

Deal allows West Slope tribal gas station to open

By Joann Eisenbrandt

The controversial gas station/convenience store complex on tribal lands of the Shingle Springs Band of Miwok Indians near Red Hawk Casino will be moving forward to completion soon.

El Dorado Council, a local nonprofit advocacy group, had filed a lawsuit against El Dorado County disputing the county's approval of the project's environmental documentation. On May 23, El Dorado Council (EDCI) and the tribe filed a settlement agreement with the court which will end the lawsuit against El Dorado County that has kept the project on hold. The agreement came just one day before El Dorado County Superior Court Judge Curt Stracener was to hear the case. The county supports the settlement agreement, but is not a party to it.

In a press release, Shingle Springs Band of Miwok Indians' Chairman Nicholas Fonseca said, "This settlement enables our tribe to continue to do its good work to benefit the community, our tribal members and our employees."

The project is adjacent to Highway 50 on Shingle Springs Drive in a largely rural area.

County residents on surrounding rural residential parcels have been vocal about their dislike of this project and with what they see as the failure of the county Board of Supervisors to do more to protect their rural lifestyle. The construction of Red Hawk Casino and the subsequent conversion by the tribe of private parcels into trust with the Bureau of Indian Affairs upset residents because of their lack of control over how these parcels could then be used.

El Dorado Council was co-founded in 1992 by local resident

Carol Louis to give voice to residents' land use concerns in the Shingle Springs area. Louis is not happy with the settlement agreement and resigned May 22 from the group she helped start because of it. She believes it did not offer enough mitigation measures for the Shingle Springs community from the impacts that this commercial complex would create. She wanted to let the court decide on the merits of the lawsuit.

"The Shingle Springs neighborhoods have been under siege for 20 years by the tribe," she told *Lake Tahoe News*. "I am disappointed that the El Dorado Council has not done its due diligence in securing a better outcome for the residents."

A resident of the area near the gas station complex who wished to remain anonymous said, "We had a lot of folks go to (El Dorado Council) meetings and contribute personal checks to finance the lawsuit. None of us wanted to settle; we wanted to wait for the judge's decision. It is my understanding that the majority of people were never notified as to the intentions of the three (board members) who signed off on it. We were left totally in the dark."

The EDCI board consists of Mike Doran, Kelly Rosco, and Lori Parlin.

Because lands held in trust for tribes are not subject to local planning and land use regulations, local jurisdictions have less control over what is built. The tribe did not need El Dorado County's approval or permits to build the gas station complex. But to get access off the property, the tribe had to obtain a county encroachment permit for construction of the driveway entrance to the gas station property and for the installation of pipeline extensions and connections for water and sewer service to the property from El Dorado Irrigation District (EID).

The El Dorado County Board of Supervisors approved the tribe's

encroachment permit in June of last year. EDCI filed a lawsuit alleging the county's environmental review was insufficient under requirements of CEQA (California Environmental Quality Act) because it did not fully analyze the environmental impacts of the entire project. In addition to the gas station and convenience store, there is also a potential second phase that could include a restaurant, retail and office space, fast-food establishments, an entertainment venue and an 80-room hotel and conference center. El Dorado Council believed a full environmental impact report needed to be prepared to identify impacts of the much larger second phase on traffic, noise, aesthetics, water quality, and sewer capacity.

Mike Doran, CEO and chairman of the board of EDCI, believes the settlement agreement was a good choice.

"We believe that after many meetings with the tribe on this settlement agreement, it covers a variety of issues important to the community that would not have been addressed had we pursued the litigation. There was no guarantee that we would have won the litigation. The settlement agreement has environmental mitigations for storm water runoff, inspection of the underground storage tanks, tax equity issues important to stakeholders and provisions to make life easier for residents near the gun range," Doran said.

A gun range the tribe opened on trust lands across Shingle Springs Drive from the gas station complex has been a volatile issue with residents because of noise and safety issues. There are many rural residences, schools and churches in the immediate area.

The gas station complex has been completed for some time and has just been sitting empty waiting for the outcome of the lawsuit. Under the settlement agreement, EDCI will ask the court to dismiss its lawsuit against the county. AmyAnn Taylor, attorney general of the Shingle Springs Band of Miwok Indians, said the tribe will try to take advantage of summer

vacation when children are not in school and road traffic is lower to do the needed three to four months of outside road construction needed to complete the driveway access. Completions of the hookups with EID also have to occur before the gas station can open.

In its press release, El Dorado Council pointed out what it believes were key components of the agreement. "As part of the settlement," it states, "the tribe agrees to study and perform feasible mitigations to bring the gun range within the bounds of the county's noise ordinance. Mitigations could include enclosing the gun range to create an indoor range or installing a sound wall around the outdoor gun range."

Another issue is what some called the tribe's unfair tax advantage. EDCI's press release notes the tribe has agreed to charge non-Indian customers approximately the same tax rate that other non-Indian businesses in the county charge for gasoline and for the goods and services at the new complex. Tax equity was included in the 2006 memorandum of understanding (MOU) between the tribe and El Dorado County. This MOU was part of the settlement of the lawsuit against the initial construction of Red Hawk Casino. This provision has not yet been put into effect by the county.

Doran told *Lake Tahoe News* that, "We are taking the tribe at their word at this point that they will in good faith accomplish these things that are part of the settlement agreement."

One of the stipulations of the settlement agreement is that Judge Stracener retain jurisdiction over the settlement agreement. Either party could then return to the court to request action if the other party failed to live up to the terms of the agreement. The court has not yet issued the minute order outlining the terms of the settlement, including whether or not it agrees to retain jurisdiction.

The settlement agreement also indicates the tribe will perform an environmental review before any further development takes place on the parcel, but it is not entirely clear at this point precisely what form that review would take.

Carol Louis is not ready to take the Tribe at their word. She told *Lake Tahoe News* that the tribe has been given too much “wobble room” regarding compliance with the provisions of the settlement.

El Dorado Council will also be dismissing its lawsuit opposing the tribe’s request to put 25 additional acres of land contiguous to Red Hawk Casino into trust. The tribe indicated in its application to the BIA that the land would be for tribal housing. Housing was originally the stated purpose for the 32-acre parcel where the gas station complex now stands. Changing uses is allowed after lands are put in trust as long as the new use still meets federal guidelines. Louis believes the tribe intends to now build their hotel on the 25-acre parcel next to the casino.

AmyAnn Taylor said this is not true. She told *Lake Tahoe News* that the Tribe had already mapped out this land into 5-acre residential parcels and that there were 90 tribal members on a waiting list to live there. She added that the tribe would “rather spend its money for the community instead of fighting lawsuits.”

With regard to one of the community’s biggest concerns, Taylor noted the tribe will be doing an economic analysis in the next few months to see if it would be financially feasible to convert the existing outdoor gun range into an indoor range.

Right now, neither of the parties has released a copy of the final settlement agreement. Doran said it will most likely be made public by EDCI once the court has published its final order.