



City of Clearlake

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February 10, 2022

Amy Dutschke
Regional Director
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

RE: TR-4313-P5-J51-632T Environmental Assessment and draft FONSI for Fee-to-trust Acquisition and Travel Center Project – Elem Indian Colony of Pomo Indians of the Sulphur Band Rancheria

Director Dutschke:

The City of Clearlake received a copy of the Environmental Assessment (EA) and draft FONSI on January 25, 2022. After review of the documents the City would like to identify various concerns with the preparation of the EA and the draft FONSI and request that several items be updated and recirculated prior to adoption of a final FONSI.

General Overview:

It is impossible to determine a finding of no significant impact, based on the information in the EA. The most detailed description of the proposed “travel center” is simply one paragraph in nature (2.1.2 Commercial Development) and is not adequate for basing any environmental findings. Why is there no site plan or other supporting documents that can be invaluable in actually conducting a review of environmental impacts? In discussion with Elem representatives we understand that they want to determine if the fee-to-trust process will move forward prior to beginning the design phase. While we understand not spending significant dollars for design prior to a decision on the fee-to-trust process, we also find it impossible to make an environmental determination on the information provided thus far and at least a site plan should be required before a FONSI determination can be made. Many of the specific comments below are raised due to the inability to analyze the project for potential impacts.

3.2 Water Resources:

Stormwater - The EA acknowledges drainage will be designed to push surface water into the City-manage stormwater system. With no detail about how this will be managed, and on-site water handled, a determination of no significant impact cannot be made.

Groundwater – This section (and others) references the project site being within the Golden State Water District. This is incorrect. The property is within the Highlands Mutual Water Company. Further the groundwater section includes a mitigation measure (3.2-1) for construction activity, but there is no

mitigation or analysis of the impacts of the project itself once built and its impact on the City-managed stormwater system.

3.5 Cultural Resources:

While at first glance the cultural resources section seems uniquely thorough in the EA, upon closer review it does not meet a standard of consistency with federal, state or local regulations. The City would not accept this review for any other conventional applicant in the City.

The City requested an informal review of the cultural resource section of the EA/draft FONSI from an archeologist and was provided with the following feedback.

- (1) The Document Review section makes the argument that “the nearest sites to the APE are over 500 feet away...[and therefore]...none of the resources would be impacted by the Proposed Action” (page 3.5-4). This argument is based on a premise that the Northwest Information Center archives contain a complete and accurate record of all local cultural resources, neither of which is true. The prior surveys cited by the document covered only a fraction of the landscape, no field investigation has been done of the proposed Fee-to-Trust parcel, and prior projects in the vicinity are generally so old that they are well-past their conventional shelf-lives, having been done prior to implementation of modern regulation and methods. For example, we’ve learned in the past two decades that, in floodplain environments like this, archaeological deposits are more likely to be buried than visible on the surface. A pre-project study employing subsurface probes (augers or backhoe test pits) are fundamentally important.
- (2) The Impact Analysis section (3.5.2) subscribes to the notion that no field investigation is necessary and that potential cultural resource concerns can be addressed by implementation of the National Historic Preservation Act’s (NHPA) “post-review discoveries” provision. You will find few if any lead agencies willing to support this construct. The post-review discoveries provision is meant to provide a safety net for truly unanticipated discoveries (i.e., discoveries not made during good-faith field inventory), and not as a half-measure potentially resulting in the execution of studies under duress and at the expense of the project proponent who will then have to carry the costs of construction stand-down and project delay. This is an inaccurate application of the regulatory framework guiding archaeological practice; it short-circuits NHPA’s intent and clearly runs counter to the purpose of NHPA’s post-review discovery provisions.
- (3) The cultural resources section closes with the assertion that “Since no historic properties were identified, and since future development would be implemented in a manner consistent with federal, State, and local land use regulations, there would be No Historic Properties Affected from the No Action Alternative” (section 3.5.2.2). In fact, it’s entirely possible that “no historic properties were identified” because no historic resource investigation was undertaken.
- (4) The Cultural Resource section is inadequate with respect to basic content. For example, there are several important errors of commission and omission, in particular the use of unique terminology and the lack of identification of specific regulatory provisions. For example, the assertion that “there would be No Historic Properties Affected from the No Action Alternative” is an odd mashup that appears to take a broad swipe at the question of Project Effects and appears to be making

a claim for a finding of “No Adverse Effect” pursuant to 36 CFR Part 800.5(b), yet fails to cite the regulatory instrument. In another example, the document identifies “post-review discovery procedures” but fails to place these procedures in the regulatory context, fails to note the need for a federal lead, and fails to note that regulation requires that all work cease in the vicinity of the find until a professional archaeologist is retained to evaluate the find, and further, that the archaeologist may determine the unanticipated finds may merit resolution of adverse effects pursuant to 36cfr800 and thus result in reasonable efforts to avoid, minimize, or mitigate adverse effects. The study also fails to note that, because the project will be completed under federal permit, the work must proceed in compliance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq. [Nov. 16, 1990], under which any individual who has knowingly and inadvertently discovered human remains “must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal agency official” (10.4(b)). If the discovery occurs in connection with a Federal undertaking or activity, then “the person, in addition to providing the notice described above, must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains” (10.4(b)). The responsible Federal agency official must act immediately to certify receipt of the notification, secure and protect the finds, notify affected tribes by telephone and with written confirmation, and initiate consultation (10.4(d)(1)(i-iv)). The regulations make further provisions for treatment and disposition of the remains, but these procedures will primarily depend on the outcome of tribal consultation. It is also important to note that the Native American Graves Protection and Repatriation Act specifically dictates that the activity resulting in the inadvertent discovery may resume either: (1) “thirty (30) days after certification by the notified Federal agency of receipt of the written confirmation of notification of inadvertent discovery if the resumption of the activity is otherwise lawful”, or (2) “at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribes (10.4(d)(2)).

We request that an updated cultural resource study be conducted consistent with federal, state and local standards and the EA be revised accordingly and recirculated for review and comment.

3.6 Socioeconomic Conditions and Environmental Justice:

This section focuses on the beneficial socioeconomic impact of the Tribe providing employment opportunities for tribal members and funding for tribal services. The City is supportive of this goal and further choosing the City of Clearlake for that investment.

What does not appear to be analyzed is the socioeconomic impact of the proposed travel center on other businesses and the larger community. While, as mentioned above, details on this project are scarce we know the plan is for eight fuel pumps and a convenience store. This area of the City has a very high concentration of gas stations. This proposal would be the sixth one on Lakeshore Drive. One is 150 ft away, two are approximately 900 feet away, one each at a half mile and a mile away. The traffic analysis in the EA surmises that 79% of traffic to the travel center would not be new trips but “diverted” customers from one or more of the neighboring locations. This will result in a dramatic economic impact on local businesses, employees, additional investment and public agency tax revenue. Other Lake County tribes have constructed travel centers selling fuel and tobacco products, but they have been associated with other tribal operations such as hotels and casinos and are not in close proximity to other existing businesses of that type. The proposed project will be undoubtably devastating to the immediately neighboring businesses. One location has halted plans to expand and renovate their facility due to the

concern about the tribal project and being able to compete with their advantageous tax structure. Again, we do not begrudge the Tribe from pursuing this project, which will undoubtedly be an economic benefit to them, but at the very least the review needs to address and identify the negative impact that will surely result in a loss of jobs of neighboring businesses. City sales tax records show that the previous 12 months resulted in \$525,811 of sales tax receipts from gas stations. This includes the 1% Bradley-Burns, the 1% Measure V for roads, and 0.5% Measure P for police. If 79% of this total is diverted to the proposed travel center this would result in a loss of \$415,391 in revenue to support public services. This does not assume the loss of other retailers from tobacco and other high tax products, that if sold from the proposed travel center would cause a dramatic revenue reduction for local businesses and public agencies. It is inaccurate for the EA to state that this project will not have significant adverse effects to the tax revenues to the local political subdivisions.

The City requests the larger socioeconomic impacts be analyzed, the EA be updated and recirculated for review and comment.

3.7 Land Use:

The EA is not using up to date zoning information. The City of Clearlake adopted a new zoning ordinance and zoning map in December of 2020, which was effective in early 2021. The land use analysis relies on the old information. The project site is zoned Mixed Use (MUX).

The land use analysis needs to be redone based on accurate and up to date land use information and the EA be recirculated for review and comment.

3.8 Transportation:

As mentioned previously it is extremely difficult, if not impossible, to analyze the traffic impacts of this project without a site plan and other project details. There is some discussion about impacts to Lakeshore Drive and Highway 53, but little beyond that. There is a minor reference to impact to residential areas, but there is no acknowledgement or reference to impacts to Golf Avenue, Ballpark Avenue, or the roadways and parking facilities contained within Redbud Park, which is adjacent to the project site.

The City appreciates the commitment illustrated in the document to install pedestrian safety and accessibility improvements to the City standard. We further agree that the trust acquisition will not affect the jurisdiction of public roads or the ability of law enforcement personnel to access local communities, this EA is supposed to analyze not only the fee-to-trust process, but the travel center as well. This determination of no impact cannot be made on the travel center with the available information.

The most recent gas station project approved by the City (at the south east corner of the Old Highway 53/Lakeshore intersection) was required to make improvements to the Old Highway 53/ Lakeshore intersection. This project is likely to also cause a negative impact on this intersection as well as various public roadways in and around Redbud Park. We believe the EA does not adequately address these impacts and a FONSI is not appropriate or justifiable.

While we hesitate at this time to request mitigation measures be added due to the incompleteness and inaccuracy of the document in general, the City will require an encroachment permit for connection to City infrastructure and work within the City right-of-way.

3.9 Public Services and Utilities:

3.9.1.1 – Water Supply - As mentioned above the EA is incorrect in the water service provider. This project is within the Highlands Mutual Water Company's District. The EA should be updated to accurately reflect the capacity and impacts of the appropriate water district and recirculated for comment.

3.9.1.5 – Police Services – This project could have a significant impact on police services. The data provided is from 2016 is extremely outdated. The EA should analyze more recently available data. The City released its most recent annual report from the Police Department on February 3, 2022. The EA is incorrect in stating that there is an existing commercial use at the site and therefore the project will not have an additional impact. While there is a small commercial building on the site, most of the property is vacant and a travel center will have a significantly different impact.

3.9.1.6 – Fire and Emergency Services – The information provided on fire emergency mutual aid and emergency medical transportation is inaccurate. An adequate analysis of the actual service providers should be completed and incorporated in a revised EA before recirculation.

Summary

The City supports the tribe's interest and need in economic sustainability and welcomes new investment in the community. However, we conclude it is clear there is simply not enough project information provided to make a determination on environmental impacts. Additionally, many of the conclusions offered are based on inaccurate information as described above. The City of Clearlake requests a more detailed project description and site plan be provided, the EA be updated based on this information in an accurate and thorough way, and the EA and FONSI then be recirculated for review and comment.

Thank you for your consideration of these comments and our request. Please do not hesitate to contact me with any questions.

Sincerely,



Alan Flora
City Manager

cc: Augustine Garcia, Tribal Chairperson
Jack Duran, Tribal Counsel