Project # Appeal CC 2022-01

City of Clearlake

14050 Olympic Drive, Clearlake, California 95422
(707) 994-8201 Fax (707) 995-2653

Planning Application
Appeal to CC

RECEIVED
DEC 22 2022
CITY OF CLEARLAKE

OFFICE USE ONLY	INITIAL FEES
Clearance Fee	880.00
Categorical Exemption Fee	N.A.
General Plan Maintenance Fee	25.00
Technology Fee (2%)	18.10
Subtotal	923.10
3% CC/DC Processing Fee ($27.69)	
Total	

Received By:	Mark
Date:	12-22-2022
Receipt Number:	R0004775
File Number:	AC 20 --

APPLICANT

NAME: Appellant - Koi Nation of Northern Cal.
MAILING ADDRESS: P.O. Box 392
CITY: Santa Rosa
STATE: CA ZIP CODE: 95402
PRIMARY PHONE: 707-572-5586
EMAIL: rgeary@hpultribe-nsn.gov
SIGNATURE:

I certify that all the submitted information is true and correct to the best of my knowledge and belief. I understand that any misrepresentation of submitted data may invalidate any approval of this application.

PROPERTY OWNER (IF NOT APPLICANT)

NAME: n/a
MAILING ADDRESS:
CITY:
STATE: ZIP CODE:
PRIMARY PHONE:
EMAIL:
SIGNATURE:

I declare under penalty of perjury that I am the owner of said property or have written authority from the property owner to file this application. I certify that all the submitted information is true and correct to the best of my knowledge and belief. I understand that any misrepresentation of submitted data may invalidate any approval of this application.

PROJECT LOCATION

ADDRESS: 6356 Armijo Avenue, City of Clearlake, CA
ASSESSOR PARCEL NUMBERS: 042-121-25
PRESENT USE OF LAND:
WATER SUPPLY: ☐ PUBLIC ☐ GROUNDWATER WELL
SANITATION: ☐ PUBLIC SEWER ☐ SEPTIC SYSTEM
FLOOD ZONE:

OFFICE USE ONLY

ZONING DISTRICT:
GENERAL PLAN DESIGNATION:
RELATED FILE NUMBERS:
NOTES:
APPROVED: DATE:

Detailed Reason for Appeal (All material must be submitted as a complete application)

See Attached letter to Mayor and City Councilmembers.

Revised August 15, 2022

KRONICK

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD

HOLLY ROBERSON
hroberson@kmtg.com

December 22, 2022

VIA E-MAIL AND U.S. MAIL

Hon. Dirk Slooten, Mayor
And City Councilmembers
Clearlake City Council
City of Clearlake
14050 Olympic Drive
Clearlake, CA 95422
ATTN: Melissa Swanson, City Clerk
Email: mswanson@clearlake.ca.us

Re: Appeal of Planning Commission Decision
Approval of Airport Hotel and 18th Street Extension Project and Related MND

Dear Mayor Slooten and City Councilmembers:

While the Koi Nation of Northern California ("Koi Nation" or "Tribe") continues to support responsible development within the City of Clearlake ("City"), the City must follow the law in approving such development. Unfortunately, despite numerous warnings by the Tribe, the City continues to ignore its legal responsibilities. This particular matter before the Council on appeal from the Planning Commission's December 13, 2022, approval of the Airport Hotel and 18th Street Extension Project ("Project"), and accompanying Mitigated Negative Declaration ("MND"), and is an example of the City approving of a project based upon faulty environmental compliance documents in disregard of its obligations under the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"). The City's Municipal Code, at section 18-36.030, provides for appeals to the City Council of decisions by the City Planning Commission, and Code section 18.36-010 instructs that any person may appeal the decision of any official body.

The Project is on property containing significant tribal cultural resources ("TCR"). The Tribe has already lost many important sacred sites and suffered culturally from the City's development occurring without taking into account the impacts on Ancestors, their cultural items, and the Tribe's TCR. This aggressive approach to development is both illegal and unethical. It has to stop, and you have the power to stop it.

Proceeding with the Project, with its flawed MND, will expose the City to needless delay, expense, and if necessary, litigation. The Tribe is proceeding with this appeal as to this Project because there is a better way. The City should continue and reinstitute the tribal consultation required by CEQA and prepare and approve an Environmental Impact Report ("EIR") for the Project, which includes a meaningful consideration of Project alternatives and adoption of feasible mitigation measures to reduce the impacts of the Project on the environment and TCR. (*See Protect Niles v. City of Fremont* (2016) 25 Cal.App.5th 1129, 1134 [holding that an EIR is required rather than a MND when substantial evidence supports a fair argument that there will be adverse environmental impacts from a project.].)

Complying with CEQA by fully engaging in and completing consultation with the Tribe, and by preparing an EIR, will allow the Project to move forward in a respectful manner that is cognizant of the original people of this land who have been here since time immemorial. The Project is within the aboriginal territories of the Tribe, and the Tribe has a cultural interest and authority in the proposed Project area. Development to improve the community can continue, but such development must have sufficient analysis of TCR to facilitate avoidance and preservation in place to the extent feasible, as required by law. If avoidance or preservation in place is not feasible, then prudent mitigation measures developed through consultation and the EIR must be included so that such development does not irreparably destroy TCR.

The Tribe remains open to consultation with the City to resolve this matter, and respectfully requests that the City Council appoint an ad hoc committee for government-to-government consultation between the Tribe and the City. We remain committed to resolving this dispute. Until this dispute is resolved, however, the Tribe is prepared to take all necessary legal steps to protect the Ancestors, the TCR, and this culturally relevant site.

The City's Tribal Consultation Process Violates CEQA

Through this appeal, the Tribe highlights a significant violation of CEQA which is the City's disrespectful and continued disregard of its obligations under Assembly Bill 52 ("AB 52") (2014 Stats, ch. 532.) According to Public Resources Code section 21080.3.1, as enacted through AB 52,

> (a) The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.
>
> (b) Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation.

Government Code section 65352.4 provides that:

> "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

Public Resources Code section 21080.3.2(b) provides that consultation is concluded if: "(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource" or "(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached."

According to Public Resources Code section 21082.3(d),

> . . . the lead agency may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:
>
> (1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.
>
> (2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process.
>
> (3) The lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days.

In the present case, the City emailed to Robert Geary, Tribal Cultural Resources Director/Tribal Historic Preservation Officer, on February 16, 2022, advising of an opportunity to consult with it on potential impacts the Project may have on TCR.[1] As the City acknowledged:

> The purposes of tribal consultation under AB52 are to determine, as part of the CEQA review process, whether or not Tribal Cultural Resources are present within a project area, and if so, whether or not those resources will be significantly impacted by the project. If tribal cultural resources may be significantly impacted, then consultation (if requested) will help to determine the most appropriate way to avoid or mitigate those impacts.

In response, Mr. Geary stated in a February 23, 2022, letter to the City: "The Habematolel Pomo Cultural Resources Department has reviewed the project and concluded that it is within the aboriginal territories of Habematolel Pomo of Upper Lake. Therefore, we have a cultural interest and authority in the proposed project areas and would like to initiate a formal consultation with the lead agency." Mr. Geary further requested that the City provide a project timeline, detailed ground disturbance plan and the latest cultural resources study for the project. The Tribe and the Habematolel Pomo of Upper Lake have entered into an Intergovernmental Agreement for cooperation including that Mr. Geary, as Tribal Historic Preservation Officer, will respond to notices jointly as lead for both the Tribe and the Habematolel.

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[1] Mr. Geary did request in a February 16, 2022, letter to the City that all notices be sent via certified U.S. Mail, with a return receipt requested. This request for notice via certified U.S. Mail, with a return receipt requested, was reiterated in a December 20, 2022, letter from the Tribe's Chair to the City. Mr. Geary has advised the City that certified mail allows the Tribe to keep track of projects and respond in a timely manner. Unfortunately, the City has continually ignored this request and relied solely on email notices, including notice of the subject approval and MND, which impedes actual notice to the Tribe and its ability to provide necessary responses.

Adeline Brown and Mark Roberts, on behalf of the City, then met with Mr. Geary on March 9, 2022, for purposes of AB52 Consultation for, in part, the Project. After the meeting, Mr. Geary sent a letter to the City stating:

> Thank you for your project consultation dated, March 9, 2022, regarding cultural information on or near the proposed 18th Ave. Between SR53 and Old Hwy. 53, Clearlake, Lake County. We appreciate your effort to contact us and consult with our department.
>
> The Habematolel Pomo Cultural Resources Department has reviewed the project with your agency and concluded that it is within the aboriginal territories of the Koi Nation and Habematolel Pomo of Upper Lake. Therefore, we have a cultural interest and authority in the proposed project area.
>
> Based on the information provided at the above scheduled consultation, the Tribe has concerns that the project could impact known cultural resources. We request including cultural monitors during development and all ground disturbance activities. Additionally, we request that you incorporate Habematolel Pomo of Upper Lake's Treatment Protocol into the mitigation measures for this project and recommend cultural sensitivity training for any pre-project personnel on the first day of construction activities.

The letter requested that the City contact Mr. Geary to set up a monitoring agreement.

Thus, the Tribe requested consultation, and a meeting occurred on March 9, 2022. However, the consultation is not complete according to the statutory criteria. Therefore adoption of an EIR or MND is premature under section 21082.3. There has certainly been no agreement on culturally appropriate mitigation measures to avoid, preserve, or mitigate impacts to TCR for the Project. Full and complete consultation is required in order to fully understand the TCR impacted by the Project and to develop meaningful and culturally appropriate mitigation measures. The lack of full and complete consultation as required by AB 52 will result in an invalid MND, and the Project cannot proceed absent CEQA compliance.

During the hearing before the Planning Commission, Commissioner McCarrick asked staff whether consultation under AB 52 had occurred. Staff did not admit that such consultation had occurred. However, the Tribe did in fact engage with the City in AB 52 consultation in good faith. The City never responded to the Tribe's identification of TCR and recommended mitigation measures. Consultation was never closed. Notwithstanding this open consultation, the City did not provide proper notice to the Tribe of the Project moving forward in the CEQA process.

Instead, staff noted at the Planning Commission hearing that the initial study was sent out for 30-day review by local agencies, and no local tribal "organization" provided comments or raised concerns. Tribal Nations are sovereign governments, not "organizations". They have unique standing in the government-to-government process required by AB 52 and CEQA. This statement erroneously suggests the City fully engaged in the AB 52 consultation process requested by the Tribe and that this process has been concluded. It has not. This response also improperly equates the ability of local agencies to comment on a proposed CEQA document with the government-to-government consultation required under AB 52. AB 52 expressly establishes a consultation process rather than simply an opportunity to comment upon a proposed document identical to the opportunity available to any agency or interested member of the public.

This consultation process does not end simply because the agency moves to adopt or approves a MND. Public Resources Code section 21082.3(d) mandates that consultation must occur until: (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or (2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. Certainly, no agreement has been reached as to the current Project. The City has failed to comply with section 21082.3(d) and for this reason alone the MND is inadequate, and the City should re-engage the Tribe in meaningful consultation.

The City Must Fully Address Tribal Cultural Impacts As Part Of Its CEQA Analysis

The City staff may assert that the Planning Commission properly adopted the MND and approved the Project because there is no impact on TCR. False. There is an impact on TCR from this Project, and the Tribe would provide, through meaningful consultation, substantial evidence of an impact on TCR. Ignoring it does not make it go away. As there is uncertainty about the extent of TCR on the site, how can the City be sure that the mitigation measures in the MND actually reduce the level of impact to less than significant? It cannot. Therefore, the City re-engage in consultation and must ultimately prepare an EIR on this Project. (*See Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665 ("Agoura Hills").)

The Tribe appreciates the archaeological research that was done on this site, but it does not take the place of the TCR knowledge and evidence that the Tribe can provide through its Tribal Historic Preservation Officer Robert Geary, via a tribal cultural resources survey and robust, good faith consultation. The Tribe can provide maps, cultural knowledge, and oral testimony to explain why this site requires further analysis prior to any MND adoption. The specific consideration of Tribal information is crucial since the area is culturally sensitive, and there are registered CHRIS center sites in proximity to the Project area.

While helpful as a starting point, merely relying upon or cross-referencing archeological studies is not sufficient under AB 52 and CEQA. This archaeological information may inform a tribal cultural resources assessment, but it is no substitute for input from the California Native American Tribal government which is traditionally and culturally affiliated with the area. (See AB 52, § 1 ["California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated.]; *Confederated Tribes and Bands of Yakama Nation v. Klichitat County* (9th Cir. 2021) 1 F.4th 673, 682 fn. 9 [noting the importance of tribal oral history and traditions in interpreting information].) Addressing the category of Cultural Resources together with the distinct category of Tribal Cultural Resources by simply cross-referencing its prior cultural resources analysis without tribal input obtained through the AB 52 consultation process has been illegal since July 1, 2015, when AB 52 went into effect. However, comments by City staff at the Planning Commission meeting indicate this is exactly what the City did through the defective MND. In fact, the City not only failed to include TCR information, but actively rejected the opportunity to receive this information when it proceeded without engaging the Tribe in the consultation required by AB 52.

The relevant tribal government and tribal cultural practitioners, such as Mr. Geary, can shed more light on these tribal cultural resources beyond simply an archeological analysis. Appropriate tribal consultation would elucidate the tribal cultural landscape and specific cultural context in which the known artifacts and other tribal cultural resources on the Project site exist. Meaningful consultation will ultimately inform the local agency's CEQA determinations. According to Public Resources Code section 21082.3(b)

> If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
>
> (1) Whether the proposed project has a significant impact on an identified tribal cultural resource.
>
> (2) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.

To the extent that any impact would be significant, the City must also discuss how adverse any impacts would be. (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

Meaningful consultation would inform numerous concerns about the Project that the City needs to address through an EIR including:

> (1) Lack of appropriate inclusion and analysis of Archeological and Tribal Cultural Resources sites in and near the Project Area of Potential Effect;
>
> (2) Lack of incorporation of the Tribe's Tribal Cultural Resources Treatment Protocols into project Mitigation Measures;
>
> (3) Lack of inclusion of a Tribal Monitor for all ground disturbance activities based upon a signed tribal monitoring agreement; and
>
> (4) Absence of necessary Cultural Sensitivity Training, after consultation and in conjunction with the Tribe, for all project personnel on the first day of construction prior to work starting. Training on tribal cultural resources must come from the Tribe.
>
> (5) Given the existence of tribal cultural artifacts and resources throughout numerous sites within the City, simply halting work upon TCR discovery while some unspecified analysis will then occur is not sufficient. (*See Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 520-521 [deferral of mitigation without objective and measurable standards or reasonable assurance an impact will be reduced is an error].) Although CEQA provisions potentially allow for deferral of analysis in cases of "accidental discovery" (*see* Pub. Resources Code § 21083.2(i)), information produced by both the City and the Tribe all but guarantees that the discovery of cultural artifacts and resources on the site will not be "accidental," and mitigation must therefore be put in place prior to any ground disturbing activities. Such mitigation must include consultation with relevant Tribe representatives, adoption of the Tribe's Tribal Cultural Resources Treatment Protocols into project Mitigation Measures, and Cultural Sensitivity Training before any ground disturbing activities occur; and
>
> (6) To the extent ground disturbing activities such as tree removal, disturbance of creek banks and importation of fill occurs, the impact of such activities must be analyzed. The creek banks, the oaks, the trees which are a known and documented Indigenous food source, and culturally significant plant, and other botanicals traditionally used for food, fiber, medicine, and tribal cultural purposes, are all TCR. There must also be a discussion as to the source of any fill and its composition. Any site disturbance for fill purposes could

> have a significant impact given the potential distribution of TCR and artifacts on the site. Additionally, as noted above, the extent of any tribal cultural site subject to protection under proposed mitigation measures must be documented and determined in light of additional information presented by the Tribe. Upon determination, concrete measures such as cap and fill to delineate and specify protective measures must be implemented rather than generalized directives that disturbance should be avoided.

The failure to analyze the Project's impacts on tribal cultural resources violates CEQA's mandate to analyze all of the Project's impacts. (*See* CEQA Guidelines § 15064(d); *see also id.* §§ 15065(a)(4), 15358(a); Pub. Resources Code § 21065.3; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

In addition to its general concern about ground disturbing activities on the site, the Tribe has particular concerns about this specific site. The Tribe is aware that the City has a pattern and practice of depositing and storing at the airport site cultural soil containing TCR removed from other nearby project sites that are culturally sensitive. Notwithstanding the presences of extensive TCR in and around the City, such soil removal occurred without any tribal monitoring or protocols in place. The soil was not screened prior to removal and was subsequently determined to contain extensive TCR. The City compounded the unlawful and disrespectful handling of known TCR by then using and/or allowing the soil to taken from the airport site and used as fill for other nearby projects. Since the City has engaged in an egregious, hurtful, and deeply insulting pattern and practice of not protecting culturally significant soils from other significant cultural sites and allowing that soil to be used on other projects which creates archaeological confusion and spreads tribal cultural resources around the City without context and without respect, the City must expressly ensure through any MND or EIR that any cultural soils from this site remain on site without being disturbed, and that any fill brought in is clean, engineered fill. The current MND does not provide these necessary assurances. The City also needs to ensure that the Project does not encroach on the new cultural site created by storing culturally significant soils at the airport. The Tribe can work with the City, through the consultation process, to determine appropriate treatment protocols for the spoils piles at the airport.

In order to best address these concerns, an EIR is the appropriate vehicle for any review and must include the following avoidance, preservation in place, and mitigation measures for tribal cultural resources:

> (1) Avoidance: Change the Project design to avoid sensitive areas including existing soil storage sites, to the extent feasible and if avoidance is not feasible, the environmental documentation must explain what options were considered and why they were rejected;
>
> (2) Preservation in Place: Use capping with culturally appropriate materials such as clean, engineered fill to cover the entire project site and protect Tribal Cultural Resources and leave them in place, which is the preferred preservation method unless other methods would be more protective, and should be identified as such in the CEQA documents (see CEQA Guidelines, § 15126.4(b)). The EIR must discuss the mechanisms used to achieve the required mitigation measures;
>
> (3) Decisions about Tribal Cultural Resources must be made by the Tribe's Historic Preservation Officer, in consultation with the Project Archaeologist;
>
> (4) A signed Tribal Cultural Resources Treatment Protocol must be in place before construction begins, which includes a Tribal Monitoring agreement;

(5) A reburial location for Tribal Cultural Resources on site must be identified in advance of project construction, in a place not subject to further disturbance and upon consultation with the Tribe; and

(6) All Tribal Cultural Resources must be recorded on the appropriate DPR forms and submitted to the CHRIS center within 90 days of project completion.

Because of terrible and traumatic past experiences with projects undertaken by the City, the Tribe now has to forcefully advocate for having TCR treatment protocols and a tribal monitoring agreement in place for projects on potentially sensitive sites such as this one, to avoid a repeat of the prior actions which caused, and continue to cause, significant negative impacts to TCR. For example, the treatment protocol would require that the City not remove cultural soils from the Project site, which is a standard practice throughout the state but which the City ignores.

The City must analyze potential impacts of the proposed Project for their significance and assess whether there may be tribal culturally significant impacts. If there are, then robust mitigation measures are required after complete analysis through an EIR. Fully utilizing the consultation process with the Tribe which is traditionally and culturally affiliated with the area is key to avoiding impacts to these environmental resources to the extent feasible, as CEQA requires. This will allow the City to obtain more relevant information about the impacts of the Project on TCR and allow the City to set in place culturally appropriate mitigation measures for those impacts. It is impermissible under CEQA for the City to make an impact determination without first determining the extent of the resource, and whether avoidance of the resource is feasible. (*See Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665 ("Agoura Hills").)

In *Agoura Hills*, similar to this Project, the City of Agoura Hills failed to identify and analyze a prehistoric archaeological site which was also a tribal cultural resource, as a TCR, despite being notified by public comments that fairly apprised the City of the concern that it had failed to adequately address project alternatives or mitigation measures that could preserve TCR. As a result, the City was sued, and it lost. After considerable expense and a lengthy delay of the project, the City was required by the Court of Appeal to prepare an EIR. The better course for this Project is for the City to proceed immediately with the required EIR and avoid unnecessary expense and delay.

The City Must Also Analyze Cumulative Impacts On Tribal Cultural Resources

In enacting AB 52, the Legislature acknowledged that "a substantial adverse change to a tribal cultural resource has a significant effect on the environment," and consequently it sought to "[r]ecognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to [CEQA]." The substantial change to TCR and need for tribal participation in the environmental review process for projects involving artifacts, remains and ancestral lands is significant as to one project and this significance is amplified when numerous projects within the relatively small municipal boundaries of the City involve the same or similar tribal cultural resources impacts. As courts recognize, "[c]umulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114, disapproved on other grounds.) Impacts

are cumulatively considerable if the effects of a project are significant when viewed in connection with the effect of past projects, other current projects and probable future projects. (Pub. Resources Code § 21083(b)(2).) An EIR is required if a Project will involve cumulatively significant impacts. (Pub. Resources Code § 21083(b).)

The City is located within the aboriginal territory of the Tribe, and it contains numerous documented and undocumented sites used and inhabited by Ancestors of Tribal members. Some of these sites are the oldest in California. This specific site was historically used by acknowledged Tribal healing practitioners which increases its cultural significance and could lead to its designation within the California Register of Historical Resources. (*See* Pub. Res. Code § 5024.1.) Lake County in general, and the City of Clearlake area in particular, are incredibly archaeologically, historically, culturally, and tribal culturally significant. Many of these sites have been, are currently, or will be subject to City projects including the present Project. These projects have resulted in, and will likely continue to result in, the discovery of Native American human remains and a significant number of artifacts associated with the Tribe such as occurred at the recent Austin Park Splash Pad project and as have been document on the proposed recreation facility site. The City's pattern and practice of engaging in development projects without meaningful good faith tribal consultation, and in engaging in improper soil and TCR handing, is creating a cumulative impact to TCR which violates CEQA, and which is unethical and disrespectful to the Ancestors of people who are part of the Clearlake community. Thus, the City must fully examine such cumulatively considerable cultural impacts within the context of an EIR for this Project.

Conclusion

Here, the City can avoid the mistake that other public entities have made by taking the public comments and tribal consultation seriously, reaching out to the tribal government again for information, and properly analyzing the cultural and archaeological sites as tribal cultural resources prior to the adoption of an EIR. (*See* Pub. Resources Code § 21074(a), 21082.3(b).). Before proceeding with this Project, and accompanying MND, the City must fully consult the Tribe about opportunities for avoidance, preservation in place, or mitigation of TCR if avoidance and preservation in place is infeasible. Any development in tribal culturally sensitive areas, such as this site, must be done based upon the required EIR in a way that is respectful of TCR and seeks to avoid, protect, preserve in place, or mitigate impacts to those resources as required by CEQA including AB 52.

The Tribe remains willing to consult and collaborate with the City to accomplish these goals. The tribal cultural heritage of Lake County is rich and diverse. Impacting and damaging these important TCR impacts the Tribe's cultural practices and its religious practices, as well as the cultural, archaeological, and historic heritage of the Tribe and California. (See, e.g., American Indian Religious Freedom Act.) Such impacts are significant and the City must address them through the CEQA process including the re-engaging in the processes of AB 52. Absent meaningful consultation and cultural resource analysis, a potentially beneficial project cannot proceed since the City cannot simply ignore or shortcut its legal obligations under CEQA and blindly undertake project development. (*See Agoura Hills, supra,* 46 Cal.App.5th at 690.)

The Tribe also remains available to offer the City, members of the City Council, City Planning Commission, and City staff free training on TCR, CEQA and AB 52 consultation. This training will help the City to avoid CEQA procedural violations and improve protection of TCR which are very important and culturally significant to the Tribe.

In conclusion, we sincerely hope that the Council will not affirm approval of the Project and its defective MND at this time. Instead, the Council should appoint an ad hoc committee to consult with the Tribe in good faith government to government consultation, and collaborate with the Tribe to develop avoidance, preservation in place, and mitigation measures which avoid significant impacts to TCR. That information should be included in an EIR, or at a minimum, in a revised and recirculated MND.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

H. Roberson

HOLLY ROBERSON