

Lawsuit threatens tribe's West Slope expansion

By Joann Eisenbrandt

PLACERVILLE – A lawsuit filed last week is designed to keep the Miwok Indians from developing land on the West Slope even though grading has already begun on Phase I.

On Friday the El Dorado Council filed a lawsuit against the county-approved encroachment permit for the Shingle Springs Village Project being developed by the Shingle Springs Band of Miwok Indians. The writ asks that the initial study and mitigated negative declaration approved by the El Dorado County Board of Supervisors for this project located on Shingle Springs Drive at Highway 50 be set aside.

This is a two-phase project, with Phase I being construction of a gas station, convenience store and car wash. Phase II would include a restaurant, retail and office space, an entertainment venue and an 80-room hotel and conference center.

While the land on which the project will be located is property held in trust for the Shingle Springs Band of Miwok Indians by the Bureau of Indian Affairs – “sovereign land”—removed from county tax rolls and outside most county land use jurisdiction, the county does have control over encroachments from that property onto county lands and roadways. The tribe has already prepared and circulated the needed federal environmental assessment under National Environmental Policy Act for the project itself situated on their land.

At its June 28 meeting, the El Dorado County Board of Supervisors approved the mitigated negative declaration for their encroachment permit part of the project. This was part

of a limited review conducted by the county under California Environmental Quality Act. A mitigated negative declaration is at the low end of the totem pole of review options under CEQA and says in effect that the project will have impacts, but all of them can be mitigated to less than significant.

El Dorado Council strongly disagrees. This nonprofit has been following the issue of the relationship between the tribe and county residents for some time. Carol Louis, co-founder and spokesperson for the group, told , “We spent the last year and a half investigating all the Shingle Springs land issues and we found that the county has not represented the taxpaying citizens of El Dorado County in these matters. EDCI has diligently tried to work with the board on the Shingle Springs Village project and before that on the gun range and motocross issues, but the board has not cooperated with us at all. They are more afraid of losing money (through the county’s funding MOU with the tribe) than in working with the community.”

Recent significant increases in the amount of private lands purchased then put into trust by native American tribes and the consequent financial and environmental impacts on local jurisdictions has become an issue not just in El Dorado County, but throughout the country.

The writ filed by the Donald Mooney law firm in Davis on behalf of EDCI names El Dorado County, the Board of Supervisors, and the Shingle Springs Band of Miwok Indians and their development corporation as “real parties in interest.” It asserts that the county, as the lead agency, violated CEQA when it adopted a mitigated negative declaration instead of requiring a full environmental impact report. It also states that the board’s action violates the county’s General Plan as recently amended by the adoption of Measure E by voters in the June 7 primary election.

“Respondents have abused their discretion,” the writ contends, “and failed to act in the manner required under CEQA with

respect to the project because they have failed to provide an adequate, stable project description, failed to adequately analyze the project's environmental impacts, failed to identify necessary and feasible mitigation measures, and impermissibly 'piecemealed' the environmental review for the project ... substantial evidence in the administrative record supports a 'fair argument' that the respondents' approval of the project may result in a significant impact to the environment."

Evidence supporting a public agency's "abuse of discretion" and a clear showing that there is a "fair argument" to support significant environmental impacts that were not fully analyzed or mitigated are key components considered by the court in deciding whether or not to approve a CEQA-based Writ such as this one.

Although the Shingle Springs Village Project will be constructed in two phases, EDCI contends the county only analyzed the impacts of Phase I, the smaller part of the project, deferring consideration of the impacts of Phase II for a later time. This, they say, is a violation of CEQA. The county's staff report for the project states, "The improvements are limited to the water, sewer, and driveway access needed to serve the tribe's proposed Phase I commercial development. The analysis concludes that the improvements are consistent with the applicable policies of the General Plan, provisions of the county codes, and poses less than significant environmental impacts with mitigation measures."

Also missing, the writ contends, is an analysis of the cumulative impacts of past, present and future projects. While the Writ expresses concern for impacts related to noise, aesthetics, air quality and greenhouse gas emissions and hazards and hazardous materials, the traffic impacts of the entire project is the central issue.

The Traffic Impact Analysis prepared by KD Anderson &

Associates gives projections of traffic impacts for roadways and intersections in the project area for both Phase I and Phase II. The Analysis addresses the Phase II buildout, but adds, "It is important to note, however, that a project specific traffic analysis will be required by El Dorado County when the balance of the project proceeds to identify the actual mitigation requirements for the build out condition."

These are the deferred mitigation measures that EDCI says are not allowed under CEQA. The Traffic Impact Analysis found that implementation of Phase I of the Project would generate 807 new daily trips, but that Phase II of the Project would generate 8,549 new daily trips. "This tenfold increase," the Writ tells the court, "will result in devastating traffic impacts that will not likely be possible to fully mitigate. Thus, the traffic impacts for Phase II are entirely foreseeable, and the County chose to ignore them in its review of the Project because a full Environmental Impact Report would obviously have been required ..."

This is where Measure E comes into play. It requires that developers of projects that could create LOS F on adjacent roadways would have to build the needed infrastructure to support that increased traffic before they could receive discretionary approval. LOS (Level of Service) F is the highest congestion level on the traffic flow designation scale and is generally described as "gridlock." Measure E also removed the Board of Supervisors' ability to override this requirement for a specific development project by a four-fifths vote of the board.

The Traffic Impact Analysis indicates that LOS F will occur at a number of roadway locations and intersections at project build out. This impact is compounded by the proposed development of 1,041+ homes on 645 acres by San Stino's pending Mill Creek residential project in this immediate area.

EDCI believes the county's approval of the encroachment permit for the Tribe's project did not follow the Measure E

guidelines and is therefore inconsistent with the county's General Plan.

Sue Taylor of Save Our County, who was the proponent of Measure E, told *Lake Tahoe News*, "The voters passed Measure E to give the board yet another tool to protect the communities throughout El Dorado County from congestion due to over-development. The project being pushed by the Tribe is another example of the Board ignoring the desire of the communities they serve. This project will forever change the rural nature of Shingle Springs. It is nice that other community groups are willing to hold our Board of Supervisors' feet to the fire when it comes to the promises they have made to protect the County's rural character. "

The county's staff report for the project says it would, "allow the Shingle Springs Band of Miwok Indians to provide the population in the surrounding community with a fueling station/car wash/convenience store." Members of EDCI, other Shingle Springs-area residents and business owners have made it clear both verbally at Board meetings and in written comments that they do not want to be provided with any of these services in their presently-rural neighborhood.

In the county's Initial Study Environmental Checklist the surrounding land use types and settings are detailed. The site owned by the Tribe as well as properties in all four directions from the Project site are zoned Estate Residential 5-acre. The uses include rural residences, the California Montessori Project school, a church and Buckeye Elementary School.

When the project's land was originally put from fee into trust, the tribe stated in their application to the Bureau of Indian Affairs that it was to be used for tribal housing. However, the tribe is not precluded from changing the use of the land as stated on their original fee-to-trust application as long as all needed environmental documents are completed

for the revised use(s) and all applicable laws complied with.

A written comment submitted for the June 28, Board of Supervisors meeting from Sally and Jim Traub sums up area residents' objections to this changed use. "We write this letter from the viewpoint of 44-year residents of El Dorado County who are also parents, grandparents, a business owner, and a longtime educator . . . This would have a negative impact on so many things we hold dear in this county—increase in traffic, encroachment on rural lands, and more importantly put dubious businesses in close proximity to two elementary schools . . . This is a rural, family area that should in no way be open to more commercial pursuits. Again this tribe is proposing something that is so far from the best interest of the community as a whole."

The writ contends the county ignored such community input during the project approval process. Once all "administrative remedies" had been exhausted, the Writ says, the only option remaining for EDCI was to sue.

Pointing to the county's failure to meet CEQA requirements and the project's violation of the county's General Plan guidelines, EDCI is asking the court for, "a stay and preliminary and permanent injunction restraining County and its agents, employees, officers and representatives from undertaking any activity to implement the Project in any way pending full compliance with CEQA, the CEQA Guidelines, and the state Planning and Zoning Law."