

Court slows West Slope tribe's project

By Joann Eisenbrandt

Completion of the Shingle Springs Village project, a gas station/convenience store complex on tribal lands of the Shingle Springs Band of Miwok Indians, has been slowed by a stay granted Oct. 7 by El Dorado Superior Court Judge Curt Stracener.

The project has been quickly taking shape just off Highway 50 south of Red Hawk Casino in Shingle Springs.

It is being built on land held in trust for the tribe by the Bureau of Indian Affairs (BIA). Tribes can purchase privately owned lands not directly attached to their Rancheria and then request they be put into trust, thereby removing them from local jurisdictions' tax rolls and regulations. While the title to the land rests with the federal government, the tribe retains control over its use. Development of projects on these lands are not subject to county planning regulations, but are controlled by NEPA, the National Environmental Policy Act. No NEPA document was required or prepared for Shingle Springs Village.

The loss of local control over what the Shingle Springs Band of Miwok Indians has chosen to do with their lands has been a source of ongoing concern as far back as the construction of Red Hawk Casino. Recent requests by the tribe to put additional land they have purchased into trust have only exacerbated local residents' fears.

When the tribe originally requested the federal government put the gas station complex parcel and others around it into trust, the paperwork they submitted to the BIA indicated they would be used for needed tribal housing and a health facility.

Instead, a gun range and motocross track were constructed and now the gas station/convenience store complex is well under way. Tribes are allowed to change the use of lands put into trust as long as they develop them in accordance with federal guidelines.

County residents on surrounding parcels, mainly zoned 5-acre rural residential, have been vocal about being upset not only with the tribe, but also with the county Board of Supervisors, who they believe could have done more to protect their interests. The character of their neighborhoods is changing; the peaceful rural lifestyle they enjoyed is being lost and they have been powerless to stop it. El Dorado Council (EDCI), a local nonprofit advocacy group, has been among the most outspoken.

While the county cannot control what is built on tribal lands, it can control "encroachments" from them onto county lands or roadways. The tribe was required to obtain a county encroachment permit for construction of the one driveway entrance to the gas station property and, after receiving approval from EID (El Dorado Irrigation District), the installation of pipeline extensions and connections for water and sewer service to the property.



Shingle Springs Village continues to take shape on tribal lands just off Highway 50 on the West Slope. Photo/LTN

The Board of Supervisors approved the tribe's encroachment permit on June 28. EDCI believes the county's environmental review was insufficient. They filed a lawsuit alleging the mitigated negative declaration the county prepared violated the requirements of CEQA (California Environmental Quality Act) because it did not fully analyze the environmental impacts of the entire project.

Because the facilities themselves are on tribal land, the lawsuit did not prevent the tribe from continuing to construct the fueling bays and commercial buildings as they waited for the legal process to play out. Lawsuits take time, as the lengthy administrative record is prepared by both parties, briefs are submitted and settlement conferences are scheduled. El Dorado Council requested a stay which would prevent the county and EID from moving forward with any actions related to implementing the encroachment permit itself—the disturbance of any county roadways to construct the permanent driveway access to the property or for the installation of connections to existing EID water and sewer lines offsite.

At issue is what the actual scope of the Shingle Spring Village project is, what potential impacts on traffic, noise, aesthetics, water and sewer capacity it will have, and whether the county's environmental review before granting the encroachment permit was legally adequate.

As requested by the county, the tribe provided a complete project master plan as part of their encroachment permit application. It showed the gas station/convenience store complex as Phase I and a restaurant, retail and office space fast-food establishments, an entertainment venue and an 80-room hotel and conference center as Phase II. A traffic impact analysis was prepared which outlined how both phases of the project would affect traffic circulation in the immediate area, but the county's review of environmental impacts and needed mitigation measures only focused on Phase I. Analysis of the impacts of Phase II was deferred to a later time. Such segmentation of the environmental review process, EDCI contends, violates CEQA; a full environmental impact report analyzing the impacts of the entire project is required.

What concerns El Dorado Council is that the admittedly more significant impacts of Phase II have not been taken into account and that the county may not ever get another chance to do so.

Speaking for the tribe and its development corporation, attorney Matthew Adams told the court Phase II of the project was, "a long-range concept, a hypothetical plan submitted by the tribe at the county's request." He added that the tribe has not planned or budgeted for it. He added that before Phase II of the project could take place, there would have to be additional environmental review by the county.

Attorney Marsha Burch, representing EDCI, disagreed. The environmental analysis the county just completed might be, "their only opportunity to address all of the project's impacts ... the idea of a second (encroachment) permit process

is not supported by fact,” Burch contended. If the tribe did not request approval for additional encroachments to access the property or changes to the pipes needed to supply water and sewer for Phase II, then there would be no further county review.

Phase II as presented in the Master Plan, or an even bigger project, could be built with no opportunity to mitigate the increased traffic and other impacts. The traffic impact analysis indicated that Phase I would generate 807 new daily vehicle trips, but that Phase II would generate 8,549.

Lake Tahoe News asked El Dorado County Development Services Director Roger Trout what would trigger additional review of the Shingle Springs Village project by the county. Trout pointed to the provision in the motion made by District 4 Supervisor Michael Ranalli at the June 28 board meeting which included the stipulation that, “Future encroachments onto right-of-way from APN 319-220-18 shall require board approval.”

Right now, Trout added, there is the approval of one encroachment for the fueling station. If the tribe later adds relatively small commercial development, such as a restaurant, then the existing encroachment permit will be adequate.

“If they build something bigger, they will need more encroachments and they will have to approach us. That’s what the board action on June 28 said,” Trout said.

The county also has the option of revoking the existing encroachment permit should the tribe do something that abuses the agreements under that permit.

In addition to the county’s encroachment permit, the project also requires an environmental review under CEQA by EID and their approval to provide water and sewer service to the property.

EID requested the tribe include the potential water and sewer demands of all phases of the project right at the beginning. A March 16, 2015, letter from EID supervising civil engineer Michael Brink to Tamara Murray-Guerrero, chairperson of the tribe's business development corporation noted, "Service is only requested for Phase I of an apparent multi-phased development. Based on the conceptual site plan provided, it appears future phases (hotel) will have a much higher demand than the proposed Phase I retail/fuel station."

Some concern was expressed in that letter whether EID's then-existing sewer system could accommodate the demands of Phase II.

Brink told *Lake Tahoe News* that is not an issue now. "The pipes (on the project site) are sized to meet all anticipated demands of all phases of the project as we know them. We do have the capacity to serve their needs. There is no expansion needed at the Deer Creek Wastewater Treatment Plant in Cameron Park."

Judge Stracener questioned Adams on this same point. Adams responded it was, "in the public interest" to put in the larger pipes now as it would avoid tearing up country roadways a second time and be less expensive for everyone should there be a Phase II. He added, "We are speculating about the future. CEQA says that since the county can't shape the project, environmental review is meaningless."

Stracener called this "Wizard of Oz logic." "Pay no attention to the man behind the curtain. Pay no attention to the large water and sewer lines put in just in case we build something bigger, because it's more cost efficient. Ignore the fact it can feed all of Phase II because we haven't decided on this." Phase II, he added, "Is more than a gleam in someone's eye."

EID has not yet given its final approval to the tribe's request for water and sewer service. Brink explained that EID

has submitted its final comments and is still awaiting a resubmittal of site plans from the tribe's engineering firm, Baker Williams Engineering of Sacramento. Plans and revisions have been going back and forth since March 2015. As of Aug. 31, 2016, EID did its final review and is ready to sign off once they receive the project's final site plans.

EID will also issue a notice of determination regarding their CEQA environmental documentation. Brink noted that they are using the county's mitigated negative declaration from the encroachment permit as the basis of their review.

It is the effect of the Shingle Springs Village project on the "public interest" of El Dorado County residents that is at the heart of the controversy surrounding it. El Dorado County Deputy Counsel Breann Mobius told the court on Oct. 6 that it "cannot issue a stay against the public interest." She added, "There is already constant litigation in this county. If the stay is allowed, no one can rely on their permits."

Stracener responded, "Isn't the public interest involved in the impact of that project on all of that outlying area?"

El Dorado Council co-founder and spokesperson Carol Louis agrees.

"The judge made a good ruling (granting the stay) for the families and businesses surrounding the Casino Tribe's Village project," she told *Lake Tahoe News*. "The tribe's chairman, Nick Fonseca, his tribal council, and the Board of Supervisors have taken an adversarial position toward the families in this community. All citizens of El Dorado County both Indian and non-Indian are suffering from bad leadership which forces the residents to act on their own behalf to protect their constitutional rights."

Stracener's Oct. 7 minute order reads, "After careful review of the moving and opposing papers and further consideration of the arguments of the parties following oral argument, the

court adopts its tentative ruling as the final ruling on the submitted matter.” That tentative ruled concluded, “The court finds that it is in the public’s interest to stay the encroachment project approval/encroachment permits pending a judgment in this action.”

Fonseca, chairman of the Shingle Springs Band of Miwok Indians provided this statement to *Lake Tahoe News*: “The judge’s decision issuing a stay on the utility and road construction portion of the Tribe’s gas station project is disappointing. However, the Shingle Springs Band of Miwok Indians is continuing construction on its trust land and will work through the court process to resolve the judge’s outstanding concerns. The tribe continues to be excited to provide the gas station services to the community.”

El Dorado County Counsel Michael Ciccozzi had not yet reviewed the minute order, but noted via email, “We have not yet seen the judge’s ruling, but will review it when received and advise our board accordingly.”

Only actions by the county or EID with regard to the encroachment permit are halted by the minute order until it is either appealed or the lawsuit filed by EDCI is settled. An appeal would be filed with the Third District Court of Appeals. Continued construction of the gas station complex onsite is not affected.