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Meeting Date: 6/28/2016 Agenda Item: #51

1 message

Verla Manda <greatnewlife@att.net>

Sun, Jun 26, 2016 at 1:17 AM

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The attached letter provides comments regarding the Mitigated Negative Declaration for the above Agenda Item relating to the Utility Lines and Encroachments for the Project Site of the Shingle Springs Band of Miwok Indians on Shingle Springs Drive, Shingle Springs California.

Site Plan Review SPR15-0003 Project Name: Shingle Springs Drive Improvements-Encroachment Permit.

Should you have any questions, please contact Aren (Verla) Manda at (530) 677-4772. Thank you.

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**FINAL 6-23-2016 Comments to Mitigated Negative Declaration.doc**

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Shingle Springs Drive Community Group
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P. O. Box 1635
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BOARD OF SUPERVISORS
EL DORADO COUNTY
2016 JUN 27 AM 11:50

June 22, 2016

Board of Supervisors
330 Fair Lane
Placerville, CA 95667

RE: Mitigated Negative Declaration
File: Site Plan Review SPR15-0003
Project Name: Shingle Springs Improvements-Encroachment Permit

The Shingle Springs Drive Community Group represents the majority of property owners located on or just off Shingle Springs Drive, Shingle Springs, California South of U. S. Highway 50 (including Sleepy Creek Lane). We respectfully submit the following comments regarding the above referenced Mitigated Negative Declaration (hereinafter referred to as the MND).

1. **The Traffic Impact Analysis.**

a. **Size of Hotel.** The Traffic Impact Analysis for the Shingle Springs Village Phase I, prepared by KDAAnderson & Associates, Inc., dated **March 23, 2016** identifies on Page 13 that Phase I of the above Project consists of "Gasoline Sales/Convenience Store/Car Wash on the west side of Shingle Springs Drive immediately south of the interchange" and Phase II "a hotel, two fast food restaurants and roughly 50,000 sf of retail space with two additional access points on Shingle Springs Drive." Page 21 of that same report states, "This second phase could include two fast food restaurants, an 80 room hotel, and roughly 50 ksf of retail space." Table 7 on Page 36 also makes reference to an **eighty (80) room hotel**. It is apparent that the analysis was based on an **eighty (80) room hotel** and retail shops of unknown types.

It is also interesting and rather confusing that a **May 2016** Environmental Assessment entitled Shingle Springs Rancheria, Residential 10.18+ Fee-to-Trust Project Environment Assessment with Lead Agency as the Bureau of Indian Affairs, Pacific Region Office, describes **the hotel as a two hundred and fifty (250) room hotel**. Page 3-26 of that report states "It is assumed that the Red Hawk Parkway interchange will continue to exclusively serve the Red Hawk Casino and Shingle Springs Rancheria. In the absence of any additional development, it would follow that ramp volumes to/from the

Casino/Rancheria would remain exactly the same as they are today. However for purposes of this analysis, it is assumed that the [Red Hawk Casino] **Hotel as assumed within the 'Shingle Springs Interchange DEIR/DEA' will be constructed and in operation by 2035.** The traffic analysis as included within the 'Shingle Springs Interchange DEIR/DEA' **assumed that the proposed 250 room hotel** would result in 35 new weekday AM peak hour trips (21 inbound/14 outbound and 38 new weekday PM peak hour trips (20 inbound/18 outbound)."

So which is it? Eighty (80) rooms or two hundred and fifty (250) rooms? Or, is this an entirely different hotel? Or, another "bait and switch" tactic by the Tribe?

b. The Traffic Report does not identify the mix of traffic vehicles considered in the report (i.e., big rigs, 18 wheelers, as opposed to passenger vehicles) nor the traffic consequences should big rigs increasingly utilize the Tribe's gas station (this is a potential as the prices are anticipated to be less than other local competitors in view of the fact that the Tribe is not required to charge sales tax, State and Federal Road Taxes, etc). With the gas station and convenience store so close to U. S. Hwy 50, this is definitely a potential; and, with the ingress/egress driveways so close to the U.S. Hwy 50 on and off ramps, traffic could be significantly affected. In fact, the KDAnderson Traffic Report on page 62 makes slight mention of "The adequacy of on-site truck circulation will need to be assessed as that median is designed."

Another flaw to the Traffic Impact Analysis became evident by El Dorado County's description of what is to be built during Phase II. Page 5 of the MND signed on May 19, 2016 by El Dorado County (hereinafter referred to as County) states, "Phase II of their Shingle Springs Village Project includes: a restaurant, retail space, office space, and an **entertainment venue within a 46,200 square foot structure and a 4,050 square foot structure**; two fast food facilities measuring 3,230 square feet and 3,275 square feet, respectively; and a **three story 45,000 square foot 80-room hotel and conference center.**" Again, an eighty (80) room hotel.

c. **Entertainment Venue.** The nature of the entertainment (46,200 square foot and 4,050 square foot structure) has not been identified; therefore, how can accurate traffic impacts and patterns be determined without knowing the exact makeup of the entertainment or the days and hours patrons will frequent the entertainment facility? Noise from the entertainment venue is another concern and uncertainty. This community (residents on or in close proximity to Shingle Springs Drive) is significantly affected by the Tribe's recreational activities relating to the "scaled down" gun range and their motor cross activities; further noise irritants would be intolerable.

Therefore, we take issue with the entire Traffic Analysis Report prepared by KDAnderson & Associates, Inc. referenced in the MND. The information provided for the analysis was vague, uncertain and in conflict with other information provided to the

Bureau of Indian Affairs that invalidates the reliability and accuracy of the Traffic Impact Analysis Report. Our exception to the Traffic Impact Analysis extends to any portion of the MND that utilizes the Traffic Impact Analysis as a basis for mitigating negative aspects of the Project. This Tribe has a history with the community of saying one thing and doing another. Given the Tribe's propensity to say whatever is needed to gain approvals for their requests/projects, any analysis should be prepared with "worse case" scenarios as regards to impacts in view of the of the Tribe's inclination to provide misleading information, and the lack of a detailed description from the Tribe as to the nature/type and size of the businesses the Tribe intends to build on this project site. There are no guarantees that the Phase II completion will be held off until 2035; the Tribe may decide to proceed with Phase II much sooner. Nor are there any guarantees that the Tribe will build that which is vaguely described in the MND. Will the County revoke the encroachment permit as permitted by County Ordinances in Chapter 12.08 - Road Encroachments, Article III - Encroachment Permits, Sec. 12.08.190 through Sec. 12.08.210 should the reality of the Tribe's commercial construction significantly differ from that discussed in the MND? And more importantly, how would one know if the reality differs from what is included in the MND in view of the vague and uncertain descriptions in that document?

2. **Trash.** The MND does not address the concern of spill over trash onto private property that is often associated with convenience stores, fast food establishments, etc. What recourse do adjacent/neighboring properties have relative to this matter in view of the Tribal Trust Status? Will the County exercise their power to revoke the encroachment permit should the Tribe allow trash to spillover onto neighboring properties? Although the project description of this MND is the utility lines and an encroachment, the County's approval of a commercial encroachment enables the Tribe to build commercial enterprises on what is currently zoned R-E5 (rural residential).

Request was made to Supervisor Ranalli last February for help from the County to mitigate the negative aspects of the Tribe's Project by creating a gated community of those residential properties located on the east side of Shingle Springs Drive, the South Buckeye Rancheros Development, and the residential properties on the west side of Shingle Springs Drive immediately south of the Tribe's Project area. The gated community would be secured by constructing ten to twelve (10-12) foot sound proof block walls at the property lines south and east of the Tribe's property located on the east side of Shingle Springs Drive and south of U. S. 50, where the Tribe's gun range and motocross track are located; six to eight (6-8) foot block walls at the property lines on Shingle Springs Drive; similar block walls as specified by South Buckeye Rancheros to create a gated community entrance at Maggie Lane; and similar block walls as specified by those residents on the west side of Shingle Springs Drive; gates will be installed on all driveways/easements on both east and west sides of Shingle Springs Drive, and at Maggie Lane for the South Buckeye Rancheros; all residents will receive up-to-date (state of the art) automatic openers and communication/intercom type devices; update

to date (state of the art) keypads will be installed at each gate. All costs for creating and maintaining the gated community would be paid by either the Tribe, or the County with funds the County receives from the Tribe to mitigate the negative impacts of the Tribe's activities in the Shingle Springs area.

3. **Construction Workers Hours and Equipment (Pages 10, 11, and 59); Phasing and Construction -Construction Schedule (Page 8); Fugitive Dust (Page 11); and Sensitive Receptors (Page 24).** It is important to note that some residents within close proximity to the project work are battling cancer, other serious health issues and respiratory problems. The long hours of construction during the week and on Saturdays may interfere with, delay, or negate the recovery of these residents. Not only will the residents have the construction noise for the utility lines and the encroachment for two (2) months, they will then have to contend with the Tribe's construction efforts for another five (5) to six (6) months or longer, depending upon weather and unforeseen occurrences (MND, Page 8). Therefore, we take issue with the hours of construction work identified throughout the report (Page 10, 11, and 59) and request that no Saturday work be permitted. Also, it is imperative that El Dorado County Air Quality Control staff be present to ensure fugitive dust is not problematic to those seriously ill or with respiratory problems. This is a long period of time for patients seriously ill to put up with the negative aspects of construction. It is interesting to note the protection the MND extends to wildlife, vegetation, minerals, human remains and Indian Culture, but not for the living residents.

4. ENVIRONMENTAL IMPACTS -I. Aesthetics (Page 18)

a. **Discussion, b** of the MND states, "The site is visible from U. S. 50 and adjacent private property, but the development of a driveway and drainage along Shingle Springs Drive and underground utilities would not affect the visual character or quality of views from U. S. 50 or surrounding private properties. Impact would be less than significant." This statement could not be more inaccurate; **the commercial encroachment permit enables the building of Tribal commercial enterprises** practically in the front yards of those private property owners on Shingle Springs Drive. Currently, the view is grassland, hills with trees, deer and other wildlife and at night the stars are visible due to the darkness around us. This project property was zoned R-E5 and is now being developed with high density commercial, one would be less than observant, or blind, to think the impact would be less than significant. The Tribe purchased R-E5 property; therefore, the County should extend an encroachment for a single family dwelling, not an encroachment sized for commercial use/activity.

The MND makes frequent references to Federal, State and Local Laws, Regulations and Policies that may apply to this Project and perhaps will make a reader of the document feel comforted that government will resolve all the negatives associated with this project (MND, pages 17-78, Regulatory Setting) ; but the reality is, State and local

government have little to no control on Tribal Trust Lands. We take issue with the statements regarding the environmental impacts as well as the references to State and Local Laws, Regulations and Policies that appear to provide protection to citizens under these circumstances but it is uncertain that such laws, regulations and policies are enforceable upon Tribal Trust Lands. The MND should only cite those governmental agencies that are known and verified to have such authority or influence on Tribal Trust Lands.

b. **Discussion c** of the MND states, "The indirect effect of the addition of more vehicles on Shingle Springs Drive and the proposed driveway would not result in a significant change." As previously discussed in #1 above, the validity of the Traffic Impact Analysis by KDAAnderson & Associates, Inc. has been excepted due to conflicting and uncertain information provided by the Tribe, uncertain information regarding the entertainment venues and a lack of addressing all deterrents to traffic flow (i.e., railroad). In addition to this objection, the encroachments as proposed are immediately across the street from private residences; **while the vehicles are stopped waiting to exit, or when the vehicles are turning right or left from the project sight, the lights of those vehicles will shine toward private property/homes throughout the night.** The Tribe has advertised that some of the commercial activities will be open 24 hours a day (i.e., gas station, convenience store, etc). Not only the light from the Tribe's build-out but the lights from the cars will be a source of irritation and complaint for the residents/property owners. This negative aspect further justifies the necessity for creating a gated community paid for by the Tribe or the County as described in #2 above.

5. **Environmental Impacts (Pages 17 through 78).** Throughout the pages of the MND, reference is made to Federal, State and Local Laws, Regulations and Policies; however, often government entities use "boiler-plate" text within documents that may not be applicable to Tribal Trust lands. The MND should remove references to any governmental entity that does not have authority/influence over Tribal Trust Lands and their activities (i.e., County standards and ordinances relative to height, design, size, setbacks of structures). Inclusion of this information misleads the reader to believe that all negative aspects of the project are governed/monitored and resolvable by those entities. The document should provide only those governmental agencies who have been verified to exercise authority/influence over tribal lands and activities, and who are authorized to monitor and accept/process complaints.
6. **Current Zoning, Use, and Structures (Page 6).** The MND states, "The General Plan Designation for the area surrounding the Project area is Low Density Residential (LDR) with some Commercial and Public Facility in the vicinity, and has an overlay designation of IBC "Important Biological Corridor". To our knowledge, there is no commercial on Shingle Springs Drive. The East Side adjacent to the freeway was zoned Planned Development, but there are no commercial parcels or activities in the immediate area; other than the schools and church, all remaining parcels are zoned R-E5 (rural

residential). The Tribe is forcing commercial on the resident majority land owners in what use to be a quiet, rural, and lawful residential neighborhood. We take exception to this statement in the MND.

The last sentence in this section (Current Zoning, Use, and Structures, Page 6) states, **"The closest residence is located approximately 300 feet from the Project."** This statement is in error. Residents located on Parcel 319-220-50-100 are less than 100 feet and those on Parcel 319-220-38-100 are less than 200 feet from the Project pertaining to the encroachments and utility lines. We take exception to the accuracy of the MND relative to this matter.

7. **ROW Project Features (Pages 6-7)**

a. **Utility Lines, Page 7 - 2nd Paragraph.** The MND speaks of the need for an encroachment crossing permit from El Dorado County, as the jurisdictional member of the Sacramento Placerville Transportation Corridor Joint Powers Authority to install the pipelines under the railroad tracks that the MND states, **"even though the railroad is not currently in use."** This statement is in error. The railroad is in use; on Sundays at least twice a month, the Joint Powers Authority permits public tours on small rail cars. This use will also interfere with traffic as volunteers are stationed on Shingle Springs Drive to stop vehicles when the touring rail cars cross Shingle Springs Drive. The KDAnderson & Associates, Inc. analysis did not address this interruption/delay of traffic into their calculations. We have also heard that there are plans in the future to have large, full sized trains utilizing the tracks in this area. Therefore, we take exception of the accuracy of the MND, and again the Traffic Impact Analysis.

b. **Private Driveways and Easement.** Although the MND discusses lanes of access on Shingle Springs Drive and construction at Maggie Lane, the MND does not address construction disturbance to private residences at their driveways and shared easements (Sleepy Creek Lane). What provisions will be made to ensure residents may timely and safely exit and enter their properties at all times during the time ditches on both the east and west sides of Shingle Springs Drive are open? We take exception to the MND as it does not communicate to residents the full impact of the project nor mitigate the inconvenience residents will have to endure during construction.

8. **XII NOISE, Would the project result in:**

a. **Items a-d (marked with Less Than Significant Impact-page 56).** Let it be known that an objective sound test was performed by a qualified professional that documented background noise levels at numerous residences in the area prior to Tribal activities and construction. Further monitoring will determine any changes that would identify a substantial adverse affect due to Noise (especially that created by increased traffic on

Shingle Springs Drive). Therefore, we take exception to the finding of "Less than Significant Impact" determined by the County's MND.

b. Discussion (Page 56). The MND indicates that a substantial adverse effect due to Noise would occur 'if the implementation of the project would: Result in long-term operational noise that creates noise exposure in excess of 60 dBA CNEL at the adjoining property line of a noise sensitive land use and the background noise level is increased by 3 dBA, or more; or result in noise levels inconsistent with the performance standards contained in Table 6-1 and Table 6-2 in the El Dorado County General Plan. " Should future testing as indicated in #8, a above find changes in background noise levels increased in excess of 3 dBA, or in excess of the Table 6-1 and Table 6-2, the findings of the County's MND will be found inaccurate and resolution may be pursued for damages.

c. Noise Exposure (page 57).

1). The MND states, "As discussed in the Traffic Report for the project, the increase in vehicle trips would not be substantial enough to raise noise levels beyond 60 dB or more than 3 dB above background levels, since most vehicle activity would be located near U.S. 50 away from the schools and residences." Not all residences are located away from the U. S. 50 and the Project area; nor are they all located south close to the schools. We take exception to this statement regarding the potential for noise level to exceed 60 dB and more than 3 dB above the pre-construction professionally documented background noise levels (especially in view of our exception to the Traffic Report).

2). The MND addresses the concerns of noise related to the bore and jack construction process required during the installation of utility pipelines at Maggie Lane and crossing the railroad tracks; the statement is made that "The nearest residence is over 300 feet northeast of the railroad track" This assessment we believe to be in error; recent measurement indicated the distance to be less than three hundred (300) feet (depending upon where the boring occurs). We take exception to this statement.

Page 58 of the MND identifies Mitigation Measure NOISE-1: Noise Reduction During 24-hour Construction Operations. The Mitigation states that "the bore and jack operations that produce the highest noise levels shall be timed to occur during regular daytime construction hours, to the extent feasible. Generator and ventilation equipment shall be directed away from sensitive receptors. Loader operations will be kept to a minimum. Backup alarms on equipment will not be operated during nighttime hours and either sound barriers shall be erected at the entry and exit shafts to minimize noise or the applicant shall pay for hotel accommodations for the affected residential properties. The construction contractor shall coordinate with affected residents at least two weeks prior to 24-hour construction operations to make arrangements for those

residents that would like to arrange hotel accommodations." We take exception to this mitigation measure as we believe that **both** sound barriers should be erected at the entry and exit shafts to minimize noise **and** the applicant shall pay for hotel accommodations for the affected residential properties should the residents determine that the noise level and vibrations are a significant irritant or if the noise level and vibration interferes with their ability to sleep. Such accommodations should be in keeping with the quality and comfort of the displaced resident home.

9. **X. LAND USE PLANNING (Items a. through c.) and Discussion (Page 53).** The MND identifies the following as a substantial adverse effect on Land Use:

- Result in conversion of undeveloped open space to more intensive land uses;
- Result in a use substantially incompatible with the existing surrounding land uses; or
- Conflict with adopted environmental plans, policies, and goals of the community.

All of the parcels surrounding the Tribe's Project Site, with the exception of one parcel, are rural residences (R-E5), a church, two schools and undeveloped R-E5 parcels (the one non-residential parcel is an undeveloped area to the northeast outside the project footprint zoned Planned Development). The Tribe's application for an encroachment permit is for commercial activity which is not compatible with surrounding land uses and conflicts with the adopted environmental plans, policies and the **goals of this community** (the residents/property owners want to maintain the rural residential status); therefore, we take exception of the County's MND findings of "Less than Significant Impact" as it is insignificant only to those not living in the immediate area of the Tribe's commercial, construction activities. Nor do we agree that the action to provide a commercial encroachment will not limit or remove existing access or movement in the area. Travel northbound on Shingle Springs Drive to U.S. Hwy 50's on and off ramps will be significantly impaired and access effected.

10. **Required Permits and Approvals (Page 13 -14).** The County's MND identifies various Federal, State, Local and Trustee Agencies permits, approvals and separate environmental analyses that may be required for the Tribe's Project. Until it is known for a certainty that the Tribe has obtained all such permits/approvals, the County should withhold extending the encroachment permit.

11. **III. AIR QUALITY, b-c (Page 23-24).** The MND identifies "Operation of the driveway would result in additional traffic as disclosed in the Traffic Analysis for the project" and utilizes the KD Anderson & Associates, Inc. Traffic Report to determine the operation emissions from traffic, we take exception to the Air Quality statements in the MND in view of the reasons listed in #1 above (the Traffic Impact Report is flawed).

The MND further states on Page 24, paragraph 2 that "air emissions associated with the gas station are not addressed in this CEQA document as the action occurs outside County or CEQA jurisdiction due to Tribal ownership of the land. Therefore, the air emissions will address traffic on the driveway, but do not address emissions from stationary sources on the site. " We believe that it is reasonable and prudent for the County to obtain information from the responsible Federal Agency with oversight of the gas station operations so they may inform the affected residents of Federal procedures that will ensure the resident's safety; therefore, we take exception to the MND's lack of information on this important matter.

Sensitive Receptors: The MND identifies sensitive receptors as children, the elderly, people with illnesses, or others that are especially sensitive to the effects of air pollutants." Nearly all of the residents on Shingle Springs Drive are senior citizens some of which have debilitating illnesses such as those mentioned in #3 above; in addition, one family has four children. Lengthy work schedules and extended construction (utility lines and an encroachment, as well as the Tribe's commercial construction) will impose hardships on those residents struggling with life-threatening illnesses.

12. IV. BIOLOGICAL RESOURCES

a. Mitigation Measure BIO-1 (page 30). Measures to Avoid Disturbance of Nesting Raptors and Songbirds or Destruction of Active Nests. We take exception to the language utilized in describing the work that will take place regarding the protection and disturbance of nesting raptors, songbirds and active nests. Such language as "it is **recommended** that a focused survey for active nests be conducted by a qualified biologist" does not provide the reader of this document with confidence that such action will take place; rather than "recommended," the mitigation should use language to "**require**" the focused survey by a qualified biologist. Additionally, it is requested that the use of words "**would**" and "**should**" in this mitigation be replaced with "**will**" and "**shall**". County government has a duty to protect the biological resources within its geographical boundaries.

b. Mitigation Measure BIO-2. Measures to Avoid Disturbance of Protected Bats (pages 30-31) We take exception to the language utilized in describing the work that will take place to avoid impacting breeding or hibernating bats in or near the County ROW. Such language as "surveys of potential bat roost habitat are **recommended** to be performed in all trees within 25 feet of the project limit" does not provide the reader of this document with confidence that such action will take place; rather than "recommended," the mitigation should use language to "**require**" the focused survey by CDFW. Additionally, it is requested that the use of words "**would**", "**should**" and "**may**" in this mitigation be replaced with "**will**" and "**shall**". Again, county government has a duty to protect the biological resources within its geographical boundaries.

c. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites (Page 25)? The MND states a "Less than Significant with Mitigation." The wildlife in the community has already been significantly affected by the Tribe's activities and the Tribe's commercial project (be it utility lines and an encroachment or the Phase I and Phase II Project Construction) will continue to interfere with that ecological balance. The County's granting a Commercial Encroachment Permit will further affect the migratory corridors of the wildlife. During the past thirty to forty years, deer, coyotes and wild turkeys frequented and traveled through the Shingle Springs Drive area. The residents often observed this wildlife in their yards and in the surrounding areas. Since the Tribe's shooting range and motocross track have been active, it is very rare now, if ever, that residents have the opportunity to enjoy sharing the rural environment with these beautiful animals. Now that the natural predators have left, jack rabbits have become more prolific in the area; for thirty to forty years, it was a rare sight to see wild jack rabbits. Although the wildlife in the Shingle Springs area may not be identified as an Endangered Species, they are part of the reason residents choose to live in this rural environment. We do not want our children and grandchildren to grow up like many city dwelling children who have never seen a cow in real life.

Migration Corridors (Page 29). Although the MND states that the project is not located within a migratory deer herd corridor, it can be verified with the residents that during the past thirty-forty years a significant number of deer passed through the area and those lands owned by the Tribe that will soon be under commercial construction. The MND states, "Species could continue to use the roadway as a movement corridor following construction. "We take exception to this plan as it creates a road hazard that could prove life-threatening to residents, those traveling on Shingle Springs Drive and to the wildlife.

13. **VIII. HAZARDS AND HAZARDOUS MATERIALS (pages 42-47).** Although the installation of utility lines and encroachments themselves would not necessarily expose the residents and the school's children to hazardous materials, the County's approval of a commercial encroachment for the Tribe's gas station and other commercial ventures will indeed enable potential exposure to hazardous materials once Phase I and Phase II are built and operational. The County does not have authority to monitor or influence operations within the Tribe's gas station facility, nor the ability to verify that personnel has received adequate training, or to verify that an appropriate Hazardous Materials Business Plan or Risk Management Plan have been established; therefore, the proposed project could expose the area to hazards relating to the use, storage, transport, or disposal of hazardous materials. The MND cites several California Governmental Agencies that normally administer state policies; however, it is unknown at this time what authority the State of California has on Tribal Trust Lands; therefore, we take exception to the declaration of "Less Than Significant Impact."

14. **XIII. POPULATION AND HOUSING, Discussion: b. Housing Displacement.** The MND states that "Existing residences near the Project will remain the same. No impact would occur." We take exception to this declaration; should the conditions in the neighborhood deteriorate to such an extent that the residents experience excessive noise, pollutants, crime, prostitution, drugs, and loitering in the neighborhood, or be in fear for their lives, due to the Tribe's commercial project attracting such criminal activity as has occurred at the RedHawk Casino, it may be necessary to request the County to rezone the current R-E5 residential properties on the east and west sides of Shingle Springs Drive to commercial in order for the residents to escape and yet maintain some value to their properties.
15. **XIV. PUBLIC SERVICES, Discussion (page 61-62).** The MND identifies "a substantial adverse effect on Public Services would occur if the implementation of the project would:
- Substantially increase or expand the demand for public law enforcement protection without increasing staffing and equipment to maintain the Sheriff's Department goal of one sworn officer per 1,000 residents."

Since the opening of the RedHawk Casino and the opening of the gun range and motocross track, the residents on Shingle Springs Drive have had to deal with the following types of situations:

- Strangers coming from the RedHawk Casino and knocking on residents doors (in spite of "No Trespassing Signs" posted at the entrance to the private property) asking for money to buy gas because they had lost all of their money at the Casino
- Strangers driving on private property either in search of the Tribe's motocross track, or to park and leave their vehicles for an extended period of time to attend Tribal functions; when such intruders are asked to remove either themselves or their vehicles from the private property, many became belligerent and confrontational
- Strangers driving onto private property to use residents picnic benches and tables to enjoy a country luncheon (again in spite of No Trespassing Signs)
- Strangers parking on private property, or at the front of residents properties, during the night and throwing out used condoms, dirty diapers, beer and liquor bottles and cans
- Fecal material and foreign chemicals left on the residents property or in mailboxes.

We have been encouraged by our County Supervisor to contact the Sheriff's Department when we experience these types of situations; however, by the time the

police arrive (and that is, if they arrive) the intruder has left. We realize the Sheriff's Department has much more serious situations to deal with and we immensely dislike having to distract them from those more serious, or life-threatening calls for help. However, one only has to listen to a police scanner or make request at the Sheriff's Department to discover the coverage the Sheriff has to provide to maintain the law at the Casino; therefore, it is anticipated that with the opening of the Tribe's commercial project on Shingle Springs Drive, the resident's exposure to crime will increase due to the volume of people drawn to the Tribe's commercial enterprises (i.e., Casino hotels are reported to attract prostitution and drug sales). Therefore, we take exception to the statement that a "Less Than Significant Impact" would occur. The County's approving a commercial encroachment in the middle of a residential neighborhood enables the Tribe to develop commercial enterprises that very likely will introduce significant crime in the neighborhood that may duplicate the crime that occurs daily at the RedHawk Casino. This concern further justifies our request for the County or Tribe to pay for and maintain the creation of a gated community for all affected residential property owners located in the Shingle Springs Drive area and as mentioned in #2 above.

16. **XVI. TRANSPORTATION/TRAFFIC (page 65).** Exception is taken to all rulings of "Less Than Significant" for the reasons mentioned in #1 above and relating to the Traffic Impact Analysis.

Future improvements to Shingle Springs Drive, specifically the addition of a TWLT lane, may result in widening the road. Should a TWLT lane or four lanes become necessary, this action may widen the road to the extent that traffic would be very close, practically at the front doors, of two homes on Shingle Springs Drive (parcels 319-220-38-100 and 319-220-50-100).

Several traffic areas within the scope of the Project are reported in the flawed Traffic Impact Analysis Report to operate currently at maximum or unsatisfactory levels and would, with the completion of this Project and future Phases of the Project, exceed County Standards to the point of failure. It is worrisome to read in the KDAnderson & Associates, Inc. Report that "El Dorado County staff reports that none of the improvements discussed in the preceding sections of the analysis are currently in the CIP."

17. **XIX. MANDATORY FINDINGS OF SIGNIFICANCE (pages 77-78).**

Items "b" and "c" marked "Less than significant with Mitigation." We take exception to these findings. Throughout this document it is noted that the impacts are cumulatively considerable and have environmental effects that will cause substantial adverse effects for the human beings residing in the area; noise, trash, absence of beloved wildlife, community goals, land use conflicts, scenic views, glare from car lights at night and the strong potential for increased crime have been discussed in this document as concerns

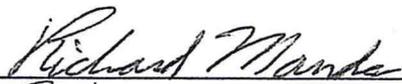
expressed by residents/property owners located on or near Shingle Springs Drive. County mitigates any negative affects to the County Budget by requesting more payment from the Tribe; how do property owners mitigate all that they will lose (i.e., property values, privacy, safety, etc.)? We look to you, our County Supervisors, to work on our behalf and to do otherwise is a betrayal.

County Ordinance Chapter 12.08 - Road Encroachments, addresses unlawful activities related to persons who establish, revise or maintain any access road across any portion of the right-of-way or any County highway without having first obtained an encroachment permit; who have not paid the appropriate permit application fee and inspection fee; and that misrepresent any material fact in the application may experience the potential of having their encroachment permit denied or revoked. The Tribe has misrepresented their intentions relative to the Project site from the very beginning and from the time they requested the BIA to place the land in Trust; the Tribe stated on the BIA's Application that the land was to be used for Tribal Housing. Further misrepresentation may be evident regarding the number of rooms that will be included in the hotel; it would appear that there may be sufficient justification to deny the Tribe's Encroachment Application. Furthermore, the Tribe has been in violation of Chapter 12.08 - Road Encroachment provisions for numerous years relative to the Tribal Property owned on the east side of Shingle Springs Drive. The County has turned a "blind-eye" in enforcing County laws, regulations and policies; the Tribe has held major public events on this property on numerous occasions and continues to use an unlawful encroachment to this property in order to utilize their gun range and motocross track. Our country and this county needs "one law for all people."

We respectfully thank you for considering our concerns and comments.

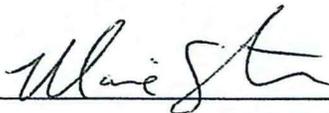
Sincerely,

Shingle Springs Drive Community Group


Richard Manda


Verla (Aren) MANDA


ANTHONY J. SPITZER


Marie Spiteri

James Starr
JAMES STARR

Curtis Dedrick
CURTIS DEDRICK

Stephen Howard Dedrick
STEPHEN HOWARD DEDRICK

Matt White
MATT WHITE

Joan A. Fasnacht
Joan A. Fasnacht

Ellen M. Starr
Ellen M. Starr

Staci Dedrick
STACI DEDRICK

David A. White
David A. White

Thelma R. White
Thelma R. White

Linda Smalley
Linda Smalley

PS: This document is being sent via email; however, a signed copy of this document will be delivered on Monday, June 27, 2016.



EDC COB <edc.cob@edcgov.us>

Mitigated Negative Declaration Shingle Springs Drive Improvements-Encroachment Permit Comment letter

Marsha Burch <mburchlaw@gmail.com>

Sun, Jun 26, 2016 at 10:06 PM

To: edc.cob@edcgov.us, bosone@edcgov.us, bostwo@edcgov.us, bosthree@edcgov.us, bosfour@edcgov.us, bosfive@edcgov.us

Please see attached comment letter.

Marsha A. Burch, Esq.
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6_26_16 Comment Shingle Springs Village ND .pdf
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MARSHA A. BURCH

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June 26, 2016

Via electronic mail edc.cob@edcgov.us

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Re: Mitigated Negative Declaration for Site Plan Review SPR15-0003
Shingle Springs Drive Improvements-Encroachment Permit
SCH# 2016052071

Dear Supervisors:

We appreciate the opportunity to provide the following comments on behalf of El Dorado Council.ORG (the "Council"). The Council is made up of citizens of El Dorado County who are deeply concerned about the proposed encroachment permit and the cursory level of environmental review. These comments are intended to supplement comments submitted previously by others during the review process.

As explained below, the Initial Study and Mitigated Negative Declaration (referred to together herein as "MND") for the Project does not comply with the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*) in certain essential respects.

While the City may understandably wish to avoid the costs associated with extensive environmental review, the MND does not fulfill the County's obligations under CEQA. It is our view that an Environmental Impact Report ("EIR") is required for the Project.

An overarching concern in this case is the fact that the MND ignores potentially significant adverse impacts as a result of an unclear and unstable project description. Further, the MND recognizes that there will be two phases to the development facilitated by the permit, but defers analysis of Phase II impacts to a later time. CEQA does not allow for such deferral of analysis where potential impacts are foreseeable, and it also does not allow for a lead agency to segment a project; breaking it into pieces as is done here. A further concern impacting the entire analysis is the failure of the MND to acknowledge the growth inducing impact of the extension of water and sewer facilities. There is substantial evidence in the record of potential significant impacts, requiring the preparation of an EIR for the Project.

Another major, and perhaps overriding, concern is that, contrary to the statements and assumptions in the MND, the County *does* have the authority to impose

land use restrictions, including through CEQA review and imposition of mitigation requirements and conditions on Phase I and Phase II of the development project. This mistaken assumption should be corrected and a complete analysis of the potential adverse impacts of the entire development project should be studied in a comprehensive EIR.

I. State Land Use Laws Apply to the Trust Lands

The first sentence of the second paragraph in the “Background” section, on page 4 of the MND, casually states that: “The majority of the proposed Phase I development is located on Tribal land and is therefore not subject to CEQA.” The MND does not cite any legal authority or other support for this broad claim. And it is repeated throughout the MND and is apparently offered as an excuse for an incomplete and inadequate analysis of all the adverse environmental impacts of the proposed development project. The contention that the Phase I development is not subject to CEQA and other State laws is wrong and it completely undermines the environmental analysis in the Initial Study offered in support of the MND.

Phases I and II of the development project are being built on property that was transferred to the United States, supposedly “in trust” for the Shingle Springs Band of Miwok Indians, on or about February 11, 2011. This transfer was ostensibly made pursuant to the Indian Reorganization Act of 1934 (“IRA”). (25 U.S.C. § 465 et seq.) But, based on the Supreme Court’s decision in *Carcieri v. Salazar*, (2009) 555 U.S. 379, the validity of this attempted fee-to-trust transfer is questionable at best because the Shingle Springs Band of Miwok Indians was not a federally recognized tribe in 1934 when the IRA was enacted. However, even if the fee-to-trust transfer of the property was allowed by the 1934 IRA (and it was not), that fact would not exempt the land or Phases I and II of the development from the application of State and local law for at least two reasons.

First, although the IRA states that any land acquired by the United States in trust for tribes or Indians is “exempt for State and local taxation” (25 U.S.C. § 465), it does *not* include a similar exemption from State and local regulation. Surely, if Congress had intended such an exemption it would have included it in the IRA. It was not, and the mere transfer of land to the United States does not exempt it from State and local laws.

Second, for the last 51 years the Secretary of Interior has directed that all Indian land in California shall be subject to “all of the laws, ordinances, codes, resolutions, rules or other regulations of the State of California, now enacted or as they may be amended or enacted in the future, limiting zoning, or otherwise governing, regulating or controlling the use or development of any real or personal property, including water rights . . .” (30 Fed. Reg. 8722 (1965).) Thus, even if the land was validly transferred or taken into trust, it remains subject to State laws and regulations, including CEQA.

In summary, CEQA applies to the entire project including the encroachment permits, Phases I and II of the development project, and all anticipated and related projects. An EIR should be prepared for the entire project which studies all the potential adverse environmental impacts. Also meaningful and enforceable mitigation should be proposed, imposed and monitored for the entire project. Furthermore, as with any

development proposal, and to protect the public including their equal protection rights, the County should require compliance with the applicable building codes and require that appropriate permits be obtained for all aspects of the entire project.

II. The Project Description is Unstable and Uncertain

“An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” (*County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) A complete project description is necessary to ensure that all of the project’s environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.)

The MND does not provide a complete, consistent project description sufficient to support environmental analysis. Review of the record reveals that the Project consists of three components: (1) development of the access driveway and sewer / water extensions (referred to herein as the “Encroachment”); (2) Phase I of the development the Encroachment will serve, including a gas station, carwash and convenience store; and (2) Phase II of the development, including a restaurant, retail space, an entertainment venue (over 50,000 square feet), two fast food restaurants, and a three-story, 80-room hotel and conference center.

The County has taken the position that CEQA does not apply to the Shingle Springs Village project that is comprised of Phase I and Phase II set forth above, because the development will occur on Tribal trust lands. (MND, p. 4.) Even if this is true (which it is not, see Section I, above), the County must consider all foreseeable impacts and may not ignore the fact that Phase I and Phase II will be possible only as a result of approval of the Encroachment. Simply because the County does not believe that it has the authority to impose mitigation requirements on the Tribal trust lands, it may condition the permits and approvals associated with the Encroachment to require mitigation off-site to avoid or reduce the impacts associated with all aspects of the Project. At the very least, the County must disclose to the public and the decision makers all of the impacts that will flow from its approval of the Project.

For traffic and drainage impacts, the MND considers the “Project” to be the Encroachment *and* Phase I of the development. Phase II, the hotel portion of the development is referred to occasionally throughout the document and is discussed in the traffic impact analysis (“Traffic Study”), but is not considered at any point for purposes of determining impacts.

No explanation is given for leaving Phase II development out of the analysis. It may be due to the fact that Phase I will, according to the Traffic Study, result in 807 new daily trips, while adding Phase II to the analysis would result in 8,549 external daily trips. It is no wonder the County would like to avoid disclosing and analyzing this impact, as it will be devastating to the surrounding community and triggers the requirement that a full EIR be prepared for the Project.

The Traffic Study notes that Phase II is considered as a “Build Out” condition for the purpose of “confirming the adequacy of project access under long term conditions.” (Traffic Study, p. i.) If the Encroachment will serve Phase II of the development, then

there is no rational basis for leaving Phase II out of the environmental analysis at this stage. To do otherwise would be to impermissibly piecemeal the Project.

For impact areas other than traffic and drainage, none of the proposed development is considered in the MND. This narrow view violates CEQA because it ignores foreseeable direct and indirect impacts, and it also does not make sense in light of the fact that other portions of the MND do include Phase I impacts.

CEQA applies to all “discretionary projects proposed to be carried out or approved by public agencies.” (Public Resources Code [“PRC”] § 21080(a).) Before taking action, a public agency must conduct a preliminary review to determine whether the action is a “project” subject to CEQA. (See *Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n* (2007) 41 Cal.4th 372, 380.) A “project” is “the whole of an action” directly undertaken, supported, or authorized by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment.” (PRC § 21065; CEQA Guidelines § 15378(a).) The definition of “project” is given a broad interpretation in order to maximize protection of the environment. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1180.)

Importantly for purposes of considering the County’s Project description in this case, the rule is as follows: under CEQA, “the term ‘project’ refers to the underlying activity and not the governmental approval process.” (*California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1241.) Thus, the Project being considered by the County includes the Encroachment, Phase I and Phase II, even though many of the future approvals for build out of the development project will be carried out by others.

The County has taken the position that CEQA does not apply to the development proposals on the trust lands, but this does not relieve the County from analyzing and mitigating the direct and indirect impacts of approving the Project. In this case, Phase I and Phase II of the development will be facilitated (and indeed possible) only through approval of the Project by the County.

III. The MND Improperly Segments the Environmental Review

The MND fails to consider the full and foreseeable build out of Phase I and Phase II and improperly ignores this indirect impact of approving the Project. California courts have repeatedly and forcefully rejected attempts to avoid proper evaluation and disclosure of a proposed action’s long-term environmental impacts. CEQA requires that lead agencies consider a project’s full environmental impacts “at the earliest possible stage” and certainly before the project gains “irreversible momentum.” (E.g., *City of Carmel by the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 242.) Thus there is an overwhelming mandate against allowing agencies to defer the preparation of a full EIR until a later phase of the project; instead, CEQA mandates “that environmental considerations do not become submerged by chopping a larger project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.” (*Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal.3d 263, 283-84; and see *No Oil v. Los Angeles* (1987) 196

Cal.App. 3d 223, 233, 237.) CEQA accomplishes this in part by defining the term “project” broadly to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change to the environment.” (CEQA Guidelines §15378(a).) More specifically, “project” means the reviewed activity, which may be subject to several discretionary approvals. (CEQA Guidelines § 15378(c).) Thus, an agency must prepare an initial study considering the entirety of a phased project.

IV. Standard for use of a Negative Declaration

Where, as here, there is substantial evidence in the record to support a fair argument that the proposed project may have a significant effect on the environment, preparation of an EIR is required. (PRC §§ 21100, 21151; CEQA Guidelines § 15064; *Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319.)

The standard in reviewing an agency’s decision not to prepare an EIR for a project is subject to the “fair argument test” and is *not* reviewed under the substantial evidence test that governs review of agency determinations under Public Resources Code sections 21168 and 21168.5. The “substantial evidence test” that generally applies to review of an agency’s compliance with CEQA provides that if any substantial evidence in the record supports the agency’s determination, then the determination will remain undisturbed.

In stark contrast, an agency’s decision to omit the preparation of an EIR will not stand if *any* substantial evidence in the record would support a fair argument that the Project *may* have a significant effect on the environment. (*No Oil, Inc. v. city of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003; Pub. Resources Code § 21151.)

There is substantial evidence to support a fair argument that each of the Project impacts discussed below *may* be significant. A full EIR should be prepared for other reasons as well. The cumulative impacts of the Project are significant, particularly when Phase II is considered, as it must be under the law.

V. The Project may Result in Significant Impacts

Because of the flaws in the project description and the segmenting of the underlying project, the MND fails to adequately analyze all areas of impact. Of particular concern are the impacts discussed below, but this is not an exhaustive list of the potentially significant impacts that will result from the Project. An adequate initial study based upon an accurate project description must be prepared by the County in order to correctly identify all potentially significant impacts.

A. Aesthetics

The Aesthetics section in the MND highlights the absurdity of pretending that the only impacts of the Project will be those associated with the installation of the sewer and water lines, and construction of the driveway. (MND, pp. 17-18.) The whole of the

project includes commercial uses in a residential area, with the potential for 24-hour operation. The Project will indirectly result in gas station and convenience store lights, lights from cars on the roadway and the visual impact of commercial development in the rural setting. None of this is even considered in the MND.

While the County may adhere to the belief that CEQA does not apply to approvals of the buildings, etc. on the Tribal trust lands, CEQA most certainly applies to the discretionary approval of the Encroachment, and the County must review the whole project, including indirect impacts. If there is no ability on the part of the County to mitigate a potentially significant impact, then the impact must be disclosed and a finding must be made that it will be significant and unavoidable. All of this must occur within the context of an EIR.

The CEQA process may not be distorted to allow for a more convenient review where there are complicating factors such as the Tribal development. The process is not irrational, and if an impact is identified as potentially significant, the lead agency must adopt all *feasible* mitigation measures. In other words, if mitigation is not feasible, then the County has the option of making a finding of overriding considerations.

B. Air Quality

The air quality section of the MND includes the mind-bending proposition that the traffic trips generated by Phase I of the underlying development should be considered for purposes of emissions calculations, but Phase II should be ignored. The improper segmenting of the project results in this section of the MND being completely inaccurate, and this is further complicated by the fact that none of the construction impacts associated with Phase I or Phase II are included in the analysis, nor are any stationary sources on the site. (MND, p. 23.)

The conclusion of no significant operational impact is based upon the El Dorado County Air Quality Management District Guide to Air Quality Assessment. (MND, p. 22.) The MND states that the operation of Phase I will result in 807 new vehicle trips, resulting in 8.24 pounds per year of ROG. (MND, p. 23.) For this emission type, the threshold of significance is 82 pounds. It bears noting here that when Phase I and Phase II traffic counts were totaled together in the Traffic Study, the new daily trips were 8,549, which would exceed the threshold, and this does not even take into account the stationary emissions on the development site that were acknowledged but left out.

C. Greenhouse Gas Emissions

The analysis of Greenhouse Gas Emissions also considers only the construction phase of the Encroachment, along with only the mobile sources for Phase I of the development. (MND, p. 40.) There is no basis for the arbitrary inclusion of only some portions of the project and only certain sources from each of these portions. The whole of the project must be considered, including construction of the Encroachment, construction of both Phase I and Phase II, operation of Phase I and Phase II, with mobile and stationary sources included.

D. Hazards and Hazardous Materials

This section is lacking any meaningful review because it also pretends that the development of a gas station and other commercial uses will not occur. (MND, pp. 41-46.) The County must consider the whole of the project. If there is the potential for nearby residents to be subject to fuel spills or fire hazards associated with the gas station or increased human activity in parking lots and other public areas, then the County must analyze this. If mitigation is infeasible, then the fact of the significant and unavoidable impact must be disclosed. Further, there may be feasible mitigation measures that could be implemented in the County right of way. Some form of physical barrier or fire suppression system may be possible between the commercial development and the residential uses, but there is no way to discuss the possibility without including the whole of the development in the initial study.

E. Water Quality

For purposes of considering drainage impacts, the County had a drainage study prepared to include the Encroachment and Phase I. Again, there is no support for this arbitrary approach provided in the MND, but the drainage and water quality section are inadequate as a result of ignoring a large portion of the project.

F. Land Use Planning

The Land Use Planning section of the MND includes discussion of whether the project is consistent with any applicable land use plan, policy or regulation. (MND, p. 53.) While it is the position of the County that they have no power to enforce the General Plan and other County land use regulations on the Tribal trust lands, this does not mean that the MND may ignore the fact that commercial uses that will result from approval of the Encroachment are absolutely in conflict with the residential zoning surrounding the project site. The question is whether or not there is any conflict with an existing land use plan, and whether that will result in a significant impact. There is no doubt that the General Plan's designation of the surrounding area for low-density residential use will result in land use conflicts of the highest order. This must be disclosed and the possibility of mitigation measures that could reduce the conflict could be implemented in the County right of way or through an impact fee or other form of mitigation. Mitigation of the inevitable land use conflicts must be considered at this stage.

G. Noise

The Noise section of the MND suffers from all of the same defects as the rest of the MND as a result of the segmenting of the project. The MND considers only noise generated by construction of the Encroachment and traffic generated by Phase I. This arbitrary approach is inconsistent with CEQA. (See discussion of Greenhouse Gas Emissions above.)

H. Transportation and Traffic

The MND ignores the bulk of the traffic that will be generated by the underlying

development project. There is no explanation for the fact that the “cumulative” traffic analysis considers just a fraction of the foreseeable future development. The MND states that it “analyzes only the necessary improvements within the ROW of Shingle Springs Drive” and that the “traffic analysis includes the traffic generated by the *commercial development on the tribal land* because the commercial development is anticipated to have cumulative impacts to the roadway.” (MND, p. 65, emphasis added.) The MND does *not* consider the “commercial development on the tribal land,” it considers just Phase I. Oddly, the traffic study prepared for the Project also discusses the traffic generated by Phase II of the commercial development.

The MND cannot begin to be accurate or successfully disclose the Project’s impacts without acknowledging that the commercial development on the Tribal land will result in 8,549 new daily trips; not 807. This tenfold difference will result in very different conclusions regarding level of significance. It is obvious from the record that there is substantial evidence of to support a fair argument that the Project will have significant traffic impacts. Further, the MND fails to discuss foreseeable projects in the vicinity of the Project, including the Mill Creek housing development. The Mill Creek project is moving through the application process and proposes to construct more than 1,000 new homes in the immediate vicinity of the Project.¹

The cumulative impacts analyses in the MND for all areas of impact are inadequate because the MND fails to consider foreseeable development that will contribute to various impacts, including noise, air quality, greenhouse gas emissions, traffic and public utilities and services. The traffic section highlights the arbitrary nature of the analyses, and also reveals that the document skipped over the necessary steps in assessing cumulative impacts. Not only does the MND ignore Phase II, but it also fails to employ any acceptable form of cumulative impacts analysis.

CEQA requires that the lead agency use either the “list” method or the “summary of projections” to evaluate cumulative impacts. (CEQA Guidelines § 15130(b)(1)(A) and (B).) The MND does not discuss past, present and probable future projects, nor does it rely upon projections in a recent planning document. The required cumulative impacts analysis is missing from the MND. If the MND even included the clearly foreseeable traffic impacts of Phase II, not to mention the other foreseeable projects that will result in cumulative traffic impacts, the thresholds of significance would be exceeded at several intersections. The MND is fatally flawed in its traffic analysis.

Finally, Measure E, recently approved by the voters of El Dorado County, requires that Mitigation Measure Traffic-4 be revised to require immediate construction of the improvements necessary to mitigate the Project’s impacts to the intersection of Mother Lode Drive / Buckeye Road / Holiday Lake Drive.

I. Utilities and Service Systems

The MND fails to adequately address the Project’s impacts to water supply and

¹ We request that all application documents and the Mill Creek development project file be included in the record of proceedings for the Project.

sewer capacity. With respect to both of these issues, the MND states that El Dorado Irrigation District (“EID”) will evaluate the supply and capacity at a later time. (MND, pp. 74-75.) For water supply, the MND does not disclose whether or not Phases I and II are being considered, and the MND concludes that no construction will occur until EID conducts a “review of existing water supplies in relation to demand, and funding is provided by the applicant...” (MND, p. 74.) Deferral of the analysis of whether there are adequate water supplies to serve the Project violates CEQA. As a responsible agency, EID will not be able to rely upon the MND to support any discretionary action.

The same is true for sewer capacity. EID will review “existing wastewater capacity in relation to demand” at some unspecified, later date. (MND, p. 75.) Deferral of the required analysis violates CEQA and is a disservice to the citizens of El Dorado County. In the midst of drought and extreme uncertainty regarding future water supplies, the days of casually saying that the question of an adequate water supply will just be dealt with later are over. The impacts to utilities and services systems must be evaluated before the Project is considered and approved.

J. Growth Inducement

Section 15126.2(d) of the CEQA Guidelines requires a discussion of the ways in which the proposed Project could induce growth, either directly or indirectly, in the surrounding environment. The MND fails to disclose and discuss the growth inducing impacts of the Project in extending the water and sewer lines into an area that has the potential for residential development. (See MND, p. 59.) The Mill Creek residential development application is pending before the County, and extension of services will facilitate this growth, and may encourage additional applications. CEQA requires analysis of this Project effect.

VI. Conclusion

For the reasons set forth above, we believe that the MND fails to meet the requirements of the California Environmental Quality Act. Further, we believe that the County has the authority to evaluate all aspects of the Project and the underlying development as CEQA does apply to the trust lands. For these reasons, we believe the document should be withdrawn and a full EIR for the whole of the project should be prepared.

Very truly yours,

// Marsha A. Burch //

Marsha A. Burch
Attorney

cc: El Dorado Council.ORG
Supervisors via email: (bosone@edcgov.us, bostwo@edcgov.us,
bosthree@edcgov.us, bosfour@edcgov.us, bosfive@edcgov.us)



EDC COB <edc.cob@edcgov.us>

Comments to Shingle Springs Drive Encroachment Permit Application

1 message

Nikki <ntcostello@sbcglobal.net>
To: edc.cob@edcgov.us

Sun, Jun 26, 2016 at 10:59 PM

To Whom it May Concern:

I am writing to urge you to deny the encroachment permit application for the Miwok Tribe water main and sewer connection intended to service both Phase I and Phase II of the proposed Shingle Springs Village project. I live in Shingle Springs not far from the proposed development, and both my children attended Buckeye Elementary School located down the street from this project location. If approved, the utilities will enable the tribe to build out their parcels, which were put in trust by the Federal Government for Tribal Housing, not a huge commercial venture. The land is zoned low density residential, 5-acre minimum I believe. The proposed development would be catastrophic to the residential neighborhood, and will significantly impact Buckeye School and the young school kids.

Approving the encroachment permit will likely drive several home owners away, and the tribe will no doubt purchase their homes as they have been doing over the past several years, allowing more land to be put into trust under the pretense of tribal housing. Encroachment approval will also severely impact Buckeye School, which currently enjoys a quite country feel. Once built out the "Village" project will turn a rural school location into a casino-centered commercial entertainment center - hardly an environment conducive for young school children.

Regarding the permit application, I disagree that there will not be significant environmental impacts - there will be as a result of the increased traffic, noise, light and glare, and potential impacts to water quality. Approving the permit will allow a gasoline station to be constructed - gasoline stations leak gasoline into the soil and groundwater. Even with the best tanks and piping systems, the fuel systems do leak - from pipe fittings beneath dispenser islands, to leaking pumps and accidental delivery overfills, and overfills of vehicles. Impacted soil and groundwater is inevitable. The gas station is to operate 24/7, causing light pollution and significant glare, especially considering the large freeway sign to be constructed for the station, which will likely be lit.

Construction of roughly 1/2 mile of piping along the street will significantly impact the school kids with noise and dust. Those risks were minimized in the study but have the potential to be significant to the kids, as well as to the church and neighbors. The potential for liberating asbestos into the air should be carefully evaluated and if asbestos is present a mitigation plan would be needed to prevent any asbestos dust from entering the air.

The real issue here is by proving access to a 12" water main and a 6" sewer line the genie will be let out of the bottle. Unchecked commercial and entertainment development will be allowed to proceed, since the land is in trust status for the tribe. I'm not against commercial development but in this case it is entirely inappropriate to develop at this location, which is a rural area zoned for 5-acre minimum housing. The development calls for an entertainment center and large hotel, each of which obviously will be associated with the casino. Such a development will destroy the character of the neighborhood and the school. That is how the tribe has been operating - drive away homeowners, put the land into trust status with bogus applications stating the land is for tribal housing, then switching the land use to a gun range, motocross track, and who knows what else.

Please deny the encroachment permit application. The proposed development area is rural in nature, is zoned for 5-acre residences, and has elementary schools nearby. The proposed commercial development is incompatible with the existing land uses and is entirely inappropriate. It should also be noted that the gasoline station will operate 24/7 and sell alcohol, just up the street from two elementary schools - that should not be allowed.

Tim Costello
3903 Los Padres Lane, Shingle Springs
ntcostello@sbcglobal.net



EDC COB <edc.cob@edcgov.us>

Fwd: See PDF Attached

Char Tim <charlene.tim@edcgov.us>

Mon, Jun 27, 2016 at 10:33 AM

To: EDC COB <edc.cob@edcgov.us>

Cc: Rommel Pabalinas <rommel.pabalinas@edcgov.us>, Tiffany Schmid <tiffany.schmid@edcgov.us>, Roger Trout <roger.trout@edcgov.us>

Board Clerk's office,

Please include this attachment as Public Comment for Legistar #15-1008 (BOS 6/28/16, Item #51). Thank you.

----- Forwarded message -----

From: **Rommel Pabalinas** <rommel.pabalinas@edcgov.us>

Date: Mon, Jun 27, 2016 at 10:06 AM

Subject: Fwd: See PDF Attached

To: Charlene Tim <charlene.tim@edcgov.us>

Cc: Tiffany Schmid <tiffany.schmid@edcgov.us>, Roger Trout <roger.trout@edcgov.us>

Hi Char-

Please forward to the Board clerk the attached scanned received agency (Caltrans and Central Valley Regional Water Quality Board) comments and a response letter to Caltrans comment from the applicant on the Initial Study/MND for the Shingle Springs Drive Improvements and Encroachment Permit.

----- Forwarded message -----

From: <CDAScanned@edcgov.us>

Date: Mon, Jun 27, 2016 at 9:38 AM

Subject: See PDF Attached

To: rommel.pabalinas@edcgov.us

TASKalfa 4551ci
[00:c0:ee:3f:cf:c4]

=====

Rommel (Mel) Pabalinas, Senior Planner
El Dorado County Community Development Agency-
Development Services Division-Planning Services
Planning Division
2850 Fairlane Court
Placerville, CA 95667
Main Line 530-621-5355
Direct line 530-621-5363
Fax 530-642-0508

Char Tim

Clerk of the Planning Commission

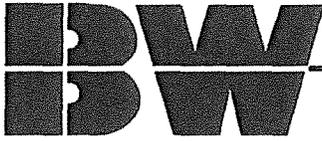
Assistant to Roger Trout
Development Services Division Director

County of El Dorado

Community Development Agency
Development Services Division
2850 Fairlane Court
Placerville, CA 95667
(530) 621-5351 / FAX (530) 642-0508
charlene.tim@edcgov.us



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June 26, 2016

Rommel (Mel) Pabalinas
Senior Planner
El Dorado County Community Development Agency-
2850 Fairlane Court
Placerville, CA 95667

SUBJECT: Shingle Springs Village- Phase 1–Caltrans comment letter dated June 22, 2016
Our file no. 14-11-053

Dear Mr Pablinas,

I receive the letter dated June 22, 2016 from the State Department of Transportation (Caltrans) as related to the proposed Phase 1 improvements to Shingle Springs Road. I have made inquiries into the Caltrans staff for further clarification on their comments. The following is my initial response subject to further correspondence and/or coordination with the various Caltrans staff.

Hydraulics

Comment

1. *Existing Drainage Pattern must not be altered. Runoff to the existing 48-inch culvert under Shingle Springs Road must not be increased.*

Response: Existing drainage pattern are not proposed to be altered. The existing 48-inch culvert under Shingle Springs Road within the Caltrans right-of-way has been analyzed. The culvert has the capacity to convey 65 CFS where as the ultimate 100yr post-project flow rate to the culvert is about 35 CFS. Existing pre-project condition peak runoff to the culvert can be provided to Caltrans as per their request.

Comment

2. *The Drainage Calculations are incomplete. The Area column of the calculations table shows area from N5 to N6 as 0.2 acres but the cumulative are increases by 29.9 acres. This is not consistent with the rest of the table.*

Response: The drainage calculations table and Shed Map is correct which depicts the calculations for cumulative areas to each node. This will be clarified with the Caltrans hydrologist.

Comment

- 3. Similarly S5 to S 6 area is 0, but the cumulative increases by 10.8 acres as well as S10 to S11. These calculations need to be clarified with clear explanation.*

Response. The calculation table depicts the cumulative shed areas to various nodes or pipe segments correctly. This will be clarified with the Caltrans hydrologist.

Comment

- 4. The Capacity of the 48-inch pipe was calculated to be 65 cfs, but there is no calculation for the design runoff from the entire watershed. The peak runoff under the existing and post project conditions must be calculated.*

Response: The Shed Map and calculation table includes the entire shed that drains to the existing 48-inch culvert which is about 47.8 acres. The existing peak condition runoff to the culvert can be provided to Caltrans. As mentioned In the response to item 1, the culvert has the capacity to convey the post project 100 year storm event.

Comment

- 5. Mitigation Measures for the increases in runoff for post project conditions must be designed based on design criteria.*

Response: Existing peak runoff calculation can be provided to Caltrans which will address mitigation if required. Please note, the entire shed area to the 48-inch culvert is about 47.8 acres which includes drainage from highway 50 that Caltrans has diverted onto the project property which eventually drains to the 48-inch culvert. The Phase 1 site area is 2.5 acres or about 5% of the overall entire shed area. Further discussions with Caltrans will address mitigations, if needed.

Comment

- 6. All information n mentioned in the comments above must be included in a Drainage Report and submitted to Caltrans for review Runoff from the existing 48-inch culvert eventually enters Caltrans right-of-way and Caltrans facilities cannon accept ant net increases in runoff.*

Response: see above response to items 1-5.

Traffic Operation

Comment 1: see letter dated June 22, 2016

Response: Phase 1 does not result in impacts to the Shingle Springs Drive/Us 50 ramps.

Comment 2: see letter dated June 22, 2016

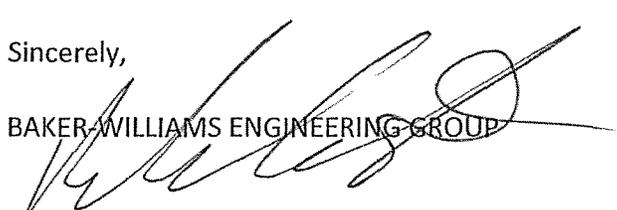
Response: The centerline if the Phase 1 driveway (Sta. 34+10) to is 575 feet from the centerline of the eastbound ramp/Shingle Springs Road intersections (Sta. 39+85).

Encroachment Permit

Response. Phase 1 improvements does not require a Caltrans Encroachment Permit other than the traffic control signage which will adhere to Caltrans requirements and permit.

If you have any questions, or if you require additional information, please contact me at (916) 331-4336, extension 114 or miker@bwengineers.com.

Sincerely,


BAKER WILLIAMS ENGINEERING GROUP

MICHAEL T. ROBERTSON, President
PE39875

encl.

cc: Mike Carruth



STATE OF CALIFORNIA
 GOVERNOR'S OFFICE of PLANNING AND RESEARCH
 STATE CLEARINGHOUSE AND PLANNING UNIT



EDMUND G. BROWN JR.
 GOVERNOR

KEN ALEX
 DIRECTOR

June 23, 2016

Mel Pabalinas
 El Dorado County
 2850 Fairlane Court
 Placerville, CA 95667

Subject: Shingle Springs Drive Improvements-Encroachment Permit
 SCH#: 2016052071

Dear Mel Pabalinas:

The enclosed comment (s) on your Mitigated Negative Declaration was (were) received by the State Clearinghouse after the end of the state review period, which closed on June 22, 2016. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2016052071) when contacting this office.

Sincerely,

Scott Morgan
 Director, State Clearinghouse

Enclosures
 cc: Resources Agency

RECEIVED
 PLANNING DEPARTMENT
 16 JUN 24 PM 1:03

#2016052011

DEPARTMENT OF TRANSPORTATION

DISTRICT 3 – SACRAMENTO AREA OFFICE
2379 GATEWAY OAKS DRIVE, STE 150 - MS 19
SACRAMENTO, CA 95833
PHONE (916) 274-0635
FAX (916) 263-1796
TTY 711
www.dot.ca.gov/dist3



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*late
6/22/16
E*

Governor's Office of Planning & Research

JUN 23 2016

STATE CLEARINGHOUSE

June 22, 2016

032016-ELD-0022
03-ELD-50/R10.304

Mr. Mel Pabalinas
County of El Dorado
Community Development Agency
Planning Services
2850 Fairlane Court
Placerville, CA 95667

Shingle Springs Drive Improvements Encroachment Permit – Initial Study/Mitigated Negative Declaration (IS/MND)

Dear Mr. Pabalinas:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review for the project referenced above. Caltrans' new mission, vision, and goals signal a modernization of our approach to California's transportation system. We review this project for impacts to the State Highway System in keeping with our mission, vision and goals for sustainability/livability economy, and safety/health. We provide these comments consistent with the state's smart mobility goals that support a vibrant economy, and build communities, not sprawl.

The Shingle Springs Band of Miwok Indians is planning to construct and operate a 5,012 square foot fueling station, carwash, and associated convenience store under the Shingle Springs Village Project Phase I. Shingle Springs Village Project Phase II includes: a restaurant, retail space, office space, and an entertainment venue within a 46,200 square foot structure and a 4,050 square foot structure; two fast food facilities measuring 3,230 square feet and 3,275 square feet, respectively; and a three story, 45,000 square foot 80-room hotel and conference center. The IS/MND addresses only the driveway access for Phase I of the Shingle Springs Village Project (as Phase II is not currently proposed but discussed in the IS/MND in order to consider cumulative traffic effects), which will require a county-issued encroachment permit. The project site is located directly south of the United States Highway 50 (US 50)/Shingle Springs Drive interchange in El Dorado County. The following comments are based on the IS/MND.

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

Hydraulics

1. Existing Drainage Patterns must not be altered. Runoff to the existing 48-inch culvert under Shingle Springs Road must not be increased.
2. The Drainage Calculations are incomplete (Attachment 1). The "Area" column of the calculations table shows area from N5 to N6 as 0.2 acres but the cumulative area increases by 29.9 acres. This is not consistent with the rest of the table.
3. Similarly S5 to S6 area is 0, but cumulative increases by 10.8 acres, as well as S10 to S11. These calculations need to be clarified with clear explanations.
4. The capacity of the existing 48-inch pipe was calculated to be 65 cfs, but there is no calculation for design runoff from the entire watershed. The peak runoff under existing and post project conditions must be calculated.
5. Mitigation measures for increases in runoff for post project conditions must be designed based on design criteria.
6. All information mentioned in the comments above must be included in a Drainage Report and submitted to Caltrans for review. Runoff from the existing 48-inch culvert eventually enters Caltrans right-of-way and Caltrans facilities cannot accept any net increases in runoff.

Traffic Operations

1. As per the IS/MND, Phase I will not result in impacts to the Shingle Springs Drive/US 50 ramps intersections. For both construction year and year 2025, the ramp intersections will continue to operate at LOS D. However, year 2035 will result in impacts to the westbound off-ramp in regard to delay with the implementation of Phase II. Per the IS/MND, the Shingle Springs/Westbound US 50 ramps intersection in year 2035 is expected to operate at LOS F, without mitigation. As per the Traffic Impact Analysis (TIA) (Attachment 2), the project proponent shall pay for the installation of an all-way-stop or other improvements needed as identified by the TIA that will be completed for Phase II of the Shingle Springs Village. We recommend that the TIA include a stop sign and signal warrant and queue analysis for both the westbound and eastbound ramp intersections for the Shingle Springs Drive/US 50 interchange.
2. As depicted in Exhibit 4, Aerial View of the Project Area (Attachment 2), the proposed driveway access to the new fueling station from Shingle Springs is located approximately 400 feet south of the Shingle Springs Drive/US 50 eastbound ramps intersection. Before any permit is approved the project proponent must verify that the new access is at least 400 feet (500 feet preferred) from the Shingle Springs Drive/US 50 eastbound ramps intersection, per the Highway Design Manual Chapter 500, Section 504.3 (Ramps) and 504.8 (Access Control).

Encroachment Permit

Any work in the state's right of way requires an encroachment permit. To apply, a completed encroachment permit application, environmental documentation, and five sets of plans clearly indicating the state's right of way must be submitted to:

Charles Laughlin
California Department of Transportation

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

Mr. Mel Pabalinas/County of El Dorado
June 22, 2016
Page 3

District 3, Office of Permits
703 B Street
Marysville, CA 95901

Please provide our office with copies of any further actions regarding this project.

If you have any questions regarding these comments or require additional information, please contact Eileen Cunningham, Intergovernmental Review Coordinator, at (916) 274-0639 or eileen.cunningham@dot.ca.gov.

Sincerely,



ERIC FREDERICKS, Chief
Transportation Planning – South Branch

c: Scott Morgan, State Clearinghouse



STATE OF CALIFORNIA

GOVERNOR'S OFFICE of PLANNING AND RESEARCH

STATE CLEARINGHOUSE AND PLANNING UNIT



EDMUND G. BROWN JR.
GOVERNOR

KEN ALEX
DIRECTOR

June 23, 2016

Mel Pabalinas
El Dorado County
2850 Fairlane Court
Placerville, CA 95667

Subject: Shingle Springs Drive Improvements-Encroachment Permit
SCH#: 2016052071

RECEIVED
PLANNING DEPARTMENT
16 JUN 24 PM 1:02

Dear Mel Pabalinas:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on June 22, 2016, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any ~~questions regarding the environmental review~~ process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

**Document Details Report
State Clearinghouse Data Base**

SCH# 2016052071
Project Title Shingle Springs Drive Improvements-Encroachment Permit
Lead Agency El Dorado County

Type MND Mitigated Negative Declaration
Description Site Plan Review Permit analyzing the impacts from the construction and operation of a 12-in, 2,400 lf water main, a 6-in, 3,335 lf sewer force main pipeline, and a 36 ft x 40 ft paved driveway within the El Dorado County ROW of Shingle Springs Drive.

Lead Agency Contact

Name Mel Pabalinas
Agency El Dorado County
Phone (530) 621-5363 **Fax**
email
Address 2850 Fairlane Court
City Placerville **State** CA **Zip** 95667

Project Location

County El Dorado
City
Region
Lat / Long 38° 40' 43.4" N / 120° 54' 55" W
Cross Streets Shingle Springs Dr and US HWY 50
Parcel No. Shingle Springs Dr ROW
Township 10N **Range** 10E **Section** 31 **Base** MDBM

Proximity to:

Highways US 50
Airports
Railways Placerville and Secto
Waterways
Schools Buckeye ES
Land Use County ROW, Res Estaet (RE-5) surrounding ROW

Project Issues Biological Resources; Drainage/Absorption; Noise; Traffic/Circulation; Water Quality

Reviewing Agencies Resources Agency; Department of Fish and Wildlife, Region 2; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 3 S; State Water Resources Control Board, Divison of Financial Assistance; Regional Water Quality Control Bd., Region 5 (Sacramento); Native American Heritage Commission; Public Utilities Commission

Date Received 05/24/2016 **Start of Review** 05/24/2016 **End of Review** 06/22/2016



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

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15 June 2016

Governor's Office of Planning & Research

JUN 16 2016

Mel Pabalinas
El Dorado County Planning Services
2850 Fairlane Court
Placerville, CA 95667

STATE CLEARINGHOUSE CERTIFIED MAIL
917199 9991 7035 8363 8638

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, SHINGLE SPRINGS DRIVE IMPROVEMENTS-ENCROACHMENT PERMIT PROJECT, SCH# 2016052071, EL DORADO COUNTY

Pursuant to the State Clearinghouse's 24 May 2016 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Shingle Springs Drive Improvements-Encroachment Permit Project, located in El Dorado County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases,

the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues.

For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/.

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Policy is available on page IV-15.01 at:
http://www.waterboards.ca.gov/centralvalleywater_issues/basin_plans/sacsjr.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan

(SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/.

For more information on the Caltrans Phase I MS4 Permit, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/caltrans.shtml.

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml.

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ.

For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml.

Clean Water Act Section 404 Permit

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

Waste Discharge Requirements – Discharges to Waters of the State

If USACOE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml.

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Risk General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Risk Waiver) R5-2013-0145. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Risk General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Risk Waiver and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2013-0145_res.pdf

Regulatory Compliance for Commercially Irrigated Agriculture

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program. There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board's website at: http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/for_growers/apply_coalition_group/index.shtml or contact water board staff at (916) 464-4611 or via email at IrrLands@waterboards.ca.gov.
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at IrrLands@waterboards.ca.gov.

Low or Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Dewatering and Other Low Threat Discharges to*

Surface Waters (Low Threat General Order) or the General Order for Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

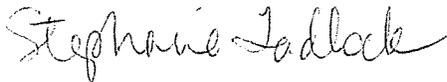
For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf

If you have questions regarding these comments, please contact me at (916) 464-4644 or Stephanie.Tadlock@waterboards.ca.gov.



Stephanie Tadlock
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento