

From: Dr. John Parker
Subject: Comments for Provinsalia Draft EIR
Date: October 18, 2007 6:53:33 PM PDT
To: planner@clearlake.ca.us

Dear Clearlake City Planning Staff,

Thank you for allowing me to review and comment on the Draft EIR prepared for the Provinsalia Project located at the end of Dam Road.

As I am a Registered Professional Archaeologist with 37 years of expertise in the field of Cultural Resource Land Use Planning, I will restrict my comments to only the Cultural Resource Section of the EIR (4.9).

The Cultural Resource Data Section

The EIR contains a very well researched and well written background of local archaeology, history, and the legal framework for determining site significance. Unfortunately, that is all that the cultural resource section contains. Page 4.9-5 of the EIR states "Archaeological and Historical investigations...did not encompass the entire project area, but did identify three previously recorded prehistoric sites..." "Also, archaeological investigations did not update the existing records for these three sites, verify their boundaries, or identify their current conditions." In fact, the archaeological study performed for the Draft EIR was no more than a background records search conducted by Roop and Evans (2005) with no field inspection.

This flies in the face of CEQA requirements. CEQA states that a lead agency must make two determinations regarding historical or archaeological resources:

- 1) "Whether a project will impact a resource that falls within the definition of "historical resource", and
- 2) "Whether any such impact will cause a substantial adverse change to the significance of the resource ." (Remy et. al. 1999:181) (CEQA Sec. 21084.1)

In order for the Item #1 determination to be completed, it is necessary to find out if there are any "historical resources" at a proposed project location (e.g. within the path of proposed construction). This information cannot be obtained by simply reviewing the existing records of historical resources housed at a state or local agency. An archaeological field inspection must be conducted on all discretionary projects in order to discover if any historical resources are present. Such inspections are often called "Phase I archaeological inspections". Why is a "Phase I" inspection required on all discretionary projects? Because CEQA specifies that a land use planner, can't make the decision to require an EIR, issue a Negative Declaration, or Categorical Exemption unless they have identified and evaluated the significance of any archaeological resources within the project area.

CEQA Sec. 21083.2 stipulates that only impacts to "unique" archaeological resources need be addressed during the environmental review and project planning process. This statement assumes that before the decision is made to issue a Negative Declaration, Categorical Exemption, or require an EIR; archaeological and historical resources on the property must have already been identified and evaluated for significance.

Problem with Cultural Resource Data Section

There was no comprehensive archaeological inspection of the entire project area to identify historic and prehistoric archaeological sites. No work was done to determine the significance of the resources within the project area as required by CEQA (Sec. 21084.1). This EIR cannot be considered complete

until ALL cultural resources have been identified within the project area AND each has been evaluated for significance.

Impact Statement and Mitigation Section

At least three prehistoric sites have already been identified within the project boundaries (Draft EIR pg. 4.9-11). Unfortunately, there is no discussion about the specific impacts that will occur to these known resources, nor what impacts will occur to resources that may not have been identified yet. The reason for an EIR is to list the exact impacts that will occur to resources and list the proposed alternatives required to mitigate those impacts.

CEQA specifically states that significant resources MUST be mitigated either by avoidance (protection as open space, deeded into a conservation easement, etc.), or by recovering the data that the sites contain before they are disturbed (CEQA sec. 21083.2 (b1), (b2), (b3), (b4), 15126.4c). These are the MITIGATION alternatives that should be listed in the EIR. Unfortunately, the fact that all significant archaeological sites haven't been identified makes it impossible to review those sites vis-à-vis the proposed grading plan to determine what impacts will occur. If the proposed impacts are not known, it is impossible to list meaningful mitigation alternatives to address those impacts.

Problem with Cultural Resource Mitigation Measures

Mitigation Measures MM 4.9.1a and 4.9.1b only require that a formal inspection of the project area be conducted by an archaeologist to record sites and determine if impacts will occur. These are the planning steps that should have taken place before the preparation of the Draft EIR. The Draft EIR should discuss the specifics of site preservation or data recovery mitigation plans. There is no discussion of specific impacts that will occur to sites, nor specific mitigation alternatives relating to those sites that will be damaged by grading or other impacts as is required to be discussed in an EIR.

MM 4.9.1a states "Potential Impacts... shall be determined. " MM 4.9.1b states "Archaeological investigations (survey and testing) shall be conducted to verify the boundaries and identify current condition of (the three previously recorded) sites.... Sites shall be avoided... If the sites cannot be avoided, then (various laws) shall be followed to address adverse effects and impacts to the sites." (Draft EIR pg. 4.9-11-12)

The laws listed in MM 4.9.1 b are the same laws that require that all resources be identified and their significance determined BEFORE an EIR is prepared. These laws require that the EIR be specific concerning impacts and mitigation alternatives concerning cultural resources.

To compound the problem, these inadequate "mitigation measures" are to be implemented "as a condition of project approval." Therefore, the city will not know what cultural resources exist within the project area, nor what impacts will occur to those resources until after the project has been approved. By then it is too late for the city to have any say about what mitigation plans shall be carried out to lessen impacts to Cultural Resources. This goes completely against the spirit and legislative intent of the California Environmental Quality Act.

Once the archaeological inspection is completed, and significant sites identified, how does the City then require preservation or data recovery mitigation? Will the city be requiring another EIR in the future to deal with just archaeological impacts? What will be the forum at-which the public gets to review and comment on those impact mitigation alternatives?

Mitigation Measure 4.9.1c is even more horrendous. It indicates that an archaeological monitoring plan should be designed to monitor construction near the three recorded sites “to safeguard the integrity of the sites” (Draft EIR pg. 4.9-12). CEQA clearly states that if a significant site cannot be preserved in place, a data recovery plan shall be carried out to recover the “scientifically consequential information from or about the resource” prior to the start of construction (CEQA sec. 15126.4c). Monitoring construction through an archaeological site does not suffice as “mitigation” under CEQA and would leave the City of Clearlake open to a law suit as has been discovered by the City of Morro Bay (see bottom of web page www.tcsn.net/sloarchaeology/political.html).

Conclusion

The Draft EIR as currently written is not in compliance with CEQA requirements.

- 1) It does not identify all cultural resources that exist within the project area.
- 2) Because all resources are not known, it is impossible to determine the significance of all cultural resources as required by CEQA (sec. 21083.2 and sec. 21084.1).
- 3) Specific direct or indirect impacts to specific resources are not listed or known as is required by CEQA (sec 15126.2 subd (a)).
- 4) Because the existing resources are still unknown and the specific impacts are unknown, the EIR was unable to list meaningful mitigation alternatives that would address or lessen those impacts as required by CEQA (sec. 15126.4 (3)).

Specific Work Needed to Bring the EIR into Compliance with CEQA Requirements

The final EIR must include the results of a complete archaeological field inspection of the project area as required by CEQA (sec. 21083.2). The final EIR must detail the significance of those resources. The final EIR must review all significant cultural resources along with proposed project designs to determine what specific impacts will occur. Then, and only then, can meaningful mitigation measures be developed to address those impacts. The final EIR must include those proposed mitigation measures.

Where possible, project designs should be altered to include significant cultural resources in open space or conservation easements as suggested by CEQA (sec. 15126.4 (3 a, b)). Any historic or prehistoric sites that must be disturbed during the project construction process will need to be mitigated according to CEQA (sec. 15126.4c).

Thank you again for your time and consideration. Feel free to contact me if you have any questions or concerns regarding these comments.

Sincerely,
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