



County of El Dorado

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To: Honorable Chairman and members of the Board of Supervisors

RE: Memorandum for Agenda Item #14, 10/6/15 BOS Agenda, related to the Shingle Springs Village Project

The purpose of this memo is to briefly address some of the issues that arose during the September 15, 2015 hearing on this agenda item. The discussion at that time covered a wide range of topics regarding tribal sovereignty most of which are not implicated by this particular agenda item.

This agenda item does not approve any development by the Tribe. It is a narrowly focused item that only approves a contract to conduct a CEQA study required to process an application by the Tribe, which we must process. It requests only that the Board approve a contract with an environmental consultant to perform an environmental assessment and prepare the necessary CEQA documents to evaluate the offsite effects that may result from the construction of necessary utility connections and new driveways relating to the Shingle Springs Village project ("Project"). In other words, a contract to review the environmental impacts related to the application for an encroachment permit. The Shingle Springs Band of Miwok Indians Development Corporation ("Tribe") will be responsible for all costs associated with this contract.

This item does not ask the Board to approve the proposed Project or any other project. This item does not request that the Board approve the application for an encroachment permit related to the Project. This item is designed to provide the Board with sufficient information regarding the effects of the construction of the necessary utility connections and new driveways required by the proposed Project in order to make an informed decision on whether to grant the application for the encroachment permit requested by the Tribe. Without this critical information, the Board will be unable to make a decision on the application for an encroachment permit which the County will ultimately be required to make.

On September 15, 2015 the Community Development Agency (CDA) brought this item to the Board. A large part of the discussion at that time focused on the relative merits of the final Project. While that is a healthy discussion to be had at some point in time, the approval of this contract is not that time. In essence opposition to this contract is best characterized as the attempt to prevent the Board from obtaining information necessary for the Board to make a legally defensible decision on the application for an encroachment permit. Both this Board and the public in general should support the concept of the Board having this information in order to make the decision that best serves the public interest.

Processing of Application for Encroachment Permit

As stated, the Tribe has submitted an application for an encroachment permit in relation to the Project. The Tribe has requested the right to come onto County property to construct water, sewer, utilities and storm drain improvements and for access roads/driveways connecting to Shingle Springs Drive. Although the County does not have any land use authority over tribal lands held in trust, the County does retain authority over its roads and highways and can require that the Tribe obtain an encroachment permit.

The process for the approval or denial of an encroachment permit is set forth in El Dorado County Ordinance Code, Chapter 12.08, Road Encroachments. That chapter has as its stated purpose, “protecting the safety of the public traveling on public roads and to protect the public roads from unwarranted damage.” The process is the same for anyone applying for an encroachment permit.

In this particular instance, because it is anticipated that the work on the improvements related to the encroachment will exceed \$100,000 the Board must review and approve the application. [Ord. Code section 12.08.055]. The Board must exercise its discretion in making this decision. In this situation, the encroachment permit is discretionary and therefore a CEQA analysis is required.

The CEQA analysis can be achieved in one of two ways; the County can hire the environmental consultant at the Tribe’s expense or the Tribe can hire the environmental consultant. The agenda item before the Board seeks to have the County employ an environmental consultant to undertake the CEQA analysis required in this instance at the Tribe’s expense.

Without that analysis the Board will have insufficient information to make an informed decision on the application for the encroachment permit.

If the Board seeks to stop the encroachment permit process at this juncture by taking no action and refusing to allow the processing of the application, the Tribe will have a strong foundation for legal action based upon the Board’s failure to exercise its discretion in the first instance. Beyond the legal ramifications, such an action would unnecessarily harm the relationship between the County and the Tribe and any attempts to build upon that relationship.

In short, a good neighbor policy is a two way street and cannot be founded upon one side refusing to follow its own processes when the other has submitted to those processes in good faith.

Comparing NEPA and CEQA

The California Environmental Quality Act (CEQA) is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.

Members of the public have also expressed concern with regard to projects that the Tribe is, or may, pursue on Tribal lands. The National Environmental Policy Act (NEPA) requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA is broad and includes:

- making decisions on permit applications,
- adopting federal land management actions, and
- constructing highways and other publicly-owned facilities.

Using the NEPA process, agencies evaluate the environmental and related social and economic effects of their proposed actions. Agencies also provide opportunities for public review and comment on those evaluations.”

NEPA is the process that applies to projects on Tribal land held in trust whereas, CEQA is the process that would apply to the encroachment application, a project off tribal land. County Counsel has provided a letter attached to the original item which discusses the legal analysis regarding tribal sovereignty and its effect on the County’s land use authority, including the evaluation of the effect of the Amended State Compact with the Tribe. In short, the County has no land use authority over tribal lands. However, that does not mean to say that there is no land use regulation applicable to a project on tribal lands.

In the case at hand, both NEPA and CEQA may apply to the project. CEQA analysis is appropriate for the encroachment permit necessary for the offsite improvements related to the project and NEPA may apply to the project itself. The process to be followed under either process is very similar with both processes providing for an initial assessment of the project and its environmental impacts, the preparation of public documents, public review and comment on those documents and ultimately judicial review of the lead agencies decision. Attachment “A” provides a side by side comparison of the processes. Ultimately, dissatisfaction with the agency decision under either process is subject to judicial review.

Coordination with the Tribe

In a letter dated September 29, 2015, the County through Chairman Veerkamp expressed the County’s desire to work cooperatively to achieve the goals of both the County and the Tribe. The vision expressed is to establish a mutually beneficial government to government relationship with regard to both development under the jurisdiction of the County and development on Tribal trust land.

On Thursday, October 1, 2015, Supervisors Veerkamp and Mikulaco along with County Counsel and I met with representatives of the Shingle Springs Band of Miwok Indians to discuss not only the present project but also the long range plans of the Tribe and how the County and the Tribe could work together to ensure that the needs of both the County and its citizens and the Tribe and its members are met. The meeting was a positive first step toward the good neighbor relationship both the County and the Tribe seek to achieve as the Tribe pursues its efforts toward economic development projects on Tribal lands.

In conclusion, for today’s purposes, the Board need only decide whether or not to authorize a contract with Hauge Brueck Associates, LLc to perform the CEQA analysis of the offsite improvements related to the Tribe’s proposed project for purposes of determining whether to grant or deny an application for a roadway encroachment. The Board is not commenting on the merits of the proposed Project or predetermining whether and encroachment permit will be granted. The Board is simply following its process to evaluate an application for an encroachment permit, just as it would do for any applicant.

Sincerely,



Larry T. Combs
Chief Administrative Officer

ATTACHMENT A

Table 1: Summary and Comparison of NEPA and CEQA Processes

National Environmental Policy Act	California Environmental Quality Act
Initial Review for Categorical Exclusion <ul style="list-style-type: none"> Excluded if there are no extraordinary circumstances 	Initial Review for Categorical Exemption <ul style="list-style-type: none"> Exempt if the project falls within: <ul style="list-style-type: none"> A statutory exemption, or A categorical exemption, and no exception applies
Environmental Assessment <ul style="list-style-type: none"> Engage the public to the extent practicable If no significant impacts, adopt a Finding of No Significant Impact or, if mitigation is required to reduce an impact, a Mitigated Finding of No Significant Impact If impacts may be significant, prepare an Environmental Impact Statement 	Initial Study <ul style="list-style-type: none"> Required consultation with responsible and trustee agencies Notice of Intent Public and Agency Review and Comment If no significant impacts, adopt a Negative Declaration or, if mitigation is required to reduce an impact, a Mitigate Negative Declaration If impacts may be significant, prepare an Environmental Impact Report
Environmental Impact Statement Process	Environmental Impact Report Process
Notice of Intent	Notice of Preparation
Scoping	Scoping
Draft EIS	Draft EIR
Filing with EPA which publishes a Notice of Availability in the Federal Register	State Clearinghouse Distribution for State Agency Review (if required)
Public and Agency Review and Comment	Public and Agency Review and Comment
Final EIS	Final EIR
Filing and EPA Notice of Availability in the Federal Register, Public and Agency Review (if designated)	Adopt Findings on Project Impacts and Alternatives, and, if necessary, a Statement of Overriding Considerations
30 Day Review Period (Agency may convert this into a public review and comment period).	
Agency Decision	Agency Decision
Record of Decision	Notice of Determination

TABLE 3: CONTENTS OF EIRs AND EISs

<u>Component</u>	<u>CEQA (EIR)</u>	<u>NEPA (EIS)</u>
<u>Cover Sheet</u>		X
<u>Summary</u>	X	X
<u>Table of Contents</u>	X	X
<u>Purpose of and Need for Action</u>	X	X
<u>Project Description</u>	X	X
<u>Alternatives Description</u>	X	X
<u>Environmental Setting (EIR) or Affected Environment (EIS)</u>	X	X
<u>Mitigation Measures</u>	X	X
<u>Unavoidable Adverse Impacts</u>	X	X
<u>Relationship Between Local Short-Term Uses of the Environment and the Maintenance and Enhancement of Long-Term Productivity</u>		X
<u>Irreversible or Irretrievable Commitments of Resources</u>	X	X
<u>Economic and Social Effects</u>		X
<u>Growth-Inducing Impacts</u>	X	
<u>Cumulative Impacts</u>	X	X
<u>List of Preparers</u>	X	X
<u>Organizations and Persons Consulted</u>	X	
<u>Responses to Comments on DEIR and DEIS</u>	X	X
<u>List of Commentors</u>	X	
<u>SOURCE: EIP Associates</u>		