

EDC, residents at odds with West Slope tribe



A motocross track went in on tribal land where housing was supposed to go. Photo/Provided

By Joann Eisenbrandt

PLACERVILLE – In early April, the Shingle Springs Rancheria Band of Miwok Indians presented two applications to the Bureau of Indian Affairs to have fee-simple lands that they had purchased put into trust with the federal government. Together, these parcels total just more than 35 acres and are adjacent to or in close proximity to the existing Shingle Springs Rancheria.

Once lands are put into trust, they fall under the tribe's sovereign status. The federal government holds legal title to trust lands, but the tribe holds the right to occupy the land,

called “beneficial ownership.” The land is under tribal jurisdiction and is exempt from state and local taxes and removed from state and local land use regulations. It is this lack of control that has county residents, especially those living in close proximity to the tribe’s trust lands, speaking out in protest.

“So what about the rights of non-Native Americans who have worked hard and saved for many years to buy land in this county ... the tribe has stated on numerous occasions that they want to be good neighbors, but their actions prove otherwise. What this tribe has done (and plans to do in the future) with their fee-to-trust land severely devalues all neighboring property owner’s investments. The Shingle Springs Tribe has demonstrated that they are unwilling to be good neighbors and that they lack consideration for the health and welfare of the surrounding community.”

– David, Thelma and Matthew White, Joan Fasnacht, Beverly Weston, and Mary West; written comments submitted for the May 24, 2016, El Dorado County Board of Supervisors meeting

The fee-to-trust process

The Indian Reorganization Act of 1934 gave the secretary of the Interior the discretion to acquire trust title to land on behalf of federally recognized Indian tribes. Factors considered in approving fee-to-trust requests include the tribe’s need for the land, the purpose for which it will be used, impacts on the state or county resulting from the removal of the land from the tax rolls, jurisdictional problems and potential conflicts of land use it may cause and its distance from the tribe’s reservation.

Depending on the type of land, its current and future uses, and whether or not federal funds will be used in its development, preparation of environmental documentation under the National Environmental Policy Act (NEPA) may be required.

Public entities such as El Dorado County can comment on fee-to-trust requests and federal environmental documents, but they cannot approve or deny them. An administrative appeal may be made to the Bureau of Indian Affairs' decision to accept lands into trust and if denied, a judicial appeal can be made to the appropriate federal court.

Current and past concerns

At its May 24 meeting, the Board of Supervisors approved a letter to the Bureau of Indian Affairs (BIA) regarding the impacts the tribe's two current fee-to-trust applications would have on the county and its residents. The board requested an extension of the 30-day comment period in April and was given until May 30 to respond.

The tribe's applications say the lands will be used for tribal housing. The county is concerned that the planned density on one of the residential parcels will be higher than that of surrounding non-Indian parcels. It also worries about the loss of county revenue when all the parcels are removed from the tax rolls as well as loss of future traffic impact mitigation (TIM) fees when they are developed, and the increased service needs and impacts on county roads they will create.

This is not the first time the tribe has had "off-reservation" lands they purchased put into trust. In 2002, nine parcels totaling approximately 104 acres were requested to be put into trust. In that application, the tribe told the BIA that it "intends to use the new trust land for the construction of 1) a much-needed clinic facility for the Shingle Springs Tribal Health Program; and 2) single family tribal housing."

This is not what happened.

The county pointed this out in its May 24 letter.

"Several years after the Department of the Interior accepted the parcels into trust," it says, "the tribe proposed new and

decidedly different uses for the parcels. Instead of a health clinic and tribal housing, the tribe proposed to use the parcels for a public shooting range consisting of 29 lanes and a gas station/convenience store.”

The shooting range was later downsized and limited to use by tribal members but the land originally targeted for the health clinic has been used for motocross events. Tribal housing was never built and the clinic was constructed on existing Rancheria land instead.

The area surrounding all of these parcels is a rural residential area, and residents have continued to express their concerns about the impacts on their way of life—impacts they cannot control.

In written comments for the May 24 board meeting, Ellen Van Dyke of Rural Communities United echoed the concerns of many area residents. “Being ‘sovereign’ should not mean one has the right to make neighbors fear for their safety, or destroy the quality of life of others. Yet this is exactly what has occurred utilizing bait-and-switch tactics, swapping anticipated beneficial land uses for severely incompatible ones on the existing trust land. Please do not reward bad behavior by approving this application to expand that sovereignty and its abuse.”

Speaking at that same meeting, Carol Louis of the El Dorado Council told the board, “We’ve investigated this tribe and their legitimacy. It has not been a good neighbor policy. They have done everything to undermine the community surrounding them and we expect them to continue that.” Louis asked the board to strengthen their letter to the BIA or even ask for denial of the tribe’s request.

As she later told *Lake Tahoe News*, “I’m concerned. The fee to trust process is broken. We have sent the BIA our response to the trust applications. We are also asking the secretary of

the Interior to rescind the approval of the tribe's earlier applications to put the land on the south side of Highway 50 along Shingle Springs Drive into trust."

Formed in the early 1990s to inform residents about county issues, the EDC is focusing now on the Shingle Springs Rancheria. They believe that "off-reservation lands" should not be allowed to go into trust, but should be subject to the same rules and regulations as lands owned by non-Indians.

The board asked the BIA, "In order to avoid future impacts, the county requests that subject parcels be developed as proposed but not acquired to include in tribal trust. If the parcels are accepted into trust, such acceptance could be conditioned upon the parcels being used for residential purposes only as depicted in the environmental assessment for a period of at least 20 years and if the use is to be changed the tribe must comply with county land use regulations for the development of the parcels.

"An additional request of El Dorado County is to require the payment of any and all fees related to development of the subject parcels to help defray the revenues lost by the county through removal of the parcels from the county's jurisdiction."

The question of changing land uses

While the BIA considers a tribe's need for land and the uses they propose for it, the process is not exhaustive nor the criteria very specific. The standards say the land must be necessary to facilitate tribal self-determination, economic development or Indian housing. Proposing a certain use in its application does not restrict a tribe from changing that use once land has been accepted into trust. As Chad Broussard, environmental protection specialist at the BIA's Pacific Regional Office in Sacramento told *Lake Tahoe News*, "The fee-to-trust process is not a development project; it is the

creation of 'Indian lands,' and its focus is jurisdictional." If required, subsequent development of trust lands goes through the NEPA process.

Lori Parlin of the Shingle Springs Community Alliance, shared Louis' concerns that the board's letter did not "paint a clear enough picture for the BIA of what is happening on the ground ... of how the tribe's current trust parcels are impacting the neighborhood." After discussion, District 1 Supervisor and Board Chairman Ron Mikulaco appointed an ad hoc committee consisting of Supervisors Michael Ranalli and Shiva Frentzen to review the county's letter and make any needed changes. The revised letter sent to the BIA included a number of the suggested changes made by the public and the board.

According to Arvada Wolfin, BIA realty specialist in Sacramento, all comments submitted regarding the tribe's applications would be reviewed. This can take from 30 to 60 days and then the BIA decides to go forward with the process, deny the applications or return them to the tribe for additional information or changes. A notice of decision is then published and a 30-day review period follows. It usually takes at least two years, sometimes longer, after approval for the lands to be finally received into trust.

The changing county and tribe relationship

The other issue in the mix is the county's current memorandum of understanding with the tribe. At the end of the May 24 meeting, District 3 Supervisor Brian Veerkamp cautioned the board to be sure to "keep in mind the MOU we currently have with the tribe because that is legally-binding document. "

The MOU that Veerkamp alluded to only came at the end of a twisting road. In 1999, the tribe entered into a compact with California and received approval from the National Indian Gaming Commission to operate a gaming facility. Because the tribe's Rancheria was landlocked, an overpass to Highway 50

had to be constructed before a casino could be built. In a 2003 position statement on the Shingle Springs casino, the county said it would “degrade the quality of life in El Dorado County in so many ways ... this is a planning nightmare—no rational planner and no sensible public official would ever approve a commercial project of this magnitude in an area zoned for rural residences.”

The county filed a lawsuit challenging the state’s environmental analysis under CEQA (California Environmental Quality Act) of the impacts of the Highway 50 interchange on traffic. It also challenged the lawfulness of the recognition of the tribe by the BIA. “Under federal law, gaming is only permitted by a federally recognized ‘Indian tribe’ and only on ‘Indian lands,’ that is, land held in trust for an Indian tribe,” the board said in 2003. “Records from the Bureau of Indian Affairs disclose that the two unrelated groups of Indians from Sutter and Sacramento counties, jointly referred to at that time as the ‘Sacramento-Verona Band of Homeless Indians’ for administrative convenience, never functioned historically as a tribe, never had any historic relationship with El Dorado County, and were never formally or properly ‘recognized’ by the federal government as an ‘Indian tribe.’ “

Despite these comments, in September 2006, the county entered into an MOU with the Tribe to settle the litigation. In that MOU, the Tribe asserted their legitimacy and their right to the land they occupy. “Shingle Springs Band of Miwok Indians is a federally-recognized Indian tribe, which is the beneficiary of trust land that is owned by the United States, entitled Shingle Springs Rancheria and located within the geographical boundaries of the county of El Dorado.”

The county agreed to dismiss their federal recognition lawsuit and assist the tribe in winning the CEQA Highway 50 interchange lawsuit against the remaining private petitioner. In return, the tribe agreed to pay the county \$5.2 million annually for 20 years to mitigate the anticipated impacts of

the casino. The tribe further agreed to fund construction of a portion of a programmed HOV (high occupancy vehicle) project for Highway 50 from Bass Lake Road to South Shingle/Ponderosa Road. The interchange was subsequently constructed and Red Hawk Casino opened in December 2008.

In 2012, the MOU with the tribe was revised. Instead of using the tribe's payments specifically for HOV lanes, the county would now be able to use the \$5.2 million annual payment for "public improvements," including road improvements and maintenance on a revised map covering a broader area from Cameron Park up to Placerville. The county also agreed to pay the tribe an annual payment of \$2.6 million a year beginning in December 2017, to be applied to the health programs at the tribal health clinic since it serves tribal members and non-Indians.

Concerns have been expressed that the county is putting money ahead of the welfare of its residents. "It's about the people, their quality of life and how they are being impacted," Parlin told *Lake Tahoe News*. "The county tax dollars and MOU dollars should not be No. 1. It should be public safety and the quality of life."

Status of the gas station complex

The final disposition of the tribe's current fee-to-trust applications will take time. The gas station and commercial complex proposed for the southeast corner of Shingle Springs Drive and Highway 50 on land the tribe already holds in trust is currently moving through the environmental review process. The tribe prepared an environmental assessment under NEPA. The comment period for the EA closes June 8. After review of all comments, the BIA will either make a finding of no significant environmental impacts, or a finding that there are impacts that can't be fully mitigated. In the second case, a more comprehensive environmental impact statement will be required.

Residents in the area of this project remain upset and frustrated. A September 2015 letter included in a packet of information the El Dorado Council sent to the BIA, local, state and federal agencies, says, "Our elected officials have a moral obligation to stand up and fight for what its community wants and needs. Our community does not need a commercial truck stop in a residential neighborhood, next to two elementary schools and a church. Our community doesn't need a 29 lane gun range aimed at our back yards while school children are at recess. We expect and need our elected officials to state in a public forum that this is wrong. Some residents have expressed their view that the tribe is trying to pressure them into selling their land in what they term a tribal land grab."

The county doesn't have a say in the NEPA process but it can conduct a limited CEQA review of the proposed road encroachments needed for access from the gas station complex onto Shingle Springs Drive, and for water, sewer, utilities and storm drain improvements that are in the public right-of-way. It has prepared an initial study and just issued a mitigated negative declaration, saying in effect that any impacts found can be mitigated to less than significant. The 30-day comment period for this document began on May 28 and it will come before the Board of Supervisors on June 28.

The larger issue

The issue of federally recognized tribes putting lands into trust is not just an El Dorado County or California issue. It has raised concerns nationwide. Sen. John Barrasso of Wyoming, chairman of the Select Committee on Indian Affairs, introduced a bill to address what he sees as the ongoing problems with the Department of the Interior's existing fee-to-trust land acquisition process.

Rural County Representatives of California (RCRC), an association of 34 rural California counties which work

together on a variety of issues, including land use, has been involved in this issue. California has 100 federally-recognized Indian tribes, and many of them are located in RCRC representatives' counties. El Dorado County's representative to RCRC is Supervisor Ranalli. The trust lands in question are in his district. *Lake Tahoe News* made repeated attempts to contact Ranalli on this issue, but he did not respond.

In an Aug. 27, 2015, letter to Barrasso, the RCRC said, "The existing fee-to-trust process is opaque, cumbersome, lengthy, and uncertain for all parties involved. More than one-quarter of the Tribes in California have applied for fee-to-trust lands within the past four years. These applications comprise 10,314 acres of land, approximately equal to the number of acres taken into trust in California in the previous 10 years. During that period, 100 percent of the fee-to-trust applications were approved by the Bureau of Indian Affairs. We recommend that land use be a required element of an application and that relevant mitigation be legally enforceable. Any change in land use, particularly in cases where there is no cooperative agreement, must be subject to review by the public and contiguous jurisdictions, otherwise, there is no accountability in the process at all."