

Sierra Club Lake Group

PO Box 1011 Kelseyville, CA 95451

December 2, 2008

TO: Clearlake Planning Commissioners Carl Webb, Al Bernal, Fred Gaul, Gina Fortino-Dickson, Bill Perkins

CC: Dale Neiman

RE: Provinsalia EIR certification and project approval

Dear Commissioners:

The Sierra Club Lake Group, which has been closely following this major project for more than four years, with the submission of numerous comment letters and participation in many “workshops” and similar discussions, appreciates this opportunity to make our views formally known to the Commission in the course of its deliberation on recommendations to the City Council. The remarks below fall into three distinct sections: the advisability of certifying the Environmental Impact Report (EIR) prepared by Pacific Mutual Consultants (PMC), environmental impacts resulting from the Provinsalia project if it is completed, and other considerations, including detrimental effects that would ensue if the project is not built out, a scenario that seems highly probable in the current financial climate.

First, we would like to raise a procedural question: why is the Planning Commission being asked to deliberate on amending the General Plan and rezoning the site simultaneously with making its assessment of the adequacy of the EIR? Ordinarily the City Council’s EIR certification would come first, and only after that essential step is completed would the Commission take up requests for additional actions. Since the Council can, and very probably will, impose additional mitigations and conditions when considering certification, fast tracking the process in this way may be counterproductive as well as giving an impression of unseemly haste.

Provinsalia EIR Certification

As detailed in our letter of October 10, 2008, we believe that procedural and substantive lapses in the EIR make certification unwise, and could in all likelihood expose the city to legal action.

- Many agencies, organizations, and individuals submitted comments on the draft EIR, which should all have been addressed during preparation of the FEIR. Some submissions were omitted, including those of Supervisor Ed Robey and County Community Development Director Richard Coel and perhaps many others. Under these circumstances the FEIR cannot be considered complete.

- Dr. John Parker's letter of October 18, 2007 details major inadequacies in both the method of evaluating cultural resources and proposed mitigations. These comments were not addressed in the FEIR, and the Cultural Resources mitigation measures (Section 4.10, pp 26-28 of the Mitigation and Monitoring Program) discussed by the Planning Commission at its November 3, 2008 workshop do not reflect these concerns. The Commissioners were told at that time that major substantive changes had been subsequently made to this section, but these changes, which represent significant new information, have never been made available for public review, as is required under CEQA.
- As detailed below, the per-parcel capital expansion fee proposed as mitigation for the extremely costly sewer construction needed to service the subdivision is in no respect adequate to defray the expense falling on taxpayers.
- Faulty evaluation of the project's impacts on climate change is contrary to policies of the State of California, which has firmly established the control and reduction of carbon emissions as a stated goal. (details in the October 10 Sierra Club letter). Subsequently, State-imposed requirements were further augmented by Governor Schwarzenegger's Executive Order of November 14, 2008 requiring state agencies to enhance their management of climate impacts from sea level rise, increased temperatures, shifting precipitation and extreme weather events. Lead agencies now *must* make a good-faith effort at a *numerical* calculation of the carbon emissions associated with a project, including traffic, energy consumption, release of sequestered carbon, construction activities, etc, and to assess their standards of significance. The State Attorney General has already demonstrated his willingness to exercise legal remedies against local jurisdictions that fail to comply with these standards.

We therefore recommend most strenuously that the EIR be returned to PMC with a request to revise the Cultural Resources section, devise appropriate mitigation for impacts associated with providing sewer service, and provide comprehensive *quantitative* analysis of Provinsalia's impacts on climate change. The resulting DEIR should then be re-circulated for additional public comments related to these subjects, and a truly "final" FEIR prepared that responds to *all* comment letters, including those omitted to date and any additional submissions.

Environmental consequences of the project.

"Significant and unavoidable" impacts. Even though the EIR sometimes underestimates the project's impacts and does not always propose appropriate mitigations, it is apparent that Provinsalia will result in numerous adverse environmental impacts. It will lead to the "loss of natural undisturbed open space and rural lands;" "increase human intrusion and activity levels in proximity to habitat areas;" "substantially alter the existing landscape" from "open space to a large suburban level of development;" "contribute to a cumulative increase in traffic" resulting in "unacceptable intersection service levels" in both Clearlake and Lower Lake; increase air pollution; destroy cultural resources; "introduce substantial daytime and nighttime glare and light sources;" induce population growth; and contribute to the jobs/housing imbalance. All of these impacts are acknowledged to be "significant and unavoidable," meaning that the project cannot legally be approved without findings of overriding public benefit sufficient to counterbalance every one of these effects.

Land Use. The Resource Protection designation currently on the project site is intended to protect “hillsides, marshes, creeks, wildlife habitat areas, orchards and vineyards, and similar areas as valuable open space and contributing to the rural character of Clearlake.” The amazing characteristics of this pristine property, which supports a full range of wildlife including top predators, and incorporates a variety of ecotypes ranging from steep wooded uplands to an extensive riparian corridor, are virtually unprecedented within the limits of an incorporated city. If this project goes forward those natural values will be replaced by managed turf, pavement, and densely packed houses. Despite references to “estate-type” housing the overwhelming majority of the lots in the project will be far less than a quarter-acre in size, with some smaller than the city’s normal 5,000 square foot minimum. Although the design specifies an “interpretative center” to be located in the unbuildably steep eastern portion of the property, as well as “neighborhood parks,” foot and bike trails, and “wetland and other natural features,” no specifics about these amenities has been provided, far less any guarantee that they will ever be constructed.

The project will also profoundly affect surrounding rural areas. The EIR acknowledges that it will permanently change the “existing ambiance and character of the surrounding rural residential areas” and bring “increased traffic, noise, lighting, dust, and other impacts but incomprehensibly concludes that this upheaval of people's lives to be “less than significant” – a view that project neighbors do not appear to share.

Biological Resources. We are profoundly disturbed by the destruction of natural habitat caused by this project. Virtually all the native grasslands on the site – 158 acres – will be destroyed, and almost 100 acres of oak woodlands, with no mitigation proposed except for a replanting program. No matter how many sapling oaks are planted (and replanted and then replanted again, after the extensive transplant death that is so notoriously predictable with native oaks) it will take many generations before they will be able to provide a fraction of the habitat value of the woodlands that have been demolished. The anticipation that “many isolated blue and valley oaks would remain” on individual lots and be preserved by homeowners seems most unlikely given the small size of the lots and large size of the houses, and even if some scattered trees are retained the woodland ecology will be irretrievably impaired. According to Table 4.5-4 two-thirds of the riparian willow woodlands will also be lost, along with 4.5 miles of seasonal creeks. Impacts to native wildlife will inevitably follow the destruction of their habitat, with the detailed specified mitigations an inadequate defense. For example, northwestern pond turtles are to be protected by fencing off buffers around wetlands during construction, but since “these turtles . . . maintain basking and nesting sites in grassland habitats” and virtually all of these grasslands will be destroyed, their population seems certain to be affected. Similarly, active nests and nesting sites of raptors and bats are to be protected, but the loss of foraging territories is not addressed.

Traffic. Although the technical traffic studies provided seem to be quite exhaustive, the narrowness of their scope greatly limits their value. Nothing is said about impacts to Highway 29 south of Lower Lake, including the segment traversing Mt St. Helena. This stretch of highway already approaches the limits of its safe carrying capacity and would certainly be adversely affected by the increase in commuter traffic generated by Provinsalia. Impacts to Middletown, which is bisected by

Highway 29 in the downtown area, are also ignored. A number of intersections are analyzed in detail, but the effects of increased traffic on Main Street in Lower Lake are not mentioned, except for the Post Office parking lot, where impacts are acknowledged to be “cumulatively considerable, significant, and unavoidable”. Parking is already in short supply on Main Street, especially when a funeral service is in progress, and the extra demand from Provinsalia could easily have such negative effects as to impede the growth of what is becoming a thriving village center.

We agree that a new connector road between Provinsalia Ave and 18th Avenue is needed to protect public safety, and concerned that no specific plans for this road, (including its precise location and analysis of its impacts on 18th Avenue traffic, which the current study predicts will be affected only negligibly) have yet been provided. Until this route has been precisely located, owners of adjacent properties, some of whom may be subject to eminent domain, cannot adequately assess its effects on their lives and make appropriate representations to their elected representatives.

As currently designed, some of Provinsalia’s interior roadways will exceed maximum grade limits, and many dead end streets longer than 1000 feet will be created. The proposed mitigation (p 4.6-55) would rightly change the project design to conform to city standards, but we contend that this redrafting should be done immediately, *before* tentative approvals are considered. The same is true of public transit and school bus stop locations.

Climate Change. The conclusion that the cumulative effects of Provinsalia and other developments in increasing greenhouse gas emissions and contributing to climate change are “less than cumulatively considerable” is not true, despite their apparent insignificance in relation to the massive scale of the global climate crisis. We believe that *every* straw weighs equally on the camel’s back, and that *every* development proposal should be subject to a requirement for carbon neutrality at the very least. In response to the Lake Group’s EIR comment letter asking for an evaluation of the greenhouse gas emissions resulting from the destruction of natural vegetation, extensive additional replanting requirements have been added, but no attempt has been made to assess the quantitative effects of either woodland removal or replanting. A request for an analysis of the carbon emissions resulting from burning the removed oak trees is avoided by saying that they “shall be either chipped and re-used as mulch” (a use that also releases sequestered carbon) or “sold to a wood vendor” – for firewood! We wonder if this response is deliberately cynical or merely inadvertently so. In any case the first step towards mitigation – accurate measurement of the quantity of carbon that will be released – is wholly absent. We furthermore note that the latter half of MM 4.5.2, including specifics about monitoring responsibilities and the above-mentioned remark about burning, has been omitted from the mitigation measures discussed by the Planning Commission on October 21 and November 3. No attempt whatever has been made to assess carbon emissions resulting from increased traffic, from the major construction needed to bring infrastructure to this remote site, or from the soil disturbance resulting from extensive grading activities.

Noise. Impacts in this location should be evaluated not from a typical suburban perspective, but in relation to the near-wilderness quality of the site, and the deep tranquility prevailing there at the present time. This rare trait is integral to the

quality of life of the surrounding neighborhood, and its loss must not be taken lightly.

Cultural Resources. We generally support the proposals to minimize disturbance of cultural resources on the site, and strongly support the position that the most effective mitigation is avoidance, but it is disturbing to learn that even with all recommended mitigations – avoidance, capping of sites, conservation easements, strategically located greenspaces, and ongoing monitoring – the project will lead to “loss of the integrity of the entire district” and therefore create impacts to cultural resources that are cumulatively considerable, significant, and unavoidable.

Population and Jobs. Provinsalia’s tendency to “induce substantial population growth” and contribute to Clearlake’s existing jobs/housing imbalance is admitted to be significant and unavoidable: by 2030 the inhabitants of this single subdivision would represent *half* of the projected population increase for the city *as a whole*, and increase the total population of the city by 15 percent. Despite considerable short-term construction employment, very few long-term jobs would be created. Substantial numbers of Provinsalia’s residents are expected to commute out of the county. By extending infrastructure through what is now vacant land, the project would also inevitably cause population growth between Highway 53 and the project site, and thereby further distort the contours of the City of Clearlake, which possesses numerous vacant lots within its residential core that could otherwise absorb substantial projected growth by the infill process that is central to smart growth principles.

Fire. A massive residential development in a comparatively remote location surrounded by fire-prone wildlands will be at risk no matter what mitigations are proposed, but in this case that risk is heightened by the provision of a mere twenty-foot buffer zone along the urban/wildland interface, which does not even meet minimal CDF standards, and by the densely packed nature of the subdivision. Five-foot sideyard setbacks mean that most houses will be only ten feet apart, allowing fire to jump from one to another very easily. The EIR furthermore acknowledges that the “Specific Plan does not identify an adequate water supply and fire flows for fire protection,” which would require 240,000 and 300,000 gallons of storage.

Wild animals. Both bears and mountain lions are known to live on this site, and the lions at least are likely to remain, feasting on dogs and cats belonging to residents, and on the herds of deer attracted by the golf course. The possibility of injury or even death to human beings is obvious.

Schools. Provinsalia’s effects on the Konocti Unified School District have not been appropriately assessed. It is acknowledged that despite development fees the project will create a capacity expansion shortfall estimated at \$500,000-\$1,000,000, but this very substantial burden on the district as a whole is considered less than significant because of the questionable assumption that few school age children will live in the subdivision. Many other complex impacts have also been neglected.

Infrastructure. No sewer lines service this site, and the nearest available sewer connections are so overburdened that untreated waste sometimes bubbles from manhole covers during heavy rains. The most economical option to provide the necessary capacity expansion for Provinsalia would require the construction of an entirely new sewer main line from the project site to the Southeast Treatment Plant on the north edge of the city, at a cost of at least \$13 million. The EIR proposes to

mitigate (MM 4.13.5.2) this burden, which LACOSAN director Mark Dellinger considers significant and unavoidable, by (unspecified!) “capital expansion fees” assessed on each unit. But some five miles of sewer lines cannot be constructed incrementally; the full costs will be incurred *before* the first residents can move in, meaning that the expense must be assumed by the taxpayers of Clearlake or the County of Lake. The only acceptable solution is for the project developers to pay for essential infrastructure improvements up front, and to recover their costs from the sale of lots and houses – each of which would have to be priced some \$22,000 more than comparable properties in order to meet the cost of the new sewer line alone.

Visual Impacts. It is acknowledged that Provinsalia would “substantially alter existing landscape characteristics” in a significant and unavoidable way. Considering the scale of the project, the large proportion of the site that is to be covered by buildings and pavement, and the high residential elevations (35 feet, meaning houses taller than the mature oak woodlands now on the site), no mitigations can eliminate this effect. These permanent changes in the landscape will drastically affect the lives of the surrounding residents, and impact other Lake County residents and visitors as well since the subdivision would be clearly visible from Glasgo Grade and other locations including the vista point at Boggs State Forest. We also agree that glare and light pollution will permanently alter the visual character of the “regional landscape,” and that this lamentable result will be “cumulatively considerable, significant, and unavoidable”.

Other considerations.

Eminent domain. Access to the project will require the construction of a brand new “Provinsalia Avenue” running partially along existing 7th and 8th Avenue street easements but also requiring acquisition of property that is not currently owned by either the applicants or the City of Clearlake. If the owners of the necessary right of way do not wish to sell, is the city prepared to use its rights of eminent domain to acquire their land? Have the property owners who might be affected been given notice of this possibility?

Fiscal liability. Project developers do not propose to fund Provinsalia’s roadways, golf course, or similar infrastructure directly, with the costs to be recovered through sale of lots and houses as is the normal practice. Instead, they want to pay for these improvements through the sale of Mello-Roos bonds, ultimately to be repaid by project residents but underwritten by *the full faith and credit of the City of Clearlake*. If Provinsalia becomes yet another lamentable example of Lake County’s many paper subdivisions the City will still be liable for this obligation. The taxpayers will furthermore be burdened with the costs of repairing this pristine parcel if the project is abandoned after grading has taken place, a liability which can be avoided by requiring the developers to post a performance bond for site restoration. This scenario seems far from improbable in the current real estate market: given Lake County’s spiraling foreclosure rate, the rising number of homes with mortgage debt exceeding their market value, and the gloomy economic outlook generally, it’s hard to see who the purchasers of these large, jammed together houses might be. The costs of providing the sewer capacity expansion needed to service the site could also fall on existing ratepayers, as detailed above.

General Plan distortion. Ordinarily, when a subdivision is approved but not constructed the temporary maps lapse after a specified period, commonly two years with a possible one or two year extension, but in this case the developers are

requesting an amendment to the city's General Plan – the municipality's "Constitution" governing growth – changing the designation on the site to Specific Plan. This designation would continue to govern land use on the site even if the project itself is not completed. Any deviation from the project design outlined in the 70-page Specific Plan now under consideration would require a subsequent General Plan amendment and full CEQA review. Even such a minor change as the repeatedly suggested alternative design replacing the golf course with a more natural rural landscape incorporating hiking, biking, and equestrian trails would be impossible without amending the General Plan. Burdening the core planning documents of the city of Clearlake with this albatross is not, in our opinion, in the best interest of the city and its citizens.

In summary, the Lake Group believes that the detriments associated with this project far outweigh any potential benefits, and strongly advises that the Commission recommend against certifying the EIR, against making the requested General Plan amendments and zoning changes, and against approving the Specific Plan.

Yours sincerely,

A handwritten signature in black ink that reads "Victoria Brandon". The signature is written in a cursive, flowing style.

Victoria Brandon
Chair, Sierra Club Lake Group