



**COUNTY OF PLACER**  
**Community Development/Resource Agency**

Michael J. Johnson, AICP  
Agency Director

**PLANNING**

**TO:** Board of Supervisors

**FROM:** Michael J. Johnson, Planning Director

**DATE:** August 24, 2010 (Continued from the August 10, 2010 Hearing)

**SUBJECT: THIRD-PARTY APPEAL – PLANNING COMMISSION APPROVAL OF A MINOR USE PERMIT (PMPA20070467) “CELEBRATION COMMUNITY FELLOWSHIP CHURCH”**

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**ACTION REQUESTED**

The Board is being asked to consider a third-party appeal from Don Ryberg, Tsi'-Akim Maidu Tribal Chair, of the Planning Commission's approval of a Minor Use Permit for the Celebration Community Fellowship Church. It is staff's recommendation that the Board uphold the decision of the Planning Commission and deny the appeal.

**BACKGROUND**

This item was originally scheduled to be heard by the Board of Supervisors at its August 10, 2010 meeting. Prior to the hearing, correspondence was received from a representative of the United Auburn Indian Community requesting additional time to review the project. After receiving comments from the project applicant, the Board unanimously adopted a motion to continue the item to the August 24, 2010 meeting to allow staff additional time to meet with representatives of the United Auburn Indian Community.

Following the August 10, 2010 Board of Supervisors hearing, a question arose as to which Native American tribe represents the Most Likely Descendant of the tribe that once existed in the project vicinity. As of the date of this staff report, the Native American Heritage Commission has not provided an official ruling on which tribe they have determined the Most Likely Descendant to be. It should be noted that Native American involvement, including correspondence with several locally recognized tribes, has occurred throughout the County review for this project. Although the Most Likely Descendant is not clearly known at this time, Condition 40 requires the presence of a Native American monitor during all ground disturbing activities of the project. This condition does not specify a particular individual or tribe, but allows the selection of the monitor to be made consistent with the State designation of a Most Likely Descendant.

**PLANNING COMMISSION HEARING**

The Planning Commission heard the request for a Conditional Use Permit for the Celebration Community Fellowship on May 27, 2010. At that hearing, the Commission considered reports from the Development Review Committee staff and received written correspondence, in the form of a four-page letter from Don Ryberg, Chair of the Tsi'-Akim Maidu Tribe. Several

individuals provided oral testimony, including Grayson Coney, Cultural Director of the Tsi'-Akim Maidu Tribe; Michael Ben Ortiz, Tsi'-Akim Maidu spokesperson (both of whom opposed the project); three church members who spoke in support of the project; Cedric Lee, Pastor of the Celebration Community Fellowship and; Cindy Arrington, the archaeologist who prepared a cultural resources report for the project. No other responses were received or recorded.

During public comment, Mr. Coney stated that the methodologies and conclusions of the Cultural Resources Technical Report (hereafter, Cultural Report), prepared by Cindy Arrington (GeoEngineers), were flawed and suggested that the Cultural Report failed to recognize the scope and significance of the site and the cultural resources that were discovered during site investigations.

In referencing the letter submitted to the Planning Commission by Don Ryberg, Mr. Coney stated that, although the proposed Environmentally Sensitive Area (ESA), identified on the Site Plan (Exhibit 3) approximates the location of a burial site, the remainder of the parcel includes a much larger Native American village site, and that the ESA should be expanded to include the entire parcel.

Mr. Coney also challenged a statement in the Cultural Report that the site had been disturbed by adjacent Caltrans work in the Interstate 80 Right-of-Way. He mentioned that Caltrans "as-built" plans produced during the construction of Highway 40, and subsequently Interstate 80, indicate that the soil was balanced on site, meaning soil that was disturbed in the construction of Interstate 80 remained in the highway right-of-way and was not pushed onto the project site. However, Mr. Coney did not provide copies of the as-built notes.

In response to Mr. Coney's statements, Ms. Arrington explained that the types of cultural resources found on the site were not unique or of a quality that would clearly render the site eligible for recordation into the National Register of Historic Places. She stated that historic and prehistoric resources were intermixed at depths up to 70 cm, indicating that significant site disturbance had taken place over the years. She explained that, while artifacts were discovered throughout the site, the only portion of the site that contained bone fragments is in an area that will be avoided by the project (the ESA) and no site disturbance will occur there.

Ms. Arrington further stated that she had reviewed the Caltrans "as-built" plans referenced by Mr. Coney, but found that they do not contain any language about cultural resources uncovered during construction of Interstate 80. In addition, Ms. Arrington stated that, in her professional opinion, the construction of Interstate 80 would have resulted in fill material being pushed to either side of the freeway along the entire length of construction. This material, according to Ms. Arrington, could have been the source of the bone fragments and would explain why they are only found along the west property line adjacent to the freeway. Ms. Arrington restated her conclusion that, if a village site exists, it is located under what is now Interstate 80, and the project site represents only the eastern perimeter of the village.

Ms. Arrington referred to the Monitoring and Treatment Plan (Plan) contained in the Cultural Report that provides protection for any cultural resources that may be discovered throughout construction of the project. As stated above, the most sensitive area of the site is avoided through project design, and will be protected from future development by an exclusive public easement. As required by the Plan, all construction activities occurring on the remainder of the

site will be continually monitored by an on-site archaeologist, Native American Monitor and Cultural Resources Specialist. Additionally, all site workers will be required to complete cultural awareness training, prior to any work on-site.

The Planning Commission considered the staff report, the Mitigated Negative Declaration and all public testimony, focusing on the nature and intent of the proposed ESA. Ultimately, the Commission determined that the protections set forth in Conditions 36 through 46 would sufficiently avoid impacts to the cultural resources in the northwest portion of the project site (within the ESA). The Commission further discussed the County's responsibility to allow the property owner to develop the site consistent with the underlying zoning, particularly when avoidance of the most significant cultural resources had been demonstrated in the project design.

After deliberations, the Planning Commission adopted a motion (5-0, with Commissioners Gerry Brentnall and Larry Sevison absent) to approve the project as proposed.

### **APPEAL**

Mr. Ryberg appealed the decision by the Planning Commission on June 7, 2010 (Exhibit 1). The appeal states that the Cultural Report is flawed and refers to an attached letter that Don Ryberg had originally sent to the Planning Commission as the basis for the appeal. Because this letter is identical to the written correspondence submitted to, and considered by, the Planning Commission, it does not contain any new information that has not already been considered.

The letter which forms the basis of the appeal presents the following issues:

1. The appellant states that the village site of Hownosum Soka and the burial site of Hownosum Ustu are within the boundaries of the proposed project and that the Cultural Report failed to identify these features because oral history of the site, represented by Mr. Coney and others, was ignored during the site investigation.
2. The appellant states that the current limits of the proposed Environmentally Sensitive Area and the establishment of a monitoring and treatment plan will not adequately protect the culturally sensitive resources on the site.

### **RESPONSE TO APPEAL**

Ms. Arrington provided a response to the Appeal (Exhibit 4), which counters the assertion of insufficient analysis by summarizing the testing methods that were employed on the site, interpreting the significance of the discovered resources and discussing the integrity of the site and surroundings.

In response to the two primary issues set forth in the appeal letter, staff has prepared the following two statements, utilizing the Cultural Report and Ms. Arrington's Response to Appeal Letter (Exhibit 4):

1. The Cultural Report documents the Native American consultation, including letters and phone calls to ten local tribes, as well as correspondence with the Native American Heritage Commission. At that time, there were suggestions that a village and burial site existed in the vicinity. Ms. Arrington considered the information provided by concerned

Native Americans and conducted a technical analysis of the site, including the subsurface inspection of 23 auger units spread throughout the site and four test excavation units concentrated within the previously noted area of concern in the 2005 Phase II investigation performed by NCR Consulting, the same area of concern identified by Mr. Coney and having the greatest potential for evidence of the prehistoric use of the site.

The site investigation found no evidence of a midden or calcined soil (indicators of a prehistoric village, cemetery or cry site) and no evidence of bedrock milling. The Cultural Report concluded that the site has been highly disturbed and that, while historic and prehistoric artifacts were discovered throughout the site, none of the artifacts were intact and all had been disturbed through the historic use of the site. Further, the artifacts that were discovered do not clearly indicate the presence of a former village or burial site, but indicate that if such a site exists in the vicinity, it is likely to the west of the proposed project and beneath Interstate 80.

2. The purpose of the Cultural Report is to identify the existence of cultural resources on the site in order to determine the potential for site inclusion into the National Register of Historic Places (NRHP) and to avoid potential impacts to any significant cultural resources. Consistent with the Placer County goal of avoidance of impacts, the project will preserve the most culturally sensitive area of the site through the establishment of an Environmentally Sensitive Area that will remain undeveloped in perpetuity. In addition, the site is considered potentially eligible for inclusion into the NRHP and the applicant is required to submit application for inclusion prior to any site disturbance. Furthermore, staff has determined that the site protections set forth in the Monitoring and Treatment Plan will adequately protect the cultural resources that exist on the site.

As described in the Planning Commission staff report (Exhibit 6), two separate archaeological surveys, each prepared by a Registered Professional Archaeologist, were conducted on the site. In addition, the most recent archaeological survey, the Cultural Report, was peer-reviewed by a third-party archaeologist recommended to the County by the Native American Heritage Commission. The analysis and conclusions of the Cultural Report represents the literature and records research, field-work and site excavation conducted by two professionally trained archaeologists, as well as the independent review of a third archaeologist.

The Planning Commission has determined that Conditions 36 through 46 will ensure the protection of cultural resources on the project site during and after construction, and that impacts to cultural resources as a result of the project will be reduced to a less than significant level. In addition, the Planning Commission has considered the letter attached to the Appeal and made their decision with that information in mind.

#### **CONCLUSION/RECOMMENDATION**

As highlighted above, staff has concluded, consistent with the Planning Commission's determination, that the archaeological analysis and the independent peer review (as requested by the Native American Heritage Commission) for this project meets regulatory compliance with the California Environmental Quality Act. While the Native American Heritage Commission had concerns with the initial archaeological analysis, the Commission has not expressed any concerns to staff with the subsequent Phase II Technical Report or with the independent peer review of that report prepared for this project.

Based on the analysis described above, staff recommends that the Board of Supervisors deny the appeal and uphold the Planning Commission's approval of the Minor Use Permit (PMPA20070467) subject to the following findings and attached Conditions of Approval:

**FINDINGS:**

CEQA:

The Board of Supervisors has considered the proposed Modified Mitigated Negative Declaration (PMPA20070467), the proposed mitigation measures, the staff report and all comments thereto and hereby adopts the Modified Mitigated Negative Declaration for the project based upon the following findings:

1. A Mitigated Negative Declaration has been prepared for this project in compliance with CEQA. Mitigation measures include, but are not limited to, roadway improvements, grading plans, improvement plans, payment of traffic fees, implementation of Best Management Practices, US Army Corps of Engineers review and mitigation for loss of wetlands, purchase of tree preservation conservation easements, cultural resources protection measures and stormwater requirements. With the incorporation of all mitigation measures, the project is not expected to cause any significant, negative impacts.
2. There is no substantial evidence in the record as a whole that the project as revised and mitigated may have a significant effect on the environment.
3. The Mitigated Negative Declaration as adopted for the project reflects the independent judgment and analysis of Placer County, which has exercised overall control and direction of its preparation.
4. The mitigation plan prepared for the project is approved and adopted.
5. The custodian of records for the project is the Placer County Planning Director, 3091 County Center Drive, Suite 140, Auburn CA, 95603.

MINOR USE PERMIT:

1. The proposed use is consistent with the objectives, policies, general land uses and programs as specified in the Placer County General Plan, the Auburn Bowman Community Plan and the Placer County Rural Design Guidelines.
2. The proposed Minor Use Permit is consistent with the Placer County Zoning Ordinance (Farm - Section 17.10.010).
3. The proposed use will be consistent with the character of the immediate area, which is rural residential, and will not be contrary to its orderly development.
4. The development and use of the site as proposed will not be detrimental to the health, safety, and general welfare of people residing in the neighborhood, and will not be detrimental or injurious to property or improvements in the neighborhood or the general welfare of the County.

Respectfully submitted,



MICHAEL J. JOHNSON, AICP  
Director of Community Development / Resource Agency

**EXHIBITS:**

- Exhibit 1 – Appeal to Board of Supervisors
- Exhibit 2 – Vicinity Map
- Exhibit 3 – Site Plan
- Exhibit 4 – Archaeologist Reply to Appeal
- Exhibit 5 – Mitigated Negative Declaration
- Exhibit 6 – Planning Commission Staff Report
- Exhibit 7 – Conditions of Approval

cc: Don Ryberg – Appellant  
Cedric Lee – Property Owner  
Kevin Sullivan, LPA, Inc. – Applicant  
Katy Sanchez – Native American Heritage Commission  
Dave Singleton – Native American Heritage Commission  
Grayson Coney – Tsi'-Akim Maidu Cultural Director  
Marcos Guerrero – United Auburn Indian Community of Auburn  
Erin Hess – US Army Corps of Engineers  
Cindy Arrington, RPA – GeoEngineers

**Copies Sent by Planning:**

Michael Johnson – Community Development Resource Agency Director  
Paul Thompson – Deputy Planning Director  
Scott Finley - County Counsel  
Sharon Boswell - Engineering and Surveying Division  
Vicki Ramsey - Environmental Health Services  
Andy Fisher - Parks Department  
Yu-Shuo Chang - Air Pollution Control District  
Subject/chrono files