTMENT OF PUBLIC WORKS AND FACILITIES County of Placer

TO: Honorable Board of Supervisors Date: October 6, 2015

FROM: Ken Grehm, Director of Public Works and Facilities

SUBJECT: **PLACER COUNTY GOVERNMENT CENTER – REQUEST FROM COSTCO
WHOLESALE CORPORATION FOR AN EXCLUSIVE AGREEMENT TO
NEGOTIATE**

ACTION REQUESTED / RECOMMENDATION

1. Authorize the Director of Public Works and Facilities or designee to execute an Exclusive Agreement to Negotiate between the County and Costco Wholesale Corporation, a Washington Corporation.
2. Make a determination that the action is exempt from California Environmental Quality Act review pursuant to California Public Resources Code Section 21065 and CEQA Guidelines Sections 15378(a), 15352(a), 15061(b)(3), and 15306.

BACKGROUND / SUMMARY

On October 1, 2015 the County received from Costco Wholesale Corporation ("Costco") a request for the County to consider an Exclusive Agreement to Negotiate ("ENA") between the County and Costco. A copy of the proposed ENA is on file with the Clerk of the Board of Supervisors.

The ENA would establish a two (2) year negotiation period, subject to certain extensions, in which the County and Costco can negotiate a potential ground lease for an area generally located in the vicinity of Willow Creek Drive and First Street near the existing Home Depot store at the Placer County Government Center. The ENA provides a framework for negotiation between the parties. The ENA does not bind the County to approve a proposed negotiated ground lease or obligate the County to approve a potential project. The ENA does not affect existing County agreements, or identify any specific proposed lease terms or other potential deal points. The ENA reserves to the County its discretion to consider, approve, or disapprove any future environmental documents and/or potential land use entitlements. The ENA does not commit the County to any project, or to any potential lease terms with Costco or any other party. The proposed agreement provides Costco a right of entry to inspect the property and the ability to apply for potential land use entitlements consistent with the County's established land use entitlement processes.

In consideration for exclusive negotiating rights, the ENA provides that Costco will deliver to the County copies of reports or studies related to the physical condition of the negotiation area in the event Costco terminates the agreement.

Costco has executed the ENA on file with the Clerk of the Board. Staff recommends your Board's approval of the agreement. The ENA has been approved as to form by County Counsel.

If your Board approves the ENA described in this Memorandum, staff will commence negotiations with Costco pursuant to the ENA. There is no specific timeline to return to your Board, if at all, at this time.

ENVIRONMENTAL

Approval of authorization for the County to enter into the ENA with Costco does not require CEQA review for multiple independent reasons.

The action to approve the ENA is not a project as defined in California Public Resources Code Section 21065 and/or California Environmental Quality Act (CEQA) Guidelines Section 15378(a) and therefore is not subject to CEQA. CEQA applies only to the approval of a project, and the ENA does not constitute approval of a project. A "project" is "an activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment" and is either, a) an activity directly undertaken by any public agency; or, (b) an activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or, (c) an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Cal. Public Resources Code Section 21065, CEQA Guidelines Section 15378(a). The authorization, execution and implementation of the ENA itself will not cause any physical change to the environment, directly or indirectly. The ENA is merely a contract whereby the County agrees not to enter into a real estate transaction for a particular land area with any entity other than Costco for a period of time, allowing each party to explore whether or not an actual physical project should be pursued for the site. The action is also not an activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. Furthermore, "approval" under CEQA is defined as "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." CEQA Guidelines Section 15352(a). The requested action does not constitute a project approval and does not commit the County to a definite course of action. The County is in no way approving a lease to Costco, or any land use entitlements to allow Costco to construct and operate a store. The County is not committing to any particular physical development project and reserves all rights to fully analyze any project ultimately proposed in full compliance with CEQA. The County retains complete discretion to deny or modify any development project brought before it. Any proposed ground lease and/or potential project will undergo an independent environmental review pursuant to CEQA and the County's land use processes.

On a separate and independent basis, if the action is determined to be a project, the action is exempt from CEQA as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. CEQA Guidelines Section 15061(b)(3). This rule is known as the "common sense exemption." For the reasons discussed above, common sense indicates that authorization to enter into the ENA will not result in any change to the environment, and thus no significant impacts will occur by virtue of the ENA. As noted, if Costco should choose to submit an application for a development project and to negotiate with the County for a lease of the land covered by the ENA, a full and comprehensive CEQA process will take place before the County decides whether or not to approve any actions that would result in environmental effects.

On a separate and independent basis, if the action is determined to be a project, the action to approve the ENA is also exempt from CEQA pursuant to CEQA Guidelines Section 15306 - Information Collection - which exempts data collection, research, and resource evaluation activities leading to an action which a public agency has not yet approved. To the limited extent that Costco may conduct testing on the land subject to the ENA, such as taking soil samples to

test the quality of the soil or other property conditions, such actions would not result in a serious or major disturbance to an environmental resource and are exempt from CEQA review. Such actions occur in the ordinary course of business in any event, and would not cause environmental effects.

FISCAL IMPACT

No cash consideration will be paid from or to the County under the ENA. As the ENA does not provide for any proposed deal points or proposed lease terms, no other fiscal analysis can be provided at this time. Staff costs to implement the ENA can be absorbed into established budgets.

Proposed Exclusive Agreement to Negotiate on file with the Clerk of the Board of Supervisors