

Attachment 2  
Comment Letters



JULY 31, 2024

VIA EMAIL: [CHAD.BROUSSARD@BIA.GOV](mailto:CHAD.BROUSSARD@BIA.GOV)

CHAD BROUSSARD, ENVIRONMENTAL PROTECTION SPECIALIST  
BUREAU OF INDIAN AFFAIRS  
PACIFIC REGIONAL OFFICE  
2800 COTTAGE WAY  
SACRAMENTO, CA 95825

Dear Mr. Broussard:

DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE KOI NATION OF NORTHERN CALIFORNIA SHILOH RESORT AND CASINO PROJECT, CALIFORNIA STATE CLEARINGHOUSE # 2022050599

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Draft Environmental Impact Statement for the Koi Nation of Northern California Shiloh Resort and Casino Project (Project).

The Division monitors and maps farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. Public Resources Code, section 614, subdivision (b) authorizes the Department to provide soil conservation advisory services to local governments, including review of CEQA documents.

Protection of the state's agricultural land resources is part of the Department's mission and central to many of its programs. The CEQA process gives the Department an opportunity to acknowledge the value of the resource, identify areas of Department interest, and offer information on how to assess potential impacts or mitigation opportunities.

The Department respects local decision-making by informing the CEQA process, and is not taking a position or providing legal or policy interpretation.

We offer the following comments for consideration with respect to the project's potential impacts on agricultural land and resources within the Department's purview.

#### PROJECT ATTRIBUTES

The proposed Project includes the transfer of the 68.6-acre project site into federal trust status for the benefit of the Tribe for gaming purposes. The project site is located southeast of the intersection of Old Redwood Highway and Shiloh Road, adjacent to the southern boundary of the Town of Windsor. Subsequent to the fee-to-trust transfer,

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the Tribe proposes to develop a casino-resort facility that includes a three-story casino, five-story hotel with spa and pool area, ballroom/meeting space, event center, and associated parking and infrastructure. The gaming component of the facility would be approximately 538,137 square feet and include 2,750 gaming devices with 105 table games.

The hotel component of the facility would be approximately 268,930 square feet and consist of 400 rooms. Approximately 5,119 parking spaces would be provided on the ground floor of the casino, as well as in a four-story parking garage and an overflow surface parking lot on the eastern side of Pruitt Creek. An enclosed clear-span pedestrian bridge would connect the parking garage with the casino-resort approximately 12 feet above Pruitt Creek. Other supporting infrastructure, including the proposed water treatment and wastewater treatment facilities would be located on the southeastern portion of the project site.

The proposed site contains Prime Farmland, Farmland of Statewide Importance, and Unique Farmland as designated by DOC's Farmland Mapping and Monitoring Program.

#### PROJECT CONSIDERATIONS

The conversion of agricultural land represents a permanent reduction and impact to California's agricultural land resources. The Department generally advises discussion of the following in any environmental review for the loss or conversion of agricultural land:

- Type, amount, and location of farmland conversion resulting directly and indirectly from implementation of the proposed project.
- Impacts on any current and future agricultural operations in the vicinity; e.g., land-use conflicts, increases in land values and taxes, loss of agricultural support infrastructure such as processing facilities, etc.
- Incremental impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project, as well as impacts from past, current, and likely future projects.
- Implementation of any City or County Agricultural Mitigation Plans, Programs, or Policies.
- Proposed mitigation measures for impacted agricultural lands within the proposed project area.

#### MITIGATING AGRICULTURAL LAND LOSS OR CONVERSION

Consistent with CEQA Guidelines, the Department advises that the environmental review address mitigation for the loss or conversion of agricultural land. An agricultural conservation easement is one potential method for mitigating loss or conversion of agricultural land. (See Cal. Code Regs., tit. 14, § 15370 [mitigation includes "compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of

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conservation easements."]; see also *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814.)


Mitigation through agricultural conservation easements can take at least two forms: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural easements. The conversion of agricultural land may be viewed as an impact of at least regional significance. Hence, the search for replacement lands may not need to be limited strictly to lands within the project's surrounding area. A helpful source for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

[California Council of Land Trusts](#)

Of course, the use of conservation easements is only one form of mitigation, and the Department urges consideration of any other feasible measures necessary to mitigate project impacts.

Thank you for giving us the opportunity to comment on the Draft Environmental Impact Statement for the Koi Nation of Northern California Shiloh Resort and Casino Project. Please provide the Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Associate Environmental Planner via email at [Farl.Grundy@conservation.ca.gov](mailto:Farl.Grundy@conservation.ca.gov).

Sincerely,



Monique Wilber  
Conservation Program Support Supervisor

A1-3  
cont.

# Congress of the United States

Washington, DC 20510

August 2, 2024

The Honorable Deb Haaland  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Secretary Haaland,

As the Bureau of Indian Affairs (the Bureau) considers comments on its Draft Environmental Impact Statement for the Koi Nation's application to acquire 68 acres of land into trust for a casino in Sonoma County in the Second District of California, we write to you to voice our concern and opposition to the project. While we remain champions for tribal interests, we would like to bring to your attention serious concerns raised by both the tribes with ancestral ties to the land and the neighboring constituents that render the proposed plans inappropriate for the area.

Federal law requires that a restored tribe have a "significant historical connection" to the land where it proposes to game, but the land in question is over 50 miles from the Koi Nation's ancestral land in the Lower Lake area of Lake County. The Koi Nation lacks evidence of a historical connection such as ancestral villages, burial sites, or subsistence use of the land. Further, the tribes that *are* indigenous to Sonoma County including the Federated Indians of Graton Rancheria, Dry Creek Rancheria Band of Pomo Indians, Cloverdale Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Lytton Rancheria oppose both the proposed project and the Koi Nation's ancestral claims to the land. These tribes that have documented historical connections to the area also have cultural and archeological concerns about the proposal that the Bureau must address. The State of California's Historic Preservation Officer and the Sonoma County Board of Supervisors also share these concerns. Both have written to you and Sonoma County passed a resolution opposing the establishment of this casino within the County.

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In addition, we have heard from worried constituents in the area about the intended use of the land for a casino. The proposed project would be located in a residential area with elementary schools, parks and religious centers in close proximity. The anticipated traffic and construction from a casino would create unwanted noise and pose a danger to these residents – not to mention its associated air quality and climate impacts. Increased traffic also poses a serious concern when considering wildfire evacuation routes and the thousands of vehicles that could be added to the road from the project. We also cannot ignore the obvious environmental strain this project will create. A new casino of this magnitude, and its construction, will increase water pressure on the Russian River, as well as generate possible runoff and groundwater impacts from converting what is currently open space into impermeable surfaces.

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Finally, we request that the comment period for this draft environmental impact statement be extended. Given the level of public interest and recent Federal holiday and summer vacations adversely impacting our constituents' ability to participate in this process, it is appropriate for the Bureau to

A2-3

extend the deadline for public comment beyond 45 days and conduct meaningful discussions with impacted tribes and residents before closing, per our letter of July 22, 2024.

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cont.

Thank you for your full, fair, and serious consideration of our request for you to reject the Koi Nation's application to acquire this land in trust and the proposed casino.

Sincerely,



Jared Huffman  
Member of Congress



Mike Thompson  
Member of Congress

**From:** Luo, Yunsheng@DOT <[Yunsheng.Luo@dot.ca.gov](mailto:Yunsheng.Luo@dot.ca.gov)>  
**Sent:** Wednesday, August 21, 2024 2:54 PM  
**To:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>  
**Cc:** Bibiana Sparks <[bsparks@acorn-env.com](mailto:bsparks@acorn-env.com)>  
**Subject:** RE: [EXTERNAL] Koi Nation of Northern California Shiloh Resort and Casino Project, EIS

Hi Chad,

Melissa is on vacation, and I am covering for her this week. Thanks so much for confirming. I think our previous letter still stands.

Best,

Yunsheng Luo

Caltrans, District 4

Work Cell: 510-496-9285

**From:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>  
**Sent:** Wednesday, August 21, 2024 2:42 PM  
**To:** Luo, Yunsheng@DOT <[Yunsheng.Luo@dot.ca.gov](mailto:Yunsheng.Luo@dot.ca.gov)>  
**Cc:** Bibiana Sparks <[bsparks@acorn-env.com](mailto:bsparks@acorn-env.com)>  
**Subject:** Re: [EXTERNAL] Koi Nation of Northern California Shiloh Resort and Casino Project, EIS

**EXTERNAL EMAIL.** Links/attachments may not be safe.

Thanks for reaching out. I had previously responded to Melissa Hernandez, who had a similar question. We will continue to consider the comments that you submitted on the EA. Let me know if you'd like to discuss anything with our traffic consultants.

Sincerely;

Chad Broussard

Environmental Protection Specialist

Pacific Region, Bureau of Indian Affairs

2800 Cottage Way

Sacramento California 95825

Phone: 916-978-6165

Mobile: 916-261-6160

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**From:** Luo, Yunsheng@DOT <[Yunsheng.Luo@dot.ca.gov](mailto:Yunsheng.Luo@dot.ca.gov)>

**Sent:** Wednesday, August 21, 2024 1:59 PM

**To:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>

**Subject:** [EXTERNAL] Koi Nation of Northern California Shiloh Resort and Casino Project, EIS

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Good afternoon Chad,

Hope this email finds you well. This is Yunsheng Luo with Caltrans D4. We are reviewing the DEIS for this project. We had submitted the attached comment letter for

this project's EA. Would this comment be still considered during this round of review or we should submit a new letter?

Thank you!

**Yunsheng Luo**

*Senior Transportation Planner*

*Branch Chief, Local Development Review, Caltrans D4*

Please visit the [LDR webpage](#) for more information (review process and timeline)

Phone: 510-496-9285

Email: [Yunsheng.Luo@dot.ca.gov](mailto:Yunsheng.Luo@dot.ca.gov)

## California Department of Transportation

DISTRICT 4  
OFFICE OF REGIONAL AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



October 27, 2023

SCH #: 2022050599  
GTS #: 04-SON-2022-00839  
GTS ID: 26607  
Co/Rt/Pm: SON/101/26.981

Chad Broussard, Environmental Protection Specialist  
U.S. Department of the Interior  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way, Room W-2820,  
Sacramento, CA 95825

### **Re: Koi Nation of Northern California Shiloh Resort and Casino Project- Environmental Assessment (EA)**

Dear Chad Broussard:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Shiloh Resort and Casino Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system.

The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities. The following comments are based on our review of the September 2023 EA.

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#### **Project Understanding**

The proposed project is the acquisition of approximately 68.6-acres of fee land in unincorporated Sonoma County in trust by the Bureau of Indian Affairs upon which the Koi Nation would construct a casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure (Proposed Project). Water supply to serve the project is proposed through the use of on-site wells, and wastewater would be treated via a proposed on-site tertiary wastewater treatment plant (WWTP).

#### **Travel Demand Analysis**

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses



Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).

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cont.

The project Vehicle Miles Traveled (VMT) analysis and significance determination are undertaken in a manner consistent with the Office of Planning and Research's (OPR) Technical Advisory. Per the EA, this project is found to have a less than significant VMT impact, therefore working towards meeting the State's VMT reduction goals.

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Caltrans supports the recommendations put forth on page 6 of the Traffic Impact Study which outline improvements in pedestrian and bicycle infrastructure including crosswalks. Improving these essential elements will support both safety and accessibility for all users.

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### **Construction-Related Impacts**

Project work that requires movement of oversized or excessive load vehicles on State roadways requires a transportation permit that is issued by Caltrans. To apply, please visit Caltrans Transportation Permits ([link](#)).

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Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the State Transportation Network (STN).

### **Lead Agency**

As the Lead Agency, the Office of the Interior is responsible for all project mitigation, including any needed improvements to the STN. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

A3-5

### **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

A3-6

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Laurel Sears, Senior Transportation Planner, via [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov). For future early coordination opportunities or project referrals, please contact [LDR-D4@dot.ca.gov](mailto:LDR-D4@dot.ca.gov).

Chad Broussard, Environmental Protection Specialist  
October 27, 2023  
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Luo Yunsheng". The signature is fluid and cursive, with the first name "Luo" and the last name "Yunsheng" written in a single continuous stroke.

YUNSHENG LUO  
Branch Chief, Local Development Review  
Office of Regional and Community Planning

c: State Clearinghouse



## OFFICE OF THE GOVERNOR

August 16, 2024

Bryan Newland  
 Assistant Secretary – Indian Affairs  
 U.S. Department of the Interior  
 1849 C Street, N.W., MS-4660-MIB  
 Washington, D.C. 20240

Re: Shiloh Resort and Casino Project (Koi Nation of Northern California)  
Scotts Valley Casino and Tribal Housing Project (Scotts Valley Band of Pomo Indians)

Dear Assistant Secretary Newland:

On behalf of Governor Gavin Newsom, I write to urge the U.S. Department of the Interior not to move forward with the Shiloh Resort and Casino Project in Sonoma County and the Scotts Valley Casino and Tribal Housing Project in Solano County.

Governor Newsom and his Administration are grateful for the opportunity to share our perspective on these projects, as we are grateful to the Department for its thoughtful and constructive engagement in a wide range of other contexts. Our concerns about these specific projects, and their specific procedural pathway, should not be understood as a criticism of the Department's broader practice of taking land into trust for tribal governments—including, in appropriate cases, the Department's practice of (and time-tested procedures for) taking land into trust for gaming. The Governor recognizes the important role that this practice can play in supporting tribes' political sovereignty and economic self-sufficiency.

At the same time, however, caution is warranted when considering the potential expansion of gaming to land that is not currently eligible for gaming. This is particularly true in California, where the voters who legalized tribal gaming

A4-1

were promised that such gaming would remain geographically limited. This historical context underscores the importance of striking a careful balance between the potential benefits of expanded tribal gaming and its potential impacts on surrounding communities.

Federal law contains important safeguards that have previously helped the Department strike this delicate balance. As a starting point, federal law generally prohibits gaming on new land taken into trust for a tribe, unless the land is linked to the tribe's preexisting reservation. 25 U.S.C. § 2719(a). The principal exception to this rule carefully safeguards local interests (including the interests of local tribes), allowing gaming only where the Department has determined not only that such gaming would be in the best interest of the gaming tribe, but also that it "would not be detrimental to the surrounding community"—and only where the relevant state's governor concurs in that determination. 25 U.S.C. § 2719(b)(1)(A). Governor Newsom discharges this responsibility with the utmost care, and has previously exercised this power in a manner that supports both tribal self-sufficiency and the interests of surrounding communities. See, e.g., Letter from Governor Gavin Newsom to Bryan Newland, Assistant Secretary – Indian Affairs (June 13, 2022). The Governor appreciates the opportunity to engage in this important process, which appropriately balances the sovereign interests of states and tribes.

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cont.

Here, however, the Governor is concerned that the Department might depart from this familiar procedure and its important safeguards. In their current form, these two projects propose to rely on a different statutory provision that allows gaming on land taken into trust—without a two-part determination or the Governor's concurrence—as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). Make no mistake: the Governor recognizes the profound moral value of restoring a tribe's control over its aboriginal homeland. Care must be taken, however, to ensure that this "restored lands" exception—like all exceptions—remains within appropriate limits. The "restored lands" exception must not be construed so broadly as to "give restored tribes an open-ended license to game on newly acquired lands." *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015). On the contrary: "In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations." *Id.*

As explained below, neither of these two proposed projects fits within the limits of the “restored lands” exception.

As to the Shiloh Resort and Casino Project, the Koi Nation of Northern California lacks sufficient historical connection to the Windsor parcel to support the “restored lands” exception. The Windsor parcel does not fall within the Koi Nation’s aboriginal homeland: it lies approximately fifty miles, over winding mountain roads, from the Lake County region where (as the Koi Nation acknowledges) “the Koi Nation’s ancestors had villages and sacred sites along the shores of Clearlake since time immemorial.” Koi Nation’s Opening Brief at 11, *Koi Nation of Northern California v. City of Clearlake*, No. A169438 (Cal. Ct. App. Apr. 30, 2024). The assertion that the Koi Nation sometimes used trade routes or otherwise obtained resources near modern-day Windsor cannot change this basic fact: such transient uses do not show the kind of sustained, durable presence that would be necessary to support the view that the proposed project represents a “restoration.” Nor can it matter that individual members of the Koi Nation voluntarily resided in Sonoma County during the twentieth century. If the presence of individual members in modern times were conflated with a tribe’s control over its aboriginal homeland, for purposes of the “restored lands” exception, the exception could swallow the rule—which, as the Ninth Circuit has warned, it must not do. See *Redding Rancheria*, 776 F.3d at 711.

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The Scotts Valley Casino and Tribal Housing Project raises similar concerns. Like the Koi Nation, the Scotts Valley Band has its aboriginal homeland in modern-day Lake County. Like the Koi Nation, the Scotts Valley Band lacks the deep and enduring connection to the relevant territory (here, the Vallejo parcel) necessary to invoke the “restored lands” exception. And here again, the nearby presence of specific individuals, late in history, must not be conflated with the Tribe’s collective control over its aboriginal homeland. Nor can an 1851 treaty—apparently purporting to cede a vast swath of the North Bay, Sacramento Valley, and Clear Lake regions—produce a different result. Cf. *Scotts Valley Band of Pomo Indians v. Dep’t of the Interior*, 633 F. Supp. 3d 132, 168 (D.D.C. 2022). Nineteenth-century treaties were hardly models of respect for tribal sovereignty, and one cannot safely assume that they accurately reflect the boundaries of tribes’ aboriginal homelands.

The Department's interpretation of the "restored lands" exception further counsels against applying that exception to the Scotts Valley project. The Department has construed the "restored lands" exception to require one or more "modern connections" between the tribe and the land. 25 C.F.R. § 292.12(a). In the context of the Scotts Valley project, no such modern connection is apparent. On the contrary, the Environmental Assessment appears to recognize that the Scotts Valley Band has no presence in Solano County: the Environmental Assessment notes that the Band's members "span[] across Alameda, Contra Costa, Lake, Mendocino, and Sonoma Counties," while omitting any reference to Solano. Env'tl. Assessment at 1-2. Under the Department's view of the "restored lands" exception, embodied in its regulations, this lack of "modern connections" provides an additional reason not to use the exception to proceed with the Scotts Valley project.

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Nor can the so-called "Indian canon" stretch the limits of the "restored lands" exception to encompass these two projects. *Cf. Scotts Valley Band*, 633 F. Supp. 3d at 166–68. Although that canon sometimes allows statutory ambiguity to be resolved in favor of tribal sovereignty, it has no application where—as here—"all tribal interests are not aligned." *Redding Rancheria*, 776 F.3d at 713. "An interpretation of the restored lands exception that would benefit [a] particular tribe, by allowing unlimited use of restored land for gaming purposes, would not necessarily benefit other tribes also engaged in gaming." *Id.* Here, other local tribes—tribes who truly have called the relevant lands home since time immemorial—are steadfast in their opposition to these projects. "The canon should not apply in such circumstances." *Id.*

Finally, misplaced reliance on the "restored lands" exception, in the context of these two projects, also risks leading the Department astray under the National Environmental Policy Act. As explained above, the Windsor parcel and the Vallejo parcel fall far outside the aboriginal homelands of the Koi Nation and the Scotts Valley Band, respectively. In focusing on those two parcels, the Department has thus far failed to consider whether the purposes of the proposed projects could be served by sites within the Tribes' aboriginal homelands—which is to say that the Department has, thus far, failed to adequately consider reasonable geographic alternatives as required by NEPA. See *'Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097–1101 (9th Cir. 2006).

A4-2

Governor Newsom has deep respect for tribal sovereignty, and he has been proud to restore tribes' control over lands from which they have been dispossessed. Here, however, he is concerned by the prospect that the Department might invoke the "restored lands" exception to support projects that are focused less on restoring the relevant tribes' aboriginal homelands, and more on creating new gaming operations in desirable markets. If the Department were to embrace this view of the "restored lands" exception, it is far from obvious that the "exception" would retain a clear and durable limiting principle. This prospect is particularly troubling in California, where the voters who approved tribal gaming were promised that such gaming would remain carefully limited—including by federal law and its geographic restrictions on the categories of land open to gaming.

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Governor Newsom is committed to working with tribal governments, and the Department, to support tribes' self-determination and economic development. In appropriate cases, the Governor stands ready to exercise his authority, under federal law, to concur in the Department's decision to take land into trust for gaming. Here, however, he is concerned that these specific projects are proceeding in a manner that would sidestep the State, ignore the concerns of tribal governments and other local communities, and stretch the "restored lands" exception beyond its legal limits—while failing to adequately consider whether there might be a better way. On behalf of the Governor, I urge the Department not to move forward with these proposed projects.

Sincerely,



Matthew Lee  
Senior Advisor for Tribal Negotiations &  
Deputy Legal Affairs Secretary  
Office of Governor Gavin Newsom

Cc: Amy Dutschke, Regional Director for the Pacific Region, Bureau of Indian Affairs



SANTA ROSA PLAIN  
**GROUNDWATER**  
 SUSTAINABILITY AGENCY

August 20, 2024

Amy Dutschke, Regional Director  
 Chad Broussard, Environmental Protection Specialist  
 Bureau of Indian Affairs, Pacific Regional Office  
 2800 Cottage Way, Room W-2820  
 Sacramento, CA 95825

**RE: Comments on Koi Nation of Northern California Shiloh Resort and Casino Project Draft Environmental Impact Statement**

This letter presents comments of the Santa Rosa Plain Groundwater Sustainability Agency (GSA). We appreciate the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the Koi Nation of Northern California Shiloh Resort and Casino Project (Proposed Project). This review is in addition to prior input provided in a comment letter on the Environmental Assessment (EA) published in September 2023. The November 13, 2023 GSA comment letter is attached and incorporated here by reference. Key points of prior comments are summarized below:

- Evaluate the impact of groundwater pumping from the Proposed Project on sustainability indicators defined in the Groundwater Sustainability Plan.
- Analyze potential impacts on groundwater dependent ecosystems and biological resources.
- Conduct a quantitative analysis of potential well interference on existing and reasonably foreseeable future nearby water wells.

The GSA appreciates the supplemental water resource analyses provided in the DEIS Appendix D-4, *Supplemental Groundwater Resources Impact Assessment (GRIA)*. The additional analysis addresses some concerns raised by the GSA. In particular, Section 6.2, Consistency with Local Groundwater Sustainability Plan (GSP), provides information needed to evaluate potential Project compatibility with the approved Santa Rosa Plain GSP. However, the modeling approach, some assumptions, and select data input presented in

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 City of Cotati, Chair

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 Independent Water  
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Mark Stapp  
 City of Santa Rosa

Neysa Hinton  
 City of Sebastopol

Chris Coursey  
 County of Sonoma

A5-1



Appendix D-4 may result in projected groundwater impacts from the Proposed Project being underestimated. Our comments on the GRIA, as detailed below, focus on the approaches to modeling of potential impacts and evaluation of interconnected surface water (ISW) and groundwater-dependent ecosystems (GDEs).

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cont.

### **Modeling Approach Comments**

1. The modeling approach uses the 2014 version of the SRPHM rather than the updated version (SRPHM 1.0+) from the GSP as the underlying model architecture for the impact analysis (described in Section 5 of the GRIA). Changes the GSA made to the original U.S. Geological Survey (USGS) SRPHM model for the GSP are documented in Appendix 3-C of the GSP ([https://santarosaplainingroundwater.org/wp-content/uploads/3-C- SRPHM-Updates-Appendix -3-C\\_ada-1.pdf](https://santarosaplainingroundwater.org/wp-content/uploads/3-C- SRPHM-Updates-Appendix -3-C_ada-1.pdf)). The Final EIS should evaluate whether the changes associated with the most recent version of the model would affect the GRIA findings. The SRPHM 1.0+ model files are available from the GSA by request for use in any further analysis to support this EIS. Some of the key and significant changes the GSA made to the original USGS SRPHM model for the GSP were:
  - Revised approach to simulating rural residential water demands;
  - Revised agricultural pumping method and assumptions, including changes in assumptions for crop coefficients and changes in how recycled water is applied;
  - Modified climate representation for precipitation and evapotranspiration (ET);
  - Inclusion of septic return flows; and
  - Further temporal extension of the model through December 2018.
2. The parent model used for the GRIA includes only the northwest corner of the USGS SRPHM (as shown in Figure 11 of Appendix D-4) and applies constant-head boundary conditions to all horizontal boundaries of the parent model. The selection of the domain for the parent model is not explained or justified. Specifically, the constant-head boundary conditions provide an unlimited source of water, which could affect the drawdown estimates should the simulated drawdowns reach these boundaries. The Final EIS should include an evaluation of whether the simulated results from the parent model differ from simulated results from the full USGS model domain and whether any discrepancies would affect the GRIA findings.
3. The vertical layering of the child model grid was modified to include a 20-foot-thick aquitard layer between Layer 2 and Layer 3 of the parent model. The inclusion of the aquitard layer at this depth within the model likely has a significant impact on the simulated drawdown analysis used to evaluate potential impacts of Proposed Project pumping to domestic wells and Interconnected Surface Water (ISW) and Groundwater Dependent Ecosystems (GDEs). The GRIA states that the aquitard layer was added to represent the presence of a consistent confining layer at this depth based on an evaluation of local boring logs from within the child model area. However, lithologic logs

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A5-3

A5-4

from only two borings (for the Town of Windsor’s Esposti and Bluebird wells located approximately 1,000 and 10,000 feet away from the project) are referenced in the document. Given the highly heterogenous nature of the alluvial sediments in the area and likely impact to simulated drawdown, documentation of other lithologic logs from the projected area of drawdown associated with the proposed project indicating the consistent presence of a continuous aquitard at this depth should be provided to justify the inclusion of the aquitard layer in the child model.

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cont.

4. The GRIA implies that assumed climate for the 50-year simulation is based on those used by the USGS. However, the USGS used 30-year climate scenarios. The future climate scenario should be thoroughly described (e.g., source, precipitation, and ET characteristics, etc.) and how the scenario was incorporated into the model should be described. Additionally, the forecast scenario used for the GRIA does not include future potential increases in pumping from nearby groundwater users other than the Tribe and the Town of Windsor. The 50-year projections simulated in the GSP using SRPHM 1.0+, which incorporate assumptions for changes in future municipal, agricultural, and rural residential groundwater extraction/land use should be evaluated and considered to determine whether these assumptions would alter the findings of the GRIA.
5. A modeling approach should also be used in the GRIA to assess projected impacts on groundwater recharge from the Proposed Project by evaluating simulated recharge scenarios that model existing conditions and proposed future conditions with the Proposed Project.

A5-5

A5-6

***Interconnected Surface Water and Groundwater Dependent Ecosystem Comments***

1. **The GRIA states that** *“the documented depth to the regional water table indicates it is unlikely that aquatic resources identified in the vicinity of the Site are groundwater connected, except for a possible perennial reach of Pruitt Creek located northeast of the Site at the foot of the Mayacamas.”* **The evaluation of impacts to ISW and GDEs should** incorporate the mapping of interconnected surface water documented in the GSP (Section 3.2.6.2), which indicates that other segments of Pruitt Creek, including a reach on the Proposed Project Site is interpreted as interconnected.
2. The Final EIS should provide modeled streamflow during the dry season (July, August, and September) along interconnected surface water reaches under existing and proposed conditions. Alterations in flow relative to no pumping conditions should be used to assess if cumulative or project specific impacts to interconnected surface water are expected. Given that modeled drawdown presented in the GRIA extends below perennial portions of Pruitt, Pool, and Mark West Creek, it is recommended that reductions in flow be estimated for all potentially impacted salmonid bearing streams.

A5-7

A5-8

### **Minor Comments**

Text and graphics in the GRIA contain several minor omissions or errors as follows:

1. **“Drawdown” shown in figures (e.g. fig. 20) is not drawdown. Figure 20 shows simulated hydraulic head.**
2. Drawdown contours in many of the Figures 14 and 16 are not labelled.

A5-9

### **Conclusions**

The GSA encourages the Koi Nation of Northern California (Tribe) to maximize the onsite use of recycled water to help offset the need to pump groundwater from the Subbasin, to the fullest extent feasible. The Tribe should also consider supporting and funding projects that reduce groundwater demand and supplement groundwater supplies through recharge enhancement to offset any projected water demands associated with the Proposed Project which cannot be met through recycled water use. Applicable projects identified within the GSP and currently being pursued by the GSA include a Water-Use Efficiency (WUE) Assessment and Pilot Program for groundwater users and planning and implementation of managed aquifer recharge projects.

A5-10

The GSA supports the Tribe’s efforts to implement a monitoring plan to evaluate actual groundwater impacts to shallow domestic wells and groundwater dependent ecosystems from the Proposed Project and encourage the Tribe to share any data obtained during project development and operation that would support filling data gaps identified in the GSP or support regional groundwater resiliency and sustainability actions.

The GSA requests that the Bureau of Indian Affairs consider the above comments, questions, and recommendations. The GSA **appreciates the opportunity to provide these comments and welcomes a collaborative relationship with the Tribe on the sustainable management of this shared and precious resource to the benefit of the Tribe and the local community.**

If you have any questions or **concerns about the GSA’s input, or would like to meet to discuss,** please contact me at (707) 243-8555 or [arodgers@santarosaplainingroundwater.org](mailto:arodgers@santarosaplainingroundwater.org).

Respectfully,



Andy Rodgers, Administrator  
**Santa Rosa Plain Groundwater Sustainability Agency**

Attachment - SRPGSA Comment Letter regarding Koi Nation Shiloh Resort and Casino Project Environmental Assessment (November 13, 2023)



SANTA ROSA PLAIN  
**GROUNDWATER**  
SUSTAINABILITY AGENCY

November 13, 2023

Amy Dutschke, Regional Director  
Chad Broussard, Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

**RE: Comments on Koi Nation of Northern California Shiloh Resort and Casino Project Environmental Assessment**

**This letter presents comments on behalf of the members of the Santa Rosa Plain Groundwater Sustainability Agency (GSA). We appreciate the opportunity to comment on the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project (Proposed Project).**

**The Proposed Project would receive their water supply from on-site wells located within the Santa Rosa Plain Groundwater Subbasin (Subbasin) and recycled water from on-site wastewater treatment facilities.**

**The GSA is responsible for sustainably managing groundwater resources within the Subbasin and has adopted the Santa Rosa Plain Groundwater Sustainability Plain (GSP)<sup>1</sup>, which was approved by the California Department of Water Resources in January 2023. The GSP establishes a standard for sustainability of groundwater management and use and determines how the Subbasin will achieve this standard by 2042. Available information from the approved GSP and the Water Year 2022 Annual Report<sup>2</sup> should be reviewed and incorporated into relevant analyses performed for the EA. Specific areas of analyses which the EA should focus on include:**

- **Evaluating the impact of groundwater pumping from the Proposed Project on sustainability indicators defined in the GSP, in particular chronic lowering of groundwater levels, groundwater storage, depletion of interconnected surface water, and water quality. The GSP includes**

Board of Directors

Susan Harvey  
City of Cotati, Chair

Emily Sanborn  
City of Rohnert Park

Joe Dutton  
Gold Ridge RCD

Lynda Hopkins  
Sonoma Water

Evan Jacobs  
Independent Water  
Systems

Sam Salmon  
Town of Windsor

John Nagle  
Sonoma RCD

Mark Stapp  
City of Santa Rosa

Neysa Hinton  
City of Sebastopol

Chris Coursey  
County of Sonoma

A5-11

<sup>1</sup> Sonoma Water, 2021. Groundwater Sustainability Plan, Santa Rosa Plain Groundwater Subbasin. Prepared for the Santa Rosa Plain Groundwater Sustainability Agency. <https://santarosaplainingroundwater.org/gsp/>

<sup>2</sup> Sonoma Water, 2023. Water Year 2022 Annual Report, Santa Rosa Plain Groundwater Subbasin. Prepared for the Santa Rosa Plain Groundwater Sustainability Agency. March <https://santarosaplainingroundwater.org/annual-reports/>

sustainable management criteria (SMC) for each of these sustainability indicators, which should be compared with projected groundwater impacts from the Proposed Project in order to determine whether cumulative impacts to groundwater would be significant.

- The EA should include an analysis of potential impacts on groundwater dependent ecosystems, as well as an analysis of whether any of the species identified in the Biological Resources section of the EA are considered part of a groundwater-dependent ecosystem and include mitigation measures to the extent feasible.
- The EA should conduct a quantitative analysis of potential well interference effects associated with future groundwater pumping on existing and reasonably foreseeable future nearby water wells. The Town of Windsor’s Water Mater Plan identifies increasing groundwater extraction from the Esposti Park wells. The Proposed Project should evaluate the cumulative impact of the Town’s increased extraction.

The EA should also describe how “local vineyard irrigation sources containing typical irrigation rates for Windsor, Carneros, Napa, and Sonoma County were consulted” to derive the estimated vineyard irrigation rate of 0.317 AFY/acre used in Appendix C of the EA, as this is appreciably lower than the 0.6 AFY/acre assumption used by the GSA and County of Sonoma.

Should the borehole for any future new on-site water-supply wells be drilled across separate and distinct aquifer zones, please limit communication between shallow and deep aquifer systems by limiting the well screen interval and gravel pack to a singular aquifer system and using solid casing and annular seals across any identified significant and laterally extensive aquitards, consistent with groundwater management best practices.

The GSA encourages the Koi Nation of Northern California (Tribe) to maximize the onsite use of recycled water to help offset the need to pump groundwater from the Subbasin, to the fullest extent feasible. The Tribe should also consider funding projects that reduce groundwater demand and supplement groundwater supplies through recharge enhancement to offset any projected water demands associated with the Project which cannot be met through recycled water deliveries. Applicable projects identified within the GSP and currently being pursued by the GSA include a Water-Use Efficiency (WUE) Assessment and Pilot Program for groundwater users and planning and implementation of Aquifer Storage and Recovery (ASR) projects.

We encourage the Tribe to share any data obtained during project development and operation that would support filling data gaps identified in the GSP,

A5-11  
cont.

including any geophysical logs, water quality data, pump test results, meter readings, and ongoing groundwater level and usage measurements.

The GSA requests that the Bureau of Indian Affairs consider the above comments, questions, and recommendations. The **GSA appreciates the opportunity to provide these comments and welcomes a collaborative relationship with the Tribe on the sustainable management of this shared and precious resource to the benefit of the Tribe and the local community.**

If you have any questions or concerns about the GSA's input, or would like to meet to discuss, please contact me at (707) 243-8555 or [arodgers@santarosaplaingroundwater.org](mailto:arodgers@santarosaplaingroundwater.org).

Respectfully,



Andy Rodgers, Administrator  
**Santa Rosa Plain Groundwater Sustainability Agency**

A5-11  
cont.



August 20, 2024

The Honorable Deb Haaland  
Secretary, U.S. Department of Interior  
1849 C Street, NW  
Washington DC 20240

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

**RE: Koi Nation of Northern California Proposed Casino Resort**

We the undersigned state legislators write to express our opposition to the Koi Nation's proposal to acquire 68 acres of land into trust for a casino in Sonoma County. As representatives of numerous tribes in this part of Northern California, we have taken great pride in working with our constituents and statewide tribal nations to protect cultural resources and provide opportunities for economic development.

When we seek wisdom on issues of tribal rights, our consultation begins with tribes that have the closest ancestral ties to the lands in question. While it is our hope that the members of the Koi Nation find opportunities to overcome our state and nation's devastating history with regard to our treatment of indigenous people, it is also our responsibility to weigh their proposals in the context of their neighbors, including tribal nations and communities, which may be impacted. In this instance, it does not appear that the site in the Koi proposal satisfies the federal legal requirement of having a "significant historical connection" to ancestral lands, nor evidence of cultural ties such as ancestral villages, burial sites, or subsistence use. Additionally, the Koi Nation's ancestral homelands are over 50 miles away in the Lower Lake area of Lake County.

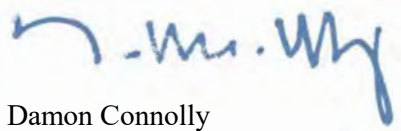
Several of our constituent tribes and those in neighboring areas that are indigenous to Sonoma County, including the Federated Indians of Graton Rancheria, Dry Creek Rancheria Band of Pomo Indians, Cloverdale Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Lytton Rancheria, oppose both the proposed project and the Koi Nation's ancestral claims to the land. The Sonoma County Board of Supervisors have also passed a resolution opposing the project. Lastly, neighbors of the proposed site have expressed serious concern that its location in a residential neighborhood is not only inappropriate but could negatively impact nearby local schools and residences.

It is with great respect, and regret, that we express our opposition to the Koi proposal and their application to acquire this land in trust and build the proposed casino.

Should you have any questions, please feel free to reach out to our offices directly.

A6-1

Sincerely,



Damon Connolly  
Assemblymember, 12th District



Cecilia Aguiar-Curry  
Assembly Majority Leader, 4th District



Evan Low  
Assemblymember, 26th District



Marc Berman  
Assemblymember, 23rd District



Gail Pellerin  
Assemblymember, 28th District



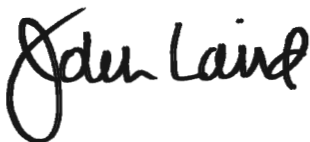
Lori D. Wilson  
Assemblymember, 11th District



Tim Grayson  
Assemblymember, 15th District



Josh Becker  
Senator, District 13



John Laird  
Senator, District 17



**REGION 9**

SAN FRANCISCO, CA 94105

August 23, 2024

**Chad Broussard**  
Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way, Room W-2820  
Sacramento, California 95825

**Subject: EPA Comments on the Koi Nation of Northern California Shiloh Resort and Casino Project Draft Environmental Impact Statement**

Dear Chad Broussard:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA. It requires EPA to review and comment on the environmental impact of any proposed federal action subject to NEPA's environmental impact statement requirements, and to make its comments public.

The Draft Environmental Impact Statement (DEIS) evaluates the potential environmental impacts associated with the Koi Nation Shiloh Resort and Casino Project, which includes the acquisition by the U.S. Bureau of Indian Affairs (BIA) of a 68.6-acre property into federal trust status for the benefit of the Koi Nation of Northern California for gaming purposes.

The EPA is a cooperating agency on the project and provided comments on the Administrative Draft Environmental Analysis (EA) on May 15, 2023, and on the Draft EA on November 7, 2023. BIA chose to prepare an EIS to further evaluate project impacts. We are attaching our comments on the Draft EA for your further consideration, since BIA has not yet responded to those comments. In our Draft EA comments, we highlighted the need for maintaining pre-project hydrology, especially since the mobile home communities downstream of the project site, which lie in the 100-year floodplain, already experience regular flooding. We also note that if the project is approved, the EPA would be the permitting agency for the onsite wastewater treatment plant's National Pollutant Discharge Elimination System (NPDES) permit authorizing the discharge of treated effluent into Pruitt Creek. With that in mind, we appreciate BIA's early consultation efforts thus far.

**Review Summary**

EPA identified public health, welfare, or environmental quality concerns in the Draft EA that we recommend be addressed in the Final EIS. Specifically, we have concerns regarding the effectiveness of

the proposal to mitigate potential impacts to the drinking water supply of nearby residents. See our recommendations below.

A7-1  
cont.

**Well Interference Drawdown Mitigation**

In our comments on the Draft EA, we requested additional information on the well compensation program should nearby residential well users be impacted by the project’s groundwater pumping. The DEIS contains an expanded well interference drawdown mitigation proposal which indicates that should the Town of Windsor develop and operate two new municipal potable water supply wells at Esposti Park, located close to the project site, the Tribe shall participate in the development and implementation of an interference drawdown monitoring and mitigation plan, and shall pay a share of the mitigation costs that is proportional to its contribution to the shallow aquifer impact being mitigated. We have concerns regarding implementation of this plan, due to its complexity and required verifications. For example, well owners may submit claims for diminished well capacity or increased well maintenance costs if caused by the Project. The claims would be evaluated, and a determination would be made as to whether the impact is a result of the project. Attributing this effect to the project may be difficult, and it is unclear who would make the required verification. Additionally, it appears the requirements to participate in the program could be overly burdensome for residents in terms of the time and/or expertise required for these steps. We recommend further clarification and response to our comments in the Final EIS on the implementation of this program, including the difficulty in attributing the well impacts to the project. Consider contracting with a third-party should this mitigation be adopted.

A7-2

The EPA appreciates the opportunity to review this DEIS for the Koi Nation Shiloh Resort and Casino Project in Windsor. Should you have any questions regarding this letter, please contact me at [donez.francisco@epa.gov](mailto:donez.francisco@epa.gov), or contact Laney Gordon, the lead reviewer for this project, at (415) 972-3562 or [gordon.laney@epa.gov](mailto:gordon.laney@epa.gov).

Sincerely,

**FRANCISCO  
DONEZ**

Francisco Dóñez  
Manager

Environmental Review Section 2

Digitally signed by  
FRANCISCO DONEZ  
Date: 2024.08.23 14:31:52  
-07'00'

Enclosure: EPA’s detailed comments on the Draft EA, November 7, 2023

cc: Darin Beltran, Chairman, Koi Nation of Northern California

### **Stormwater Management/Climate Change**

The proposed action would add over 35 acres of new impervious surfaces. We appreciate that the project design largely avoids the 100-year and 500-year floodplains on the site. We also appreciate that the proposed action includes green infrastructure and low impact development techniques including a detention basin and bioswales in the project design, as well as a green living roof. We recommend retaining these features in the final design.

The DEA indicates that the predevelopment hydrology would be maintained on site via the stormwater drainage system. It is vital that the project not contribute additional stormwater runoff because the residential properties downstream of the site lie in the 100-year floodplain, and there are press reports indicating that this area already experiences regular flooding.<sup>1</sup> While the DEA indicates that the stormwater drainage system under Alternative A would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event (p. 2-9), it is not clear whether the detention basin sizing and outlet piping that will meter the flow into the creek to pre-development levels would be designed to accommodate the precipitation extremes being experienced under climate change. These precipitation patterns are characterized by rainfall amounts that may be similar to historical amounts but occur all at once, i.e., are more intense. Additionally, we note that stormwater features require regular maintenance to be effective.

A7-3

**Recommendation:** In the Final EA, clarify whether and how increased precipitation intensity occurring under climate change has been accommodated in the drainage plans and if pre-development hydrology would be maintained considering these larger flows. Ensure all low impact development techniques are incorporated in the final design. Consider the reduced intensity Alternative B that would decrease the amount of new impervious surfaces by 8.5 acres and would allow more infiltration on the site. If Alternative A is selected, we recommend the entire 100 and 500-yr floodplain be avoided if possible, and that porous pavement be considered for the surface parking lot and roadways. We recommend consulting EPA's new [Bioretention Design Handbook](#)<sup>2</sup> which includes information about the latest approaches and lessons learned for bioretention design, construction, inspection, and operation and maintenance. Include the development of maintenance contracts in the mitigation measures to ensure these features are maintained for maximum effectiveness. Update the climate change discussion on page 3-137 to include flooding as a future effect.

### **Clean Water Act (CWA) Section 402 permitting for the Discharge of Wastewater from the Wastewater Treatment Plant**

As the DEA notes, the EPA is the regulatory authority<sup>3</sup> under the Clean Water Act for any discharge from a point source to a water of the U.S. occurring on Tribal Trust Lands in California. Several of the

A7-4

<sup>1</sup> See <https://www.pressdemocrat.com/article/news/mobile-home-park-north-of-santa-rosa-flooded-as-atmospheric-river-deluges-s/>

<sup>2</sup> Available at [https://www.epa.gov/system/files/documents/2023-11/bioretentiondesignhandbook\\_plainnov2023.pdf](https://www.epa.gov/system/files/documents/2023-11/bioretentiondesignhandbook_plainnov2023.pdf)

<sup>3</sup> There are 2 instances in Appendix C on p. 2-19 and p. 6-13 that reference the Regional Water Quality Control Board issuing the NPDES permit. If this document has not been finalized, we recommend correcting this for the Final EA.

alternatives under consideration would require authorization through a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of treated wastewater. The Tribe would be responsible for obtaining an NPDES permit from EPA Region 9 prior to the discharge of treated wastewater.

The BIA consulted with the EPA on this permit, and we explained that any permit issued must ensure the discharge meets Water Quality Standards for the State of California at the point where the discharge enters state waters, as established in the Water Quality Control Plan for the North Coast Region (Basin Plan). The Basin Plan requires all discharges to be treated to a tertiary level of treatment, prohibits discharges greater than 1% of the receiving water flow, and prohibits the discharge of treated domestic wastewater to the Russian River or its tributaries from May 15 to September 30. The DEA evaluates the feasibility of meeting the Basin Plan's 1% discharge flow requirement using flow data from USGS gauging station at Mark West Creek (USGS #11466800). We note that the discharge volume relative to the flow of the direct receiving water, Pruitt Creek, will need to be assessed to determine whether the Basin Plan's 1% discharge flow requirement can be met.

Additionally, the EPA must ensure that any discharge complies with the provisions of 40 CFR § 122.4(i), which prohibits the issuance of a permit to a new discharge if the discharge from its construction or operation would cause or contribute to the violation of water quality standards. As noted in the EA, downstream waterbodies are listed as impaired for sedimentation/siltation, temperature, indicator bacteria, dissolved oxygen, mercury, and phosphorus on the CWA § 303(d) list for California. During our conversation with Acorn consultants on Friday May 12, 2023, we highlighted the uncertainty and complexity of permitting in this watershed. The EPA has not received a permit application, so cannot predetermine the conditions that would allow the EPA to issue a discharge permit. If the EPA receives a permit application, we would evaluate the proposed discharge and assess its compliance with CWA requirements, including compliance with the water quality standards of the Basin Plan at the Tribe's boundary. Maximizing water reuse will likely be an important element of a permit.

**Recommendation:** We encourage the Tribe to consult early with EPA's Water Division regarding the permit application process. Sunny Elliott is EPA's NPDES contact for this project and can be reached at 415-972-3840 or [elliott.sunny@epa.gov](mailto:elliott.sunny@epa.gov) with any questions. If the EPA develops a draft permit, there will be an opportunity for public comment as part of the permitting process.

#### **CWA Section 404 permit for discharge of fill into waters of the U.S**

We commend the BIA and the Tribe for designing clear-span bridges over Pruitt Creek, which bisects the site, as well as directional drilling for water and sewage pipelines beneath the Creek. We note that the pipelines and outfall structures for treated effluent discharge and stormwater drainage that would be developed within the riparian corridor and bed, bank, and channel of Pruitt Creek may require CWA Section 404 Nationwide permits from the Army Corps of Engineers, likely NWP #7 and 43. In order to qualify for the use of a NWP, prospective permittees must comply with all of the terms, general conditions and regional conditions of the NWP, including requirements for the submittal of a pre-construction notification.

**Recommendation:** Consult with the Army Corps of Engineers regarding the needed CWA Section 404 permits. Update the Final EA regarding potential applicability of Nationwide 404

A7-4  
cont.

A7-5

permits for the pipeline and outfall structures in Pruitt Creek and identify the pre-construction notifications that would be required.

A7-5  
cont.

**Groundwater impacts**

The project includes future site-specific monitoring to confirm the hydraulic separation between the upper and lower aquifers underlying the site to ensure that there would be no significant impacts to surrounding wells, including the Town of Windsor’s Esposti Park irrigation and standby potable wells (p. 3-19). Groundwater monitoring would occur at least one year before public opening, and a neighboring well impact compensation program is included to compensate neighboring well owners for impacts to their well if the project pumping well causes interference drawdown. It appears that wells within 1-mile of the project site would be included. It is important that recycled water from the on-site WWTP be utilized for toilet/urinal flushing, landscape irrigation, vineyard irrigation, cooling tower make-up and other approved non-potable uses to reduce groundwater water demand.

A7-6

***Recommendation:*** Identify the well users that will be included in the well impact compensation program, preferably with a map. We agree with the recommendation that the Tribe contract with a third party, such as Sonoma County, to oversee the well impact compensation program and recommend this be committed to in the mitigation measures.

**Drinking Water System**

The project proposes to develop a new on-site potable water system consisting of up to two water supply wells, a water treatment plant, water storage tank, and water pump station. This drinking water system would provisionally be classified as a Non-Transient/Non-Community public water system<sup>4</sup> under the Safe Drinking Water Act and would be subject to requirements for NTNC systems.

A7-7

***Recommendation:*** Consult with the EPA early in the process of setting up the public drinking water system to conduct baseline monitoring, and submit the results to EPA prior to public water use. The EPA point of contact is Jason Gambatese. Jason can be reached at (415) 972-3571 or gambatese.jason@epa.gov.

**Climate Impacts – Fire and Heat**

The project site is in a designated high wildfire risk area and is located about 0.3 miles from the site of the 2017 Tubbs and Kincade wildfires. We appreciate the various wildfire resiliency elements in the project design. The project includes fire-resistant building materials, ignition-resistant landscaping, defensible space efforts, and evacuation planning. We recommend these be retained in the final design.

We further recommend considering extreme heat in planning and design. The DEA states only that on-site air conditioning would lessen the effects of increasing temperatures and frequency of extreme heat days (p. 3-140). Heat mitigation strategies can be integrated into project designs and can include outside areas (e.g., cool surfaces and pavements that store less heat than traditional pavements) as well as providing a certain amount of shading through either trees or built shade structures. Orienting buildings with local climate and geographic conditions in mind can avoid solar heat gain and decrease

A7-8

<sup>4</sup> A public water system is defined as any entity serving water for the purposes of human consumption to 15 or more active service connections or 25 or more people at least 60 days out of the year.

energy usage. On building sides with high solar exposure, improvements such as shade screens, window glazing, and smaller windows on the east and west sides can help shade and keep the inside of buildings cooler. The proposed green roof on the casino building and parking structure are also effective cooling features. We note that the project does not include photovoltaics; we recommend they be included on the other rooftops if design permits. If Alternative A is selected, consider providing shading over the surface parking lot by incorporating carports with photovoltaics, which are increasingly common project features that minimize heat impacts to drivers. We appreciate that the plan includes EV charging stations for some vehicles.

A7-8  
cont.

**Recommendation:** We recommend integrating the heat mitigation strategies, identified above, in the site design. Include photovoltaics as part of the project.

### **Air Quality**

We appreciate the clarification in the DEA that the Tribe would apply for a New Source Review permit under the Clean Air Act for the backup generators. We recommend including this information for the other alternatives, if applicable. Information about Tribal NSR is available at <https://www.epa.gov/caa-permitting/about-tribal-minor-new-source-review-permitting-region-9>. The EPA is the permitting authority for NSR permits on tribal lands.

A7-9

**Recommendation:** Update the NSR discussion for all alternatives in the Final EA. For assistance in Tribal NSR permitting, please contact EPA Region 9's Air Permit Office at R9AirPermits@epa.gov.

### **Biological Resources**

The DEA states that the BIA will initiate informal consultation with the U.S. Fish and Wildlife Service regarding the potential for the project alternatives to impact the California red-legged frog in accordance with the federal Endangered Species Act, and the Biological and Essential Fish Habitat Assessment will be submitted to the National Oceanic and Atmospheric Administration Fisheries for review and concurrence (p. 5-1). It is not clear why these consultations have not yet occurred.

A7-10

**Recommendation:** Provide an update on the consultations with the USFWS and NOAA Fisheries. Include the input from these agencies in the impact assessment and mitigation measures in the Final EA.



Sent via Email  
August 25, 2024

Amy Dutschke, Regional Director  
2800 Cottage Way  
Sacramento, CA 95825

SUBJECT: EIS Comments Koi Nation Shiloh Resort and Casino Project  
Town of Windsor Comments on Draft Environmental Impact  
Statement, Released July 2024

Dear Ms. Dutschke:

The Town of Windsor, which includes the Windsor Water District, hereby submits comprehensive comments on the Draft Environmental Impact Statement (DEIS) for the Koi Nation Shiloh Resort and Casino Project. The Town's analysis reveals that the DEIS, as currently presented, is inadequate in addressing numerous significant environmental and community impacts. Many of these impacts were noted in the Town's response to the Environmental Assessment, dated October 19, 2023, and remain either unmitigated or insufficiently mitigated, resulting in potentially severe consequences for the environment and the residents of Windsor. Consequently, the Town strongly urges the Bureau of Indian Affairs to reconsider the project and endorse the "no project" alternative. Specific concerns that the Town has with the DEIS are detailed as follows:

A8-1

**1. Water Resources**

The following comments are provided by Windsor Water District staff who have knowledge and expertise regarding the Town's and the region's water and sewer supply, infrastructure, and long-range planning. The DEIS presents significant shortcomings in addressing the potential impacts of the Project on water resources, including groundwater, surface water, and floodplain management. The Town of Windsor has identified numerous critical deficiencies that, if left unaddressed, could lead to severe and unmitigated adverse impacts on the region's water resources, with potentially long-lasting consequences.

A8-2

**Groundwater Resources**

Groundwater resources are particularly vulnerable to the impacts of this large-scale development, and the DEIS does not adequately protect these resources.

• **Groundwater Extraction and Well Interference:**

- The DEIS proposes extracting significant amounts of groundwater to meet the water demands of the resort and casino. However, it fails to thoroughly analyze the potential for well interference with existing wells, including the Town of Windsor's Esposti Supply well. The Esposti well is a potable supply well, and any reduction in its yield or quality due to the project's groundwater pumping could severely impact the Town's public drinking water supply. The Town would like to emphasize that this is not agricultural irrigation or a business's water supply where the value of the water can be quantified. Reduction of yield or quality of potable drinking



**Town of Windsor**  
9291 Old Redwood Hwy  
P.O. Box 100  
Windsor, CA 95492

**Mayor**  
Rosa Reynoza

**Vice Mayor, District 4**  
Tanya Potter

**Councilmember District 1**  
Mike Wall

**Councilmember District 3**  
Debora Fudge

**Councilmember District 2**  
Sam Salmon

**Town Manager**  
Jon Davis

water supply will have significant adverse health impacts to surrounding residents.

- The DEIS's proposed mitigation, which involves compensating owners of nearby wells that become unusable within five years of project pumping, is entirely inadequate. Compensation does not prevent the harm to the availability and quality of public drinking water, and it fails to address the immediate and long-term availability of groundwater resources. The Town insists that a comprehensive well interference study be conducted before any groundwater extraction begins, and that stronger mitigation measures be put in place, such as limiting groundwater extraction rates or finding alternative water sources.

A8-2  
cont.

- **Monitoring and Reporting:**

- The DEIS suggests a Groundwater Dependent Ecosystem (GDE) Verification Monitoring Workplan, which is a positive step. However, the annual monitoring report should not be limited to submission to the Bureau of Indian Affairs (BIA) alone. It is critical that these reports also be submitted to the Groundwater Sustainability Agency (GSA) and the Town of Windsor to ensure all stakeholders have access to the data and can respond to any emerging issues.

A8-3

- **Sustainability and Financial Contributions:**

- The DEIS does not address whether the project plans to financially contribute to the regional Groundwater Sustainability Agency. The GSA is responsible for ensuring groundwater is managed sustainably, and all significant extractors should contribute to the regional efforts. The Town of Windsor insists that the project must contribute financially to the GSA at the regional standard rate for extracted groundwater to ensure the long-term sustainability of the region's water resources.

A8-4

### **Surface Water Resources**

The DEIS inadequately addresses the impacts on surface water resources, particularly concerning recycled water use, surface water discharge, and stormwater management.

- **Recycled Water Use and Title 22 Compliance:**

- The DEIS proposes using recycled water for various purposes, including irrigation. However, it fails to address the restrictions imposed by Title 22 of the California Code of Regulations, which prohibits the use of recycled water in buildings where food preparation occurs. This significant oversight could lead to violations of state regulations and potential public health risks.
- Additionally, the DEIS does not adequately consider the feasibility of using recycled water to provide offsite irrigation using the Town's recycled water infrastructure. Such a collaboration could reduce the project's demand on local water supplies and offer a more sustainable solution. The Town recommends that the DEIS be revised to explore this option thoroughly.

A8-5

- **Surface Water Discharge and Monitoring:**

- The DEIS proposes monitoring surface water flows at Mark West Creek, a location significantly downstream from the point of discharge on Pruitt Creek. This approach is flawed because it does

A8-6



not accurately reflect the conditions at the actual discharge location and discounts the actual impacts the project will have on local waterways. Pruitt Creek, Pool Creek, and Windsor Creek are closer to the project site and more directly affected by the discharge. The Town insists that flow monitoring and discharge controls be implemented at the point of discharge on Pruitt Creek, rather than relying on data from Mark West Creek, to ensure that any impacts are identified and mitigated at the source.

A8-6  
cont.

- The DEIS's proposal to discharge surface water seasonally is also problematic. The calculation that 1% of Mark West Creek's flow would represent the allowable discharge rate does not accurately reflect the project's impacts on local waterways, as the planned discharge would constitute a much higher percentage of the flow in the upstream tributaries closer to the discharge point. The Town insists that the DEIS provide a more accurate and location-specific analysis of discharge impacts.

- **Beneficial Uses of Local Creeks:**

- The DEIS fails to mention the beneficial uses of nearby creeks, including Pruitt Creek, Pool Creek, and Windsor Creek, all of which are closer to the site and proposed discharge location. These creeks are vital for local ecosystems, agriculture, and potentially even drinking water supplies. The DEIS must include a thorough analysis of how the proposed discharges could impact these beneficial uses, with appropriate mitigation measures to protect them.

A8-7

### **Floodplain Management and Stormwater**

The DEIS inadequately addresses floodplain management and stormwater impacts, particularly in light of recent updates to FEMA Flood Insurance Rate Maps (FIRM) and the unique challenges posed by the site's location.

- **Updated FEMA FIRM Maps:**

- The FEMA Flood Insurance Rate Maps (FIRM) were recently updated, with new maps effective as of July 31, 2024. The DEIS relies on outdated floodplain information, which significantly undermines the accuracy of its flood risk assessments. The Town of Windsor insists that the DEIS be revised to incorporate the newest FEMA flood tiles and to re-evaluate flood risks based on the updated maps. This will ensure that floodplain elevations and the associated risks are correctly accounted for, thereby protecting both the project site and downstream areas from potential flooding.

A8-8

- **Seasonal Storage Ponds or Tanks:**

- The DEIS proposes large seasonal storage ponds or tanks to manage wastewater and stormwater. However, these structures are described as being very large and tall, which could create visual nuisances, particularly from Shiloh Road. Additionally, the DEIS does not adequately address the potential failure of these storage systems during extreme weather events, which could lead to overflows and subsequent flooding.
- The Town insists that the DEIS include a detailed structural analysis of these storage tanks, consider their placement to minimize visual impact, and provide contingency plans for overflow scenarios to prevent downstream flooding.

A8-9

- **Stormwater Management and Low Impact Development (LID):**
  - The DEIS mentions the use of bioswales as a stormwater management measure under Low Impact Development (LID) principles. However, bioswales alone are not sufficient to manage peak runoff during large storms, especially in a flood-prone area. The DEIS must clarify that bioswales will be designed with sufficient capacity and function to handle significant stormwater volumes, beyond their LID role, to prevent localized flooding and erosion.
  - Additionally, the DEIS must address the potential for reclaimed water to sheet flow across roads during heavy storm events, particularly in areas where Pool Creek already surcharges across Windsor Road. Uncontrolled runoff could exacerbate flooding and create hazardous driving conditions. The DEIS must include specific measures to prevent reclaimed water from flowing across roadways, particularly in vulnerable areas.

A8-10

**Wastewater Collection and Disposal**

The DEIS does not adequately address the long-term sustainability and environmental impacts of the proposed wastewater collection and disposal methods.

- **Sewer Placement and Maintenance:**
  - The DEIS suggests placing sewer lines beneath a creek, which could complicate long-term monitoring and maintenance. The DEIS must explore alternative placements, such as over a pedestrian bridge, to facilitate easier monitoring and reduce the risk of contamination from potential leaks or breaks in the sewer lines.
- **Biosolids Management:**
  - The DEIS proposed that biosolids will be dewatered on site and then hauled off to an approved disposal or treatment facility. This is completely contrary to the Town’s Net Zero efforts as they relate to wastewater.
  - The DEIS does not identify this facility or even whether adequate facilities exist, nor does it account for the increased emissions, traffic, or wear on road infrastructure from these truck trips.
  - The DEIS must include analysis that identifies the frequency of trips, likely truck routes, and proposed mitigation measures to address the impacts.
- **Water Supply for Non-Gaming Alternatives:**
  - In the discussion of Alternative C (Non-Gaming Alternative), the DEIS does not mention the potential use of treated recycled water or reverse osmosis-treated water for winery operations. This omission represents a missed opportunity to reduce the environmental impact of the project and to promote water conservation. The Town recommends that the DEIS be revised to include the use of treated recycled water in non-gaming alternatives to further reduce the project’s demand on local water supplies.

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**2. Air Quality**

The DEIS's analysis of air quality impacts underestimates the potential adverse effects on local air quality, particularly during construction and operation phases.

- **Construction Emissions:** The DEIS proposes the use of Tier 3 engines for construction equipment, which is an outdated standard. The Town recommends the requirement of CARB-rated Tier 4 engines for all construction equipment over 50 horsepower to minimize emissions. Additionally, the DEIS fails to provide enforceable measures to limit idling times for construction vehicles, which could result in significant emissions near residential areas.
- **Operational Emissions:** The traffic-related air quality impacts are understated, particularly given the project's potential to increase traffic volumes by 15-25% more than estimated in the DEIS, as identified by the Town's traffic and transportation consulting expert, W-Trans, Inc. The analysis does not adequately address the cumulative impact of these emissions on local air quality, nor does it consider the potential for increased cancer risks due to elevated levels of hazardous air pollutants (HAPs).

A8-14

A8-15

### 3. Biological Resources

The following comments are based on review of the DEIS by the Town of Windsor Planning Division, which has expertise in National Environmental Policy Act (NEPA) proceedings as well as the unique biological characteristics of the project site and its surroundings. The DEIS's assessment of biological resources is inadequate and fails to provide sufficient protections for the sensitive habitats and species that are likely to be impacted by the Koi Nation Shiloh Resort and Casino Project. The Town of Windsor has identified several critical deficiencies in the DEIS's approach to assessing and mitigating impacts on biological resources, particularly concerning wetlands, riparian areas, wildlife corridors, and sensitive species. Additionally, the project is currently designated as a Community Separator. The loss of this mandatory low intensity land use designation for the high intensity Project has potential for serious disruption of biological resources.

#### Wetlands and Riparian Areas

The project site includes important wetland and riparian habitats, particularly along Pruitt Creek, which are vital for maintaining local biodiversity, water quality, and ecosystem services. The DEIS does not adequately address the potential impacts on these areas, nor does it propose sufficient mitigation measures to protect them.

- **Wetland Impact and Mitigation:**
  - The DEIS acknowledges the presence of wetlands on the project site but fails to provide a comprehensive assessment of the extent of these wetlands or the full range of functions they provide. Wetlands play a critical role in flood attenuation, water filtration, and providing habitat for a variety of species, including some that are protected under state and federal law.
  - The proposed mitigation measures, which include wetland creation or enhancement off-site, are insufficient to compensate for the loss of wetlands on-site. Off-site mitigation often fails to replicate the complex functions of natural wetlands, particularly in terms of supporting local biodiversity and maintaining hydrological

A8-16

connectivity. The Town insists that the DEIS be revised to include a more robust on-site wetland mitigation strategy that prioritizes the preservation and enhancement of existing wetlands rather than relying on off-site mitigation.

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cont.

- **Riparian Buffer Zones:**

- The DEIS proposes the establishment of riparian buffer zones along Pruitt Creek. However, the proposed buffer widths are minimal and may not be sufficient to protect the creek from the impacts of stormwater runoff, sedimentation, and pollution associated with the project. Riparian areas are crucial for maintaining water quality, providing habitat for wildlife, and supporting the overall health of aquatic ecosystems.
- The DEIS must be revised to increase the width of riparian buffers, based on the best available science, to ensure that these areas can continue to function effectively as protective buffers. Additionally, the DEIS must include detailed management plans for these buffers, specifying how they will be maintained and monitored over the long term to prevent degradation.

A8-17

### **Wildlife Corridors and Habitat Connectivity**

The project site is located in an area that is part of a larger network of wildlife corridors, which are essential for the movement and survival of various species. The DEIS does not adequately address the potential disruption of these corridors and the resulting fragmentation of habitats.

- **Impact on Wildlife Corridors:**

- The construction and operation of the resort and casino have the potential to disrupt key wildlife corridors that connect habitats across the region. These corridors are critical for the movement of species such as deer, bobcats, and various bird species, allowing them to access food, water, and breeding sites. The disruption of these corridors could lead to increased wildlife-vehicle collisions, reduced genetic diversity, and the eventual decline of local populations.
- The DEIS does not provide sufficient analysis of the specific locations of these corridors or the potential impacts of the project on wildlife movement. The Town finds that the DEIS must include a detailed study of local wildlife corridors and propose mitigation measures such as wildlife crossings, habitat restoration, and the preservation of continuous natural areas to maintain connectivity.

A8-18

- **Species-Specific Impacts:**

- The DEIS fails to adequately assess the potential impacts on sensitive species known to inhabit the project area, such as the California red-legged frog, Western pond turtle, and various bird species protected under the Migratory Bird Treaty Act. The DEIS's reliance on generalized mitigation measures, such as seasonal construction restrictions and habitat avoidance, does not provide the level of protection needed for these species.
- The DEIS must be revised to include species-specific impact assessments and mitigation plans, developed in consultation with wildlife experts and regulatory agencies. These plans should include measures such as creating or enhancing breeding habitats,

A8-19

implementing predator control programs, and conducting ongoing monitoring to ensure the effectiveness of mitigation efforts.

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cont.

### **Cumulative Impacts on Biological Resources**

The DEIS inadequately addresses the cumulative impacts of the project on biological resources, particularly when considered in the context of other ongoing and planned developments in the region.

- **Cumulative Habitat Loss:**

- The project's impact on biological resources cannot be viewed in isolation. The cumulative effects of habitat loss, fragmentation, and degradation due to multiple developments in the region could have significant adverse impacts on local wildlife populations and ecosystem health. The DEIS's cumulative impact analysis is superficial and does not account for the broader context of regional biodiversity loss.
- The Town asserts that the DEIS be revised to include a more comprehensive cumulative impact analysis, taking into account other developments in the area and their combined effects on biological resources. This analysis should lead to the identification of additional mitigation measures or project alternatives that could reduce the overall impact on the region's ecosystems.

A8-20

- **Long-Term Monitoring and Adaptive Management:**

- The DEIS does not provide a clear plan for long-term monitoring of the project's impacts on biological resources or for the adaptive management of mitigation measures. Monitoring is essential to ensure that mitigation efforts are effective and to make adjustments if they are not meeting their goals.
- The Town finds that the DEIS must include a detailed long-term monitoring plan, with specific metrics for success, regular reporting requirements, and provisions for adaptive management. This plan must be developed in consultation with relevant agencies and stakeholders to ensure that it is robust and comprehensive.

A8-21

## **4. Cultural Resources**

The DEIS underestimates the potential impacts on cultural and paleontological resources on the project site. The Town of Windsor is particularly concerned about the potential adverse effects on tribal cultural resources, especially given the reported inadequacies in consultation with local tribes during the preparation of the DEIS.

### **Inadequate Tribal Consultation**

At the Bureau of Indian Affairs (BIA) hearing on July 30, 2024, representatives from several Sonoma County tribes expressed significant concerns about the lack of adequate consultation during the DEIS process. Tribal representatives emphasized that their input was either not sought or inadequately considered, particularly regarding the identification and protection of cultural resources. This lack of meaningful consultation raises serious concerns about the potential for significant adverse impacts to tribal cultural resources that have not been adequately identified or mitigated.

A8-22

- **Lack of Thorough Identification and Assessment:**

- The DEIS does not appear to have thoroughly identified all tribal cultural resources on the project site, nor has it assessed the potential impacts to these resources in sufficient detail. Tribal cultural resources, including sacred sites, burial grounds, and areas of cultural significance, may be present on or near the project site, and their disturbance could have profound and irreversible impacts on the cultural heritage of local tribes.
- The Town of Windsor supports the concerns raised by tribal representatives and urges the BIA to engage in a more thorough consultation process with the affected tribes. This process should include site visits with tribal representatives, the integration of tribal knowledge into the cultural resource assessments, and the development of culturally appropriate mitigation measures.

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**Potential Impacts on Archaeological Resources**

The DEIS acknowledges the presence of cultural resources near Pruitt Creek but limits monitoring to a 150-foot buffer around the creek. This approach is inadequate for ensuring the protection of potentially significant subsurface resources that may exist across the entire project site.

- **Expanded Monitoring and Mitigation:**

- The DEIS must be revised to expand the monitoring area beyond the 150-foot buffer to cover the entire project site. This expanded monitoring shall include the presence of a qualified archaeologist and tribal monitors during all ground-disturbing activities to ensure that any cultural resources encountered are properly identified, assessed, and treated according to tribal preferences.
- In addition to expanding the monitoring area, the DEIS must include specific mitigation measures for the inadvertent discovery of cultural resources. These measures shall include immediate cessation of work, notification of the relevant tribal authorities, and the development of a treatment plan that respects the cultural significance of the resources.

A8-23

**Paleontological Sensitivity**

The western portion of the project site is near areas designated as having high paleontological sensitivity. The DEIS does not include adequate mitigation measures in case paleontological resources are encountered.

- **On-Site Paleontological Monitoring:**

- The Town recommends that a qualified paleontologist be present during all ground-disturbing activities in areas of high paleontological sensitivity. This monitoring is crucial to ensure that any paleontological resources encountered are properly documented and preserved.
- The DEIS must also include a contingency plan for the preservation of paleontological resources, including procedures for the temporary halting of construction activities, the proper excavation and documentation of finds, and the storage or display of significant specimens in consultation with appropriate scientific institutions.

A8-24

**5. Socioeconomic Conditions and Environmental Justice**

The socioeconomic analysis in the DEIS is flawed and relies on assumptions that do not reflect the local realities of Windsor and Sonoma County.

- **Housing Impacts:** The DEIS assumes that the project will have minimal impact on local housing markets, despite acknowledging the existing housing shortage exacerbated by recent wildfires. The Town disputes the DEIS's finding of "Less Than Significant Impact" and recommends that the DEIS be revised to include realistic assessments of housing needs, including the provision of on-site affordable housing for casino workers.
- **Economic Displacement:** The DEIS downplays the potential for economic displacement, particularly for small businesses and lower-income residents. The project could lead to increased property values and rents, pushing out existing residents and businesses. The Town recommends a more detailed analysis of these impacts and the inclusion of mitigation measures to protect vulnerable populations.
- **Public Services and Infrastructure:** The DEIS does not adequately account for the increased demand on public services, particularly law enforcement, fire protection, and emergency medical services. The proposed mitigation measures, such as service agreements with local agencies, are vague and unenforceable. The Town insists on clear, enforceable commitments from the project proponents to fund and support necessary service expansions.

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## 6. Transportation and Circulation

The following comments are from Windsor Public Works Department staff who have knowledge and expertise regarding the Town's street infrastructure, plans for improving that infrastructure, and the evaluation and mitigation of the impacts from new development on that infrastructure as well as traffic engineering consultants, W-Trans, which peer reviewed the Traffic Impact Study (TIS) referenced by the DEIS. The DEIS's analysis of transportation impacts is incomplete and underestimates the project's effects on local traffic conditions.

### Traffic Impact Study

The Town of Windsor has significant concerns regarding the methodology and conclusions of the Traffic Impact Study used in the DEIS.

- **Trip Generation and Traffic Analysis Scenarios:**
  - The TIS does not analyze Sunday peak hour conditions, which, as noted in the Town's 2023 comments on the EA, may constitute the highest hourly trip generation of the week for a casino resort. This oversight is critical because Sunday traffic volumes could represent the worst-case scenario for the project, particularly when considering the weekend visitor influx.
  - Furthermore, the estimated daily and Saturday 24-hour trip generation estimates used in the DEIS may be 15 to 25 percent too low. This underestimation could lead to an inaccurate representation of the project's impact on local traffic, resulting in inadequate mitigation measures.
- **Adverse Level of Service (LOS) and Queuing at Shiloh Road/US 101 North Ramps:**
  - The 2023 EA and TIS identified adverse LOS and queuing issues at Shiloh Road/US 101 North Ramps for 2028 plus Project

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scenarios, which required mitigation. However, the current TIS no longer identifies this impact, which is a significant concern for the Town. The Town requests a detailed explanation for this change, as the area between the US 101 North Ramps and Hembree Lane is likely to encounter major traffic impacts due to added project traffic.

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- The existing lane utilization patterns will create safety concerns, particularly with the right-turn queues on the northbound off-ramp. Traffic destined for the casino would realistically only be able to use the outer right-turn lane that continues east on Shiloh Road, leading to longer-than-reported queues that could potentially extend onto the mainline freeway. This scenario represents a significant safety hazard that has not been adequately addressed in the DEIS.

A8-31

- **Shiloh Road Widening and Intersection Mitigations:**

- The DEIS indicates that the project would make a 100% contribution to address queuing issues at the Old Redwood Highway/Shiloh Road intersection, including the construction of a second northbound left-turn lane and westbound receiving lane. While this revision is appropriate, a similar approach must be taken for the widening of Shiloh Road to two lanes in each direction between US 101 and Old Redwood Highway before the project opens.

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- The proposed mitigation for the Shiloh Road/Hembree Lane intersection, which involves restriping the southbound approach to become a four-lane configuration, is likely infeasible given the geometry of the approach and right-of-way acquisition needs. The Town asserts that the project must be responsible for identifying and implementing feasible mitigation measures, rather than relying on simplistic or unrealistic solutions.

A8-33

- The road widening and intersection improvements discussed in the DEIS are not envisioned in the Town of Windsor's or the County of Sonoma's planning documents or capital improvement programs and not enough right-of-way is under public control to accommodate these improvements. The DEIS does not explain how traffic impacts would be mitigated below the threshold of significance if property owners are unwilling to sell the land needed for public right-of-way.

A8-34

- **Old Redwood Highway/Shiloh Road Cumulative Mitigation:**

- The DEIS continues to use a 39.4 percent fair share contribution for the Old Redwood Highway/Shiloh Road intersection improvements. However, as stated in the Town's 2023 comments on the EA, this contribution is illogical. The intersection requires far more extensive widening to accommodate the project than envisioned by the Town at buildout. Additionally, Table 33 in the TIS suggests that the project would be responsible for no further long-range (2040) improvements to Shiloh Road/Old Redwood Highway beyond those constructed by the project for the opening year 2028. This conclusion is inappropriate, as the long-range improvements needed with the casino project are significantly greater than anticipated by the Town without the casino project. As noted above, some of the land needed for these improvements is

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privately owned and the DEIS does not offer an alternative for mitigation if the necessary right-of-way remains out of public control.

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- **Roadway Segment Analysis:**

- The DEIS's roadway segment analysis, as noted in the 2023 comments on the EA, uses very high-level capacity assumptions based on weekday volumes. This approach fails to capture the worst-case traffic conditions, particularly during peak hours on weekends when the project's traffic volumes are highest. The reliance on weekday volume-based capacity assumptions is inadequate, providing an inaccurate representation of the project's traffic impacts on Shiloh Road.

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- The applied daily roadway capacity assumptions in the analysis are also unrealistic. For example, the 2028 roadway capacity increases with the implementation of intersection mitigation measures are claimed to be 35 percent. However, this increase is attributed to extended signal green times, which is incongruent with the types of mitigations being implemented and the lack of added lane capacity on Shiloh Road in 2028. The Town of Windsor finds these assumptions to be overly optimistic and not reflective of likely real-world conditions.

A8-37

- **Project Responsibility for Widening Shiloh Road:**

- The DEIS does not adequately identify the need for the project to construct or contribute funds to the widening of Shiloh Road, other than at select intersections. Given the anticipated traffic impacts, the Town believes that the 2028 plus Project mitigations must include widening Shiloh Road to two lanes in each direction between US 101 and Old Redwood Highway. The project should be responsible for ensuring these improvements are completed before the casino opens to avoid significant traffic congestion and safety hazards.

A8-38

- **Multimodal Transportation and Pedestrian/Bicycle Facilities:**

- The DEIS concludes that the project “would not adversely impact existing local bicycle and pedestrian facilities which are generally lacking adjacent to the project site,” based on the proposed sidewalks or trails between the site and the Shiloh Road/Old Redwood Highway intersection. However, the Town disagrees with this conclusion, as the project would significantly affect pedestrian and bicyclist circulation both in the immediate area and along the Old Redwood Highway and Shiloh Road corridors.

- The project does not adequately address the pedestrian and bicycle improvements needed to align with the Old Redwood Highway Corridor Enhancement Plan and the Town’s Complete Streets Guidelines. Moreover, the DEIS relies on the Town to build these facilities through the traffic impact fee program, despite the fact that the casino project is not within the Town’s jurisdiction and would not contribute to these fees. The project must fully fund and construct the necessary multimodal transportation facilities to accommodate the significant traffic volume increases it will create.

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- The DEIS ignores the fact that Shiloh Road, Old Redwood Highway, and Faught Road are important regional connectors utilized by thousands of recreational bicycle riders and utilized in

several major bike-riding events each year. The analysis must be updated to consider these important users of the roadways surrounding the project site and the DEIS must propose mitigation measures to address any potential impacts.

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### **Old Redwood Highway/Shiloh Road Roundabout**

The DEIS fails to adequately consider the implications of the proposed Koi Nation Shiloh Resort and Casino Project on the planned roundabout at the Old Redwood Highway/Shiloh Road intersection. The Town of Windsor's Old Redwood Highway Corridor Enhancement Plan (2022) includes a future single-lane roundabout at this intersection, and a feasibility study conducted by the Town in 2020 determined that this configuration would be sufficient to accommodate future buildout traffic volumes at Level of Service (LOS) C or better. However, the traffic volumes anticipated from the Koi Nation project significantly exceed those considered in the Town's General Plan and feasibility study, necessitating a much larger and more complex roundabout design.

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- Impact of Increased Traffic Volumes:
  - The traffic impact study (TIS) for the project indicates that the traffic volumes at the Old Redwood Highway/Shiloh Road intersection will be dramatically higher than those anticipated under the Town's General Plan buildout. To accommodate these increased volumes, a roundabout at this location would need to be considerably larger, potentially requiring a combination of dual and triple entering and circulating lanes, as well as dual travel lanes in each direction on both Old Redwood Highway and Shiloh Road. This significantly exceeds the scope of the single-lane roundabout envisioned in the Town's plans.
- Right-of-Way Acquisition and Design Challenges:
  - The expanded roundabout design necessary to handle the increased traffic from the project would require substantial right-of-way acquisition on all four corners of the intersection. This expansion could have significant impacts on adjacent properties, including existing developments and future projects that have already been planned with the original roundabout configuration in mind.
  - Additionally, the larger roundabout would pose design and safety challenges, particularly for non-motorized users. Multi-lane roundabouts are generally more difficult for pedestrians and bicyclists to navigate compared to single-lane roundabouts. Ensuring safe crossings might necessitate the installation of robust treatments, such as parallel path systems or Pedestrian Hybrid Beacons, to manage pedestrian traffic safely. These considerations are critical, as the safety benefits of a larger, multi-lane roundabout are typically less than those provided by a single-lane roundabout.
- Cost Implications:
  - The cost of designing, constructing, and acquiring the land necessary for a roundabout of this scale is substantial. Estimates suggest that the enhanced roundabout could cost between five to ten million dollars or more, a significant increase over the cost of the single-lane roundabout originally planned by the Town. This raises concerns about the financial burden on the Town and the potential need for additional funding sources, particularly if the

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project proceeds without adequate contribution from the project proponents.

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- Need for Revised Traffic Impact Study (TIS):
  - The DEIS must be revised to include an updated analysis of the proposed roundabout, taking into account the increased traffic volumes associated with the project. This analysis must include a detailed examination of the required roundabout geometry, right-of-way impacts, and the feasibility of implementing necessary safety measures for pedestrians and bicyclists. The Town also asserts that the project proponents be required to contribute to the costs associated with these necessary upgrades, ensuring that the intersection can handle the increased traffic safely and efficiently.

A8-43

### **Coordination with CalTrans on Shiloh Road/Highway 101 Interchange**

The DEIS does not adequately address the necessary coordination with the California Department of Transportation (CalTrans) regarding the critical upgrades required for the Shiloh Road/Highway 101 interchange. Given the significant increase in traffic volumes that the Koi Nation Shiloh Resort and Casino Project is expected to generate, the current interchange infrastructure will likely be insufficient to handle the added demand, leading to severe congestion, safety concerns, and potential bottlenecks, especially during peak travel times.

- **Need for Interchange Upgrades:**
  - The Shiloh Road/Highway 101 interchange is a vital access point for both local and regional traffic. The increased traffic resulting from the project will exacerbate existing issues at this interchange, potentially leading to longer delays, higher accident rates, and overall reduced safety and efficiency. The DEIS must include a detailed analysis of the interchange's current capacity and the impact of additional traffic, along with a discussion of the specific upgrades required to accommodate the project.
  - The Town of Windsor strongly recommends that the DEIS be revised to include a comprehensive plan for working with CalTrans to identify, design, fund, and implement the necessary upgrades to the Shiloh Road/Highway 101 interchange. This plan should ensure that all improvements are completed prior to the opening of the resort and casino to prevent the interchange from becoming a significant traffic bottleneck.
- **Lack of Coordination and Mitigation Planning:**
  - The absence of a coordinated approach with CalTrans in the DEIS is a significant oversight that undermines the overall traffic impact analysis. Without clear commitments and detailed plans for interchange improvements, the project risks causing long-term detrimental effects on the regional transportation network.
  - The Town urges the Bureau of Indian Affairs to require the project proponents to engage directly with CalTrans as part of the environmental review process. This coordination should include the development of a Memorandum of Understanding (MOU) or similar agreement to ensure that both parties are aligned on the scope, funding, and timeline for the necessary interchange upgrades.

A8-44

## **7. Public Services and Utilities**

The DEIS inadequately assesses the significant impact that the Koi Nation Shiloh Resort and Casino Project will have on public services and utilities in the Town of Windsor and the surrounding areas. The increased demand for law enforcement, fire protection, emergency medical services, and utilities, combined with the environmental impacts such as the heat island effect, poses substantial challenges that the current DEIS fails to address adequately.

A8-45

### **Heat Island Effect**

The DEIS overlooks the potential for the project to contribute to the heat island effect, which can have far-reaching impacts on public services, utilities, and public health.

- **Increased Energy Demand:**

- The development of large paved areas, parking lots, and extensive building footprints associated with the resort and casino will contribute to the heat island effect, where these surfaces absorb and re-radiate heat, leading to higher temperatures in the immediate area. This localized warming can significantly increase the demand for cooling, particularly during the summer months, leading to higher energy consumption and placing additional strain on the local power grid.
- The Town of Windsor is concerned that the DEIS does not propose sufficient mitigation measures to counteract the heat island effect, such as increasing green space, implementing reflective or green roofing materials, and incorporating shade trees in parking lots. Without these measures, the project could contribute to increased energy costs, higher emissions from power generation, and reduced air quality.

A8-46

- **Impact on Public Health:**

- The heat island effect can exacerbate health issues, particularly for vulnerable populations such as the elderly and those with pre-existing health conditions. Higher temperatures can lead to increased instances of heat-related illnesses, putting additional strain on local healthcare services and emergency medical responders.
- The DEIS must be revised to include a comprehensive analysis of the heat island effect and propose mitigation strategies that can reduce its impact on the community and public services.

### **Increases in Drunk Driving and Related Crimes**

The DEIS does not sufficiently consider the potential increase in drunk driving incidents and related crimes that could result from the operation of the casino and resort.

- **Impact on Traffic Safety:**

- Casinos are associated with increased alcohol consumption, leading to a higher risk of drunk driving incidents. The Town of Windsor is concerned that the increased traffic from the casino, combined with the potential for more intoxicated drivers on the roads, could lead to a significant rise in traffic accidents, injuries, and fatalities.
- The DEIS does not include adequate mitigation measures to address this risk. The Town insists that the DEIS be revised to

A8-47

include specific strategies to reduce drunk driving, such as increasing the availability of public transportation and ride-sharing options, implementing strict enforcement of DUI laws, and coordinating with local law enforcement agencies to increase patrols during peak casino hours.

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- **Coordination with California Highway Patrol (CHP):**

- The increase in traffic, especially on Highway 101 and surrounding roads, necessitates close coordination with the California Highway Patrol (CHP) to manage traffic safety effectively. The DEIS does not detail any coordination efforts with the CHP, which is a significant oversight given the expected rise in traffic volume and the associated risks.
- The Town urges the BIA to work closely with the CHP to develop a traffic management plan that includes enhanced DUI enforcement, traffic flow monitoring, and rapid response strategies for accidents and incidents on Highway 101 and regional roads.

A8-48

### **Mail Theft and Identity Theft**

The DEIS does not adequately address the potential for increases in mail theft and identity theft, crimes that are often associated with large developments that attract significant numbers of visitors and employees. The Town of Windsor is particularly concerned about the risk of these crimes spilling over into the nearby residential neighborhoods, threatening the safety and security of local residents.

- **Increased Risk to Residential Areas:**

- The influx of visitors and employees to the casino and resort could lead to an increase in mail theft and identity theft in the surrounding areas, including nearby residential neighborhoods. These crimes often target large, transient populations, but the presence of such a development, particularly one where gambling is taking place, also increases the likelihood of these criminal activities affecting local residents. The concentration of people, the transient nature of casino visitors, and the desperation that can accompany gambling addiction pose a significant risk of criminal activity to the surrounding community.
- Residential neighborhoods near the project site may experience a rise in these crimes as criminals exploit the increased activity and traffic to blend in and target homes for mail theft, identity theft, and other crimes. This can lead to significant financial and personal hardships for local residents.

A8-49

- **Preventive Measures:**

- The DEIS currently does not propose sufficient mitigation measures to address these risks. The Town insists that the DEIS be revised to include strategies to protect nearby residential neighborhoods from the spillover of these crimes.

### **Calls for Mutual Aid**

The DEIS fails to adequately consider the impact of the project on the demand for mutual aid from surrounding jurisdictions, particularly in the context of fire protection and emergency medical services.

- **Strain on Local Resources:**

- The significant increase in visitors to the area, combined with the potential for large-scale emergencies, could lead to an increased

A8-50

demand for mutual aid from surrounding fire districts and emergency medical services. This could strain the resources of neighboring jurisdictions, reducing their ability to respond to emergencies in their own communities.

- The DEIS must include a detailed analysis of the expected increase in mutual aid requests and propose mitigation measures to ensure that the project does not unduly burden neighboring communities. This could include commitments to fund additional fire and EMS resources, training for mutual aid partners, and the establishment of agreements with neighboring jurisdictions to ensure adequate coverage.

A8-50  
cont.

### **Impacts to Esposti Park**

While the DEIS acknowledges the potential noise impacts on Esposti Park, it fails to consider the broader implications of increased visitation by patrons and employees of the Koi Nation Shiloh Resort and Casino Project on the park's resources. This omission is particularly concerning given the park's proximity to the project site and the likelihood that it will experience a significant increase in use.

- **Increased Visitation and Strain on Park Resources:**

- Esposti Park is a valued community resource that provides recreational opportunities for Windsor residents and visitors alike. The anticipated influx of patrons and employees to the nearby casino and resort will likely lead to increased use of the park's facilities, including its parking areas, restroom facilities, and waste receptacles. The DEIS does not adequately address how this increased visitation will impact the park's resources, potentially leading to overcrowding, increased wear and tear, and a greater need for maintenance and waste management services.
- The Town of Windsor previously raised this concern in its response to the Environmental Assessment (EA), noting the need for a thorough analysis of how the project might affect Esposti Park's capacity to serve the community. Unfortunately, the DEIS has not addressed these concerns, leaving a critical gap in the assessment of public services and utilities.

A8-51

- **Need for Enhanced Maintenance and Management:**

- The increased use of Esposti Park by project-related visitors and employees will likely necessitate more frequent maintenance and upkeep to ensure the park remains a clean, safe, and enjoyable space for the community. This includes more regular servicing of restroom facilities, increased waste collection, and potentially expanded parking capacity to accommodate the additional demand. The DEIS must be revised to include a detailed analysis of these potential impacts, along with proposed mitigation measures to support the park's ongoing maintenance and management.
- Possible mitigation measures could include, but are not limited to, financial contributions from the project proponents to fund the increased maintenance needs, installation of additional waste receptacles and restroom facilities, and the implementation of measures to manage parking demand during peak usage times.

### **General Impacts on Public Services**

The DEIS's overall assessment of the impact on public services is inadequate and fails to provide detailed mitigation measures that address the full scope of the project's impact.

- **Law Enforcement:**

- The DEIS underestimates the additional demand that the casino will place on local law enforcement. The increase in visitors, traffic, and potential for crimes such as drunk driving, theft, and disorderly conduct will require a significant increase in police presence and resources. The DEIS must include detailed plans for increasing local law enforcement capacity, including funding for additional officers, equipment, and training.

A8-52

- **Fire Protection and Emergency Medical Services:**

- The project's potential to increase the frequency and severity of emergencies, from accidents to health crises, necessitates a more robust approach to fire protection and emergency medical services. The DEIS must include specific commitments from the project proponents to enhance these services, such as funding for additional personnel, vehicles, and facilities to ensure timely and effective responses.

A8-53

## 8. Noise

The DEIS underestimates the potential noise impacts during both construction and operation phases.

- **Construction Noise:** The DEIS's proposed construction hours, including allowing work on Sundays, do not align with the Town's municipal code. The Town insists that construction be prohibited on Sundays to minimize noise impacts on nearby residential areas.
- **Operational Noise:** The DEIS does not adequately assess the long-term noise impacts associated with increased traffic and the operation of the casino. More stringent noise mitigation measures, including the use of sound barriers and restrictions on nighttime operations are required.
- **Event-Related Noise:** The DEIS does not account for noise impacts from large events hosted at the casino, which could significantly disturb nearby residents. The DEIS must include an analysis of noise generated by events and propose mitigation measures, such as soundproofing and restrictions on event timing.

A8-54

A8-55

A8-56

### Inadequacy of Proposed Noise Mitigations

The DEIS proposes mitigations such as the use of quiet pavement and offering to pay for the installation of double-pane windows for nearby residents upon request. However, these measures are insufficient to prevent a significant adverse impact from the noise generated by the Koi Nation Shiloh Resort and Casino Project.

- **Limitations of Quiet Pavement:**

- While quiet pavement can reduce some of the noise generated by vehicles on roadways, it is not a comprehensive solution, especially given the expected increase in traffic volumes and the continuous nature of traffic associated with a large-scale development like the casino. Quiet pavement primarily reduces tire noise, but it does little to mitigate other sources of traffic noise, such as engine noise, acceleration, braking, and the overall increase in traffic density. Furthermore, the effectiveness of quiet

A8-57

pavement diminishes over time due to wear and tear, which means that the noise reduction benefits may be short-lived unless the pavement is regularly maintained and replaced. The DEIS includes no proposed maintenance program of long term funding mechanism.

A8-57  
cont.

- Inadequacy of Double-Pane Windows:
  - Offering to pay for the installation of double-pane windows for nearby residents, while helpful in reducing indoor noise levels, is a reactive measure that does not address the root cause of the noise problem. Additionally, this mitigation is only effective for indoor environments, leaving outdoor spaces such as yards, patios, and public areas unprotected from increased noise levels. Moreover, relying on residents to request this mitigation is inherently flawed, as many may be unaware of the option or may not realize the impact until it has already affected their quality of life. The burden should not be on residents to initiate noise mitigation; instead, the DEIS must proactively identify and implement measures that prevent significant noise impacts in the first place.
- Cumulative Noise Impact:
  - The DEIS does not adequately consider the cumulative noise impact from the project, including construction noise, operational noise, and increased traffic noise. Even with the proposed mitigations, the cumulative effect of these noise sources is likely to result in a significant adverse impact on the surrounding community. The Town of Windsor is concerned that the proposed measures are not robust enough to protect residents from the long-term, continuous noise exposure that is expected to result from the project.

A8-58

A8-59

## 9. Hazardous Materials and Hazards

The DEIS fails to adequately address the significant risks associated with hazardous materials and evacuation impacts, particularly in relation to wildfire hazards. The Town of Windsor has identified several critical deficiencies in the DEIS's approach to managing these risks, which could lead to severe consequences, including the potential for loss of life during emergency evacuations.

A8-60

### Wildfire Evacuation:

The Town of Windsor is particularly concerned about the DEIS's treatment of wildfire evacuation planning. Given the project's location in a Wildland-Urban Interface (WUI) area—a region with a high risk of wildfires—comprehensive and effective evacuation planning is not just necessary, it is critical to public safety. The DEIS's analysis of evacuation times, potential bottlenecks, and mitigation measures is severely insufficient, raising serious concerns about the safety of both residents and visitors in the event of a wildfire.

A8-61

- **Evacuation Time Estimates:**
  - The DEIS estimates that evacuation times for the Town of Windsor during a “No-Notice Event” (such as a rapidly spreading wildfire) could increase from 4-6 hours without the project to 6-8 hours with the project. This increase in evacuation time is unacceptable, especially considering the history of devastating wildfires in California. The DEIS fails to recognize that wildfire hazards seen



recently in Sonoma County, including dry lightning strikes and windborne ember cast, dramatically increase the likelihood of a “No-Notice Event”. The DEIS does not provide sufficient analysis of how these extended evacuation times could impact the safety of residents, particularly those living in the more vulnerable areas to the east of the project site, such as Shiloh Estates and Mayacama, which have limited evacuation routes.

A8-61  
cont.

- **Traffic Bottlenecks and Critical Intersections:**

- The DEIS does not adequately address the potential for severe traffic bottlenecks at critical intersections, particularly Shiloh Road and Old Redwood Highway, which are key evacuation routes. The increased traffic volumes due to the project will exacerbate existing congestion, creating dangerous delays during an evacuation. The DEIS’s reliance on minor roadway improvements, such as restriping and signal timing adjustments, is grossly insufficient to mitigate these risks. In a wildfire emergency, these bottlenecks could lead to a catastrophic situation where residents and visitors are trapped, unable to evacuate in time.

A8-62

- **Inadequate Mitigation Measures:**

- The primary mitigation measure proposed in the DEIS to address evacuation impacts is the development of a project-specific evacuation plan prior to occupancy. However, the DEIS provides no details on the content or effectiveness of this plan. There is no assurance that this plan will be capable of reducing evacuation times or preventing bottlenecks, nor does it account for the unique challenges posed by a rapidly spreading wildfire. The DEIS fails to outline any concrete actions or infrastructure improvements that would ensure a safe and timely evacuation for all affected populations.
- The DEIS also overlooks the need for enhanced public communication systems, such as early warning systems and real-time traffic management tools, which are essential in managing evacuations during fast-moving disasters. Without these systems, the risk of confusion, panic, and gridlock during an evacuation is significantly heightened.

A8-63

**Post-Wildfire Contamination:**

The DEIS does not address the potential for post-wildfire pollutant materials, such as ash and debris, to contaminate local waterways, including Pruitt Creek, Pool Creek, and Windsor Creek. Wildfires often leave behind hazardous materials that can be washed into water systems by subsequent rainfall, leading to significant environmental and public health risks.

- **Contamination Risks:**

- The potential for ash and other post-fire contaminants to enter local water bodies is particularly concerning given the proximity of the project site to these creeks. Contaminants from the project site could exacerbate the already vulnerable conditions of these waterways, leading to degraded water quality, harm to aquatic ecosystems, and increased treatment costs for drinking water supplies.

A8-64

- **Inadequate Mitigation for Water Contamination:**

- The DEIS lacks specific measures to prevent or manage post-wildfire contamination. There is no mention of on-site treatment facilities, containment strategies, or emergency response plans to address contamination risks. The absence of these critical components in the DEIS represents a significant oversight, leaving the community at risk of exposure to harmful pollutants.

A8-64  
cont.

#### **Hazardous Materials Management:**

The DEIS also fails to provide a comprehensive plan for managing hazardous materials during construction and operation of the casino resort. The handling, storage, and disposal of hazardous materials such as fuel, chemicals, and construction debris pose significant risks to both workers and the surrounding community.

- **Construction-Related Hazards:**

- The DEIS provides only general guidelines for hazardous materials management during construction, lacking detailed protocols and specific mitigation measures. This lack of specificity increases the risk of accidental spills, leaks, or improper disposal of hazardous materials, which could contaminate soil, groundwater, and surface water bodies.
- The proximity of construction activities to sensitive areas such as Pruitt Creek heightens the risk of environmental contamination. The DEIS must include detailed hazardous materials management plans that outline specific procedures for handling, containment, and emergency response.

A8-65

- **Operational Hazards:**

- During operation, the casino resort will generate various forms of hazardous waste, including those from vehicle maintenance, cleaning operations, and potential fuel storage. The DEIS does not adequately address how these wastes will be managed to prevent environmental contamination or public health risks.
- The Town insists that the DEIS include stringent requirements for hazardous waste storage, regular inspections, and emergency response protocols to manage any accidental releases effectively.

A8-66

#### **Wildfire Hazard Mitigation:**

The DEIS's proposed wildfire hazard mitigation measures are fundamentally inadequate given the high-risk nature of the project location. While the DEIS acknowledges that official maps depict the nearest extent of recent wildfires at approximately 0.3 miles from the project site, the reality is that firefighting activities related to embercast and spot fires took place on or near the project site, which as a vineyard, served as a critical firebreak during these fires. The replacement of an irrigated vineyard with flammable buildings will exacerbate the dangers caused by future wildfires.

A8-67

- **Vegetation Management and Firebreaks:**

- The DEIS lacks detail on vegetation management practices and the establishment of firebreaks to prevent the spread of wildfires. These measures are crucial for protecting both the project site and the surrounding areas from the rapid spread of wildfire. Without clear guidelines and enforceable standards for vegetation management, the risk of a catastrophic wildfire impacting the project and surrounding areas remains high.

- **Emergency Services and Infrastructure:**

- The DEIS does not adequately address the need for additional emergency services infrastructure, such as dedicated fire access roads, water supply for firefighting, and strategically placed fire hydrants. The absence of these critical infrastructure components could severely hinder firefighting efforts and exacerbate the risk of loss of life and property during a wildfire. A8-68
- The DEIS also fails to propose any funding mechanisms or commitments from the project proponents to support the expansion of local firefighting and emergency response capabilities, which will be essential in managing the increased risks posed by the project.

**Seismic Risks and Natural Disasters:**

The DEIS fails to adequately consider the significant risks associated with the project's location on the Rogers fault, as well as the broader risks related to natural disasters such as earthquakes, floods, fires, and extended power loss. The Town of Windsor is deeply concerned that the DEIS does not propose any meaningful plans or mitigation measures to address these critical hazards, which could have catastrophic consequences for both the project site and the surrounding community.

- **Rogers Fault and Seismic Risks:**

- The project site is located near the Rogers fault, a known seismic feature that poses a significant earthquake risk. Despite this, the DEIS lacks a comprehensive seismic hazard analysis and does not include detailed plans for ensuring the structural integrity of the proposed buildings in the event of an earthquake. A8-69
- The DEIS must be revised to include a thorough seismic risk assessment, taking into account the potential for ground shaking, surface rupture, liquefaction, and landslides. This assessment must be conducted by qualified geotechnical engineers and seismologists, and the findings should inform the design and construction of all project structures to ensure they meet or exceed current seismic safety standards.

- Additionally, the DEIS must include detailed emergency response plans specifically addressing earthquake scenarios, including evacuation routes, emergency shelter locations, and protocols for coordinating with local emergency services. A8-70

- **Flood Risks:**

- The project's proximity to Pruitt Creek and other local waterways also raises concerns about flood risks, particularly in the context of increasingly severe weather events due to climate change. The DEIS does not provide sufficient analysis of flood risks, nor does it propose robust flood mitigation measures.
- The DEIS must be revised to incorporate the latest floodplain data, including updated FEMA Flood Insurance Rate Maps (FIRM). The project should be designed with flood-resistant features, such as elevated foundations, flood barriers, and enhanced stormwater management systems. The DEIS must also include a detailed flood emergency plan, outlining specific actions to protect life and property in the event of a flood. A8-71

- **Extended Power Loss and Resiliency Planning:**

- The DEIS does not adequately address the potential for extended power loss, which could occur as a result of an earthquake, flood, fire, Public Safety Power Shutoff (PSPS) events, or other natural disasters. Extended power outages pose significant risks to the operation of critical systems, such as emergency lighting, fire suppression, and wastewater management, all of which are essential for the safety of the project site and the surrounding community.
- The Town insists that the DEIS include a comprehensive resiliency plan that addresses the potential for extended power loss. This plan should include the installation of backup generators with sufficient capacity to power essential systems for an extended period, the use of renewable energy sources such as solar panels with battery storage, and the development of contingency plans for maintaining operations and ensuring public safety during prolonged outages.

A8-72

## 10. Visual Resources

The DEIS fails to adequately assess the visual impacts of the project, particularly from key vantage points.

- **Scenic Corridors:** The project site is visible from Highway 101 and Faught Road, both of which are designated scenic corridors in the Town's General Plan. The DEIS does not provide sufficient analysis of the project's impact on these scenic corridors, nor does it propose adequate mitigation to preserve the visual character of these areas. The Town recommends reducing the height of parking light poles, using lower color temperature lighting (no greater than 3,000 Kelvin), and reevaluating the placement of structures to minimize visual impacts from these corridors.

A8-73

## 11. Land Use

The DEIS does not adequately consider the project's compatibility with existing land use plans and policies.

- **Consistency with General Plan:** The project conflicts with the Town's General Plan, which designates the area for agricultural use. The DEIS fails to adequately address the impacts of converting agricultural land to a commercial gaming facility, which is inconsistent with the County's Land Intensive Agriculture designation. Additionally, the project does not align with the Shiloh Road Vision Plan, which envisions a mixed-use, pedestrian-oriented corridor. The Town strongly urges reconsideration of the project in light of these conflicts, and recommends either significant redesign or adoption of the "no project" alternative.
- **Community Separator:** The project site is part of the Windsor/Larkfield/Santa Rosa Community Separator, intended to maintain greenbelt areas between developed communities. The DEIS does not sufficiently analyze the impact of the project on this community separator, potentially undermining the Town's long-term growth management policies.

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A8-75

## 12. Growth-Inducing Effects

The DEIS underestimates the potential growth-inducing effects of the project.

- **Induced Development:** The project is likely to induce additional commercial and residential development in the surrounding area, contrary to the Town's growth management policies. The DEIS's conclusion that these impacts would be "diffused across the State" is unsupported by data. The Town insists that the DEIS be revised to include a more localized analysis of induced development and its impacts, particularly in relation to traffic, housing, and public services.

A8-76

### 13. Cumulative Effects

The cumulative effects analysis in the DEIS is insufficient and does not fully account for the combined impacts of the project alongside other planned developments in the region.

A8-77

- **Cumulative Water Demand:** The DEIS does not adequately address the cumulative impact on regional water supplies, particularly following multi-year drought conditions in the region and other large developments in the area. A more thorough analysis of cumulative water demand and its potential impacts on local groundwater levels and surface water flows must be conducted.
- **Cumulative Traffic Impacts:** The DEIS's analysis of cumulative traffic impacts is flawed, particularly in its assumption that future road improvements will align with the project's needs. The Town insists that the DEIS include a realistic assessment of traffic conditions based on existing and reasonably foreseeable developments, rather than relying on optimistic assumptions about future infrastructure projects.
- **Cumulative Impacts to Residential Development:** The DEIS fails to include several major residential developments in its analysis, including Windsor Gardens, Old Redwood Highway Villages, Shiloh Apartments, and Shiloh Mixed Use. Information on these projects is easily found on the Town of Windsor's website. The DEIS must be updated to include these projects in its analysis to ensure that the potential cumulative impacts on traffic, housing, and other community resources are fully considered and appropriately mitigated.
- **Cumulative Impact on Fossil Fuel Infrastructure:** The DEIS does not consider the Town of Windsor's ordinance passed in 2022, which bans the construction or expansion of gas stations within Town limits. This ordinance is part of a broader movement across Sonoma County, with several other jurisdictions adopting similar bans in response to growing concerns over fossil fuel reliance, climate change, and public health. The ban on new gas stations means that the existing stations in and around Windsor will face increased demand from the additional traffic generated by the casino and resort. This could lead to longer wait times, increased congestion around existing gas stations, and higher fuel prices, which may disproportionately affect residents and visitors who rely on gasoline-powered vehicles. It also conflicts with regional sustainability planning and air quality goals. The analysis must be updated to consider these cumulative effects and to propose meaningful mitigation measures.

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A8-80

In summary, the Town of Windsor finds the DEIS to be fundamentally inadequate. The document fails to sufficiently demonstrate mitigation of the significant adverse impacts that the Koi Nation Shiloh Resort and Casino Project would have on the environment and the Town of Windsor. The deficiencies

A8-81

identified in this letter clearly demonstrate that in order to avoid these impacts, the project would need to be redesigned so extensively that it would no longer resemble the project currently described in the DEIS. Given the scale of the necessary changes, it is evident that the "no project" alternative is the only viable option that aligns with the Town's commitment to protecting its environment and community.

The Town of Windsor respectfully urges the Bureau of Indian Affairs to require the adoption of the "no project" alternative, as it is the only option that ensures the protection of the Town's environmental resources, public safety, community character, and quality of life.

On August 14, 2024, a joint meeting of the Town of Windsor Planning Commission and Town Council was held, during which members of the public as well as elected and appointed officials provided comment on the DEIS. A recording of that meeting is available here: <https://windsor-ca.granicus.com/player/clip/1665> and the Town incorporates those comments herein by reference. Additionally, written correspondence related to the DEIS that has been received by the Town during the public comment period is attached to this letter.

If you have questions or need additional information, please contact me: Patrick Streeter, Community Development Director, at [pstreeter@townofwindsor.com](mailto:pstreeter@townofwindsor.com) or at (707) 838-5313.

Sincerely,



Patrick N. Streeter, AICP  
Community Development Director

cc: Chad Broussard, Environmental Protection Specialist  
Jon Davis, Windsor Town Manager  
Windsor Town Council  
Windsor Planning Commission

**Attachment**

Comments related to the Draft Environmental Impact Statement for the Koi Nation Shiloh Resort and Casino Project

A8-81  
cont.

Harold Minkin  
[REDACTED]  
Windsor, CA 95492  
[REDACTED]

Received as Additional Correspondence for  
the Joint Town Council & Planning  
Commission Meeting on August 14, 2024  
RE: Item 6.1

August 8, 2024

Ms. Amy Dutschke  
Regional Director, Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way, Sacramento, CA 95825

Regarding: **“DEIS Comments, Shiloh Resort and Casino Project”**

I am writing to you as I am a citizen of Windsor, California. I participated on the zoom call on July 30, 2024 at 6 PM. A majority of the people who were on the call were against having a casino built at the proposed location. Both Town Council of Windsor and Santa Rosa are against having a casino built

Here are the many issues brought up:

The Koi Nation is from Clear Lake, CA not from Santa Rosa, CA. They are 60 miles from their native lands. No casino has been built in California farther than 15 miles from their native lands.

The land has always been for Residential, agricultural and limited commercial use as mentioned in your EA report. It has Pruitt Creek that runs through the property and floods every year. The road is only a two lane road and would cause extreme problems for the citizens who live nearby if and when they have a fire, earthquake or other natural disaster. The proposed casino stated in their Environmental Impact report expects to have approximately 2,000 to 5,000 people traveling on Shiloh Road each day. This could be the equivalent of 2500 cars each day.

The U.S Fish and Wildlife Service has stated the endangered Tiger Salamander, Red Legged Frog, potential issues to coho salmon that can be found throughout Windsor, CA. This was in an article on August 31, 2011 from Patch.com. Measure L mentions this in your report, my question is how do you control habitat needs? What measures are to be taken?

It has been proven that where there is a casino an increase in crime, drunk driving, accidents and more have substantially increased. Currently Santa Rosa and Windsor police forces are understaffed as well as the Sonoma County Sheriff's Department. In your EIS report you mention having best management practices to solve these issues and shall “make best efforts to enter service agreements with the Sheriff and Fire Departments, again there are no guarantees which could result in an increase

The casino will also increase noise, air, lighting and groundwater pollution. This is addressed as only an LS (less than significant) issue. It is very much a *huge* concern to homes and businesses in the surrounding area.

During the proposed construction phase lasting from 2023 until the opening date of 2028, the large construction trucks and workers building from 7 am until 5 pm will create a lot of noise, traffic congestion and increase smog in the area.

The casino will affect local businesses and adjacent casino's. In your report you state there will be an overlap of potential market area and project site. **Four casino's affected will be: Graton Resort and Casino, Cache Creek Casino Resort, River Rock Casino and San Pablo Lytton Casino.**

**Secondary markets that will also be affected are: Twin Pine Casino and Hotel, Coyote Valley Casino and Hotel, Robinson Rancheria Resort and Casino, Konocti Vista Casino Resort and Sherwood Valley Casino.**

Regarding housing, property values, schools and businesses near the proposed casino in your, "sensitive receptors" section you state only LS. Growth Inducing Effects as stated in your report state it will have a negative effect on roadways infrastructure, sewer and water services.

It is known that property values go ***DOWN between 2-10% near a casino!***  
They will also be affected by construction noise, night lighting issues, air pollution from all the vehicles, etc.

The needed water of 170,000 gallons per day of potable water and 108,000 gdp of recycled water. Potable water supply would be provided via on-site wells, and recycled water (tertiary treated effluent) would be provided from the on-site wastewater treatment facilities (see Section 2.1.4). Recycled water would be used for toilet and urinal flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Fire flow requirements for Alternative A are anticipated to be 2,000 gallons per minute for 4 hours assuming the use of automatic fire sprinklers consistent with applicable requirements of the Tribe's Building and Safety Code of 2023, which are consistent with the California Building Code (CBC, Appendix D-1). as mentioned in 2.1.3 in the report would require several wells at a depth of 700 ft. Currently the surrounding wells on homeowners properties, according to those who spoke on the zoom video, are drying up or are not usable. This brings up many issues, one is where will the casino get water if the wells cannot produce enough to support the casino, hotel and pool? This will impede growth for needed housing, agriculture and other businesses that depend on water.

Another item mentioned in the report is that the casino would be located in a "high fire zone". I did not find where the Koi Nation would be building a fire station nearby. Other major concerns are how to get all the people safely evacuated. Regarding emergencies it is stated you will ONLY have three employees trained as a firefighter and EMT. ***This will NOT be enough workers to assist in case of an emergency***

Both the council members of Sonoma County, including Santa Rosa and Windsor are opposed to having this casino built. The Graton and Dry Creek Pomo tribes have also stated they are against the casino. Many callers from union construction companies that were told they would be hired by the Koi Nation were the very few in favor of the casino.

***I am hoping the Koi Nation decides to do 3.13.3.5 Alternative D: No Action Alternative***

Regards,  
Harold Minkin

CC: Amy Dutschke, Pacific Regional Director  
Chad Broussard, Environmental Protection Specialist, Deb Haaland, Secretary of the Interior



**From:** catherine dodd <[catherine.dodd@gmail.com](mailto:catherine.dodd@gmail.com)>  
**Sent:** Tuesday, August 13, 2024 1:02 PM  
**To:** Patrick Streeter <[pstreeter@townofwindsor.com](mailto:pstreeter@townofwindsor.com)>; D Fudge <[dfudge@comcast.net](mailto:dfudge@comcast.net)>  
**Cc:** [Keith.Roberts@sonoma.county.org](mailto:Keith.Roberts@sonoma.county.org)  
**Subject:** Windsor Draft comments on DEIS for Koi Casino suggestions

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Councilmember Fudge and Peter Streeter,  
Councilwoman, you may remember me I walked for you with dear Joan Galindo some years ago.

Thank you for leading the evaluation of the Chickasaw/Koi Casino project.

I thoroughly read the DRAFT comments which will be considered at tomorrow night's meeting thank you again for providing leadership and voice to so many concerns. I have some suggestions below. I live in Wikiup and have been a lone voice organizing the neighborhood. I will be at the meeting although it's at the same time as the Mark West Area Municipal Advisory Council meeting where I have asked that the Casino Project remain as a standing item on the agenda. The Council does not take positions so I may just provide a written update.

First, the 2022 Notice covers 2 different requirements which are unaddressed. 1) the EIS and 2) **"off-reservation" environmental impacts of he Proposed Project required by a "future Tribal-Sate Compact between the State of California and the Koi Nation"** A Tribal Environmental Impact Report or TEIR.

The notice says: "to reduce paperwork and eliminate redundancy, **the TEIR will be prepared in coordination with the EA resulting in a joint "EA/TEIR"** (herein referred to as an "EA")." The Town and SoCo should be requesting the state to evaluate the proposal. Perhaps Sup Gore who is on several tribal committees can assist, I have cc'd his staff Keith Roberts on this email.

I hope you will consider these suggestions to make the Windsor comments (which are good) stronger.

Throughout the document the grammar needs to be stronger, it uses the word "recommends" where it should say "insists", or the phrase "does not" where it should say "fails to", and "should" where it should say "must". Comments that are "opinions" are not considered. Please do not let great points made in the document as "recommendations" and "does not" or

"should" be considered "opinions" rather than conditions that must be addressed. I suggest a "search and replace for these words/phrases." Other issues that could be strengthened or added

**p.2** re: proposed mitigation to compensate owners whose wells become unusable - should include monitoring of water quality before they become unusable. and "The town "recommends" (should be insists) that a comprehensive well interference study be conducted "before any groundwater extraction begins" should say that it should be included in the EIS along with monitoring plans reporting to the BIA and local and county water agencies.

**p.3** include the aesthetics: while the word aesthetic is used only once in the document to introduce the Visual Resources section it is an important issue. CA Supreme Ct decision overturned the placement of telecom antennas based on ruining the aesthetic charm of neighborhoods in NEPA evaluation. Large wastewater storage units (and generators) are very unattractive and will change the aesthetics of the area. Their size will allow them to be seen from Shiloh, the Park and Old Redwood.

**p. 5** emissions - should add "and other illnesses" to cancer. Dementia is not associated with poor air quality. Further we have only studied effects of 2.5mcg particles - research is now looking at smaller particles.

Their measurements do not include the impact of daily diesel trips for supplies and waste removal nor stalled traffic on Old Redwood.

**p. 5** wetlands are essential for humidity which helps prevent fires

**p.7** cumulative habitat loss does not take into account the effect of the urban heat island that will be created by **34 acres** of built environment. Daniel Swain PhD UCLA Climate Scientist who specializes in fire risk describes the the fore heat island effect which increases fire risk when temperatures are over 85 and winds above 20miles/hour. Heat islands are produced by buildings/pavement that collects and give off heat 24/7. The night air loses it's humidity. So replacing vineyards which absorb heat (and CO2) with heat emitting buildings will change the immediate temperatures affecting habitat and increase fire risk.

This heat island will affect the health of the low income seniors who live in the two trailer parks. Heat illness had been recognized by the [CDC](#) as deadly.

**p. 8** Potential Impacts on Archeological Resources - thank you for including these comments. This comment should also speak to the "trust" land transfer itself - there is no documentation that the Koi tribe has ancestral ties to this location, an argument can be made that there has been a community in Sebastopol but the Koi remain active in preserving their ancestral connections to Lake County as evidenced by their leadership and connection to the Anderson Marsh Historic State Park on the Lake see the state park brochures and the [PBS special](#) A Walk through time on the

[park website](#). Making this point is important because this is the second objective of the public comment period.

**p. 9** Housing needs to add over 1000 workers and lack of affordable housing stock not only in Windsor but in Wikiup. There is only one house for rent at this time in Wikiup. Home sales are only on the market for a week and are selling for \$890 up. Homeowners cannot get insurance because of fire risk which has worsened the real estate market. Property values will decrease, people move to Windsor for its small town aesthetics.

Low wage casino workers will be sleeping in their cars.

**p. 9** transportation and Circulation "impacts are incomplete" as is the resulting climate impact analysis. Please see "heat island" comments above. The addition of traffic will exacerbate the heat island effect.

**p. 10** traffic will avoid Shiloh and drive up to Faught road, a much windier two lane road with deep trenches, and then on through neighborhoods passed San Miguel school to reach the HWY 101 at Airport Blvd.

**p. 10** Shiloh should not be widened, it will change the aesthetic character of the area.

**p. 11** Faught is also a bicycle corridor which will be endangered by more cars.

**p. 12** Waste management unacceptable to add 5tons/day to waste stream when we are working so hard to reach Zero Waste. Suggestion to avoid polystyrene needs to include all plastic items and any items with PFAS including flooring, carpeting, uniforms etc. The DEIS merely states the capacity of SoCo landfill. It fails to recognize the Methane emissions from Landfill, the SoCo Local Solid Waste task for reported last week that the goal for methane collection is 30% over the next 10 years.

**p. 12** Emergency service estimates need to be based on each quarter in 2023 calls for Emergency response to Graton and since this will be bigger than Graton adjusted accordingly (Hwy patrol, Rohnert Park police, SoCo sheriff, SoCo Social Services (children locked in cars, domestic violence), ambulance, and local and county fire).

**p. 12** Noise traffic calming essential. 24 hour noise will be aesthetically unpleasant and residents should be able to sit outside in peace and sleep with their windows open.

**p. 13** Wild fire does not assess RISK! The proposal is for a non-smoking facility however smokers will go outside and will smoke in their cars traveling to and from. Adding 10,000 people (Half the population of Windsor and twice the population of Wikiup) squeezed into 34 acres between 2 neighborhoods will inevitably end up with an accidental cigarette but or car spark and fires.

Evacuation estimates do not point out that they are the same evacuation routes for Windsor and only refer to Windsor and east Mayacama estates - need to add Wikiup and Larkfield south and the stopped traffic will be greatly worsened.

**p. 15** Wildfire mitigation - this removes a valuable firebreak, and and completely neglects the importance of prevention. The new description relies on the County's warning systems which are untested in PANIC situations where people do not obey the traffic laws.

**p. 15** Visual resources: In the DEIS there are references to "visuals" and several photos with the casino stuck in (one from Hwy, 101, Shiloh Ridge) none from the neighborhood across the street on Shiloh. The rendering that Acorn used on the cover of the EIS which is the entrance across the road neighborhood and it looks like a freeway turn off, not a quiet country road. Their photos from Shiloh Regional Park use some kind of telescopic lens which makes the monolith look farther away and much smaller. Hikers will not appreciate the removal of the beautiful view. The other photos make it look like a compound.

Thank you for including the "scenic corridors in the Windsor General Plan" it is important protect the **quaint country aesthetic of the neighborhood** and Alternatives A,B and C will harm that.

Aesthetics is more than visual. Aesthetics include neighborhood quality: fresh air and quiet. The traffic alone will damage both the air and the quiet for the two directly adjacent neighborhoods: 8,410/trips/day and 11,834 trips Saturday will cause significant noise at all hours of the day as will the sirens from law enforcement, emergency medicine, fire. Neighbors should be able to sit outside and sleep with their windows open to wake up to birds. Also, widening Shiloh will change the aesthetic quaintness of the area where bike riders and walkers enjoy being outdoors.

From the surrounding areas (e.g. Wikiup) noise is also an issue from increased traffic and sirens on HWY 101 and Old Redwood.

**p. 16** recommends redesign....*really do you think that's possible - your recommendation is D - so why even suggest redesign.*

The Windsor draft does not comment on the "drunk driving" section which states that there is no mitigation required.

Given that areas around the Casino on Shiloh and Old Redwood have no sidewalks and Esposito park is across at a major intersection, it seems that more than "responsible alcohol beverage policy" should be required (what ever that is). Pedestrian and bicycle safety are paramount.

Perhaps a drink limit or signs posted at the garage and parking areas that driving while inebriated is prohibited and the facility reserves the right to require breathalyzer testing prior to leaving the grounds - and then enforce it. Further an analysis of drunk driving arrests within 25 miles of the Graton casino prior to its opening and during 2023 would shed some light on this danger.

I hope you will consider some of these suggestions. Windsor's statement is the most important. Thank you for making this heroic effort.

In gratitude,

Catherine Dodd PhD, RN she/her



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Board Member [Commonweal](#)

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Advisor, Families Advocating for Chemical and Toxic Safety [FACTS](#)

[Nurses for America](#) Core Team  UM

**From:** [Carrie Marvin](#)  
**To:** [Town Council](#); [Carrie Marvin](#)  
**Subject:** MEETING ON KOI CASINO  
**Date:** Friday, August 9, 2024 2:52:29 PM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Unfortunately I am out of town so I ask that this be submitted into the record.

I have so many reasons that I am concerned about this casino going in to our local neighborhood, across from the park. But something I just think they keep missing - or they don't understand because they don't live here - is how terrifying it is to have to evacuate quickly due to fire. The thought of another 5,000 plus cars trying to leave Windsor and get on the freeway is just unimaginable. When I spoke on the call to the BIA, I tried to explain that this is very serious and that we are screaming about this. If people are stuck in cars with fire raining down - and we have seen that happen - I would think they would have a serious lawsuit on their hands. Because we are telling them this is our reality. And they are not understanding this. Please do what you can to make this clearer to them. The Tubbs fire spread across a 6 lane freeway. It burned down KMART and everything in that parking lot. You wouldn't even think that was possible. We have videos of what happens in these fires - people in their cars - stories of people dying because they cannot get out to escape the fires. This is a very real concern. And I feel like they are not understanding the reality.

Am I concerned about them having 7 wells on their property and building a waste system and knowing how that area floods and concerned about our local animals - of course I am concerned. I can't believe this is still progressing. We must do what we can to stop this.

The other native tribes clearly don't want the KOI - who we KNOW are not native to this location - who will just pilfer off the 2 casinos 15 minutes north and south of us. It just seems like the KOI and the BIA don't care at all about those tribes or the fact that they would be building this in an actual neighborhood. Or for the real human lives who will be lost WHEN (not if) another fire occurs. Everyone in Windsor should be concerned.

Carrie Marvin  
Windsor CA

Received as Additional Correspondence for  
the Joint Town Council & Planning  
Commission Meeting on August 14, 2024  
RE: Item 6.1

**From:** [Carrie Marvin](#)  
**To:** [Town Council](#)  
**Subject:** What 1600 Spots looks like  
**Date:** Wednesday, August 14, 2024 6:14:12 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Look at the enormity of this structure. Now times that by MORE than 3 and that would give you 5,000 spots. It is humungous. This in a neighborhood. How is this even possible? How will this affect our traffic?

[New 5-Story Parking Structure Unveiled At Graton Resort & Casino](#)



**New 5-Story Parking Structure Unveiled At  
Graton Resort & Casino**

The garage marks the first completed project of a multi-year, \$1 billion expansion of the casino resort.

Carrie Marvin  
Windsor

Received as Additional Correspondence for  
the Joint Town Council & Planning  
Commission Meeting on August 14, 2024  
RE: Item 6.1

**From:** [Carrie Marvin](#)  
**To:** [Town Council](#)  
**Subject:** Articles to be entered in the record  
**Date:** Wednesday, August 14, 2024 4:33:29 AM  
**Attachments:** [75.png](#)

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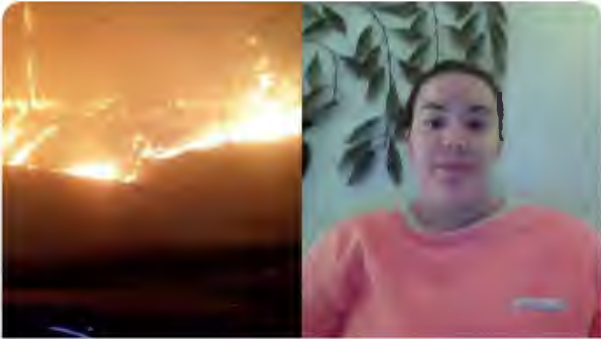
CNN headline today 8/14 about Athens fire- “ the fire moved faster than the cars”

“Lahaina’s front street filled with burned cars abandoned by drivers”



Five people found dead in cars caught up in California wildfires  
[independent.co.uk](http://independent.co.uk)

“Five people found dead in cars caught up in California wildfires” (paradise fire)



'The car's on fire, I'm not going to make it': Nurse recounts escape from California fire  
[youtube.com](http://youtube.com)

The car's on fire. I'm not going to make it”

“Forced out by deadly fires. Then trapped in Traffic.







Forced Out by Deadly Fires, Then Trapped in Traffic (Published 2018)

nytimes.com



Thousands fleeing Kincadee fire face heavy traffic and long gas station lines

latimes.com

“Thousands fleeing Kincadee fire face heavy traffic and long gas lines”

“180,000 people evacuated due to Kincadee fire. largest evacuation in Sonoma County History”



180,000 People Evacuated Due to Kincadee Fire; Largest Evacuation in Sonoma County History

youtube.com

vcstar.com



<https://www.vcstar.com/in-depth/news/local/2019/04/25/california-wildfire-evacuation-routes-traffic-jams/3238313002/>

This is a very good article. Doesn't list sonoma county as one of the worst but does mention the Tubbs fire.

"California wildfire evacuations are becoming deadly traffic jams"

BIA should be required to read and watch videos about the Tubbs and Kincade fires. There are lots of them.

Articles like this which describe the fire activity



Sonoma County under siege: Kincade Fire forces 90,000 evacuations  
sfchronicle.com

cnn.com



Sent from my iPhone

Received as Additional Correspondence for  
the Joint Town Council & Planning  
Commission Meeting on August 14, 2024  
RE: Item 6.1

**From:** [Jonathan Marvin](mailto:Jonathan.Marvin@me.com)  
**To:** [ourcommunitymatters2@gmail.com](mailto:ourcommunitymatters2@gmail.com); [Town Council](mailto:Town.Council@me.com)  
**Cc:** [Carrie Marvin](mailto:Carrie.Marvin@me.com)  
**Subject:** Fwd: THE KOI CASINO IN THE WINDSOR NEIGHBORHOOD  
**Date:** Wednesday, August 14, 2024 12:17:08 PM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

I am following up on comments made by my wife, Carrie Marvin and I hope to be at the hearing this afternoon. This email was sent to the Chad Broussard at the BIA, but I received an automatic reply that he was out of the office until Friday. Ironically, my conclusion is that I fully support the recommendation of the EIS, that the Environmentally Preferable Alternative is Alternative D.

Begin forwarded message:

**From:** Jonathan Marvin <[jpmarv@me.com](mailto:jpmarv@me.com)>  
**Subject:** THE KOI CASINO IN THE WINDSOR NEIGHBORHOOD  
**Date:** August 14, 2024 at 12:11:35 PM PDT  
**To:** [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

Mr. Broussard:

By way of introduction, I am a resident of Windsor and my wife has been a vocal advocate opposing the approval by the BIA of the proposed Casino by the Koi Tribe of the Pomo Indians in Windsor I am sure you are aware is most definitely not their tribal homeland - but I leave that to others to discuss. My wife and others who as Windsor residents (particularly those most affected on the east side of Highway 101) have spent hundreds of hours working to impress upon the BIA the dangers that would be presented by this project to those thousand upon thousands of residents in Windsor and northern Santa Rosa. I have finally had a chance to read some - but not all of the EIS - and I believe most of these potential impacts are raised and acknowledged to be true environmental impacts by the authors of the EIS. Originally my biggest concern about the EIS process was that the EIS was drafted by a company that apparently has significant past ties (and potential future business) with the Chickasaw Nation regarding that tribe's efforts to increase the number of Casinos across the country. And I still believe that the majority of impacts identified in the EIS have been classified by Acorn Engineering as not having Significant Impact, without much consideration given to the real life ramifications of the impacts on the community (as opposed to the impacts on the Casino site itself). But Ultimately, what is most significant is the final conclusion of the EIS as to the "Environmentally Preferable Alternative" project for the site under the Code of Federal Regulations (40 CFR 1502.14(f)). I am sure you fully understand this provision of the Code which requires the author of the EIS to make a recommendation based on comparison of the environmental impacts identified for the various alternatives. As set forth in the Code:

The alternatives section is the heart of the environmental impact statement. The

alternatives section should identify the reasonably foreseeable environmental effects of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16). In doing so, the analysis should sharply define the issues for the decision maker and the public and provide a clear basis for choice among options. In this section, agencies shall:

\* \* \*

(f) Identify the environmentally preferable alternative or alternatives amongst the alternatives considered in the environmental impact statement. The environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders; or causing the least damage to the biological and physical environment. The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative.

It is worth noting that there were only two “beneficial impacts” identified by the EIS, one being the Effects to the Tribe, which they note “would allow the Tribe to generate revenues to fund tribal services.” There is no indication or evidence of what services the Koi nation provides to its fewer than 100 members. And the completely speculative Economy/Employment benefit to an amorphous community (in no way discussing how the affected location would benefit), in which “construction and operation of the project alternatives could impact spending and labor demand in the region. Construction and operation of the project alternatives could impact wages, job availability, and/or employment rates.” Based on comments raised at the Zoom meeting, primarily by members of the Northern California Carpenters Union, presumably there would be some number of jobs for union members during construction (in those comments, none of those union members claimed to be residents of Windsor and only one identified his home as unincorporated Santa Rosa. And presumably there would be other jobs available but no indication of evidence that any of those jobs would be taken by Windsor or even Sonoma County residents where the biggest employment issue for many small businesses is finding people to fill job openings. Compare that with more than 80 negative impacts, whether deigned by Acorn Environmental to be Less than Significant (without other than speculative explanation) or Significant (with speculative analysis of the mitigation that could render them **potentially** less significant.

I urge you to take the recommendation of the EIS and find for Alternative D as identified by the EIS.

**From:** RICHANDSHERYL LAWTON  
**To:** Town Council  
**Subject:** Koi Nation Casino Project  
**Date:** Wednesday, August 14, 2024 1:33:49 PM

Received as Additional Correspondence for  
the Joint Town Council & Planning  
Commission Meeting on August 14, 2024  
RE: Item 6.1

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello,

I have previously submitted the following concerns directly to BIA via Chad Broussard, but feel it is important to restate them as I don't want any of these concerns to be minimized or overlooked. The proposed project would be extremely detrimental to Sonoma County, specifically the northern section of Santa Rosa and the Town of Windsor.

1. Traffic- the corner of Shiloh Road and Old Redwood Highway is already heavily used and has seen recent housing and other projects currently under construction. Addition traffic on these two lane roads will cause significant backups leading to numerous negative impacts such as noise and air pollution, accidents, soil and water contamination, etc.
2. Evacuation routes for emergency response fall into this proposed area. Current roadways, freeway access, and the surrounding areas can not accommodate the additional projected number of visitors.
3. Water usage- water is already a limited resource within our community. The current sanitation and water systems would be overloaded with the estimated increase usages.
4. Flooding potential- Poole creek often floods during the rainy season. Additional conversion of land available for water absorption to building development will increase the amount of runoff and erosion.
5. Wildlife corridors currently exist on the proposed property. Development will displace these important corridors and thereby negatively impact the population of endangered species.
6. Gaming opportunities already exist with the county and meet the demands of visitors. There isn't a need for further options.
7. The proposed project is immediately adjacent to existing neighborhoods, town park, and large apartment complex. Residents, specifically children, would be exposed to negative social behaviors that are associated with casinos ( smoking, drinking, gambling, use of addictive substances, etc.)

I support rejecting the proposed project. I support not developing this 68.60 acre parcel.

Thank you  
Sheryl Lawton

Sent from my iPhone

**From:** Harold <haroldminkin6@gmail.com>  
**Sent:** Sunday, August 18, 2024 9:54:43 AM  
**To:** Jon Davis <jdavis@townofwindsor.com>  
**Cc:** Harold Minkin <haroldminkin6@gmail.com>  
**Subject:** Letters sent to Biden and Harris

Hi Jon,

Hopefully these letters can be included in with the other information to be sent to the BIA.

Let me know!

***Regards,***

***Harold***

Harold Minkin

[REDACTED]  
Windsor, CA 95492

[REDACTED]  
haroldminkin6@gmail.com

August 18, 2024

Vice President Kamala Harris  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Regarding: **Shiloh Resort and Casino Project in Windsor, CA**

Dear Vice President Harris,

I am hoping you and President Biden persuade Deb Haaland, Secretary of the Interior to prevent the Koi Nation from building a casino, as described in my letter in our town of Windsor, California.

I am writing to you as I am a citizen of Windsor, California. I participated on the zoom call on July 30, 2024 at 6 PM. A majority of the people who were on the call were against having a casino built at the proposed location. Both the Town Council of Windsor and Santa Rosa are against having a casino built.

Here are the many issues brought up:

The Koi Nation is from Clear Lake, CA not from Santa Rosa, CA. They are 60 miles from their native lands. No casino has been built in California farther than 15 miles from their native lands.

The land has always been for Residential, agricultural and limited commercial use as mentioned in your EA report. It has Pruitt Creek that runs through the property and floods every year. The road is only a two lane road and would cause extreme problems for the citizens who live nearby if and when they have a fire, earthquake or other natural disaster. The proposed casino stated in their Environmental Impact report expects to have approximately 2,000 to 5,000 people traveling on Shiloh Road each day. This could be the equivalent of 2500 cars each day.

The U.S Fish and Wildlife Service has stated the endangered Tiger Salamander, Red Legged Frog, potential issues to coho salmon that can be found throughout Windsor, CA. This was in an article on August 31, 2011 from Patch.com. Measure L mentions this in your report, my question is how do you control habitat needs? What measures are to be taken?

It has been proven that where there is a casino an increase in crime, drunk driving, accidents and more have substantially increased. Currently Santa Rosa and Windsor police forces are understaffed as well as the Sonoma County Sheriff's Department. In your EIS report you mention having best management practices to solve these issues and shall "make best efforts to enter service agreements with the Sheriff and Fire Departments, again there are no guarantees which could result in an increase

The casino will also increase noise, air, lighting and groundwater pollution. This is addressed as only an LS (less than significant) issue. It is very much a *huge* concern to homes and businesses in the surrounding area.

During the proposed construction phase lasting from 2023 until the opening date of 2028, the large construction trucks and workers building from 7 am until 5 pm will create a lot of noise, traffic congestion and increase smog in the area.

The casino will affect local businesses and adjacent casino's. In your report you state there will be an overlap of potential market area and project site. **Four casino's affected will be: Graton Resort and Casino, Cache Creek Casino Resort, River Rock Casino and San Pablo Lytton Casino.**

**Secondary markets that will also be affected are: Twin Pine Casino and Hotel, Coyote Valley Casino and Hotel, Robinson Rancheria Resort and Casino, Konocti Vista Casino Resort and Sherwood Valley Casino.**

Regarding housing, property values, schools and businesses near the proposed casino in your, "sensitive receptors" section you state only LS. Growth Inducing Effects as stated in your report state it will have a negative effect on roadways infrastructure, sewer and water services.

It is known that property values go ***DOWN between 2-10% near a casino!***  
They will also be affected by construction noise, night lighting issues, air pollution from all the vehicles, etc.

The needed water of 170,000 gallons per day of potable water and 108,000 gpd of recycled water. Potable water supply would be provided via on-site wells, and recycled water (tertiary treated effluent) would be provided from the on-site wastewater treatment facilities (see Section 2.1.4). Recycled water would be used for toilet and urinal flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Fire flow requirements for Alternative A are anticipated to be 2,000 gallons per minute for 4 hours assuming the use of automatic fire sprinklers consistent with applicable requirements of the Tribe's Building and Safety Code of 2023, which are consistent with the California Building Code (CBC, Appendix D-1). as mentioned in 2.1.3 in the report would require several wells at a depth of 700 ft. Currently the surrounding wells on homeowners properties, according to those who spoke on the zoom video, are drying up or are not usable. This brings up many issues, one is where will the casino get water if the wells cannot produce enough to support the casino, hotel and pool? This will impede growth for needed housing, agriculture and other businesses that depend on water.

Another item mentioned in the report is that the casino would be located in a "high fire zone". I did not find where the Koi Nation would be building a fire station nearby. Other major concerns are how to get all the people safely evacuated. Regarding emergencies it is stated you will ONLY have three employees trained as a firefighter and EMT. ***This will NOT be enough workers to assist in case of an emergency***

Both the council members of Sonoma County, including Santa Rosa and Windsor are opposed to having this casino built. The Graton and Dry Creek Pomo tribes have also stated they are against the casino. Many callers from union construction companies that were told they would be hired by the Koi Nation were the very few in favor of the casino.

***I am hoping the Koi Nation decides to do 3.13.3.5 Alternative D: No Action Alternative***

Regards,

Harold Minkin

CC: President Joe Biden

Amy Dutschke, Pacific Regional Director

Chad Broussard, Environmental Protection Specialist, Deb Haaland, Secretary of the Interior



Harold Minkin

Windsor, CA 95492

haroldminkin6@gmail.com

August 18, 2024

President Joe Biden  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

Regarding: **Shiloh Resort and Casino Project in Windsor, CA**

Dear President Biden,

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Both the council members of Sonoma County, including Santa Rosa and Windsor are opposed to having this casino built. The Graton and Dry Creek Pomo tribes have also stated they are against the casino. Many callers from union construction companies that were told they would be hired by the Koi Nation were the very few in favor of the casino.

***I am hoping the Koi Nation decides to do 3.13.3.5 Alternative D: No Action Alternative***

Regards,

Harold Minkin

CC: Vice President Kamala Harris

Amy Dutschke, Pacific Regional Director

Chad Broussard, Environmental Protection Specialist, Deb Haaland, Secretary of the Interior

**From:** RICHARD BOYD <richard11boyde@comcast.net>  
**Sent:** Sunday, August 18, 2024 7:37:17 PM  
**To:** Town Council <TownCouncil@Townofwindsor.com>  
**Subject:** comments on Koi Shiloh casino

Please see the attached letter.

August 19, 2024

Windsor Town Council Members  
Towncouncil@townofwindsor.com

**Subject: EIS Comments, Koi Nation Shiloh Resort and Casino**

Dear Windsor Town Council Members:

I am a Sonoma County resident and I oppose the Koi Nation's proposed fee-to-trust transfer of unincorporated land adjacent to the Town of Windsor for a hotel and casino gaming project. The environmental impact statement (EIS) released on July 8, 2024, contains so many vague assessments that one wonders how the BIA could even make a judgement about allowing the Koi Nation to take the land in question into trust. My objections to the EIS are far too numerous to discuss, but I will specify a few to document my objections.

My primary issue is with respect to the partnership between the Koi and the Chickasaw tribes. The Koi number less than 100, so there's no way they could run a casino of the size they are proposing. The Chickasaw certainly do know how to run a casino, and they are apparently trying to tap into the profit potential of California by their attempt to merge with a local tribe to create a new casino. The locals are pawns in the Chickasaw's effort to circumvent the fact that the proposed casinos are 1500 miles from their homeland. Furthermore, it would deliberately compromise the lives and livelihood of the local Indigenous tribes.

Sonoma County and the Town of Windsor have raised numerous concerns related to water supply; wastewater; traffic; air, noise, and light pollution; wildfire risk and evacuation routes; law enforcement and public safety; housing value degradation; and other economic impacts. Sonoma County Tribes have also highlighted the impacts on them and their cultural resources. Many of the mitigation measures in the EIS are framed as "Best Management Practices," but even when those are spelled out there is little assurance that they will occur. And the actual mitigation is rarely adequate.

For example, a huge concern of many of the local residents is how fire evacuation will occur. The EIS claims this will be solved by expanding Shiloh Rd. and Old Redwood Highway. But there is scant recognition that there are already more people who will need to be evacuated from the two new apartment complexes than were in the past two evacuations. The Shiloh-Old Redwood and Shiloh-101 intersections were clogged the last time we were evacuated. Adding all the residents from the two new apartment complexes and several thousand more from the proposed casino to this will be catastrophic. The EIS proposes that the thousands of occupants of the casino-hotel would be given an hour's advance notice of an evacuation order, so they could get out first. This isn't much solace to the occupants of Windsor who would need to evacuate along Shiloh Road, since the casino complex evacuees would surely be clogging Shiloh Road as well as the subsequent intersections.

The EIS claims that fires like the last two disastrous ones that occurred in Sonoma County in the past few years won't create another emergency situation because of better advanced warning systems. However, I note that, in some cases, a fire might not give much of a head start. This would be the case of a "dry lightning" storm. One such storm occurred several years ago, and it started nineteen fires in this area. With no warning! It's clear why the EIS doesn't offer any real mitigation

strategies for this situation. It can't be mitigated when the thousands of cars from the casino/hotel are added to our already expanded numbers.

There are so many other problems that are "solved" in the EIS by BMP, but often the solutions are not with the Koi's jurisdiction. In some cases, the EIS states that committees will be set up to study the problem, or an expert biologist will be hired to assess the situation. But those aren't solutions, they merely kick the can down the road.

In another section, it is stated that very little home devaluation occurs as a result of a casino. And the EIS refers to data for homes within a five-mile radius. That is a long way from the casino. It would be much more relevant to discuss home prices within a one-mile radius. Since there will be 25 times as many homes within a five-mile radius as within 1 mile, the number of homes at larger radius will dominate the statistics. This is semantic trickery.

For me the final blow in this EIS comes in section 3.14, where it is stated "**Future development along with project alternatives may cumulatively impact land resources, including topographic changes, soil loss, and seismic risk.** If this EIS is approved for any of the options A, B, or C, the wording of this statement is sufficiently vague that the Chickasaw would apparently have carte blanche to ultimately build whatever they want. irrespective of the many unmitigable environmental impacts.

I should note that I strongly support the efforts of local, indigenous tribes. However, the level of dishonesty and deceit in this EIS troubles me greatly. And the effort of the Chickasaw to establish a casino 1500 miles from their home may well be illegal. Authorizing even one instance of such casino shopping would set a terrible legal precedent.

This project is not right for Sonoma County and will do nothing to restore lands to the Koi Nation, whose homeland is in Lake County. The only way to avoid significant environmental impacts and avoid compromising the lives of the rightful local Indigenous people is for the Bureau of Indian Affairs to approve Option D, the environmentally preferred "no project" alternative in the EIS.

Sincerely,  
Richard N. Boyd, Ph.D.  
[REDACTED]  
Windsor, CA 95492

**From:** Sidnee Cox <[sidnee@sonic.net](mailto:sidnee@sonic.net)>

**Sent:** Monday, August 19, 2024 10:36 AM

**To:** [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov); Town Council <[TownCouncil@Townofwindsor.com](mailto:TownCouncil@Townofwindsor.com)>

**Subject:** Re: EIS Comments, KOI Nation Shiloh Resort & Casino, Windsor

Chad Broussard  
Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Region  
[chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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

**Re: EIS Comments, Koi Nation Shiloh Resort and Casino Project**

**Dear Mr. Broussard and Ms. Dutschke,**

Thank you for this opportunity to submit public comment regarding the Environmental Impact Statement for the proposed Koi Nation Shiloh Resort and Casino Project. I've read the 278 pages of the EIS, as well as most of the supplemental attachments. I oppose this project for the reasons discussed below.

I understand that in 2019, the Koi Nation became a federally recognized tribe, and in 2021 they purchased the 68 acre vineyard adjacent to Windsor, CA. The Koi Nation intends to establish this site as their sovereign land.

The problem? They don't plan on living there according to the EIS. They plan on building a massive casino complex that will bring thousands of daily visitors, gamblers, vacationers, partiers, and concertgoers, (requiring over a thousand employees), to an agricultural property that contains a vineyard with seasonal waterway (Pruitt Creek, a tributary to the Russian River), as well as several federally protected species. The site is also next to neighborhoods with many homes, as well as apartments filled with families and kids. A county regional park (Shiloh, Regional Park) frequented by hikers, cyclists, and equestrians, and a family friendly park (Esposti Park) with two baseball fields for Little Leaguers and sports teams is right across the street. On an average weekend, the Esposti parking lot can be full.

We understand the Koi lost their homeland in Clear Lake generations ago and have been residing in other areas such as Sebastopol and Santa Rosa. They want a place to call home. Of course that is understandable.

But a home is NOT a 68 acre casino complex that consists of a 400 (or 200) room hotel, multiple restaurants, gaming facilities, spa, entertainment theater, parking garage for thousands of cars, waste water treatment plant, etc.. The Koi resort project will be a cooperative business venture with the Chickasaw from Oklahoma. The Chickasaw will be financing, building, and operating this

project.

This planned resort, which is supposed to reclaim a sovereign place for the Koi to call home, is not only going to cause profound harm to the land and environment, it will also put the surrounding roadways, neighborhoods and recreational parks at risk. The EIS is required to delve deeply into these risks and determine the extent of the harm and explore possible mitigation strategies. Reading through this extensive report, it is obvious that there are too many sources of harm to be mitigated. (“Best Management Practices” are not mitigation and will not render the impacts “less than significant.”)

This proposed Koi project will significantly impact air quality, water resources (i.e. well water depletion), crime rates, Pruitt Creek contamination, traffic circulation, fire evacuation, public services, and cause noise and light pollution. No amount of mitigation will change these facts.

A massive casino complex must not be erected on this site (identified as Alternative A and B). Neither should Alternative C- “the non-gaming alternative” which consists of a 200 room hotel with 20,000 sq ft. winery, 5,000 sq ft. visitor’s center, spa, restaurant, water and wastewater treatment facility, parking lots, etc. And since the Koi will partnering with the Chickasaw, who own and operate 23 casinos in Oklahoma, including the largest casino in the U.S., how long will it be before Alternative C is turned into Alternative A or B?

Option D, “No action alternatives” would allow the land to remain in its existing condition and not taken into trust “for the foreseeable future.” No environmental effects would occur. Pursuant to 40 CRF section 1502.14 (f), Alternative D was determined to be the environmentally preferred alternative.

It is imperative that the Koi procure an alternative site to pursue their business objectives “in order to best meet the tribe’s objectives and provide the greatest socioeconomic benefit to the Tribe and the surrounding community.”

I have lived in Windsor since 1987. When our town was incorporated in 1992, a community separator and Urban Growth Boundary was established to provide critical open space directly south of town (now the location of the proposed casino project). This open space proved to be a vital firebreak during the Kincade fire in 2019 that threatened to destroy most of Windsor. The flames came within a half mile of our neighborhood on East Shiloh.

It is my prayer and fervent intention that objective logic and clear vision will prevail, and the BIA will not allow this land to be taken into trust for these project alternatives.

The neighbors of southeast Windsor are exercising our rights as property owners, voters, taxpayers, and stewards of our land. We remain firmly dedicated to opposing this development so we may continue to enjoy a safe and peaceful environment for our families, our community, and our longtime neighbors.

We support the Federated Indians of Graton Rancheria and the Dry Creek Rancheria of Pomo Indians that own and operate the Graton Casino and River Rock Casino, respectively, in Sonoma County.

**Some final questions:**

- What federal, state or local protections will the environment have if this land is taken into trust?
- Who would monitor the environmental impact on an ongoing basis?
- What steps can be taken by any jurisdiction if environmental requirements are not followed?
- What sort of precedent will be set if the Chickasaw Nation is allowed to get a foothold into the gaming industry in Sonoma County and California?



Above left, Graton Casino, Rohnert Park, is in an industrial and business zone. Above, River Rock Casino, Geyserville, is in a rural area, distant from any developments.

Below, left, the proposed Koi Casino will be located at Windsor's southern boundary. It will be adjacent to residential neighborhoods. The two new apartment complexes impacting evacuation routes are shown in orange.

The proposed Koi project alternatives A, B and C will have significant environmental impact on water resources, traffic, air quality, public services, evacuation planning in emergencies, and more. The most recent EIS does not reduce these impacts to "less than significant."

Thank you for your time on this critical matter.

Sincerely,  
Sidnee Cox

[REDACTED]  
Windsor, CA 95492





Sidnee Cox • [REDACTED] Windsor, CA 95492

Chad Broussard  
Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Region  
[chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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

Re: EIS Comments, Koi Nation Shiloh Resort and Casino Project

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Sincerely,

Sidnee Cox





Graton Resort and Casino  
Rohnert Park



River Rock Casino, Geyserville



Proposed Koi Casino and  
Resort Complex just outside  
Windsor's southern boundary.

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**From:** betsy mallace <[REDACTED]>

**Sent:** Monday, August 19, 2024 12:01 PM

**To:** Town Council <[TownCouncil@Townofwindsor.com](mailto:TownCouncil@Townofwindsor.com)>

**Subject:** MORE SUPPORT AGAINST CASINO FIGHT!! Gov Newsom ltr

Hi,

Just want to be sure you have seen this.

Thanks,

Betsy Mallace

[REDACTED]

[REDACTED]

[REDACTED]



## OFFICE OF THE GOVERNOR

August 16, 2024

Bryan Newland  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W., MS-4660-MIB  
Washington, D.C. 20240

Re: Shiloh Resort and Casino Project (Koi Nation of Northern California)  
Scotts Valley Casino and Tribal Housing Project (Scotts Valley Band of Pomo Indians)

Dear Assistant Secretary Newland:

On behalf of Governor Gavin Newsom, I write to urge the U.S. Department of the Interior not to move forward with the Shiloh Resort and Casino Project in Sonoma County and the Scotts Valley Casino and Tribal Housing Project in Solano County.

Governor Newsom and his Administration are grateful for the opportunity to share our perspective on these projects, as we are grateful to the Department for its thoughtful and constructive engagement in a wide range of other contexts. Our concerns about these specific projects, and their specific procedural pathway, should not be understood as a criticism of the Department's broader practice of taking land into trust for tribal governments—including, in appropriate cases, the Department's practice of (and time-tested procedures for) taking land into trust for gaming. The Governor recognizes the important role that this practice can play in supporting tribes' political sovereignty and economic self-sufficiency.

At the same time, however, caution is warranted when considering the potential expansion of gaming to land that is not currently eligible for gaming. This is particularly true in California, where the voters who legalized tribal gaming

were promised that such gaming would remain geographically limited. This historical context underscores the importance of striking a careful balance between the potential benefits of expanded tribal gaming and its potential impacts on surrounding communities.

Federal law contains important safeguards that have previously helped the Department strike this delicate balance. As a starting point, federal law generally prohibits gaming on new land taken into trust for a tribe, unless the land is linked to the tribe's preexisting reservation. 25 U.S.C. § 2719(a). The principal exception to this rule carefully safeguards local interests (including the interests of local tribes), allowing gaming only where the Department has determined not only that such gaming would be in the best interest of the gaming tribe, but also that it "would not be detrimental to the surrounding community"—and only where the relevant state's governor concurs in that determination. 25 U.S.C. § 2719(b)(1)(A). Governor Newsom discharges this responsibility with the utmost care, and has previously exercised this power in a manner that supports both tribal self-sufficiency and the interests of surrounding communities. See, e.g., Letter from Governor Gavin Newsom to Bryan Newland, Assistant Secretary – Indian Affairs (June 13, 2022). The Governor appreciates the opportunity to engage in this important process, which appropriately balances the sovereign interests of states and tribes.

Here, however, the Governor is concerned that the Department might depart from this familiar procedure and its important safeguards. In their current form, these two projects propose to rely on a different statutory provision that allows gaming on land taken into trust—without a two-part determination or the Governor's concurrence—as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). Make no mistake: the Governor recognizes the profound moral value of restoring a tribe's control over its aboriginal homeland. Care must be taken, however, to ensure that this "restored lands" exception—like all exceptions—remains within appropriate limits. The "restored lands" exception must not be construed so broadly as to "give restored tribes an open-ended license to game on newly acquired lands." *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015). On the contrary: "In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations." *Id.*

As explained below, neither of these two proposed projects fits within the limits of the “restored lands” exception.

As to the Shiloh Resort and Casino Project, the Koi Nation of Northern California lacks sufficient historical connection to the Windsor parcel to support the “restored lands” exception. The Windsor parcel does not fall within the Koi Nation’s aboriginal homeland: it lies approximately fifty miles, over winding mountain roads, from the Lake County region where (as the Koi Nation acknowledges) “the Koi Nation’s ancestors had villages and sacred sites along the shores of Clearlake since time immemorial.” Koi Nation’s Opening Brief at 11, *Koi Nation of Northern California v. City of Clearlake*, No. A169438 (Cal. Ct. App. Apr. 30, 2024). The assertion that the Koi Nation sometimes used trade routes or otherwise obtained resources near modern-day Windsor cannot change this basic fact: such transient uses do not show the kind of sustained, durable presence that would be necessary to support the view that the proposed project represents a “restoration.” Nor can it matter that individual members of the Koi Nation voluntarily resided in Sonoma County during the twentieth century. If the presence of individual members in modern times were conflated with a tribe’s control over its aboriginal homeland, for purposes of the “restored lands” exception, the exception could swallow the rule—which, as the Ninth Circuit has warned, it must not do. See *Redding Rancheria*, 776 F.3d at 711.

The Scotts Valley Casino and Tribal Housing Project raises similar concerns. Like the Koi Nation, the Scotts Valley Band has its aboriginal homeland in modern-day Lake County. Like the Koi Nation, the Scotts Valley Band lacks the deep and enduring connection to the relevant territory (here, the Vallejo parcel) necessary to invoke the “restored lands” exception. And here again, the nearby presence of specific individuals, late in history, must not be conflated with the Tribe’s collective control over its aboriginal homeland. Nor can an 1851 treaty—apparently purporting to cede a vast swath of the North Bay, Sacramento Valley, and Clear Lake regions—produce a different result. Cf. *Scotts Valley Band of Pomo Indians v. Dep’t of the Interior*, 633 F. Supp. 3d 132, 168 (D.D.C. 2022). Nineteenth-century treaties were hardly models of respect for tribal sovereignty, and one cannot safely assume that they accurately reflect the boundaries of tribes’ aboriginal homelands.



The Department's interpretation of the "restored lands" exception further counsels against applying that exception to the Scotts Valley project. The Department has construed the "restored lands" exception to require one or more "modern connections" between the tribe and the land. 25 C.F.R. § 292.12(a). In the context of the Scotts Valley project, no such modern connection is apparent. On the contrary, the Environmental Assessment appears to recognize that the Scotts Valley Band has no presence in Solano County: the Environmental Assessment notes that the Band's members "span[] across Alameda, Contra Costa, Lake, Mendocino, and Sonoma Counties," while omitting any reference to Solano. Env'tl. Assessment at 1-2. Under the Department's view of the "restored lands" exception, embodied in its regulations, this lack of "modern connections" provides an additional reason not to use the exception to proceed with the Scotts Valley project.

Nor can the so-called "Indian canon" stretch the limits of the "restored lands" exception to encompass these two projects. *Cf. Scotts Valley Band*, 633 F. Supp. 3d at 166–68. Although that canon sometimes allows statutory ambiguity to be resolved in favor of tribal sovereignty, it has no application where—as here—"all tribal interests are not aligned." *Redding Rancheria*, 776 F.3d at 713. "An interpretation of the restored lands exception that would benefit [a] particular tribe, by allowing unlimited use of restored land for gaming purposes, would not necessarily benefit other tribes also engaged in gaming." *Id.* Here, other local tribes—tribes who truly have called the relevant lands home since time immemorial—are steadfast in their opposition to these projects. "The canon should not apply in such circumstances." *Id.*

Finally, misplaced reliance on the "restored lands" exception, in the context of these two projects, also risks leading the Department astray under the National Environmental Policy Act. As explained above, the Windsor parcel and the Vallejo parcel fall far outside the aboriginal homelands of the Koi Nation and the Scotts Valley Band, respectively. In focusing on those two parcels, the Department has thus far failed to consider whether the purposes of the proposed projects could be served by sites within the Tribes' aboriginal homelands—which is to say that the Department has, thus far, failed to adequately consider reasonable geographic alternatives as required by NEPA. See *'Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097–1101 (9th Cir. 2006).

Governor Newsom has deep respect for tribal sovereignty, and he has been proud to restore tribes' control over lands from which they have been dispossessed. Here, however, he is concerned by the prospect that the Department might invoke the "restored lands" exception to support projects that are focused less on restoring the relevant tribes' aboriginal homelands, and more on creating new gaming operations in desirable markets. If the Department were to embrace this view of the "restored lands" exception, it is far from obvious that the "exception" would retain a clear and durable limiting principle. This prospect is particularly troubling in California, where the voters who approved tribal gaming were promised that such gaming would remain carefully limited—including by federal law and its geographic restrictions on the categories of land open to gaming.

Governor Newsom is committed to working with tribal governments, and the Department, to support tribes' self-determination and economic development. In appropriate cases, the Governor stands ready to exercise his authority, under federal law, to concur in the Department's decision to take land into trust for gaming. Here, however, he is concerned that these specific projects are proceeding in a manner that would sidestep the State, ignore the concerns of tribal governments and other local communities, and stretch the "restored lands" exception beyond its legal limits—while failing to adequately consider whether there might be a better way. On behalf of the Governor, I urge the Department not to move forward with these proposed projects.

Sincerely,



Matthew Lee  
Senior Advisor for Tribal Negotiations &  
Deputy Legal Affairs Secretary  
Office of Governor Gavin Newsom

Cc: Amy Dutschke, Regional Director for the Pacific Region, Bureau of Indian Affairs



**From:** Nina Cote <[nina.cote@sbcglobal.net](mailto:nina.cote@sbcglobal.net)>

**Sent:** Saturday, August 17, 2024 9:41 AM

**To:** Rosa Reynoza <[rreynosa@townofwindsor.com](mailto:rreynosa@townofwindsor.com)>; Nina Cote <[nina.cote@sbcglobal.net](mailto:nina.cote@sbcglobal.net)>

**Subject:** COMMENTS Regarding - Proposed Koi Mega Casino Resort Location

Hi Rosa,

First, I'd like to thank the Town of Windsor for listening to and supporting their constituents in strong opposition to the proposed casino.

These short comments were written with the intention of being spoken within the three minutes allotted to speakers at this week's special Town Council Meeting. Because many of these topics were touched on at the meeting by other speakers, I made the decision to email them to the council.

I can't reiterate enough times that the proposed casino site is next to the Kincade and Tubbs fire boundaries against the fire prone Mayacamas Mountains.

Per Cal Fire, the **2024 California wildfire season** states Year-to-date, the number of wildfires and the number of acres burned are higher than the five-year average.

The population of Windsor is approximately 26,000 people and Wikiup, Larkfield and Fulton combined have an approximate population of 50,000 people.

The estimated number of people visiting the proposed casino would bring in daily what would amount to another town of Windsor into this small area. An area intended and currently zoned as a land separator between SR and Windsor, agricultural, a scenic route, flood plan and flood way.

This week there was an emergency event on the corner of Shiloh and Old Redwood Highway. Shiloh Road had to be closed between Hembree Lane and Shiloh due to a gas leak and residents were ordered to shelter in place. As this was announced I thought about what it would be like with cars streaming from the freeway to the proposed casino. It would have increased an already complicated situation with cars backing up from 101, and people unfamiliar with the area trying to find alternate routes to the casino.

The proposed location is NOT appropriate for any large business.

The proposed mitigations and best management practice measures proposed by Acorn in the DEIS are invalid in all categories.

Here is an example of mitigation for Noise – installing window assemblies – dual pane windows. Most houses already have dual pane windows, and these don't have the ability to block out the increase in noise. We also don't live with our windows closed, meaning the significant increase in noise will be detrimental to the health and wellbeing of everyone who lives in the surrounding area to the proposed site.

I strongly oppose the proposed casino site and only support the option for no action.

Sincerely, Nina

Nina Cote'



Windsor

**From:** Sidnee Cox <[sidnee@sonic.net](mailto:sidnee@sonic.net)>

**Sent:** Tuesday, August 20, 2024 2:15 PM

**To:** [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov); Town Council <[TownCouncil@Townofwindsor.com](mailto:TownCouncil@Townofwindsor.com)>

**Subject:** Re: EIS Comments revised 8-20-24: KOI Nation Shiloh Resort & Casino, Windsor

Hello,

Please see the revised letter below and attached dated Aug. 20, 2024 regarding my EIS Comments, Koi Nation Shiloh Resort and Casino, Windsor. Also attached is the Aug. 16th letter from Gov. Newsom's office.

Thank you,  
Sidnee Cox

**Chad Broussard**  
**Environmental Protection Specialist**  
**Bureau of Indian Affairs, Pacific Region**  
[chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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

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A massive casino complex must not be erected on this site (identified as Alternative A and B). Neither should Alternative C - “the non-gaming alternative” which consists of a 200 room hotel with 20,000 sq ft. winery, 5,000 sq ft. visitors’ center, spa, restaurant, water purification and wastewater treatment facility, and parking lots. And since the Koi will be partnering with the Chickasaw, who own and operate 23 casinos in Oklahoma, including WinStar World Casino and Resort in Thackerville, Oklahoma (perhaps the largest casino in the world), how long will it be before Alternative C is turned into Alternative A or B?

A strong indication that Alternative A or B is the plan of the Chickasaw can be seen in their business model and simply by following the money. For the Koi Nation (a small Pomo band of 90 members) to purchase a 68-acre vineyard in Windsor created some questions at the outset. In January 2022, Koi leaders revealed a pre-development agreement with the Chickasaw Nation whereby Global Gaming Solutions– a wholly owned Chickasaw business– would partner with the Koi to construct a \$600 million dollar casino resort and also manage and operate the facility.

Chickasaw Nation Governor, Bill Anoatubby, commented:

*“The Chickasaw Nation is pleased to play a role in this project, and we look forward to a successful collaboration.... The prosperity of our citizens and a commitment to working together with our partners in the Koi Nation as well as local, state, and community officials are key components to our mission. We look forward to witnessing new jobs, additional businesses, and increased tourism to this region.”* <https://sbcamericas.com/2022/01/25/koi-nation-partners-with-chickasaw-nation-for-planned-shiloh-casino-in-california/>

Additional businesses? Increased tourism? New jobs to the area? What about everything that comes with that? Is this what we want for our town? This project will catapult the Town of Windsor into something unrecognizable and unnecessary, environmentally harmful, and potentially dangerous, especially when we have another evacuation.

This project is opposed by all our Windsor Town Council members, Sonoma County Supervisors James Gore and Lynda Hopkins, State Senator Mike McGuire, U.S. Rep, Jared Huffman, and most recently, Governor Gavin Newsom (see attached letter dated August 16<sup>th</sup>, released from Gov. Newsom’s office).

Option D, “No action alternatives” would allow the land to remain in its existing condition and not taken into trust “for the foreseeable future.” No environmental effects would occur. Pursuant to the National Environmental Policy Act’s 40 CFR section 1502.14[f], Alternative D was determined to be the environmentally preferred alternative.

**It is imperative that the Koi procure an alternative site to pursue their business objectives “in order to best meet the tribe’s objectives and provide the greatest socioeconomic benefit to the Tribe and the surrounding community.” (quote from EIS Section 2- Comparison to the Alternatives 2.5 p. 2-28)**

**I have lived in Windsor since 1987. When our town was incorporated in 1992, a community separator and Urban Growth Boundary was established to provide critical open space directly south of town (now the location of the proposed casino project). This open space proved to be a vital firebreak during the Kincade fire in 2019 that threatened to destroy most of Windsor. The flames came within a half mile of our neighborhood on East Shiloh.**

**It is my prayer and fervent intention that objective logic and clear vision will prevail, and the BIA will not allow this land to be taken into trust for these project alternatives.**

The neighbors of southeast Windsor are exercising our rights as property owners, voters, taxpayers, and stewards of our land. We remain firmly dedicated to opposing this development so we may continue to enjoy a safe and peaceful environment for our families, our community, and our longtime neighbors.

We support the Federated Indians of Graton Rancheria and the Dry Creek Rancheria of Pomo Indians that own and operate the Graton Casino and River Rock Casino, respectively, in Sonoma County.

**Some final questions:**

- **What federal, state or local protections will the environment have if this land is taken into trust?**
- **Who would monitor the environmental impact on an ongoing basis?**
- **What steps can be taken by any jurisdiction if environmental requirements are not followed?**
- **What sort of legal precedent will be set if the Chickasaw Nation is allowed to get a foothold into the gaming industry in Sonoma County and California?**

**Thank you for your time on this critical matter.**

**Sincerely,**

**Sidnee Cox**

**[REDACTED]**

**Windsor, CA 95492**

**Comparisons between Graton Resort and Casino in Rohnert Park (currently being expanded), River Rock Casino (expansion plans in the works), and the proposed Koi Shiloh Resort and Casino adjacent to Windsor in Sonoma County.**



Graton Resort and Casino  
Rohnert Park



River Rock Casino, Geyserville



Proposed Koi Casino and  
Resort Complex just outside  
Windsor's southern boundary.

Above left, Graton Casino, Rohnert Park, is in an industrial and business zone. Above, River Rock Casino, Geyserville, is in an agricultural/rural area, not near any housing developments.

Below, left, the proposed Koi Casino will be located at Windsor's southern boundary. It will be adjacent to residential neighborhoods. The two new apartment complexes impacting evacuation routes are shown in orange.

The proposed Koi project alternatives A, B and C will have significant environmental impact on water resources, traffic, air quality, public services, evacuation planning in emergencies and more. The most recent EIS does not reduce these impacts to "less than significant."



ATTACHMENT



Above left, Graton Casino, Rohnert Park, is in an industrial and business zone. Above, River Rock Casino, Geyserville, is in an agricultural/rural area, not near any housing developments.

Below, left, the proposed Koi Casino will be located at Windsor's southern boundary. It will be adjacent to residential neighborhoods. The two new apartment complexes impacting evacuation routes are shown in orange.

The proposed Koi project alternatives A, B and C will have significant environmental impact on water resources, traffic, air quality, public services, evacuation planning in emergencies and more. The most recent EIS does not reduce these impacts to "less than significant."





## OFFICE OF THE GOVERNOR

August 16, 2024

Bryan Newland  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W., MS-4660-MIB  
Washington, D.C. 20240

Re: Shiloh Resort and Casino Project (Koi Nation of Northern California)  
Scotts Valley Casino and Tribal Housing Project (Scotts Valley Band of Pomo Indians)

Dear Assistant Secretary Newland:

On behalf of Governor Gavin Newsom, I write to urge the U.S. Department of the Interior not to move forward with the Shiloh Resort and Casino Project in Sonoma County and the Scotts Valley Casino and Tribal Housing Project in Solano County.

Governor Newsom and his Administration are grateful for the opportunity to share our perspective on these projects, as we are grateful to the Department for its thoughtful and constructive engagement in a wide range of other contexts. Our concerns about these specific projects, and their specific procedural pathway, should not be understood as a criticism of the Department's broader practice of taking land into trust for tribal governments—including, in appropriate cases, the Department's practice of (and time-tested procedures for) taking land into trust for gaming. The Governor recognizes the important role that this practice can play in supporting tribes' political sovereignty and economic self-sufficiency.

At the same time, however, caution is warranted when considering the potential expansion of gaming to land that is not currently eligible for gaming. This is particularly true in California, where the voters who legalized tribal gaming

were promised that such gaming would remain geographically limited. This historical context underscores the importance of striking a careful balance between the potential benefits of expanded tribal gaming and its potential impacts on surrounding communities.

Federal law contains important safeguards that have previously helped the Department strike this delicate balance. As a starting point, federal law generally prohibits gaming on new land taken into trust for a tribe, unless the land is linked to the tribe's preexisting reservation. 25 U.S.C. § 2719(a). The principal exception to this rule carefully safeguards local interests (including the interests of local tribes), allowing gaming only where the Department has determined not only that such gaming would be in the best interest of the gaming tribe, but also that it "would not be detrimental to the surrounding community"—and only where the relevant state's governor concurs in that determination. 25 U.S.C. § 2719(b)(1)(A). Governor Newsom discharges this responsibility with the utmost care, and has previously exercised this power in a manner that supports both tribal self-sufficiency and the interests of surrounding communities. See, e.g., Letter from Governor Gavin Newsom to Bryan Newland, Assistant Secretary – Indian Affairs (June 13, 2022). The Governor appreciates the opportunity to engage in this important process, which appropriately balances the sovereign interests of states and tribes.

Here, however, the Governor is concerned that the Department might depart from this familiar procedure and its important safeguards. In their current form, these two projects propose to rely on a different statutory provision that allows gaming on land taken into trust—without a two-part determination or the Governor's concurrence—as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). Make no mistake: the Governor recognizes the profound moral value of restoring a tribe's control over its aboriginal homeland. Care must be taken, however, to ensure that this "restored lands" exception—like all exceptions—remains within appropriate limits. The "restored lands" exception must not be construed so broadly as to "give restored tribes an open-ended license to game on newly acquired lands." *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015). On the contrary: "In administering the restored lands exception, the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes' gaming operations." *Id.*

As explained below, neither of these two proposed projects fits within the limits of the “restored lands” exception.

As to the Shiloh Resort and Casino Project, the Koi Nation of Northern California lacks sufficient historical connection to the Windsor parcel to support the “restored lands” exception. The Windsor parcel does not fall within the Koi Nation’s aboriginal homeland: it lies approximately fifty miles, over winding mountain roads, from the Lake County region where (as the Koi Nation acknowledges) “the Koi Nation’s ancestors had villages and sacred sites along the shores of Clearlake since time immemorial.” Koi Nation’s Opening Brief at 11, *Koi Nation of Northern California v. City of Clearlake*, No. A169438 (Cal. Ct. App. Apr. 30, 2024). The assertion that the Koi Nation sometimes used trade routes or otherwise obtained resources near modern-day Windsor cannot change this basic fact: such transient uses do not show the kind of sustained, durable presence that would be necessary to support the view that the proposed project represents a “restoration.” Nor can it matter that individual members of the Koi Nation voluntarily resided in Sonoma County during the twentieth century. If the presence of individual members in modern times were conflated with a tribe’s control over its aboriginal homeland, for purposes of the “restored lands” exception, the exception could swallow the rule—which, as the Ninth Circuit has warned, it must not do. See *Redding Rancheria*, 776 F.3d at 711.

The Scotts Valley Casino and Tribal Housing Project raises similar concerns. Like the Koi Nation, the Scotts Valley Band has its aboriginal homeland in modern-day Lake County. Like the Koi Nation, the Scotts Valley Band lacks the deep and enduring connection to the relevant territory (here, the Vallejo parcel) necessary to invoke the “restored lands” exception. And here again, the nearby presence of specific individuals, late in history, must not be conflated with the Tribe’s collective control over its aboriginal homeland. Nor can an 1851 treaty—apparently purporting to cede a vast swath of the North Bay, Sacramento Valley, and Clear Lake regions—produce a different result. Cf. *Scotts Valley Band of Pomo Indians v. Dep’t of the Interior*, 633 F. Supp. 3d 132, 168 (D.D.C. 2022). Nineteenth-century treaties were hardly models of respect for tribal sovereignty, and one cannot safely assume that they accurately reflect the boundaries of tribes’ aboriginal homelands.

The Department's interpretation of the "restored lands" exception further counsels against applying that exception to the Scotts Valley project. The Department has construed the "restored lands" exception to require one or more "modern connections" between the tribe and the land. 25 C.F.R. § 292.12(a). In the context of the Scotts Valley project, no such modern connection is apparent. On the contrary, the Environmental Assessment appears to recognize that the Scotts Valley Band has no presence in Solano County: the Environmental Assessment notes that the Band's members "span[] across Alameda, Contra Costa, Lake, Mendocino, and Sonoma Counties," while omitting any reference to Solano. Env'tl. Assessment at 1-2. Under the Department's view of the "restored lands" exception, embodied in its regulations, this lack of "modern connections" provides an additional reason not to use the exception to proceed with the Scotts Valley project.

Nor can the so-called "Indian canon" stretch the limits of the "restored lands" exception to encompass these two projects. *Cf. Scotts Valley Band*, 633 F. Supp. 3d at 166–68. Although that canon sometimes allows statutory ambiguity to be resolved in favor of tribal sovereignty, it has no application where—as here—"all tribal interests are not aligned." *Redding Rancheria*, 776 F.3d at 713. "An interpretation of the restored lands exception that would benefit [a] particular tribe, by allowing unlimited use of restored land for gaming purposes, would not necessarily benefit other tribes also engaged in gaming." *Id.* Here, other local tribes—tribes who truly have called the relevant lands home since time immemorial—are steadfast in their opposition to these projects. "The canon should not apply in such circumstances." *Id.*

Finally, misplaced reliance on the "restored lands" exception, in the context of these two projects, also risks leading the Department astray under the National Environmental Policy Act. As explained above, the Windsor parcel and the Vallejo parcel fall far outside the aboriginal homelands of the Koi Nation and the Scotts Valley Band, respectively. In focusing on those two parcels, the Department has thus far failed to consider whether the purposes of the proposed projects could be served by sites within the Tribes' aboriginal homelands—which is to say that the Department has, thus far, failed to adequately consider reasonable geographic alternatives as required by NEPA. *See 'Ilio'ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097–1101 (9th Cir. 2006).

Governor Newsom has deep respect for tribal sovereignty, and he has been proud to restore tribes' control over lands from which they have been dispossessed. Here, however, he is concerned by the prospect that the Department might invoke the "restored lands" exception to support projects that are focused less on restoring the relevant tribes' aboriginal homelands, and more on creating new gaming operations in desirable markets. If the Department were to embrace this view of the "restored lands" exception, it is far from obvious that the "exception" would retain a clear and durable limiting principle. This prospect is particularly troubling in California, where the voters who approved tribal gaming were promised that such gaming would remain carefully limited—including by federal law and its geographic restrictions on the categories of land open to gaming.

Governor Newsom is committed to working with tribal governments, and the Department, to support tribes' self-determination and economic development. In appropriate cases, the Governor stands ready to exercise his authority, under federal law, to concur in the Department's decision to take land into trust for gaming. Here, however, he is concerned that these specific projects are proceeding in a manner that would sidestep the State, ignore the concerns of tribal governments and other local communities, and stretch the "restored lands" exception beyond its legal limits—while failing to adequately consider whether there might be a better way. On behalf of the Governor, I urge the Department not to move forward with these proposed projects.

Sincerely,



Matthew Lee  
Senior Advisor for Tribal Negotiations &  
Deputy Legal Affairs Secretary  
Office of Governor Gavin Newsom

Cc: Amy Dutschke, Regional Director for the Pacific Region, Bureau of Indian Affairs



August 20, 2024

Chad Broussard  
Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Region  
[chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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

Re: EIS Comments, Koi Nation Shiloh Resort and Casino Project

Dear Mr. Broussard and Ms. Dutschke,

Thank you for this opportunity to submit public comment regarding the Environmental Impact Statement for the proposed Koi Nation Shiloh Resort and Casino Project. I've read the 278 pages of the EIS, as well as most of the supplemental attachments. I oppose this project for the reasons discussed below.

I understand that in 2019, the Koi Nation became a federally recognized tribe, and in 2021 they purchased the 68 acre vineyard adjacent to Windsor, CA. The Koi Nation intends to establish this site as their sovereign land.

The problem? They don't plan on living there according to the EIS. They plan on building a massive casino complex that will bring thousands of daily visitors, gamblers, vacationers, partiers, and concertgoers, (requiring over a thousand employees), to an agricultural property that contains a vineyard with seasonal waterway (Pruitt Creek, a tributary to the Russian River). The site is also next to neighborhoods with many homes, and in close proximity to apartments with families and kids. A county regional park (Shiloh, Regional Park) frequented by hikers, cyclists, and equestrians, and a family friendly park (Esposti Park) with two baseball fields for Little Leaguers and sports teams are right across the street. On an average weekend, the Esposti parking lot can be full.

We understand the Koi Tribe lost their homeland in Clear Lake generations ago and many tribe members have been residing in other areas such as Sebastopol and Santa Rosa. They want a place to call home. Of course that is understandable.

But a home is NOT a 68 acre casino complex that consists of a 400 (or 200) room hotel, multiple restaurants, gaming facilities, spa, entertainment theater, parking garage for thousands of cars, with a waste water treatment plant, etc.. The Koi resort project will be a cooperative business venture with the Chickasaw from Oklahoma.

This planned resort, which is supposed to reclaim a sovereign place for the Koi to call home, is not only going to cause profound harm to the land and environment, it will also put the surrounding roadways, neighborhoods and recreational parks at risk. The EIS is required to delve deeply into these risks and determine the extent of the harm and explore possible mitigation strategies. Reading through this extensive report, it is obvious that there are too many sources of harm to be mitigated. ("Best Management Practices" are not mitigation and will not render the impacts "less than significant.")

This proposed Koi project will significantly impact air quality, water resources (i.e. well water depletion), crime rates, Pruitt Creek contamination, traffic circulation, fire evacuation, public services, and cause noise and light pollution. No amount of mitigation will change these facts.

A massive casino complex must not be erected on this site (identified as Alternative A and B). Neither should Alternative C - "the non-gaming alternative" which consists of a 200 room hotel with 20,000 sq ft. winery, 5,000 sq ft. visitors' center, spa, restaurant, water purification and wastewater treatment facility, and parking lots. And since the Koi will be partnering with the Chickasaw, who own and operate 23 casinos in Oklahoma, including WinStar World Casino and Resort in Thackerville, Oklahoma (perhaps the largest casino in the world), how long will it be before Alternative C is turned into Alternative A or B?

A strong indication that Alternative A or B is the plan of the Chickasaw can be seen in their business model and simply by following the money. For the Koi Nation (a small Pomo band of 90 members) to purchase a 68-acre vineyard in Windsor created some questions at the outset. In January 2022, Koi leaders revealed a pre-development agreement with the Chickasaw Nation whereby Global Gaming Solutions— a wholly owned Chickasaw business— would partner with the Koi to construct a \$600 million dollar casino resort and also manage and operate the facility.

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<https://sbcamericas.com/2022/01/25/koi-nation-partners-with-chickasaw-nation-for-planned-shiloh-casino-in-california/>

Additional businesses? Increased tourism? New jobs to the area? What about everything that comes with that? Is this what we want for our town? This project will catapult the Town of Windsor into something unrecognizable and unnecessary, environmentally harmful, and potentially dangerous, especially when we have another evacuation.



This project is opposed by all our Windsor Town Council members, Sonoma County Supervisors James Gore and Lynda Hopkins, State Senator Mike McGuire, U.S. Rep, Jared Huffman, and most recently, Governor Gavin Newsom (see attached letter dated August 16<sup>th</sup>, released from Gov. Newsom's office).

Option D, "No action alternatives" would allow the land to remain in its existing condition and not taken into trust "for the foreseeable future." No environmental effects would occur. Pursuant to the National Environmental Policy Act's 40 CFR section 1502.14[f], Alternative D was determined to be the environmentally preferred alternative.

It is imperative that the Koi procure an alternative site to pursue their business objectives "in order to best meet the tribe's objectives and provide the greatest socioeconomic benefit to the Tribe and the surrounding community." (*quote from EIS Section 2- Comparison to the Alternatives 2.5 p. 2-28*)

I have lived in Windsor since 1987. When our town was incorporated in 1992, a community separator and Urban Growth Boundary was established to provide critical open space directly south of town (now the location of the proposed casino project). This open space proved to be a vital firebreak during the Kincadee fire in 2019 that threatened to destroy most of Windsor. The flames came within a half mile of our neighborhood on East Shiloh.

It is my prayer and fervent intention that objective logic and clear vision will prevail, and the BIA will not allow this land to be taken into trust for these project alternatives.

The neighbors of southeast Windsor are exercising our rights as property owners, voters, taxpayers, and stewards of our land. We remain firmly dedicated to opposing this development so we may continue to enjoy a safe and peaceful environment for our families, our community, and our longtime neighbors.

We support the Federated Indians of Graton Rancheria and the Dry Creek Rancheria of Pomo Indians that own and operate the Graton Casino and River Rock Casino, respectively, in Sonoma County.

Some final questions:

- What federal, state or local protections will the environment have if this land is taken into trust?
- Who would monitor the environmental impact on an ongoing basis?
- What steps can be taken by any jurisdiction if environmental requirements are not followed?
- What sort of legal precedent will be set if the Chickasaw Nation is allowed to get a foothold into the gaming industry in Sonoma County and California?



Thank you for your time on this critical matter.

Sincerely,

*Sidnee Cox*

Sidnee Cox

Comparisons between Graton Resort and Casino in Rohnert Park (currently being expanded), River Rock Casino (expansion plans in the works), and the proposed Koi Shiloh Resort and Casino adjacent to Windsor in Sonoma County.



Above left, Graton Casino, Rohnert Park, is in an industrial and business zone. Above, River Rock Casino, Geyserville, is in an agricultural/rural area, not near any housing developments.

Below, left, the proposed Koi Casino will be located at Windsor's southern boundary. It will be adjacent to residential neighborhoods. The two new apartment complexes impacting evacuation routes are shown in orange.

The proposed Koi project alternatives A, B and C will have significant environmental impact on water resources, traffic, air quality, public services, evacuation planning in emergencies and more. The most recent EIS does not reduce these impacts to "less than significant."

To the Town of Winsor,

I would like to add some comments to the meeting about casino, I was at meeting last week .

My very smart neighbors covered the bias and very sloppy environmental report, and the fire danger to all of us. I agree with all that was said.

I live at [REDACTED], 30 feet from road edge on Pruit creek, due to setback regulation I can not drill another well on my property and the city of Winsor has a moratorium on hooking up to the pipe in street. My well is shallow.

The night of the Tubbs fire my dinner guest started home about 10ish and called to warn us that fields were burning at Shiloh and 101. Then as she traveled south on 101 large lite cinders were crossing freeway, I am sure there are records of when 101 closed, the main escape route. From my porch we watched as Larkfield burn fast with propane tanks sending colloms of flames into air. With escape blocked south with only a north 101 evacuation and many thousands more cars then we had then ,because of new apartments, events and hotel- casino. There are many ways to loss life with these conditions.

Thank you for this space to speak.

Richard Kluck, 43 year here.



Sam Salmon, Windsor Town Councilmember since 1994  
956 Milsom Place, Windsor, Ca. 95492

August , 2024

Amy Dutschke  
Regional Director of Indian Affairs, Pacific Region  
2800 Cottage Way  
Sacramento, Ca. 95825

Dear Director Dutschke;

I am writing to voice my concern and objection to the findings in the Draft EIS for the Koi Nation Casino Project. It is my conclusion, supported by the technical evaluation provided by the Town of Windsor, that the Draft fails to accurately reflect the impacts of the project alternatives as to traffic congestion and safety of pedestrians and bicyclists with the dramatic increases of unplanned vehicles usage of Shiloh Road and the Old Redwood Hwy 101 intersections, emergency evacuation route capacity in times of fire, ground water capacity and the effect on the Town's and Town's adjacent neighbors with the projected needs of the Koi Casino project alternatives, as well as flooding potential and waste water processing.

I would also like to relay my concern with the inadequacy of the July 30, 2024 public comment forum via zoom put forth by your office. I raised my hand at 6 pm sharp and for the waited for the next 3 hours to be called upon before giving up. At my mid-point in waiting I also raised my hand via the telephone, and again was not called. The inability to testify was noted by many community members.

I think it is important to state some of the historically significant of the Shiloh Road corridor between Old Redwood Hwy. and the Hwy. 101 interchange. Approximately 15 years ago the Town of Windsor established specific zoning and design guidelines for this area and documented the effort in the adoption of the Shiloh Vision Plan. The Town acknowledged this corridor would become a major neighborhood with multi-family housing and varied retail and commercial establishments. We wanted to plan for a walkable, bikeable, attractive mixed use neighborhood. Accommodation of the project's traffic will render our efforts impossible with the congestion generated by the project. Since the Koi Casino project is of a like size as the existing Graton

Resort Casino, 15 miles to the south comparisons can be made as to impacts in real time. The Graton Casino (Graton) is directly off Hwy 101, in a zoned commercial area of Rohnert Park. The land surrounding is commercial and to the west, non-intensive agriculture being grassland and owned by Graton as opposed to the Koi's project being almost a mile off Hwy. 101 and adjacent to homes and within a community separator and more importantly within an area directly threatened by past wildfires.

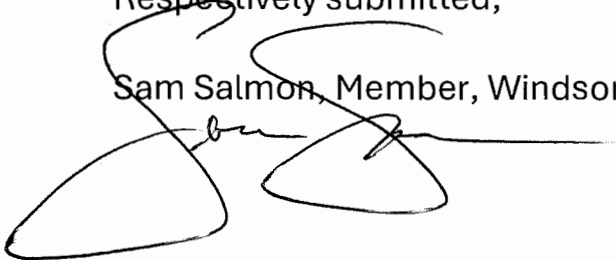
Here in Sonoma County, we have experience three devastating wildland fires, two, the Tubbs and Kincaid Fires, directly threatened the project area necessitating evacuations. To understand the enormity of the threat of wildfire to the project area, visualize the October 2019 Tubbs Fire devastating Santa Rosa's hillside community of Fountain Grove, then only to witness the fire sweep through a mobile home park on the east side of Highway 101, jump five lanes of highway, a median and shoulders on both sides to the west of Hwy 101, ultimately destroying the Kmart shopping center and 1300 structures in the residential neighborhood of Coffey Park, the vast majority single family homes. The storyline at Tubbs Fire- Wikipedia provides a shocking description of the devastation and the loss of 22 lives. It is imperative to assert that the Department's EIS for this project did not begin to assess the impacts of potential wildfires and the necessary evacuation procedures. These impacts remain non-mitigable.

Groundwater is another source of concern and inadequately addressed in the EIS. I sit on the Santa Rosa Plain Groundwater Sustainability Agency which was formed at the mandate of the State of California to protect and manage the groundwater supplies in the basin in which the project resides. The Project will not meet the standards being set by this agency and the EIS provides no meaning mitigation.

I have reviewed dozens of letters provided to the Town of Windsor that are being or have been provided to the Bureau. The Town has prepared a very technical assessment of the EIS finding it wholly unacceptable with inadequate study and wrong conclusions. I am hopeful the Bureau will deny the Koi's application in the location they have chosen.

Respectfully submitted,

Sam Salmon, Member, Windsor Town Council since 1994

A handwritten signature in black ink, appearing to read 'Sam Salmon', is written over the typed name. The signature is stylized with large loops and a long horizontal stroke extending to the right.




**ROBERT H. PITTMAN, COUNTY COUNSEL**

575 Administration Drive, Room 105A  
Santa Rosa, CA 95403

**P:** (707) 565-2421

**f:** (707) 565-2624

August 26, 2024

Amy Dutschke, Regional Director  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way  
Sacramento, California 95825

Chad Broussard  
Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Region  
Chad.broussard@bia.gov

RE: EIS Comments, Koi Nation Shiloh Resort and Casino

VIA EMAIL

Dear Ms. Dutschke and Mr. Broussard:

The County of Sonoma submits these comments on the Draft Environmental Impact Statement (DEIS) prepared for the Koi Nation's (Tribe's) proposed fee-to-trust application for its Shiloh Resort and Casino Project. The County asks that our comments be given careful consideration, and that the Bureau of Indian Affairs (Bureau) change course, and release a legally adequate environmental review document, or simply adopt the no project alternative. It is appropriate and mandated by the National Environmental Policy Act (NEPA) that the Bureau take a "hard look" at the environmental impacts of this project. The Bureau has rushed the NEPA review, as demonstrated by the DEIS itself, and is both failing to take the "hard look" that NEPA requires and leaving many conclusions regarding impacts unsupported. Because of the informational gaps in the analysis, reasonable requests for extension of the comment period were requested. These requests were denied. The question presented is thus – Why? Why avoid taking the time and doing the work for the required hard look? At best the answer is that the Bureau does not fully understand or appreciate its obligations under NEPA, a misunderstanding that can be corrected and addressed. At worst, the answer is that the Bureau has predetermined the outcome, and a high-quality environmental review would serve to interfere with the Bureau's decision. As discussed below, unfortunately the latter appears to be the case.

**Assistant County Counsel**  
DEBBIE F. LATHAM

**Chief Deputy County Counsels**

JENNIFER C. KLEIN  
CORY W. O'DONNELL  
ADAM L. BRAND  
JOSHUA A. MYERS  
TASHAWN C. SANDERS

**Deputies**

TAMBRA CURTIS  
LISA PHEATT  
HOLLY RICKETT  
VERNE BALL  
IAN TRUEBLOOD  
ELIZABETH COLEMAN  
PETRA BRUGGISSER  
CHRISTA SHAW  
MICHAEL KING  
KARA ABELSON  
DIANA GOMEZ  
ALDO MERCADO  
SITA KUTEIRA  
JEREMY FONSECA  
LUKE BOWMAN  
MATTHEW LILLIGREN  
MAILE DUNLAP  
KRISTIN HORRELL  
IVAN JIMENEZ  
SHARMALEE RAJAKUMARAN  
NATHANIEL RAFF  
ETHAN PAWSON  
JOSEPH ZAPATA  
ALEXANDRA APODACA  
DAVID LUSBY

A9-1

The Bureau has addressed some deficiencies in the prior Environmental Assessment (EA), and now concedes that there are significant impacts. But it doubles down on most of its prior failures. The County remains mindful of the Bureau's roles in reviewing and deciding on the application made by the Koi Nation and its role as a trustee for lands already held in trust for tribes in Sonoma County. The County is respectful of tribal sovereignty and understands the need for tribal self-determination and economic development to provide for tribal members. However, this respect is not inconsistent with the County's continued objection to any attempt on the part of the federal government to take the present 68 acres of land located east of the Town of Windsor into trust for the benefit of the tribe for gaming in a manner that violates federal law.

NEPA requires "accurate" and "high quality" analysis. 40 C.F.R. § 1500.1(b). As Congress has also made clear in the recent amendments to NEPA, the Bureau is required to:

- ensure the professional integrity, including scientific integrity, of the discussion and analysis in the Environmental Impact Statement.
- use reliable data and resources in developing the Environmental Impact Statement; and
- study, develop, and describe technically and economically feasible alternatives.

A9-2

42 U.S.C. § 4332(2)(D)-(F), added to NEPA on June 3, 2023, P.L. 118-5; Exhibit A, County Scoping Letter. The Bureau has not complied with these mandates. The conclusions in the DEIS have been dictated by the applicant's desired outcome and timeline and not by a reasonable investigation with peer review.

Picking a site for commercial development that is only undeveloped because local planning protects that site from commercial development (Exhibits D, E, I) comes with multiple environmental and infrastructural challenges and costs, and these are not forthrightly addressed in the DEIS. The DEIS is riddled with outcome-oriented analysis and fails to disclose critical data on which it relies, fails to develop crucial baseline data altogether, fails to analyze the impacts of much of the contemplated infrastructure (including off-site infrastructure), fails to consider cumulative projects that should have been considered, simply ignores the best available information on many impacts, and relies on legal requirements for mitigation that are neither applicable nor imposed. The DEIS completely distorts the actual regulatory setting, and fails to grapple with the issues presented by that setting. The DEIS does not contain a reasonable range of alternatives, and in many cases, the DEIS omits analysis of the alternatives that were considered.

In short, the Bureau's mad rush to move forward with a highly problematic project on an inappropriate site has yielded, predictably, a highly problematic environmental review document.

**I. The Bureau’s refusal to take a hard look at the project is demonstrated by the DEIS’s repetition of the errors in the EA.**

The County previously submitted comments on the EA. Exhibit H. While, thankfully, the Bureau now admits, as legally required, that the project will result in significant environmental impacts, the County’s comments were mostly just ignored.<sup>1</sup> Most of the County’s prior comments remain applicable to the deficiencies in the DEIS, since there has been minimal “supplementation” that is confined to the appendices, and no corrections of the EA’s errors. These errors are egregious and pervasive. The Bureau has not even stopped citing imaginary codes – the non-existent “California Public Safety Code” – that the project supposedly will voluntarily comply with. This Bureau has done anything but take a hard look at this project.

A9-3

**II. Just as was the case with the EA, the DEIS is affirmatively misleading with respect to the “regulatory setting,” and contains no discussion of mitigation efficacy within the context of the actual setting.**

The Bureau is, in substantial part, an economic development agency, and the Tribe is the proponent of a major commercial development project. While the Tribe is a government and has sovereign interests, it is also a commercial developer, and as is the case with most commercial developers, the Tribe has a structural interest in avoiding requirements, mitigation, and protective measures that impede on profits. Part of the “action forcing” purpose of NEPA is to ensure that environmental issues are publicly considered notwithstanding the Bureau’s focus on other issues.

In our federal system, state requirements play an important role in protecting the environment, health, and safety. In the common case of co-operative federalism in environmental regulation, the federal government relies to a large extent on states, and steps in if the states decline to hold up their end of the co-operative bargain. Federal enclaves are typically covered by extensive environmental regulations. Just by way of one example, among many, the military and General Services Administration have extensive building codes that parallel state requirements. They are detailed and mandatory. Anyone can review them.

A9-4

Here, all state and local civil regulatory requirements to protect the environment and life safety will be removed if the land is taken into trust. The County submitted comments on the fee to trust application, addressing among other things jurisdictional conflicts in land use. Exhibit I. While the Tribe has dismissed jurisdictional conflicts in the fee-to-trust context by (circularly) looking ahead to removal of civil regulatory law applicability to trust lands, we urge the Bureau to not dismiss this conflict when it comes to NEPA because the deregulation results in environmental impacts.

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<sup>1</sup> Among the odder exceptions in the document is the Bureau’s odd argument that the casino will have cafeterias and not restaurants, per 22 Cal. Code Regs. § 60313. Other new documents are discussed below.

Just as with any developer, this type of deregulated setting is profitable for the Tribe. Undeveloped land that is acquired is liberated from all its protections, and suddenly it can be developed in a way that was previously prohibited; the Tribe profits, just as any developer would. There are important historic and policy reasons why trust lands are intended to confer commercial successes to tribes, including the need to fund self-governance and the well-being of tribal members. However, the current project would never be permitted by local authorities for a reason, and the Tribe's interests in profitability are directly in tension with environmental concerns. The benefits the Tribe may obtain as part of its application does not excuse the federal government's compliance with NEPA when acting on such application. And it certainly cannot be said that establishing trust lands that are freed from all prior state and local environmental requirements has no environmental consequences, particularly if the federal government is not willing to compensate for the gap. Tribal sovereignty does not excuse the Bureau from evaluating the environmental consequences of the Bureau's actions.

A9-4  
cont.

The question thus becomes, what is the federal government going to do to prevent or mitigate environmental harms stemming from a Bureau decision to take the land into trust – a decision which would remove all state environmental regulation? The answer is, unfortunately, the Bureau is attempting to obfuscate and hide the ball.

The obfuscation starts with the “regulatory setting” sections of the DEIS. It is conventional for NEPA documents to contain a “regulatory setting” to frame impact analysis. This, like the environmental setting (or “baseline”), is a “practical requirement” of NEPA. *Or. Natural Desert Ass'n v. Jewell*, 840 F.3d 562, 568 (9th Cir. 2016). Impacts are more or less likely depending upon the existence and mechanics of existing regulations. Mitigation measures may not be required if they would duplicate existing legal requirements. Or alternatively, mitigation may be required to flush out compliance with broad regulatory mandates, and so on. In sum, existing legal requirements are facts that are very relevant to environmental facts and impact analysis. Like all of the environmental analysis, information of “high quality” is required. 40 C.F.R. § 1500.1.

A9-5

As was the case with the EA, the DEIS continues to list and describe State and local requirements as part of the “regulatory setting.” The EIS states that these are provided “for context.” DEIS, 3-1. This is affirmatively misleading. The EIS identifies approximately 30 California civil laws without discussing the fact that these *do not apply* to the present project. The only thing that is relevant about these laws is *the implications of their non-applicability*. If any standards of these state and local requirements are to apply, it is through mitigation. The need for this mitigation has not even been discussed.

Perhaps there are tribal ordinances that would be relevant to the analysis, but these oddly enough have not been described at all in the “regulatory setting.” There is extensive discussion about inapplicable law, and no information that the public can comment on in the DEIS regarding applicable tribal requirements, if any. Outside of the

A9-6



regulatory setting, the DEIS makes passing reference to a tribal Building and Safety Code of 2023, but the code is not provided, and the discussion is in the same sentence as the discussion of a non-existent “California Public Safety Code,” which is to say this discussion only serves to bookmark the lack of transparent disclosure and analysis. The Tribe’s Building and Safety Code of 2023 should have been provided, assuming it exists. Just as the contents of mitigation measures matter, the contents of this code matter.

And even if there were relevant tribal environmental codes, they can be changed at will by the tribal government. Some tribal governments do state, for example, that they would follow local health and safety requirements, only to change course at a later point. This is not terribly surprising, given the tribes’ investments in tribal economic enterprises. The County does not mean to suggest that tribal profits are illegitimate interests, or that tribes should not seek to provide for their members. Of course, the opposite is true. Instead, the point is that environmental requirements are mandatory for a reason. If they will not apply to trust lands, then the Bureau needs to grapple with and address what that means for the environment *before it acts* on the fee to trust application. That is the function of NEPA and the Bureau’s obligation, at the very least.

The DEIS discloses, at best, alleged voluntary tribal compliance with an ambiguous set of environmental and safety laws. But at worst, as discussed in the County’s comments, the DEIS makes representations about the project’s voluntary compliance with state and local requirements that are misleading and/or demonstrably false when the details are actually disclosed.

The Bureau appears to be actively resisting the imposition of mandatory requirements on the Tribe that it could rely on to make credible less-than-significant findings. This is contrary to the letter and spirit of NEPA. If the Bureau has a regulatory enforcement mechanism in mind, it should have been discussed in the regulatory setting. The legal context is highly relevant to the environmental analysis.

This is especially true given the shifting sands of tribal casino regulation. In the wake of *Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024 (9th Cir. 2022), and the subsequent update to federal regulations governing Class III gaming, Title 25 CFR Part 293, an agreement between the Tribe and the state or local government in which the tribe agrees both to be subject to environmental regulations and to waive its sovereign immunity for the limited purpose of enforcing such environmental regulations against it no longer appears realistic or reliable. Whether such a mitigation agreement would be subject to or secure approval under 25 CFR Part 83 is also an issue left unaddressed in the DEIS.

A tribal-state compact continues to be a condition precedent for conducting Las Vegas style Class III tribal gaming on trust lands. Yet, under *Chicken Ranch* and Part 293, such compacts cannot contain provisions “which are not directly related to the operation of gaming activities,” which provisions include those “[r]equiring compliance with or adoption of state environmental regulations of projects or activities that are not

A9-6  
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A9-7

directly related to the Tribe's operation of gaming activities and maintenance of the gaming facility; ..." 25 CFR § 293.23(c). Thus, a compact in which the state and tribe agree that the tribe will comply with or adopt state environmental regulations (or tribal equivalents) could not be approved under federal law, unless shown to be directly related to the operation of gaming activities. In the County's view, the *Chicken Ranch* decision, and the change to 25 CFR Part 293 which became effective March 22, 2024, 89 Fed. Reg. 13256 (Feb. 21, 2024), have handicapped if not precluded the federal government's reliance on tribal mitigation agreements with state and local governments as a means of complying with NEPA. This may have been an unintended consequence of these changes in the law, but their impact remains the same.

With these models very recently taken off the table, there are regulatory holes to be filled. The Bureau appears to be unwilling to fill them, or unaware that it needs to do so. Instead, the DEIS contains a robust list of inapplicable laws. The EIS does not identify the legal authority the Bureau or other federal agency, such as the National Indian Gaming Commission, has over the Tribe to ensure continuance of mitigation requirements after the land is taken into trust. *Cf. Confederated Tribes of the Grand Ronde Cmty. of Or. v. Jewell*, 75 F.Supp.3d 387, 391 (D.D.C. 2014). No other legal mechanism imposing mitigation has been identified in the DEIS beyond voluntary agreements the Tribe would offer non-tribal and non-federal agencies. The Bureau has not confirmed that such an agreement is outside of Part 293, or Part 83. Nor has the Bureau done what it should have done and imposed *on itself* a mitigation measure requiring the Bureau to approve the agreement's substantive mitigation terms under Part 83. And then, in turn, the *substantive terms* or requirements that the agreements would need for adequate mitigation are not analyzed and disclosed.

Absent any substantive guarantees that non-federal agreements to mitigate the project's impacts will be reached, the document must identify and analyze how environmental impacts resulting from the Bureau's actions will be avoided or mitigated *in the absence of such agreements*. Alternatively, it must analyze what the implications are of the absence of mitigation. The Bureau has options to address the problem presented. As one example, the Bureau could enter into an enforceable intergovernmental agreement with the Tribe, and with other governments as feasible and necessary, to ensure that mitigation is not illusory.

In effect, the Bureau is looking everywhere but to itself for mitigation. The County requested that the Bureau discuss its own role in mitigation in its scoping comments, and that request was ignored.

The DEIS must consider the *actual* regulatory setting after the land is taken into trust, consistent with Public Law 280, and the means to address the environmental issues that regulatory setting creates. At present, the project amounts to a large commercial development on a problematic site with few environmental obligations. The entire approach of the DEIS deprives both the Bureau and interested parties of the opportunity to evaluate the efficacy of the mitigation. The County understands the tribal self-determination and economic development goals behind the project, but NEPA is

A9-7  
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designed to prevent agencies from treating environmental issues as someone else's job.

The County celebrates the use of tribal sovereignty to protect the environment. However, that does not mean that tenuous representations about environmental protections are acceptable. The competitive advantage of de-regulated tribal land has long been well understood,<sup>2</sup> and it comes with environmental consequences that need to be appropriately considered and addressed. The Bureau has tools it can use to address these issues, but instead is engaging in obfuscation.

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**III. Just as was the case with the EA, the DEIS converts mandatory requirements into voluntary aspirations, and provides no basis for concluding that the vague mitigation of BMPs will be effective in reducing the project's significant impacts.**

The DEIS discusses Best Management Practices (BMPs) and mitigation measures interchangeably but continues to rely on vague Tribal BMPs rather than specific mitigation measures for most impacts. This impermissibly avoids committing the Bureau and Tribe to compliance and monitoring, 40 C.F.R. §§ 1502.2(c), 1505.3(c), to ensure mitigation implementation and efficacy. Table ES-1 makes it clear that the only reason that mitigation is "not required" (as stated repeatedly) is because of the existence of tribals BMPs. In some cases – for example, building codes, fire codes, and related analysis, like geotechnical issues – life safety issues are presented. The structure and incentives of this deregulatory approach for the proposed commercial undertaking incentivize a casual approach to compliance and non-compliance, even as significant impacts are admitted by the Bureau in the case of non-compliance. Mandatory requirements and codes are converted into vague, unenforceable practices. Voluntary Building Code compliance is discussed impressionistically, but the procedural checks (not to mention licensing requirements) that are present in mandatory codes are not. By way of another example, vague statements about LID stormwater compliance are made, but the illusion evaporates with inquiry. Exhibit B. In the context of a deregulatory fee to trust action, the DEIS must disclose the enforcement and monitoring mechanism for the BMPs it relies upon to allow for an evaluation of efficacy.

A9-8

Moreover, the issue is not simply how will the Tribe be bound by any of the representations about the BMPs, but *any* of the assumptions about the nature and scale of the project. The Bureau describes alternatives that themselves contain many different internal "options" (all with inadequate environmental review). With limited exceptions, the Bureau's contemplated action is completely open ended. The DEIS

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<sup>2</sup> Roger Romulus Martella, Jr., "Not In My State's Indian Reservation": A Legislative Fix to Close an Environmental Law Loophole, 47 Vand. L. Rev. 1863 (1994); Luke W. Cole and Sheila R. Foster, *From the Ground Up, Environmental Racism and the Rise of the Environmental Justice Movement* (2000) (classically discussing in Chapter 3 the complexities of the economic exploitation of the exemption from environmental regulation on tribal lands).

contains no discussion of whether the Tribe can simply change its mind and build a bigger or completely different project, and what that would mean for the environment.

A9-9  
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**IV. The discussion of greenhouse gas impacts remains affirmatively misleading, and the greenhouse gas impacts of the project are significant.**

No effort has been made to correct the defects in the EA and take a “hard look” at the greenhouse gas emissions of the project. The DEIS states “The use of BMPs will minimize air quality and climate change impacts from operations. No mitigation required.” DEIS, ES-24. Again, the BMPs are mitigation, and there is no discussion of their effectiveness. There is no quantification of what emissions will be expected to result, and there is no explanation of why the disclosed emissions are less than significant. Instead, the DEIS contains misleading references to state and Bay Area Air Quality Management District (BAAQMD) guidance:

In the approximately 126 measures and strategies identified [in the California Air Resources Board’s Climate Scoping Plan] that would achieve a State-wide reduction in GHG emissions, only three would apply to the project alternatives: diesel anti-idling, achieve 50% State-wide recycling goal, and water use efficiency ....

A9-10

If a project will not include natural gas appliances; will not result in wasteful, inefficient, or unnecessary energy use; will generate an average vehicle miles traveled (VMT) per employee below 85% of the regional average; and will provide EV facilities consistent with current California building standards, then a project’s climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B, and C would result in average VMT per employee that is lower than 85% of the regional average (10.53 VMT per employee). (DEIS 3-155.)

The County will again summarize its objection to the misrepresentations in the DEIS:

1. The representation that a less than significance finding can be made for buildings with natural gas under the BAAQMD guidance is false.
2. The representation that the state’s and BAAQMD’s vehicle miles travelled guidance (the latter relies on the former) allows a less than significance finding based only on employees for a visitor serving regional destination

A9-11

is false. Only an office can utilize vehicle miles travelled per employee. In any case, this quantitative analysis violates NEPA even if it accurately characterized the guidance relied upon, which it does not. Furthermore, even the employee calculations are flawed as comparisons of employee vehicle miles to Sonoma County average trip lengths, as opposed to the Bay Area trip lengths, is also directly contrary to the state’s guidance.<sup>3</sup> In addition, the Bureau should have considered the County’s Community Separator and Urban Growth Boundary policies, which are intended to help manage and mitigate vehicle miles travelled. Exhibits D, E, I.

A9-11  
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3. The reliance on the California Air Resources Board’s (CARB) Scoping Plan’s “inapplicability” is misplaced, because CARB expects non-state governments to make reductions by reducing vehicle miles travelled, through transportation electrification, through vehicle miles travelled reduction, and through building decarbonization. California Air Resources Board, 2022 Scoping Plan, Appendix D, <https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-d-local-actions.pdf>

A9-12

County staff observe that the technical discussion of the feasibility of an all-electric casino is conclusory and omits technical information that would allow the County’s technical staff to comment. Put another way, in addition to misrepresenting state and BAAQMD guidance, the Bureau is doing a programmatic review where a project-level review is appropriate and would provide crucial information. On this issue, the DEIS attempts to treat the Tribe’s decision not to commit to an all-electric resort as a technical decision, when it is really a business decision. In the BMPs, the DEIS says: “The Tribe will use electric boilers and appliances in lieu of natural gas or propane units to the extent that electric boilers and appliances are commercially available.” It is not clear why the Tribe would use electric boilers rather than high efficiency heat pumps with heat recovery potential to improve the overall efficiency and lower peak energy draw

A9-13

<sup>3</sup> The Governor’s Office of Planning and Research has explained in its FAQ: “In the VMT Technical Advisory, does the term ‘regional’ refer to the MPO/RTPA? Yes. As used in the VMT Technical Advisory, ‘regional’ refers to the full geography within the jurisdictional borders of a metropolitan planning organization (MPO) or a regional transportation planning agency (RTPA). Comparing a project’s VMT per capita or VMT per employee to that of the entire region (i.e., MPO or RTPA) or entire city allows a lead agency to better align with the state’s climate commitments. Comparison to only a portion of the region or city could result in a less environmentally protective significance threshold, potentially disconnecting significance determinations from those commitments. For example, comparing a project to only the unincorporated areas of a county, or just a select portion of a county, may exclude lower VMT areas. However, thresholds that vary by location, but where each threshold is more environmentally protective than a region- or city-based threshold, would still be aligned with state climate commitments.” <https://opr.ca.gov/ceqa/sb-743/faq.html#VMT-TA-regional> (last visited Aug. 24, 2024). In other words, the regional average to consider is the average from the nine-county Bay Area, and not the higher average in Sonoma County.



compared to electric boilers. It is not clear why the Tribe would not eliminate all potential water use from cooling towers by utilizing either air source or ground source heat pumps for this climate zone. On what basis does the DEIS conclude that the project will not result in “wasteful, inefficient, or unnecessary energy use?” It is not clear why the Tribe would not use solar heating for the proposed pool, which is likely a high source of load. It is not clear why the Tribe is not considering photovoltaic generation and batteries, as other tribes have done for casinos.<sup>4</sup> Having cited “boilers” as the issue, albeit without explanation, it is not clear why the Tribe is not committing to all-electric kitchens. And as a business decision, it is not clear why there is no consideration that gas mains are not near the project (they are a mile away) and California Public Utilities Commission rules will place the entire cost of bringing gas to the site on the Tribe. It is also not clear why there is no discussion of federal funding and support, by way of example under section 50145 of the Inflation Reduction Act.

County staff notes that some consideration of what has been achieved in practice would seem relevant to assertions about feasibility. Merely by way of recent examples: The Microsoft company campus in Redmond, Washington, includes 77,000 square feet of all-electric kitchen equipment for the cafeteria that opened in March of 2024 and it plans to serve more than 10,500 meals per day.<sup>5</sup> The Google Bay View campus in Mountain View also has an all-electric cafeteria that is open to the public.<sup>6</sup> The entirety of that campus is 1.1 million square feet and is all electric. The Piedmont Aquatic Center has committed to making its pools all electric, and the center will open in 2025.<sup>7</sup> The five-story Premier Inn in Swindon, Wiltshire, England is all-electric.<sup>8</sup> Hilton’s sizeable Hotel Marcel in New Haven, Connecticut, successfully converted an existing building to be all electric, LEED Platinum, and Passive House certified.<sup>9</sup> Heat pumps have been used effectively for heating and cooling at resorts like the Stromstad Spa resort in Northern Europe, that offers nearly 260,000 square feet with 232 luxury guest rooms and extended spa facilities.<sup>10</sup> Renewable energy microgrids with battery storage

A9-13  
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<sup>4</sup> Department of Energy Office of Indian Energy Policy and Programs, Solar Array Reflects Restored Tribe's Path to a Brighter Future for All, July 12, 2022, <https://www.energy.gov/indianenergy/articles/solar-array-reflects-restored-tribes-path-brighter-future-all> (last visited Aug. 24, 2024)

<sup>5</sup> <https://trellis.net/article/taste-microsofts-all-electric-kitchen/> (last visited Aug. 24, 2024)

<sup>6</sup> <https://blog.google/outreach-initiatives/sustainability/its-electric-6-lessons-from-our-largest-electric-kitchen/> (last visited Aug. 24, 2024)

<sup>7</sup> <https://www.piedmontcivic.org/2022/04/02/faq-on-an-all-electric-new-piedmont-aquatic-center-decision-april-4/> (last visited Aug. 24, 2024)

<sup>8</sup> <https://www.edie.net/whitbread-opens-its-first-all-electric-premier-inn-hotel/> (last visited Aug. 24, 2024)

<sup>9</sup> <https://www.hoteldive.com/news/zero-emissions-passive-house-hotel-marcel/715775/> (last visited Aug. 24, 2024)

<sup>10</sup> <https://thermia.com/inspiration/large-buildings-case-stories/modern-spa-with-eco-heating-system/> (last visited Aug. 24, 2024)

have been achieved in practice for wastewater treatment.<sup>11</sup> Sonoma Water has demonstrated carbon-free water supply in practice. Healdsburg, Windsor, and Petaluma have installed floating solar arrays on their wastewater treatment ponds, saving millions of dollars in energy costs.<sup>12</sup> State funding exists for tribal microgrid projects, which have been constructed to support casinos.<sup>13</sup> The largest of casino resort developers, like MGM Resorts, can and do rely on renewable energy.<sup>14</sup> And so on.

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The DEIS does not conduct a meaningful NEPA review with respect to greenhouse gases that will impose any meaningful commitments on the project. The Tribe is being left with a blank slate, which may be profitable for the Tribe, but does not ensure that significant environmental impacts will be avoided or mitigated. As the County has previously noted, the Bureau's reliance on the significance criteria it cites actually compels a significance finding that the Bureau resists, but that is nonetheless required by the Bureau's own logic.

A9-14

**V. The Bureau's failure to make any improvements to its fatally flawed traffic and wildfire evacuation analysis puts the public at risk.**

The Bureau has made no efforts to improve its egregious traffic and evacuation analysis of the project from the EA. Accordingly, the County reiterates its objections, and urges the Bureau not to put the public at risk. In the hopes that the Bureau will jettison its hasty rush towards NEPA non-compliance, the County submits the comments of Janice Thompson, Deputy Director of Engineering and Maintenance with Sonoma Public Infrastructure. Exhibit C. The Bureau is not using reliable data, or accurate and substantiated analysis. The Bureau is not considering cumulative projects. The Bureau is not proposing to mitigate significant impacts, and at bottom, the Bureau is unacceptably taking a careless approach to life safety.

A9-15

**VI. The attempt to "supplement" the project description's wastewater discharge scenarios with open ended possibilities that also have not been analyzed solely serves to demonstrate that the analysis in the DEIS is inadequate.**

A9-16

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<sup>11</sup> <https://www.waterworld.com/home/article/14071013/microgrids-power-wastewater-treatment-plants> (last visited Aug. 24, 2024)

<sup>12</sup> <https://www.petaluma360.com/article/news/petaluma-plans-floating-solar-array-for-its-water-treatment-plant/> (last visited Aug. 24, 2024)

<sup>13</sup> <https://www.gov.ca.gov/2024/04/11/solar-microgrid-breaks-ground-in-northern-california-tribal-community/> (last visited Aug. 24, 2024)

<sup>14</sup> <https://investors.mgmresorts.com/investors/news-releases/press-release-details/2021/Las-Vegas-Strip-Goes-Solar-MGM-Resorts-Launches-100mw-Solar-Array-Delivering-Up-To-90-Of-Daytime-Power-To-13-Las-Vegas-Resorts/default.aspx> (last visited Aug. 24, 2024)

In the County’s comments on the EA, the County pointed out that the unrealistic assumptions about discharge from the site were unwarranted, and this rendered the entirety of the analysis illusory. The Bureau has responded in the DEIS, somewhat deep in the appendices, not by abandoning the wildly problematic assumptions that were used to justify discharging to Pruitt Creek, but by “supplementing” with additional “feasibility” analysis attempting to show that the project could be designed without discharging to Pruitt Creek at all. This does not address the gap in analysis of the environmental consequences of the initial proposal, and problematically just leaves that proposal on the table. There remains no realistic information about the ability of the site to discharge treated wastewater, and the significant risks to critical habitat if the design is inadequate. As was already discussed in the comments of Registered Professional Geologist Robert Pennington, both the Bureau and the Tribe need realistic baseline stream and flow data to complete their analysis. This data is needed to assess this proposal *both* (1) from the perspective of feasibility *and* (2) from the perspective of foreseeable environmental impacts if the particular “option” were to be approved.

A9-16  
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The Bureau, by its supplementation effort, at least concedes that there is a major issue on both fronts, but rather than imposing mitigation on the proposal to ensure impacts are addressed, the Bureau just leaves everyone uncertain about what the actual project is. The additional options clearly are intended to mitigate the problems presented by the original proposal, but they are not imposed as mitigation, and the impacts of the options, new and old, are not addressed.

The new proposals in the DEIS also amount to extreme measures. The proposal now resorts to multiple massive (6-story) water tanks, with no analysis of any issues that arise from these structures – geotechnical, aesthetic, or otherwise. No mitigation ensures the safety of these structures. The impacts of placing these massive structures in the Community Separator is unaddressed, as is the fact that these are proposed to be on the far eastern edge of the parcel and thus in the viewshed of two regional parks. The Community Separator is designated as an area of scenic sensitivity. Exhibits D, E. These proposals merely enhance the adverse, significant visual impacts of the project.

A9-17

Buried in the supplementation, the analysis also discloses that the proposal involves levees to increase the storage of the ponds:

To manage storage pond footprint, it was assumed that ponds would be constructed with taller berms up to 15 ft in height. For the Feasibility Study, a maximum height of 10 ft was assumed. The footprint of the pond remains the same as that proposed for Alternative A Option 1 in the Feasibility Study, however, increasing the height of the pond increases the storage capacity. (DEIS, Appendix D-2, Acorn Environmental Summary of Storage and Disposal Options with No Surface Water Discharge, March 15, 2024, page 3.)

A9-18



This type of infrastructure would require special review and emergency coordination under California’s dam safety laws. Exhibit G. The EIS does nothing to fill the gap and address the life safety issues presented. Cal. Water Code § 6004(e)(2). Mitigation is required to protect the surrounding community, but the foreseeable significant impacts of the proposal have not even been considered.

A9-18  
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**VII. The discussion in the DEIS of groundwater and water quality impacts is utterly inadequate.**

The DEIS acknowledges that the project is within critical habitat for endangered steelhead, and that it could also impact other adjacent critical habitat for other endangered salmonids. DEIS, 3-52. Without developing critical evidence that would be required, both about existing conditions and the effects of the project, the DEIS assumes that there will not be adverse impacts. These hugely important outcome-oriented assumptions are not supported by data, let alone reliable data.

The DEIS downplays the possibility of a connection between the project’s groundwater pumping and surface waters, even as this assumption is contradicted by the available evidence. Exhibit G. The DEIS does not substantively discuss the environmental risks if this assumption is wrong, and offer mitigation. Exhibits, E, G. The DEIS is assuming continuous geologic barriers over a broad area of complex and heterogeneous geology, and in the absence of robust evidence commensurate to the large area at issue, this is an inappropriate assumption. Exhibit G. The DEIS also discounts the biological importance of the critical habitat, contrary to the evidence. Exhibits E, F. The DEIS takes this cavalier approach even as the adverse impacts will likely amount to “take” under section 9 of the Endangered Species Act and adverse modification under section 7. Exhibits E, F.

A9-19

The DEIS lacks any analysis of the likely water quantity impacts of the project on critical habitat, and only contains a conclusory hand wave about water quality. This gap in analysis of water quality impacts is compounded by both the likelihood of unpermitted discharges of treated wastewater, Exhibit B, and the lack of appropriate stormwater analysis of the design. Appendix D in the DEIS states: “Although not required for tribal trust lands, local jurisdictional guidelines will be used for the site hydrology calculations...” DEIS, Appendix D, Grading and Hydrology Report February 2023 Page 3-1. This is a misrepresentation. Exhibit B. The analysis uses the Sonoma County Water Agency Flood Management Design Manual for water quality calculations, notwithstanding a directive in the manual not to use the manual for this purpose. The flood management manual addresses flooding, not non-point source stormwater pollutants *or* creek hydromodification, both of which can adversely impact the receiving critical habitat. Exhibit B.

The standards that should have been applied are the Storm Water LID Technical Design Manual approved by the North Coast Regional Water Quality Control Board. The analysis states that “Sonoma County LID requirements” will be applied, but the misleading nature of this conclusory statement becomes apparent when one considers

that the project would have to be much smaller and redesigned to physically accommodate the measures required by the LID Manual. Exhibit B.

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The DEIS omits any substantive discussion of the cumulative development context in the area or the regional water supply context that will lead to more pressure to rely on groundwater. Exhibit G. The DEIS fails to realistically and accurately analyze groundwater and surface water impacts. Exhibits E, F, G.

A9-20

**VIII. The DEIS does not examine a reasonable range of alternatives.**

The original Scoping Report had erroneously concluded that there are no critical habitat concerns about the proposed location for the project. Based in part on this erroneous conclusion, the Scoping Report also limited review to the present site based on the extraordinary statement that alternative sites were “highly speculative” and “would not aid informed decisionmaking.” Rather than revisiting that conclusion once the extensive errors of the EA were pointed out to the Bureau, the Bureau has gone forward with the same set of alternatives.

A9-21

In Appendix-A2 the Bureau supplements the scoping analysis, essentially with a reiteration of its faulty reasoning, rejecting two proposed alternatives rather than stepping back and examining whether other off-site reasonable options exist. This would be a reasonable inquiry under the circumstances. Exhibit D. But the Bureau will not allow it. The supplement concludes that one proposed alternative site in the area allegedly cannot be considered because it is in critical habitat. Of course, the proposed project will also adversely impact critical habitat for steelhead, so this is not a credible discussion.

The rejection of the other alternative, an alternative with on-site housing for employees, amounts to nothing less than a very telling admission by the Bureau. At the outset, such an alternative is obviously reasonable to consider given the housing crisis, the impacts of the project, and the failure of the project to contribute to affordable housing; the exacerbation of the housing crisis is an adverse social and economic effect of the project. Exhibit D; 40 C.F.R. § 1508(i)(4). So why was this alternative summarily eliminated from consideration? Because there is *no room* – “no remaining areas on the site” – and because there is no existing financing. DEIS, Appendix A-2, 3. In other words, this reasonable alternative is supposedly not feasible solely because the pre-determined project on the pre-determined site will not allow for it. The Bureau will not allow itself to identify or consider other alternatives that the Tribe does not prefer. This is not surprising given deal that the Tribe has struck with the Chickasaw Nation of Oklahoma concerning the inappropriate site. But it is not consistent with the Bureau’s obligations under NEPA. It is notably also inconsistent with other EIS documents prepared for past fee to trust applications seeking land into trust for gaming purposes submitted by other tribes, which have identified and analyzed a wider range of alternatives, including reduced size casinos.

A9-22

The Bureau’s scoping failure taints the entire DEIS. The Bureau should have considered the trade offs of varying *types* of sites, and then assisted the Tribe in *developing* alternatives. 42 U.S.C. § 4332(2)(F). The Tribe’s assertion that it has a connection to Sonoma County is controversial, but if the Bureau agrees, that renders more sites available for consideration. A still larger area would have been available had the Bureau not changed its criteria from the purpose and need (stated in section 1.2 of the DEIS) and the scoping criteria applied (in the Scoping Report and the Supplemental Scoping Report). And still more alternative sites would be relevant had the Bureau considered options available to Congress, which has had an active role in fee to trust decisions. “Agencies ... may include reasonable alternatives not within the jurisdiction of the lead agency.” 40 C.F.R. § 1502.14(a). It cannot be said that the present parcel, and only the present parcel, and only the present project on this parcel, are the Tribe’s only reasonable options. And these options have environmental consequences. By way of example, a more urban site could take advantage of existing planning and infrastructure, reduce vehicle emissions, and avoid impacts to sensitive habitat; a more remote site that is not in the protected Community Separator would avoid land use conflicts, and would provide the Tribe with still more options to avoid resource conflicts.

A9-23

Instead, the Tribe’s proposed location is taken as a given. The fact that the Tribe has a casino development agreement with Global Gaming Solutions, a Chickasaw Nation of Oklahoma business, is a matter of public record. Both Alternatives A and B conspicuously reflect the same terms, which are presumably the terms of that deal: Both have “2,750 gaming devices [and] 105 table games.” And these are the same alternatives that were included in the EA. There is no evidence that Global Gaming Solutions is interested in non-gaming, but the DEIS includes Alternative C, an on-site alternative that presumably would never go forward. It does not appear to meet the screening criteria that the Bureau has applied, as it is not clear that project would have financing either. It is not at all clear why this alternative is included, rather than a smaller casino.

A9-24

The Bureau now grudgingly admits that the project, if approved, would have an adverse impact on River Rock Casino, which “is considered a potentially significant impact.” The DEIS also admits that “should competition effects be so severe as to cause closure of a facility, it could result in environmental effects associated with abandoned buildings and vacant lots, referred to as ‘urban blight’. Additionally, in the case of tribal casinos, facility closure could result in socioeconomic effects to tribal communities from decreased availability and/or quality of governmental services.” DEIS, 3-75. Left unconsidered are the simultaneous cumulative and growth inducing impacts implied by the “gravity” model that the Bureau is relying upon – undisclosed mathematically, but apparently finding that bigger casinos will attract more visitors from farther distances. Exhibit H (EA comments). There are many other significant impacts of the Project that the Bureau would prefer not to investigate. The County reiterates that picking a site for commercial development that is only available because local planning protects that site from commercial development comes with multiple environmental and infrastructural challenges and costs. It is hard, and likely impossible, to make this project work on this site without causing significant environmental impacts.

A9-25

These impacts could be addressed on other sites. Exhibits E, G. There is certainly no analysis in the DEIS that supports a different conclusion, and the attempt to screen out reasonable off-site alternatives in the DEIS violates NEPA. Confining the analysis to the existing proposal creates a false choice between the tribal economic development contemplated by the purpose and need, and the environment. If the Bureau “develop[s]” additional alternatives as required under the circumstances, 42 U.S.C. § 4332(2)(C), rather than just confining itself to the Tribe’s existing deal, and if the Bureau “rigorously explore[s] and objectively evaluate[s]” those offsite alternatives, 40 CFR § 1502.14(a), the significant impacts of the project can be avoided. Confining the choice to a decision between not meeting the purpose and need and developing an inappropriate site is a complete distortion of reality and an affront to NEPA’s basic purpose.

A9-26

**IX. The DEIS also lacks a detailed analysis of the alternatives it does consider.**

The lack of discussion of the Bureau’s legal approach to the various proposals also taints the alternatives analysis. The analysis contains no discussion of why the Tribe would not build whatever it liked after the land is taken into trust. And the DEIS also omits crucial information from studies about the impacts of alternatives. Exhibit G. These details involve impacts to endangered species and are crucial for informed decisionmaking. Further, the DEIS wastewater analysis also includes a large number of “options,” without analyzing them. Exhibit B, G. These divergent paths could have been considered in the alternatives analysis. The feasibility “options” are effectively alternatives, and involve impacts that should have been provided in the alternatives analysis.

A9-27

**X. Conclusion.**

Based on the existing environmental review, the Bureau’s only legal option is to adopt the no project alternative. In the interests of the environment and public safety, the County urges the Bureau to do so.

Sincerely yours,



Verne Ball

Attachments

Exhibit A



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April 5, 2024

Amy Dutschke, Regional Director  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way  
Sacramento, California 95825

RE: NOI Comments, Koi Nation Fee- to-Trust and Casino Project

VIA U.S. MAIL AND EMAIL

Dear Regional Director Dutschke:

The County appreciates the opportunity to comment on the scoping of the Environmental Impact Statement for the Koi Nation's Proposed Shiloh Resort and Casino Project. The County previously submitted comments on the Environmental Assessment that are relevant to scoping. These comments are attached to this letter for your convenience.

In addition, Congress recently amended the National Environmental Policy Act (NEPA) to explicitly codify the following requirements for Environmental Impact Statements:

- (D) ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document;
  - (E) make use of reliable data and resources in carrying out [NEPA];
  - (F) consistent with the provisions of [NEPA], study, develop, and describe technically and economically feasible alternatives;
- (42 U.S.C. § 4332.)

Consistent with these recent amendments, the County requests that the Bureau implement independent peer review for any work that is produced by consultants who are under contract with the applicant. The County further requests that this peer review process be transparently discussed in the Environmental Impact Statement.

The County also requests that alternatives, including alternatives to the proposed location for the project, be "developed" at a level of detail that provides the Bureau with useful information and realistic options.

A9-28



Finally, the County requests that the Bureau discuss its own role in ensuring mitigation measures are not illusory, and if the Bureau envisions reliance on mitigation measures that involve agreements, actions, and/or cooperation with non-tribal parties, how this would work both legally and practically.

A9-28  
cont.

Sincerely yours,



Verne Ball

cc: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs,  
chad.broussard@bia.gov

Attachment



## Exhibit B





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08/26/2024

Verne Ball  
Sonoma County Counsel  
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Regarding: Memorandum of Koi Nation Resort & Casino Grading  
& Hydrology Report Engineering Review Comments

Dear Verne,

Permit Sonoma's Deputy Director of Engineering, Nathan Quarles PE, Engineering Division Manager, Alex Rosas PE, and Flood Plain Manager, Steve Snow PE, have reviewed the Grading and Hydrology Report section of the preliminary environmental assessment for the Koi Nation Resort and Casino Project and coordinated to prepare the following comments.

1. The report uses the Sonoma Water Flood Management Design Manual (FMDM) as the guidance document for the design, for which the focus was on hydrologic impacts post development. However, the FMDM is a design guidance manual for sizing of drainage conveyance features and stream modeling rather than for a comparison of pre-development and post-development impacts. The FMDM states not to use these methodologies for the kind of analysis as was done in the Report.

Specifically, the FMDM provides the following language in this regard on page 1-5 and 1-6, section 1.4.4:

*“Nonpoint-source runoff, including runoff from impervious surfaces, is generally referred to as stormwater runoff. Potential pollutants carried in stormwater runoff are regulated as a water quality concern. Stormwater runoff may also cause channel erosion due to increased peak flow rates or volumes from urbanized areas. The federal Clean Water Act of 1972 (CWA), Section 402 established the National Pollutant Discharge Elimination System (NPDES) permit program to regulate discharges of pollutants to surface waters. Under the NPDES, public agencies (such as cities, counties, and other agencies) are required to maintain compliance with the conditions of NPDES permits for their stormwater discharges. The municipalities, in turn, require that individual projects within their jurisdictions comply with the requirements of these permits...”*

*The focus of this FMDM is to provide hydrologic and hydraulic analysis methods and criteria for designing facilities to accommodate flood conditions. The focus of this manual is not to address the more frequent and lower magnitude stormwater flows that are*

**A9-29**



*typically the focus of NPDES requirements. The user of this manual, or project applicant, should consult with the appropriate RWQCB office and/or appropriate municipality (or the County) regarding potential NPDES regulatory requirements that may affect a specific project."*

The Report uses the FMDM methodologies to demonstrate no storm water quality impacts, notwithstanding the fact that the manual is explicit that one should not use the manual for this purpose. The appropriate framework is the Storm Water Low Impact Development (LID) Technical Design Manual, approved and required by the North Coast Regional Water Quality Control Board through the multijurisdictional MS4 permit for exactly these types of impacts.

A9-29  
cont.

2. For projects such as this, located within the Phase 1 NPDES boundary, storm water quality mitigation is normally required to be designed in conformance with the Storm Water LID Technical Design Manual (LID Manual for short). The LID Manual was established with significant developments such as this in mind, to address the expected storm water issues and impacts. The Report alludes to LID design strategies for various bioswales but does not provide a clear acknowledgement of which LID methodologies are being used, and the NEPA document does not mandate compliance with any of them. Further, the LID discussion was only in reference to storm water treatment, where the accepted LID design strategy is treatment and retention (i.e. infiltration). Because of the environmental context, a project of this scale would normally be subject to hydromodification control requirements, also known as 100% volume capture.

The LID Manual defines hydromodification as follows:

*"Altering the drainage patterns (away from their natural state) of a site and the flows, beds or banks of rivers, streams, or creeks, including ephemeral washes, which results in hydro-geomorphic or habitat changes. Hydromodification is the term used to describe the changes that occur in a waterway as the result of changes in the contributing watershed. When a site is developed and the amount of impervious area is increased, runoff generated will reach the waterway sooner, at higher velocities, and at higher volumes than it had in the previously undeveloped condition. Additionally, the total time that the creek receives flow will be shortened. These changes in flow patterns cause negative impacts such as erosion of creek banks, sediment scour, and reduced base flow. These impacts in turn affect wildlife and riparian habitat, damage property, and alter flood conditions."*

A9-30

Additionally, the LID Manual defines hydromodification control as follows:

*"As defined for the purposes of this manual, hydromodification control Best Management Practices (BMPs) are BMPs that meet the definition of a LID BMP and are required to capture and retain 100% of the volume of runoff generated by 1.0" of rain over a 24-hour period for project sites increasing or replacing one acre or more of impervious surface."*

The Report attempts to conservatively demonstrate no impacts with a design of storm water detention facilities for a 100-year storm, however, detention does not meet the LID goals of infiltration. Sizing of storm water detention features for a 100-year storm appears conservative on the surface with 221,850 ft<sup>3</sup> of storage, however, these features as shown in the preliminary design would need to be around 10+ feet deep. In comparison, following LID design criteria would require approximately 127,070 ft<sup>3</sup> of storage in bioretention features, which are only 6 inches deep at the surface with additional subsurface storage. Due to potential limitations of likely high groundwater adjacent to the creek, the subsurface depth of bioretention features may be limited and therefore require significantly more surface area despite the lower mitigation volume; the proposed design does not account for the surface area requirements of such features. The reality is that the EIS is citing compliance with requirements that are not mandated by mitigation measures, but actual compliance is not realistic without changes to the project.

A9-30  
cont.

The Report focuses on the peak flows from the site to demonstrate no storm water impacts, where the accepted mitigation is hydromodification control of storm water volume leaving the site and the design as proposed will do nothing to lower storm water volume from the site, rather just spread the release out over time. The treatment of storm water is also questionable with this design. Untreated storm water discharges to Pruitt Creek could lead to negative impacts in the riparian habitat.

A mitigation measure should be imposed upon the project mandating compliance with the LID Manual.

3. The Report also discusses an option to route storm water runoff to the wastewater treatment plant for an integrated system. Combined stormwater and sewer systems often lead to overloading of the wastewater treatment plant, and spills/discharges to the environment. The Report also proposes to store treated wastewater on-site, which if combined with storm water would lead to massive storage requirements that likely cannot be accommodated on-site for a whole winter's worth of storm water and wastewater. A full analysis of this infrastructure has not been provided in the DEIS. It will be challenging to find a use for the recycled water during the winter months when irrigation demand is low, and full analysis of off-site discharge of recycled water feasibility has not been provided. It is foreseeable that the project will be forced to discharge recycled water at rates far above the agronomic rate of uptake for the recycled water discharge locations, leading to discharges to groundwater and surface water. Absent large scale and unanalyzed storage infrastructure, the design will lead to much higher inflow than outflow to the recycled water storage and eventually necessitate an unpermitted discharge into salmonid critical habitat in Pruitt Creek.

A9-31

4. The Report analyzes the 100-year storm which is typically considered conservative; however, it only analyzes a single storm, assuming the detention basin is empty. This is inconsistent with winter rainfall patterns in Sonoma County where the largest storms are often just one of a series of strong atmospheric river type storms that make landfall successively which will lead to problems in this design once capacity of the detention basin is reached. This could exacerbate flooding issues on-site and at adjacent properties, for which there is a FEMA designated special flood hazard area along Pruitt Creek.

A9-32

5. The proposed site is bisected by the Pruitt Creek floodway and floodplain at the southwestern end of the site for which the County as a participating community in the National Flood Insurance Program (NFIP) requires development in compliance with FEMA flood hazard area development standards. The proposed design does appear to avoid the floodway, for which the County has a prohibition of any new work, however, it appears that improvements are proposed in the floodplain area. The normally applicable requirement would prohibit fill in special flood hazard areas unless the fill has been offset by equivalent cuts to balance the earthwork and maintain the flood carrying capacity. There is no discussion in the EIS that these normally applicable requirements are not applicable here, and it is therefore unclear from the proposed design whether no net fill will be integrated into the design. If not, this would present flood risks to neighboring property owners where flood waters could be displaced onto their property, leading to structure and property damage or even life safety risks in a flood disaster, and these significant risks should be addressed by a mitigation measure imposed upon the project.

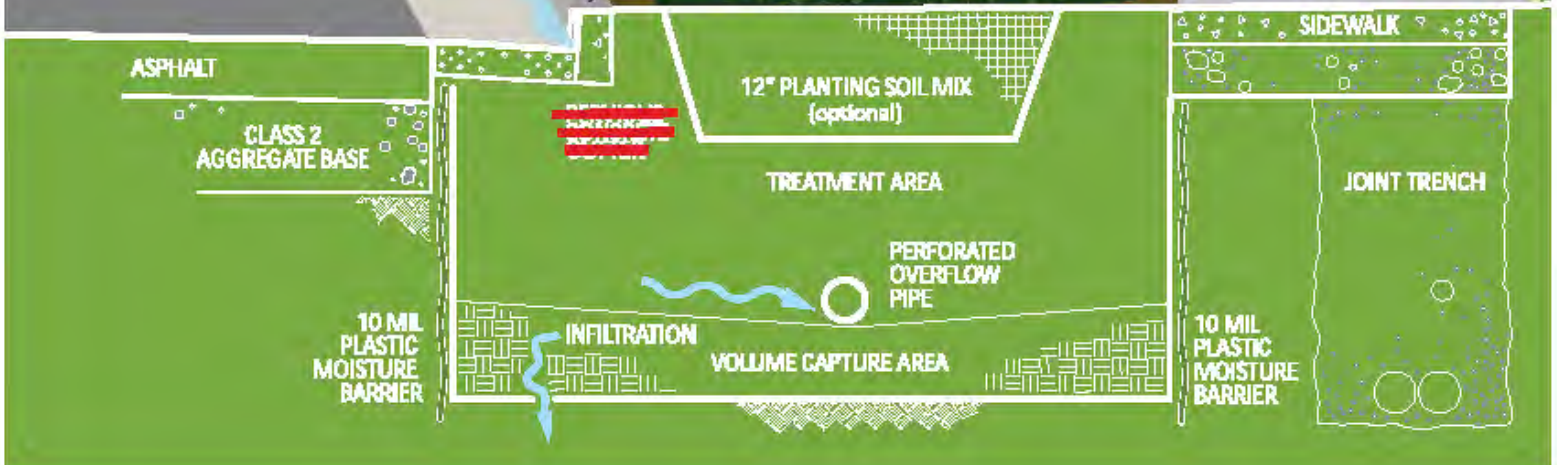
A9-33

Sincerely,

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# Storm Water Low Impact Development Technical Design Manual





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# ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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**APN:** Assessor's Parcel Number.

**BEST MANAGEMENT PRACTICE (BMP):** A program, technology, process, citing criteria, operational method, or engineered system which when implemented prevents, controls, removes, or reduces pollution.

**C-FACTOR:** Representation of a surface's ability to produce runoff. Surfaces that produce higher quantities of runoff are represented by higher C-Factors (such as impervious surfaces.)

**CC&Rs :** Conditions, Covenants and Restrictions.

**CURVE NUMBER (CN):** CN is based on soils, plant cover, amount of impervious area, interception, and surface storage. CN is an empirical parameter used in hydrology for predicting runoff or infiltration from rainfall.

**COPERMITTEES:** Local Government Agencies (County of Sonoma, City of Cloverdale, City of Cotati, City of Healdsburg, City of Rohnert Park, City of Santa Rosa, City of Sebastopol, Sonoma Water, City of Ukiah, and the Town of Windsor) regulated under a common NPDES MS4 Storm Water Permit issued by the North Coast Regional Water Quality Control Board.

**DELTA VOLUME CAPTURE:** The capture and retention of the increase in volume of runoff due to development generated by 1.0" of rain over a 24-hour period. See Chapter 6 for formulas and further description.

**DISCRETIONARY PROJECT:** A project which requires the exercise of judgment or deliberation when a public agency or body decides to approve or disapprove a particular activity.

**FULL-DEPTH RECLAMATION:** The Asphalt Recycling and Reclaiming Association defines full-depth reclamation (FDR) as "a reclamation technique in which full flexible pavement section and a predetermined portion of the underlying materials are uniformly crushed, pulverized, or blended, resulting in a stabilized base course."

**GOVERNING AGENCY:** The agency which has approval authority related to storm water over the proposed project.

**HILLSIDE:** Property either located in an area having known erosive soil conditions, where the development will result in grading on any slope that is 10% or greater or an area designated by the municipality under a General Plan or ordinance as a "hillside area".

**HYDROMODIFICATION:** Altering the drainage patterns (away from their natural state) of a site and the flows, beds or banks of rivers, streams, or creeks, including ephemeral washes, which results in hydro-geomorphic or habitat changes. Hydromodification is the term used to describe the changes that occur in a waterway as the result of changes in the contributing watershed.

# ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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When a site is developed and the amount of impervious area is increased, runoff generated will reach the waterway sooner, at higher velocities, and at higher volumes than it had in the previously undeveloped condition. Additionally, the total time that the creek receives flow will be shortened. These changes in flow patterns cause negative impacts such as erosion of creek banks, sediment scour, and reduced base flow. These impacts in turn affect wildlife and riparian habitat, damage property, and alter flood conditions.

**HYDROMODIFICATION CONTROL:** As defined for the purposes of this manual, hydromodification control Best Management Practices (BMPs) are BMPs that meet the definition of a LID BMP and are required to capture and retain 100% of the volume of runoff generated by 1.0" of rain over a 24-hour period for project sites increasing or replacing one acre or more of impervious surface. See Chapter 6 for formulas and further description. Note: It is possible that a Project that increases or replaces less than one acre of impervious surface may be required to implement hydromodification controls if required by the Clean Water Act Section 401 permit issued by the Regional Water Quality Control Board.

**IMPERVIOUS SURFACE:** For the purposes of this Manual, impervious surface is defined as areas that have been modified such that storm water percolation into underlying soils is reduced or prohibited. Typical examples of impervious surfaces include concrete, asphalt, and roof tops. Additional examples include engineering practices such as compaction or lime treatment. Gravel placed as part of the proposed project is considered to be impervious unless documentation is provided to verify that it is pervious. Existing gravel on a project site prior to the proposed project is considered to be pervious unless documentation is provided that demonstrates that it is impervious.

**LOW IMPACT DEVELOPMENT (LID):** LID is a design strategy with the goal of replicating the pre-development hydrologic function of the site through the use of design techniques. Hydrologic functions include rainwater storage, infiltration, and groundwater recharge. LID design techniques seek to maintain the volume and frequency of discharges through the use of integrated small-scale storm water retention and detention areas, reduction of impervious surfaces, and the lengthening of flow paths. All these LID design elements increase infiltration and decrease runoff velocity and volume.

**LOW IMPACT DEVELOPMENT (LID) BMPs:** Permanent storm water BMPs that treat or retain storm water through a soil filter media and/or vegetation and/or retain storm water runoff on-site through infiltration or evapotranspiration. LID BMPs are permanent, typically small scale (although large scale is acceptable), planted features that aim to mimic the hydrologic function of the pre-development site by capturing, treating, and infiltrating storm water as close to the source as possible. At plant maturity, at least 50% of a BMP must be vegetated for the BMP to be considered a LID BMP per the BMP Selection Table (see Appendix B). Alternatively, a BMP

# ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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can be considered to be a LID BMP if the Hydromodification Control BMP design criteria is met and at least one vegetated a water quality BMP or Runoff Reduction Measure is utilized to provide water quality treatment prior to discharge to the volume capture BMP.

**MINISTERIAL PROJECT:** A project where the agency or body merely has to determine whether there has been conformity with applicable statues, ordinances, or regulations.

**MS4 PERMIT:** Municipal Separate Storm Sewer Systems Permit.

**NCRWQCB:** North Coast Regional Water Quality Control Board. This design manual is covered under the North Coast Regional Area (Region 1).

**NPDES:** National Pollutant Discharge Elimination System.

**PERVIOUS SURFACE:** For the purposes of this manual, pervious surfaces are areas that allow for storm water infiltration into the underlying soil as would occur in the undeveloped location in an unaltered condition.

**POLLUTION PREVENTION:** Design approaches and/or site construction/maintenance practices that minimize or prevent pollution from entering storm water runoff and impacting storm water quality.

**PRE-DEVELOPED CONDITION:** Describes the project site prior to the proposed development.

**PRETREATMENT:** As it relates to this LID Manual, pretreatment is defined as an additional treatment step and/or BMP that is designed to remove a specific pollutant or pollutants of concern before the runoff reaches the main LID BMP.

**RECONSTRUCTION:** The removal and replacement of paving material or building material down to exposed or disturbed soil (subgrade).

**REDEVELOPMENT:** Land-disturbing activity that results in the creation, addition, or reconstruction of impervious surface area on an already developed site. Redevelopment includes, but is not limited to, the following: the expansion of a building footprint; addition or replacement of a structure; reconstruction of impervious surface that is not a part of a routine maintenance activity. It does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of facility, nor does it include emergency construction activities required to immediately protect public health and safety. Minor changes to line or grade of 0.20 feet or less shall be considered as maintaining original line and grade.

**ROUTINE MAINTENANCE ACTIVITIES:** Routine maintenance activities are activities that are conducted to maintain original line and grade, hydraulic capacity, and original purpose of facilities. Routine maintenance activities include activities such as overlays and/or resurfacing



# ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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of existing roads or parking lots, road pavement structural section rehabilitation (FDR)<sup>1</sup>, as well as trenching and patching activities and reroofing activities. For activity to be considered "routine maintenance" it must not change existing lines and grades or hydraulic capacity. Minor changes to line or grade of 0.20 feet or less shall be considered as maintaining original line and grade. Replacement of existing pedestrian ramps to maintain compliance with current Americans with Disabilities Act Requirements shall be regarded as routine maintenance.

**SITE:** For the purposes of this manual, the site includes any and all areas of improvements associated with the project. The site includes public improvements, frontages, utility services, and any offsite improvements.

**STORM WATER:** Flow generated by rainfall.

**STORM WATER POLLUTION PREVENTION PLAN (SWPPP):** A plan to identify and implement site specific, construction related BMPs to reduce or eliminate pollutants (particular pH and turbidity) in storm water discharge from construction sites. The Statewide Construction Activity NPDES General Permit requires the preparation of a SWPPP for projects that disturb one acre or more of soil. SWPPP's are submitted to the State Water Resources Control Board (SWRCB) and are not covered in this Manual.

**STRUCTURAL BMP:** Any manufactured facility, structural mechanism, or apparatus designed and constructed to mitigate the adverse impacts of storm water runoff pollution (e.g. canopy, structural enclosure). The category may include both treatment control BMPs and source control BMPs.

**STORM WATER LOW IMPACT DEVELOPMENT SUBMITTAL (SWLIDS):** The deliverable report that satisfies the project specific MS4 permit requirements as described in this Manual.

**STORM WATER LID DETERMINATION WORKSHEET:** A worksheet to determine if a project will need to incorporate permanent Storm Water Best Management Practices (BMPs) and submit a SWLIDS as required by the NPDES MS4 Permit Order No. R1-2015-0030.

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<sup>1</sup> FDR maintenance activities are exempt as long as it is not part of a larger development or redevelopment project; does not change pre-project drainage patterns; and does not expand the footprint of the road.

# ACRONYMS, ABBREVIATIONS AND DEFINITIONS

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**SUBGRADE:** That portion of roadway on which pavement surfacing, aggregate base, subbase or a layer of any other material is placed (also known as the grading plane or the point at which soil would be exposed and/or disturbed).

**SWRCB:** State Water Resources Control Board.

**TRASH AMENDMENT:** An amendment to the State Water Resources Control Board's Water Quality Control Plan for Ocean Waters and the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California that establishes a trash discharge prohibition and includes a strategy to provide "full capture" of trash from stormwater through the use of existing and reissued NPDES permit provisions, such as the MS4 permit. The Trash Amendment requires that all debris particles 5 millimeters or greater in size must be trapped to meet the full capture standard.

**TRASH CAPTURE:** Capture of all trash and debris 100 microns (0.0039 inches) in diameter (for LID BMPs) and larger.

**TREATMENT BMPs:** An engineered system that is designed to remove pollutants from storm water using physical, chemical, or biological processes before the storm water is discharged to the storm drain system. Examples of treatment controls include: vegetated swales, extended detention basins, vegetated buffer strips, Bioretention areas, and media filters.

**TREATMENT TRAIN:** Using a variety of BMPs, both practices and constructed features, in series in order to achieve improved storm water quality.

**TRIBUTARY AREA:** The physical area that drains to a specific BMP or drainage feature.

**U.S. EPA:** United States Environmental Protection Agency.

**100% VOLUME CAPTURE:** For the purposes of this manual, 100% volume capture is the capture and retention of 100% of the volume of runoff generated by 1.0" of rain over a 24-hour period. See Chapter 6 for formulas and further description.

**WETLANDS:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. For official determination whether or not an area is classified as a wetland pursuant to Section 404 of the Federal Clean Water Act, contact the United States Army Corps of Engineers.

# CHAPTER 1: INTRODUCTION

## INTRODUCTION

Creeks and riparian habitat areas are a beautiful aspect of our community and home to a wide range of aquatic and terrestrial species such as; fish, otters, ducks, hummingbirds, egrets, and frogs. Our local creeks drain to the river and ocean and their water quality is important for our generation and future generations.



Development of land typically increases impervious surface and decreases infiltration. Storm water, or runoff generated from rain, that is not absorbed into the ground accumulates debris, chemicals and other polluting substances harmful to water quality. Polluted storm water entering creeks is a significant concern to plant and animal life that inhabit the waterways and ultimately public health as well. Additionally, land development typically increases the flow rate and decreases the duration of runoff from land causing hydromodification in creeks, which contributes to erosion, flooding, loss of habitat, and decreased aquatic biological diversity.

The intent of this manual is to provide design guidance to mitigate negative water quality impacts due to development.

## BACKGROUND

The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. Growing public awareness and concern for controlling water pollution led to sweeping amendments in 1972. As amended in 1972, the law became commonly known as the Clean Water Act. Congress subsequently authorized the National Pollution Discharge

Elimination System (NPDES), which regulates municipal storm water discharges through the issuance of Municipal Separate Storm Sewer System (MS4) permits.



The North Coast Regional Water Quality Control Board (NCRWQCB) issues the NPDES Municipal Separate Storm Sewer Systems (MS4) Permit (Permit) requiring Governing Agencies to implement a myriad of programs to prevent pollution, improve and protect storm water quality, reduce storm water runoff, and enhance the ecologic vitality of local creeks and waterways. The Permit also requires that



# CHAPTER 1: INTRODUCTION

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the Governing Agencies regulate new development and retrofit projects within their jurisdiction.

The original CoPermittees (City of Santa Rosa, County of Sonoma and Sonoma County Water Agency) received their first NPDES storm water permit in 1997 which has been renewed approximately every five years. The most recent permit update took effect January 6, 2016 and required that the previous version of this LID Technical Design Manual (LID Manual) be revised to meet the new permit requirements. Additionally, the City of Cloverdale, City of Cotati, City of Healdsburg, City of Rohnert Park, City of Sebastopol, City of Ukiah, and Town of Windsor have been added to the County of Sonoma, Sonoma County Water Agency, and City of Santa Rosa as CoPermittees.

Each CoPermittees is responsible for applying these Permit requirements in conformance with this LID Manual, at a minimum, to new development, retrofit projects, and applicable infrastructure improvement projects within their jurisdiction.

## PURPOSE OF THIS LID MANUAL

The Storm Water Low Impact Development Technical Design Manual (LID Manual) provides technical guidance for project designs that require the implementation of permanent storm water Best Management Practices (BMPs). This Manual supersedes both the 2005 SUSMP Guidelines and the 2011 version of this LID Manual.



## HOW THIS MANUAL RELATES TO OTHER REQUIREMENTS

This Manual is intended to satisfy the specific requirements of "ORDER NO. R1-2015-0030, NPDES NO. CA0025054 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS" (Order R1-2015-0030). Additional design requirements imposed by Governing Agencies, such as local grading ordinances, CAL Green, CEQA, 401 permitting, and hydraulic design for flood control still apply as appropriate. Governing Agencies may, at their discretion, determine that designing in accordance with this Manual satisfies other requirements. Additionally, coverage under another regulation may trigger the requirement to design in accordance with this Manual. Please check with the local Governing Agency for specific requirements.



# CHAPTER 1: INTRODUCTION

## WHAT IS STORM WATER LOW IMPACT DEVELOPMENT (LID)?

For the purposes of this Manual, Low Impact Development (LID) Best Management Practices (BMPs) are defined as permanent storm water BMPs that treat or retain storm water through a soil filter media and/or vegetation and/or retain storm water runoff on-site through infiltration or evapotranspiration.

LID BMPs are permanent, small scale, planted features that aim to mimic the hydrologic function of the predevelopment site by capturing, treating, and infiltrating storm water as close



to the source as possible. At plant maturity, at least 50% of a BMP must be vegetated for the BMP to be considered a LID BMP per the BMP Selection Table. If 50% vegetated cover will not be established before the completion of construction, the following shall be supplied as part of the project design submittal approval process in order to be considered a LID BMP: 1) an erosion control plan for the LID BMPs with sufficient measures to provide soil stabilization and treatment until plant

maturity (e.g. ground-up, composted mulch on all bare soils with rock inlet protection); and 2) a planting and irrigation plan for the LID BMPs that shall include, by plant genus species and common name, selected plants, maximum spacing, total number of plants to be installed, and a table with mature plant size (canopy). Alternatively, a BMP can be considered to be a LID BMP if the Hydromodification Control BMP design criteria is met and it is paired with one of the Runoff Reduction Measures (Disconnected Roof Drains, Paved Area Disconnection, Interceptor Trees, Buffer Strips and Bovine Terraces) in series as part of a "treatment train."

LID is formally defined as:

"A development site design strategy with a goal of maintaining or reproducing the pre-development hydrologic system through the use of design techniques to create a functionally equivalent hydrologic setting. Hydrologic functions of storage, infiltration, and groundwater recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and distributed small-scale storm water retention and detention areas, reduction of impervious surfaces, and the lengthening of flow paths, and runoff time."

(As defined in Attachment A of Order R1-2015-0030, NPDES Permit No. CA0025054)

# CHAPTER 1: INTRODUCTION

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The intention of this Manual is to promote the following LID goals:

- Minimize the adverse impacts from storm water runoff on water quality, the biological integrity of receiving waters, and the beneficial uses of water bodies.
- Minimize the percentage of impervious surfaces on land development projects and implement mitigation measures to mimic the pre-development water balance through infiltration, evapotranspiration, and capture and reuse of storm water.
- Minimize pollutant loadings from impervious surfaces such as roof tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs, including source control BMPs or good housekeeping practices, LID planning and design strategies, and treatment control BMPs.
- Proper selection, design and maintenance of treatment control BMPs, and Hydromodification Control BMPs to address pollutants generated by land development, minimizing post-development surface flows and velocities, assuring long-term functionality of BMPs, and avoiding the breeding of vectors.

## REVISION AND AMENDMENT

It is recognized that LID is an emerging field, and that while every effort has been made to ensure that this Manual is complete and accurate, revisions and/or amendments may be necessary. Proposed revisions and/or amendments will be evaluated on a case by case basis and will require review and approval by the NCRWQCB.

# CHAPTER 2: PROJECT TRIGGERS

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## PROJECTS THAT TRIGGER REQUIREMENTS

### GEOGRAPHIC AREAS

The requirements set forth in this Storm Water Low Impact Development Technical Design Manual apply to projects within the jurisdiction of City of Santa Rosa, City of Healdsburg, Town of Windsor, City of Cotati, City of Sebastopol, City of Cloverdale, City of Ukiah and City of Rohnert Park as well as the portions of the County of Sonoma as shown in Attachment C of the NPDES MS4 Permit Order No. R1-2015-0030. Although the Sonoma Water is named in the Permit, it does not have land use authority.

This LID Manual does not apply to the areas south of the Russian River/Laguna De Santa Rosa watershed boundary, including portions of Petaluma, Sonoma, and the southern portion of the County of Sonoma as they are outside the jurisdiction of the North Coast Regional Water Quality Control Board and have distinct design requirements.

### PROJECT TRIGGERS AND EXEMPTIONS

Since Storm Water LID features are designed to mitigate for the permanent impacts caused by impervious surfaces, the total amount of impervious surface must be considered when determining whether or not a project triggers Storm Water LID requirements. This evaluation must include the built-out project condition (including homes, structures, sidewalks, and/or roadways that will be completed under separate building permits) as well as all phases of a phased project. Note that for site tributary areas where no impervious surface will be added or replaced, the installation of BMPs are not required.

### IMPERVIOUS SURFACE

An impervious surface is defined as areas that has been modified such that storm water percolation into underlying soils is reduced or prohibited. Examples of impervious surfaces include concrete, asphalt, and roofs. Additional examples include engineering practices such as compaction or lime treatment. Existing gravel on a project site placed prior to the proposed project is considered pervious unless documentation is provided that demonstrates that it is impervious. Gravel placed as part of the proposed project is considered impervious unless documentation is provided to verify that it is pervious.

### SITE DETERMINATION

For the purposes of this Manual, the impacts that must be accounted for in the SWLID design includes everything within the project site of all improved parcels as well as all off-site or associated public improvements, such as trenching and repaving for utility connections.

# CHAPTER 2: PROJECT TRIGGERS

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The following flow chart (Figure 1) is provided as guidance in determining which projects trigger permanent water quality Treatment, Delta Volume Capture, and/or Hydromodification Control features which shall require the applicant to submit a SWLIDS report and which projects qualify for exemptions. Final determination is achieved by completing a "Storm Water LID Determination Worksheet", a copy of which is attached in Appendix A as reference.

Note that projects identified as exempt may still be required to implement permanent storm water quality features as a condition of other environmental permit processes.

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## Figure 1 Footnotes

<sup>2</sup> "Routine Maintenance Activity" This exemption includes activities such as overlays, resurfacing, and/or road pavement structural section rehabilitation (e.g. FDR) of existing roads or parking lots as well as trenching and patching activities and reroofing activities. For activity to be routine maintenance it must not change existing lines and grades or hydraulic capacity. Minor changes to line or grade of 0.20 feet or less shall be considered as maintaining original line and grade. Replacement of existing pedestrian ramps to maintain compliance with current Americans with Disabilities Act Requirements shall be regarded as routine maintenance.

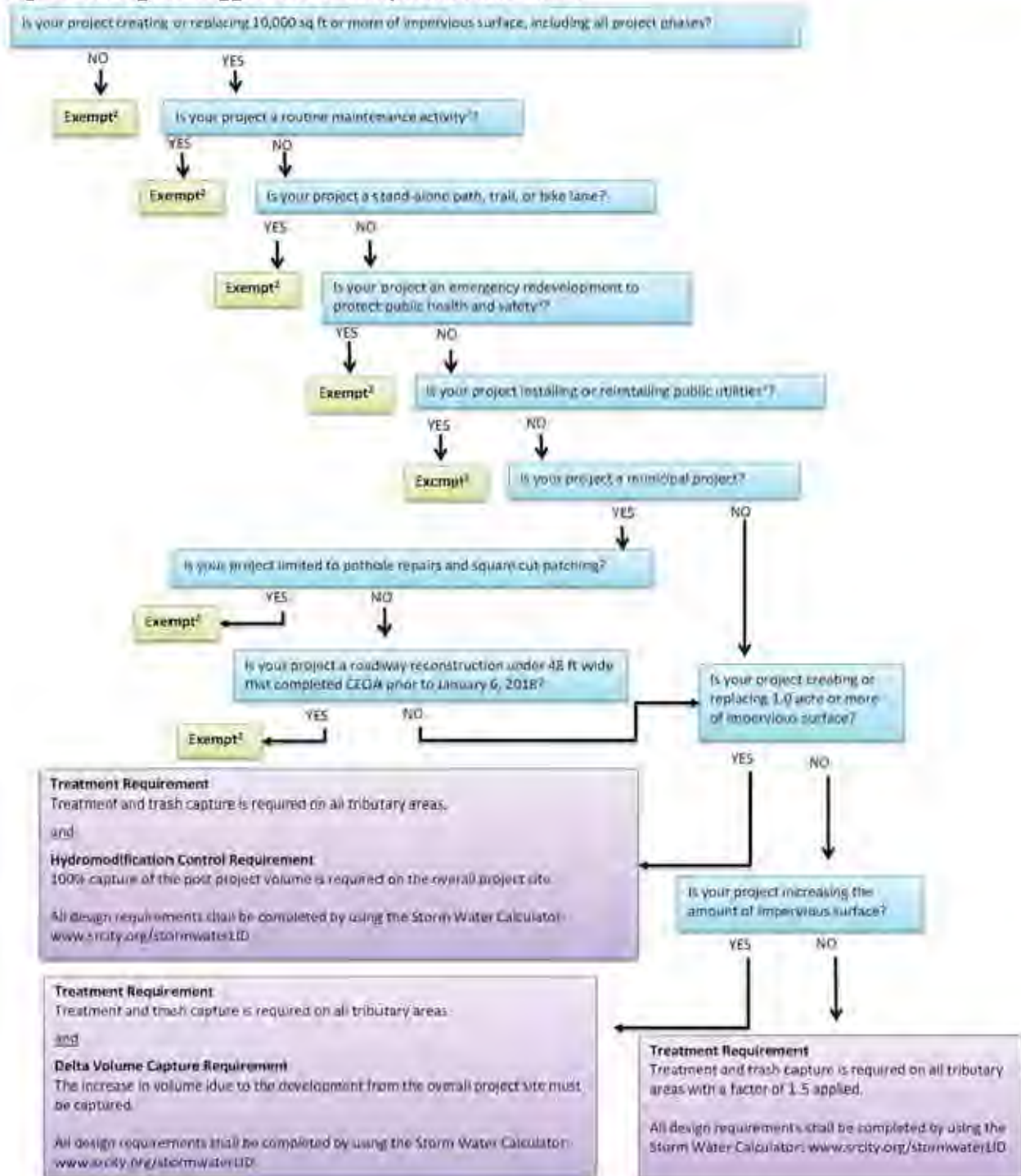
<sup>3</sup> The NCRWQCB must agree the activities are needed to protect public health and safety to qualify for this exemption.

<sup>4</sup> Applies to public utilities, such as sewer or water, only. The project must not include any additional street or road development or redevelopment activities beyond the paving activities needed as a result of construction impacts to the existing roadway.



# CHAPTER 2: PROJECT TRIGGERS

Figure 1. Project Triggers and Exemptions Flow Chart



Note: Final determination is achieved by completing a "Storm Water LID Determination Worksheet".

# CHAPTER 2: PROJECT TRIGGERS

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## IMPACTS TO BE MITIGATED

The specific level of treatment and/or retention required is determined on each tributary area and is different for offsite improvement areas. Design requirements for project sites that propose under 1.0 acre of new and/or replaced impervious surface are outlined in Table 1 on the on the following pages. Design requirements for project sites that propose over 1.0 acre of new and/or replaced impervious surface are outlined in Table 2 on the following pages.

# CHAPTER 2: PROJECT TRIGGERS

Table 1: Design Requirements for Project Sites Under 1.0 Acre of New and/or Replaced Impervious Surface

	Description of Tributary Area	Design Requirements:	Notes
		All BMPs must meet the design criteria of a LID BMP as defined by this manual.	
1	Tributary area consists of <u>both existing and new and/or replaced</u> impervious area.	Existing impervious area: Treatment required. New and/or replaced impervious area: 100% Volume Capture or both Delta Volume Capture and Treatment required.	Order R1-2015-0030 trash capture requirements must be met in all tributary areas. <sup>5</sup>
2	Tributary area consists of <u>new and/or replaced</u> impervious area <u>only</u> .	100% Volume Capture or both Delta Volume Capture and Treatment required.	Order R1-2015-0030 trash capture requirements must be met in all tributary areas. <sup>5</sup>
3	Tributary area consists of <u>existing</u> impervious area <u>only</u> .	No requirements apply.	The project may need to meet the requirements of the Statewide Trash Amendment. Refer to the governing agency.
4	Tributary area consists of <u>off-site improvements or public improvements only</u> .	New and/or replaced impervious area only: 100% Volume Capture or both Delta Volume Capture and Treatment required.	The proposed BMP(s) should be designed to receive the runoff from the improved area whenever possible. If this is not possible, the BMPs required for off-site and/or public improvements may be constructed on-site as a "on-site offset" or the runoff accounted for by oversizing another BMP

<sup>5</sup> The trash capture requirements include compliance with the State Water Board's Amendment to the Water Quality Control Plan for the Ocean Waters and Part 1 Trash Provision of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Trash Amendment). LID BMPs must capture trash 100 microns in diameter and larger.

## CHAPTER 2: PROJECT TRIGGERS

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			within the same project, but in another tributary area. Trash Amendment requirements must be met where applicable.
5	<u>Run-on</u> from outside the project site.	No requirements apply if run-on is bypassed.	If the run-on reaches a BMP it must be either included in the sizing or designed to bypass.

# CHAPTER 2: PROJECT TRIGGERS

Table 2: Design Requirements for Project Sites Over 1.0 Acre of New and/or Replaced Impervious Surface

	Description of Tributary Area	Design Requirements	Notes
		All BMP must meet the design criteria of a LID BMP as defined by this manual.	
1	Tributary area consists of <u>both existing and new and/or replaced</u> impervious area.	100% Volume Capture/Hydromodification Control required.	Order R1-2015-0030 trash capture must be met in all tributary areas. <sup>6</sup>
2	Tributary area consists of <u>new and/or replaced</u> impervious area <u>only</u> .	100% Volume Capture/Hydromodification Control required.	Order R1-2015-0030 trash capture must be met in all tributary areas. <sup>6</sup>
3	Tributary area consists of <u>existing</u> impervious area <u>only</u> .	No requirements apply.	The project may need to meet the requirements of the Statewide Trash Amendment. Refer to the governing agency.
4	Tributary area consists of <u>off-site improvements or public improvements only</u>	New and/or replaced impervious area only: 100% Volume Capture/Hydromodification Control or both Delta Volume Capture and Treatment required.	The proposed BMP should be designed to receive the runoff from the improved area whenever possible. If it is not possible for the BMP to be constructed to intercept the physical runoff at this location, the BMPs required for off-site improvements may be constructed on-site as a "on-site offset" or the runoff accounted for by oversizing another BMP within the same project, but in

<sup>6</sup> The trash capture requirements include compliance with the State Water Board's Amendment to the Water Quality Control Plan for the Ocean Waters and Part 1 Trash Provision of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Trash Amendment). LID BMPs must capture trash 100 microns in diameter and larger.

## CHAPTER 2: PROJECT TRIGGERS

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			another tributary area. Trash Amendment requirements must be met where applicable.
5	<u>Run-on</u> from outside the project site.	No requirements apply if run-on is bypassed.	If the run-on reaches a BMP it must be either included in the sizing or designed to bypass.

# CHAPTER 3: SUBMITTAL PROCESS

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## SUBMITTAL PROCESS

Each step in the process is briefly described below and is discussed in further detail in the following chapters.

### STEP 1: REQUIREMENTS

Evaluate your project and complete the Storm Water LID Determination Worksheet to determine whether or not the project will need to incorporate permanent LID Storm Water Best Management Practices (BMP's) and submit an Initial and a Final Storm Water Low Impact Development Submittal (SWLIDS) as required by the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer Systems (NPDES MS4) only.

The project may still need to incorporate permanent storm water LID BMP's as required by other regulations and approval agencies, such as but not limited to: California Building Code (CALGreen), North Coast Regional Water Quality Control Board (NCRWQCB) section 401 permit, or State Water Resources Control Board requirements.

### STEP 2: CALCULATIONS

Assess your project design and layout. Select the highest priority BMPs applicable to your project by completing the BMP Selection Table. Complete sizing calculations for all BMPs using the Storm Water Calculator. Integrate these BMPs into your project's design documents. Ensure the applicable requirements (Treatment, Volume Capture, Trash Capture) are met and that all necessary tributary areas are addressed.

**Note:** In some cases, supplemental calculation and/or supporting documentation must be provided that is not incorporated into the Storm Water Calculator. Separate calculations may not be used as a replacement for the Storm Water Calculator.

### STEP 3: INITIAL SWLIDS

Prepare and submit an Initial SWLIDS with your tentative map or other discretionary approval process. All calculations, design, and submittal requirements must be submitted. Fill out a Completeness Checklist and submit with the Initial SWLIDS.

### STEP 4: UPDATE CALCULATIONS

This step is conducted with the design of Improvement Plans or other Final Ministerial Submittal. Re-evaluate project design and layout to verify the highest priority BMPs possible are used per the BMP Selection Table. Complete updated sizing calculations for all BMPs using



# CHAPTER 3: SUBMITTAL PROCESS

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the Storm Water Calculator. Ensure the applicable requirements (Treatment, Volume Capture, Trash Capture) are met and that all necessary tributary areas are addressed.

**Note:** In some cases, supplemental calculation and/or supporting documentation must be provided that is not incorporated into the Storm Water Calculator. Separate calculations may not be used as a replacement for the Storm Water Calculator.

## STEP 5: FINAL SWLIDS

Prepare and submit a Final SWLIDS with your Improvement Plans or other Final Ministerial Submittal. Ensure the applicable requirements (Treatment, Volume Capture, Trash Capture) are met and that all necessary tributary areas are addressed. Fill out a Completeness Checklist and submit with the Final SWLIDS.

Final SWLIDS must include a description of necessary maintenance, a maintenance checklist, guidelines, frequency of maintenance activities, and a Maintenance Declaration or other legally binding mechanism to assign maintenance responsibility and funding source.

## STEP 6: MECHANISM OF MAINTENANCE

Record a Maintenance Declaration or other legally binding mechanism to assign maintenance responsibility and funding source before occupancy can be given.

## STEP 7: CONSTRUCTION

Construct all BMPs per the approved construction documents. Protect BMPs from runoff and sediment loading during construction. Pay close attention to compaction, specified soil, contamination, planting, irrigation, and fine grading.

## STEP 8: INSPECTION AND CERTIFICATION

The Engineer shall complete a final inspection and certify that all BMPs will function per the intent of the approved design. This certification shall be provided to the Governing Agency prior to the issuance of final occupancy.

The current versions of all documents referenced in the steps above and necessary design tools, including the Storm Water Calculator, can be found at [www.srcity.org/stormwaterLID](http://www.srcity.org/stormwaterLID) or the individual co-permittee websites.

# CHAPTER 4: SITE ASSESSMENT

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## SITE ASSESSMENT

Keep clean water clean! Simple site layout considerations can dramatically affect the amount of storm water that will need to be treated and infiltrated. Storm water from undisturbed areas should be collected before it runs across parking lots or other impervious areas. Flow from impervious areas should be directed into landscapes or natural areas, to allow for infiltration. Impervious areas should be disconnected by breaking them up with landscaping. Hard piped systems should be used only when necessary. Pollutant generating activities should be located indoors or under a rooftop to minimize exposure to storm water. Minimize the use of pesticides, herbicides, fertilizers, and avoid over irrigation in landscape areas so that they don't contribute to runoff to the storm drain system. Implement practices during construction that minimize compaction, vegetation removal, and the need for lime treatment.

## SOIL CLASSIFICATION

Sonoma County is largely made up of clay type soils. In order to achieve infiltration (a fundamental aspect of LID) in these soils, BMPs need to be carefully designed. They must allow infiltration to occur to the maximum extent that the native soil will accept. While it is required that the soils on site be classified into their hydrologic soil groups (A, B, C, or D) by a licensed Geotechnical, Soils, or Civil Engineer using one of the following tests, it is not necessary to conduct field infiltration or percolation tests on the native soil unless the proposed design has the potential to pond water on the surface of the BMP. In this case, field tests and calculations would need to be conducted to ensure that all ponded water will drain within 72 hours to eliminate the concern of attracting vectors such as mosquitos. Field test need to be conducted in the location and depth of the designed BMP.

### Soil Type Classification Methods:

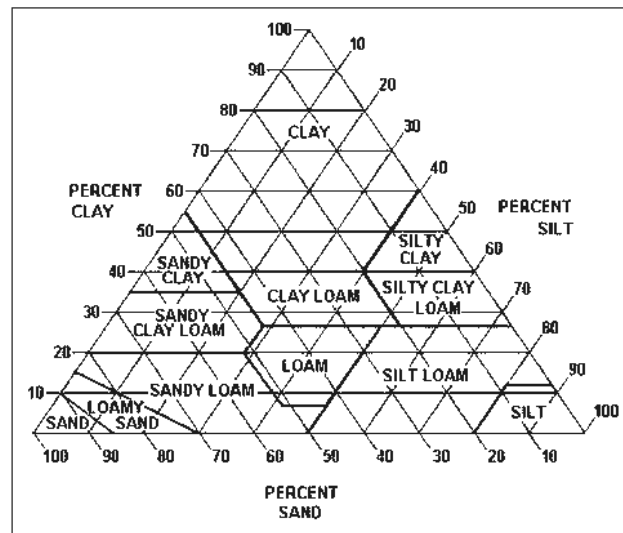
Initial SWLIDS may be calculated using the soil type maps provided by the USGS if site specific soil evaluation has not yet been completed. These values are considered conservative and are only acceptable for Initial SWLIDS.

In order to identify the site soil type, which is necessary to complete the calculations, the designer can either use the published soil type per the Natural Resource Conservation Service (NRCS) or must use one of the following soil type evolution methods to determine the site specific conditions:

1. ASTM D 422 particle size analysis of soils, including hydrometer, using the following soil texture triangle shown in Figure 2.

# CHAPTER 4: SITE ASSESSMENT

Figure 2. Soil Texture Triangle



## 2. ASTM D 3385 infiltration rate of soils in field using double-ring infiltrometer test.

Areas of higher infiltration rates and low infiltration rates should be considered when locating buildings and open space. Using the soil survey completed by the Natural Resource Conservation Service (NRCS) of the U.S. Department of Agriculture, infiltration rates or particle size analysis, soils can be classified into Hydrologic Soil Groups, see Reference Document D.

## DEPTH TO GROUNDWATER

The depth to seasonal high groundwater level shall be evaluated prior to selection of BMPs. If seasonal high groundwater exists less than 2' from the bottom of the selected BMP, a portion of the calculated capacity will be used up by the groundwater. A high water table may limit the use of infiltration based measures.

## CONTAMINATION

In areas with known groundwater pollution, infiltration may need to be avoided, as it could contribute to the movement or dispersion of groundwater contamination. The California State Water Resources Control Board (SWRCB) maintains a database of registered contaminated sites through their Geotracker® Program. Registered contaminated sites can be identified in the project vicinity when the site address is typed into search. Mobilization of groundwater contaminants may also be of concern where contamination from natural sources is prevalent (e.g., marine sediments, selenium rich groundwater).

# CHAPTER 4: SITE ASSESSMENT

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Infiltration on sites with contaminated soils and/or groundwater that could be mobilized or exacerbated by infiltration will require additional review by NCRWQCB and may require offset, either onsite and/or offsite.

## SLOPE CONSTRAINTS

The effects of infiltrated storm water on soil properties and slope stability will need to be considered for a number of factors, including: ground subsidence, liquefaction, landslide potential, and distance to load bearing structures such as building foundations, and retaining walls.

These potential issues must be thoroughly reviewed by a licensed Geotechnical, Soils, or Civil Engineer and their recommendations incorporated into the site design.

## NATURAL AREAS

Identify existing natural areas on the site and consider ways in which they can be preserved and integrated into the site design. Avoiding sensitive areas such as creeks, heritage trees, and wetlands reduces the need for other permits and reduces the amount of storm water that needs to be treated.

## SPECIAL CONSIDERATIONS



### POLLUTANTS OF CONCERN

BMPs shall be selected and designed to treat the following pollutants of concern: dissolved and particulate metals, pathogens, nutrients, sediment, hydrocarbons, and trash, fine sediment, and other debris sized 100 microns and larger. This requirement may be met by directing flow and debris into a landscaped based infiltration feature that adequately captures these pollutants. All other pollutants shall be treated to the maximum extent

practicable. It may be necessary to select and install multiple BMPs in order to treat all pollutants of concern.

### TRASH CAPTURE

Trash is a key pollutant of concern and must be addressed in all tributary areas of the entire project. If the selected LID BMP does not adequately intercept trash as small as 100 microns by



# CHAPTER 4: SITE ASSESSMENT

virtue of its design (such as bioretention with curb openings) then an additional treatment BMP, such as capture inserts, baskets, or separators, may need to be used. All trash capture BMPs must be accessible and maintainable to ensure proper operation. The 100 microns requirement set forth by NPDES MS4 Permit Order No. R1-2015-0030, is stricter than the State Water Resource Control Board trash Intercept requirement of 5 millimeters and therefore meets the State Water Resource Control Board requirement of 5 millimeters.

## PREVIOUSLY DEVELOPED SITES - A SPECIAL CASE



Project sites that have existing impervious cover, such as existing pavement or buildings, in the pre-developed condition are different than projects that start with a fully undeveloped site. Since the volume capture requirement applies to any increase in storm water volume generated by the site, the greater the difference between the undeveloped

condition and the developed condition, the greater the Delta Volume Capture requirement. Conversely, a site that is 100% impervious prior to development would not require any Delta Volume Capture, provided the final project did not create or replace 1 acre or more of impervious surface.

It should be noted that the requirement for treatment and trash capture would still apply to each tributary area.

If Delta Volume Capture is not required on a site, and treatment is the only requirement, apply a factor of 1.5 to the total flow that must be addressed. This factor is built into the Storm Water Calculator.

# CHAPTER 4: SITE ASSESSMENT

## SOIL

Many of the BMPs in this Manual use structural soil as a key component of their function. Structural soil is a specific soil mix that is primarily made up of angular rock, a small amount of



organics, and a tackifier which binds the organics to the rock. Structural soil was originally developed for urban tree planting and is used in BMPs because it can be compacted to 95% to support traffic loading while still providing over 23 inches per hour of infiltration. Structural soil is most appropriately used in areas where the soil will be load bearing or where ground subsidence over time is not acceptable. For more information on structural soil see the "Reference Documents" section of this Manual.

Some BMPs may not require the use of structural soil and a more organic type planting soil and/or treatment media may be used in its place. It may be possible in some cases to use native soil or to amend the native soil so that it is suitable. Use of non-structural soil will depend on evaluation of the criteria in "Chapter 4: Site Assessment" as well as consideration of load bearing needs and may require evaluation by a licensed Geotechnical Engineer.

All soils used in BMPs must provide adequate porosity (as determined by the calculations and the design), be able to support plant life, and not introduce pollutants into the storm water.

## LANDSCAPING REQUIREMENTS

Vegetation is an important element of the storm water BMPs in this manual. Plants provide a physical structure that increases storm water infiltration into the soil and promotes a soil community of



microorganisms that remove pollutants. Therefore, it is critical that the vegetation is healthy and maintained throughout the life of the BMPs. The Maintenance Declaration, or equivalent mechanism, must ensure vegetation is maintained.

At plant maturity, at least 50% of a BMP must be vegetated for the BMP to be considered a LID BMP per the BMP Selection Table. If 50% vegetated cover will not be established before the completion of construction, the following shall be supplied as part of the project design submittal approval process in order to be considered a LID BMP: 1) an erosion control plan for the LID BMPs with sufficient measures to provide soil stabilization and treatment until plant

# CHAPTER 4: SITE ASSESSMENT

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maturity (e.g. ground-up, composted mulch on all bare soils with rock inlet protection); and 2) a planting and irrigation plan for the LID BMPs that shall include, by plant genus species and common name, selected plants, maximum spacing, total number of plants to be installed, and a table with mature plant size (canopy). Alternatively, a BMP can be considered to be a LID BMP if the 100% Volume Capture/Hydromodification Control design criteria is met and the BMP is designed in series with one of the Runoff Reduction Measures (Disconnected Roof Drains, Paved Area Disconnection, Interceptor Trees, Buffer Strips and Bovine Terraces) as part of a "treatment train."

The environments within these BMPs, in particular long periods of inundation, can be stressful on many plant species. The BMP Approved Plant List, Appendix F, consists of California native plants and other cultivars that have been proven to thrive in the types of environments found in BMPs listed in this Manual.

These features are considered part of the landscaping and must, at a minimum, comply with the landscaping standards, building codes, and ordinances of the local Governing Agencies and must be maintained over time in conformance with the recorded Maintenance Declaration or other maintenance responsibility mechanism.

## SITE DEFINITION AND CONTROL OF RUN-ON DRAINAGE

For the purposes of this manual, the definition of "site" includes any and all areas of improvements associated with the project, such as public improvements, frontages, utility services, and any other improvements associated with the development.

Run-on is the drainage generated from upstream tributary areas that drain into your site. The drainage entering the site that reaches a BMP needs to be incorporated into project design. All BMPs must be adequately sized to accept the runoff that they receive. It may be possible to collect offsite storm water before it enters the project site and bypassed. If offsite drainage will contribute to the storm water on-site then it must be considered in the sizing and location of the selected BMPs.

## ON-SITE OFFSET

BMPs must be sized to address all flows and/or volume they physically receive. If this is not possible, another BMP within another project tributary area may be oversized and used to offset the shortfall. This practice is referred to as an "on-site offset." Justification for the use of an on-site offset must be provided to the Governing Agency explaining why the proposed design cannot accommodate all flows and/or volume. Most commonly, this would be due to the inability to physically route the water to the BMP or a physical lack of space due to other utilities.



# CHAPTER 4: SITE ASSESSMENT

The Volume Capture and Hydromodification Requirements apply to the entire project site, as opposed to particular tributary areas individually. Storm water may be routed to the portion of the site most suited for infiltration and Delta Volume Capture from other less suitable areas. This may be particularly useful on sites that are partially prohibited from infiltrating (e.g. contamination or slope stability issues) or have areas more suited to Infiltration. On-site offset may not be provided to meet treatment and trash control requirements and must be met in each individual tributary.

## MINIMIZING THE SIZE OF BMPs – RUNOFF REDUCTION MEASURES

There are a number of ways to reduce the amount of treatment and/or Delta Volume Capture required. One of the simplest ways is to minimize the amount of impervious area on the project site. Another way is to keep clean water clean. This means that if off-site drainage is directed onto the site and is collected and bypassed through the site instead of allowing it to contribute to the water to be treated, it may be excluded from the tributary area. If natural or landscaped areas drain to paved or impervious areas, collect the runoff while it is clean (while it is in the landscaped area) before it crosses impervious areas and picks up pollutants.



Runoff Reduction Measures can be implemented on-site to reduce the amount treatment and Volume Capture needed. Runoff reduction measures, like disconnecting downspouts, and planting interceptor trees, reduce the amount of storm water that needs to be managed by BMPs, by intercepting rainwater and/or allowing it to infiltrate. Using these types of Runoff Reduction Measures can reduce the size of the BMPs needed up to 50%.

# CHAPTER 4: SITE ASSESSMENT

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Credit for Runoff Reduction Measures used shall be calculated as part of the "Storm Water Calculator" located in Appendix C. Additional information can be found in the Fact Sheets in Appendix E.



# CHAPTER 5: BMP SELECTION

## BMP SELECTION

### PRIORITIZATION OF LID

Prioritization needs to be given to small scale landscaped based infiltration BMPs that treat storm water as close to the source as possible. These types of LID BMPs are given the highest priority in the selection process.



### BMP FACT SHEETS

The Fact Sheets provide detailed information for each BMP including a description, advantages, limitations; key design features, sizing design, inspection and maintenance requirements, and a design detail where appropriate. Each BMP listed below, and in the "BMP Selection Table", has a Fact Sheet in Appendix E.

### BMP SELECTION TABLE

BMP selection should be done for each project tributary area by completing a "BMP Selection Table" found in Appendix B. The selection table lays out the decision matrix as described above for the BMPs that will be used with the project.

This table shall be used for all projects in order to select the highest priority BMPs possible. BMPs rated with the highest priority should be used and an explanation of infeasibility will be required before a lower priority BMP may be selected. When selecting BMPs for a site, it is important to consider a number of factors. These feasibility factors include the elements identified in the site assessment, including: groundwater contamination, high bedrock or hardpan, and slope stability, among others.

### SUMMARY OF BMP PRIORITY GROUPS

All projects should consider the use of the "Universal LID Features." If those features are unable to be used, then "Priority 1" should be considered. If those BMPs are inappropriate or infeasible, then "Priority 2" should be considered, and so on. Any time a lower priority BMP is selected, justifications shall be provided for reasons why higher-level priority BMPs are deemed inappropriate.

#### UNIVERSAL BMPs AND RUNOFF REDUCTION MEASURES

BMPs in this priority are generally not dependent on-site constraints and should be considered for use with all projects. BMPs in this category include rainwater harvesting,

# CHAPTER 5: BMP SELECTION

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green roofs, interceptor trees, buffer strips, and flow through planters. All BMPs shall be identified in the text and clearly identified visually on project site drawings in the Initial and Final SWLIDS including, but not limited to, rainwater harvesting, green roofs, interceptor trees, buffer strips, flow through planters, and downspout disconnects.

**PRIORITY 1** - These features meet all the criteria of LID; they are small scale, vegetated, and infiltration based, and meet both the Delta Volume Capture and Treatment Requirements. BMPs in this priority are installed without perforated pipe and/or impermeable liners. Infiltration must be provided by the underlying native soils. All BMPs must be designed to eliminate all surface water within 72 hours to prevent mosquito breeding.

**PRIORITY 2** - These features meet all the criteria of LID because they are small scale, vegetated and infiltration based, and meet both the Delta Volume Capture and Treatment Requirements. BMPs in this priority are designed with perforated pipe installed high in the treatment area, as opposed to at the bottom of the feature, to ensure that Delta Volume Capture occurs in the area below the perforated pipe. Once the volume below the perforated pipe is filled, any additional flow will be collected by the perforated pipe. This filtered storm water will then be conveyed to the storm drain system.

**PRIORITY 3** - These BMPs filter storm water and then convey it to the storm drain system, and as such, do not meet all of the objectives of LID because they do not provide for infiltration, and thus do not provide Delta Volume Capture. BMPs in this priority are intentionally designed not to infiltrate and shall only be used in cases where infiltration is not possible or allowed.

Examples of site constraints that would preclude infiltration include: ground contamination, high groundwater, and slope instability. Further discussion of site evaluation and infiltration can be found in Chapter 4. The other appropriate use for Priority 3 BMPs is redevelopment of previously developed sites.

If the volume of storm water (and/or impervious area) of a developed site is not greater than that before it was developed, then the increase in volume would be zero and the Delta Volume Capture requirement would not apply, and only Treatment would be required. Infiltration still provides water quality benefits and is encouraged wherever feasible.

Priority 3 BMPs are designed with a moisture barrier lining and perforated pipe in the bottom of the feature to ensure drainage.



## CHAPTER 5: BMP SELECTION

**PRIORITY 4** - BMPs in this priority achieve either Delta Volume Capture or Treatment, but not both, and are typically landscape based. They may also be Infiltration based, but not vegetated. They must be used as part of a treatment train in sequence with other BMPs in order to achieve both objectives. Examples Include: Tree Filter Units, Modular Wetlands, or infiltration trenches without vegetation.



**PRIORITY 5** - BMPs in this priority are physical structured units that do not achieve Volume Capture and are generally not landscape based. They must be used as part of a treatment train in sequence with other BMPs in order to achieve both objectives. These features may also be appropriate for high pollutant generating land uses that require pretreatment. Examples include: Chambered Separator Units and Trash Excluders.

### PRIORITY 6 - OFFSET PROGRAM

Every effort should be made to address all storm water requirements on the project site. Treatment of the runoff (water quality flow) is a requirement that must be met on-site and in all tributary areas even when offset for volume capture is allowed. Trash capture measures still must be met as outlined in Tables 1 and 2.

Offset may only be considered when one of the following conditions is present:

- (1) The project's proximity to geotechnical hazards preclude Infiltration,
- (2) The proposed BMPs location puts it in proximity to a contaminated groundwater site such that infiltration poses a risk of causing pollutant mobilization,
- (3) Site constraints that prohibit the ability to infiltrate storm water due to shallow groundwater and/or depth to hardpan, or
- (4) Other criteria proposed by a Governing Agency and approved by the NCRWQCB Executive Officer, in which compliance with Delta Volume Capture is not feasible, such as high-density development or sensitive biological areas.

# CHAPTER 5: BMP SELECTION

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If the project is unable to address all design requirements on-site and the use of offset is necessary, the project must either:

- a) Be referred to the NCRWQCB for review and approval, if the Governing Agency does not have a NCRWQCB approved Offset Program, or
- b) Follow the Governing Agency's approved Offset Program including all process, submittals, and requirements.

## CONTRIBUTING USE/POLLUTANT LOADING

The offset selected should treat the same type of pollutants that are generated by the untreated portion of your projects. For example, if the portion of your site that is not treated is roadway, then the offset projects selected should treat runoff from a roadway.

## LOCATION OF OFFSET

All offset projects should be located within the same city or unincorporated area in which the project causing the impact is located. Projects located in other areas may be approved on a case by case basis. Projects that have the potential to cause a significant impact to a particular creek, as determined by the governing agency, either because of the size of the project or the sensitivity of the creek, will need to complete an offset project in the same creek watershed, if feasible.

## DETENTION

Detention facilities which are integrated for hydraulic system design may be used to provide Volume Capture and/or Treatment if the design meets the design criteria specified for LID in this LID Manual.

## PROPRIETARY UNITS

Proprietary units, or vendor units, fall lower on the BMP prioritization because they generally do not meet both the Treatment and Delta or 100% Volume Capture requirements. These types of units can be very effective if used as part of a treatment train (in series with other BMPs), where specific pollutants are present (such as gas stations), or in infill situations where Volume Capture isn't required. If proprietary units are proposed, additional review by the Governing Agency and/or the NCRWQCB may be required. A maintenance plan and inspection checklist meeting the manufacturer's recommendations will need to be submitted for review with the SWLIDS.

# CHAPTER 5: BMP SELECTION

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## HIGH POLLUTANT LOADING LAND USES

Some land uses, such as gas stations and loading docks, may produce especially high pollutant loads. In these cases, pretreatment devices, such as oil grease separators or inlet inserts, may be necessary to remove site specific pollutants, such as hydrocarbons, before storm water is directed to typical BMPs. This “treatment train” approach ensures that BMPs continue to function properly.



# CHAPTER 6: SUBMITTAL

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## STORM WATER LOW IMPACT DEVELOPMENT SUBMITTAL (SWLIDS)

### INITIAL SWLIDS

The Initial SWLIDS will be submitted with the entitlement application for the tentative map, design review, use permit, or equivalent level of design. The Initial SWLIDS shall include a completed Storm Water LID Determination Worksheet, an Initial SW LID Submittal Coversheet, site layout, selected BMPs with individual identifiers, their location shown on drawings (including, but not limited to, locations of rain water harvesting, green roofs, interceptor trees, and downspout disconnects), sizing calculations, tributary areas to each BMP, a description or diagram of how BMPs will be accessible for Post-Construction inspections, a narrative description of how the chosen BMPs are designed to work, a preliminary description of maintenance requirements and proposed funding source. The Initial SWLIDS will need to be approved by the appropriate Governing Agency prior to approval of the tentative map, design review, use permit, or equivalent.

### FINAL SWLIDS

The Final SWLIDS is submitted with the Improvement Plans, Grading Permit, Building Permit, or equivalent level of design and shall include all of the elements required for the Initial SWLIDS. In addition, all elements of the designed BMPs shall be shown on their respective drawing sheet (i.e. swales shown on grading sheets and bypass inlets shown on utility sheets). A final version of the Inspection and Maintenance Plan is required which includes long term inspection and maintenance instructions and requirements, inspection checklists, identification of the responsible parties, and a funding source.

A signed and recorded copy of a Maintenance Declaration designating the responsible party for maintenance, including irrigation, and funding source must be submitted with the Final SWLIDS. The Final SWLIDS will need to be approved by the appropriate Governing Agency prior to approval of the Improvement Plans, Grading Permit, Building Permit, or equivalent. The Maintenance Declaration will need to be recorded before construction is completed and before occupancy can be given in order to capture any field construction changes that occur.

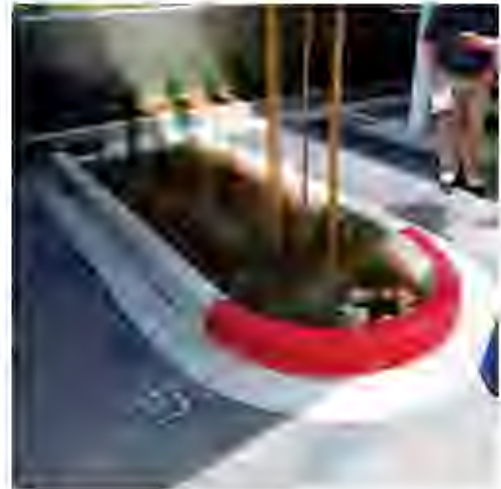
# CHAPTER 6: SUBMITTAL

## WHAT THE SW LID SUBMITTAL MUST INCLUDE:

### NARRATIVE PORTION

#### PROJECT DESCRIPTION

The project description section of the narrative should describe the proposed project type, location, specific uses and features of note. Environmentally sensitive features such as creeks, wetlands, or trees should be described and whether they are going to be avoided, saved, or removed. The existing predevelopment site should be described, and any existing impervious area noted. Existing and proposed drainage patterns need to be discussed.



How these requirements were triggered (impervious area, CALGreen, etc.) and the level of Treatment and/or Volume Capture achieved should be included.

#### POLLUTION PREVENTION MEASURES

All pollution prevention measures should be described and any measures that are providing area reduction credits should be specifically noted.

#### DESCRIPTION OF THE TYPES OF BMPs SELECTED

Describe each type of BMP, its priority group, where it is intended to be used, and the reason for its selection. Identify any specific alterations to the design that is proposed. Any time a lower priority BMP is selected, justifications shall be provided for reasons why higher-level priority BMPs are deemed inappropriate.

#### DESCRIPTION OF MAINTENANCE PROCEDURES AND PROPOSED FUNDING SOURCE

Outline what maintenance is required for each type of BMP selected and how often it should be serviced. Describe the proposed funding source that will be utilized to ensure long-term maintenance, who will be financially responsible, and who will be responsible to ensure maintenance is performed. Required maintenance and funding sources shall include all items for the proper functioning of BMPs, including irrigation.

# CHAPTER 6: SUBMITTAL

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## COMPLETED BMP SELECTION TABLE

Complete the "BMP Selection Table" for each tributary area within the site to demonstrate that the BMP of the highest priority has been selected in each location.

## COPY OF COMPLETED STORM WATER LID DETERMINATION WORKSHEET

Include a copy of the Storm Water LID Determination Worksheet confirming that the project requires a SWLIDS.

## EXHIBITS

### EXHIBIT OR PLAN SHEET

All exhibits should be provided at an appropriate scale so that they are clear and legible and may be a plan sheet if necessary.

### EXISTING CONDITION EXHIBIT

This exhibit shall show the proposed tributary areas over the existing site. The existing impervious area for each tributary area shall to be shown and labeled in square feet or acres. This exhibit will be used to determine the pre-development Curve Number and the Delta Volume Capture.

This exhibit shall show the different types of land cover and the associated C values in each tributary area. This information allows a composite C value calculation to be completed for the Treatment Requirement.

### PROPOSED CONDITION EXHIBIT

This exhibit shall show the developed site layout, clearly delineated tributary areas and associated C values and/or CN values as appropriate, new or replaced area, labeled storm drain inlets, identification of all Runoff Reduction Measures, and all proposed BMPs with individual identifiers. All BMPs and Runoff Reduction Measures shall be dimensioned and labeled. The sites K value and the on-site soil type should be noted.

### PRELIMINARY DETAIL FOR EACH TYPE OF BMP SELECTED

Provide a preliminary 8.5"x11" detail for each BMP type or include on submitted drawings. These should be taken straight from the Fact Sheets unless changes to the design are proposed. The reason for the deviation from the standard design should be address in the narrative portion of the SWLIDS. Required plantings, erosion control

# CHAPTER 6: SUBMITTAL

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while plantings are being established such as ground-up composted tree mulch (no floatable bark or wood chips allowed), irrigation, and inlet protection.

## PROJECT DRAWINGS

Show all applicable elements of the selected BMPs on the appropriate plan sheet. For example; swales on the grading sheet, perforated pipe on the utilities sheet.

## CALCULATIONS - FORMULAS

Complete calculations will need to be provided for each BMP using the "Storm Water Calculator" which can be downloaded from the City of Santa Rosa's website at [www.srcity.org/stormwaterLID](http://www.srcity.org/stormwaterLID). Additional supporting calculations must be included where appropriate. Methodology, formulas, and references are described on the following pages.

## HYDROMODIFICATION CONTROL REQUIREMENT

Hydromodification Control is required for any project that creates or replaces one acre or more of impervious area. The Hydromodification Control Requirement is to infiltrate and/or reuse 100% of the total calculated volume of storm water generated by the developed site for a 1.0 inch rain event in a 24-hour period. If this requirement is met with the installation of LID BMPs that include 50% or more mature vegetation coverage, then both the Delta Volume Capture and Treatment Requirements are satisfied. However, all tributary areas must provide trash capture. These requirements may be achieved using treatment trains where a variety of BMPs, both practices and constructed features, are constructed in series in order to achieve improved storm water quality.

All volume calculations are completed using the Curve Number Method, as described on the next page. The proposed site will be used to determine the tributary areas and post development curve number used for these calculations.

## DESIGN REQUIREMENTS

The water quality design storm used for all SWLIDS calculations is 1.0 inch in a 24-hour period.

For all projects: The treatment component requires that all runoff generated by this water quality design storm from impermeable surfaces be treated on site for the pollutants of concern. Trash capture requirements must be met as outlined in Tables 1 and 2.

For projects that increase the amount of impervious surface, but create or replace less than a total of one acre: The Delta Volume Capture component requires that any increase in volume due to development for the water quality design storm must be infiltrated and/or reused on site. Further discussion of the Treatment and Delta Volume Capture requirements and the

# CHAPTER 6: SUBMITTAL

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accompanying formulas can be found in Chapter 6. Trash capture requirements must be met as outlined in Tables 1 and 2.

For projects that create or replace one acre or more of impervious surface: These larger projects must mitigate their impacts by capturing 100% of the post development volume generated by the water quality rain event.

The Delta Volume Capture and Hydromodification Requirements apply to the project site as a whole, as opposed to particular tributary areas individually. Storm water may be routed to the portion of the site most suited for infiltration and volume capture from other less suitable areas. This may be particularly useful on sites that are partially prohibited from infiltration (e.g. contamination or slope stability issues) or have areas more suited to infiltration.

Trash capture requirements must be met as outlined in Tables 1 and 2.



# CHAPTER 7: MAINTENANCE AND INSPECTION

## MAINTENANCE AND INSPECTION

### INTRODUCTION

The maintenance and inspection section of the SWLIDS shall describe provisions required to keep BMPs operating as originally designed and approved. At a minimum, the SWLIDS and Maintenance Declaration shall include:



- Scope and frequency of BMP inspections.
- Regularly scheduled maintenance.
- Provisions for unscheduled maintenance.
- Recordkeeping requirements.
- Identification of the responsible party.
- Identification of the funding source, including irrigation.
- Identification of access routes to BMPs.
- Costs associated with inspection and maintenance.
- Design life including periodic replacement cost.
- Specific provisions recommended by the manufacturer of any proprietary system BMP.

Additional reference information regarding maintenance requirements and inspection checklists are included in BMP Fact Sheets which can be found in Appendix E.

### REQUIREMENTS FOR BMPs ON PRIVATE LAND

#### RESPONSIBILITY FOR BMP ON PRIVATE LAND

Maintenance and inspection of all BMPs on private land are the responsibility of the property owner. This responsibility shall run with the land and be legally recorded, executed, and transferred upon sale of the property. Property owners shall inspect, or ensure the inspection by a qualified professional, of all BMPs at least once a year or at the frequency specified in the BMP Fact Sheets and report it annually to the Governing Agency.

#### DECLARATION OF COVENANTS TO MAINTAIN BMP ON PRIVATE LAND

Legally binding, signed maintenance declaration of covenant, or equivalent mechanism, stating the ongoing maintenance of BMPs on private property are the owner's



# CHAPTER 7: MAINTENANCE AND INSPECTION

responsibility is required for the long-term maintenance of all BMPs located on private properties. This declaration shall legally assign maintenance responsibility to the property owner and assure that all BMPs will remain fully functional and that all areas identified for Treatment and/or Volume Capture will discharge to the specified BMP.

This declaration shall be recorded among the deed records at the County Recorder's Office so that it will run with the title to the land and shall include a map clearly identifying each BMP. Additionally, a copy of this declaration shall be included in any sales and/or lease agreements for properties with storm water BMPs. A copy of the executed document shall be provided to the governing agency.

## FUNDING AND MAINTENANCE ACTIVITY REQUIREMENTS FOR BMPs ON PRIVATE LAND

The funding of all inspection, maintenance, and replacement of BMPs on private land is the sole responsibility of the property owner.

## RECORD KEEPING FOR BMP ON PRIVATE LAND

Records regarding annual inspections and maintenance shall be retained for at least five years and made available upon request to the Governing Agency. These records shall include copies of completed inspection reports and maintenance checklists to document any inspection and maintenance activities that were conducted over the last five years. Any corrective actions, repairs, or replacements shall also be documented and kept in the BMP inspection and maintenance records for a minimum of five years.



## REMEDICATION OF PROBLEMS FOR BMP ON PRIVATE LAND

The remediation of problems, in addition to routine maintenance needed to keep the BMP in working order is the responsibility of the property owner. This responsibility runs with the land and transfers to the new owner in the event the property is sold. In the event adequate BMP maintenance is not

conducted, the property owner shall allow the Governing Agency's staff, or their designees, to enter the property and take the necessary steps to restore the BMPs to good working order. The property owner will be responsible for reimbursing the Governing Agency for expenditures associated with restoring the BMPs to good working order, in addition to any administrative costs, fines, or penalties imposed.



# CHAPTER 7: MAINTENANCE AND INSPECTION

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## REQUIREMENTS FOR BMPs ON COMMON LAND

### RESPONSIBILITY FOR BMP ON COMMON LAND

Maintenance and inspection of all BMPs on common land (those held by Home Owners Associations or HOAs) are the responsibility of the HOA. This responsibility shall run with the land and be legally recorded, executed, and transferred upon sale of the property. The HOA shall inspect and/or ensure the inspection by a qualified professional, of all BMPs at least once a year and at the frequency specified in the maintenance and inspection section of the SWLIDS.

### CC&Rs FOR BMP ON COMMON LAND

For projects with BMPs located within a common area or easement to be maintained by a HOA, language regarding the responsibility for inspection and maintenance must be included in the project's CC&R's. In addition, the CC&R's shall include the location and brief description of all storm water BMPs installed with the project. This language shall be reviewed and approved by the Governing Agency as part of the Final SWLIDS approval process.

### SIGNED DECLARATION FOR BMP ON COMMON LAND

A legally binding, signed maintenance declaration, or equivalent mechanism approved by the Governing Agency, is required for all BMPs located on common land. This declaration shall legally assign maintenance responsibility to the HOA and will be executed by the HOA. The declaration shall be recorded at the County Recorder's Office. It will run with the title to the land. Additionally, a copy of this declaration shall be included in any sales and/or lease agreements for properties with storm water BMPs.

### FUNDING FOR BMP ON COMMON LAND

The funding of all inspection, maintenance, replacement, and reporting of BMPs on common land is the sole responsibility of the HOA.

### RECORD KEEPING FOR BMP ON COMMON LAND

Records regarding annual inspections and maintenance shall be retained for at least five years and made available upon request to the Governing Agency. These records shall include copies of completed inspection reports, and maintenance checklists to document any inspection and maintenance activities that were conducted over the last five years. Any corrective actions, repairs or replacements, shall also be documented and kept in the BMP inspection and maintenance records for a minimum of five years.

# CHAPTER 7: MAINTENANCE AND INSPECTION

## REMEDATION OF PROBLEMS FOR BMP ON COMMON LAND

In the event adequate BMP maintenance is not achieved, the HOA shall allow the Governing Agency's staff to enter the property and take the necessary steps to restore the BMPs to good working order. The property owner will be responsible for reimbursing the Governing Agency for expenditures associated with restoring the BMPs to good working order in addition to any administrative costs, fines, or penalties imposed.

## REQUIREMENTS FOR BMPs IN THE PUBLIC RIGHT OF WAY RESPONSIBILITY

Project sponsors and property owners are encouraged to locate storm water BMPs within the limits of their private property on the project site. However, in cases where proposed BMPs are required to treat/mitigate storm water runoff from public improvements, required as part of the project or existing public right of way that drains into the project area, BMPs may need to be located in the



public right of way. If BMPs are proposed in a public area for transfer to, and long-term maintenance by, the Governing Agency, the BMPs must meet the design guidelines of this UD Manual. Check with the Governing Agency for any specific regulations related to BMPs in the right of way.

Also, it is expected that BMPs constructed as a part of public Capital Improvement Projects (CIP) will be located in the public right of way. While these projects do not need a recorded Maintenance Declaration, long term maintenance and funding must be considered.

Inspection and maintenance shall remain under the project or property owner's responsibility until the BMPs are legally transferred to public ownership. Additionally, by the use of maintenance indemnification agreements, a private entity may maintain BMP located in the public right of way. Once the BMPs are legally transferred, the maintenance, inspection, and replacement are the responsibility of the Governing Agency. Publicly constructed Capital Improvement Projects (CIP) are the responsibility of the Governing Agency.

# CHAPTER 7: MAINTENANCE AND INSPECTION

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## SIGNED MAINTENANCE DECLARATION FOR BMP IN THE PUBLIC RIGHT OF WAY

For cases in which a Governing Agency agrees to accept responsibility for BMP long term operation, including inspection and maintenance, verification, such as a signed statement from the Governing Agency accepting responsibility for the BMP is required.

## FUNDING FOR BMP IN THE PUBLIC RIGHT OF WAY

The funding of all inspection, maintenance, and replacement of BMPs built by private development is the sole responsibility of the property owner or developer. Funding shall include costs of irrigation if irrigation is required. With legal authorization, the Governing Agency may create a Special Tax District, or equivalent mechanism. A storm water tax would be assessed on the property owners within the Special Tax District to provide the funding for long term BMP inspection, maintenance, and periodic replacement which would be performed or coordinated by the applicable agency. Special Tax District funding shall also consider and include costs for governing agency administration (such as accounting, legal, tracking, etc.), contract management (for outside contractors), as well as contingency and escalating factors.

## RECORD KEEPING FOR BMP IN THE PUBLIC RIGHT OF WAY

All records will be kept by the Governing Agency.

# CHAPTER 8: CALCULATIONS

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## CALCULATIONS

All BMPs must be sized using the "Storm Water Calculator" which can be downloaded from the City of Santa Rosa's website at [www.srcity.org/stormwaterLID](http://www.srcity.org/stormwaterLID). The following formulas are provided for reference and are used in the Storm Water Calculator. Additional supporting calculations may be submitted where appropriate.

**HYDROMODIFICATION REQUIREMENT:** 100% OF THE VOLUME GENERATED BY THE DEVELOPED SITE FOR A 1.0" RAIN EVENT OVER A 24-HOUR PERIOD

Required if the project creates or replaces 1.0 acre or more of impervious surface.

**FORMULA:** EQ. 6.1

$$S = \frac{1000}{CN_{POST}} - 10$$

**WHERE:**

S=Potential maximum retention after runoff (in)<sup>7</sup>

CN= Curve Number for the developed condition<sup>8</sup> associated with the tributary area (A) used below.

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**FORMULA:** EQ. 6.2

$$Q = \frac{((P*K)-(0.2*S))^2}{((P*K)+(0.8*S))} * \frac{1ft}{12in}$$

**WHERE:**

Q= Runoff depth (ft)<sup>9</sup>

P=1.0" Precipitation

K=Seasonal Precipitation Factor<sup>10</sup>

S= Potential maximum retention after runoff (in)<sup>7</sup>

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<sup>7</sup> As defined by the "Urban Hydrology for Small Watersheds" TR-55 manual.

<sup>8</sup> Per Table 2-2 of the "Urban Hydrology for Small Watersheds" TR-55 manual.

<sup>9</sup> Q in feet of depth as defined by the "Urban Hydrology for Small Watersheds" TR-55 Manual.

<sup>10</sup> From the Sonoma County Water Agency Flood Control Design Criteria.

# CHAPTER 8: CALCULATIONS

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FORMULA: EQ. 6.3

$$V = (Q)(A)$$

WHERE:

V= Volume of storm water to be retained (ft<sup>3</sup>)

Q= Runoff depth (ft)<sup>11</sup>

A= Tributary Area (ft<sup>2</sup>) corresponding to the associated Curve Number (CN) used above.

**100% TREATMENT REQUIREMENT:** All of the runoff generated by a rain event with an intensity of 0.20 in/hr must be treated from all tributary areas. All run-on must also be considered and either bypassed through the project site or include in the calculations for BMP sizing.

100% TREATMENT FLOW CALCULATION -RATIONAL METHOD

FORMULA: EQ. 6.4

$$Q_{\text{TREATMENT}} = (I)(A)(C_{\text{POST}})(K)$$

WHERE:

Q<sub>TREATMENT</sub>= Design flow rate required to be treated (cfs)

I= 0.2 (in/hr) Intensity<sup>12</sup>

A= Tributary area (acres)

C<sub>POST</sub>= Rational method runoff coefficient for the developed condition

K= Seasonal Precipitation Factor

**DELTA VOLUME CAPTURE REQUIREMENT:** The increase in volume of storm water generated by the developed site for a 1.0" rain event over a 24-hour period due to development must be infiltrated and/or reused on site. This requirement only applies if the total amount of impervious area is increased due to development. This requirement may be met on a site basis, meaning a greater volume of storm water may be captured in one tributary area to allow a lesser volume to be captured in another.

DELTA VOLUME CAPTURE CALCULATION- CURVE NUMBER METHOD

(Equations 6.5 and 6.6 will need to be calculated for both the pre-developed and post developed condition.)

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<sup>11</sup> Q in feet of depth as defined by the "Urban Hydrology for Small Watersheds" TR-55 Manual.

<sup>12</sup> Intensity as defined by the NPDES MS4 Permit Order No. R1-2015-0030.



# CHAPTER 8: CALCULATIONS

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FORMULA:

EQ. 6.5

$$S = \frac{1000}{CN} - 10$$

WHERE:

S= Potential maximum retention after runoff (in)<sup>13</sup>

CN= Curve Number<sup>14</sup> for the developed condition or pre-developed condition as appropriate.

---

FORMULA:

EQ.6.6

$$Q = \frac{((P*K)-(0.2*S))^2}{((P*K)+(0.8*S))} * \frac{1\text{ft}}{12\text{in}}$$

WHERE:

Q= Runoff depth (ft)<sup>15</sup>

P= 1.0" Precipitation

K= Seasonal Precipitation Factor<sup>16</sup>

S= Potential maximum retention after runoff (in)<sup>13</sup>

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FORMULA:

EQ. 6.7

$$\Delta Q = Q_{\text{post}} - Q_{\text{pre}}$$

WHERE:

Q<sub>pre</sub>=Pre-development runoff depth (ft)

Q<sub>post</sub>= Post development runoff depth (ft)

---

FORMULA:

EQ. 6.8

$$V = (\Delta Q)(K)(A)$$

WHERE:

V= Volume of storm water to be retained (ft<sup>3</sup>)

ΔQ= Q<sub>post</sub>-Q<sub>pre</sub>=Pre-development runoff depth (ft) – Post development runoff depth (ft)

K= Seasonal Precipitation Factor<sup>16</sup>

A= Tributary Area (ft<sup>2</sup>)

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<sup>13</sup> As defined by the "Urban Hydrology for Small Watersheds" TR-55 manual.

<sup>14</sup> Per Table 2-2 of the "Urban Hydrology for Small Watersheds" TR-55 manual.

<sup>15</sup> Q in feet of depth as defined by the "Urban Hydrology for Small Watersheds" TR-55 Manual.

<sup>16</sup> From the Sonoma County Water Agency Flood Control Design Criteria

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## Exhibit C





# Sonoma County Public Infrastructure

**Johannes J. Hoevertsz, Director**

Monique Chapman, Deputy Director – Administration

Michelle Ling, Deputy Director – Facilities Development & Management

Trish Pisenti, Deputy Director – Transportation, Operations & Fleet

Janice Thompson, Deputy Director – Engineering & Maintenance



2300 COUNTY CENTER DRIVE, SUITE A220, SANTA ROSA, CA 95403 PH: 707.565.2550 FAX: 707.565.3240

SUBJECT: Koi Nation Shiloh Resort and Casino Project  
County of Sonoma Public Infrastructure Department Comments on Draft Environmental Impact Statement, Released July 2024

Dear Deputy County Counsel Ball:

The County of Sonoma Public Infrastructure (“SPI”) Department, given its principal responsibility for County roadways, coordinates and works closely with numerous agencies, municipalities, and other community stakeholders on matters involving traffic and circulation in and affecting the unincorporated areas of Sonoma County. Consistent with that role, SPI has reviewed and hereby submits comments on the Draft Environmental Impact Statement (DEIS) for the Koi Nation (“Tribe”) Shiloh Resort and Casino Project. SPI’s analysis reveals that the DEIS insufficiently addresses and fails to mitigate for numerous, significant traffic and safety impacts of the Project, along with failing to present adequate analysis and assessment of its own mitigation measures. Accordingly, SPI strongly urges the Bureau of Indian Affairs (“BIA”) to reconsider the Project and endorse the "no project" alternative. Specific concerns with the DEIS are:

A9-34

### **Vague, Missing, And Unenforceable Mitigation Measures, Which Are Unsupported By Any Effectiveness Assessment**

For many identified Project impacts, the DEIS proposes use of “Best Management Practices” (“BMPs”) that lack any detail or specific measures, are ambiguous and open-ended, and that implicitly suggest that such BMPs—and not general building codes or other generally-applicable standards—are the only measures to be used. The prescription of BMPs is made more troubling by the fact that other discussions in the DEIS refer to use of both BMPs and mitigation measures to address certain impacts, suggesting that BMPs differ from mitigation measures.

Moreover, insofar as the DEIS identifies mitigation measures that are left to be identified in either a “design-level geotechnical report” from “a registered design professional” that will be “no less stringent than” the California Building Code (DEIS, Table 2.1-3) or “If [species] is detected..., the USFWS shall be contacted immediately to determine the best course of action,” impacts and mitigation measures remain unidentified, unspecified, and unable to be assessed for appropriateness or adequacy.

A9-35

Even when mitigation measures are identified, the DEIS qualifies many of the measures as “to the extent feasible” (e.g, Biological Resources Mitigation Measure O). Such a nebulous and subjective standard fails to prescribe actual, enforceable, assessable measures for identified impacts.

Also, what other specific codes and standards that get referenced are either not made available for review, or are made up and non-existent. Specifically, in its discussion of Construction measures, the DEIS states that “The proposed facilities would conform to applicable requirements of the Tribe’s Building and Safety Code of 2023, which are consistent with the CBC and California Public Safety Code, including building, electrical, energy,

mechanical, plumbing, fire protection, and safety.” However, the Tribe’s “Building and Safety Code” is not made available for review, and as a sovereign nation it is not clear what binding effect said Code may have on any Tribal activities. Oddly, a description of it is omitted from the “regulatory setting”, even as inapplicable State codes are discussed at length. What is more, there is no such thing as the “California Public Safety Code” cited on page 2-14. The mitigation measures pertaining to methods, practices, materials, and other standards crucial for safe construction remain illusory and unable to be assessed.

A9-35 cont

### **Failure To Address Foreseeable Contingencies**

The DEIS identifies adverse impacts to County law enforcement and related operations and budgets. As mitigation, the DEIS calls for “good faith efforts” by the Tribe to negotiate service agreements containing certain conditions with the Sonoma County Sheriff office and the Sonoma County Fire District. However, no provision is made should said negotiations with the Sheriff Office not come to fruition; in contrast to the prescribed fallback measure of building and maintaining a fire and EMT facility and staffing on site, no such or other mitigation measure is stated for provision of law enforcement (police) service onsite. (See Table ES-1; Section 3.7, “Fiscal Impacts”: Mitigation Measures A and C.) The failure to specify any measure to apply in the event a service agreement cannot be reached leaves unmitigated the identified impacts. An obvious solution would be to compel the tribe to reach an agreement based on the impacts, rather than the “good faith efforts” approach. Absent the agreement, which the mitigation does not ensure, the impacts remain significant.

A9-36

### **Unreliable Traffic Data Not Consistent with Actual Casino Use**

The DEIS Traffic Study makes a fundamental misstep that leads to flawed analysis and conclusions. After invoking the Institute of Traffic Engineers (ITE) publication Trip Generation (11<sup>th</sup> Ed., 2021), which is widely-recognized across the country for development project trip generation analysis, the Traffic Study then “identifies” and selectively adopts data and ‘observed rates’ from several other casino projects, including a traffic study from 2015. Then, the Traffic Study inexplicably uses trip rates for a Hotel use, and meeting space and event center traffic generation data from the unrelated 2015 casino traffic study. These numbers were then further discounted by seventy-five percent based on assumptions that event attendance would include trips generated by the casino. (See Traffic Study, Appendix I, pg 30-31.)

A9-37

However, the ITE Trip Generation Manual includes data specifically for Casino uses—yet the DEIS is silent as to why that more-specific, more current data was not used, and instead “observed trip generation rates” at two other casinos and data from a near-decade old, different casino traffic study in other parts of California were selected.

As a result, the trip counts used in the traffic analysis appear inapplicable to this casino project in this locale, and at a minimum they should be checked against the most current version of the Institute of Transportation Engineers Trip Generation Manual.

### **Traffic Impacts – “Fair Share” Payments Only**

Even though numerous and major roadway improvement measures are identified as needed to mitigate significant traffic impacts and ensure needed circulation, every single measure (with one small exception,

A9-38

discussed below) would only be subject to the Tribe paying “fair share” amounts—yet the required mitigation measures may never even be implemented or built.

The DEIS calls for significant roadway measures to maintain acceptable traffic circulation and mitigate project impacts, including to expand existing roads and intersections, add traffic lanes, lengthen turning lane storages, and add pedestrian improvements. However, the DEIS does not require that the Tribe actually undertake or ensure completion of the mitigation measures. Instead, the Tribe is given the option to only pay specified percentages of what these measures might cost. (See DEIS, Section 4, pg. 4-11: “The Tribe shall either complete or make in-lieu fair share contributions to the cumulative 2040 traffic mitigation measures prior to the need for the improvements. The Tribe’s fair share contribution percentage, as estimated in the Traffic Impact Study (Appendix I), is included for each measure.”)<sup>1</sup> Not one single measure would actually be required to be affirmatively performed or caused by the Tribe, nor made a condition of Project approval or for opening the proposed casino and resort. Simply providing payment does not mitigate impacts—only the actual mitigation measure projects would. Yet the DEIS findings would reflect ‘no significant impacts’ even if the actual mitigation projects do not come to fruition.

A9-38 cont

The only mitigation measure affirmatively imposed on the Tribe would be that, in the event the that certain repaving is not completed by other, piggybacked roadway projects by 2040 (see below), the Tribe to “compensate homeowners adjacent to the identified roadway segments for dual pane exterior windows or other noise reducing measures... at the request of the homeowner.” (DEIS, Section 4, pg. 4-10.) On its face, this mitigation measure would only take place no sooner than 2040—more than a decade after Project opening—and the details regarding the universe of “adjacent owners,” minimum and maximum amounts of compensation, and outreach and notification to subject homeowners, among other things—are left unspecified. As such, this one affirmative mitigation measure that would be imposed on the Tribe not only would be delayed while Project impacts would be occurring on a daily basis, but also cannot even be fully assessed. There also is no discussion of enforcement mechanics around how this in-kind mitigation measure would be assured.

A9-39

The Bureau does have the ability to adopt mitigation that is binding on both Bureau and Tribe to ensure efficacy. For example, the Bureau could require that the casino not open until the mitigation is completed. Instead, should it rely on the DEIS, the Bureau would be asking everyone to hope and assume that its mitigation measures will be effective, without any assessment of the realities on the ground, and simply ignoring the findings that it needs to make if it does not adopt actual mitigation. Absent mitigation that is ensured to actually occur (and when and how it is needed in time for Project impacts), the DEIS forces only speculation and aspiration that impacts will be made less than significant.

To the extent that the DEIS evacuation analysis and conclusions (discussed below) rely on any of these mitigation measures to be actually implemented to facilitate and ameliorate Project traffic evacuation, the possibility that measures may become mere moneys on account makes such a mitigation approach all the more inadequate and, in fact, useless for mitigating Project impacts.

### **Traffic Mitigation Measures – No Foreseeable or Guaranteed Projects To “Piggyback”**

A9-40

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<sup>1</sup> Notably, only “fair share” amounts for intersection improvement and road widening mitigation measures are specified in the DEIS. In contrast, the amount of “fair share” required for the “noise-reducing payment” (see DEIS, Section 4, pg. 4-10) measure required of the Tribe is completely unspecified, and therefore cannot be assessed.

What is more, the DEIS assumes and relies—that is, would piggyback--on several major, third-party roadway initiatives and potential future projects to provide expanded roadways and improved intersections to incidentally mitigate for Project-caused traffic. (“Widening is planned under the Town of Windsor General Plan and Traffic Impact Fee program and assumed to be implemented under mitigated conditions.” DEIS, pg. 3-158; “While all scenarios experience 95th percentile queue lengths that are not consistent with Town of Windsor standards, the addition of project-related intersection improvements, restriping to increase storage length, *and planned improvements by the Town of Windsor and County of Sonoma* would mitigate project-related impacts to a level that would be consistent...”Traffic Study, pg. 6 [emphasis added].) These include projects to widen Shiloh Road (identified in the DEIS Traffic study as “Town of Windsor Project #2, Shiloh Road Interchange”), to construct a second northbound left turn lane and westbound receiving lane at Old Redwood Highway’s intersection with Shiloh Road (identified as Town of Windsor’s “Traffic Impact Fee project”), and completely unspecified “County of Sonoma” projects.

Reliance on “pipeline” projects and general planning concepts that might be undertaken by others, with no guarantee of timing, specific plans or specifications, or even that the projects will in fact be performed, reduces the Project mitigation measures to being contingent, unreliable, and illusory. Said another way, the Project would not independently mitigate for its own impacts and would need other, separate projects to—hopefully—occur and provide the needed mitigation. The DEIS admits this reality, yet all it requires is a Tribal ‘best effort to assist’ and with no meaningful provision to ensure mitigation should implementation not occur on the needed time frame: “While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day.” (DEIS, section 4, pg. 4-10.)<sup>2</sup>

Even if such projects are currently planned, they remain just that—plans for the future, and subject to a wide variety of variables. A simple review of Town of Windsor planning and project materials reveals that at least two of the major projects (“Town of Windsor Project #2, Shiloh Road Interchange” and Shiloh Road expansion from Hembree Lane to Old redwood Highway) relied on by the DEIS, are not even in current 5-year Capital Improvement Plans. As for the other major project (Town of Windsor’s “Traffic Impact Fee project, to add turn and receiving lanes at Old Redwood Highway and Shiloh Road), the County is informed and believes that said project lacks complete funding and in accordance with Town plans, may be implemented as a major traffic roundabout that will require significant right of way acquisition from adjacent properties. Moreover, Town materials further indicate that significant portions of such projects would be undertaken by private development projects—if and when said projects ever come to fruition, and only to the extent of each project’s respective impacts. What this means is the Town will not necessarily complete the entire 4-lane widening of all of Shiloh, as called-for by the DEIS. Should said private developments fail, or should the Town never initiate the major projects (and others) due to funding, planning, or other reasons, then the needed improvements and mitigations will not be realized. Project traffic and impacts would remain unmitigated, notwithstanding a check that would have been paid by the Tribe years before. The impacts, including life safety impacts related to fire evacuation, would remain.

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<sup>2</sup> The County does not agree that off-site improvements are not within the “ability of the control of the Tribe” or that lack of “jurisdiction” is fatal to implementing needed mitigation. Project conditions and other prerequisite terms to meaningfully and timely mitigate for identified impacts could be imposed on the Project or any associated discretionary approval by the BIA or other agencies having jurisdiction.

To the extent Project mitigation would rely on specific construction or even materials used by projects undertaken by others, the DEIS fails to provide for assuring such specifics. For example, in calling for the Tribe to pay a “fair share” for “noise-reducing pavement” for roadway projects along Shiloh Road and on Old Redwood Highway (see DEIS, Section 4, pg. 4-10), actual mitigation for identified noise impacts would depend on construction means, methods, and materials of third-parties, including the Town of Windsor and the County of Sonoma and their contractors. However, there is no assurance that those agencies and their contractors would necessarily employ such “noise-reducing pavement.” This serves as yet another example of needed mitigation proving to be unguaranteed and unenforceable, and ultimately illusory.

A9  
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As for the reliance on the Shiloh Road expansion to a four-lane road, the DEIS and its Traffic Study call for Shiloh Road to be widened to the Gridley Drive intersection. (See Traffic Study, Appendix I, pg. 123; DEIS Proposed Mitigation Measure, Transportation and Circulation, Measure #E.) However, the Shiloh Road projects as identified in Town of Windsor Traffic Impact Fee studies and other local planning documents only call for 4-lane widening to the intersection of Shiloh with Old Redwood Highway. There is no project or planning document that would entail widening Shiloh beyond Old Redwood Highway anywhere to the east, including Gridley Drive. So, even as mitigation for significant Project impacts requires widening Shiloh Road east past Old Redwood Highway, no actual mitigation would actually be achieved—the Tribe would only be made to pay a “fair share” to a project that nobody owns, nobody is planning, and nobody is responsible for.

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-42

### **Required Mitigation Measures Would Require Right of Way Take and Possibly Condemnation**

The numerous mitigation measures identified in the DEIS and Traffic Study appear to require significant expansion of existing rights of way. Yet the DEIR and Traffic study fail to account for the costs, delays, and associated impacts to adjacent properties.

Based on desk-level analysis and having been deprived by the Bureau of Indian Affairs of the time to obtain proper field surveys, the widened roadways and intersections and lengthened turn lanes called for as mitigation measures are expected to require expanded right of way take to accommodate the measures and needed appurtenances in accordance with modern road design standards. This reality is already recognized in the Town of Windsor’s Traffic Impact Fee report, wherein the “Shiloh Road Interchange” and the “Shiloh Road – Hembree Lane to Old Redwood Highway” expansion projects list easements and right of way acquisition as included project scope and cost items. To accommodate the listed mitigation measures, additional rights of way appear to be needed for all approaches at the Shiloh Road/Old Redwood Highway intersection and the Hembree Lane approach at Shiloh Road.

A9-  
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Despite this, the DEIS fails to raise, analyze, or propose any mitigation measures to address the take of property needed to mitigate for the Project. No provision is made for the impacts to adjacent properties should rights of way be expanded, and yard space or other private property be taken for public use. Moreover, no treatment is afforded for the impact to the public park (Esposti Park) northeast of the Shiloh/Old Redwood Highway intersection, which stands to be impacted should that intersection be expanded to four lanes to mitigate for Project impacts.

In addition to denying the County the ability to assess such foreseeable Project impacts, the failure to account for the need to acquire property ignores the legal reality of eminent domain requirements. Without more, approval of a Project that will require significant property acquisition pre-supposes the legal ability to acquire such property in the first place. Is mitigation for a commercial casino project adequate legal grounds for a public entity to exercise the power of eminent domain to take property over owner opposition? If the federal government believes so, based on its trust obligations to a tribe, it should be the acquisition lead and take on that



responsibility as part of the mitigation. Absent legal authority to obtain such needed property, needed mitigation measures may become impossible.

**Required Traffic Mitigation Measures Are Missing From the DEIS**

The DEIS takes the approach of listing all mitigation measures for the Project in DEIS Section 4 (“Mitigation measures have been recommended as appropriate for any potentially significant effects identified following the incorporation of project design measures and BMPs and are listed in the table below.”) and in Table ES-1 (“Summary of Impacts and Mitigation Measures”).

However, the measures that do get listed in the DEIS variably ignore or misstate the measures that the Project’s Traffic Study specified to address impacts. This in part reflects a discrepancy in the Traffic Study itself, where the narrative summary of required mitigation measures deviates from the content in the Traffic Study analysis tables. There is no explanation for *why* these deviations are made. Curiously, all deviations work to *reduce* the amount and degree of required mitigation as identified in the Traffic Study analysis. The mitigation measures that purportedly would be imposed on or incorporated in the Project therefore fail to fully address the very impacts the Project’s Traffic Study identifies, including by completely leaving out certain measures without discussion or support. How can mitigation measures be proposed when they don’t even reflect the very measures identified and called for by the supporting Traffic Study and other materials? This gap in analysis and lack of any supporting rationale not only suggests many of the measures are arbitrary, but also completely denies others, including the County, the ability to meaningfully analyze the measures for sufficiency in addressing impacts.

The following tables summarize the discrepancies and omissions:

**Table 1:**  
**Opening Year 2028 + Project Alternative A**

<u>Measure/Location</u>	<u>Traffic Study, Table 24</u>	<u>DEIS</u>
Intersection 1, EBR lane	175 ft. storage length	150 ft only
Intersection 1, NBL turn lane	215 ft. storage length	(None) <sup>3</sup>
Intersection 1, SBL lane	195 ft. storage length	190 ft only
Intersection 1, SBR lane	130 ft. storage length	105 ft only
Intersection 7	Multiple turn lanes, dedicated	(None)

<sup>3</sup> Defers to Town of Windsor’s “Traffic Impact Fee project” only.

	turn and receiving lanes	
Intersection 9	Stop sign for loop road traffic + dedicated right turn lane	(None)
Casino Entrances	Pedestrian facilities including concrete sidewalks and marked crosswalks	(None)
Adjacent Bus Stops	Continuous, accessible pedestrian pathways between transit stops and project entrances	"No mitigation required"

**Table 2:**

**Cumulative Year 40 + Project Alternative A**

<u>Measure/Location</u>	<u>Traffic Study, Table 32</u>	<u>DEIS</u>
Intersection 1, EBL lane	425 ft. storage length	385 ft only
Intersection 1, SBL lane	190 ft. storage length	145 ft only
Intersection 1, SBR lane	160 ft. storage length	105 ft only
Intersection 2, <sup>4</sup> SBL	350 ft storage length	(None)
Intersection 3, NBR	340 ft. storage length	(None) <sup>5</sup>

**Extraneous Mitigation Measures Raise Questions and Doubts**

There also are at least two examples of mitigation measures called for in the DEIS that are without support or analysis in the Traffic Study. Example 1: the DEIS states that a mitigation measure would include an “exclusive left turn lane and one shared through-right turn lane” at the northbound approach to this intersection (Shiloh Road and Hembree Lane). However, there is no northbound approach at this intersection—it is only a three-way intersection. Example 2: the DEIS states that a mitigation measure would include a “restripe SBR to give 65 ft. storage length” for mitigation, but that measure does not appear at all in the Traffic Study or anywhere else in the EIS. The Traffic Study Queue Length Tables lack any reference to any SBR or data for such (only a WBL is analyzed).

It is not known why these mitigation measures are included, raising questions about what methodology was used, attention to detail, and whether other information has been excluded for assessment.

<sup>4</sup> The DEIS states that a mitigation measure would include an “exclusive left turn lane and one shared through-right turn lane” at the northbound approach to this intersection (Shiloh Road and Hembree Lane). However, there is no northbound approach at this intersection—it is only a three-way intersection. It is not known why this mitigation measure was included, raising questions about methodology used, attention to detail, and whether other information has been excluded.

<sup>5</sup> Defers to “Town of Windsor Project #2, Shiloh Road Interchange” project only.



## Impacts from a “No Notice” Fire Scenario Remain Completely Unmitigated

Having identified project traffic as a significant impact in the event of a wildfire evacuation in the Project area, the DEIS provides an Evacuation Mitigation Plan, with several options to “relieve evacuation traffic.” However, the Plan and traffic relief options are only analyzed and concluded as adequate based on an assumed “With Notice” fire event. In contrast, a “No Notice” fire event is dismissed by the DEIS as “unlikely” to occur, because “the enhanced safety measures and procedures in place today significantly lower the chances of another No Notice Scenario, similar to the 2017 Tubbs Fire, from occurring.” (DEIS, pg. 3-129.)

“Unlikely” and “lower” chances are not the same as there being no risk, or, that a sizable risk does not remain even though smaller than what it historically was. Yet, in fire-prone Northern California and in Sonoma County with its recent experiences and trends with devastating wildfires, the DEIS fails to specify even one single measure to mitigate for the “substantial congestion” and bottlenecks caused by the Project evacuation traffic identified in the “Evacuation Travel Time Assessment.” Not one. This, despite a No Notice fire event on a holiday and harvest weekend being admitted as a “reasonable worst-case scenario.” (DEIS, Appendix N-2, pg. 8.) The lack of any mitigation measures stands in stark contrast to the discussion and proposed mitigation measures for a With Notice fire scenario, where a “Project-only” evacuation protocol is determined to clear Project-related evacuation traffic within allegedly acceptable time frames. (Id., pg. 10.)

A9-46

Instead, the “Evacuation Travel Time Assessment” and DEIS skip over further analysis and proposing any mitigation measures, on the assumption that a “No Notice scenario represents a mass evacuation that experts indicate is far larger than what would be reasonably expected in the future, and thus represents a worst-case scenario.” (Id.) Yet, this is at odds with the DEIS’s “Evacuation Recommendations Memorandum” (Appendix N-3), which states “Today, Sonoma County has developed fire preparedness education, advanced Alert and Warning Systems, Evacuation Zones, and early detection devices such as wildfire cameras to enhance life-safety through orderly evacuations. *However, “No Notice” events still merit significant consideration and planning.*” (Pg. 5 [emphasis added].)

This boils down to just a massive gamble that such a No Notice event will never again occur, rather than mitigating for significant, dangerous public safety impacts (given the reality of life and conditions in Sonoma County), even if the odds have recently been reduced.

## “With Notice” Evacuation is Only Mitigated if a Single Zone or the Project Alone Evacuates at a Time

In yet another gamble, conclusions regarding mitigation hinge on yet another scenario which is not guaranteed: that evacuations proceed in sequential order and that the evacuation study area zones would not be simultaneously evacuated.

While never stated as an express assumption, the “Evacuation Travel Time Assessment” relies on a graduated, progressive evacuation that would allow for project-related traffic to evacuate separate from traffic in other evacuated areas:

A9-47

“In this analysis, *the project employees and visitors evacuate with the phase 1 evacuation zones* [...] The results of the evacuation travel time analysis are presented below in Table 2. The results of the analysis indicate the modeled amount of time to clear the study area of phase 1 evacuation demand under 2028 and 2040 conditions is less than 8.5 hour (510 minutes), which is *the time difference between phase 1 and phase 2 zones receiving the evacuation orders.*” (DEIS, Appendix N-2, pg 9 [emphasis added].)

The above belies the underlying assumption and prerequisite for all the evacuation and mitigation analysis to hold true: that the Phase 1 and Phase 2 areas would not be evacuated at the same time. However, such a scenario cannot ever be guaranteed, and there is no analysis or mitigation measures specified to address the impacts of an emergency where the entire evacuation zone is ordered to evacuate at the same time.

A9-47  
cont.

### Evacuation Analysis Fails to Account for Pipeline Development Project Traffic

Analysis for Project-related evacuation traffic impacts assumed that Project-traffic would evacuate concurrently with traffic from the rest of the evacuation areas, along with traffic from only three planned projects.<sup>6</sup> This is incomplete and ignores the traffic from other projects that are planned and under development in the very same evacuation area studied by the Assessment. As stated by the Tribe’s CAS safety Consultants, Inc., “We recommend evaluating the scale of the Shiloh Resort and Casino evacuation impact along with other proposed projects in the area. Traffic engineers should evaluate traffic conditions based on the cumulative impacts of known or planned projects in the area. *Any additional known or proposed project should be considered in determining the evacuation impacts of the Shiloh Resort and Casino and surrounding community.*” (DEIS, Appendix N-3,p g. 10 [emphasis added].) According to Town of Windsor planning materials, there are many other planned projects in the evacuation study areas (Phase 1 and Phase 2 areas), including the “[Estates at Ross Ranch](#),” “[Heritage Park](#),” and “[Shiloh Business Park](#).”

A9-48

The evacuation traffic data and analysis accordingly lack the cumulative impacts of these known, planned, and pipeline projects, and the study’s assumptions of only three projects and an annual traffic growth rate may undercount actual, foreseeable, and more likely traffic conditions in future evacuation scenarios.

### Conclusion

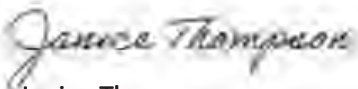
Assuming the DEIS and its supporting materials even adequately capture all significant Project impacts, the DEIS and the proposed mitigation measures fall short of providing complete, meaningful, and realistic analysis and mitigation assessment. Having identified many significant impacts the Project will create, the DEIS looks the other way and ignores the deficiencies of those measures, assumes that real-world scenarios will not occur, and fails to explain why the DEIS deviates from its own supporting Appendices and the conclusions therein. Project traffic needs to be mitigated as soon as casino doors open, not if and when other people’s projects might get around to including measures to also handle the Project’s traffic. “BMPs” and worst-case scenarios related to all the facets of the Project need to be articulated and assessed now, rather than deferred and left open-ended and unplanned-for. And, Project traffic needs to be safely evacuated during common fire situations like Sonoma County has already seen, not just under an entirely hypothetical, orderly, phased evacuation scenario where not everyone in the Project area is evacuating all at once.

A9-49

Given these deficiencies, the County of Sonoma Public Infrastructure Department fails to see how the Project can be found to mitigate for and be determined to have ‘less than significant’ impacts, and urges that the BIA adopt the “no project” alternative.

<sup>6</sup> The planned projects are “Shiloh Terrace” residential development, and “Shiloh Crossing” and “Clearwater” mixed-uses developments.

Sincerely,

A handwritten signature in cursive script that reads "Janice Thompson".

Janice Thompson

Deputy Director of Engineering and Maintenance

## Exhibit D

**MEMO**

**To:** Verne Ball, Deputy County Counsel

**From:** Tennis Wick, AICP, Director  
Scott Orr, Assistant Director  
Ross Markey, Comprehensive Planning Division Manager  
Katrina Braehmer, Supervising Planner  
Eric Gage, Planner

**Date:** 21 August 2024

**Subject:** Koi Nation Shiloh Resort Hotel & Casino: DEIS comments

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**Project Location/APN #:** 222 E Shiloh Road, Santa Rosa, 95403 (APN 059-300-003)

**Project Description:** The proposed project includes the development of a casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure within the project site.

**General Plan Land Use:** Land Intensive Agriculture 20-acres per dwelling unit

**Zoning:** LIA (Land Intensive Agriculture) B6 20 (20 acres per dwelling unit density), F1 (Floodway Combining District) F2 (Floodplain) RC50/25 (Riparian Corridor 50/25 foot setbacks) SR (Scenic Resources) VOH (Valley Oak Habitat)

**Environmental Impact Assessment Comments****Chap 3.7 Socioeconomic Conditions and Environmental Justice**

Comment: The DEIS finds that the project would not result in a change to the local population and therefore concludes that the project would not have impacts on the local workforce housing supply. Appendix B-1 states:

*“The construction and operation of the subject facility will have a positive impact on local employment (thereby reducing the unemployment level). As the incremental number of people employed represents a comparatively small percentage of the unemployed population within the county, there is likely a good degree of availability of people currently residing in the area to fulfill*



*the available positions. Furthermore, a large influx of new residents to the host county and/or workforce is not expected to occur due to the construction of the facility as the Project site is proximate to a sizeable workforce in the subject county as well as nearby counties.”*

This paragraph is unsupported speculation. In turn, the conclusion that there will not be an impact on housing is not supported by actual data and analysis. Any impact should be considered significant given the context -- the overall housing crisis that exists in Sonoma County and the State of California. There is no discussion in the DEIS of non-compliance with typically applicable local affordable housing contributions that would otherwise apply. A project of this size would normally require the provision of 40 lower income residential units on-site or an equivalent alternative action. This project will exacerbate the affordability crisis for low-income housing in the county and region.

**A9-50  
cont.**

### **Chap 3.9 Land Use**

Comment: The proposed project is inconsistent with the Sonoma County General Plan and Zoning Ordinance.

Approximately 47 acres of the project site is designated Farmland of Statewide Importance, 8 acres designated Farmland of Local Importance, and 13 acres of Prime Farmland. The project design includes vineyard buffers and screening, and siting of water treatment systems, to minimize impacts in areas adjacent to existing residential uses. The impact analysis of agricultural resources concludes that the conversion of agricultural land is less than significant based on USDA Farmland Conversion Impact rating.

**A9-51**

The analysis should consider the regional context, but does not. Sonoma County General Plan General Plan Objective AR-4.1 establishes agricultural production as the highest priority use on agriculturally zoned parcels. General Plan Policy AR-4a explicitly states that visitor-serving uses in agricultural areas shall be accessory to a primary agricultural use and shall be limited in scope and intensity relative to the agricultural use. The proposed project is inconsistent with the General Plan policies pertaining to agricultural resources.

Consistent with General Plan policy, commercial entertainment centers, such as the proposed project, and similar intensities of commercial use are expressly not permitted in Land Intensive Agriculture zoning. The proposed project is inconsistent with the purpose of the Land Intensive Agriculture zoning district.

The project is also inconsistent with the stated purpose and provisions of applicable zoning. The site is within a voter-approved Community Separator, designated in the General Plan and by zoning as a Scenic Resource. The stated purpose of Community Separators is to preserve open space, retain rural visual character, limit new development in scale and intensity, and specifically avoid commercial development. Therefore the proposed large-scale, visitor-serving commercial use is inconsistent with the Community Separator policies and Scenic Resource (SR) Combining District.

**A9-52**

The only actual analysis of the existing land use appears to be the following statement: “While the proposed uses within the Project Site are not similar in nature to the uses immediately surrounding the site, they are consistent with large scale commercial uses approximately 0.3 miles to the northwest, including big box stores and other high intensity commercial uses near the Highway 101 and Shiloh Road interchange.” This sentence misinterprets or misrepresents the land use context, and fails to acknowledge that the local infrastructure has only been prepared for the planned land uses.

**A9-53**





### **Chap 3.10 Public Services and Utilities**

Comment: The proposed casino and resort exceed the intensity of development contemplated in the Sonoma County General Plan for the area and the subject parcel. The impacts of surrounding infrastructural improvements to accommodate the use are absent from the DEIS.

### **Chap 3.13 Visual Resources**

Comment: The County's [visual assessment guidelines](#) were developed to provide a formal, consistent process for visual impact analyses to determine the significance of project impacts. The DEIS references the Sonoma County General Plan and Zoning Code policies governing scenic resources but does not utilize the County's visual assessment guidelines. Following these guidelines, the site would be characterized as having high sensitivity area due to its location within a Community Separator. The visual dominance of the project would be characterized as dominant because the project elements, including bulk and mass, height, and lighting, stand out against the existing setting and surrounding landscape. The County's visual assessment guidelines would find that a site with high sensitivity and a project with dominant elements would result in a significant visual impact requiring mitigation.

The DEIS lists "Protective Measures and Best Management Practices" in Table 2.1-3 that are intended to be incorporated into the project design that include measures to reduce impacts from project lighting but do not address other elements of the project that would result in impacts to scenic quality of the area. No mitigation measures for impacts to visual resources were proposed as would typically be required of private development projects that are found to have a significant impact under the County's visual assessment guidelines.

No visual assessment has been provided of the novel infrastructure that is contemplated, including 65 foot water tanks and leveed ponds.

## Exhibit E



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**Tennis Wick**  
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**Tyra Harrington**  
Code Enforcement

**Genevieve Bertone**  
**Communications**

Steve Mosiurchak  
Fire Marshal

John Mack  
Natural Resources

Brian Keefer  
**Ombudsperson**

TO: Verne Ball, Deputy County Counsel

FROM: John Mack, Division Manager, Natural Resources Division

DATE: August 25, 2024

RE: Review of **Draft** Environmental Impact Statement, **Koi Nation of Northern California Shiloh Resort and Casino Project**

CC: **Scott Orr, Tennis Wick**

### Overview

**A Draft Environmental Impact Statement (EIS) has been prepared pursuant to the National Environmental Quality Act (NEPA) to analyze potential impacts from the Koi Nation of Northern California (the Tribe) proposed Shiloh Resort and Casino Project (the Project). The Project would include taking the entire 68.6 acre parcel on which the Project is located into federal trust status for the benefit of the Tribe for gaming purposes. Previously, a Notice of Preparation for the Project was noticed on May 27, 2022, a scoping report with comments received during the NOP comment period was published in September 2022, and an Environmental Assessment was circulated for public comment with the comment period ending on November 13, 2022. Based on this, the Bureau of Indian Affairs then decided to prepare an EIS for the Project and released the Draft EIS for public comment with the comment period ending on August 26, 2024.**

**The Draft EIS includes an analysis of four alternatives: the proposed project, a reduced intensity proposed project, a non-gaming alternative (winery with hotel) and no project alternative. The basic conclusion of the review below points to the basic incompatibility of the Project parcel with the scale of commercial development proposed.**

**The Draft EIS included an analysis of impacts for the following: Land Resources, Water Resources, Air Quality, Biological Resources, Cultural/Paleontological Resources, Socioeconomic Conditions/Environmental Justice, Transportation and Circulation, Land Use, Public Services and Utilities, Noise, Hazardous Materials and Hazards, Visual Resources, and Cumulative Effects.**

**In addition to the flawed alternatives analysis, the Project will, at a minimum, result in significant and unmitigated impacts to Land Resources, Water Resources, Biological Resources, Transportation and Circulation, Land Use, Hazards (Wildfire) Visual Resources, and Cumulative Effects (especially Greenhouse Gas Emissions). In addition, to these impacts, serious concerns and potential impacts exist with regards to groundwater resources (not evaluated here).**

A9-57

### Project Setting

The Project parcel is located in the northeast corner of the Santa Rosa alluvial plains, **within 0.5 miles of the southwest toe of Mayacamas Mountains foothills (Figure 1)**. The **Project site is bisected by from NNE to SSW by Pruitt Creek** and is **basically flat with gentle slopes from east and west sides of parcel towards Pruitt Creek**.

**Pruitt Creek** has its headwaters **approximately 2 miles WNW of the Project parcel** in the foothills of the **Mayacamas Mountains**. **After debouching to the alluvial plains at Shiloh Road (Figure 2), Pruitt flows in an open channel with a forested riparian corridor through vineyards and rural residential lands until passing into the Project parcel via a short culvert under East Shiloh Road at the north into the project parcel (Figure 3)**.

**Within the Project parcel the predominant land use is agriculture, with most of the Project parcel in active vineyard, except for a small residential/farm complex along the east property line. The Pruitt Creek riparian corridor is relatively intact through the Project parcel and is dominated by native valley oak trees. The Pruitt Creek riparian corridor is protected in Sonoma County under three separate natural resource protection combining districts: riparian corridor, oak woodland, and valley oak. Valley Oak woodland is considered a "sensitive natural plant community" under California Department of Fish and Wildlife plant community classification.**

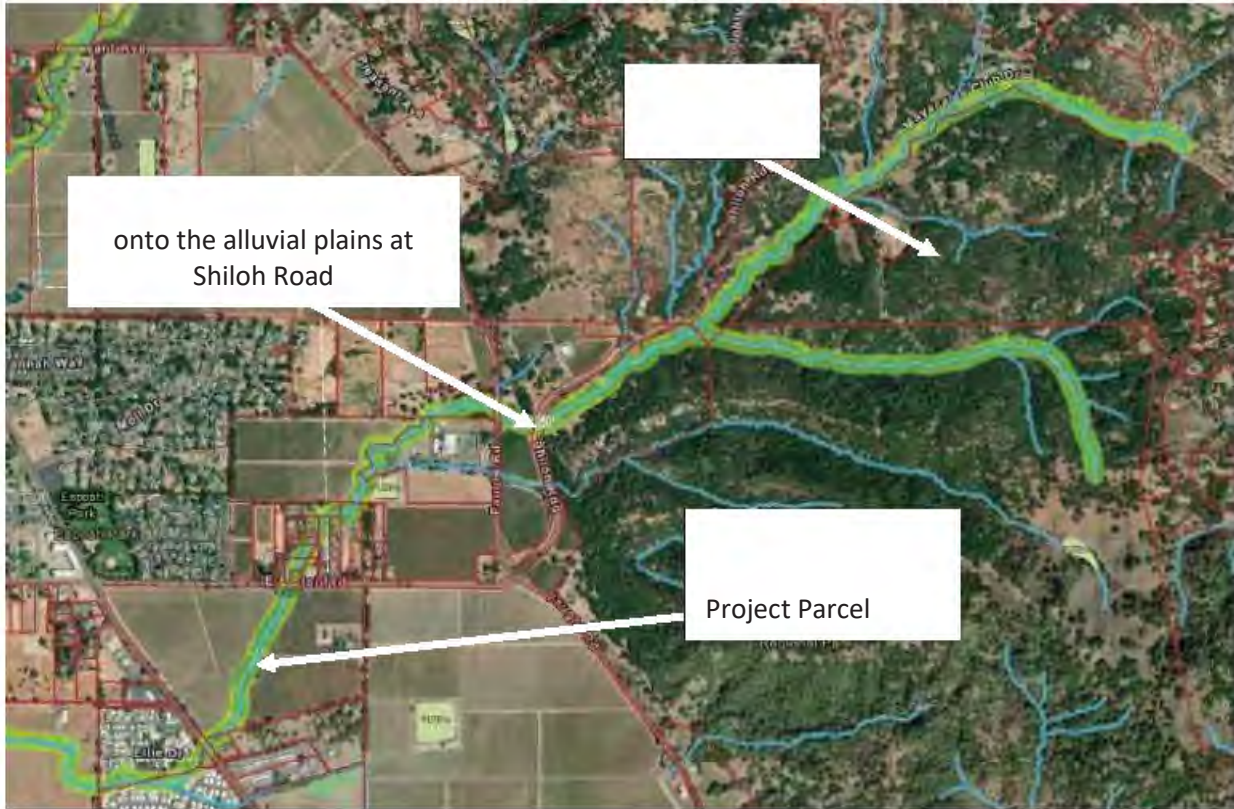
**Other than some shallow, marginal roadside swales on Old Redwood Highway and East Shiloh Road, there are no ditches or channels within the existing vineyards on the Project Parcel that would concentrate flow to Pruitt Creek. Therefore, the dominant hydrologic pathway is vertical with most precipitation infiltrating into soils and the local water table and most losses being**



Figure 1. General location of Project parcel.

A9-57  
cont.





A9-57  
cont.

**Figure 2. Pruitt Creek headwaters and mainstem as it passes through the Project parcel. Green is mapped and protected Riparian Corridor (50 feet from top of bank or dripline of trees rooted within 50 feet of top of bank).**



**Figure 3. Pruitt Creek as it enters and leaves Project Parcel with major soil types and F1 and F2 floodplain (blue, teal), and riparian corridor (green) shown.**



**due to evapotranspiration or subsurface flows to Pruitt Creek and the shallow aquifer system (See discussion below in Water Resources regarding inflated pre-development flow estimates).**

**Once Pruitt Creek leaves the project parcel via a short culvert under Old Redwood Highway (Figure 3) it flows westerly under US101 eventually joining Pool Creek just west of Conde Lane at the SMART rail line. From there, Pool Creek flows westerly to join Windsor Creek south of Starr Road and Windsor Creek flows south and southwesterly to join Mark West Creek east of Trenton-Healdsburg Road.**

#### Proposed Project

The Project (as shown in the preferred Alternative A) represents essentially a full build out of the 68.6 acre parcel with likely only about 12 acres of "boutique" vineyard retained mostly as a visual buffer along the north and west margins of the casino development (Figure 4).



Figure 4. Alternative A Project Buildout.

Although the Project states it is largely avoiding the riparian corridor oak woodlands, it **proposes development right up to the drip line of the trees with no protective buffering as well as development of stormwater management features in the F1/F2 floodplain. The project proposes at least two bridge incursions (one pedestrian and one vehicular) which will bisect the riparian corridor and up to seven outfalls (6 stormwater, 1 wastewater) which would need to be constructed into Pruitt Creek (see water resources discussion below).**

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cont.



### LAND RESOURCES (EIS Section 3.2).

While the Project parcel is located outside the Alquist-Priolo zone, the locations is within a potential zone of “violent shaking” from a predicted 7.2 rupture of the Rodgers Creek fault system (<https://www.arcgis.com/home/item.html?id=ff6b9344a63d41aba7929b0ef78b37e1>). Rupture along the Rodgers Creek-Hayward Fault system is considered to one of the most serious earthquake risks in the Bay Area in the next 30 years:

<https://www.usgs.gov/programs/earthquake-hazards/science/a-new-map-rodgers-creek-fault-sonoma-county-california#:~:text=The%20two%20sides%20of%20the,%2Dyear%20period%202014%2D2043>.

The Draft EIS does not address these risks in any substantive fashion but relies on boilerplate reference to California building codes while proposing a multi-story visitor-serving facility.

A9-58

### WATER RESOURCES (EIS Section 3.3).

The 2024 SES basically concludes that since it is possible to apply for or obtain coverage under National Pollutant Discharge Elimination System (NPDES) Permits for stormwater and wastewater discharges, that this *ispo facto* means that there will be no significant negative water quality impacts from the operation of the Project. The Draft EIS bases its conclusion on observations of Pruitt Creek during several brief site visits in 2022, simplistic engineering calculations from a design manual that is inapplicable on its face to this type of development project, and the use of flow data from much higher order streams well downstream of Pruitt Creek rather actual flow data from Pruitt Creek itself or similarly situated streams in Sonoma County.

#### *Stormwater*

While summarized in EIS Section 3.3, detailed discussion of surface water hydrology impacts are found in technical reports in Appendix D: Grading and Hydrology Study (G&H Study), Water and Wastewater Feasibility Study (W&WF Study) and a Supplemental Wastewater Memorandum. These studies erroneously use use Flood Management Design Manual (Sonoma Water 2020) (<https://www.sonomawater.org/fmdm>) which states in its applicability section that,

The focus of this FMDM is to provide hydrologic and hydraulic analysis methods and criteria for designing facilities to accommodate flood conditions. The focus of this manual is not to address the more frequent and lower magnitude stormwater flows that are typically the focus of NPDES requirements. The user of this manual, or project applicant, should consult with the appropriate

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RWQCB office and/or appropriate municipality (or the County) regarding potential NPDES regulatory requirements that may affect a specific project.

(emphasis added). In Sonoma County, the applicable method of review for determining structural post-construction stormwater best management practices is the Santa Rosa (<https://www.srcity.org/1255/Low-Impact-Development>) which is the standard of review required for Phase 1 MS4 Permit Boundary where the Project is located. Under the terms of the Phase 1 MS4 permit, the water quality treatment and volume detention standards provide a floor of protection to receiving waters. It is well known that precipitation that exceeds the BMP design standards is regularly discharged to receiving waters. Under provisions in the MS4 permit as well as the federal Antidegradation Policy, excess stormwater that is discharged to receiving waters must still not cause water quality or hydromodification of the receiving water.

Other than some shallow, marginal roadside swales on Old Redwood Highway and East Shiloh Road, there are no ditches or channels within the existing vineyards on the Project Parcel that would concentrate flow to Pruitt Creek. Therefore, the dominant hydrologic pathway is vertical with most precipitation infiltrating into soils and the local water table and most losses being due to evapotranspiration or subsurface flows to Pruitt Creek and the shallow aquifer system. Thus, concentrated surface flow pathways are not present on this largely undeveloped parcel and there are no pre-development point source discharges of stormwater. This lack of pathways for concentrating flow is readily apparent from the pre-development hydrology figure in Appendix B of the G&H Study. Despite this, the Appendix C of the G&H Study generates pre-development peak and total volume estimates that are only marginally lower than post-development hydrology. Post-development, there will be at least 4-6 new point source stormwater outfalls to Pruitt Creek where pre-development there are none (see Figure 3-1 in G&H Study (four stormwater outfalls) and Appendix G in G&H Study (six stormwater outfalls)).

The Draft EIS is completely lacking in any actual water quality or flow data for Pruitt Creek to establish baseline conditions and is unable to determine that negative impacts will not occur to this important stream and salmonid resource.

### *Wastewater*

In addition to concentrating stormwater discharges to Pruitt Creek via 4-6 new outfalls, under the wastewater management analysis for the project, large, daily discharges of wastewater appear unavoidable without making the currently speculative assumption that hundreds of acres of off-reservation lands can be made available for recycled water irrigation.

The Draft EIS makes the following estimates:

232,000 gpd weekday wastewater discharge (260 annual weekday days)

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A9-60

**335,000 gpd weekend wastewater discharge (104 annual weekend days)**

This results in

**60.320 million gallons over 260 weekday days**

**34.840 million gallons over 104 weekend days**

**95.160 million gallons annually**

The Draft EIS estimates that approximately 108 acre-feet (39.42 million gallons) can be used on the Project parcel annually for toilet flushing, vineyard irrigation, landscape irrigation, etc. This leaves a remaining 55.74 million gallons (171 acre-feet) annually or approximately 155,000 gpd to be managed.

The Draft EIS provides a per acre annual estimate for vineyard irrigation of 0.317 acre-feet per acre per year or approximately 539 vineyard acres. This would represent upwards of half of the total vineyard acreage located north, west, and south of the project. **Moreover**, vineyards are typically not irrigated during the peak of the rainy season when soils are saturated and water tables are high.

The Draft EIS states in several places (Section 3, G&H Study, W&WF Study), that there will be no summer discharge to Pruitt Creek from May 15 to October 1 but there will be winter discharge. However, the Supplemental Wastewater Memorandum in the Appendix D-4 appears to state the there will be zero discharges from the facility. This supplemental memorandum then presents several new scenarios for extensive on-site storage including deep, bermed ponds and multi-story water tanks (none of which are analyzed in the main body of the report). The reason for this supplemental rationalization of the wastewater discharges is that Draft EIS, even with liberal assumptions was unable to meet a protective (and presumably permissible) wastewater discharge amount for Pruitt Creek.

The G&H Study makes the case that flows and discharge volumes to Pruitt Creek should be estimated using a flow gauging station on lower Mark West Creek mainstem near its confluence with Windsor Creek. However, Mark West Creek is a much higher order mainstem stream at this location. Pruitt Creek at the Project parcel is a basically a low order stream in a "headwater" landscape position to Mark West Creek. The Draft EIS attempts to use 1% of the mainstem Mark West Creek flow as the protective discharge volume to Pruitt Creek but even using this quite liberal number, the Draft EIS still concludes that wastewater discharges in the late season shoulder month of October does not meet the less than 1% threshold the Draft EIS sets.

In fact, the hydrology of Pruitt Creek is much different than mainstem Mark West Creek. As an example, a recent study of the hydrology of upper Mark West Creek (which would be more

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similar to Pruitt Creek in terms of stream order) found considerably lower discharge volumes in dry, moderate, and wet rain-years with basically only January, February, March and April having appreciable enough flow in a normal year to have assimilative capacity for the estimated wastewater generation rates proposed here (see Table 4 for Site 3, in *INSTREAM FLOW EVALUATION: JUVENILE REARING OF STEELHEAD AND COHO SALMON IN UPPER MARK WEST CREEK, SONOMA COUNTY*, Stream Evaluation Report 2022-01). During drought years, there would be virtually no assimilative capacity in any month.

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While the Draft EIS goes to great lengths to wave smoke and mirrors over this issue, the management of wastewater from an on-site wastewater treatment plant with an outfall to Pruitt Creek is not at all resolved by the analysis presented. This again goes to the flaws in the Project's alternative analysis and that a project of this type is incompatible with this location.

### **BIOLOGICAL RESOURCES (EIS Section 3.5).**

As discussed in the overview section, the riparian corridor plant community is itself a sensitive natural plant community (Valley Oak Woodland). The project essentially proposes intensive development up to the dripline of the trees and also proposes multiple incursions into the riparian corridor itself by constructing two bridges and up to 6 outfalls. It also does not address alterations to the hydrology which could negatively impact this sensitive natural plant community. The Draft EIS does not address this and proposes no mitigation for these impacts.

A9-61

Pruitt Creek is also habitat for protected salmonid species. The Draft EIS attempts to minimize and avoid the results of this conclusion by concluding, without site specific flow and salmonid data, that Pruitt Creek is marginal salmonid habitat. At a minimum, several season, short interval flow monitoring and data regarding salmonid presence and breeding should be collected and incorporated into a detailed biological assessment that is incorporated into a biological opinion by National Marine Fisheries Service with appropriate protective and mitigation measures. This analysis should explicitly evaluate the effect of the hydromodifications to Pruitt Creek which will occur with the extensive alterations to the Creek's hydrology caused by stormwater and wastewater management the Project will require.

A9-62

**TRANSPORTATION AND CIRCULATION (EIS Section 3.8).** A detailed traffic analysis is provided in the Draft EIS. The overall conclusion is that there will be significant impacts to multiple roads and intersections between baseline and post-project level of service (LOS) (see Table 3-12, p. 59). The project proposes at least seven structural fixes in attempt to offset these significant impacts to traffic and circulation (Table ES.5 Summary Matrix). As discussed above in for the alternatives analysis, the need to alter transportation facilities from the Project parcel to the major highway corridor at US101, is evidence of that proposed casino and hotel use is incompatible with the Project parcel.

A9-63

**LAND USE (EIS Section 3.9)**

A cursory review of aerial photos and land use maps in the area around the Project parcel shows the Project parcel is a western part of a **large (>1000 acre) complex of high value agricultural lands with protective agricultural base zoning**. The Draft EIS confirms that the project is also considered high value agricultural lands under the State’s classification system. The Project’s preferred full buildout casino and hotel alternative would effectively remove these lands from agricultural use except for some fragments of vineyard retained for visual screening.

The best and highest uses of lands in the Project vicinity have been fully analyzed in County General Plan and zoning ordinances with carefully identified growth boundaries to prevent sprawl and loss of the County’s rural character and important agricultural uses.

In addition, to fundamental land use conflicts with the County’s agricultural zoning of the Project Parcel, the Pruitt Creek corridor has multiple combining district protections (riparian, oak woodland, valley oak) with the goal of maintaining the ecological functions and values of stream corridor and high value forest types from intensive development.

The multiple significant impacts identified in the Draft EIS relating to traffic, wildfire evacuation, greenhouse gas, wastewater, water supply, and ecological resources, etc. are the result of the **basic incompatibility of the full buildout casino hotel use with this location**. But, the Draft EIS dismisses these extensive land use conflicts with a tautology, by basically concluding that because the land will be taken into trust, local land use requirements will become in applicable, therefore, there is no significant impact (p. 3-90, Section 3.9.3.2).

If the project were properly located, it would be situated in a location where water supply, sanitary sewer and transportation facilities were already in place and designed for large-scale commercial development, rather than on marginally serviced parcel on high value agricultural lands.

A9-64

**XII. HAZARDOUS MATERIALS AND HAZARDS (EIS Section 3.12).**

Much has changed in Sonoma County since the 2008 in terms of our understanding of wildfire risk. The threats from a large, northeast wind-driven fire throughout the Mayacamas Mountains areas are well understood and not to be minimized. One of the main risks to structures is the ember event that can precede the actual fire front by many miles, although at this location the Kincade fire front advanced within sight of the parcel location. Beyond alleged compliance with current building codes, the Draft EIS does not address this situation.

Of even more concern, is the Project’s effect on evacuation on the surrounding community. The Draft EIS concludes the Project will have a significant negative impact on evacuation timeframes which is not surprising given the Project’s incompatibility with the local

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transportation infrastructure. The Draft EIS attempts to mitigate itself out of this problem by establishing a self-imposed and self-implemented early warning and evacuation of its potentially thousands of patrons and vehicles, essentially pushing them out onto the local transportation network before local residents are officially ordered to evacuate. It is highly speculative to expect a fast-moving, wind-driven fire like the Kincade, which resulted in the evacuation of Windsor, Healdsburg and many other County residents to the south, will oblige by providing sufficient notice to allow for such a pre-emptive evacuation. This again points to the basic incompatibility of this location, with the large, commercial development being proposed.

A9-66  
cont.

**VISUAL RESOURCES (EIS Section 3.13).** Without specifying an analysis methodology, the Draft EIS arrives at the conclusion that with various modest mitigations in terms of color palette and some peripheral vineyards, there would be a less than significant impact to visual resources from the Project. The County has developed principled Visual Assessment Guidelines (Guidelines) that can be found at <https://permitsonoma.org/longrangeplans/proposedlong-rangeplans/environmentalreviewguidelines/visualassessmentguidelines>. Using these guidelines, the location has at least a “high” site sensitivity (Table 1 in Guidelines) and the visual dominance of the site is “co-dominant” to “dominant” (Table 2 in the Guidelines). Thus, in Table 3 of the Guidelines (Thresholds of Significance), the existing facility would be considered to have a “significant” impact. The Proposed Project will have a multi-story hotel facility as well as potentially large ponds and multi-story water tanks that will be visible from the various vantage points. It will also completely change the local character of the rural and housing uses in the immediate project vicinity.

A9-67

Again, this points to the basic incompatibility of the Project with this location.

**CUMULATIVE EFFECTS (EIS SECTION 3.14).**

Finally, I would note that despite estimating a nearly operational emissions of 70,000 Mt of CO<sub>2</sub>e per year with a “social cost” from GHG emissions of \$129 million dollars, the Project does not propose even the most basic of substantive on-site offsets like active solar power generation on building roofs or parking lots and garages or off-site offsets.

A9-68



## Exhibit F



**Sonoma  
Water**

## MEMORANDUM

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**DATE:** August 23, 2024

**TO:** Verne Ball, Deputy County Counsel

**FROM:** **Jeff Church, Senior Environmental Specialist at Sonoma Water**

**PROJECT:** Koi Nation Shiloh Casino Draft Environmental Impact Statement

**SUBJECT:** Response to DEIS characterization of the memorandum “Documentation of observations of steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek, Windsor California (October 27, 2023)”.

The Koi Nation Shiloh Casino DEIS misinterprets and/or mischaracterizes observations of steelhead salmon in Pruitt Creek that were documented in a previous memorandum titled “Documentation of observations of steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek, Windsor California”, dated October 27, 2023.

On page 3-55 of the DEIS, it is stated that steelhead occur regularly within Pruitt Creek upstream of the project site in years with adequate rainfall, but not during an extensive drought. However, a specific drought was not identified with this statement, so one cannot know whether or not a study was conducted to support this conclusion. If the reference is to the most recent extended drought (approximately 2020 through 2022), no surveys were identified as being conducted that could make this determination, including studies that focused specifically on upstream migration and spawning. If the reference is to the previous extended drought that occurred from approximately 2012 to 2014, young of the year steelhead were observed to be present in those years. Genetic analysis has not been conducted to determine whether the source of these young of the year were from anadromous steelhead or resident rainbow, however prior observations of both forms of steelhead coexisting in the creek support the potential that the young of the year in any given year could be a result of anadromy. A more comprehensive study of flows, including the timing and duration of flows during the spawning season would have needed to have been conducted (and preferably been conducted in coordination with a spawning study) in order to make the definitive conclusory statement that was made in the DEIS regarding absence of steelhead during drought periods.

Similarly, the statement that no evidence of breeding has been observed (p 3-55) implies that studies were conducted to specifically monitor for evidence of breeding with negative results. Specific studies focusing on spawning and breeding were not conducted, and therefore a definitive statement such as was made is not appropriate. The fact that anadromy has been observed in Pruitt Creek, and young of the year were observed in the stream, including during the extended drought of 2012 through 2014, belies this assertion and provides direct evidence

of breeding occurring on a regular basis in the stream. To reach a conclusion that is contrary to the available evidence, focused studies, including spawning and redd surveys, as well as genetic analysis of the young of the year would need to be conducted before any sort of conclusion on the absence of anadromous breeding in the stream could be made.

In light of the fact that this section of Pruitt Creek is within the critical habitat for steelhead, and supports a historic presence of resident rainbow trout and anadromous steelhead, this stream should be considered highly valuable for preservation of available spawning and rearing habitat, as well as a source and contributor of genetic diversity that is necessary to support the resiliency and continued survival of the species.

Given the concern outlined in the County of Sonoma's assessment of the potential for groundwater and surface water impacts as a result of the project, and the importance of available flow volume and depth during critical migratory periods from winter through spring, ongoing indiscriminate year round pumping of groundwater has a great potential for decreasing base flow volumes and depths that are necessary between storm events to provide migratory access through the project site to the upstream perennially flowing reach of Pruitt Creek. Insufficient storm water management could also alter flow patterns resulting in increased peak flows, decreased base flows, and inputs of contaminants into Pruitt Creek.

Should groundwater pumping result in a reduction in these base flows, as is implied in the County's assessment of the proposed project groundwater study, then it is very likely groundwater pumping would result in a reduction in the timing and duration of sufficient migratory flows. Based on professional judgment and experience working with the National Marine Fisheries Service, such a reduction in flows could result in adverse modification of critical habitat (adjacent to the project and with potential effects to migration through the project site to upstream spawning and rearing habitat) and a potential take of listed species. Should insufficient storm water management result in altered flow patterns and reduced water quality, then it is also very likely that changes to the duration, timing, and quality of suitable migratory flows could result in adverse modification of critical habitat in Pruitt Creek. The Bureau of Indian Affairs should be required to undergo formal Section 7 Consultation with the National Marine Fisheries Service to produce a biological opinion to address these impacts associated with the ongoing operation of this proposed project.

I reach these conclusions as a biologist that has worked for twenty-three years studying the Russian River watershed for both the North Coast Regional Water Quality Control Board and Sonoma Water, including Pruitt Creek.

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cont

A9-70

## Exhibit G



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August 22,2024

Project No.:782-60-23-02  
SENT VIA: EMAIL

Verne Ball  
Office of County Counsel  
575 Administration Drive  
Santa Rosa, CA 95403  
verne.ball@sonoma-county.org

**SUBJECT: Koi Nation Shiloh Resort and Casino Project Draft Environmental Impact Statement, Comments on Water Resources Assessment**

Dear Verne,

The County of Sonoma has retained West-Yost to review the Draft Environmental Impact Statement (DEIS) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West-Yost staff reviewed the DEIS assessment of the proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Draft Environmental Impact Statement for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023), relevant sections;
- Appendix D-2 Supplemental Wastewater Memorandum;
- Appendix D-3 Grading and Hydrology Study; and
- Appendix D-4 Supplemental Groundwater Resources Impact Assessment.

This review is in addition to prior input on the Environmental Assessment (EA) for the Proposed Project dated September 2023. The County of Sonoma submitted a comment letter on November 9, 2023. In summary, that letter presented concerns in the following areas:

- The EA provides insufficient analysis and lacks basic data needed to reach conclusions about likely impacts of the Proposed Project;
- Assumptions used in the analysis may be inappropriate and yield inaccurate results;
- The EA fails to consider the project's impacts in the context of reasonably foreseeable future development; and
- Mitigation Measures outlined in the EA are inadequate.

Some supplemental water resource analyses have been provided in the DEIS in response to County input and public comment. The additional analyses in the DEIS provided initial responses to some

A9-71

issues raised in the County EA comment letter. However, the additional analyses include information that indicates impacts have not been analyzed and assumptions that are unwarranted. New project elements have not been evaluated. The analysis identifies additional cumulative impacts that have not been analyzed and mitigation measures that are undeveloped.

A9-71  
cont.

Below are detailed comments on each of the three supplemental analyses: Appendix D-2, D-3, and D-4.

## **SUPPLEMENTAL WASTEWATER MEMORANDUM - APPENDIX D-2**

Supplemental Wastewater Memorandum- Appendix D-2 (Supplemental Assessment) provides additional information that builds on the February 2023 Water and Wastewater Feasibility Study. The Supplemental Assessment evaluates four additional wastewater discharge options (Options 5-8) in which no wastewater is discharged to Pruitt Creek. It is understood that these new options are evaluated because there is substantial uncertainty to estimates of streamflow for Pruitt Creek at the Project Site, and it is unclear if an NPDES permit to discharge wastewater to this small intermittent stream could be attained. Instead of collecting streamflow data for the site and evaluating the feasibility discharge to Pruitt Creek using actual streamflow and water quality data, the Supplemental Assessment evaluates that scenario where all wastewater is discharged through irrigation (onsite and offsite) allegedly at agronomic rates. The agronomic rate is the amount of recycled water needed by the crop being grown that minimizes the movement of nutrients below the plants' root zone and prevents runoff.

### ***Impacts of wastewater storage and disposal***

The Supplemental Assessment estimates required wastewater storage and areas of vineyard or turf necessary to discharge wastewater under Project Alternative A (Preferred Project). The methods were reviewed and were only valid if the assumptions used remain applicable, but the data supporting the assumptions is not clear. The findings of the Supplemental Assessment clearly demonstrate the need for additional project planning and environmental assessment of impacts of wastewater discharge and related infrastructure development.

A9-72

1. The Supplemental Assessment indicates that wastewater storage volumes of 86.7 to 103.7 acre-feet will be required (Appendix D-2, Table 2). An acre foot is an acre of land covered in 1 foot of water, or 325,851 gallons. Thus, the project requires approximately 33.79 million gallons of water storage. All options in the Supplemental Assessment include installation of holding tanks with heights of 65 feet (6 stories) and raising the levees on the proposed seasonal wastewater pond to up to 15 feet (Appendix D-2, page 3). Geotechnical feasibility and visual impacts of these facilities have not been disclosed and evaluated. The substantially higher pond levees could be subject to seismic activity and vulnerable to failure.

The analysis is inadequate without a dam failure analysis and inundation map to address life safety impacts. Visual impacts of the proposed two large storage tanks should be evaluated and disclosed.

2. The Supplemental Assessment, (Appendix D-2, Table 3), indicates that under Options 5 and 6, 406 acres of offsite vineyard will be required to dispose of wastewater. Under Options 7 and 8, over 44 acres of offsite turf will be required to dispose of wastewater. No potential offsite vineyard or turf sites are identified. There are substantial areas of vineyard adjacent to the

A9-73



Project Site to the east and north; however, no supporting information has been provided indicating existing landowners are interested in receiving recycled wastewater for irrigation. No discussion of pipeline routes, offsite holding tanks/reservoirs, and potential impacts of such facilities is provided. Recycled water is highly regulated in California and there is no substantive discussion of the ability of the project to comply with the applicable regulations. To receive permits to discharge on non-tribal land, the tribe will have to submit to California jurisdiction and there is no discussion of the tribe's willingness to do so. If it is not willing to do so, then offsite recycled water may not be feasible.

A9-73  
cont.

3. Before making assumptions, the Bureau of Indian Affairs should evaluate whether offsite vineyard or turf sites for recycled water irrigation is actually feasible based on concrete information. The location and description of infrastructure, including pipeline routes, offsite holding tanks/reservoirs, and potential impacts of such facilities should be described and evaluated for potential secondary impacts.

A9-74

### GRADING AND HYDROLOGY STUDY - APPENDIX D-3

The Grading and Hydrology Study-Appendix D-3 provides estimates of peak flow and stormwater volumes for both existing and post-development conditions. The analysis estimates impact of the proposed project and provides preliminary sizing for detentions basins to mitigate impacts from increased peak flow and stormwater runoff.

#### **Peak Flow and Stormwater Runoff:**

4. The Hydrology analysis appears to apply the Sonoma County Water Agency Flood Management Design Manual (FMDM) to evaluate pre- and post-development flow rates based on a comparison, which is not the intent of the FMDM methodologies. The FMDM is intended for sizing storm water conveyance features and for stream modeling. Consequently, the pre- and post- project peak flow and stormwater runoff volumes are not properly estimated, nor is adequate mitigation identified. The hydrologic analysis should be revised using Sonoma County's standards for Low Impact Development (LID) to accurately determine the runoff volume capture mitigation obligation. Adequate stormwater features to achieve 100 percent volume capture should be identified.

A9-75

#### **Flooding and Climate Change:**

5. As presented in Appendix D 3, stormwater infrastructure is allegedly designed to attenuate peak flows under a 100-year storm event. To fully account for climate change and increase storm intensity (atmospheric rivers) U.S. Environmental Protection Agency (EPA) recommends using larger storm events, greater than 100-year recurrence, to evaluate stormwater impacts and flood hazards from future projects. EPA cited a USGS study *entitled Climate change, atmospheric rivers, and floods in California - a multimodel analysis of storm frequency and magnitude changes* (Journal of the American Water Resources Association, M.D. Dettinge) in their comment letter (November 18, 2020) on the FEIS for the Tejon Indian Tribe Trust Acquisition. EPA advises against development in the 100-year floodplain and recommends not using the 100-year storm event peak flows when planning for infrastructure in the floodplain since this

A9-76

would not account for intense atmospheric rivers-induced precipitation extremes that are predicted to occur in California in the coming decades.

A critical gap is an analysis of potential flooding impacts on-site and off-site assuming a 500-year storm event peak flow to account for documented changes in local storm behavior.

A9-76  
cont.

### **Groundwater Recharge:**

6. The evaluation of impacts to groundwater recharge assumes that stormwater infrastructure will maintain existing rates of groundwater recharge. As discussed in Appendix D-3, stormwater infrastructure is alleged to be designed to attenuate peak flows under a 100-year storm event so that peak flow is no greater than existing conditions. Proposed? Stormwater infrastructure is not designed to maintain the existing volumes of runoff or rates of groundwater recharge. It is unlikely that limited areas of bioswales and detention basins proposed as part of the stormwater design would result in comparable rates of groundwater recharge for the project that involves the creation of over 1.5 million square feet of impermeable surface. It is reasonable to expect that elevated rates of recharge will occur within detention basins, but there is no analysis to support or defend the assumption that associated increases in recharge within these limited areas mitigates for loss of recharge potential from the bulk of the Project Site. Furthermore, it is likely that detention basin bottoms will become clogged with fine sediment over time and provide little or no recharge potential.

A9-77

A reasonable analysis would include a realistic discussion of discharge, and a mitigation measure specifying regular maintenance of detention basins, at a five year or more frequent interval, including the removal of fine sediment such that rates of groundwater recharge are maximized. This analysis is not included in the DEIS.

7. The Appendix D-3 also states that due to the removal of vineyard and resulting reduction in evapotranspiration that there will be an increase in groundwater recharge. This assumption is not supported by the Project Description as the majority of converted vineyard will become impermeable pavement and buildings with little or no recharge potential. Vineyard converted to landscaped areas will have similar or greater irrigation and evapotranspiration rates to vineyard. Thus, project development that proposes the large-scale conversion of vineyard to hardscape with limited landscaped areas and stormwater infrastructure features is likely to reduce rates of groundwater recharge, which would foreseeably impact the local water balance and groundwater resources.

A9-78

## **SUPPLEMENTAL GROUNDWATER RESOURCES IMPACT ASSESSMENT - APPENDIX D-4**

The Groundwater Resources Impact Assessment (GRIA) presents an analysis of potential impacts of Project Alternative A (Proposed Project) on groundwater resources including reduced groundwater recharge, water level drawdown in nearby wells, and consistency with groundwater sustainability plans (GSP). Section 3.3.3.1 of the DEIS states that groundwater impacts would be significant if the alternative would impede groundwater recharge or if drawdown caused by pumping the proposed wells at the Project Site would adversely affect local water supply. Additionally, groundwater impacts would be significant if the Project would interfere with the implementation of local groundwater management plans

A9-79

by causing or contributing to: chronic lowering of groundwater levels; depletion of groundwater storage; water quality degradation due to induced contaminant migration or interference with cleanup efforts or water quality management plans; depletion of interconnected surface waters, including potential flow in Pruitt Creek or impacts to groundwater-dependent ecosystems (GDEs); and/or land subsidence.

### **Groundwater Model Methods**

8. The groundwater model presented in Appendix D-4 is based on the Santa Rosa Plain Hydrologic Model (SRPHM) 2014 version developed by the USGS (Woolfenden and Nishikawa 2014). This model has been updated (SRPHM 1.0+). Some of the key updates the GSA made to the original USGS SRPHM model for the GSP were:
  - A new approach to rural residential water demands that used the SRPGSA rate study to identify parcels that use wells for domestic use.
  - New agricultural pumping assumptions for crop coefficients, which is a significant change from the 2014 model.
  - Changes to climate inputs for precipitation and evapotranspiration
  - Inclusion of septic system return flows

It is unclear how use of the updated SRPHM 1.0+ model would affect their work and results and conclusions of the GRIA, but the updated model should be reviewed and the Final EIS should disclose any potential changes to the conclusions presented in the DEIR. The updated model can be found at: [https://santarosaplaingroundwater.org/wp-content/uploads/3-C-\\_SRPHM-Updates-Appendix\\_-3-C\\_ada-1.pdf](https://santarosaplaingroundwater.org/wp-content/uploads/3-C-_SRPHM-Updates-Appendix_-3-C_ada-1.pdf)

9. Section 4.3.3 of the GRIA conceptualizes three major hydro-stratigraphic units in the vicinity of the Project Site: 1) Shallow Zone (first water to approximately 120 feet below the ground surface [bgs]); 2) Intermediate Zone (Approximately 113 to 350 bgs); and 3) Deep Zone (greater than 350 feet bgs). The analysis presumes low permeability aquitards occur between each of the aquifer zones and inhibit vertical groundwater flow between zones. The Assessment states that there is limited data on which to base the presence of continuous aquitards. The assumption that continuous aquitards exist that separate the shallow zones from intermediate and deeper zones is not substantiated, and this assumption may impact modeled drawdown and related findings. The assumption that continuous aquitards exist results in lower estimates of project induced drawdown within the shallow aquifer than are likely present. Conservative assumptions should be utilized unless clear data supports fewer conservative assumptions.

Well completion reports from nearby wells were independently reviewed and compared with the DEIS analysis. Well completion reports record intervals of clays, silts, sands, and gravels extending to depths greater than 400 feet. This data does not appear to support the existence of laterally continuous clay layers separating a shallow aquifer zone from an intermediate zone, or deep aquifer zone. A more representative conceptual model is likely a heterogeneous alluvial aquifer comprised of laterally discontinuous layers or lenses of sedimentary deposits of varying composition and hydraulic properties.

No well completion report data is present in the analysis. Given the importance of the issue, absent very clear evidence of aquitards the conceptual model should be updated, and aquitard layers removed from the groundwater model. Reasonable assumptions for lithology

A9-79  
cont.

A9-80

and groundwater flow should be maintained and the model should be re-run and updated results presented for predicted drawdown and streamflow depletion.

A9-80  
cont.

10. The GRIA implies that assumed climate for the 50-year simulation is based on those used by the USGS. However, the USGS used 30-year climate scenarios, and this is not disclosed in the analysis. The future climate scenario should be thoroughly described (e.g., source, precipitation, and evapotranspiration characteristics, etc.) and how the scenario was incorporated into the model should be described. Additionally, the forecast scenario used for the GRIA does not include future potential increases in pumping from nearby groundwater users other than the Koi Nation of Northern California (Tribe) and the Town of Windsor. The 50-year projections simulated in the GSP, which incorporate assumptions for changes in future municipal, agricultural, and rural residential groundwater extraction/land use should be evaluated and considered to determine whether these assumptions would alter the cumulative impacts findings of the GRIA.

A9-81

The GRIA should, but does not, evaluate the impact on groundwater recharge by the Proposed Project, evaluating simulated recharge scenarios that model existing conditions and estimated conditions with the Proposed Project.

### ***Interconnected Surface Waters***

11. The GRIA finds that there is little potential to impact interconnected surface waters. This finding is supported in part by the limited extent of interconnected surface water identified in the Assessment *“the documented depth to the regional water table indicates it is unlikely that aquatic resources, identified in the vicinity of the Site are groundwater connected, except for a possible perennial reach of Pruitt Creek located northeast of the Site at the foot of the Mayacamas Mountains.”* Water level data used to make the assertion that the regional water table is too deep to be interconnected was from shallow monitoring wells located approximately 1 mile west and 0.8 miles south of the Project Site with reported water levels of approximately 10 to 25 feet below ground surface. These data, from relatively distant locations, are insufficient to make the finding that Pruitt Creek is disconnected. Even if groundwater levels were measured at 10 to 25 feet bgs nearer to the site, these are still relatively shallow groundwater levels and support the finding that the water table is likely hydraulically connected to local streams. This is especially so given that Pruitt Creek is incised by 10 or more feet. It is not clear why the remote wells were used. The GRIA maps four existing onsite water wells. Seasonal water level data from all onsite wells should be presented.

A9-82

12. Pruitt Creek at the project site is identified as intermittent and has been observed by Sonoma Water staff to be perennial upstream of the project site. As stated in DWR’s 2024 document titled *Depletions of Interconnected Surface Water, An Introduction*, perennial and intermittent surface water bodies are most likely to be interconnected surface waters. The adopted Santa Rosa Plain GSP identifies stream reaches of Pruitt Creek upstream and downstream of the project site as interconnected. The GRIA hypothesizes that streamflow in perennial reaches of Pruitt Creek is likely largely controlled by inflow from upstream sources and impedance of the streambed, and to a lesser degree the groundwater gradient in the alluvial aquifer near the Project Site.

A9-83

This finding is not supported by any analysis or data, and given the importance of the finding, the analysis should be more conservative absent data. Modeled drawdown, reported in Table

6 of the GRIA, estimates project specific drawdown of about 1.6 feet and cumulative drawdown with Town of Windsor pumping of close to 6 feet within the shallow aquifer zone at points along the mapped extent of riparian vegetation along Pruitt Creek, the groundwater dependent ecosystem of concern. In section 6.2.4, the GRIA dismisses the potential for impacts to aquatic resources on the basis that a drawdown of approximately 1 foot caused by the project is negligible; however, there is no analysis to support this finding. If existing groundwater levels are at or near the same level of the creek bed, then a reduction of 1.5 to 6 feet could result in substantial increases in rates of streamflow depletion and significant impacts on aquatic habitat.

The GRIA cites guidelines developed by New South Wales in Australia in 2012 to assess risk to groundwater dependent ecosystems that characterize drawdowns that are less than seasonal stream fluctuations as posing a low risk of adverse impacts. Use of this significant criteria is inappropriate for evaluating groundwater dependent ecosystem impacts in Sonoma County, California and criteria established in the Santa Rosa Plain GSP should be used.

Sustainable management criteria of the Santa Rosa Plain GSP demonstrate that changes in the water level within the shallow aquifer on the order of only a fraction of a foot can have large impacts on streamflow and habitat of interconnected surface waters. For context, the average difference in water table elevation between the Minimum Thresholds (i.e. undesirable water levels) and Measurable Objectives (i.e. objective water levels) for representative monitoring points of the Santa Rosa Plain basin for interconnected surface waters is less than 2 feet. For certain monitoring points the difference is less than 0.5 feet. To appropriately evaluate impacts on interconnected surface waters use of a well calibrated integrated hydrologic model capable of representing groundwater surface water interaction processes and estimating streamflow under existing and proposed conditions is needed.

The discussion of potential impacts to interconnected surface waters is entirely qualitative and not supported by any modeling or other quantitative analysis. It is unclear why the GRIA did not include output of the numeric hydrologic model to support findings related to impacts to interconnected surface waters. This is an inexplicable omission. The assessment developed and used a modified version of the USGS model of the Santa Rosa Plain to model drawdown and evaluate impacts of drawdown on nearby wells. The USGS model used by the Assessment was the same model used to prepare the report titled *Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052* by Wolfenden, Linda R., and Tracy Nishikawa, 2014. A primary objective of the USGS study was to evaluate reductions in streamflow due to groundwater pumping in the Santa Rosa Plain. In fact, the model output presented in the USGS report specifically estimates streamflow under pumping and no pumping conditions of Pruitt Creek.

The GRIA lacks sufficient information to determine if Pruitt Creek flow is connected to surface water and states on page 32 that: *“Additional monitoring would be required to confirm whether surface water in Pruitt Creek at this location is groundwater connected, but assuming that it is, induced drawdown at the water table in the area could potentially increase vertical groundwater gradients and infiltration rates from the perennial reaches of the creek.”* The DEIS acknowledges that there is not enough data to determine the nature of the interconnection of Pruitt Creek surface water with groundwater and indicates additional monitoring is needed. The analysis seems to assume that the creek is not interconnected with

A9-83  
cont.



groundwater but provides options for the future should monitoring data indicate a connection. This data is needed to determine the actual impact of the Proposed Project pumping.

Where there is uncertainty in the data assumptions that are most protective of sensitive resources should be employed. Appropriately conservative assumptions should be made in the model given the nature of the risk to hydrologic and biological resources, including federally protected endangered species.

The analysis lacks critical information, including modeled streamflow during the dry season (July, August, and September) at the upstream and downstream GDE locations under no pumping, existing, and proposed conditions. Alterations in flow relative to no pumping conditions should be used to assess if cumulative or project specific impacts on interconnected surface water are expected. The currently modeled drawdown extends below perennial portions of Pruitt, Pool, and Mark West Creek, and thus it is absolutely critical that reductions in flow be estimated for all potentially impacted salmonid bearing streams. Impacts to both rearing and migration have been ignored.

A9-83  
cont.

### ***Cumulative Impacts and Mitigation Measures***

13. The growth projections presented in the Groundwater Sustainability Plan (GSP) were based on general plan designations and the land use and water demand for the Project Site is assumed to remain agricultural. The GSP 40-year demand projections do not include the water-intensive, urban land uses proposed by the Project because the project would never be permitted in the current location (in the Community Separator, on agriculturally zoned land outside the Windsor Urban Growth Boundary). For these reasons, the water demand of the Project was not factored into the GSP and the sustainability strategies do not include this additional water demand. Extraction of an additional 156 AFY of water from the Santa Rosa Plain will substantially increase water demand in the subbasin placing additional pressures on sustainable management.

A9-84

14. While the DEIS considers cumulative groundwater impacts associated with future pumping of the proposed Town of Windsor municipal well, it does not take into account other reasonably foreseeable future projects that could reduce overall available water supply resources in the Santa Rosa Plain. Specifically, PG&E's surrender and decommissioning of the Potter Valley Project will result in reduced water transfers from the Eel River basin into the Russian River watershed, reducing water availability and likely increasing groundwater pumping. Based on the fact that PG&E is decommissioning the project (Attachments A and B), including removing the dams, reduced water availability in the Russian River and potential cumulative impacts to groundwater levels from increased pumping, including from the Proposed Project, cannot be ignored. For example, on August 20, 2024 the Sonoma County Water Agency petitioned the State Water Resources Control Board for a Temporary Urgency Change (Attachment C) to water rights permits due to reductions in water storage in Lake Mendocino and reduced flows to the Russian River.

A9-85

15. The analysis does not take into account these future conditions in estimating groundwater drawdown. The assumption that the Town of Windsor would only operate municipal wells during dry years is not conservative or appropriate.

A9-86



16. The mitigation measure proposed to address cumulative groundwater resources is not fully developed and needs additional actions to mitigate adverse impacts. Monitoring, reporting, and convening meetings alone will not address the impact. The mitigation measure should include concrete actions to be taken if groundwater monitoring shows adverse impacts to existing domestic wells and/or groundwater dependent ecosystems.

Visitor serving uses are notoriously water intensive, and a discussion of appropriate mitigation measures is wholly missing. The Bureau of Indian Affairs and Tribe could commit to curtailing water use during dry periods when stress on groundwater resources may results in adverse impacts. Obviously, this curtailment can impact casino operations, and the mitigation measure should make this clear. Even quite modest water conservation measures are missing. Water conservation measures that have been effective for hotel and restaurant uses include drinking water provided on request only; reduced towel and linen washing services; non-operation of ornamental water features; and restrictions on filling pools.

A9-87

17. Additionally, a mitigation measure indicates that groundwater monitoring data would be submitted to the Bureau of Indian Affairs for review. This is conclusory and raises issues of expertise and licensing, and what the Bureau of Indian Affairs intends to do with the data, if anything. As is typical under NEPA with other specialized data (hydrogeologic data in this case) the mitigation should include a commitment to have the data reviewed by an objective and qualified professional, pursuant to objective standards dictated in the mitigation measure.

Given the importance of the data, the presence of GDEs, and the need for formal consultation under the Endangered Species Act, the mitigation measure should include the submission of the data to the National Marine Fisheries Service (NMFS) as part of formal consultation mitigation measure, and additional review by the USGS.

A9-88

18. The DEIS provides supplemental analysis in Appendix D-2, D-3, and D-4 solely for Alternative A Proposed Project, but no analysis at all is included to evaluate impacts from other Alternatives. A full and high-quality analysis of a reasonable range alternatives is missing. Other locations should be considered and fully analyzed. Few impacts to water resources would be likely if the Project were located where existing municipal water and wastewater could be provided with existing infrastructure. It cannot be said that a major issue with the proposal is not the location itself.

A9-89

## SUMMARY

The DEIS does not present adequate evidence to support the conclusion that there will not be significant impacts to groundwater levels, neighboring domestic and municipal wells, or groundwater dependent ecosystems. Potential project and secondary impacts have not been fully analyzed and the DEIS lacks information essential for a reasoned choice of alternative development proposals. Additional data collection and analysis should be performed and included in the Final EIS.

A9-90

Sincerely,  
WEST YOST



Sandi Potter; PG, CEG,  
Senior Technical Specialist I  
PG #5610

Attachment(s):

Attachment A: FERC Letter Regarding Potter Valley Project - Revised Schedule for Filing Surrender Application

Attachment B: PG&E Potter Valley Project FERC Decommissioning Schedule

Attachment C: Sonoma County Water Agency Temporary Urgency Change Petition Package

## Attachment A

### FERC Letter Regarding Potter Valley Project Revised Schedule for Filing Surrender Application



June 6, 2024

**Via Electronic Submittal (E-File)**

Debbie-Anne Reese, Acting Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E. Room 1A  
Washington, DC 20426

**Re: POTTER VALLEY HYDROELECTRIC PROJECT, FERC NO. 77  
SURRENDER APPLICATION AND DECOMMISSIONING PLAN  
Status Update and Revised Process Plan and Schedule**

Dear Secretary Reese:

This letter presents Pacific Gas & Electric Company's (PG&E) update on the status of efforts to submit a Final Surrender Application and Decommissioning Plan for PG&E's Potter Valley Hydroelectric Project (Potter Valley), Federal Energy Regulatory Commission (FERC) No.77, and a revised process plan and schedule.

By letter dated May 11, 2022, FERC staff informed PG&E that because no third party had filed an adequate relicensing application for Potter Valley by the April 22, 2022, deadline for such applications, PG&E must file a plan and schedule for filing a license surrender application with FERC.<sup>1</sup> As directed, PG&E, on July 8, 2022, filed a plan and schedule for PG&E's preparation and filing of a surrender application with FERC.<sup>2</sup> PG&E's schedule outlined a 30-month period for it to secure consultant support, conduct outreach to agencies and other interested parties, prepare initial and final draft surrender applications (including a decommissioning plan for Potter Valley), obtain comments from agencies and other interested parties on these drafts, and prepare and file a final license surrender application with FERC.

By letter dated July 29, 2022, FERC accepted PG&E's proposed process plan and schedule.<sup>3</sup> Noting that PG&E's "proposed schedule allows for several iterations of consultation with the resource agencies,

<sup>1</sup> Letter from Shana Wiseman, FERC, to Jan Nimick, PG&E, at 2, Project No. 77-000, Accession No. [20220511-3004](#) (issued May 11, 2022).

<sup>2</sup> Letter from Janet Walther, PG&E, to Kimberly D. Bose, FERC, Project No. 77-164, Accession No. [20220708-5267](#) (filed July 8, 2022).

<sup>3</sup> Letter from Shana Wiseman, FERC, to Jan Nimick, PG&E, *et al.*, at 2, Project No. 77-000, Accession No. [20220729-5323](#) (issued July 29, 2022) ("We find this schedule acceptable.").

Tribes, and various stakeholders,” FERC requested that “[i]f adjustments to this schedule are necessary, the licensee should notify Commission staff as soon as possible.”<sup>4</sup>

PG&E is firmly committed to submitting a license surrender application with FERC at the earliest practicable date. For the last couple of years, since FERC accepted the license surrender process plan and schedule, PG&E has worked with agencies, Tribes, and other interested parties to develop and implement an integrated and coordinated solution to meet divergent interests present at Potter Valley. As part of this outreach, PG&E solicited proposals for interest in any of Potter Valley’s facilities. In late 2023, PG&E received a proposal from a coalition referred to as the “Proponents” (consisting of Sonoma County Water Agency, Mendocino County Inland Water and Power Commission, Humboldt County, Round Valley Indian Tribes, California Trout, Trout Unlimited, and California Department of Fish and Wildlife) for the construction and operation of a New Eel-Russian Facility (NERF) using some of Potter Valley’s facilities, which would integrate into PG&E’s decommissioning plan to preserve some of the long-standing diversions from the Eel River to the Russian River, while concurrently improving habitat and flow conditions for migrating salmonids in the Eel River.

PG&E’s primary goal is the decommissioning of Potter Valley and remains focused on the timely removal of both Scott Dam and Cape Horn Dam. The Proponents are committed to the coequal goals of (1) improving fish migration and habitat on the Eel River with the objective of achieving naturally reproducing, self-sustaining, and harvestable native anadromous fish populations and (2) maintaining material and continued water diversion from the Eel River through the existing tunnel to the Russian River to support water supply reliability, fisheries, and water quality in the Russian River basin. To this end, PG&E, the Proponents, and others have formed a steering committee to bring these interests into one agreement that aligns with PG&E’s surrender application and accompanying Potter Valley decommissioning plan.

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cont.

PG&E anticipates an additional 6 months (beyond the original 30-month period in the existing process plan and schedule) is needed to develop the final Surrender Application and Decommissioning Plan. Due to the progressive work with the steering committee, we do not consider this postponement in filing the Surrender Application and Decommissioning Plan to delay the eventual removal of the Potter Valley project. Both PG&E and the Proponents agree that the construction of the NERF will not interfere with or delay such deconstruction in any way. The commitment amongst the steering committee to develop common interest agreements, will create alignment amongst regulatory and interested parties regarding the proposed action and resource protection measures, allowing for an efficient regulatory process in obtaining affiliated permits and regulatory authorizations required for the decommissioning of Potter Valley.

For these reasons, and in accordance with FERC’s July 29, 2022, PG&E believes that an extension of the process plan and schedule to allow parties to come together on these important matters is necessary. The adjusted process plan and schedule is as follows:

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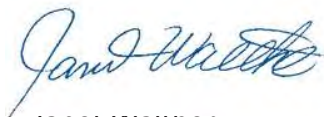
<sup>4</sup> *Id.*

Activity	Revised Schedule
Provide final draft surrender application and decommissioning plan to agencies and stakeholders for a 30-day review and comment period	January 25, 2025
Address comments from agencies and other stakeholders on final draft surrender application and decommissioning plan	March 2025 – May 2025
Prepare and file final surrender application and decommissioning plan	July 29, 2025

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cont.

Should you have any questions concerning this matter, please contact PG&E’s license project manager, Tony Gigliotti, at (925) 357-7120.

Sincerely,



Janet Waitner  
Senior Manager, Hydro Licensing





## Attachment B

# PG&E Potter Valley Project FERC Decommissioning Schedule



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

November 18, 2020

Amy Dutschke  
Pacific Regional Director  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, California 95825

Subject: Final Environmental Impact Statement for the Tejon Indian Tribe Trust Acquisition and Casino Project, Kern County, California (EIS No. 20200207)

Dear Amy Dutschke:

The U.S. Environmental Protection Agency has reviewed the above-referenced document. We are providing comments pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. EPA is a cooperating agency on the project and provided scoping comments (September 3, 2015), comments on the Administrative Draft EIS (September 19, 2019), the Draft EIS (July 22, 2020), and the Administrative Final EIS (October 14, 2020).

In our previous comments, we expressed concerns regarding development in a floodplain at the Mettler site, which would require importing a large amount of fill to raise the site 2.5 feet to be sufficiently out of the floodplain. Trucking this large amount of fill would cause air quality impacts in an extreme ozone nonattainment area. The predicted mitigated oxides of nitrogen (NOx) construction emissions are close to the de minimis threshold (with unmitigated emissions above it) and we commented that should any changes or refinements to the project occur that could increase emissions above the threshold, a conformity determination for the construction phase would be needed before revisions to the project action could be approved. To provide for some flexibility and better avoid the potential to exceed the NOx de minimis threshold during the construction phase, we recommended strengthening the construction best management practices by requiring Tier 4 engines for all construction equipment with a horsepower rating of greater than 50, instead of CARB-rated Tier 3 engines as proposed. No changes to the BMPs are included in the FEIS. BIA responded that a Supplemental EIS would be prepared if actual emissions would be above the predicted emissions in the FEIS. We recommend including this commitment in the Record of Decision.

We continue to advise against development in a floodplain and continue to recommend against the use of the 100-year storm event peak flows when planning for infrastructure in the floodplain since this would not accommodate the intense atmospheric river-induced precipitation extremes that are predicted to occur in California in the coming decades.<sup>1</sup> Our comments and recommendations regarding placement of the wastewater effluent disposal percolation pond and stormwater detention basin in the floodplain

<sup>1</sup> <https://ca.water.usgs.gov/naba/2011/climate-change-atmospheric-rivers-floods-california-detringer.pdf>

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1-01

1-02

were addressed by BIA in noting that the design features included in the DEIS are for purposes of analyzing environmental impacts. According to the FEIS, prior to construction, a more detailed designed study would be conducted in order to produce construction drawings with detailed design elements and specifications. BIA states that the proposed percolation pond elements would be conservatively designed to accommodate both stormwater and treated effluent during a peak rainfall event. The mitigation measures for water resources (p. 4-2) continues to state that the wastewater treatment plant would comply with all permit requirements and regulations; we reiterate that we are not aware of applicable regulations or permits for the proposed onsite wastewater treatment plant located on tribal land. Please clarify the permits and regulations that would apply to this work in the Record of Decision.

1-02  
(Cont.)

A9-91  
cont.

The EPA appreciates the opportunity to review this FEIS. We would appreciate receiving a copy of the Record of Decision when it is available. Please send an electronic copy to Karen Vitulano, the lead reviewer for this project, at [vitulano.karen@epa.gov](mailto:vitulano.karen@epa.gov). If you have any questions, please contact me at (415) 947-4167, or contact Ms. Vitulano at 415-947-4178.

Sincerely,

JEAN  
PRIJATEL

Digital signature of  
JEAN PRIJATEL  
Date: 2010.11.14  
10:20:42 -0800

Jean Prijatel  
Manager, Environmental Review Branch

cc: Octavio Escobedo, Chairperson, Tejon Indian Tribe  
Patia Siong, San Joaquin Air Pollution Control District



## Attachment C

# Sonoma County Water Agency Temporary Urgency Change Petition Package





Please indicate County where your project is located here:

Sonoma / Mendo.

MAIL FORM AND ATTACHMENTS TO:
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

- Point of Diversion, Point of Rediversion, Place of Use, Purpose of Use, Distribution of Storage, Temporary Urgency, Instream Flow Dedication, Waste Water, Split, Terms or Conditions, Other

Application 12919A Permit 12947A License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Present: Proposed:

Place of Use - Identify area using Public Land Survey System descriptions to 1/4-1/4 level; for irrigation, list number of acres irrigated

Present: Proposed:

Purpose of Use

Present: Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

[Empty box for names, addresses, and phone numbers]

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present: Proposed:

A9-91 cont.



**Temporary Urgency**

This temporary urgency change will be effective from  to

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

**Instream Flow Dedication** – Provide source name and identify points using both Public Land Survey System descriptions to 1/4-3/4 level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either:  cubic feet per second or  gallons per day

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location?  Yes  No  
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

**Waste Water**

If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water?  Yes  No

Will any legal user of the treated waste water discharged be affected?  Yes  No

**General Information** – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or redirection and the proposed point of diversion or redirection, as well as any other person(s) known to you who may be affected by the proposed change.

**All Right Holders Must Sign This Form:** I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated  at



Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

- NOTE:** All petitions must be accompanied by:
- (1) the form Environmental Information for Petitions, including required attachments, available at: [http://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/docs/pet\\_info.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf)
  - (2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)
  - (3) Department of Fish and Wildlife fee of \$860 (Pub. Resources Code, § 10005)

A9-91  
cont.

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- Point of Diversion, Point of Rediversion, Place of Use, Purpose of Use, Distribution of Storage, Temporary Urgency, Instream Flow Dedication, Waste Water, Split, Terms or Conditions, Other

Application 15738 Permit 12949 License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Present:
Proposed:

Place of Use - Identify area using Public Land Survey System descriptions to 1/4-1/4 level; for irrigation, list number of acres irrigated

Present:
Proposed:

Purpose of Use

Present:
Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

[Empty box for names, addresses, and phone numbers]

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:
Proposed:

A9-91
cont.

**Temporary Urgency**

This temporary urgency change will be effective from  to

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

**Instream Flow Dedication** – Provide source name and identify points using both Public Land Survey System descriptions to 1/4-3/4 level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either,  cubic feet per second or  gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location?  Yes  No  
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

**Waste Water**

If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water?  Yes  No

Will any legal user of the treated waste water discharged be affected?  Yes  No

**General Information** – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or redirection and the proposed point of diversion or redirection, as well as any other person(s) known to you who may be affected by the proposed change.

**All Right Holders Must Sign This Form:** I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated  at

Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

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  - (2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)
  - (3) Department of Fish and Wildlife fee of \$850 (Pub. Resources Code, § 10005)

**A9-91  
cont.**

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Sonoma / Mendo.

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DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
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PETITION FOR CHANGE

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- Point of Diversion, Point of Rediversion, Place of Use, Purpose of Use, Distribution of Storage, Temporary Urgency, Instream Flow Dedication, Waste Water

- Split, Terms or Conditions, Other

Application 15737 Permit 12950 License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Present:
Proposed:

Place of Use - Identify area using Public Land Survey System descriptions to 1/4-1/4 level; for irrigation, list number of acres irrigated.

Present:
Proposed:

Purpose of Use

Present:
Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

[Empty box for names, addresses, and phone numbers]

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:
Proposed:

A9-91
cont.



**Temporary Urgency**

This temporary urgency change will be effective from  to

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

**Instream Flow Dedication** – Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/2 level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either  cubic feet per second or  gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location?  Yes  No  
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

**Waste Water**

If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water?  Yes  No

Will any legal user of the treated waste water discharged be affected?  Yes  No

**General Information** – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or redirection and the proposed point of diversion or redirection, as well as any other person(s) known to you who may be affected by the proposed change.

**All Right Holders Must Sign This Form:** I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated  at

Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

- NOTE: All petitions must be accompanied by:
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  - (2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)
  - (3) Department of Fish and Wildlife fee of \$850 (Pub. Resources Code, § 10005)

A9-91  
cont.

Please indicate County where your project is located here:

Sonoma / Mendo.

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State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
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PETITION FOR CHANGE

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

- Point of Diversion, Point of Rediversion, Place of Use, Purpose of Use, Distribution of Storage, Temporary Urgency, Instream Flow Dedication, Waste Water, Split, Terms or Conditions, Other

Application 19351 Permit 16596 License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion - Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Present:
Proposed:

A9-91 cont.

Place of Use - Identify area using Public Land Survey System descriptions to 1/4-1/4 level; for irrigation, list number of acres irrigated

Present:
Proposed:

Purpose of Use

Present:
Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

[Empty box for names, addresses, and phone numbers]

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:
Proposed:



**Temporary Urgency**

This temporary urgency change will be effective from  to

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

**Instream Flow Dedication** – Provide source name and identify points using both Public Land Survey System descriptions to 1/4-1/4 level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either  cubic feet per second or  gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location?  Yes  No  
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

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If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water?  Yes  No

Will any legal user of the treated waste water discharged be affected?  Yes  No

**General Information** – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned?  Yes  No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
 ownership  lease  verbal agreement  written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or redirection and the proposed point of diversion or redirection, as well as any other person(s) known to you who may be affected by the proposed change.

**All Right Holders Must Sign This Form:** I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated  at



Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

- NOTE:** All petitions must be accompanied by:
- (1) the form Environmental Information for Petitions, including required attachments, available at: [http://www.waterboards.ca.gov/waterrights/publications\\_forms/forms/docs/pet\\_info.pdf](http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf)
  - (2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/fees/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/)
  - (3) Department of Fish and Wildlife fee of \$650 (Pub. Resources Code, § 10005)

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cont.

## Sonoma County Water Agency

### *Supplement to the August 2024 Temporary Urgency Change Petitions*

The Sonoma County Water Agency (Sonoma Water) seeks temporary urgency changes to its four water-right permits used to provide wholesale water to cities and water districts in Sonoma and Marin Counties. These changes are necessary to ensure that the water supply condition and corresponding minimum instream flow requirements in the Russian River watershed are aligned with actual watershed hydrologic conditions. This is essential to maintain sustainable reservoir and river operations to protect municipal water supply and listed salmon species in the Russian River.

Based on Sonoma Water's water right permits' terms established under State Water Resources Control Board (State Water Board) Decision 1610, the water supply condition for the Russian River is determined using cumulative inflow into Lake Pillsbury as the hydrologic index. Lake Pillsbury is a storage reservoir located in the Eel River watershed for Pacific Gas & Electric Company's (PG&E) Potter Valley Hydroelectric Project (PVP), which transfers water into the East Fork of the Russian River (East Fork). The Federal Energy Regulatory Commission (FERC) license for the PVP expired on April 14, 2022, and the PVP now operates on an annual license. PG&E has elected to surrender the operating license and decommission the PVP and developed a plan and schedule that was approved by FERC on July 29, 2022. In June 2024, PG&E requested an extension to the schedule with revised submittal dates of January 2025 for the draft license surrender application and decommissioning plan and June 2025 for the final submittal. FERC's license-surrender proceedings will likely take years before PVP operations and long-term rules governing any imports to the Russian River watershed are resolved.

Notwithstanding these long-term issues, PG&E submitted a long-term flow regime request to modify flow requirements under the current FERC license on July 31, 2023. To reduce the potential seismic risk at Lake Pillsbury's Scott Dam, PG&E made the decision to keep the spillway gates open atop Scott Dam indefinitely, reducing the water storage capacity in Lake Pillsbury by approximately 20,000 acre-feet. Consequently, PG&E claims that Lake Pillsbury can no longer sustain normal operations under the current license terms. PG&E has proposed a reduction in the minimum release flow requirements for the East Fork flows starting in 2024 until project decommissioning is complete.

In addition to these proposed reductions in transfers from lower minimum release flow requirements, a transformer bank failure at the PVP powerhouse in 2021 has resulted in significant reductions in transfers into the Russian River. This failure caused PVP hydropower generation to cease and, with it, all associated discretionary transfers of Eel River water to the East Fork. In October 2021, PG&E initially announced that the

**A9-91  
cont.**

anticipated repairs would take up to two years at a cost of five to ten million dollars. On March 22, 2023, PG&E announced in a letter to FERC that it does not intend to replace the transformer.

PG&E has indicated that without the ability to generate hydropower, PG&E will not likely make discretionary transfers through the PVP above its FERC license and contract obligations. Discretionary transfers to generate hydropower can occur up until early April if hydrologic conditions on the Eel River and at Lake Pillsbury are met. Without the discretionary transfer of Eel River water to generate hydropower, the total transfer through the PVP into the East Fork will be reduced by up to 456 acre-feet per day<sup>1</sup>.

In the interim while the long-term flow regime request is under FERC review, PG&E has applied annually for a temporary variance of flow requirements due to the seismic risk at Scott Dam. On June 27, 2024, FERC issued an order approving this year's variance request. FERC approved changes to the minimum release flows in the Eel River and the East Fork. Minimum release flow requirements for the Eel River below Scott Dam were reduced to the critical water year type of 20 cfs. The FERC order authorized minimum release flow requirements for the East Fork to be immediately reduced from 75 cfs to 25 cfs and later reduced to 5 cfs if water temperatures of Lake Pillsbury releases exceeded 15 degrees Celsius. PG&E reported that minimum release flows to the East Fork were reduced to 5 cfs on July 3<sup>rd</sup> due to Lake Pillsbury release temperatures exceeding 15 degrees Celsius. This minimum release flow requirement will increase on September 30<sup>th</sup> to 35 cfs and remain there while the FERC order is in effect. After October 1<sup>st</sup>, the termination of the order will be dependent on when Lake Pillsbury storage exceeds 36,000 acre-feet.

As described above, multiple changes to the PVP operations have reduced and could further reduce the transfers of Eel River water into the Russian River. The historical link of the two watersheds on which Decision 1610 is based is no longer applicable. The hydrologic index of Decision 1610 is not a reliable metric for Russian River water supply conditions without the large inter-basin transfer and will not function as intended. While the Lake Pillsbury watershed on the Upper Eel River and the Upper Russian River are adjacent basins, the hydrologic conditions can be quite different. For example, in water

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<sup>1</sup> PVP has design flow capacities of up to 240 cubic feet per second (cfs) through the powerhouse for power generation and up to 135 cfs through the powerhouse bypass to meet FERC license requirements for minimum release flows into the East Fork Russian River and water supply contract requirements with the Potter Valley Irrigation District.



year 2021, Lake Mendocino experienced the second driest year on record for the Ukiah Valley (period of record: 128 years), unequivocally a 'Critical' condition. However, based on the cumulative inflow to Lake Pillsbury, water supply conditions in the Russian River were classified as 'Normal' on January 1, 2021 and 'Dry' on February 1, which remained the designated water supply condition for the rest of the calendar year.

Over a month, the difference between water needed for a 'Normal' water supply condition and a 'Dry' condition to maintain instream flow requirements is almost 4,500 ac-ft under the winter minimum instream flow requirements of Decision 1610. Under spring and summer requirements, it amounts to over 6,500 ac-ft. Year-round, the additional amount of water needed between a 'Dry' water supply condition and a 'Critical' condition to maintain instream flow requirements is nearly 3,000 ac-ft over a month.

In February 2020, Lake Mendocino was above the water conservation pool and at the top of the Forecast Informed Reservoir Operations (FIRO) pool of 80,050 ac-ft. Over the next 20 months, the Russian River watershed experienced a severe drought and Lake Mendocino storage levels declined to 12,864 ac-ft in October 2021, despite Sonoma Water filing temporary urgency change petitions to drastically reduce minimum instream flow requirements and the State Water Board curtailing over 1,800 riparian claims and appropriative water rights. This recent historical example from the 2020-2022 drought highlights the diligence needed under the current conditions to prevent the complete draining of Lake Mendocino.

Under the current Decision 1610 hydrologic index, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at unsustainable levels if the Russian River watershed experiences significantly less rainfall than the Lake Pillsbury watershed. Given the changes to PVP operations, the influence of the Eel River water imports on downstream hydrologic conditions in the Russian River is greatly diminished. Therefore, cumulative inflow into Lake Pillsbury is no longer an appropriate metric to assess the hydrologic conditions in the Russian River watershed. Consequently, Sonoma Water requests that storage thresholds in Lake Mendocino be used as the hydrologic index to determine the water supply condition in the Russian River watershed upon which minimum instream requirements are based. This approach using a similar table of storage thresholds was requested by Sonoma Water in a prior State Water Board filing for Temporary Urgency Change Petitions (TUCP) in October 2023 (approved December 27, 2023). Additionally, TUCPs using the same approach were filed by Sonoma Water in December 2013 (approved December 31, 2013), January 2021 (approved February 4, 2021), November 2021 (approved December 10, 2021), and October 2022 (approved December 14, 2022). Under the current TUCP request, the

**A9-91  
cont.**

storage thresholds are the same as developed for the October 2023 TUCP, which were updated from prior uses of a hydrologic index based on storage thresholds to incorporate new operational conditions in the Russian River watershed and a new methodology (see Section 4.0).

## 1.0 BACKGROUND

Sonoma Water controls and coordinates water supply releases from Lake Mendocino and Lake Sonoma to implement the minimum instream flow requirements in water rights Decision 1610, which the State Water Board adopted on April 17, 1986. Decision 1610 specifies minimum flow requirements for the Upper Russian River, Dry Creek and the Lower Russian River<sup>2</sup>. These minimum flow requirements vary based on water supply conditions, which are also specified in Decision 1610. The Decision 1610 requirements for the Upper Russian River and Lower Russian River are contained in term 20 of Sonoma Water's water-right Permit 12947A (Application 12919A). The Decision 1610 requirements for the Lower Russian River are contained in term 17 of Sonoma Water's water-right Permit 12949 (Application 15736) and term 17 of Sonoma Water's water-right Permit 12950 (Application 15737). The Decision 1610 requirements for Dry Creek and the Lower Russian River are contained in term 13 of Sonoma Water's water-right Permit 16596 (Application 19351).

Sonoma Water's operations are also subject to the Russian River Biological Opinion issued by the National Marine Fisheries Service on September 24, 2008, and the consistency determination issued by the California Department of Fish and Wildlife on November 9, 2009.

### 1.1 MINIMUM FLOW REQUIREMENTS

Decision 1610 requires a minimum flow of 25 cubic feet per second (cfs) in the East Fork from Coyote Valley Dam to the confluence with the West Fork of the Russian River (West Fork) under all water supply conditions. From this point downstream to Dry Creek, the Decision 1610 required minimum flows in the Russian River are 185 cfs from April through

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<sup>2</sup> The Upper Russian River is the stream reach from the confluence of the East Fork of the Russian River and West Fork of the Russian River to the Russian River's confluence of Dry Creek. The Lower Russian River is the stream reach from the confluence of Dry Creek and the Russian River to the Pacific Ocean.

August and 150 cfs from September through March during *Normal* water supply conditions, 75 cfs during *Dry* conditions and 25 cfs during *Critical* conditions. Decision 1610 further specifies two variations of the *Normal* water supply condition, commonly known as *Dry Spring 1* and *Dry Spring 2*. These conditions provide for lower minimum flow requirements in the Upper Russian River during times when the combined storage in Lake Pillsbury (owned and operated by the PG&E) and Lake Mendocino on May 31 is unusually low. *Dry Spring 1* conditions exist if the combined storage in Lake Pillsbury and Lake Mendocino is less than 150,000 acre-feet on May 31. Under *Dry Spring 1* conditions, the required minimum flow in the Upper Russian River between the confluence of the East Fork and West Fork and Healdsburg is 150 cfs from June through March, with a reduction to 75 cfs during October through December if Lake Mendocino storage is less than 30,000 acre-feet during those months. *Dry Spring 2* conditions exist if the combined storage in Lake Pillsbury and Lake Mendocino is less than 130,000 acre-feet on May 31. Under *Dry Spring 2* conditions, the required minimum flows in the Upper Russian River are 75 cfs from June through December and 150 cfs from January through March.

From Dry Creek to the Pacific Ocean, the required minimum flows in the Lower Russian River are 125 cfs during *Normal* water supply conditions, 85 cfs during *Dry* conditions and 35 cfs during *Critical* conditions.

In Dry Creek below Warm Springs Dam, the required minimum flows are 75 cfs from January through April, 80 cfs from May through October and 105 cfs in November and December during *Normal* water supply conditions. During *Dry* and *Critical* conditions, these required minimum flows are 25 cfs from April through October and 75 cfs from November through March.

Figure 1 shows all of the required minimum instream flows specified in Decision 1610 by river reach, the gauging stations used to monitor compliance, and the definitions of the various water supply conditions.

## 1.2 WATER SUPPLY CONDITIONS

There are three main water supply conditions that are defined in Decision 1610, which set the minimum instream flow requirements based on the hydrologic conditions for the Russian River system. These water supply conditions are determined based on criteria for the calculated cumulative inflow into Lake Pillsbury from October 1 to the first day of each month from January to June. Decision 1610 defines cumulative inflow for Lake Pillsbury as the algebraic sum of releases from Lake Pillsbury, change in storage and lake evaporation.

**A9-91  
cont.**



*Dry* water supply conditions exist when cumulative inflow to Lake Pillsbury from October 1 to the date specified below is less than:

- 8,000 acre-feet as of January 1;
- 38,200 acre-feet as of February 1;
- 65,700 acre-feet as of March 1;
- 114,500 acre-feet as of April 1;
- 145,600 acre-feet as of May 1; and
- 160,000 acre-feet as of June 1.

*Critical* water supply conditions exist when cumulative inflow to Lake Pillsbury from October 1 to the date specified below is less than:

- 4,000 acre-feet as of January 1;
- 20,000 acre-feet as of February 1;
- 45,000 acre-feet as of March 1;
- 50,000 acre-feet as of April 1;
- 70,000 acre-feet as of May 1; and
- 75,000 acre-feet as of June 1.

*Normal* water supply conditions exist whenever a *Dry* or *Critical* water supply condition is not present. As indicated above, Decision 1610 further specifies three variations of the *Normal* water supply condition based on the combined storage in Lake Pillsbury and Lake Mendocino on May 31. These three variations of the *Normal* water supply condition determine the required minimum instream flows for the Upper Russian River from the confluence of the East Fork and the West Fork to the Russian River's confluence with Dry Creek. This provision of Decision 1610 does not provide for any changes in the required minimum instream flows in Dry Creek or the Lower Russian River (the Russian River between its confluence with Dry Creek and the Pacific Ocean). A summary of the required minimum flows in the Russian River for *Normal*, *Normal — Dry Spring 1* and *Normal — Dry Spring 2* water supply conditions is provided here:

**A9-91  
cont.**

1. Normal: When the combined water in storage in Lake Pillsbury and Lake Mendocino on May 31 of any year exceeds 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through August 31	185 cfs
From September 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

2. Normal-Dry Spring 1: When the combined water in storage in Lake Pillsbury and Lake Mendocino on May 31 of any year is between 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less, and 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through March 31	150 cfs
From April 1 through May 31	185 cfs
If from October 1 through December 31, storage in Lake Mendocino is less than 30,000 acre-feet	75 cfs

3. Normal-Dry Spring 2: When the combined water in storage in Lake Pillsbury and Lake Mendocino on May 31 of any year is less than 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through December 31	75 cfs
From January 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

## 2.0 WATER SUPPLY CONDITIONS

On May 31, 2024, the cumulative inflow for the current water year (starting October 1, 2023) into Lake Pillsbury was 482,229 acre-feet and combined storage in Lake Pillsbury and Lake Mendocino was 152,413 acre-feet. Consequently, the water supply condition is

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cont.**

categorized as *Normal* for the remainder of 2024 under the current hydrologic index of Decision 1610. Sonoma Water is currently managing the Russian River under a *Normal* water supply condition with modified minimum instream flow requirements as authorized by the State Water Board's temporary urgency change order dated June 6, 2024, to comply with the requirements of the 2008 Biological Opinion. The order authorized a reduction in minimum instream flow requirements for the Upper and Lower Russian River that remains in effect until October 15, 2024. After October 15, 2024, the minimum instream flow requirements, for the remainder of the year, would revert to the Decision 1610 requirements under a *Normal* water supply condition. Minimum flow requirements would increase on the Upper Russian River from 125 cfs to 150 cfs and on the Lower Russian River from 70 cfs to 125 cfs.

## **2.1 POTTER VALLEY HYDROELECTRIC PROJECT**

The PVP, owned and operated by PG&E, is located on the East Fork of the Russian River and the Eel River in Mendocino and Lake Counties. PVP's Lake Pillsbury is impounded by Scott Dam. Eel River natural flows and releases from Scott Dam can be diverted downstream at Cape Horn Dam through PG&E's generation facilities. Those generation facilities then release a portion of that water to the East Fork.

As discussed in the introduction above, the PVP powerhouse is inoperable and will not be repaired. This has severely reduced the transfer of Eel River water through the PVP. In addition, PG&E has revised operations at Lake Pillsbury to mitigate seismic risk, which led to a FERC-approved variance for this year and the filing of a long-term flow regime request that, if approved, would result in further reductions in transfers of Eel River water into the East Fork.

## **2.2 LAKE MENDOCINO**

As of August 14, 2024, the water supply storage level in Lake Mendocino was 79,657 acre-feet. This storage level is approximately 72.4 percent of the water supply storage curve for this time of year. Figure 2 shows observed storage in Lake Mendocino from 2015 through August 14, 2024. Current U.S. Army Corps of Engineers (USACE) flood control operations at Lake Mendocino are conducted under the Forecast Informed Reservoir Operations (FIRO) program, which implemented a major deviation to the reservoir's Water Control Manual allowing discretionary encroachment into the reservoir's flood control pool. From May 11<sup>th</sup> through October 1<sup>st</sup>, the FIRO major deviation storage curve is equivalent to the water supply storage curve of the Water Control Manual at a constant 111,000 acre-feet.

**A9-91  
cont.**

### **2.3 LAKE SONOMA**

As of August 14, 2024, the water supply storage level in Lake Sonoma was 241,889 acre-feet. This storage level is approximately 91.6 percent of the minor deviation storage curve for this time of year. Figure 3 shows observed storage in Lake Sonoma from 2015 through August 14, 2024. Current flood control operations at Lake Sonoma are conducted under the protocols of a minor deviation to the reservoir's Water Control Manual that was approved by the USACE in December 2022. From March 1<sup>st</sup> through September 30<sup>th</sup>, the minor deviation storage curve is at 264,000 acre-feet, or 19,000 acre-feet above the water supply curve of the Water Control Manual.

### **3.0 CRITERIA FOR APPROVING TEMPORARY URGENCY CHANGE TO PERMITS 12947A, 12949, 12950, AND 16596**

As required by Water Code section 1435, subdivision (b), the State Water Board must make the following findings before issuing a temporary change order:

1. The permittee or licensee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest.

### **3.1 URGENCY OF THE PROPOSED CHANGE**

For these petitions, an urgent need exists to implement the proposed changes due to the drastic reduction of potential Eel River water imports through PVP resulting from the inoperability of the powerhouse and revised operations at Lake Pillsbury. The volume of Eel River water that can be transferred to the Russian River is no longer correlated to cumulative inflow into Lake Pillsbury. An evaluation of the hydrologic condition in the Russian River is more appropriately established by conditions in its watershed. Without the proposed changes, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at levels that would risk significant depletions of storage levels. Such depletions in storage could cause serious impacts to human health and welfare and reduce water supplies needed for fishery protection.

**A9-91  
cont.**

**3.2 NO INJURY TO ANY OTHER LAWFUL USER OF WATER**

If these petitions are granted, Sonoma Water will still be required to maintain specified minimum instream flows in the Russian River. Because Sonoma Water will continue to make reservoir releases as necessary to satisfy minimum instream flow requirements and pass through natural and imported flows for downstream senior water rights, all legal users of water will still be able to divert and use the amounts of water that they are legally entitled to. Accordingly, granting these petitions will not result in any injury to any other lawful user of water.

**3.3 NO UNREASONABLE EFFECT UPON FISH, WILDLIFE, OR OTHER INSTREAM BENEFICIAL USES**

If these petitions are approved, monthly storage thresholds in Lake Mendocino would determine the water supply condition that sets the Russian River minimum instream flow requirements. This change could result in lower instream flows in the Russian River. Any effects associated with such flow reductions would not be unreasonable, considering the potential catastrophic impacts to fish, wildlife and other instream beneficial uses that could occur under minimum instream flow requirements that the Russian River watershed and reservoirs cannot sustain.

**3.4 THE PROPOSED CHANGE IS IN THE PUBLIC INTEREST**

Approval of these petitions would provide alternative criteria for determining minimum instream flow requirements for the Russian River that would be based on a more accurate assessment of water supply conditions in the Russian River watershed. This would result in minimum instream flow requirements that more likely can be sustained with releases from Lake Mendocino and Lake Sonoma without severely depleting storage. It is in the public interest to manage these water supplies based on an index that is more reflective of the hydrologic conditions of the Russian River watershed.

**4.0 REQUESTED TEMPORARY URGENCY CHANGE TO PERMITS 12947A, 12949, 12950, AND 16596**

To address the changes in PVP operations and corresponding loss of Eel River water imports through the project, Sonoma Water is filing these petitions requesting that the State Water Board make the following temporary changes to the Decision 1610

**A9-91  
cont.**



requirements<sup>3</sup>.

Starting November 1, 2024, the minimum instream flow requirements for the Russian River will be established using an index based on water storage in Lake Mendocino, rather than the current index based on cumulative inflow into Lake Pillsbury. This temporary change is requested to ensure that the water supply condition for the Russian River is determined by an index that is reflective of actual watershed conditions. Specifically, Sonoma Water proposes that the monthly storage values listed below be used, in lieu of cumulative Lake Pillsbury inflow, to determine the water supply conditions that establish which minimum instream flow requirements in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596 will apply to the Russian River:

- a. *Dry* water supply conditions will exist when storage in Lake Mendocino is less than:

- 58,000 acre-feet as of October 1
- 51,000 acre-feet as of November 1
- 49,000 acre-feet as of December 1
- 68,400 acre-feet as of January 1
- 68,400 acre-feet as of February 1
- 68,400 acre-feet as of March 1
- 77,000 acre-feet as of March 16
- 86,000 acre-feet as of April 1
- 91,000 acre-feet as of April 16
- 93,000 acre-feet as of May 1
- 94,000 acre-feet as of May 16
- 94,000 acre-feet as of June 1

- b. *Critical* water supply conditions exist when storage in Lake Mendocino is less than:

- 46,000 acre-feet as of October 1
- 41,000 acre-feet as of November 1

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<sup>3</sup>The analysis to develop a hydrologic index based on Lake Mendocino storage thresholds resulted in an evaluation period from October 1<sup>st</sup> through June 1<sup>st</sup>. While the requested period of these temporary urgency change petitions does not span the full period of these evaluation dates, the developed hydrologic index in full is requested as such to present the proposed hydrologic index in its totality.

**A9-91  
cont.**



40,000 acre-feet as of December 1  
42,000 acre-feet as of January 1  
49,000 acre-feet as of February 1  
57,000 acre-feet as of March 1  
67,000 acre-feet as of March 16  
73,000 acre-feet as of April 1  
74,000 acre-feet as of April 16  
75,000 acre-feet as of May 1  
76,000 acre-feet as of May 16  
76,000 acre-feet as of June 1

- c. *Normal* water supply conditions exist in the absence of defined *Dry* or *Critical* water supply conditions.

Because the proposed criteria for determining the applicable minimum instream flow requirements will be tied to Lake Mendocino storage, it will more accurately reflect the hydrologic conditions in the Russian River, adjusting monthly from October through February and then biweekly from March 1 through June 1. This framework allows more responsive changes to the minimum flows in the late winter and spring as yields and hydrologic conditions develop. The proposed index establishes new criteria for determining the water supply conditions of Decision 1610 and does not modify the associated minimum instream flow requirements. This will shift the criteria for establishing hydrologic conditions in the Russian River watershed to local conditions rather than rely on cumulative inflows to Lake Pillsbury in the Eel River watershed, which are no longer representative of Russian River hydrologic conditions.

These storage thresholds in Lake Mendocino were developed by Sonoma Water engineering staff using its Russian River ResSim Model. The modeling scenarios assume: (1) current Russian River system losses; (2) WY 1911 to WY 2017 unimpaired flow hydrology, and (3) Potter Valley Project operations (consistent with those outlined in the October 2023 and June 2024 FERC orders approving PG&E's flow variance requests). The thresholds were developed based on an analysis of maintaining carryover storage in Lake Mendocino over a simulated historical hydrologic dataset followed by a 1 in 100-year synthetic drought. A detailed description of the hydrologic analysis is presented in the technical memorandum included as Attachment A.

## 5.0 PROPOSED ACTIONS BY SONOMA WATER

To inform State Water Board staff and interested stakeholders in the Russian River

**A9-91  
cont.**

watershed regarding reservoir and watershed conditions, Sonoma Water will prepare a weekly hydrologic status report that contains the following information:

- Current reservoir levels and reservoir storage hydrographs for Lake Mendocino and Lake Sonoma;
- The daily rate of change in storage, inflow and reservoir release for Lake Mendocino and Lake Sonoma; and
- Cumulative rainfall plot for current water year versus historical precipitation range for Ukiah. Cumulative rainfall forecasts for 3-day, 7-day and 16-day.

These reports will be made available on Sonoma Water's website during the term of the order approving Sonoma Water's requested temporary changes.

## 6.0 WATER CONSERVATION ACTIVITIES

The following water conservation activities reflect the efforts of Sonoma Water and the Sonoma-Marín Saving Water Partnership (Partnership). The Partnership represents 13 North Bay water utilities in Sonoma and Marin counties that have joined together to provide regional solutions for water use efficiency. The utilities (Partners) are: the Cities of Santa Rosa, Rohnert Park, Petaluma, Sonoma, Cloverdale, Cotati, Healdsburg; North Marin, Valley of the Moon and Marin Municipal Water Districts; California American Water Company-Larkfield; the Town of Windsor and Sonoma Water. The Partnership was formed to identify and recommend water use efficiency projects and to maximize the cost-effectiveness of water use efficiency programs in our region.

Sonoma Water and the retail agencies of the Partnership continue to implement their primary programs, water waste prohibitions, and outreach campaigns to achieve long-term water savings and the adoption of efficient water use habits in alignment with the pending urban water use efficiency standards, objectives, and performance measures. The Partnership's 2024 water production totals through June are 13 percent below 2020 totals for the same period. As was anticipated, the 2024 percent reduction compared to 2020 increased once the irrigation months arrived. The water savings reflect the combined demand reductions from indoor and early summer outdoor water uses.

The Partnership completed the Dye Tab Challenge social media campaign in spring to incentivize customers to complete and report results of toilet leak tests during February and March. Free leak dye-test tablets were distributed by mail or made available for pickup

**A9-91  
cont.**

at utility offices. The Dye Tab Challenge coincided with the national E.P.A. WaterSense Program's Fix a Leak Week Campaign held March 18 to 24 and was promoted through a social media campaign on Facebook, X, Instagram, and Nextdoor. On May 18<sup>th</sup>, the Partnership hosted the annual Eco-Friendly Garden Tour at 26 gardens throughout Sonoma and Marin counties. The tour showcases water-wise and sustainable landscape practices to provide inspiration for participants interested in learning about and implementing similar practices at their homes. The tour had over 3,900 registered participants, with some of the gardens reporting over 350 visitors that day.

The Partnership's summer outreach campaign is underway and runs from June through September. This year's theme focuses on creating climate ready landscapes that are better adapted to survive the climate change induced weather extremes of fire, floods, and drought. The campaign highlights different topics each month, such as choosing water smart plants, irrigating efficiently, good garden design and maintenance, and use of rainwater and greywater. Weekly social media ads are placed over the 16-week campaign in addition to online and print ad placements. The Partnership also tables at in-person events in the spring, summer, and fall at popular community events such as Earth Day, the City of Santa Rosa WaterSmart Expo, Zero Waste Sonoma's Fix-It Fair, and the annual Fiesta de Independencia held at the Luther Burbank Center for the Arts. The Partnership collaborated with the Master Gardener Program of Sonoma County to install a sustainable, climate ready garden display outside the Hall of Flowers at the Sonoma County Fair from August 1-11. An additional project is underway to remove non-functional turf in front of the Sonoma County Fair administrative offices to install a demonstration low water use landscape. This project is being co-sponsored by the Partnership, the Master Gardener Program of Sonoma County, and private nursery and landscape contractor firms, with an anticipated construction period in fall 2024.

Lastly, the Partnership is hosting three Qualified Water Efficient Landscaper (QWEL) trainings this summer. The QWEL program is an EPA WaterSense labeled professional certification in irrigation system audits. QWEL Pros receive training in efficient irrigation principles and sustainable landscaping practices. The early August class is being taught in Spanish, with additional classes in English in August and September.

Additional program information, tools, and resources are available on the Partnership's website at <https://www.savingwaterpartnership.org/>.

**A9-91  
cont.**

**FIGURES**

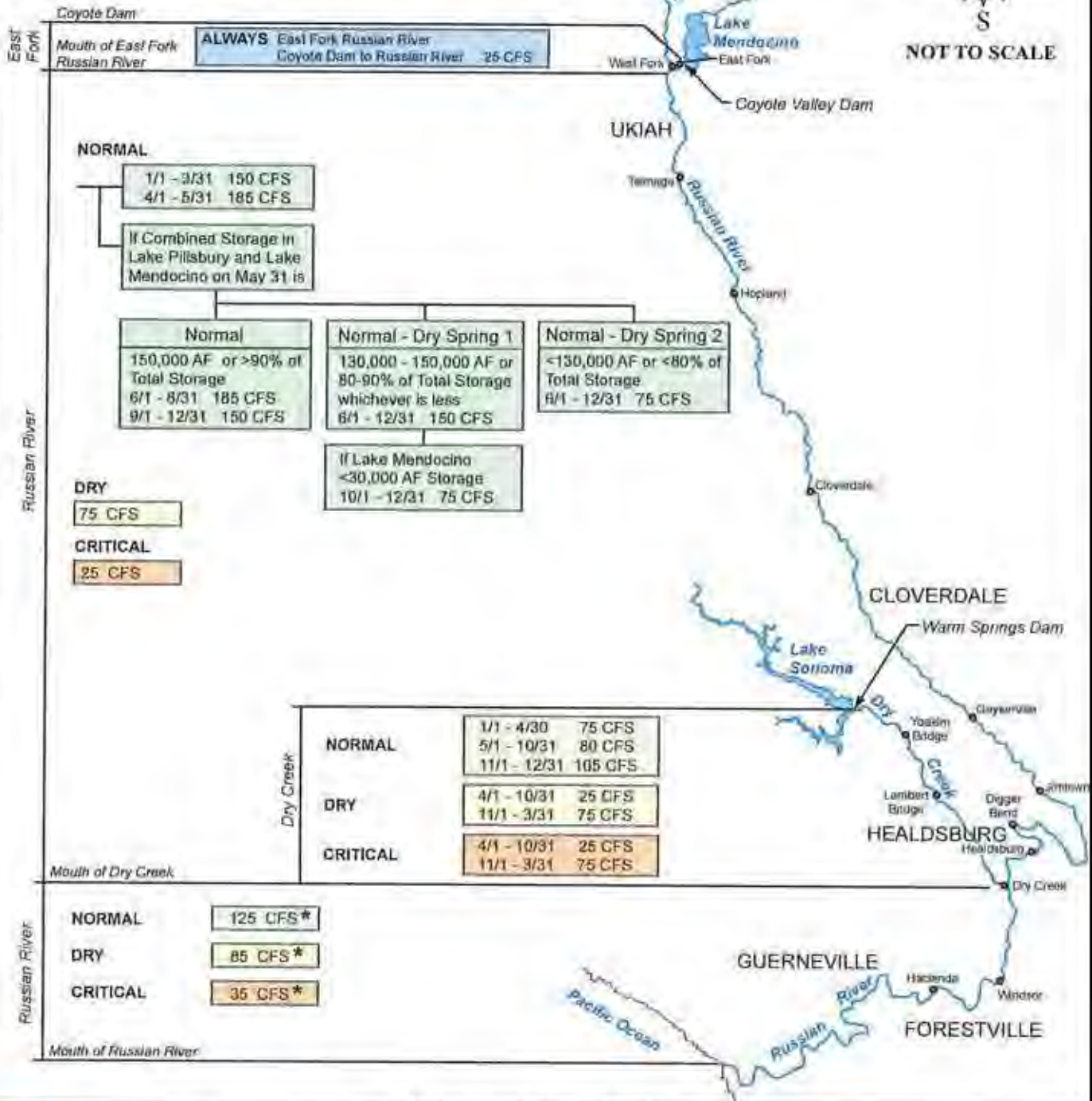


Cumulative inflow to Lake Pillsbury (acre-feet) from Oct 1 through						
	1/1	2/1	3/1	4/1	5/1	6/1
<b>NORMAL</b>	≥8,000	≥39,200	≥65,700	≥114,500	≥145,600	≥160,000
<b>DRY</b>	<8,000	<39,200	<65,700	<114,500	<145,600	<160,000
<b>CRITICAL</b>	<4,000	<20,000	<45,000	<50,000	<70,000	<75,000

Water Supply Conditions Prevailing on 6/1 Apply Through 12/31

**LEGEND**

- All flows are minimums, expressed in cubic feet per second
- ★ - Unless Lake Sonoma elevation is below 292.0, or if prohibited by the United States Government.
- AF - Acre-Feet
- - USGS Stream Gage Compliance Points



<b>ALWAYS</b>	East Fork Russian River Coyote Dam to Russian River	25 CFS
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**NORMAL**

1/1 - 3/31	150 CFS
4/1 - 5/31	185 CFS

If Combined Storage in Lake Pillsbury and Lake Mendocino on May 31 is

**Normal**

150,000 AF or >90% of Total Storage	6/1 - 8/31	185 CFS
	9/1 - 12/31	150 CFS

**Normal - Dry Spring 1**

130,000 - 150,000 AF or 80-90% of Total Storage whichever is less	6/1 - 12/31	150 CFS
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**Normal - Dry Spring 2**

<130,000 AF or <80% of Total Storage	6/1 - 12/31	75 CFS
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If Lake Mendocino <30,000 AF Storage

10/1 - 12/31	75 CFS
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**DRY**

75 CFS
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**CRITICAL**

25 CFS
--------

**Dry Creek**

<b>NORMAL</b>	1/1 - 4/30	75 CFS
	5/1 - 10/31	80 CFS
	11/1 - 12/31	105 CFS
<b>DRY</b>	4/1 - 10/31	25 CFS
	11/1 - 3/31	75 CFS
<b>CRITICAL</b>	4/1 - 10/31	25 CFS
	11/1 - 3/31	75 CFS

**Russian River**

<b>NORMAL</b>	125 CFS★
<b>DRY</b>	85 CFS★
<b>CRITICAL</b>	35 CFS★

A9-91 cont.

**Russian River Basin Streamflow Requirements**

Per State Water Resources Control Board Decision 1610, April 1986

Figure 1



# Lake Mendocino Storage

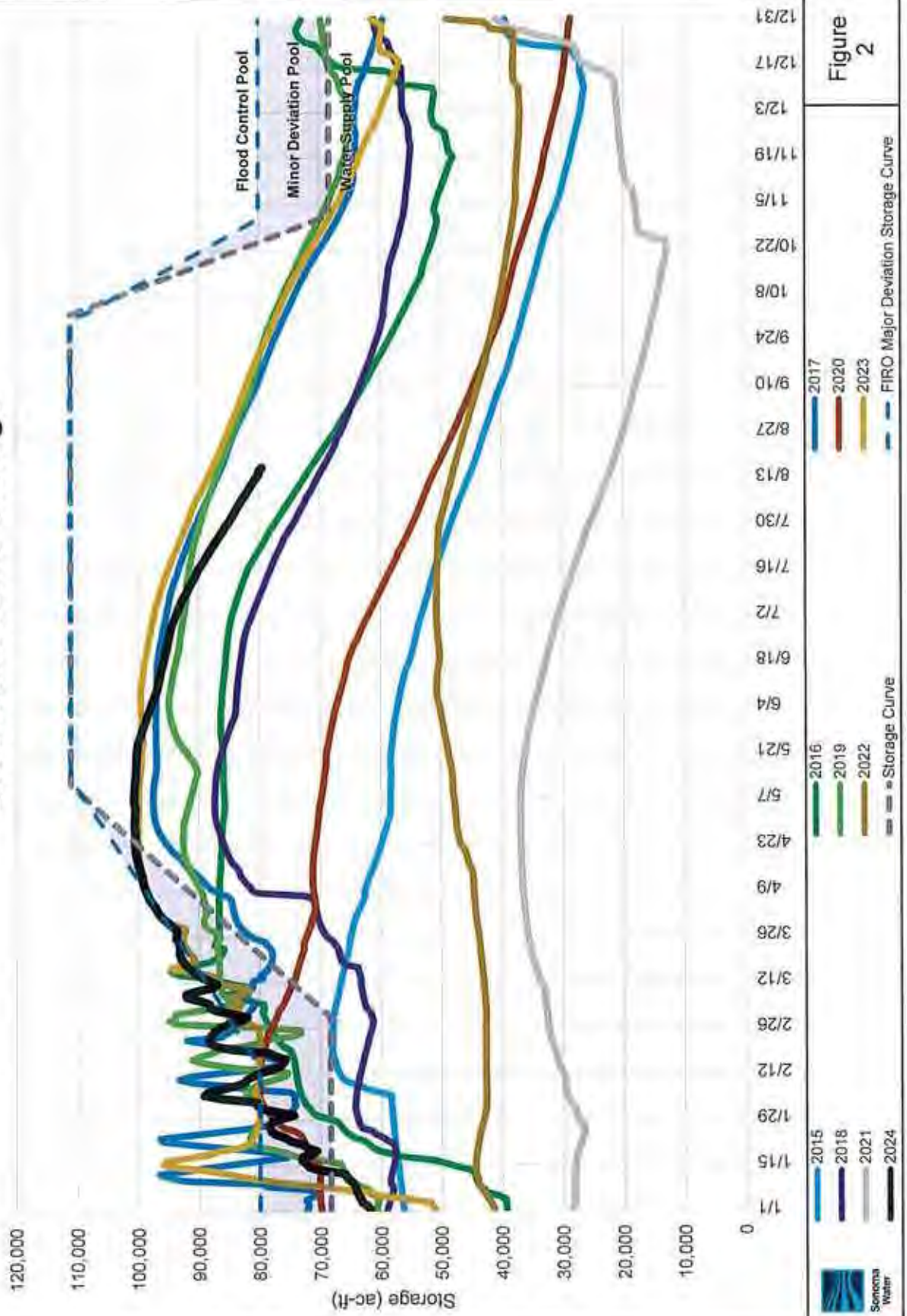


Figure 2



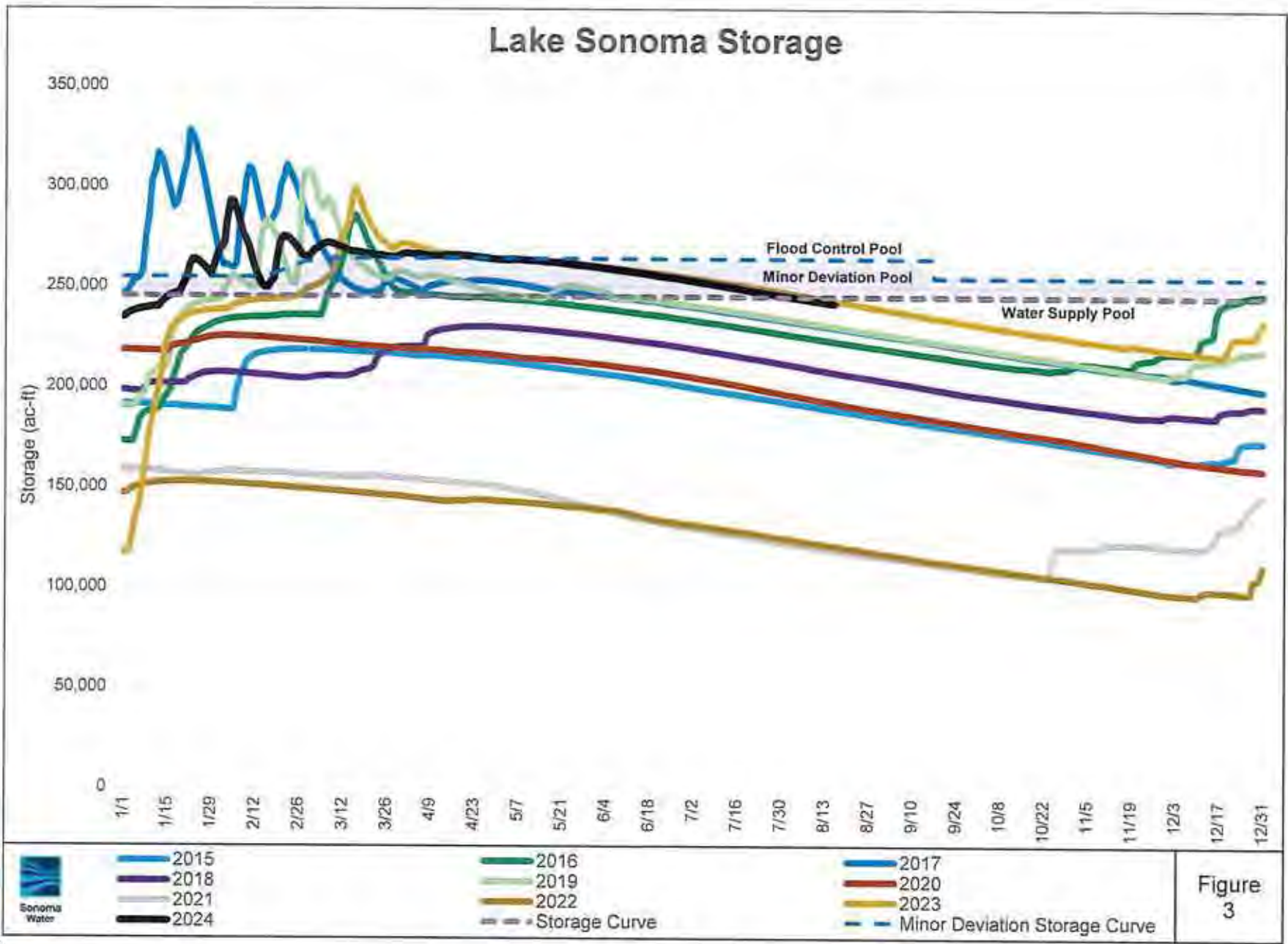


EXHIBIT H



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RE: EA Comments, Koi Nation Shiloh Resort and Casino

November 13, 2023

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the County of Sonoma, thank you for considering these comments on the Environmental Assessment (EA) prepared for the Koi Nation's proposed fee-to-trust application for its Shiloh Resort and Casino Project. The County is mindful of the Bureau of Indian Affairs' (Bureau) roles in reviewing and deciding on the application made by the Koi Nation and its role as a trustee for lands already held in trust for tribes in Sonoma County. The County is respectful of tribal sovereignty and understands the need for tribal self-determination and economic development to provide for tribal members. At the same time, Sonoma County objects to any attempt on the part of the federal government to take the present 68 acres of land located east of the Town of Windsor into trust for the benefit of the tribe for gaming in a manner that violates federal law.

Given the significant impacts of the project, and the controlling law that requires an Environmental Impact Statement (EIS) on these facts, the County of Sonoma respectfully urges the Bureau to forego any attempt to use this document to support a Finding of No Significant Impact (FONSI). This is not supportable. The County of Sonoma objects to the inadequate analysis and mitigation in the EA, and the failure of the Bureau to take a "hard look" at the environmental consequences of this proposal, as required by the National Environmental Policy Act (NEPA).

The Bureau should stop, think, and prepare the EIS that NEPA requires.

A9-92

**I. The EA contains inadequate analysis of the significant impacts of the project and an EIS must be prepared.**

The Bureau has prepared a complete EIS for other very similar casino projects within Sonoma County, as well as elsewhere in California. By way of example, in Sonoma County, the Cloverdale Rancheria Band of Pomo Indians' fee-to-trust application sought 69.77 acres of land in trust for gaming about 25 miles north of the subject site. An EIS was prepared for the Cloverdale project.<sup>1</sup> The Bureau's action on the Cloverdale site was for a resort casino and hotel, including a tribal government building and 3,400 parking spaces, for a total non-parking square footage of 595,600 square feet. By way of comparison, the Koi Nation's project is for a similar project without a government building, and totals 807,067 square feet for non-parking coverage, and 5,119 parking spaces in addition (1,689,380 square feet in addition). For a similarly sized proposed land area, the Koi casino square footage is 135.5% of that proposed by Cloverdale, its hotel rooms are 164% of that proposed by Cloverdale, and the number of parking spaces is 150.5% of that proposed by Cloverdale. Even if the current project were to be reduced in size to what Cloverdale proposed, common sense would dictate an EIA. While an EA may be appropriate for some projects, the Koi Nation's destination casino project is not one of them.

A9-92  
cont.

The EA concedes that the project will have numerous significant impacts, but then backs away from the obviously required significance findings based on regulatory requirements that do not exist, inadequate baseline information to inform analysis, inadequate environmental analysis of direct and indirect impacts, inadequate analysis of cumulative impacts, inadequate and unenforceable mitigation requirements, the strategic mischaracterization of mitigation as "part of the project" to avoid accountability, vague and unenforceable project assumptions, and in many cases, a refusal to implement all the recommendations of the consultants that the EA itself relies upon.

The decision not to prepare an EIS for this project reflects a conscious refusal to take a hard look at the impacts of the project and indicates that NEPA review is improperly being used to paper over a decision that has already been made.

**II. The EA is affirmatively misleading with respect to the "regulatory setting," contains no discussion of mitigation efficacy, and no evidence that key mitigation will be effective.**

The EA is filled with references to California state law and State and local regulatory standards. State law is discussed in most of the "Regulatory Setting" sections of the impact discussions, and also in Appendix E. However, the project may only be

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<sup>1</sup> <http://www.cloverdalerancheria.com/eis/deis.htm>

built if the land is in trust and hence not within the civil regulatory jurisdiction of the State of California or County of Sonoma. Each reference is misleading because the referenced State legal requirements and local regulatory requirements do not apply to the project. The EA avoids providing a description and discussion of the actual regulatory setting (and associated issues with mitigation implementation that this setting presents). Tribal sovereign immunity is not mentioned in the EA, much less in the context of mitigation measures.

There is no discussion of what mechanism will be available or used by the Bureau as the decisionmaker on the Koi Nation's fee to trust application to impose enforceable mitigation on the Tribe. It is one thing to discuss how environmental impacts are addressed by existing, enforceable requirements, but it is quite another to pretend that impacts are addressed by background regulations that do not exist.

In places, the EA's impressionistic discussion of State law and tribal requirements is about as far from a "hard look" as one can get. Section 2.1.9 states:

The proposed facilities would conform to applicable tribal building code requirements, which would be generally consistent with the CBC and California Public Safety Code, including building, electrical, energy, mechanical, plumbing, fire protection, and safety. An indoor sprinkler system would be installed to provide fire protection.

There is no indication that the Tribe currently has tribal building codes with "applicable" requirements, but if they existed, they would apparently only be "generally" consistent with the "California Public Safety Code" – a California statute that does not exist. The analysis appears to be based on an imaginary code that is based on an imaginary code. If there are tribal codes that apply, their text should be provided in the NEPA process such that their adequacy can be commented upon and evaluated.

It is also clear on the face of the EA that cited regulatory standards are being ignored. As noted by West Yost (Exhibit A), a great deal of emphasis is placed on compliance with Title 22 of the California Code of Regulations in the EA's discussion of recycled water (EA, Appendix B, 2-16, 4-2 and 4-3), but the whole dual plumbing design (using non-potable water within a building with food facilities, 22 Cal. Code Regs. § 60313), squarely violates Title 22.<sup>2</sup>

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<sup>2</sup> Assuming compliance with Title 22 and non-compliance at the same time makes the EA fundamentally unclear. A project that complies with Title 22 would require a different water balance analysis than is found in the EA.

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cont.



Compounding the problem is the fact that the EA discusses critical mitigation measures as “Best Management Practices” (Table 2.1-3) raising the issue of whether these purported “practices” will actually occur absent monitoring and enforcement. The Bureau’s own NEPA guidance (59 IAM 3-H) is clear that mitigation measures must be enforceable to justify a FONSI. Simultaneously, the Bureau’s analysis in the EA is clear that compliance with Table 2.1-3 is critical to the impact conclusions in the EA. The analysis returns to Table 2.1-3 for these conclusions repeatedly. There must, at a minimum, be a mitigation measure that requires compliance with Table 2.1-3 or, alternatively an explanation of how these critical requirements (which are not at all part of background legal requirements for the project) will be monitored and enforced. The entirety of Table 2.1-3 must be rewritten to allow the evaluation of the efficacy of the mitigation and remove the escape clauses – by way of example, “[e]xhaust stack and vents will be positioned to limit odor exposure to sensitive receptors *to the extent feasible*.” Characterizing critical “mitigation” as “practices” to avoid environmental accountability hides the ball in terms of impact analysis and subverts NEPA’s basic purpose.

The failure to discuss the actual “regulatory setting,” and the related failure to discuss why the “practices” and “measures” will be effective within that regulatory setting, is a fatal omission for NEPA compliance. The EA fails to provide the “reasonably complete discussion of possible mitigation measures” that is necessary to facilitate the “‘action forcing’ function of NEPA.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Credible information on the efficacy of “practices” or “measures” must be provided, and enforcement and monitoring must be implemented. Where “measures” or “practices” are illusory, they cannot legally provide the basis for a FONSI.

### **III. The EA’s discussion of groundwater and water quality impacts is inaccurate and utterly inadequate.**

The EA assumes that Pacific salmonids are not present in Pruitt Creek, stating “[l]isted Pacific salmonids are assumed to be absent from Pruitt Creek based on observations from the February 23, 2022, site assessment coupled with background research and lack of historic occurrences. The potential for Pacific salmonids to occur and use habitat in this far east portion of the Russian River Basin is temporally and physically limited.” In reality, federally listed steelhead, *Oncorhynchus mykiss*, 79 Fed. Reg. 20802, 20807 (2014), are known to exist in Pruitt Creek, and the attached memorandum by Jeff Church, a Sonoma County Water Agency biologist, documents observations both upstream and downstream from the project location. (Exhibit B.) Steelhead use this location, and the location is designated critical habitat. 70 Fed. Reg. 52488 (2005).

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It is true that the reach of Pruitt Creek at the project site is intermittent, but the Bureau reaches the exact wrong conclusion based on this fact. The Bureau should recognize that this fish habitat is exceedingly sensitive to dewatering and pollution impacts, rather than justifying a truncated investigation based on an incorrect assumption that federally listed fish species are not present. As discussed by West Yost (Exhibit A), dewatering impacts need to be evaluated based on an evaluation of the baseline conditions that is sufficient to inform the impact analysis, and the EA makes conclusions that are entirely unwarranted based on the evidence. The Bureau may not rely on its own lack of investigation into hydrologic conditions to justify discounting environmental impacts. *S. Fork Band Council of W. Shoshone*, 588 F.3d at 727. The current cursory investigation and analysis is not adequate to determine that the project will not adversely modify critical habitat<sup>3</sup> and result in significant impacts to salmonids. The project may well result in both significant impacts and violations of section 9 of the Endangered Species Act.

Further, the actual local flows in Pruitt Creek need to be evaluated to understand the baseline conditions; the EA's chosen proxy site 5.5 miles away on a different creek is not representative. (Exhibits A, C.) In addition, the analysis must include future projections given the changing climate. There is no evidence that the proposed wastewater discharge solution is feasible given actual streamflows, meaning that the EA's analysis of what will actually occur is dubious at very best. Robert Pennington, a Professional Geologist with the County of Sonoma, explains:

During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species. [ ¶ ] The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge #11466800 has a contributing watershed area of 251 square miles. The

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<sup>3</sup> The Bureau cannot take the position that taking this land into trust removes the protections of critical habitat under the applicable designation (70 Fed. Reg. 52488), because the habitat benefits from the existing designation.

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contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. (Exhibit C)

Inadequate storage will lead to environmentally harmful discharges, and there is no enforceable mitigation that requires compliance with all aspects Title 22 in California Code of Regulations, and there is no mitigation that addresses the related issues addressed by California's recently adopted Recycled Water Policy.<sup>4</sup> The study on which the EA is based admits that "contingency plans should be developed for low flow conditions" (EA, Appendix C, 2-21), but these have not been developed, disclosed, and analyzed. Similarly, crucial components of the recycled water system have not been disclosed, including a feasible plan to expand it. Absent trucking out of wastewater, which has significant impacts that are unanalyzed, it is foreseeable that the project will be forced to discharge recycled water at rates far above the agronomic rate of uptake for the recycled water discharge locations, leading to discharges to groundwater, and in turn, potential plant death that further exacerbates groundwater discharges.

Mitigation is necessary to avoid groundwater and surface water contamination, and a hand wave about Clean Water Act compliance is insufficient to excuse substantive analysis given emerging contaminants and the foreseeability of discharges to both groundwater and surface water. An inadequate initial design will lead to "upsets" and "bypasses," and claims that these harmful discharges are permitted. (40 CFR § 122.41(m) and (n).) In addition to nutrients, contaminants of concern that will exist in discharges to groundwater and stormwater include pharmaceuticals and related hormones, metals, microplastics, and PFAS. These contaminants will also be present in the project's biosolids.<sup>5</sup> In the stormwater context, given the automobile-centric nature of the project, the Bureau also must evaluate emerging contaminants like 6PPD from tires, as these chemicals have recently been identified as a major driver in

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<sup>4</sup> State Water Resources Control Board, Water Quality Control Policy for Recycled Water, (2019)  
[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2018/121118\\_7\\_final\\_amendment\\_oal.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf).

<sup>5</sup> Pozzebon, E.A., Seifert, L. Emerging environmental health risks associated with the land application of biosolids: a scoping review. *Environ Health* 22, 57 (2023).  
<https://doi.org/10.1186/s12940-023-01008-4>.

salmonid extinction.<sup>6</sup> The required good faith analysis must be based on the fact that the project is proximate to salmonid habitat, not on convenient but incorrect factual assumptions to the contrary.

Additionally, the Bureau must evaluate the cumulative impacts of the planned groundwater pumping in light of the other existing and readily foreseeable wells in the immediate area, and also evaluate the cumulative impacts of extraction on the larger groundwater basin. The Bureau has not done so. The project would pump groundwater from the Santa Rosa Plain groundwater subbasin – a basin that requires special planning under California’s Sustainable Groundwater Management Act (SGMA) to avoid adverse impacts. The groundwater in this basin is relied on for rural residential, agricultural, and municipal water supply. The EA fails to recognize – let alone analyze the impacts on – groundwater conditions and uses, and the EA lacks any analysis of long-term groundwater impacts. Mitigation measures are necessary to address groundwater impacts, and these are simply missing.

The current EA raises many more questions than it answers about whether and how the significant impacts of the project can feasibly be addressed. The current discussion only serves to document that they are not addressed. The EA cannot be used to support a FONSI for water quality and groundwater impacts. The groundwater “monitoring” mitigation measure merely documents that crucial information is missing from the EA that should have already been developed. The proposed “compensation” mitigation measure for groundwater depletion is not remotely adequate, and violates 40 CFR § 1508.20. The purported mitigation does not substitute for the environmental impacts that the EA ignores, and the EA similarly ignores the significant impacts of the mitigation itself.

In short, the EA is grossly deficient with respect to groundwater and water quality impacts.

#### **IV. The EA fails to provide adequate analysis and mitigation for reasonably foreseeable impacts to law enforcement services.**

The EA includes an analysis of Social Effects (e.g., gambling addiction, crime, drunk driving). Appendix B provides additional information on crime. The EA notes that increasing crime and calls for service to public safety are associated with any population increase, not necessarily gaming specifically, and concludes that the development, due

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<sup>6</sup> John Ramos, “Tire additive could push California salmon to extinction, study says,” CBS Bay Area, August 23, 2023, <https://www.cbsnews.com/sanfrancisco/news/tire-additive-could-push-california-salmon-to-extinction-study-says/>; Tian et al., “A ubiquitous tire rubber–derived chemical induces acute mortality in coho salmon,” *Science* 371, 185–189 (2021).

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to its large gatherings of people, may result in increased calls to law enforcement. The EA then claims that “the addition of the Proposed Project is not expected to lead to a material increase in crime rates in the area.” The EA concludes the proposal would increase total calls for service by 2.2% and increase total arrests by 1.4% (1,433 calls and 33 arrests).

This discussion is misleading. Contrary to the conclusions of the EA, the causal link to crime from casinos is clear, and there is no evidence that the project would not require additional law enforcement facilities. In 2012, before the opening of the Graton Casino, the area surrounding that location (288 Golf Course Drive) was very similar to the proposed project area, and it generated two calls for service. (In the calendar year 2022, the area surrounding the proposed site generated one call for service.) However, upon the opening of Graton Casino in 2013, the location generated 1,757 calls for service, an increase of 1,755 calls. Last fiscal year (22/23), Graton Casino generated 529 of the 6,680 calls for service in Sheriff’s Office Zone 5 (a very large Patrol Zone that includes the unincorporated areas surrounding Petaluma, Rohnert Park, and Cotati, stretching from the northern city limits of Rohnert Park to the Sonoma/Marin County border). The calls for service included, but were not limited to, assaults, trespassing, multiple types of theft, stolen vehicles, public intoxication, and drug activity. The decline from opening to fiscal year 22/23 in the case of the Graton Casino is not necessarily good news, as deputies are no longer specifically assigned to the casino and some crime previously reported by the assigned deputies themselves is possibly going unreported.

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The proposed mitigation measure (EA, 4-7) to make “good faith efforts” to enter into a service agreement is inadequate, and provides no information regarding the contents of the agreement. The EA’s attempt to discount the impacts is discouraging. The requirement that the proposed agreement be based on “quantifiable direct and indirect costs” does not adequately mitigate the impact (1) without a description of how those costs will be determined and (2) without an enforcement mechanism, which together would demonstrate that the mitigation is not illusory.

**V. The EA fails to provide adequate analysis and mitigation for foreseeable environmental impacts that will result from the economic impact of this casino.**

The EA concludes that the project would not result in significant impacts due to the economic effects of the project. This conclusion is unsupported by the facts and evidence. The socio-economic report (EA, Appendix B) concludes that existing Sonoma County casinos would experience a possible business loss of 11% and 24% but concedes that none of the estimates hold any water if other casinos (such as the approved Cloverdale casino) are constructed. Completely elided from the EA is a discussion of the foreseeable *environmental* impacts of very foreseeable business

failures that may well occur as a result of this approval. These impacts bear on both the Bureau's NEPA and the Bureau's federal trust obligations.

The Global Market Advisors impact study (Appendix B) estimates that 95% of the proposed project's estimated revenues (\$473 million) will be diverted from existing local casinos (\$449.4 million). Appendix B then dilutes this local impact by saying this is only 13.7% of a much larger, non-local gaming market. However, the analysis concedes that the existing Dry Creek Rancheria's River Rock casino will face no less than a 24.4% decline in revenue, and Global Market Advisors further concedes that this is not a conservative assumption given the fact that other casinos could also be constructed. No analysis is provided of the economic effects if this assumption is incorrect.

The over-saturation of the gaming market has physical impacts on the environment and on other tribes. The introduction of this casino to the local casino market would not only negatively impact existing gaming casinos in the area but would likely cause the total closure of more remote facilities like the Dry Creek Rancheria's River Rock casino. The Bureau stands to be the proximate cause of this closure, and the proposed action is contrary to the federal government's trust responsibilities. It is entirely foreseeable that the Bureau's proposed action will result in a closure.

The EA fails to evaluate these readily foreseeable impacts. The economic context for the Dry Creek Rancheria Band's River Rock Casino, and other tribal casinos in the area, is particularly precarious given the opening of the Graton Casino in 2013. In 2014, the Dry Creek Rancheria Band defaulted on millions in bonded indebtedness (\$150 million) to its casino investors, and in contractual obligations (\$50 million) to the County of Sonoma pursuant to an enforceable intergovernmental mitigation agreement. (Exhibit D.) The Graton Casino broke ground on a \$1 billion expansion this year.

The EA is incomplete without a factual analysis of the continued economic viability of the proximate competitors, and an analysis of environmental impacts associated with closures of existing tribal casinos and resultant blight, deterioration, and loss of function of tribal infrastructure and services. The Bureau should conduct a good faith analysis of the economic and environmental consequences of its action, and stress test the assumptions based on all the facts that are relevant to the local context. This includes, but is not limited to, economic uncertainties and the effects of natural disasters on the gaming market.

In a context of foreseeable failures, perhaps most troubling in Global Market Advisors' analysis is the analogy to "gravity" (notably, without any disclosure of the actual math), as it strongly suggests a dynamic where the Bureau's fiduciary solution to failing casinos may be the expansion of larger and larger casinos to attract more visitors from greater distances. The Bureau must evaluate not only the foreseeable impacts of casino failures, but the growth inducing response to those failures that naturally will follow.

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The current analysis of the economic and environmental consequences of the proposal is wholly inadequate for purposes of NEPA and raises serious questions about how the Bureau, as trustee, exercises its responsibilities when holding existing lands in trust for the benefit of distinct tribes, when presented with a proposed fee-to-trust application for another tribe.

**VI. The EA’s discussion of the project’s significant greenhouse gas emissions and Vehicle Miles Travelled is inaccurate and incoherent, and the significant greenhouse gas impacts of the project are not mitigated.**

The estimated greenhouse emissions from this project are extremely high, especially for this type of project. They are, disturbingly, much higher than they need to be. The estimates of operational emissions for Alternatives A, B, and C are respectively 69,862, 55,932, and 7,100 annual metric tons of CO<sub>2</sub> equivalent (MTCO<sub>2</sub>E). (EA 3-138.) The Bay Area Air Quality Management District’s (BAAQMD’s) former significance threshold based on California’s science-based emissions targets for 2020 was 1,100 MTCO<sub>2</sub>E. California’s targets have been reduced. A straight-line reduction of the former threshold based on current science-based targets for 2030 in California results in a 40% reduction, or 660 MTCO<sub>2</sub>E.<sup>7</sup> Likewise, the EA discloses extraordinarily high social costs related to the greenhouse gas emissions for this project: \$129,479,003 for Alternative A, \$103,352,963 for Alternative B, and \$13,374,218 for Alternative C. (EA 3-139.) These social costs alone indicate that the project’s greenhouse gas impacts are significant. But rather than mitigating the very significant greenhouse gas emissions of the project, or finding that they are significant in a good faith analysis in an EIS, the EA attempts to hide the ball and assert that the project is compliant with BAAQMD’s recently revised guidance. (EA, 3-140.) It is not.

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In 2022, BAAQMD revised its threshold to be based on the absence of the build out of any new natural gas infrastructure, and on a 15% reduction in vehicle miles travelled (VMT) below the regional average per capita. (Exhibit E.) The EA purports to rely on this threshold. The threshold is an aggressive ratcheting down of the prior threshold based on the severity of the climate crisis. The goal of the threshold is to evaluate the design elements that are necessary to facilitate achieving *complete carbon neutrality* in California by 2045. (Exhibit E.) The natural gas component is based on the

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<sup>7</sup> Under Health and Safety Code section 38566, SB 32 (2016), California’s emissions reduction mandate for 2030 is 40% below its prior goal for 2020. Thus, many agencies have used 660 MTCO<sub>2</sub>E as an extrapolation of BAAQMD’s 2020 threshold for this type of project (1,100 MTCO<sub>2</sub>E), as BAAQMD’s threshold was based on California’s 2020 targets. The alternatives in the EA are 105 times, 65 times, and 10 times this significance threshold.



judgment that global climate goals cannot be met with the expansion of natural gas infrastructure, given the need for major emissions reductions from existing infrastructure. The VMT component is based on guidance from the State's Office of Planning and Research, which the EA acknowledges.

The EA states:

The Bay Area Air Quality Management District (BAAQMD) provided guidance in 2022 to determine the significance of climate impacts from land use projects (BAAQMD, 2022c). If a project will not include natural gas appliances, will not result in wasteful, inefficient or unnecessary energy use, will reduce project-generated vehicle miles traveled (VMT) below the regional average, and will provide EV facilities consistent with current California building standards, then a project's climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B and C would result in over a 15 percent reduction in VMT compared to the Sonoma County region. Therefore, with the implementation of BMPs, implementation of the project alternatives would not result in a significant adverse cumulative impact associated with climate change. (EA 3-140.)

In reality, neither of BAAQMD's referenced criteria are met. The project is not foregoing all natural gas as BAAQMD's threshold requires for a finding of "less than significant." Instead, Table 2.1-3 states: "The Tribe will use electric boilers and appliances in lieu of natural gas or propane units *to the greatest extent practicable,*" whatever that means. The only thing this language clearly suggests is that the Tribe has considered the BAAQMD guidance regarding natural gas and rejected it.

Worse, the EA's statement that the project will result in "a 15 percent reduction in VMT compared to the Sonoma County region" has no basis whatsoever. Very clearly, this is not a VMT reduction project. The project's sponsors hope to draw customers from a very wide region, and have proposed no less than 5,110 parking spaces for the project. The study relied upon only looks at vehicle miles travelled associated with employees, not project visitors, which is to say that most VMT associated with the project is being ignored. This is the case even as the economic analysis in Appendix E, pages 65 and 66, describes a very large geographic market for visitors to the project, with the bulk of visitors not coming from Sonoma County. The purported "logic" of the EA is that: "The project's Home-Based VMT per employee value of 10.20 is lower than

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the 85% VMT threshold for the Sonoma County region (10.53 VMT per employee). Thus, the proposed project at full buildout is expected to have a less-than-significant impact on VMT.” These numbers do not elucidate the project’s impacts. *Even after* improperly ignoring the visitor VMT completely, the VMT numbers cited reveal significant impacts. The EA deliberately evaluates the employee VMT average against the Sonoma County average rather than the regional average (which is significantly lower, because the region includes the metropolitan areas of the Bay Area),<sup>8</sup> and then, by a thin margin, finds the outcome to be less than significant. To the extent that any component of the math is credible at all, it has been subjected to outcome-oriented manipulation.

Nor do the practices in Table 2.1-3 address the greenhouse gas impacts as the EA claims. The Bureau has deliberately chosen mitigation language in Table 2.1-3 that is utterly vague and unenforceable: “Shuttle service to and from population centers will be provided *as feasible*, which would reduce CAPs and GHGs.” The fleet mitigation is similarly vague and unenforceable, and has no standard through which efficacy can be evaluated. At the same time, as discussed more fully below, *all* of the recommendations of the traffic consultant concerning transit and pedestrian infrastructure have been summarily rejected without any explanation in the EA.

On top of these problems, the modeling assumptions in Appendix F do not hold up for very potent greenhouse gases like methane. Appendix F assumes “mitigation” that is not applied. While an unenforceable recycling “practice” has been proposed, no mitigation is imposed on the project requiring the source separation of organic waste such that it can be diverted from landfills. The lack of a feasible plan for organics diversion (including for biosolids), and the lack of any discussion of the project’s integration with related landfill diversion processes under SB 1383 (2016), means the landfill diversion estimates are not credible. This in turn means that the assumptions about project emissions for potent gases like methane are not credible. Landfill diversion cannot be assumed if the project actively thwarts diversion.

The only way to reach the conclusion that the project’s greenhouse gas impacts will be less than significant is by systematically ignoring the data, which the EA does. Perhaps the Bureau could use a different science-based analytical framework than BAAQMD and California’s Office of Planning and Research have used, but it is arbitrary and capricious to manipulate data and say that cited significance criteria are met when they are not. A good faith analysis of the greenhouse gas impacts must be conducted, and if the analysis is based on an EA, the strategy of avoiding accountability by placing

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<sup>8</sup> In the context of similar attempts to dilute required VMT reductions, the California Office of Planning and Research (on whose guidance the EA purports to rely) has made clear that “regional average” means the average in the applicable Metropolitan Planning Organization, not the lower average within a county. (Exhibit F.)

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mitigation with extensive escape clauses in the project description must be jettisoned. Given the project's high level of emissions, an EIS should be prepared. Absent an EIS, adequate and enforceable mitigation must be adopted for the project's emissions related to the project's energy sources, the project's energy consumption, transportation, and waste.

**VII. The EA's traffic analysis ignores the recommendations of the underlying studies, and is based on inadequate and ineffective mitigation measures.**

The EA reaches the logical conclusion that the project will have significant impacts on traffic without mitigation. However, the EA does not provide for enforceable mitigation that ensures that these impacts will be avoided.

The EA divides transportation into opening day mitigation and "cumulative" mitigation for 2040. For opening day, the mitigation measure states:

While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make *good faith efforts to assist* with implementation of the opening year improvements prior to opening day. (EA 4-8, emphasis added)

The Tribe does have the ability to enter into enforceable contracts to construct the improvements (with local government assent), but the language in the EA scrupulously avoids anything concrete or enforceable. As written, the mitigation measure would allow for mere cheerleading, even as the traffic study (EA, Appendix I) assumes that the Tribe or Bureau will be responsible for the entire cost. What is needed to avoid significant impacts is the improvements, not "good faith efforts" that the Bureau declines to specify. Further, the analysis does not confirm there are no constraints for the improvements (environmental, real property, etc.), and does not analyze the improvements themselves. Ultimately, the measure does not commit the Tribe and/or Bureau to the improvements. The structural problem with the analysis is therefore that the EA provides no actual evidence that the improvements will occur, which on its own requires an EIS given the fact that impacts to be mitigated are significant.

The same issues arise for the "cumulative" improvements. The EA says:

The Tribe shall make fair share contributions to the cumulative 2040 traffic mitigation measures. Funding shall be for design standards consistent with those required for similar facilities in the region. (EA, 4-8.)

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First, the amount and timing of the payments is unspecified, and no evidence is provided that the cumulative improvements will actually be constructed on the timeline required to avoid significant cumulative impacts. There is no discussion of feasibility and constraints, and no discussion of any environmental issues that may exist with the improvements. Incredibly, the widening of Shiloh Road from 2 to 4 lanes is simply “assumed” without any substantive analysis (Appendix I, 168), and it is not required as mitigation – even as it is absolutely critical for the EA’s conclusions about impacts.

Second, critical details are omitted from the mitigation measure, such as the nature of the fair share calculation (Table 33 in the traffic study is not mandated), the timing of project cost determinations, and the timing of payments. This information is crucial to evaluate the efficacy of the mitigation. Cost determinations must be based on actual facilities that meet County design standards, not hypothetically “similar” facilities, to ensure the improvements can actually be constructed. Effective mitigation measures will require enforceable agreements with the County.

Worse, without explanation, the EA inexplicably declines to impose mitigation recommended in the traffic study (EA, Appendix I) that could help address the project’s transportation impacts. These recommendations include:

- “The proposed project should provide adequate pedestrian and bicycle facilities on its site (particularly at its planned driveways) to facilitate pedestrian and bicycle traffic to and from the project site.” (EA, Appendix I, 6-7.)
- “Provide concrete sidewalks, and marked crosswalks at the proposed project driveways to connect with existing and planned pedestrian facilities along Shiloh Road and Old Redwood Highway.” (EA, Appendix I, 6-7; section 15.4.)
- “Provide continuous, accessible pedestrian pathways between the nearby transit stops and project entrances.” (EA, Appendix I, section 15.4.)
- “Provide pedestrian and bicycle facilities between the proposed project’s driveways and the project’s main facilities to improve on-site pedestrian and bicycle circulation” (EA, Appendix I, section 15.4.)
- “The site is not proposing sidewalks along its frontages. However, pedestrian facilities should be provided at the two new traffic signals to provide a connection with the sidewalks on the north side of Shiloh and the urban features on the west side of Old Redwood Highway near the future signals at the church. TJKM also recommends constructing continuous, accessible pedestrian paths between the nearest bus stops, the project access points closest to Shiloh Road & Old Redwood Highway, and the nearest project entrances.” (EA, Appendix I, section 15.2.)
- “Sonoma County Transit (SCT) serves the project area. Route 60 mostly travels along Old Redwood Highway between Cloverdale and Santa Rosa on headways varying between one to two hours. There is an existing pair of stops adjacent to the corner of Shiloh Road and Old Redwood Highway. With the addition of

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accessible pedestrian pathways between the stops and the project entrances, this route has the potential to serve employees and patrons in the Old Redwood Highway corridor.” (EA, Appendix I, 15.2.)

The failure to adopt these recommendations is unexplained. All of these mitigation measures would at least contribute to mitigating the very high VMT for the project. The EA’s departure from these recommendations is neither explained nor justifiable.

Similarly, without the “hard look” required by NEPA, the EA does not impose the queueing mitigations that the traffic study recommends. These omissions leave significant traffic impacts, including on safety, unmitigated. The mitigation section of the EA contains no mention of the mitigations recommended in the traffic study (Appendix I) in section 4.5 (p. 42, 43), section 8.0 (p. 89), section 12.2 (p. 129-132), section 5.5 (p. 57-58), section 9.2 (p. 99, 100), section 6.5 (p. 72), section 10.2 (p. 109, 110), or section 14.2 (p. 159-162).

Finally, the EA also modifies the mitigations in the traffic study without justification or explanation. There are, for example, discrepancies between turn lane mitigations in the traffic study and in the EA, as well as lane “storage length” recommendations, where mitigation has been reduced in the EA relative to the traffic study without explanation. Whatever the reason for these changes, there is no evidence that these changes are appropriate.

In sum, the proposed traffic mitigation is not adequate, and the discussion of traffic impacts does not constitute a “reasonably complete” discussion of the direct and indirect traffic impacts of the project.

#### **VIII. The EA’s discussion of wildfire risks and mitigation is inadequate.**

In the last decade, the project area has been the site of some of the worst wildfires in United States history. The project is very near to the burn areas of both the 2017 Tubbs Fire and the 2019 Kincade Fire. The EA acknowledges that the project is in a designated high fire risk area. (EA, figure 3.12-2.) The EA concedes that the elimination of fire barriers is a significant impact. Missing from the EA, however, is any recognition of the fact that the EA eliminates agricultural land that acts as a fire break (for the City of Windsor as well as for surrounding areas) and replaces it with flammable structures. This creates a potential ignition linkage from populated areas to a *very high* fire risk area. It is not as though the County has no experience with how this works. The EA contains a conclusory statement that no fire barriers will be eliminated. This is an odd mix of silly and irresponsible.

The EA cites State building standards relative to wildfire, and Former Chief Vern Losh recommends compliance with the wildfire (or “Wildland Urban Interface”) provisions of the California Building Code. (EA, Appendix N1.) The EA does not

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discuss the fact that these codes are inapplicable, and the EA does not require that they be imposed. The EA fails to discuss the fact that even a single ember in a poorly placed vent can defeat the protections provided by (already inapplicable) fire codes. Hurricane-force winds can transport these embers long distances at high velocities. It is understandable that, beyond the California code requirements, Former Fire Chief Losh recommends “special care” with locations where embers could intrude. No mitigation that implements and requires this care is imposed. No third-party plan checks are required. No substantive post-construction reviews are required. Indeed, no mitigation measures have been imposed to ensure that Chief Losh’s generic assumptions about how projects should be built are true. Fire sprinklers are mentioned, but there is no discussion of the adequacy of water supplies and infrastructure to address firefighting. There is no discussion of the potential loss of water pressure or the frequent loss of power during fire weather, which can eliminate water supply. There is no discussion of the feasibility and impacts associated with the “back up” fire station that is proposed.

The outcome-oriented carelessness of the EA applied to very significant risks is unfortunate. Yet, the EA’s failure to substantively examine evacuation risks is even more troubling. Evacuation risks are environmental risks with which Sonoma County has far too much familiarity. Evacuations have not always gone well, and timing has been crucial for the evacuations that have mitigated broader disasters. Very recent wildfires have required massive evacuations of the entire area in which the project is situated, including the complete evacuation of the adjacent Town of Windsor. The timely, total evacuation of the Town in 2019 was a key factor in allowing firefighters to save the Town and stop the further spread of the fire, as it allowed firefighters to battle flames without committing resources to rescues. (Exhibit G.) Evacuation requires sufficient infrastructure to allow occupants to leave and firefighters to enter without mutual interference. Experience has shown that the consequences of insufficient resources for evacuation can be dire.

Evacuation issues cannot be lightly treated as insignificant in Sonoma County. But that is exactly what the EA does. The CAS Safety Consulting LLC report makes numerous recommendations that have not been implemented in evacuation mitigation measures. Most problematically, these recommendations include traffic modeling that has not been completed. As the California Attorney General observes, “evacuation modeling and planning should be considered and developed at the time of project review and approval—when there is greater flexibility to modify a project’s design, density, siting, and configuration to address wildfire considerations—rather than deferred to a later stage of the development process.”<sup>9</sup> The “wait and see” approach

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<sup>9</sup> California Attorney General, “Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act,” October, 10, 2022, <https://oag.ca.gov/system/files/attachments/press-docs/2022.10.10%20-%20Wildfire%20Guidance.pdf>.



which might suffice in some cases is completely inappropriate in this situation. The only thing close to modelling that has been disclosed is an implausible conclusion that a 6-8 hour estimate to evacuate the casino and the Town is adequate. The basis of the estimate is not provided, but the conclusion that this is possible is based on various assumptions. The assumptions include the questionable assumption that Shiloh Road will be expanded at opening, even as no mitigation is proposed to require this expansion prior to opening. The EA does not provide a plausible basis for concluding that the estimated time required for evacuation is sufficient, it does not state the range of cases where that conclusion would be true, and it does not stress test all assumptions – in terms of infrastructure, in terms of disaster response operations, and in terms of the increasing wildfire risks presented by climate change. The lack of adequate traffic mitigation greatly exacerbates the deficient analysis. The EA does not provide evidence that the impacts are less than significant.

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Finally, and unfortunately, given the location and nature of the project, mitigation should be adopted to address the cleanup of the project if it does burn. It is well understood that commercial buildings that burn in wildfires present toxic hazards to the community,<sup>10</sup> and the surrounding community will not be able to ensure these hazards are abated without the imposition of mitigation that addresses these risks. Federal assistance is generally not available for commercial projects. Where cleanups are not financially convenient, they do not occur without mandatory requirements. This will result in a significant impact without mitigation.

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<sup>10</sup> California EPA, Guidance for Conducting Emergency Debris, Waste and Hazardous Material Removal Actions Pursuant to a State or Local Emergency Proclamation, October 7, 2011, <https://calepa.ca.gov/wp-content/uploads/sites/6/2019/06/Disaster-Documents-2011yr-GuideRemoval.pdf>

## IX. The EA fails to evaluate a reasonable range of alternatives.

Part of the reason why there is insufficient infrastructure for the project is the fact that the site is within an area where this type of project would never be permitted by existing local government planning. The location is zoned for agriculture,<sup>11</sup> but that is far from the only issue. Sonoma County local governments have each adopted Urban Growth Boundaries to contain auto-dependent sprawl and plan for city-centered growth. The County and the cities have voter approved Urban Growth Boundaries and Community Separators to preserve open space and protect Sonoma County's environment. The Community Separator areas are voter-approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development*. The project is outside the Town of Windsor's Urban Growth Boundary and inside the County's Community Separator. The existing infrastructure does not support this type of project because inter-governmental planning has sought to avoid this type of development in this area.<sup>12</sup> The Bureau's Scoping Memo partially acknowledges this fact in discussing the utility limitations that flow from the Town of Windsor's Urban Growth Boundary, but does not acknowledge or discuss the larger planning context.

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The EA lacks a reasonable range of alternatives, and reading the Bureau's EA is torturous, like watching a fly in a bottle. Given the site constraints in terms of resources and infrastructure, it is illogical and absurd not to include off-site alternatives in the analysis. The EA asserts that the availability of other sites is economically "speculative" but this conclusory assertion flies in the face of the other casinos that have already been developed in the Tribe's territory (as the EA defines it). It also ignores the known economic resources of the Tribe's backers in this project. (Exhibit H.) It is foundational NEPA law that "[r]easonable alternatives include those that are *practical* or *feasible* from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." 46 Fed. Reg. 18026, 18027 (1981) (emphasis in original); *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (federal agency has the "duty under NEPA to exercise a degree of

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<sup>11</sup> Approximately 47 acres of the parcel consist of Farmland of Statewide Importance; 8 acres are designated Farmland of Local Importance; and 13 acres are Prime Farmland.

<sup>12</sup> The relevant policies in the County's General Plan include, but are not limited to: "Objective OSRC-1.1: Preserve important open space areas in the Community Separators shown on Figures OSRC-5a through OSRC-5i of the Open Space and Resource Conservation Element"; "Objective OSRC-1.2: Retain a rural character and promote low intensities of development in Community Separators. Avoid their inclusion in City Urban Growth Boundaries or Spheres of Influence. Avoid their inclusion within Urbans Service Areas for unincorporated communities"; "Policy OSRC-1b: Avoid commercial or industrial uses in Community Separators other than those that are permitted by the agricultural or resource land use categories."

skepticism in dealing with self-serving statements from a prime beneficiary of the project” regarding alternatives). Further, constraining the analysis of reasonable alternatives (and the “purpose and need”) to those that could be permitted under 25 CFR § 151.12 is contrary to longstanding Council of Environmental Quality guidance. 46 Fed. Reg. at 18027 (alternatives outside of lead agency jurisdiction must be analyzed; “A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.”)

Picking a site for commercial development that is only available because local planning prevents commercial development of that site comes with multiple environmental and infrastructural challenges and costs. At bottom, it is hard to make this project work on this site without causing significant environmental impacts. The evaluation of off-site alternatives would allow the consideration of better sites, where the impacts could be better mitigated. If the site had better access to existing transportation (including multi-modal transportation) and utility infrastructure, the direct, indirect, and cumulative impacts would be easier to address. There is no need to site this project in a SGMA basin with water and wastewater constraints, or to site it in critical habitat for salmonids. The purpose and need and screening criteria have been engineered to screen out reasonable alternatives, and this is a completely unnecessary NEPA violation.

**X. Conclusion.**

The EA falls woefully short of providing "high quality" information and "accurate scientific analysis." *350 Mont. v. Haaland*, 29 F.4th 1158, 1176 (9th Cir. 2022). "An EIS is required of an agency in order that it explore, more thoroughly than an EA, the environmental consequences of a proposed action whenever substantial questions are raised as to whether a project *may* cause significant environmental degradation. That is exactly the circumstances of this case." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (emphasis in original, citation and internal punctuation omitted). The County looks forward to reviewing an EIS for this project, and will be happy to provide additional information.

Sincerely yours,



Verne Ball  
Deputy County Counsel

A9-92  
cont.

EXHIBIT A



2235 Mercury Way 707.543.8506 phone  
Suite 105 530.756.7991 fax  
Santa Rosa CA 95407 westyost.com

November 9, 2023

Project No.: 782-60-23-02  
SENT VIA: EMAIL

Verne Ball  
Office of County Counsel County of Sonoma  
575 Administration Drive  
Santa Rosa, CA 95403  
[verne.ball@sonoma-county.org](mailto:verne.ball@sonoma-county.org)

**SUBJECT: Koi Nation Shiloh Resort and Casino Project Environmental Assessment, Comments on Water Resources Assessment**

Dear Mr. Ball:

The County of Sonoma has retained West Yost to review the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West Yost staff reviewed the EA evaluation of proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Environmental Assessment for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023)
- Appendix C - Water and Wastewater Feasibility Study
- Appendix D - Grading and Hydrology Study

West Yost staff prepared these comments and recommendations based on information provided in materials provided by the County and relevant documents referenced in the EA.

**PROPOSED PROJECT SUMMARY**

The EA analyzes the Koi Nation of Northern California (Tribe) construction of a casino, hotel, spa, conference and event center, restaurants, parking, and support infrastructure (Alternative A and referred to here as the Proposed Project), which includes construction of a drinking water supply system, as well as wastewater treatment and disposal. The EA states that the average potable water demand for the site will be 170,000 gallons per day (gpd) with a peak demand of 294,000 gpd to be provided by on-site production wells (up to 700 feet deep). The estimated average wastewater generation is 232,000 gpd with an average weekend peak estimated at 335,000 gpd. Wastewater treatment is proposed using a package immersed membrane bioreactor (MBR) producing 108,000 gpd of tertiary treated recycled water for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Tertiary treated wastewater would be seasonally discharged on-site to Pruitt Creek.

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## COMMENT OVERVIEW

The project will have significant impacts related to surface and groundwater resources as described in Section 3.3.3.2 of the EA. Unless otherwise indicated, all comments are in response to “Alternative A” which is identified as the Proposed Project. Alternative A represents the most intense development considered for the site and is therefore associated with the greatest potential impacts to water resources.

While the EA provides some useful information about the Proposed Project and alternatives, the analysis presented lacks critical information that is needed to evaluate the severity of the Proposed Project’s impacts. In general, the EA relies on regional rather than site specific data, its conclusions are often not supported by evidence, and the potential cumulative impacts of the Proposed Project are not considered. Additionally, some mitigation measures identified in the EA lack details needed to evaluate their feasibility and effectiveness, for example:

- **The EA lacks analysis and basic data needed to reach conclusions about likely impacts of the Proposed Project.** The potential impacts have not been fully analyzed and the EA lacks essential information needed to evaluate the project and alternatives.
- **Assumptions used in the analysis may be inappropriate and yield inaccurate results.** The water demand, wastewater production, and recycled water reuse values are based on assumptions that are not validated based on local conditions, without discussion of project-specific or site-specific conditions. For this reason, impacts appear to be underestimated.
- **The EA fails to consider the project’s impacts in the context of cumulative, reasonably foreseeable future development.** Nor does the analysis consider climate change affects projected to occur over the life of the project.
- **Mitigation Measures outlined in the EA are inadequate.** Because the mitigation measures lack specifics relating to monitoring, criteria for success, and modes of enforcement, there is no certainty that mitigation measures will be effective in reducing potential environmental impacts.

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Each of these topics are detailed further below and presented in the following categories as ordered in impact analysis Section 3.3.3.2 of the EA:

1. *Surface Water* – New Structures and Impervious Surfaces in Flood-Prone Areas
2. *Groundwater*– Groundwater Pumping Impacts on Neighboring Wells
3. *Groundwater*– Proposed Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act (SGMA)
4. *Wastewater Treatment and Disposal* – Effluent Discharge to Pruitt Creek
5. *Wastewater Treatment and Disposal* – Impacts to Laguna de Santa Rosa
6. *Wastewater Treatment and Disposal* – Wastewater Treatment and Recycled Water Use

## SPECIFIC COMMENTS

The Water Resources Regulatory Setting identifies Federal and State Water Resource Regulations in Table 3.3-1. State regulations listed include Porter-Cologne Water Quality Act, Sustainable Groundwater Management Act, and Title 2 California Code of Regulations. However, it is unclear how these regulations and related policies would apply to the proposed project. California standards for wastewater treatment and disposal should be explicitly applied in technical assumptions, project description, impact analysis, and mitigation measure enforceability.



The EA lacks a discussion of climate change impacts and does not consider increased rainfall and higher temperatures in water and wastewater calculations. As noted in the North Bay Climate Adaptation Initiative's *Climate Ready Sonoma County*, Sonoma County is expected to experience more very hot days than in the past, and overall higher temperatures over a longer period of dry weather, even under forecasts that predict overall wetter conditions. Spring will come earlier and fall will come later, and these extended periods of hotter, drier weather will impact regional water availability. Heat will increase soil moisture deficit and reduce groundwater recharge, meaning that less water will be available even in futures with more precipitation. Heat will also increase the demand for water, exacerbating pressures on limited water resources in periods of drought (NBCAI, 2014).

## **1. Surface Water – New Structures and Impervious Surfaces in Flood-Prone Areas**

The southwest portion of the site is within the Federal Emergency Management Agency (FEMA) regulated flood area and additional areas of the site are shown in The Town of Windsor's Storm Drainage Master Plan (2020) to be flood-prone.

### ***Impervious Surfaces***

The proposed action would increase impervious surfaces on the Project Site by up to 35.51 acres through the construction of buildings, circulation, parking, and infrastructure. Increased impervious surfaces would result in increased peak flows and increased total discharge from the Project Site during precipitation events. The Proposed Project will need to consider flood mitigations, to address potential downstream flooding and sediment transport impacts.

The EA states that the Proposed Project would limit post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. However, the plan to achieve this is not fully described or analyzed. Additional calculations and site planning are needed to demonstrate the feasibility of mitigating impacts from the significant addition of impervious surface area.

### ***Floodplain Storage Capacity***

Development on the site would displace agricultural land and floodplain area that currently provides floodwater storage and may exacerbate on-site and downstream flooding. Climate models forecast that the frequency and intensity of flooding will continue to increase beyond historical levels.

The environmental analysis should be expanded to consider impacts of climate change to the mapped limits of the 100-year flood and to the intensity of future flooding at the site. Additionally, the EA does not demonstrate how impacts to all floodplain functions would be mitigated to a less than significant level.

## **2. Groundwater – Groundwater Pumping Impacts on Neighboring Wells**

The Proposed Project would pump groundwater from the Santa Rosa Plain groundwater subbasin. The Project Description estimates daily pumping of 170,000 gpd with a peak pumping of 294,000 gpd. Potable water would be sourced from on-site production wells, drilled up to 700 feet deep. Several existing wells are located in proximity to the site, including shallow residential wells at the Mobile Home Estate and two Windsor Water District municipal wells at Esposti Park, north of and in proximity to the Proposed Project site. The municipal wells are located within about 250 feet of the northwest project site boundary and about 2,200 feet from the "treatment area" as identified in Appendix C of the EA, the area tentatively designated for water and wastewater infrastructure.

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The EA does not present a conceptual groundwater model of the site and limits the discussion of potential impact to the deep aquifer (300 to 600 feet deep). The geology of the Santa Rosa Plain is complex and groundwater pumping could adversely affect surface water flow and groundwater dependent ecosystems. An analysis of existing groundwater conditions and impacts of project pumping on nearby Pruitt Creek and potential cumulative impacts downstream in the Laguna de Santa Rosa is needed.

Water quality in the wells currently limits water use to irrigation. One of the wells at Esposti Park is used to irrigate the park. The other well, currently inactive, is identified in the Town of Windsor's Water Master Plan for future development of municipal drinking water and would include a water treatment process to remove contaminants.

### ***Impacts to Neighboring Wells***

The average and peak pumping of the Proposed Project could result in groundwater drawdown in neighboring wells and could significantly decrease the Esposti well output and potentially affect water quality. The Town of Windsor Water Master Plan (Woodard and Curran, 2019) estimates the sustainable yield of the municipal to be 400 gpm (0.6 million gallons per day) or 350 acre feet per year (AFY). Proposed Project pumping could significantly decrease the previously analyzed estimated yield. Groundwater pumping at the site could also result in adverse impact to domestic wells in the vicinity. This would include reducing production of neighboring wells and/or lowering groundwater levels below well pumps altogether, rendering neighboring wells unusable.

The EA cites a Town of Windsor 2017 aquifer test at the Esposti well as evidence that pumping from the aquifer deeper than 300 feet would not result in a decline in water level. However, although no drawdown occurred during that test, the test lasted only 28 hours. The aquifer test at the Esposti municipal well was over a short duration and is not an appropriate basis for assessing impacts of continuous groundwater pumping proposed as part of the Proposed Project. The EA further concludes, based on very limited data, that the Proposed Project would not affect groundwater levels or water availability in wells drilled to a depth of less than 370 feet. The EA lacks critical hydrogeologic data to reach this conclusion.

Additional groundwater monitoring is needed to confirm hydraulic separation between the upper and lower aquifers underlying the site and surrounding area. This monitoring should be conducted as part of the environmental evaluation and prior to project approval. Additional studies, including a well interference study and hydrogeologic testing, are needed to provide adequate information to allow for a reasonable evaluation of alternative development scenarios and impacts to neighboring wells.

Project wells should be located away from adjacent wells and outside the zone of influence around the existing Esposti wells. Pumping rates should be limited to amounts that avoid impacts to neighboring wells and ensure sustainable yield for the project wells and wells in the vicinity. Additional investigation and groundwater pump tests should be completed to determine the impact to nearby wells. Assessment of the impact to the municipal well, both the current use of the well for irrigation and future use as identified in the Town of Windsor Water Master Plan (2019), is needed to address cumulative impact.

### ***Groundwater Mitigation Measure***

Proposed Project groundwater pumping could adversely affect groundwater levels and well production. Mitigation measures listed in the EA include monitoring and compensation; however, the EA does not include metrics for determining when adverse impact has occurred, compensation actions that would be required should adverse impacts result, or an enforcement mechanism. The EA should clarify that both shallow and deep wells will be monitored and eligible for mitigation compensation.

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The proposed mitigation measure to reimburse well owners should their well become unusable within five years of project pumping is not mitigation, let alone appropriate mitigation. The effects of environmental harm are more than monetary, and there are reasonably foreseeable indirect effects of unusable wells, such as impacts related to water hauling from traffic and associated GHG emissions, health and safety issues from lack of potable water, and impacts of extending municipal water service, that have not even been discussed.

Adequate data from both the shallow and deep aquifer should be collected prior to initiating groundwater pumping to fully evaluate the impact. Actions should be identified to avoid impacts to neighboring wells. The proposed mitigation measures further indicate that the Tribe, at its discretion and cost, could provide an alternative water supply. However, the EA does not identify the source of these alternative water supplies and it does not provide an evaluation of potential impacts associated with the buildout of alternative supplies. The buildout of alternative water supply infrastructure would likely have significant impacts that need to be analyzed.

### **3. Groundwater – Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act**

With the Sustainable Groundwater Management Act (SGMA), California has identified groundwater basins that require special planning to avoid adverse impacts. The project is in one of these basins. The Santa Rosa Plain Groundwater Subbasin (basin number 1-55.01) is categorized as a medium priority basin by the California Department of Water Resources (DWR) and is, therefore, subject to special regulation and planning efforts. The Santa Rosa Plain groundwater basin is regulated under SGMA because the basin is densely populated, and groundwater use is relied on for rural residential, agricultural, commercial, and municipal water supply. Groundwater management is needed to avoid adverse impacts to the groundwater basin, but there is no discussion in the EA of the unique relationship of this project to groundwater management.

DWR approved a Groundwater Sustainability Plan (GSP) for the basin in January 2023 and the Groundwater Sustainability Agency (GSA) has prepared and will continue to prepare annual reports that provide updates about current groundwater conditions. The GSP states that the groundwater stored in the shallow and deep aquifer systems is declining on average by about 2,100 AFY. The 2022 Annual Report indicated that groundwater levels and groundwater storage capacity are stable but, importantly, future declines are projected. The Annual Report further indicates that more data are needed to assess the health of groundwater to interconnected surface waters and the impact of pumping on groundwater-dependent ecosystems.

#### ***Consistency with Santa Rosa Plain Groundwater Sustainability Plan (GSP)***

The EA is significantly flawed by not considering cumulative impacts of groundwater extraction. While the analysis mentions the Santa Rosa Plain GSA, it provides no analysis of the Proposed Project's compatibility with the adopted GSP. The EA should include analysis of long-term pumping of 300,000 gpd on potential undesirable results as defined in the GSP, including for water quality. Groundwater pumped from the deeper aquifer in the northern portion of the Santa Rosa Plain subbasin underlying the Project Site is documented to contain elevated concentrations of arsenic and manganese. These constituents have been a constraint for the Town of Windsor's Esposti Park wells and the effects of additional pumping on groundwater water quality is crucial information that is missing from the EA. Additional analysis should consider planned future pumping from the Esposti well, as discussed above.

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### ***Long-Term Municipal Water Supply***

Proposed Project groundwater pumping may adversely impact Windsor Water District's ability to meet water demands with supplemental groundwater supply and may reduce water supply resiliency during a drought. The EA lacks an analysis of long-term groundwater supply and fails to acknowledge the current and future use of groundwater to meet water demands. The EA should include a water supply assessment that evaluates long-term water supply sustainability using a 45-year time horizon and consider future drought conditions and climate scenarios.

Current developments regarding local water supplies cannot be ignored in the analysis. The decommissioning of the Potter Valley hydroelectric facility and likely reductions in Eel River flows into the Russian River system, could result in reduction of surface water deliveries to the Town of Windsor, resulting in the need for future increased groundwater extraction from municipal wells.

### ***Groundwater Quality***

The EA indicates that wellhead treatment would be needed but does not describe the nature of waste products that would result from water treatment to attain potable water, nor is a disposal location identified. Improper disposal will result in, for example, soil and water contamination. The EA should include an analysis of the potentially significant impacts from removing contaminants from wells where groundwater does not meet drinking water standards.

## ***4. Wastewater Treatment and Disposal – Effluent discharge to Pruitt Creek***

The EA states that the project will produce an estimated average wastewater flow of 232,000 gpd and a peak weekend flow of 335,000 gpd. For the purposes of design, an average daily flow of 300,000 gpd and average weekend flow of 400,000 gpd was assumed, which is equivalent to about 110 million gallons/year. During the dry season, tertiary treated recycled water would be used onsite for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. An additional 11-acres of off-site vineyard could also be irrigated. Appendix C presents several options for use and storage of recycled water in ponds and tanks. During the wet season, tertiary treated wastewater would be seasonally discharged onsite to Pruitt Creek.

The information presented in the EA does not fully analyze potential environmental impacts from proposed discharge of tertiary treated wastewater to Pruitt Creek. Additional analysis is needed to evaluate water-related impacts and support the EA's conclusion that there will not be significant impacts.

### ***Seasonal Discharge Volume Estimate***

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants (WWTPs) to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. Pruitt Creek is an ephemeral drainage with highly variable flow volume. Appendix C relies on streamflow statistics from a U.S. Geological Survey (USGS) gauging station located 5.5 miles downstream of the site, which significantly overestimates the capacity for discharge to Pruitt Creek. Appropriate discharge volumes must be calculated based on local stream flow data for the analysis to be reasonable.

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Streamflow statistics at the downstream gauging station indicate that discharges immediately before and after the summertime months (May and October) may be limiting for the Proposed Project, and that streamflow rates are highly variable from year to year. Appendix C indicates that for any discharge scenario developed for the Proposed Project, backup contingency plans should be developed for low-flow conditions. However, the EA does not present this contingency plan, nor does it analyze potential on-site or secondary impacts of such discharge contingency.

The EA does not demonstrate the feasibility of seasonal discharge of anticipated wastewater flows to Pruitt Creek under all climate conditions, even though extremely varied climate conditions are foreseeable. The environmental assessment for the Proposed Project should include an analysis of seasonal discharge options to ensure capacity under all foreseeable climate scenarios.

### ***Treatment Process Vulnerability***

The Proposed Project includes construction of a self-contained package (immersed MBR) treatment plant to produce tertiary treated recycled water. The volume of influent will vary with casino usage, weather conditions, and infrastructure functioning. Any WWTP may be subject to “upset conditions”, when a sudden and unexpected event prevents the facility from operating properly. There is no indication that the Tribe has considered coordination or mutual aid agreement with other sanitary service providers to provide backup or support in the event of a WWTP upset. The Proposed Project should establish enforceable agreements to engage in mutual aid with one or more sanitary service areas.

### ***Construction of Outfall in Pruitt Creek***

Installation of a wastewater outfall structure in Pruitt Creek will adversely affect riparian habitat without appropriate mitigation. Operation of the outfall could alter the flow and hydrology of the Pruitt Creek, resulting in erosion and exacerbated flooding. Information is needed to evaluate the foreseeable impacts of the outfall structure on Pruitt Creek in all flow conditions.

## ***5. Wastewater Treatment and Disposal – Impacts to Laguna de Santa Rosa***

Discharge of tertiary treated effluent to Pruitt Creek, a tributary to Mark West Creek which flows into the Laguna de Santa Rosa, could have significant impacts on water quality in the Laguna de Santa Rosa. The Regional Board and the State Water Resources Control Board (State Board) have designated the Russian River and its tributaries, including the Laguna de Santa Rosa, as impaired waterbodies. The Regional Board has adopted policies and Total Maximum Daily Loads (TMDL) (some adopted and some under development) for a range of parameters, including sediment, temperature, pathogens, nutrients (nitrogen and phosphorus), dissolved oxygen, and sedimentation/siltation. The Water Quality Trading Framework for the Laguna de Santa Rosa Watershed adopted by the Regional Board in 2021 sets a “no net loading” effluent limitation for total phosphorus in National Pollutant Discharge Elimination System (NPDES) permits for WWTP discharge to the Laguna de Santa Rosa and provides a mechanism to offset total phosphorus inputs to the system. These regulatory tools recognize WWTPs as potential pollutant sources and provide the mechanisms to address water quality impairment.

The Proposed Project discharge of recycled water would add sediment, nutrients, and phosphorous to the Laguna de Santa Rosa watershed, undermining regional efforts to address existing water quality impairment. No analysis of the impact of project discharge on the Laguna de Santa Rosa watershed is provided. The Proposed Project could contribute to cumulative impacts in the Laguna de Santa Rosa that have not been analyzed. More evidence is needed to support the assertion the proposed discharge would comply with all current and reasonably foreseeable future policies, water quality trading framework, TMDLs, and implementation plans that support the Basin Plan.

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The EA concludes that “surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A would be less than significant,” but fails to demonstrate ability to meet nutrient limitations for discharge to Mark West Creek and its tributaries. The environmental assessment for the Proposed Project must include an analysis demonstrating how the Proposed Project would meet the no net phosphorous discharge required under the Nutrient Trading Framework and a full analysis of the proposed discharge in the context of adopted and future TMDLs. Standards for effluent phosphorous loads and for a phosphorus offset program should be identified and mitigation measures to reduce impacts of phosphorous discharge and secondary impacts of offset projects should be evaluated.

## **6. Wastewater Treatment and Disposal – Wastewater Treatment and Recycled Water Use**

The information presented in the EA does not fully analyze potential environmental impacts from proposed use and storage of recycled water on-site and off-site. Additional analysis is needed to demonstrate the feasibility of on-site wastewater treatment, recycled water storage and reuse, and potential use of recycled water off-site.

### ***Storage Tank Capacity***

The proposed on-site recycled water storage ponds and tanks would be located in the “Treatment Area” in the southeastern portion of the site. Several options for recycled water disposal are presented in Appendix C, including construction of 12- to 16-million gallon recycled water storage tanks. This would provide adequate storage for about 40 to 50 days. Since discharge will not occur between May 15 and September 30 (138 days) significantly more storage, on the order of 40 million gallons, would be needed. Proposed facilities are not shown on the site plan and more information is needed to ensure that there is adequate space to accommodate needed storage, applying site-specific evapotranspiration (ET) rates and discharge volumes.

### ***Evapotranspiration Rates***

The landscape and crop ET calculation used in the EA are substantially different from the recycled water applications rates set for the Windsor Water district, the nearest permitted recycled water producer to the site. Site-specific and ET rates should be used to recalculate, together, for a more realistic estimate of the volume of effluent that could be discharged to Pruitt Creek to fully evaluate impacts related to onsite recycled water use and storage.

### ***Recycled Water Reuse***

The Proposed Project relies on dry season use and disposal of recycled water, but has not demonstrated adequate opportunities to reuse the volume of wastewater projected to be produced at the site. Eleven acres of off-site vineyards are an optional component of the recycled water balance; however, the proposed irrigation sites have not been identified. The Proposed Project includes use of recycled water for dual plumbing and toilet flushing, however the State Division of Drinking Water (DDW) and applicable regulations do not permit recycled water use in food service buildings, such as restaurants and bars. The stated reliance on State standards is misleading. The recycling of water should be a concrete mitigation measure, with an analysis of the impacts of that mitigation. The analysis should include a realistic estimate of recycled water production, reasonable estimates for recycled water reuse based on acceptable ET rates, and identification of all on-site and off-site recycled water use and disposal options consistent with Title 24.

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cont.



### ***Biosolids and Brine***

Proposed wastewater treatment would produce biosolids and brine that would require disposal. The EA indicates that biosolids produced by the WWTP would be dewatered on-site and periodically hauled to a Class III landfill. In the very near term, State landfill diversion targets (per SB 1383) will require the diversion of biosolids from landfills, and recent CalRecycle regulations have already clarified that biosolids cannot be exempted from diversion targets as alternative daily cover. State law requires a 75 percent reduction in the landfilling of organic wastes by 2025. In addition, biosolids from WWTPs contain constituents of concern, including PFAS (per- and polyfluoroalkyl substances), and both direct and lifecycle impacts of these contaminants should be analyzed. Pyrolysis and disposal that does not involve land application has other foreseeable impacts. Proposed disposal sites that can accept biosolids and brine may be located at great distance for the Proposed Project site so associated transport greenhouse gas emissions and secondary impacts should be evaluated.

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cont.

### **CONCLUSION**

In conclusion, the Proposed Project may have significant impacts that have not been fully analyzed and additional investigation is needed. The EA does not present adequate evidence to support the conclusion that there will not be significant water resource impacts. Potential project and secondary impacts have not been fully analyzed and the EA lacks information essential for a reasoned choice of alternative development proposals for the site. In light of these deficiencies, we recommend preparation of an Environmental Impact Statement.

Sincerely,  
WEST YOST



Sandi Potter, PG, CEG  
Senior Technical Specialist I

PG No. 5610  
CEG No. 2170

EXHIBIT B



Sonoma  
Water

## MEMORANDUM

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**DATE:** October 27, 2023

**TO:** Verne Ball, Deputy County Counsel

**FROM:** **Jeff Church, Senior Environmental Specialist at Sonoma Water**

**PROJECT:** Koi Nation Casino Environmental Assessment

**SUBJECT:** Documentation of observations of steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek, Windsor California.

A few notes on observations of both resident rainbow trout and anadromous steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek near Windsor, California.

The monitoring site was located in a reach of Pruitt Creek that crosses Faught Road, southeast of Windsor California. Observations were made on the upstream and downstream sides of Faught Road, including upstream to the creek culvert at Shiloh Ridge Road (approximately 450 linear feet of stream length). Pruitt Creek is perennial in pools immediately downstream of Faught Road and upstream of Faught Road approximately 0.5 miles as observed. Pruitt Creek transitions to an intermittent and ephemeral stream approximately 100 feet downstream of Faught Road during the dry season.

Monitoring began on December 7, 2001 and continued through July 28, 2016. Monitoring began as an effort to record water temperature measurements to determine whether Pruitt Creek could serve as a potential reference stream in the Russian River Watershed. As a reference stream it could provide information on natural water temperature patterns and ranges that could be expected to occur in similar sub-watersheds within the Russian River basin. Monitoring also included observations for the presence of steelhead salmon. Positive observations of the presence of steelhead coupled with water temperature data could be used to determine if water temperature regimes in Pruitt Creek (and similar sub-watersheds) are suitable for steelhead long-term survivability.

Monitoring frequency varied, with monitoring occurring as frequently as several times a day to as little as once or twice a week or monthly.

Steelhead were observed in all years of monitoring except during the beginning of the effort in December 2001 and winter/spring 2002 due to high turbidity (and low visibility) from a failed culvert and earthen creek crossing upstream of the monitoring location. The culvert and earthen crossing were removed and the site restored in late 2002 to early 2003. The majority of observations included resident rainbow trout of several age classes including fry and young of the year. Adult anadromous steelhead were observed migrating upstream on two different

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occasions. The first observation occurred on February 3, 2008 and included one adult steelhead (approximately 18-20 inches in length) in a pool upstream of Faught Road but carried downstream to a pool below the Faught Road crossing. The second observation occurred on February 13, 2008 and included one adult steelhead (approximately 24 inches in length) under the Faught Road Bridge that also moved into the pool downstream of the crossing. This observation included a second smaller fish, approximately 10 to 12 inches in length.

Adult steelhead were also observed in Pool Creek downstream of the confluence with Pruitt Creek in a pool underneath the pedestrian bridge at Windsor Golf Course. Two separate observations of individual adult steelhead were made while golfing in the late 2000s or early 2010s. Observations were not part of a monitoring effort but were happenstance while golfing and so the dates are not exact, but the time period is accurate. Time of year was spring.

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cont.



EXHIBIT C





MEMORANDUM

**To:** Verne Ball, Deputy County Counsel  
**From:** Robert Pennington, Professional Geologist  
**Date:** November 07, 2023  
**Subject:** Koi Nation Casino Environmental Assessment, Pruitt Creek Observations

Dear Verne,

I reviewed the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs. I found the EA to be lacking in site specific analysis, particularly in regard to water supply and wastewater. This memo documents observed conditions in Pruitt Creek and discusses limitation to discharge of treated effluent to this waterway.

The National Hydrography Dataset identifies Pruitt Creek as intermittent, meaning that it has little or no flow for a substantial duration of the year. Local hydrologists and fish biologist know the Pruitt Creek near the project site to be dry for much of the year, even during the winter wet season, unless there have been substantial rains in the preceding months.

To verify stream conditions, I conducted a site visit on the morning of October 27<sup>th</sup>, 2023, and observed Pruitt Creek at the bridge crossing at Old Redwood Highway located immediately downstream of the project site. The creek was observed to be dry with no residual pools or standing water visible within 30 feet upstream or downstream of the bridge. See Figures 1 and 2. Note, the site visit was conducted on October 27, within what is considered the wet season.

The fact that Pruitt Creek in the vicinity of the project site is dry for much of the year presents a substantial limitation for the discharge of treated wastewater. The estimated average wastewater generation is 232,000 gallons per day (gpd) with an average weekend peak estimated at 335,000 gpd. During the dry season, wastewater would be used for vineyard irrigation and the remainder would be stored. During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species.

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge



#11466800 has a contributing watershed area of 251 square miles. The contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. Recycled water storage volumes must be sized for worst case drought conditions when flows in Pruitt Creek are lowest and dry or very low streamflow conditions may extend into much of the wet season.

It is recommended that multiple years of continuous streamflow data be collected at the site, including during at least one year of severe drought. These data could then be regressed with gauge records from nearby gauging stations with longer records to reconstruct a defensible streamflow hydrograph for the site on which to design wastewater disposal systems and analyze potential impacts.

In addition to streamflow, it is recommended that water quality be sampled including temperature, pH, dissolved oxygen, nitrates, and phosphates. These data are necessary to design and assess the feasibility of the proposed wastewater treatment and disposal system, and to evaluate potential impacts to water quality, aquatic habitat, and beneficial uses of Pruitt Creek and the Laguna de Santa Rosa.



Figure 1. Image looking upstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.

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cont.

**Figure 2. Image looking downstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.**

EXHIBIT D

## RIVER ROCK TO DEFAULT ON BONDS: TRIBE TO MISS INTEREST PAYMENT, SAYS CASINO WILL REMAIN OPEN

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville. | 

ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT  
BY ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT  
May 29, 2014

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

The River Rock Entertainment Authority announced it will not be making the May interest payment due Saturday on two outstanding notes, automatically triggering a default on the bonds.

The tribe emphasized the Alexander Valley casino will remain open for business. But it remains to be seen how the default may impact investors and tribal members who receive payments from the casino's profits.

"Although the scheduled interest payment will not be made, we want to assure our customers, vendors and employees that we are generating sufficient funds to operate our business and provide the excellent customer service that our patrons expect," David Fendrick, the casino's CEO and general manager, said in a statement.

The default comes just six months after the opening of a rival casino adjacent to Rohnert Park, which has cut into River Rock's revenues and drawn away gamblers that once flocked to the Alexander Valley casino.

"Our immediate focus is identifying cost savings opportunities to adjust to the challenges of our new competitive environment," Fendrick said.

(APR 2014)

 Start the conversation

Have your say.  
Leave a comment below and let us know what you think.

The tribe also has brought in consultants to help analyze the casino's marketing efforts, Dry Creek Tribal Chairman Harvey Hopkins said Wednesday. Tribal leaders are "looking at all options," he said in a brief interview.

"We've been constantly meeting with management of the casino, attorneys and financial advisers," Hopkins said. "It's been a long road to get here."

The River Rock Entertainment Authority, an unincorporated governmental arm of the tribe, on May 1 announced that it had failed to make the scheduled interest payment for the month. The authority said it would use a 30-day grace period to reduce costs and to have what Fendrick then characterized as "significant dialogue with our bondholders."

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RIVER ROCK TO DEFAULT ON BONDS: TRIBE TO MISS INTEREST PAYMENT, SAYS CASINO WILL REMAIN OPEN

River Rock opened in 2002 as Sonoma County's first tribal casino. To finance construction, the tribe sold \$200 million in senior notes to investors at 9.75 percent interest.

In 2011, the tribe restructured the debt after two rating agencies warned that the business otherwise faced a high risk of default. About \$50 million of that debt since has been repaid, Hopkins said in March.

But Hopkins also acknowledged that River Rock's revenues had declined by more than 30 percent since the Graton Resort & Casino opened in Rohnert Park in November. The new casino is closer to Bay Area gamblers and has roughly five times the space of the 61,000-square-foot River Rock facility.

As a result of the drop in revenues, the Dry Creek tribe has cut per capita payments to its 640 members over the age of 18, Hopkins said in March. In total, the tribe has nearly 1,040 members.

On Saturday, the tribe will default on two bonds: its 9 percent Series A Senior Notes and its 8 percent Series B Tax-Exempt Senior Notes, both due in 2018.

The tribe's announcement did not disclose the size of the interest payment that is due Saturday or the amount of outstanding debt it owes to bondholders.

The default will trigger a "waterfall agreement" that dictates the use of the authority's cash flow, according to the announcement.

Analysts who follow the Indian gaming market have noted that creditors of tribal casinos can't seize assets as might be done under a normal loan default. Instead, they suggested that River Rock may once more seek to restructure its debt, possibly by winning concessions from creditors in regard to the repayment of both principal and interest.

A bondholder on Wednesday seemed to take the default in stride.

"I'm not happy about it," said Mike Hudson, an Indiana man who has owned River Rock bonds for more than five years. "There are many options on the table. This is just the beginning of the next chapter. It's not gloom and doom."

Hudson said that by missing the interest payment, the tribe will be subject to having the casino revenues overseen by a trustee for the bondholders.

"Instead of a democracy, it will be more of a dictatorship," Hudson said. "A professional manager will come and manage the way they see best for the benefit of creditors, not the tribe. Essentially, they've conceded control of the casino."

"It will probably work out. Most of these things usually do," he concluded.

The River Rock Entertainment Authority has retained the law firm Holland & Knight LLP as its legal adviser and will use Stuyvesant Square Advisors Inc. as its financial adviser.

You can reach Staff Writer Robert Digtale at 521-5285 or robert.digtale@pressdemocrat.com. You can reach Staff Writer Clark Mason at 521-5214 or clark.mason@pressdemocrat.com.

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EXHIBIT E



California Environmental Quality Act  
**Air Quality Guidelines**  
**Appendix B:**  
**CEQA Thresholds for Evaluating**  
**the Significance of Climate Impacts**  
**From Land Use Projects and Plans**

April 2022



These guidelines are nonbinding recommendations, intended to assist lead agencies with navigating the CEQA process, and any updates will likewise be nonbinding and advisory.

# 1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].)<sup>1</sup> But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

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## 1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

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<sup>1</sup> The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: [https://www.califaep.org/docs/CEQA\\_Handbook\\_2021.pdf](https://www.califaep.org/docs/CEQA_Handbook_2021.pdf).





Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California’s long-term climate goal of carbon neutrality<sup>2</sup> by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its “fair share” of implementing the goal of carbon neutrality by 2045:

**Thresholds for Land Use Projects (Must Include A or B)**

- A. Projects must include, at a minimum, the following project design elements:
  - 1. Buildings
    - a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development).
    - b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines.
  - 2. Transportation
    - a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA:
      - i. Residential projects: 15 percent below the existing VMT per capita
      - ii. Office projects: 15 percent below the existing VMT per employee
      - iii. Retail projects: no net increase in existing VMT
    - b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
- B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

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If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California’s long-term climate goals—its “fair share”—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California’s efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

<sup>2</sup> “Carbon neutrality” is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.



EXHIBIT F



The County of San Diego

# Planning Commission Hearing Report

<b>Date:</b>	July 22, 2022	<b>Project:</b>	Transportation Study Guide to Implement Vehicle Miles Traveled Analysis
<b>Place:</b>	County Operations Center (COC) Hearing Room 5520 Overland Avenue San Diego, CA 92123	<b>Case/File No.:</b>	N/A
<b>Time:</b>	9:00 a.m.	<b>Location:</b>	All Districts
<b>Agenda Item:</b>	#7	<b>General Plan:</b>	Various
<b>Appeal Status:</b>	Not applicable; Approval by the Board of Supervisors	<b>Zoning:</b>	Various
<b>Applicant/Owner:</b>	County of San Diego	<b>Communities:</b>	All unincorporated communities
<b>Environmental:</b>	Notice of Exemption; CEQA Section 15378 and 15060(c)(3)	<b>APNs:</b>	Various

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## A. OVERVIEW

The purpose of this staff report is to provide the Planning Commission with the information necessary to make a recommendation to the Board of Supervisors (Board) to adopt, adopt with modifications, or not adopt the proposed Transportation Study Guide (TSG). The revised TSG aligns with State guidance and establishes a threshold based on the regional average Vehicle Miles Traveled (VMT), which includes the entire San Diego region. The TSG also identifies Infill Areas where no VMT analysis or mitigation would be required for future development projects. The TSG also includes other standards and criteria that would be used to evaluate projects, including small projects, locally serving projects and public facilities. The TSG describes the process and procedures for project applicants to use when preparing transportation analyses for projects in the unincorporated area. If adopted, projects could use the TSG immediately as the basis to address the transportation effects of projects.

## B. RECOMMENDATIONS

This is a request for the Planning Commission to consider the proposed Transportation Study Guide (TSG) and make recommendations to the Board. Planning & Development Services (PDS) recommends that the Planning Commission take the following actions:

1. Find that the proposed resolution complies with the CEQA and State and County CEQA Guidelines because the resolution is: (1) not a project as defined in the Public Resources Code section 21065



and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3); (2) categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and (3) subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the resolution implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

- 2. Recommend that the Board of Supervisors adopt the Resolution:

RESOLUTION OF THE COUNTY OF SAN DIEGO BOARD OF SUPERVISORS ADOPTING THE TRANSPORTATION STUDY GUIDE INCLUDING TRANSPORTATION THRESHOLD OF SIGNIFICANCE FOR VEHICLE MILES TRAVELED

**C. BACKGROUND**

In 2013, the State of California (State) passed Senate Bill 743 (SB 743), which changes how jurisdictions, including the County of San Diego (County), are required to analyze transportation impacts from projects under the California Environmental Quality Act (CEQA). CEQA was signed into law in 1970 to provide standards for regulating pollution and preserving the natural environment. CEQA requires California’s public agencies and local governments to measure the environmental impacts of development projects or other major land use decisions and to limit or avoid those impacts when possible. State CEQA Guidelines encourage lead agencies, like the County, to develop and publish guidelines to describe the level at which the environmental impacts become significant and therefore need to be reduced and/ or mitigated, or offset. These are called thresholds of significance. SB 743 required local jurisdictions to shift their environmental impact analysis for transportation from using traffic congestion or “level of service” (LOS) to Vehicle Miles Traveled (VMT) starting July 1, 2020. VMT replaces motorist delay and associated level of service (LOS) as the metric for analysis of transportation impacts under CEQA.

Although traffic congestion measured the impact on the driver, VMT is intended to balance the needs of congestion management with statewide goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation, such as walking and biking. VMT is calculated by determining the distance and number of vehicle trips generated from a home or business. When analyzing a project’s impact on the environment from VMT, a lead agency can provide guidance on impacts from VMT by comparing the estimated VMT from the project to the average VMT in a defined area.

SB 743 does not require local agencies to adopt guidelines or to establish a threshold for VMT; however, agencies may adopt guidelines and thresholds after public review, and these guidelines and thresholds must be supported by substantial evidence. If an agency does not adopt guidelines or thresholds, each project must develop a specific threshold to determine whether the project’s impacts will be significant under CEQA.

When analyzing a project’s impact on the environment from VMT, the estimated VMT from the project is compared to the average VMT in a defined area. If a project decreases VMT from existing conditions within the defined area, it may be considered to have a less than significant impact on transportation, depending on the decrease. A project can also be considered to have a less than significant impact on VMT if it generates less than a specified number of average daily trips. Other criteria can also be used

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to determine if a project has a less than significant impact from transportation on the environment, such as projects that are adjacent to existing major transit facilities.

Projects found to have a significant impact on the environment under CEQA are required to mitigate for, or offset, those impacts where feasible. Mitigation includes projects that reduce VMT like installing bike lanes and sidewalks, which reduce driving and vehicle trips. Because a project's VMT is largely based on the location of the project, which cannot easily be changed, mitigating for significant VMT impacts can be difficult to accomplish without a defined mitigation program in place. Mitigation for transportation impacts can also be costly. Therefore, using VMT as the metric for analyzing transportation impacts under CEQA incentivizes development in higher density areas near transit with a diverse mix of uses, and disincentivizes it in lower density areas that are more distant from jobs, services, and transit.

A transportation analysis involves determining the project's VMT using nationally adopted traffic standards and modeling and comparing those to something like a regional VMT average. Then for a project to be considered efficient, it is compared to a threshold that is also adopted by a jurisdiction, such as 15 percent below the regional VMT average, which is the threshold recommended by the Governor's Office of Planning and Research (OPR). If the average VMT is below the threshold, the project does not have a significant VMT impact and can move forward, without further VMT analysis.

If the average VMT for the project exceeds the threshold, the project must propose mitigation to reduce the project's VMT to below the threshold (i.e., by providing multimodal or transit infrastructure or other measures to reduce or offset VMT). If the project cannot reduce their VMT to below the threshold, an Environmental Impact Report (EIR) is required with a statement of overriding considerations for the project's significant and unavoidable transportation impacts. VMT is one of multiple subject matter areas analyzed under CEQA. Even if a project does not have a VMT impact, the project still requires environmental review for other CEQA environmental subject matters like biology, cultural resources, and fire hazards.

OPR prepared a Technical Advisory document to assist local agencies when developing their own guidelines for the assessment of VMT, thresholds of significance, and mitigation measures. OPR stated that lead agencies have the discretion to set or apply their own thresholds of significance. Based on staff's research, jurisdictions across the state have taken different approaches to implement VMT. Of the 58 counties in the state, 16 adopted their own VMT guidelines, nine chose to rely on OPR guidance and not adopt their own guidelines, and 33 have no guidance, so projects develop their own VMT analysis on a case-by-case basis. Of the 16 counties that adopted their own VMT guidelines, eight counties adopted a threshold based on the unincorporated area average, six adopted a threshold based on the regional average, and two counties chose other alternatives.

On June 24, 2020 (6), the Board of Supervisors (Board) adopted a Transportation Study Guide (TSG) for the unincorporated area, a technical guide for analyzing transportation impacts for projects using VMT. The TSG described the process and procedures for project applicants and their consultants to use when preparing transportation analyses. The TSG also included a methodology referred to as Local Mobility Analysis (LMA) to meet the County's General Plan requirement for a Level of Service (LOS) D (which is considered a stable flow of traffic with an acceptable level of delay) or better and to ensure the safe operations of the roads for all users including bicyclists and pedestrians. In September 2020, Cleveland National Forest Foundation, Coastal Environmental Rights Foundation, and the Sierra Club filed suit against the County, alleging adoption of the TSG violated CEQA and SB 743.

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On May 19, 2021 (1), the Board received an overview of how VMT implementation was progressing nearly a year after adoption of the County's TSG. Staff also requested the Board to provide direction on potential updates to the VMT thresholds used to evaluate the significance of a project's transportation impacts, including options for using an unincorporated area average, sub-areas average, or a regional average to measure existing average VMT, and the screening level threshold for "small" projects that should be exempt from performing additional transportation analysis. A project is considered "small" if it generates less than 110 Average Daily Trips (ADT). The Board was also given the option to leave the existing TSG in place.

After receiving the update, the Board provided direction to explore 13 items related to VMT:

1. Assess and explore the process by which infill development can be done in a manner to ensure no VMT mitigation is necessary.
2. Explore the potential creation of transit accessible areas and look at the intersection between VMT efficient areas or lower thresholds in accordance with the areas that do not require further analysis. Explore the potential transit corridors and look at the SANDAG Regional Transportation Plan (RTP), Metropolitan Transit System (MTS), North County Transit District (NCTD), and other possible areas and how that may impact VMT efficient areas or areas covered by the exemption.
3. Explore programmatic or plan-level mitigation opportunities for VMT, including the concept of a regional mitigation bank.
4. By-right process for development in VMT efficient areas.
5. Further exploration of exceptions to the VMT thresholds for affordable housing projects at less than 100 percent affordable, including mixed income and various components of Area Median Income (AMI), along with exploring the possibility of exceptions for middle income or workforce housing, local hire, and agriculture type projects that might have a net impact of lowering VMT.
6. Explore land use density of land that is in VMT efficient areas.
7. Continue to track guidance from the California Office of Planning and Research (OPR), along with other governing body efforts, including the SANDAG RTP.
8. Monitor the progress of other jurisdictions as it relates to their adoption, along with what unique programs, exemptions, or opportunities they may be exploring that the County may want to consider.
9. Consider a phase-in timeline to allow for a transition into a regional geography.
10. Consider compliance options for projects that have already been proposed or are in the process now.
11. Conduct an analysis of the options to remove the Local Mobility Analysis.
12. Inform the Board regarding updates on development of the Smart Growth component of the Climate Action Plan (CAP) Update and Supplemental EIR to ensure it is integrated and aligned with efforts around VMT.
13. Conduct an analysis of proposed housing projects designated for individuals under 60 percent AMI and under 80 percent AMI and the potential cost impact of switching to a regional geography.

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After the May 19, 2021 Board meeting, OPR clarified that "regional" is defined as the full geography within the jurisdictional borders of a Metropolitan Planning Organization (MPO) or a Regional Transportation Planning Agency (RTPA). For San Diego County, this is the San Diego Association of Governments (SANDAG) region, which includes the entire county. Previously, in its 2018 guidance, OPR recommended that for projects in the unincorporated area, the lead agency compare a project's VMT to

a “citywide” average VMT or the “region’s” average VMT. For example, the City of San Diego could evaluate a project’s VMT compared to the citywide average or the overall region’s average. For comparison, the VMT threshold using the unincorporated average is 23.4 miles and the threshold using a regional average is 16.9 miles (average reduced by 15 percent as recommended by OPR).

Although the OPR Technical Advisory is intended to provide advice and recommendations and is not mandatory, as directed by item 7 above, staff returned to the Board on September 15, 2021 (1) with this new guidance, and the Board adopted a resolution to rescind the County’s TSG based on OPR’s updated guidance that the County should use the regional average VMT for projects in the unincorporated area.

On February 9, 2022 (7), the Board received the presentation and overview of the 13 items and provided direction on options to implement analysis of transportation impacts of proposed projects under CEQA using VMT in two phases.


Phase one included the following:

1. Prepare a revised TSG using a regional geography, circulate it for a 30-day public review, and return to the Board within six months for consideration with a cost of \$100,000. The revised TSG should also include the following:
  - a. Develop new VMT screening criteria for projects within Infill Areas and any surrounding “Village” as identified in the General Plan, excluding areas outside of existing or planned transit and areas mapped as High and Very High Fire Hazard Severity Zones. The screening criteria will allow projects located in Infill Areas and any surrounding “village” to move forward without VMT analysis or mitigation. This option would allow up to 5,870 homes to move forward without VMT analysis based on the General Plan (Infill Areas combined with VMT efficient areas). Projects located outside these areas will need to conduct a VMT analysis and propose mitigation to reduce their impacts.
  - b. Adopt the 110 average daily trips small project screening criteria.
  - c. Adopt OPR recommendation to screen out projects with 100 percent affordable housing from VMT analysis.
  - d. Require an LMA. The LMA for discretionary projects would be used to evaluate road operations, traffic safety, and access. The study scope of LMA has been reduced when compared to the previous CEQA required traffic analysis based solely on Level of Service prior to the implementation of SB 743 in that the area evaluated is limited to intersections located near the project with the primary focus on traffic safety and not roadway capacity.
  
2. Directed staff to return with options for a sustainable land use framework (Option 6-D). Staff also recommends the Board direct staff to prepare options for further direction to inform the development of a sustainable land use framework for Board consideration and return to the Board in 120 days. Options would include the following: identification of principles for sustainable development that could inform future land use decisions; and comparison of planning mechanisms to implement Board directed principles, including zoning overlays, specific plans, community plan updates, or a general plan update and return to the Board within 120 days, including how to add a parcel-by-parcel analysis and convene stakeholder groups around the issue of addressing the additional considerations that would facilitate development in VMT exempted areas at a later date.

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cont.

EXHIBIT G

## Inside the fight to save Windsor from the Kincadee fire

Officials were told Windsor would almost certainly lose homes to the Kincadee fire, but not a single house was lost, thanks to hundreds of firefighters who braved great peril to face down a surging wildfire on Oct. 27. | 



SLIDE 1 OF 30

Santa Monica Fire Department firefighters Armando Reyes, left, and Andrew Klein quickly bundle their fire engine's hose to move to protect a different structure during the Kincadee fire on Los Amigos Road in Windsor on Sunday, Oct. 27, 2019. (ALVIN JORNADA/PD)

MARY CALLAHAN  
THE PRESS DEMOCRAT  
November 9, 2019

Flames were sweeping down the grassy slopes of Foothill Regional Park toward the near-empty town of Windsor when Sonoma County Fire District Battalion Chief Mike Elson drove up Cayetano Court and realized the moment they had all been bracing for had come.

Two-story flames and glowing firebrands whirled through the smoke-darkened skies, setting fences and trees ablaze, lighting landscaping and, soon, sparking fires at several homes in the neighborhood, as well.

The marauding Kincadee fire had been bearing down on Windsor all morning, burning its way through a rural landscape across a wide area north of town, where an army of firefighting forces stood ready to face it late in the morning of Oct. 27.

But it would be northeast Windsor, in and around hundreds of homes in the Foothill Oaks Estates, where they confronted the biggest threat - a near-overwhelming battle to keep the blaze from taking the neighborhood and the town.



Inside the fight to save Windsor from the Kincadee fire

Scores of firefighters took part in the initial attack, making a stand amid the chaos, barely daring to hope they would prevent the fire from ripping through town, let alone sweeping across Highway 101 and burning a trail of destruction all the way to the coast.

"That fire coming off of Foothill Park, that fire was coming off that hill very quickly, and it was massive," said Elson, who was leading a nine-engine task force but eventually took command of the Foothills campaign. "It was a massive firefight. There were flames up over the tops of houses ... and those are mostly two-story houses, so they were 30, 40 feet in the air."

But in what became a pivotal juncture in the two-week effort to beat back Sonoma County's largest wildfire ever, the battle for Windsor spared every single home in the town of 27,000 people and substantially curbed the fire's spread.

Sonoma County fire officials credit 200 firefighters or more, both local and from outside the area, who jammed into the neighborhood and simply refused to give way to the flames.

They fought house-to-house, confronting the blaze so aggressively they pushed the boundaries of personal safety to the very limit - to the point Sonoma County Fire District Chief Mark Heine said he came close to ordering crews to fall back in a few cases.

"That was very dangerous firefighting in there," Heine said. "To enter someone's backyard, where everything in their backyard was on fire, meant they didn't know if they could get themselves back out. There was just that spirit of, 'We're not letting this fire come to our town.'"

It came frighteningly close, making innumerable forays into the Foothills area, a neighborhood of several hundred homes tucked up against the hills of the regional park east of Arata and Hembree lanes in the northeast section of Windsor.

Particularly vulnerable were about 150 homes arrayed around cul-de-sacs, many of which had backyards exposed to the park or connected landscape, often separated from the parklands only by wire fencing.

But ferocious winds that sent sparks and flaming debris well ahead of the fire front that day meant anywhere in the neighborhood or even within a mile or two was at risk of blown embers and fire starts.

Were the fire to get established in even two or three homes, generating intense heat, large flames and embers, "We were likely to lose that whole neighborhood," Heine and others said.

Residents who returned to the area days later found singed trees and burned gardens, lengths of fencing turned to charcoal, ash-covered ground where the flames had spread directly from the blackened hills of Foothill park into their backyards. There were scores of pieces - outdoor sofa cushions, patches of grass, Halloween decorations - that had caught fire and been put out.

Firefighters had to kick down doors in a few cases to douse attic fires after embers ignited rooftops or burned fencing up to exterior walls like they did at Michelle and Brad Stibi's place on Valle Vista Court.

"We were the loop on national TV," Michelle Stibi, 50, said, her expression suggesting she was none too impressed with the celebrity brought by widely shared footage of the firefight in her yard. "This is going to be a concrete jungle when Brad gets done with it."

Fire officials say it would have been worse if it weren't for the stucco and tile or concrete roof construction that dominates the Spanish-styled Foothill Oaks Estates subdivision, that makes up most of the area between Hembree Lane and Vinecrest Road, where the firefight took place.

"Some of those embers were still getting up into those eaves," Elson said, "but construction features that they built into those neighborhoods definitely helped."

A far more critical factor was the early evacuation of residents, clearing the way for firefighters to battle flames and defend property without the need to commit time and attention to rescue efforts. Saving lives and getting people out had completely consumed public safety personnel during the early phase of the 2017

### Inside the fight to save Windsor from the Kincadee fire

Tubbs fire, which swept across Sonoma County from Calistoga by night with such speed that hundreds were trapped in their homes and neighborhoods and forced to flee through the flames.

"If people had stayed in those homes in Foothill, they would have died," Heme said starkly, "and if not, it would have created such a complex issue for us that we wouldn't have been able to fight the fire. It allowed us to focus on the fire and not life-safety and rescue."

The 77,758-acre Kincadee fire, now 100% contained, started many miles north of Windsor, atop The Geysers, during extremely strong winds the night of Oct. 23. It had burned virtually unchecked for four days along a mostly southerly path before it rushed toward Windsor during a period of rapid, wind-driven growth around midday Oct. 27.

Sonoma County Sheriff Mark Essick had ordered all Windsor residents to leave home a day earlier in what would be a succession of evacuations that cleared out a huge swath of Sonoma County. More than a third of the county's population was under mandatory evacuation order, from Geyserville and Alexander Valley down to north Santa Rosa, and west to Jenner and Bodega Bay.

Hurricane-force winds coming out of the northeast and fire forecast modeling had contributed to the same terrifying prediction: that an unstoppable firestorm could burn through Windsor and jump the freeway into the thickly forested Russian River Valley, where flames fed by dense fuels unburned for decades would run all the way to the Pacific Ocean.

Public safety officials alerted the public to this "worst-case scenario" when evacuation orders were issued.

But it's not clear how many civilians appreciated the very real possibility of it coming to pass.

Most Californians are certainly aware of the increasing intensity of and destruction wrought by recent wildfires, experienced close to home in October 2017, when a series of fires rampaged through the region, killing 24 people in Sonoma County and destroying more than 5,300 homes.

But even Windsor Mayor Dominic Foppoli, during a celebration of the town's endurance last weekend, felt compelled to ensure his constituents understood the gravity of what they had faced a week earlier.

Foppoli, 37, said top fire brass briefed him and other town officials a short time before Essick ordered Windsor and Healdsburg to evacuate the morning of Oct. 26 and told them at least part of their community would likely be lost to fire before the flames continued westward.

"This was not an 'if,' but it was a 'when,'" Foppoli told an estimated 4,500 who gathered in the town square to salute firefighters.

But there was positive side, too, Sonoma County Fire District Battalion Chief Marshal Cyndi Foreman said.

All the mapping, modeling and intelligence put Windsor squarely in the bull's-eye of the wildfire, Foreman said, so "we knew that we were not going to dodge this one, but we also knew it was coming."

While the Tubbs fire and last year's deadly Camp fire in Paradise continue to inform firefighters' expectations in an age of extreme fire behavior, the siege on Windsor came with the luxury of time to plan ahead.

**A9-92  
cont.**

"I'll take a disaster that we know is coming all day long, rather than something that's going to wake me up out of a dead sleep that I don't know is coming," Foreman said.

The Kincadee fire was fought under the unified command of Cal Fire, the Sonoma County Sheriff's Department, the Sonoma County Fire District and several other agencies.

But the planning for Windsor was turned over largely to the Sonoma County Fire District and to Battalion Chief Mark Dunn, with the aid of Heine and other top officials, and support from many others, including fire personnel from other agencies who happen to live in northeast Windsor and offered to help.

Nothing less than the fate of the town hung in the balance, and many thought that even if the town were saved, hundreds of homes would be lost first.

Dunn, for instance, thought substantial residential losses were inevitable if the fire got established at Foothill Regional Park, as it did.

"When people have talked to me, I've been so emotional about it," Dunn said. "It's one thing to have a plan and to ask strike team leaders and strike teams and my own department, 'I need you to do this; you're going to go to this neighborhood and try to hold your ground.'

"That's one thing. But they actually did it, and they did it perfectly. So many individual engines from different agencies doing all that," he said. "It was amazing."

The firefighting force had to be ready to meet the blaze coming in from the north or the east - or both, which is how it transpired - and be prepared to hold Highway 101, whatever it might take, Dunn said.

Inside the fight to save Windsor from the Kincadee fire

They had to figure out where they might lose control of the fire and identify contingency plans that included lines which, once crossed, would trigger crews to fall back several blocks to preset points. There was even the potential for the fire to take successive neighborhoods, forcing the entire firefighting force to seek refuge across the freeway if it got bad enough.

Dozens of engines were moved into the area by Saturday night. Oct. 26, some staged at the Luther Burbank Center for the Arts in Santa Rosa. Three strike teams of five engines were prepositioned in Windsor, a number of them redeployed directly from the 4,615-acre Tick fire that was winding down in Southern California.

Sonoma County Fire District personnel and a fleet of bulldozers also were deployed around Windsor, many of them around Arata Lane and Highway 101/Los Amigos Road, near the command post.

As restless fire officials patrolled rural areas north of town late Sunday morning, around 11 a.m., the fire made a drive for Windsor, sweeping off the hills from Chalk Hill Road in several directions once, fire officials said. One head of the fire was veering past Hillview Road toward Limerick Lane and the highway, while another came down Hillview south toward Brooks Road and Arata Lane, and a third came down Chalk Hill Road toward the area of Vinecrest Road, though eventually the biggest threat came from edges of wildfire that merged in Foothill Park and spread swiftly through the grasses of the 211-acre open space.

Roberto Pardo, 54, and his family, meanwhile, were safely ensconced in a Napa hotel, anxiously monitoring news of the Kincadee fire as they had through the night, when security cameras from his Windsor home began sending snippets of grainy footage to his cellphone.

Just before noon, he saw two fire engines pull into Miramar Court near the west side of Foothill park and observed firefighters go into his neighbors' backyards and his own - ensuring they had access in the event it was necessary, was Pardo's guess. He could see the wind whipping so fiercely it bent one of his palm trees nearly in half.

Then the six firefighters, apparently satisfied, lined up side by side in the road facing east and waited - watching, bracing, for the coming siege.

When he saw a law enforcement vehicle take a fast, hasty spin around the court before speeding away - as if checking to make sure everybody was gone - he knew "that the fire was here," Pardo said.

Firefighters were frantically canvassing neighborhoods, moving propane tanks, lawn furniture, umbrellas and whatever flammable items they found away from homes, or kicking down fences to improve access or avoid creating fuses that might help ignite homes.

Sonoma County Fire District Capt. Mike Starnetta, whose own home is mere blocks away, had by then gone looking for the fire, dragging a fire hose into Foothill park with Capt. Fred Leuenberger and confronting it there amid the oak trees. They sounded the alarm in the moments before flames hit Cayetano Court and made entry into the neighborhood behind a number of homes at once.

His report marked the beginning of an epic battle, marked by what Dunn said was suddenly one report after another of the fire's arrival in neighboring cul-de-sacs and the response of dozens of fire crews into the area.

Foreman said, "it was like somebody blew the bugle and the cavalry arrived. You couldn't run 10 or 20 feet without running into another firefighter. There were so many resources that saturated that community."

Even so, it was daunting.

Eison said he thought for a second about the personal vehicle he had left at the Hemlock Lane fire station more than a mile to the south and whether he would have time to move it before the fire got there.

"My gut reaction was that we were going to lose that whole neighborhood," he said.

Foreman remembers a point when the fire came down to Vinecrest Road toward the east edge of town when the whole sky went dark - "like somebody turned the lights off" - perhaps as the fire took three homes up a steep, narrow tail of Vinecrest, just outside the town limits.

**A9-92  
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### Inside the fight to save Windsor from the Kincadee fire

In the Foothills neighborhood, the firefight lasted an hour, perhaps 90 minutes, a relentless attack in which each strike team and engine leader was authorized to exercise his or her own discretion as to what was needed to advance the cause.

Many neighborhood residents saw the battle unfold on TV or social media, including a widely watched video shared in real-time where they watched firefighters in their own yards and saw their properties in flames.

"We created a whole text group before we evacuated on Saturday, and we all talked to each other the whole time," said Beverly Madden, who retired to a home at the end of Valle Vista Court a few years ago and was alarmed by the video someone passed her way.

She now has ash across part of her backyard and new landscaping, now probably ruined. But "when we saw the video, compared to when we got here? We feel super, super great."

The fire came within yards of Mike Hoesly's home up a long drive way atop a hill at the north end of Cayetano Court, after "toasting" about two-thirds his vineyard and burning through a good deal of landscaping at the edge of his backyard just off Three Lakes Trail in the regional park.

But he's grateful that firefighters saved his heritage oak - the only thing growing on the property, when he and his wife, Kate, moved there in 1990.

"This could have been so tragic, you know?" said Hoesly, 70. "We just feel kind of like if the home construction had been different, it could have been a domino effect."

There would be more firefighting to do later that day and in the days to come, as the wildfire swept up toward Shiloh Ridge and the Mark West Creek watershed.

But for Elson and others from the district who fought the 2017 Tubbs fire and struggled fruitlessly to try to protect homes they instead watched burn, defending Windsor proved a watershed - a badly needed save, a source of redemption, he said.

"You know," said Stornetta, "with the winds that we were having and, with the experiences that we've had in this area and all over California, I was really not holding out a ton of hope that we were going to be able to save it. However, the mentality that everyone had was, 'Hey, we're not letting this happen again.'"

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CALIFORNIA WILDFIRES

# Sonoma County under siege: Kincade Fire forces 90,000 evacuations

Kurtis Alexander, Steve Rubenstein, Alexei Koseff, Demian Bulwa  
Oct. 26, 2019 | Updated: Feb. 24, 2020 4:30 p.m.

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1 of 13

Firefighters light back-fires along Pine Flat Road near Geyserville, Calif., on Saturday, October 26, 2019 to head off the Kincade Fire, which has grown to more than 25,000 acres and triggered mandatory evacuations in Windsor, Geyserville and Healdsburg.   
Kurtis Alexander/Kurtis Alexander / The Chronicle

**[Read the latest on the Kincade Fire here.](#)**

Two years after being scarred by the deadly Wine Country wildfires, Sonoma County was under siege again early Sunday as thousands of firefighters battled to keep powerful winds from pushing the massive Kincade Fire southwest through dense cities and towns toward the Pacific Ocean.

As of midnight, the county resembled a disaster zone from end to end. Some 90,000 residents has been ordered to flee their homes — including those in the touristy wine capital of Healdsburg, with its boutique hotels and tasting rooms, and the community of Larkfield-Wikiup, which saw whole subdivisions flattened by the Tubbs Fire of October 2017.

In the Santa Rosa neighborhoods of Coffey Park and Fountaingrove, meanwhile, residents in brand-new homes just rising from the ashes were warned they might be next to evacuate. Just about everyone else in the county was either under an evacuation order, an evacuation warning, or a power outage imposed by Pacific Gas and Electric Co. to keep additional blazes from sparking.

“We’re kind of at the mercy of Mother Nature right now,” said Jonathan Cox, spokesman for the state’s Cal Fire agency. “Batten down the hatches and hope the storm passes.”

As of midnight, the Kincade Fire in and around Geyserville — possibly sparked Wednesday by PG&E equipment that had been left on despite the outage — had blackened 26,000 acres and destroyed 31 homes and 46 other structures, according to Cal Fire.

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The fire was just 11% contained, or surrounded. More than 2,800 firefighters and upward of 250 engines worked in rugged hills and canyons seeking to boost that figure as they prepared for winds from the northeast forecast to reach 40 mph — with gusts up to 80 mph.

No deaths had been reported. Two civilians and one firefighter sustained non-life-threatening injuries Friday after the firefighter deployed his personal fire shelter to save himself and the two fleeing residents.

Saturday had been a day of preparation and worry. Authorities continually expanded evacuations, while opening shelters for evacuees. Fleeing residents jammed Highway 101, and lined up to fill their tanks at gas stations. Stores in Sonoma County and well beyond sold out of ice, batteries, portable generators and other supplies.

Evacuated areas included Windsor and Mark West Springs as well as Guerneville, Forestville, Occidental, Bodega Bay and other spots along the Russian River and the coast. Among those who had to move on were roughly 100 patients at Sutter Santa Rosa Regional Hospital, who were transferred to medical facilities in Novato and San Francisco. Sonoma County officials had to empty a jail as well, just in case.

**A9-92  
cont.**



A police officer leaves a home after placing an evacuation order in the mailbox on Saturday, Oct. 26, 2019, in Geyserville, Calif.  
 Paul Kuroda / Special to The Chronicle

National Weather Service meteorologist Drew Peterson said the area was expected to see "extreme, extreme conditions." The strongest gusts were expected to pick up early Sunday in the hills and ridges and continue into Monday -- a more intense and longer-lasting windstorm than the one that pushed the 2017 fires in Wine Country.

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**A9-92  
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On Saturday, in a last-ditch effort to halt the progress of the fire before the winds picked up, hundreds of firefighters aided by airplanes and helicopters pre-emptively burned vast stretches of grassland to create a fire break. The back-fires, many set along Pine Flat Road east of Geyserville as the sun went down, were designed to create a buffer zone between the fire and the many towns of the Sonoma Valley.

"We want to make sure it doesn't go down any farther," said Capt. Mike Tompkins of the Tiburon Fire Department.

His crew was part of a team using drip torches to light dry brush and grass on fire. Another team, high on a ridge above, was lighting fires back toward Tompkins' team so that the flames from both sides would merge and create one big fuel break. Asked if it would work, Tompkins raised crossed fingers and said, "We'll find out."



<https://www.sfchronicle.com/california-wildfires/article/Kincadee-Fire-keeps-growing-as-firefighters-fear-14564573.php>

**A9-92  
cont.**

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Sonoma County under siege: Kincadee Fire forces 90,000 evacuations

Chris Markell momentarily scope his car on the 101 on-ramp to photograph the Kincadee Fire on Friday, Oct. 25, 2019, in Healdsburg, Calif.  
Paul Kuroda / Special to The Chronicle

In Healdsburg and Windsor early Saturday, residents and businesses rushed to pack up and get out of town. Danielle Kuller, the manager at Amy's Wicked Slush ice cream store in Healdsburg, said the store shut down and sent employees home.

"We're just trying to make sure everyone's safe," Kuller said.

At KC's American Kitchen in Windsor, dozens of breakfast customers watched the sheriff's press conference on the restaurant TV and found out the town was being evacuated.

"They all paid their checks and left," said Sheryl Farmer, the restaurant manager. "The restaurant is empty now. Our staff is worried and frantic. They're all trying to get home to be with their families. It's a little stressful."

By afternoon, the only people still allowed in Windsor were law enforcement personnel putting barriers on roads, driving through neighborhoods with loudspeakers and sirens, and going door to door to reach residents.

"It was nuts," said Brian Benn, who waited 15 minutes to fill up at a gas station in north Santa Rosa, just outside the evacuation area, where he said the lines for each pump were six cars deep. "You can tell people are feeling a little panicked, and trying to get their stuff together."

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Fire Tracker

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From left: Cal Fire Healdsburg's Daniel Frazee, Andrew Rush and Cassidy Harms watch as helicopters pass by and dump water down to the Kincadee Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif. Santiago Mejia / The Chronicle

About 90 people under a previous mandatory evacuation order from the Geyserville area spent Friday night at an emergency shelter at the Healdsburg Community Center, Red Cross spokeswoman Barbara Wood said. Half a dozen new arrivals joined other residents at the former elementary school. Restaurants provided meals and concerned citizens dropped off books, toothbrushes and fresh chrysanthemums for the dining hall tables. But by Saturday, the shelter was itself evacuated.

Down the road, Jorge Vazquez, 31, who works in the maintenance department at the Best Western Dry Creek Inn in Healdsburg, was tasked with going door to door telling guests to leave. Each was given 30 minutes. Many there were also evacuees from the Geyserville area, forced to make their second evacuation in three days.

"It took some convincing to get them to leave," Vazquez said. In one case, he said, he had to threaten to call the police.

New evacuation centers were opened at the veterans halls in Santa Rosa and Petaluma, and at the Petaluma Fairgrounds.

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Sonoma County under siege: Kincade Fire forces 90,000 evacuations

Fire-friendly weather conditions affected much of Northern California, where as many as 940,000 customers were expected to lose electricity in planned Pacific Gas & Electric Co. power outages designed to prevent the outbreak of additional fires.

With what forecasters called a "potentially historic" windstorm expected Saturday night into Sunday, PG&E began shutting off power to as many as 2.8 million people across huge swaths of the state in an attempt to avert wildfires. The utility said homes and businesses could lose power in portions of 38 counties across the Bay Area and throughout Northern and Central California.

"The next 72 hours will be challenging," Gov. Gavin Newsom said at a Napa event Saturday. "I could sugarcoat it, but I will not."



Rollene picks up last items before evacuating from her house with her husband Wolfgang on Saturday, Oct. 26, 2019, in Geyserville, Calif.  
Paul Kuroda / Special to The Chronicle

The planned outages were unprecedented, affecting far more people than two previous shutoffs. In the last widespread round of planned outages this month, 738,000 residences and businesses in Northern and Central California had their electricity cut off.

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The first blackouts began Saturday afternoon, affecting portions of counties in Northern California and the Sierra foothills — Amador, Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Plumas, San Joaquin, Sierra, Siskiyou, Shasta, Tehama and Yuba counties. They later spread to the Bay Area, affecting Alameda, Contra Costa, Marin, Napa, Solano and Sonoma counties.

The Marin County Sheriff's Office said it expected the outages to affect 99% of the county.

"It almost feels like an apocalypse," said Armand Quintana, manager at Jackson's Hardware in San Rafael. "There are lines at the gas station, people are buying ice from grocery stores, they're out of ice. I'm looking for zombies."

The store ran out of its stock of 50 generators, which sell for \$1,100 to \$5,000. Just hours before the expected power outages Saturday, it ran out of flashlights, batteries, candles and other power-outage supplies.

Smoke from the blaze was wafting through the Bay Area and could be sniffed on Saturday in downtown San Francisco. [Air quality experts advised](#) that buying masks and filters is no substitute for finding clean-air spaces, such as libraries and shopping malls.

A9-92  
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Helicopters dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.  
Santiago Mejia / The Chronicle

"Masks may not be the answer for a lot of people," said Dr. Jan Gurley of the San Francisco Department of Public Health. "Sometimes they make you feel a little better. But there are no substitutes for getting to where the air is clean."

Air quality throughout the Bay Area was expected to be "unhealthy for sensitive groups" and a Spare the Air Day was declared by the Bay Area Air Quality Management District. It was the 20th of 2019, compared with 13 days in all of 2018, 18 days in 2017 and 27 days in 2016. Residents were advised to limit outdoor activity and avoid driving and wood burning.

On Saturday, the Kincade Fire was burning in a southwesterly direction on the east side of Highway 128 and eastern Geyserville. Firefighters built containment lines on the edge of Geyserville, where 735 structures were under threat.

Newsom toured the fire area Friday, visiting residents, meeting local officials and praising firefighters for their "extraordinary heroism." The governor also stepped up his criticism of PG&E, as state regulators looked into whether the utility company's equipment played a role in the fire.

The company reported Thursday that equipment on one of its transmission towers broke near the origin point shortly before the Kincade Fire was reported at about 9:27 p.m. Wednesday. Power had been shut off in the area, but not on that specific transmission line, in an effort to prevent such an event.

*Chronicle staff writers John King and Catherine Ho contributed to this report.*

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EXHIBIT H

## **Brings Chickasaw’s unparalleled gaming expertise and shared values to project to support Koi’s economic independence on tribal lands in Sonoma**

**Santa Rosa, Calif. (24 January 2022)**— The \_\_\_\_\_ one of California’s historic federally recognized Native American tribes, has executed a predevelopment agreement (GGS), a wholly-owned business of the \_\_\_\_\_’s development partner for its planned \_\_\_\_\_ act as the manager and operator of the establishment when completed.

“We are honored to build this important business relationship with our brothers and sisters of the Chickasaw Nation, one of the most experienced Native American tribes in the gaming industry,” said Darin Beltran, Koi Nation’s Tribal Chair.

“Not only does the Chickasaw Nation have great expertise in gaming and resorts, but they also share the same values as the Koi Nation. Chickasaw leaders understand the importance of this project to the restoration of our economic self-reliance because they have walked the same path many times in support of their own people’s future,” said Dino Beltran, Koi Nation Vice Chair and Director of Development.

The Chickasaw Nation, with its tribal headquarters in Ada, Oklahoma, has an exemplary track record in developing and operating tribal gaming operations and related resort properties. It operates 23 gaming establishments around the nation, including Winstar World Casino and Resort, the largest casino in the world. The Chickasaw Nation also operates nearly 200 additional highly successful businesses, giving it a broad range of commercial expertise that makes it the ideal partner to develop and manage the Shiloh Resort & Casino.

“The Chickasaw Nation is pleased to play a role in this project, and we look forward to a successful collaboration,” Chickasaw Nation Governor Bill Anoatubby said. “The prosperity of our citizens and a commitment to working together with our partners in the Koi Nation as well as local, state and

community officials are key components to our mission. We look forward to witnessing new jobs, additional businesses and increased tourism to this region.”

“We are excited by the opportunity to use our expertise to help the Koi Nation realize this project and establish the economic self-sufficiency that is the inherent right of all Native American tribes,” said Bill Lance, Commerce Secretary of the Chickasaw Nation. “We look forward to beginning a successful long-term economic partnership with the Koi.”

**About the project**

The Shiloh Casino & Resort will be built on the Koi Nation’s property at 222 E. Shiloh Road in unincorporated Sonoma County. The tribe purchased the 68-acre site late last year to re-establish its tribal land base more than a century after the Koi’s ancestors were forced to relocate to the Santa Rosa/Sebastopol area.

The non-smoking Shiloh Casino & Resort will include a 2,500 Class III gaming machine facility, a 200-room hotel, six restaurant and food service areas, a meeting center and a spa, as well as a state-of-the-art live entertainment venue. The design for the low-rise facility integrates with the natural beauty of the region and will be energy-efficient and respectful of the environment, in keeping with the Tribe’s historic relationship with the land.

The Shiloh Casino & Resort will employ more than 1,100 full-time workers when fully operational. The project also will create hundreds of jobs for workers in the construction trades and other skilled laborers. The Koi Nation anticipates that a portion of the resort’s revenues will be shared with the broader community through the support of local organizations as well as collaborating with local governments to address their needs.

**About the Koi Nation**

The Koi Nation’s mission is to empower our people to achieve a better way of life and to maintain tribal integrity and honor through responsive government. We are committed to protecting and exercising our inherent sovereign rights as a federally recognized tribe to their fullest extent,

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including obtaining land to re-establish a permanent land base for our people who have lived in this region for thousands of years, and creating self-sustaining economic activity to support the tribal government and its people, and the entire community of Sonoma County. For more information visit <https://www.koinationsonoma.com>

### **About the Chickasaw Nation**

With more than 73,000 citizens, the Chickasaw Nation is a democratic republic with executive, legislative and judicial departments elected by its citizens. The treaty territory of the tribe includes 7,648 square miles of south-central Oklahoma and encompasses all or parts of 13 Oklahoma counties. The Chickasaw Nation contributes billions to the Oklahoma economy annually and employs nearly 13,500 workers.

For more information, visit <https://www.chickasaw.net>

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cont.

## Exhibit I



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May 16, 2024

Via Email: [Amy.dutschke@bia.gov](mailto:Amy.dutschke@bia.gov)  
& Via FedEx: Tracking No. 818243443933

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

RE: The County of Sonoma's Comments On:  
Koi Nation's Gaming Land Acquisition (Fee-to-Trust) Application  
222 E. Shiloh Road; APN 059-300-003

Real Estate Services TR-4609-P5  
Case Number: 33760

Dear Regional Director Dutschke:

The County of Sonoma has received the NOTICE OF GAMING LAND ACQUISITION APPLICATION from the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), for the Koi Nation's proposed resort casino. Thank you for a short extension of the time to today's date to submit the attached comments on the Application.

The County reviewed the copy of the application provided to it in December 2021 in response to its FOIA request. The Bureau did not acknowledge the County's second FOIA request made by email after receipt of the Notice for an updated copy of the Application, and an electronic copy of such updated application has not been provided to the County. Given the short time frame, and that the County's request for a full 30-day extension was not granted, we were not able to travel to Sacramento to view or request a copy of the Application in person. This seems to be an unnecessary burden to have placed on the County and other local jurisdictions from which the Bureau seeks comment, not to mention contrary to climate and paper reduction goals of the federal, state, local, and tribal governments. We ask that in the future, the public portions of fee-to-trust applications be included with the Notice or otherwise available electronically well before the comment period expires.

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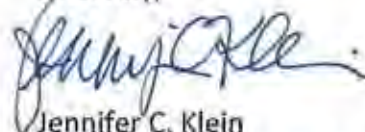
As you will see, the County's comments provide the requested information pursuant to Part 151. They also highlight several procedural and substantive flaws with the application that warrant denial, including, importantly, that proceeding under Part 151 is premature. The County requests that the Department of the Interior seriously considers these comments and hit pause on this application until it is complete and there is a final restored lands decision, among other things.

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cont.**

The County of Sonoma thanks the Bureau of Indian Affairs for the opportunity to review and comment on the Application. The County also looks forward to working with the Bureau and the Tribe to address the issues raised in the County's comments.

Please contact me at (707) 565-6007, or [Jennifer.Klein@sonoma-county.org](mailto:Jennifer.Klein@sonoma-county.org) if you have any question or concerns about the attached comments.

Sincerely,



Jennifer C. Klein  
Chief Deputy County Counsel

Enclosure – *County of Sonoma Comments with Attachments*

Cc:

Sonoma County Board of Supervisors (*via email only*: [bos@sonoma-county.org](mailto:bos@sonoma-county.org))

Lorrae Russell, (*via email only*: [Lorrae.Russell@bia.gov](mailto:Lorrae.Russell@bia.gov))

Chad Broussard (*via email only*: [Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov))

Koi Nation (*via email only*: [kn@koination.com](mailto:kn@koination.com))

**THE COUNTY OF SONOMA'S COMMENTS**  
**ON THE APPLICATION OF THE KOI NATION**  
**TO THE SECRETARY OF THE INTERIOR**  
**TO ACCEPT LAND INTO TRUST FOR GAMING PURPOSES**

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cont.

**SUBMITTED: May 16, 2024**

**COUNTY OF SONOMA**

By: *Jennifer C. Klein*  
Jennifer C. Klein, Chief Deputy County Counsel

Date: 5/16/2024

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## I. INTRODUCTION

The County of Sonoma appreciates the purpose behind the federal fee to trust land process and the desire of the **Koi Nation** (“Tribe”) to take land into trust to support self **sufficiency** and the exercise of sovereignty. However, the present **Application by the Tribe to Take Land into Trust for Gaming Purposes (“Application”)** is **fundamentally flawed on both a substantive and procedural basis and must be denied**. The **Application to take land into trust for a massive resort-casino development must be rejected due to pervasive deficiencies, including but not limited to that: 1) the proposal applies the wrong regulatory criteria to the proposed acquisition because the land has not been determined to be “restored lands”; even if the correct standard is referenced (which the County does not concede), the Application cannot be approved under Part 151 because additionally, 2) due process was violated, as all affected taxing entities and parties did not receive notice from the BIA; 3) the Application does not provide the true picture of loss of tax revenue stemming from removal of the property from the County or other local agencies’ taxing jurisdiction because it does not recognize, among other things, the loss of revenue in perpetuity based on an equivalent level of development to the tribe’s proposal or its likely demand for increased services; 4) the Application was circulated prematurely for comment – before all impacts had been identified in an EIS through the NEPA process – and hence estimates for costs to provide services or address off-reservation infrastructure needs stemming from the development – cannot be accurately calculated or provided by the County to the BIA; 5) the project would create significant negative environmental, financial, social, and jurisdictional impacts to the local community, which are presently unmitigated and weigh heavily against acceptance of the land into trust for gaming; and 6) the Application wrongly assumes that the fundamental conflicts of the project with the County’s land use regulations do not exist because those regulations would not apply if the land is taken into trust – a position that ignores the reality that actual conflicts do exist and that adequate infrastructure is not available**. Overall, for the reasons stated in this comment **letter, including its attachments**, the Tribe has failed to **affirmatively demonstrate that the Secretary has the legal authority to accept the land into trust on its behalf, and as a result the Secretary cannot approve the Application**. The **Application** should be rejected, and the Tribe should apply under the two-part test for taking land into trust if it desires to pursue the project **because there is no “restored lands determination” presently**.

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## II. TRIBE’S PROPOSAL

According to the **Bureau of Indian Affairs (BIA)**, the **Koi Nation** submitted a **Fee-to-Trust application “requesting the placement of approximately 68.60 acres of fee land in trust by the United States as restored lands pursuant to 25 CFR part 292 upon which the Koi Nation would construct a casino resort.” (Federal Register 89:47 (March 8, 2024) p. 16782.)** The land is located at **222 E. Shiloh Road, in the unincorporated area of the County of Sonoma, north of the City of**

Santa Rosa, and southeast of both the City of Windsor and land held in trust for the Lytton Rancheria Band of Pomo Indians, and south of the City of Healdsburg and land held in trust for the Dry Creek Rancheria Band of Pomo Indians. The tribe's Application indicates it is filed pursuant to 25 CFR Part 151, concurrently with a request for a restored land determination pursuant to 25 CFR Part 292. The County's understanding is that there has been no restored lands determination for this land to date. The proposed land use as described in the Environmental Assessment is "a resort facility within the western portion of the Project Site that includes a three-story casino, a five-story hotel with spa and pool area, ballrooms/meeting space, and event center." It would also include parking facilities, and other "supporting infrastructure, including the proposed water treatment and wastewater treatment facilities." The County has not seen the project description in the Environmental Impact Statement as it has not yet been circulated. As of December 2021, the Fee-to-Trust Application only stated that for "Planned Land Use" the "current intended use for the Shiloh parcel is for a Class III gaming facility." The County is unaware if the Application has or will be updated to include the expansion of facilities beyond gaming, as contemplated in the EA. There is no mention of using the property for tribal governmental uses, tribal housing, a tribal museum, or cultural resource related preservation type uses. The project plans show use of areas of the project site for vineyards proximate to the casino resort facilities.

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### **III. SEEKING COMMENT BY LOCAL GOVERNMENT ON THE APPLICATION IS PREMATURE.**

#### **A. The Application is Incomplete because there is no Restored Lands Determination.**

The Application, as it was originally filed in September 2021, seeks land into trust for gaming under 25 CFR Part 151.11 applicable to off-reservation acquisitions. This path is not permitted at this time because the parcel that is the subject of the Application has not been determined to be "restored lands." Even if the tribe applied concurrently for fee to trust and restored lands determinations, moving forward to seek comment on the fee to trust Application, prior to the restored lands determination, was backwards, since the correct authority to apply to the tribe's fee to trust determination is dependent on, and cannot be correctly identified until, the pending restored lands determination is final and supports the Application path chosen by the tribe. Because the land is not currently "restored land," proceeding further under Part 151 is not only not permitted, but a waste of resources for those asked to participate in the process – including the County of Sonoma, federal and state agencies, and the various other interested tribal governments in Sonoma County and California, who may later be asked to re-engage and comment again if the restored lands determination is denied, and "two part" determination is alternatively pursued, if at all, under the Indian Gaming Regulatory Act (IGRA).

The normal rule under IGRA is that a "two part" determination is applied to tribal requests that "off reservation" lands be taken into trust for potential gaming purposes. The "two part" test includes: (1) a determination by the

Secretary that the gaming establishment is in the best interest of the tribe and would not be detrimental to the surrounding community; and (2) the **concurrence of the state's Governor. The review of these applications is appropriately lengthy and deliberate.** Given the complicated issues that **applications of this nature** raise, and the various levels of review and approval involved, they have been approved rarely despite a number of submissions over the years. (June 18, 2010, Secretary of the Interior Memo to Assistant Secretary; IGRA, 25 U.S.C. § 2719(b)(1)(A).)

To avoid this normal rule and proceed under the less onerous Part 151 provisions, the tribe's fee to trust **Application must include a restored lands determination.** The **Application should not be considered complete until that determination is final and** included in the fee to trust **Application** materials, and only then should the fee to trust **Application** be circulated for comment by local government. **Until there is a restored lands determination that is consistent with the tribe's fee to trust Application,** the appropriate authority for judging the present request for taking **the 68.60 acre of land** into trust for gaming purposes is the **two-part test under IGRA, 25 U.S.C. § 2719(b)(1)(A), not 25 CFR 151.** Without waiving that argument, and reserving the right to provide comment and engage as part of the normal two part **determination where there is no restored lands determination,** the **County of Sonoma provides comments and information concerning the tribe's Application and its impact on tax revenue, jurisdictional conflicts and land use, and related matters based on** the prior version of **Section 151,** since the Tribe has not elected to proceed under the **version of Part 151 that became effective January 2024, after the tribe submitted its Application.** If the Tribe makes such an election, the County of Sonoma requests notice of that election.

**B. Application's Analysis under Section 151.11(c) (Economic Benefits to Tribe) is Omitted.**

The **Application acknowledges the criteria at §151.11(c), which requires the tribe to define the economic benefits justifying the trust acquisition,** and references an **"economic benefits report" at Attachment 11 to the Application,** however, no analysis was provided to the County. **Rather, Attachment 11 was designated as 'confidential' and consequently the County was unable to obtain a copy as part of its FOIA request.** Public availability and review of the Tribe's business plan and analysis of economic benefits is particularly important as there are two tribal casinos currently **operating in Sonoma County.** One casino is operated by the Dry Creek **Rancheria** Band of Pomo Indians, and another operated by the **Federated Indians of Graton Rancheria.** The **Lytton Rancheria** has **existing trust land not more than 5 miles from the Koi Nation's current proposed site.** In addition, nongaming proximate uses deserve to be examined in the context of economic sustainability for the **Koi Nation's proposed project.** For instance, in 2022, the County approved **Hyatt Place Wine Country Hotel** recently, which when constructed will be a 165-room, six-story hotel, with a **150-plus-seat rooftop restaurant present potentially unsustainable economic uses.** The site of the former Hilton Sonoma Wine Country hotel, **which was destroyed in the 2017 Tubbs**

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cont.

Fire, is the subject of a permit application filed with the City of Santa Rosa to build a full-service hotel that will include a lobby, ballroom, a restaurant and bar, spa, **pool, and outdoor reception** area. A hotel project was recently approved for the Guerneville Hotel, about 18 miles directly west of the Koi Nation’s proposed project site. Should the **Lytton tribe**, which has trust land not more than five miles from the proposed site, pursue non-gaming economic development of its trust land similar to the nongaming components of the Koi Nation’s proposal (five-story hotel with spa and pool area, ballrooms/meeting space, and event center), then the economic benefits become even more **questionable** and unpredictable for tribal and non-tribal businesses and citizens.

It is unknown if the **Koi Nation’s business plan or “economic benefits report”** addresses **competition from** nearby casinos, current or future, or **in neighboring Lake and Mendocino counties, or otherwise addresses the economic viability of a gaming operation in the proposed location.** It is also unknown if the **“economic benefits report”** examines the financial viability of the non-gaming components of the property in light of other hospitality projects planned, or planned and approved and **under construction, but not yet open.** The viability of the presently proposed casino by the **Koi Nation must be analyzed in light of the existing field of competing casinos and non-gaming hospitality hotel, and resort development, in the region.** The basic information concerning the **planned business model should be disclosed.**

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cont.

#### **IV. THE APPLICATION DOES NOT MEET THE REGULATORY REQUIREMENTS TO SUPPORT ACCEPTANCE OF LAND INTO TRUST**

##### **A. The Application Fails To Properly Analyze The Impact On The State And Its Political Subdivisions Resulting From The Removal Of The Land From The Tax Rolls (25 C.F.R. § 151.11(a), referencing §151.10(e)).**

###### **1. Impact to Taxes & Assessments.**

The Application is required to analyze **“the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.”** The Tribe incorrectly states that removal of the Property from the tax rolls will be **“negligible” and “de minimis.”** (Application at pg. 7.) The Tribe’s **Application** cites **“approximately \$266.5”** as the total taxes collected by the County for FY 2020 to argue that the taxes collected for 2020-2021 for the property, cited at **“\$93,677.84,”** are not significant. This analysis is misleading and refers to non-current data.<sup>1</sup> The County is unaware if the tribe has updated its **Application with current figures.**

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<sup>1</sup> It appears the Tribe’s application used a pie chart published on the County’s website to support its \$266.5 million figure for the County 2020-21. This is developed from the AB8 allocation and does not reflect actual collections and distributions to government entities, including school districts. Here’s a link to the **23-24 chart** for your information: <https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/auditor-controller-treasurer-tax-collector/divisions/property-tax-accounting>. It shows the estimated total Proposition 13 tax levy at \$1.5 billion for 2023-24 collected, with an estimated \$306.5 million allocated to the County and the remaining allocated to special districts, cities, redevelopment, and schools.



The actual amount of taxes allocated to the County's General Fund, for 2019-20 was \$267,585,034.95 (net after redevelopment contributions); for 2021-22 it was \$295,344,895.85 (net after redevelopment contributions); for 2022-23 it was \$316,131,595.80 (net after redevelopment contributions). The 2023-24 period has not yet closed, however, actual year to date figures show \$316,596,253.23 collected (net after redevelopment contributions) for the current year. See Attachment A.

The amount of property taxes collected for the subject parcel from 2019-20 to current is shown in the chart below. (See Attachment B for additional detail.) The chart also shows the progressive increase over time due to changes in the consumer price index, and the substantial increases that can occur when property changes ownership and a new assessment at current fair market value is established as a new base year value, pursuant to California's Proposition 13, as demonstrated by the 47.26% increase in taxes upon the 2021 transfer to Sonoma Rose LLC.

Tax Type	2019-20		2020-21		2021-22		2022-23		2023-24	
	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax
Prop 13 1%	1.00000	\$ 82,059.56	1.00000	\$ 83,702.14	1.00000	\$ 84,570.00	1.00000	\$ 86,525.78	1.00000	\$ 125,459.96
Ad Valorem	0.12750	10,462.60	0.11700	9,753.16	0.10950	9,260.38	0.10950	9,474.51	0.13450	16,874.21
Direct Charges		135.46		182.94		540.98		1,970.10		1,944.08
<b>Total</b>	<b>1.12750</b>	<b>\$ 92,657.62</b>	<b>1.11700</b>	<b>\$ 93,677.24</b>	<b>1.10950</b>	<b>\$ 94,371.36</b>	<b>1.10950</b>	<b>\$ 97,970.40</b>	<b>1.13450</b>	<b>\$ 144,278.26</b>

The Tribe cites \$266.5 million as the amount of property taxes collected by the County of Sonoma for fiscal year 2020-21. The amount stated by the Tribe is significantly lower than the amount actually collected, which includes amounts collected on behalf of schools and other entities.

If the Property is taken into trust, the County and State will suffer a material financial impact every year, and every decade, in perpetuity, unless and until the Property is removed from trust. For example, based on the current property taxes (\$144,278.28), in a ten-year span, if the land is taken into trust, the jurisdictions will collectively suffer an impact of loss property tax revenue of approximately \$1,609,131.87, depending on the market value of the property, and absent any new construction or changes of ownership, both of which are events that trigger reassessment for land not in trust. That figure assumes a modest average annual growth rate of 2%, (Proposition 13 caps annual property tax increases at 2%), and also assumes no changes in ownership or new construction or change in use or development. The loss of approximately \$1,609,131.87, or more, in tax revenue every decade, which would fund essential government functions and services, cannot fairly be called immaterial, particularly for a parcel that, if developed as the tribe proposes, will demand increased government services and enhanced surrounding infrastructure over time compared to current day. See Attachment C for that future projected loss. See Attachment D for a list of affected taxing entities with their contact information. See Attachment E for assessment information for the property.

We explain below the numerous status quo restrictions on the property. The taxable value of the property reflects the restrictions on that use. If the Property were to stay in County's taxing

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jurisdiction, and if the restrictions did not exist, then valuation of the property and corresponding taxes would be much higher. Moreover, if the land stayed in the County's taxing jurisdiction, the County would benefit over time from any reassessments triggered by changes in ownership of the property and/or the construction of new improvements. For instance, the costs to construct recent luxury hotels in the area are between \$800-\$1,200/sq ft or about \$1.3M/room. The Sonoma County Assessor would estimate that the casino gaming area would involve similar costs as it would include significant electrical and security work. Based on the planned combined square footage of the planned hotel resort, casino, and event center at 807,067 square feet, using \$1,000/sf cost figures, the development would be valued at \$807,067,000 fair market value. Using a 1.134500 tax rate, property taxes for the tribe's planned project would be approximately \$9,156,175.12, annually, not accounting for increase to the CPI. While we recognize that these are rough figures and that an income approach to valuation might be done to generate a comparison value, the County nevertheless provides this information to illustrate the point that when a development is assessed and taxed locally based on its fair market value as actually developed, then the revenue to the government from property taxes paid for the property to support services for that developed property is proportionate. To do otherwise artificially lessens the real impact to the local government. Moreover, the County notes that the BIA did not provide notice of the Application to affected taxing entities based on the service list attached to the notice the County received. The Bureau must give those entities an opportunity to comment directly as to impacts caused by loss of tax revenue stemming from a fee to trust acquisition. The County does not have the information for those independent entities, but the Bureau needs that information to fully evaluate the impact of the loss of tax revenue to the localities. Finally, it is not enough to say there is no impact because the land will not be taxable once the land is in trust. That interpretation of the regulatory standard would render it meaningless, which the rules of statutory construction abhor.

Tax revenue, both current and prospective, is used to support public services that directly and indirectly benefit the property. As a result, to appreciate the true impact to the County of the loss of land from its ad valorem tax roll, one must look at the status of the Property over time, and at the demand for public services created by the property's use.

The Secretary has specifically requested that the County identify the annual amount of property taxes allocated to the County, and any governmental services currently provided by the County. Again, please see Attachment B for tax information, and below for information on impacts to services as much as can be ascertained without a completed environmental impact statement. The County currently provides local governmental services to all parcels in the unincorporated area. These services include law enforcement and criminal justice, fire protection and other emergency services, health and human services, and transportation and public works, as detailed below. With a completed EIS (with a full project description) and more time for analysis the County may be able to provide dollar figures to quantify impacts. The Application lacks this critical information at this time.

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## **2. Public Services to the Property.**

Under 25 C.F.R. 151.11(a) and 151.10(e) the BIA must consider the impact on the County from removal of the land from tax rolls, which in this case is not only the lost revenue but also the adverse impact on government services. The Property is in the unincorporated area of the County and proposes a significant change in land use from agriculture to a large scale visitor-serving resort, open 24-hours per day, 7 days per week, in conflict with zoning and a voter community separator initiative, as described further in section B. below. The impacts of Application approval and such change in use of the property include those adverse service impacts identified below.

### **a. Law Enforcement & Criminal Justice.**

It is well established that California is a mandatory Public Law 280 state. Under P.L. 280, the Sonoma County Sheriff's Office has criminal jurisdiction and enforcement authority over the land and activities on it. The services provided by the Sonoma County Sheriff's Office are one aspect of the services provided by the criminal justice system, which also includes SWAT, helicopter, and bomb squad services, as well as jail, district attorney, public defender, and court services. The Sonoma County Sheriff's Office advises that the proposed project will adversely impact law enforcement services by increasing the volume of calls for law enforcement services, the number of visitors to the area, response times, and crime rates. If the project is completed, the Sheriff's Office would require additional funding for at least one new 24-hour/7 days per week patrol fixed post position. A fixed post position can require at least six deputy sheriff allocations and overtime to cover the necessary shifts. Other divisions of the criminal justice system, including the jail, district attorney, public defender, and courts will be impacted relative to the number of offenders that enter the system as a result of conduct on or related to the casino property. The analysis fails to show how these impacts have been mitigated. Instead, they will be aggravated by the loss of tax revenue.

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### **b. Fire Protection & Other Emergency Services.**

The Sonoma County Fire Prevention Division is responsible for Fire Code enforcement as related to new development on the Property. The Sonoma County Office of Emergency Management would have a role in disaster response, and they oversee the Operational Area during a disaster, including coordinating and hosting a call of all area partners including tribes. It also handles disaster response planning. Sonoma County Fire District (an entity separate and independent from the County of Sonoma), currently provides fire services to the Property. Special districts, including fire districts, are experiencing reductions in funding and a corresponding reduction in personnel and capacity. The entire system is overburdened. It should be noted that if the Taxpayer Protection and Accountability Act of 2024 (a pending statewide initiative) passes, the District's financial resources will be impacted. The Application is silent as to whether Sonoma County Fire District has the capacity to provide services to the Property if

developed consistent with the Tribe's plans. Given the unclear capacity of the Sonoma County Fire in the Application and similar fire districts, and the responsibility of County Service Area departments to provide mutual aide, the reduction of tax revenue further impacts the County's ability to provide these critical life and safety services to the proposed trust property. Even if the Tribe proposes agreements with these entities, it is not stated if they require approval from the federal government or if they will include a waiver of sovereign immunity in order to be legally enforceable. Moreover, the impact of the proposed trust acquisition goes beyond providing services with no property tax revenue contributions from the parcel, but also the substantially increased service demands on the County and related disaster and fire response agencies should there be a need during, for example, a wildfire event. As stated earlier, the hotel five miles south of the facility burned in the 2017 Tubbs fire, so this is a real need to be prepared for and properly resourced for. The BIA must consider this impact. The existing transportation and road infrastructure was not built or designed to a standard to accommodate evacuation of a facility of the size planned by the Koi Nation. Those physical constraints make disaster response planning, staffing, and coordination even more important and costly. Inappropriate development in high-risk areas, with difficult or high-traffic-volume evacuation routes, costs money in terms of emergency preparation.

The BIA must consider that these impacts are not hypothetical, given recent experience with nearby wildfire necessitating regional evacuations.

**c. Health & Human Services.**

The County Departments of Health Services and Human Services are currently responsible for services to the Property. However, because the land is primarily agricultural, the County Department of Health Services is not actively providing specific services to the Property. However, if the property is developed as a resort casino, the areas of new demand for the Department of Health Services are: problem and pathological gambling, alcohol-related problems, and increased domestic violence and sexual assault, food-borne illnesses, pool illness and safety hazards, emergency medical services (EMS) impacts, inspection of business activities impacting health, and animal care and control issues. Additionally, as a large facility where substantial numbers of people work and congregate, managing disease control and response – such as was seen for the Covid-19 pandemic, becomes an added new burden on the department. It is not known if the tribe intends to follow future public health orders that may entail closing its facility; if not, it can unduly strain the county's disease response system. The areas of concern for the Department of Human Services overlap in several areas with those of the Department of Health Services, primarily regarding problem and pathological gambling, alcohol-related problems, and increased domestic violence and sexual assault, as these types of problems have a demonstrated connection to the safety of children, intimate partners, and vulnerable adults, primarily seniors. See Ontario Problem Gambling Study, June 2007, in which researchers studied 182 gamblers, with 62% of them self-reporting perpetration of a physical assault on an intimate

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partner. Again, the impacts on public services are exacerbated by the project which will also not contribute to a stream of property tax that pay for them.

**d. Transportation & Public Works.**

The Sonoma Department of Transportation and Public Works (a.k.a. Sonoma Public Infrastructure or SPI) is presently responsible for maintaining the portion of Shiloh Road that provides direct access to the proposed casino project on the Property. The proposed trust acquisition presents significant transportation and traffic related impacts that have not been mitigated. First, the region is underserved by public transportation for the size of development contemplated by the tribe. Adding a business that relies heavily on lower paid unskilled labor, many of whom may be dependent on public transportation, not to mention customers who also may be dependent on public transportation, will further and significantly impact these resources and the public agencies that provide them. Second, SPI has not yet seen the traffic analysis in the planned but not released Environmental Impact Statement. The County expects over time there may be a need for a variety of traffic improvements outside of the property boundaries, such as traffic signals, signage, vegetation clearing, or turn lanes. But this cannot be confirmed without the EIS. The county does not own sufficient right of way to meaningfully widen the road. SPI would need more information regarding what off-reservation infrastructure improvements would be needed due to the project in order to provide cost estimates for constructing and maintaining such infrastructure. Third, impacts to Shiloh Road, Faught Road, and other surrounding roads are anticipated based on the traffic numbers reported in the EA), which should be updated and more fully analyzed in the anticipated EIS. Increased demand for maintenance of these roads presents an additional burden on the County.

These tax and related impacts demonstrate that, without a clear binding mitigation plan, the Secretary should exercise his discretion to deny the Application. The necessary information to approve the Application has not been provided.

**B. The Level Of Jurisdictional Problems And Potential Conflicts Of Land Use Require That The Application Be Denied (25 C.F.R. § 151.11(a), referencing 25 C.F.R. § 151.10(f)).**

In considering the Application the Secretary must carefully consider the: “Jurisdictional problems and potential conflicts of land use which may arise.” (25 C.F.R. §151.11(a) referencing 151.10(f).) Much of the information about the project necessary to evaluate these problems and conflicts has not yet been provided, such that the public is being deprived of an opportunity to comment on the actual project. However, the available information indicates the problems and conflicts are major.

The Application utilizes both circular and incorrect logic to conclude that what it calls “jurisdictional issues” will not be present. Contrary to the applicant’s statements in the Application, the State would not have civil jurisdiction over the land under P.L. 280. But more fundamentally, the applicant’s logic ignores the actual scope of the regulation and the myriad of problems created by the proposal.

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cont.

As discussed throughout these comments, **the direct and cumulative impacts of placing a massive entertainment and lodging facility on land where this type of use is prohibited leads to very significant problems.** **Extensive planning efforts** and voter-approved ballot measures have supported containing sprawl and maintaining the agricultural quality and character of the land **between cities.** Breach of these land use, zoning, and voter-enacted measures would adversely impact the environment, including federally protected species, and threaten the County's **continuing efforts to** contain sprawl, protect farmland, and coherently plan for major uses. The **significance of this conflict is also that providing services to this use conflicts with regional planning initiatives.** There is **insufficient infrastructure for this use because the applicant has chosen a location where the use is prohibited,** and urban services cannot be extended to the use. (General Plan Policy LU-3e).

**1. Sonoma County General Plan and Zoning Ordinance Conflicts, And Associated Impacts And Conflicts With Regional Planning.**

The **Application** at issue is a frontal assault on inter-governmental **actions** to constrain sprawl in Sonoma County. In 1989, Sonoma County adopted Community Separator policies in its General Plan. **Community Separators are rural open space lands around cities and unincorporated communities in Sonoma County that maintain community identities, prevent sprawl, protect natural resources, and provide visual separation between cities and unincorporated communities.** In 1996, these Community Separator policies were strengthened and reiterated by a ballot measure that required voter approval of any changes in land use density **or intensity if the cities had adopted urban growth boundaries. In the same election or shortly thereafter the cities adopted complementary Urban Growth Boundaries, and Sonoma County became the first county in the nation to establish comprehensive,** voter-approved growth boundaries and separators to require city-centered growth. Today, each city in the county has a voter-approved Urban Growth Boundary, and the County has a complementary and voter-approved greenbelt outside each Urban Growth Boundary. **As the 1996 initiative discussed,** this inter-agency planning framework also implemented many **State anti-sprawl** goals:

“(a) **Article XIII, section 8 of the California Constitution encouraging the ‘conservation, preservation and continued existence of open space lands’ for ‘recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber.’**

(b) **Articles XIII A and XIII B of the California Constitution limiting local government tax revenues and spending and thereby encouraging the efficient physical development of communities that will reduce expenditures for public safety, streets, utilities and other publicly financed, operated and maintained improvements.**

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(c) **The Planning and Zoning Law (Government Code section 65562) assuring ‘that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible’ and that they will ‘prepare and carry out open-space plans.’**

(d) **The Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§56000 et seq.) discouraging annexations and other changes in organization that result in urban sprawl and its implementation in Sonoma County by resolution number 2119, dated May 7, 1992, of the Sonoma County Local Agency Formation Commission.” (Sonoma County Ordinance 5003R, 1996)**

The framework established by Urban Growth Boundaries and Community Separators is core to the land use planning for the site, including the available infrastructure.

The Urban Growth Boundary framework is not only core to Sonoma County land use policy, but the growth policy for the Bay Area as a whole. **The Association of Bay Area Governments and Metropolitan Transportation Commission have integrated the preservation of Urban Growth Boundaries into Plan Bay Area 2050, meaning that all land use and transportation planning (city and county) within the Bay Area’s nine counties is framed around the preservation of these boundaries.**<sup>2</sup>

The applicant’s proposed site is outside of the Town of Windsor’s Urban Growth Boundary and within the County’s Community Separator. The project **conflicts** with the general plan and **zoning designations that flow from the** Community Separator controls on sprawl. **The proposed property has a General Plan land use designation of “Land Intensive Agriculture 20-acre per dwelling unit.”** The property’s zoning is **“LIA (Land Intensive Agriculture) B6 20 (20 acres per dwelling unit density), F1 (Floodway Combining District) F2 (Floodplain) RC50/25 (Riparian Corridor 50/25 foot setbacks) SR (Scenic Resources) VOH (Valley Oak Habitat).”**

As explained in more detail below, **the conversion of the use of the parcel from the existing agricultural and single family residential to development and operation of a casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure within the**

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<sup>2</sup> ABAG & MTC, Plan Bay Area 2050 (2021), [https://planbayarea.org/sites/default/files/documents/Plan\\_Bay\\_Area\\_2050\\_October\\_2021.pdf](https://planbayarea.org/sites/default/files/documents/Plan_Bay_Area_2050_October_2021.pdf)

project site, is inconsistent and in conflict with Sonoma County's General Plan and Zoning Ordinance, including the Community Separator initiative, Measure K.<sup>3</sup>

The property is zoned for Land Intensive Agricultural use. The purpose of the Land Intensive Agriculture (LIA) zoning district is to enhance and protect lands best suited for permanent agricultural use and capable of relatively high production per acre of land and implement the land intensive agriculture land use category of the general plan and the policies of the agricultural resources element (Zoning Code Section 26-06-020). Approximately 47 acres of the subject parcel is designated Farmland of Statewide Importance, 8 acres designated Farmland of Local Importance, and 13 acres of Prime Farmland. The Sonoma County General Plan Agricultural Resources Element and Open Space and Resource Conservation Element encourage the preservation of lands containing prime agricultural and productive woodland soils and to avoid conversion to incompatible commercial uses. The General Plan policies explicitly state that new uses on agriculturally zoned land that are not in the service of agricultural activities are not allowed. Policies further state that visitor-serving uses in agricultural areas shall be accessory to a primary agricultural use and shall be limited in scope and intensity relative to the agricultural use. Consistent with General Plan policy, commercial entertainment centers, such as the proposed project, and similar intensities of commercial use are expressly not permitted. The proposed project is inconsistent with the purpose of the Land Intensive Agriculture zoning district.

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cont.

Hotels and resorts are largely permitted in commercial zones only and are limited to a maximum of 200 rooms (Zoning Code Section 26-28-150). Any hotel greater than 100 rooms must be located in an area served by public sewer. The project site is not currently within a designated urban service area and does not have access to public sewer service. Casinos are not an identified land use in the Sonoma County Zoning Ordinance, however, larger-scale, visitor serving uses, such as entertainment venues, are only permitted in commercial zones.

As the County has noted previously in its comments on the Environmental Assessment, the infrastructure to support this use is not in place precisely because the use is not allowed in the Community Separator. See Attachment F for those comments; see also Attachment G for comments on scope of EIS. The roads and utilities are not sufficient for this proposed use. The attempt to approve an extremely large facility without inter-governmental cooperation and the support of off-site utilities requires very thorough analysis that does not appear to be contemplated.

Pruitt Creek traverses the site from north to south. Pruitt Creek is designated critical habitat for Coho Salmon and Steelhead. Steelhead have been observed to rear and spawn in

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<sup>3</sup> On November 8, 2016, the Community Separators Protection Ordinance, commonly called Measure K, passed with 81.1% approval. Measure K extends voter protections to Community Separator lands for 20 years.



upstream reaches where streamflow is perennial. Steelhead occupy downstream reaches during times of the year when there is flow and suitable water quality. The project has the potential to degrade habitat conditions through impacts to water quality and alterations to flow. Increased groundwater pumping has the potential to reduce streamflow. Wastewater and stormwater discharge may impact water quality due to elevated peak flows, sediment loads, and nutrients. Potential impacts to water quality and aquatic habitat conditions of Pruitt Creek should be thoroughly assessed.

The parcel's zoning includes corresponding Riparian Corridor (RC 50/25), Floodplain (F2), and Floodway (F1) combining districts along the creek. The intent of the Riparian Corridor combining district is to "to protect biotic resource communities, including critical habitat areas within and along riparian corridors, for their habitat and environmental value, and to implement the provisions of the General Plan Open Space and Resource Conservation and Water Resources Elements," (Zoning Code Section 26-65-005). The Riparian Corridor combining district establishes streamside conservation areas and largely prohibits development, including but not limited to grading, structures, vegetation removal and hardscape, with some exception, within these areas. To be consistent with the Riparian Corridor zoning district and associated General Plan policies, development of the site must protect and enhance the designated riparian corridor located along Pruitt Creek, including through the preservation of riparian vegetation, protection of water resources, floodplain management, wildlife habitat and movement, stream shade, fisheries, water quality, channel stability, groundwater recharge, opportunities for recreation, education and aesthetic appreciation and other riparian functions and values. The available information about the project to date indicates that not only is the habitat not being protected, but that the project may result in a violation of the Endangered Species Act. The project will add additional point discharge to Pruitt Creek and has potential to result in hydromodification and degraded water quality. Information about measures to ensure that stormwater impacts are fully mitigated to reduce peak runoff and protect water quality is crucial to evaluation the Application.

The water source and the wastewater for the project are of significant concern given the sensitive location. Utility services from the Town of Windsor are not available to the site because it is outside the Urban Growth Boundary. The applicant has previously proposed to treat wastewater via a proposed on-site tertiary wastewater treatment plant. This may not be feasible, and a feasible plan has certainly not been disclosed for comment. Details regarding the operation of the wastewater treatment plant, including an Operation & Maintenance Program to ensure the treatment plant is well maintained and that it operates correctly throughout the life of the project, are needed to evaluate the Application. If the project would discharge tertiary treated effluent to Pruitt Creek during the winter months, details are needed to demonstrate that the project would comply with state discharge regulations for the North Coast Regional Water Quality Control Board. Pruitt Creek downstream of the project site is known to have little or no flow for much of the year including winter months. Wastewater treatment and disposal designs should be based off site specific conditions. Multiple years of continuous streamflow data should be collected at the site, including at least one year of severe drought, to appropriately design the

A9-93  
cont.

wastewater treatment system, and assess potential impacts. This information is needed to evaluate this Application.

The project has previously proposed to use water from on-site wells, which would be located within the Santa Rosa Plain Groundwater Subbasin (Subbasin). This Subbasin is managed by the Santa Rosa Plain Groundwater Sustainability Agency, and recycled water from on-site wastewater treatment facilities. Insufficient data is available to analyze potential impacts of groundwater pumping on groundwater conditions and sustainability indicators within the Subbasin, including groundwater levels, groundwater storage, and depletion of interconnected surface water. The Santa Rosa Plain Groundwater Sustainability Plan, which was approved by the California Department of Water Resources in January 2023, describes sustainable management criteria that must be evaluated in assessing the Application.

There is also insufficient data to analyze potential well interference effects to nearby public and private wells, including cumulative effects, associated with future groundwater pumping. The project should coordinate with the County of Sonoma and Groundwater Sustainability Agency to implement projects and management actions identified in the Groundwater Sustainability Plan, including a monitoring program, increased conservation strategies, groundwater recharge, water reuse, and other actions to ensure groundwater sustainability. The Application cannot reasonably be evaluated without this information, but the available information indicates pronounced conflicts without a strategy to address them.

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cont.

## **2. Other Jurisdictional Problems: Lack of Mitigation Agreements and Tribal Ordinances.**

While the tribe has expressed a desire for an agreement with the County, it did not indicate if the agreement would be enforceable, and the copy of the Tribe's Application received by the County in December 2021 is silent regarding potential future legally enforceable government-to-government agreements with local governments, other tribal governments, or the State of California. Such agreements might address negative impacts from the acceptance of the land into trust, or development of the resort casino. However, at this stage it is totally speculative as to whether there will be such agreements, or if there are, whether the federal government would approve them, and if so, whether they would be legally enforceable. Because the BIA does not have the terms of such a speculative agreement, and because the parties have not agreed to presently negotiate such an agreement, there is no way of knowing if it will be reached, if it will adequately mitigate environmental impacts, if it compensate for financial impacts, and if it will be enforceable. Even if the tribe were to commit to such an agreement in its Application, in a way that mutually benefited the tribe and the County, the tribe cannot guarantee that the agreement would be approved by the federal government, under applicable federal regulations. The BIA should either refrain from acting on the Application until there is such an enforceable agreement approved by the federal government in place, or should deny the fee to trust Application for lack of such an agreement.

While the BIA certainly has a policy in favor of encouraging self-sufficiency, self-determination, and economic development for tribes; that policy is not incompatible with requiring recognition and mitigation of impacts to local governments prior to taking action on a fee-to-trust Application. This is clearly contemplated by the terms of 25 C.F.R § 151.10 and 151.11, which requires the BIA to evaluate impacts to local governments.

**C. The Bureau Of Indian Affairs Is Not Equipped To Discharge The Additional Responsibilities Resulting From The Acquisition Of The Land In Trust Status (25 C.F.R. § 151.11(a), referencing 25 C.F.R. § 151.10(g)).**

The Trust Application incorrectly asserts that the tribe “expects that the Bureau will be able to discharge any additional responsibilities that may arise in connection with the acquisition of the 68.60 acres in trust.” The reason given for this is that the property will not be used for mining of natural resources or forestry requiring BIA management. (Application at p. 6.) We urge the Bureau to critically consider its role as owner of the property. The statements in the Application overlook the federal government’s responsibilities to ensure that the operator and manager of the property (Barton Productions, LLC) is in compliance with federal law, including compliance with strict liability federal environmental laws (Endangered Species Act and Clean Water Act), and as trustee ensuring the property’s natural resources, including water, are capable of sustaining the planned development and use of the property in perpetuity, or until the and is no longer in trust, and not draining local aquifers on which the property and surrounding properties depend. In this way, water resources, like timber and mineral resources, have value and need to be managed in a sustainable way. There is nothing in the Application to address what this will entail, or the burden it will place on the Bureau.

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cont.

**D. The Extent To Which The Tribe Has Provided Information That Allows The Secretary To Comply With The National Environmental Policy Act (25 C.F.R. § 151.11(A), Referencing 25 C.F.R. § 151.10(h)).**

As noted above, the information provided to date is woefully insufficient for NEPA compliance. To date, the NEPA process has not been completed and, as demonstrated in the County’s comments regarding the Environmental Assessment, has previously been seriously flawed. By circulating Notice of the Application for comment prior to completion of the Environmental Impact Statement, the Department has prevented the County from commenting on the actual project and the true impacts of the proposed acquisition and resort casino development. Both the County and the Bureau lack critical information. The Department has handicapped the County and other local agencies in being able to understand and comment on the Application, and this notice and comment period are entirely pre-mature. The Bureau does not have the information required to act on the proposed fee-to-trust acquisition. Once NEPA is complete and once the Application is complete (for instance, if a restored lands determination necessary to proceed under Part 151 is included), then the Bureau must re-notice the Application for comment.

## **VI. CONCLUSION**

**For the above reasons and light of the facts set forth in these Comments, the County of Sonoma strongly opposes the Application and urges the BIA to deny it. We remain available to discuss these comments with the BIA and the Tribe upon request.**

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cont.

## ATTACHMENTS

- A. Chart showing actual **amount of taxes allocated to the County's General Fund** prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC)
- B. **Chart showing amount of property taxes collected for the subject parcel from 2019-20** to current prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC).
- C. Chart showing future projected tax loss for property if use remains the same (i.e. agricultural) prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC).
- D. **Distribution List: Taxing Entities – With Contact Information**
- E. Assessment Data from Sonoma County Assessor
- F. **County's Comments on EA**
- G. County's Scoping Comments for EIS

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cont.

**Budget v. Actual - Revenues**

As Of = @current-fiscal-year-end; Years = 5; Chart Fields = Fund, Department, Account

Department [16020600] and Account [400\*, 40101, 42291]

Run: 2024-05-07 08:39 PM

		FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2023	FY 2023-2024
						Year-To-Date
Account	Account Description	Actual	Actual	Actual	Actual	Actual
<b>Fund: 10005 – General Fund</b>						
<b>Department: 16020600 – Prop 4 Revenue - Unallocated</b>						
40002	Prop Tax - CY,Secured	199,506,359.08	208,601,943.13	217,320,965.02	231,472,881.11	234,237,496.93
40005	Prop Taxes - RDA Increment	(35,508,112.42)	(37,440,403.05)	(37,554,741.17)	(40,260,844.67)	(42,852,998.55)
40006	AB1290 RDA Pass Throughs	1,762,122.82	1,884,959.02	2,016,335.12	2,220,830.74	2,446,126.26
40007	H&S 33401 RDA Pass Throughs	19,308,527.04	20,092,518.52	20,293,791.10	21,954,475.93	22,660,745.31
40008	H&S 33676 RDA (2%) Allocation	1,991,092.00	2,082,132.00	2,130,234.00	2,224,058.00	2,319,758.00
40009	Property Taxes - VLF Swap	65,264,208.47	68,264,930.16	70,448,500.68	74,969,413.45	79,202,550.14
40010	Residual Prop Tax - RPTTF	6,730,435.26	11,555,134.14	11,886,730.80	13,978,780.02	8,173,229.49
40101	Prop Taxes - CY, Unsecured	7,339,482.66	7,478,496.67	7,646,527.65	8,468,982.05	9,478,022.43
42291	State Homeowners Prop Tax Relf	1,190,920.04	1,171,981.64	1,156,552.65	1,103,019.17	931,323.22
Total 16020600 – Prop 4 Revenue - Unallocated		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23
Total 10005 – General Fund		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23
		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23

A9-93  
cont.



**Attachment B  
to FTT Comments**

**County of Sonoma**

Property Taxes Levied by Taxing Agency  
Koi Nation of Northern California  
FY 2019-20 thru 2023-24

APN: 059-300-003-000  
Situs: 222 E SHILOH RD  
Owner: SONOMA ROSE LLC  
TRA: 120-009

Tax Type	FY 2019-20		FY 2020-21		FY 2021-22		FY 2022-23		FY2023-24	
	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax
Prop 13 1%	1.00000	\$ 82,059.56	1.00000	\$ 83,702.14	1.00000	\$ 84,570.00	1.00000	\$ 86,525.78	1.00000	\$ 125,459.98
Ad Valorem	0.12750	10,462.60	0.11700	9,793.16	0.10950	9,260.38	0.10950	9,474.52	0.13450	16,874.22
Direct Charges		135.46		182.54		540.98		1,970.10		1,944.08
<b>Total</b>	<b>1.12750</b>	<b>\$ 92,657.62</b>	<b>1.11700</b>	<b>\$ 93,677.84</b>	<b>1.10950</b>	<b>\$ 94,371.36</b>	<b>1.10950</b>	<b>\$ 97,970.40</b>	<b>1.13450</b>	<b>\$ 144,278.28</b>

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cont.

**County of Sonoma**  
**Property Taxes Levied by Taxing Agency**  
**Koi Nation of Northern California**  
**FY 2019-20**

**APN: 059-300-003-000**  
**Situs: 222 E SHILOH RD**  
**Owner: CLIFTON RANDALL C TR & CYNTHIA A TR**  
**TRA: 120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,205,956	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	Net of ERAF Total
<b><u>Prop 13 (1%) Levy</u></b>							
01200	COUNTY GENERAL	0.322101	26,431.47	\$ 26,431.47	0.3310831182	\$ (8,751.01)	\$ 17,680.46
01300	COUNTY LIBRARY	0.021567	1,769.78	1,769.78	-	-	1,769.78
01700	ERAF	-	-	-	-	9,405.01	9,405.01
03100	SHILOH CEMETERY	0.008095	664.27	664.27	0.1118389920	(74.29)	589.98
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	8,921.60	8,921.60	0.0561309871	(500.78)	8,420.82
06000	GEN #1 SOCO WATER AGENCY	0.008683	712.52	712.52	0.0826963860	(58.92)	653.60
06100	SPRING LAKE PARK SCWA	0.002801	229.85	229.85	0.0827074388	(19.01)	210.84
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,261.01	1,261.01	-	-	1,261.01
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	230.01	230.01	-	-	230.01
11500	BAY AREA AIR QUALITY MGMT	0.002152	176.59	176.59	-	-	176.59
13200	SONOMA RCD	0.000108	8.86	8.86	0.1133990518	(1.00)	7.86
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0925810538	-	-
30800	MARK WEST ELEM	0.134472	11,034.71	11,034.71	-	-	11,034.71
33700	SANTA ROSA CITY HIGH	0.198222	16,266.01	16,266.01	-	-	16,266.01
34300	SO CO JT JR COLLEGE	0.060875	4,995.38	4,995.38	-	-	4,995.38
34400	SCHOOL SERVICE ADMIN	0.022326	1,832.06	1,832.06	-	-	1,832.06
34800	SANTA ROSA AWUF	0.088077	7,227.56	7,227.56	-	-	7,227.56
35200	SCHOOLS EQUALIZAT AID	0.003630	297.88	297.88	-	-	297.88
<b>Prop 13 Total</b>		<b>1.000000</b>	<b>82,059.56</b>	<b>\$ 82,059.56</b>		<b>\$ 0.00</b>	<b>\$ 82,059.56</b>
<b><u>Voter Approved Debt</u></b>							
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	574.42	\$ 574.42			\$ 574.42
20603	MARK WEST ELEM 2002 BONDS	0.025000	2,051.48	2,051.48			2,051.48
20610	MARK WEST ELEM 2010 BONDS	0.010000	820.60	820.60			820.60
36700	SR HIGH DIST 1991 BOND	0.014000	1,148.84	1,148.84			1,148.84
36702	SR HIGH DIST 2002 BOND	0.014500	1,189.86	1,189.86			1,189.86
36703	SR HIGH DIST 2014 BOND	0.020000	1,641.20	1,641.20			1,641.20
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,066.78	1,066.78			1,066.78
39901	SOCO JR COLLEGE 2014 BOND	0.024000	1,969.42	1,969.42			1,969.42
<b>Ad Valorem Total</b>		<b>0.127500</b>	<b>10,462.60</b>	<b>10,462.60</b>			<b>10,462.60</b>
<b><u>Direct Charges</u></b>							
53900	SO CO FIRE DIST SPEC TAX		45.00	45.00			45.00
53901	SO CO FIRE DIST 2006 TAX		54.46	54.46			54.46
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			24.00
96200	SF BAY RESTORATION AUTH		12.00	12.00			12.00
<b>Direct Charge Total</b>			<b>135.46</b>	<b>\$ 135.46</b>			<b>\$ 135.46</b>
<b>Grand Total</b>		<b>1.127500</b>	<b>92,657.62</b>	<b>\$ 92,657.62</b>			<b>\$ 92,657.62</b>

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cont.

**Note:**  
 1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2019-20 certified values.

**Prepared by:** Sonoma County Auditor-Controller Treasurer-Tax Collector  
 5/8/2024

**County of Sonoma**  
**Property Taxes Levied by Taxing Agency**  
**Koi Nation of Northern California**  
**FY 2020-21**

**APN: 059-300-003-000**  
**Situs: 222 E SHILOH RD**  
**Owner: CLIFTON RANDALL C TR & CYNTHIA A TR**  
**TRA: 120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,370,213	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	Net of ERAF Total
<b><u>Prop 13 (1%) Levy</u></b>							
01200	COUNTY GENERAL	0.322101	26,960.55	\$ 26,960.55	0.3306704042	\$ (8,915.06)	\$ 18,045.49
01300	COUNTY LIBRARY	0.021567	1,805.20	1,805.20	-	-	1,805.20
01700	ERAF	-	-	-	-	9,714.92	9,714.92
03100	SHILOH CEMETERY	0.008095	677.57	677.57	0.1117847178	(75.74)	601.83
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	9,100.18	9,100.18	0.0707329341	(643.68)	8,456.50
06000	GEN #1 SOCO WATER AGENCY	0.008683	726.79	726.79	0.0826245433	(60.05)	666.74
06100	SPRING LAKE PARK SCWA	0.002801	234.45	234.45	0.0826361098	(19.37)	215.08
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,286.25	1,286.25	-	-	1,286.25
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	234.62	234.62	-	-	234.62
11500	BAY AREA AIR QUALITY MGMT	0.002152	180.13	180.13	-	-	180.13
13200	SONOMA RCD	0.000108	9.04	9.04	0.1133049674	(1.02)	8.02
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0919091798	-	-
30800	MARK WEST ELEM	0.134472	11,255.59	11,255.59	-	-	11,255.59
33700	SANTA ROSA CITY HIGH	0.198222	16,591.60	16,591.60	-	-	16,591.60
34300	SO CO JT JR COLLEGE	0.060875	5,095.37	5,095.37	-	-	5,095.37
34400	SCHOOL SERVICE ADMIN	0.022326	1,868.73	1,868.73	-	-	1,868.73
34800	SANTA ROSA AWUF	0.088077	7,372.23	7,372.23	-	-	7,372.23
35200	SCHOOLS EQUALIZAT AID	0.003630	303.84	303.84	-	-	303.84
<b>Prop 13 Total</b>		<b>1.000000</b>	<b>83,702.14</b>	<b>\$ 83,702.14</b>		<b>\$ 0.00</b>	<b>\$ 83,702.14</b>
<b><u>Voter Approved Debt</u></b>							
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	585.92	\$ 585.92			\$ 585.92
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,259.96	2,259.96			2,259.96
20610	MARK WEST ELEM 2010 BONDS	0.010000	837.02	837.02			837.02
36700	SR HIGH DIST 1991 BOND	0.007500	627.76	627.76			627.76
36702	SR HIGH DIST 2002 BOND	0.013500	1,129.98	1,129.98			1,129.98
36703	SR HIGH DIST 2014 BOND	0.015000	1,255.54	1,255.54			1,255.54
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,088.12	1,088.12			1,088.12
39901	SOCO JR COLLEGE 2014 BOND	0.024000	2,008.86	2,008.86			2,008.86
<b>Ad Valorem Total</b>		<b>0.117000</b>	<b>9,793.16</b>	<b>9,793.16</b>			<b>9,793.16</b>
<b><u>Direct Charges</u></b>							
53900	SO CO FIRE DIST SPEC TAX		90.00	90.00			90.00
53901	SO CO FIRE DIST 2006 TAX		56.54	56.54			56.54
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			24.00
96200	SF BAY RESTORATION AUTH		12.00	12.00			12.00
<b>Direct Charge Total</b>			<b>182.54</b>	<b>\$ 182.54</b>			<b>\$ 182.54</b>
<b>Grand Total</b>		<b>1.117000</b>	<b>93,677.84</b>	<b>\$ 93,677.84</b>			<b>\$ 93,677.84</b>

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cont.

**Note:**  
 1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2020-21 certified values.

**Prepared by:** Sonoma County Auditor-Controller Treasurer-Tax Collector  
 5/8/2024

**County of Sonoma**  
**Property Taxes Levied by Taxing Agency**  
**Koi Nation of Northern California**  
**FY 2021-22**

**APN: 059-300-003-000**  
**Situs: 222 E SHILOH RD**  
**Owner: SONOMA ROSE LLC**  
**TRA: 120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,456,999	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	Net of ERAF Total
<b><u>Prop 13 (1%) Levy</u></b>							
01200	COUNTY GENERAL	0.322101	27,240.10	\$ 27,240.10	0.3318590317	\$ (9,039.87)	\$ 18,200.23
01300	COUNTY LIBRARY	0.021567	1,823.92	1,823.92	-	-	1,823.92
01700	ERAF	-	-	-	-	9,850.13	9,850.13
03100	SHILOH CEMETERY	0.008095	684.59	684.59	0.1119967875	(76.67)	607.92
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	9,194.53	9,194.53	0.0709154931	(652.03)	8,542.50
06000	GEN #1 SOCO WATER AGENCY	0.008683	734.32	734.32	0.0829167850	(60.89)	673.43
06100	SPRING LAKE PARK SCWA	0.002801	236.88	236.88	0.0829282069	(19.64)	217.24
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,299.59	1,299.59	-	-	1,299.59
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	237.05	237.05	-	-	237.05
11500	BAY AREA AIR QUALITY MGMT	0.002152	181.99	181.99	-	-	181.99
13200	SONOMA RCD	0.000108	9.13	9.13	0.1132552714	(1.03)	8.10
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0914965724	-	-
30800	MARK WEST ELEM	0.134472	11,372.30	11,372.30	-	-	11,372.30
33700	SANTA ROSA CITY HIGH	0.198222	16,763.63	16,763.63	-	-	16,763.63
34300	SO CO JT JR COLLEGE	0.060875	5,148.20	5,148.20	-	-	5,148.20
34400	SCHOOL SERVICE ADMIN	0.022326	1,888.11	1,888.11	-	-	1,888.11
34800	SANTA ROSA AWUF	0.088077	7,448.67	7,448.67	-	-	7,448.67
35200	SCHOOLS EQUALIZAT AID	0.003630	306.99	306.99	-	-	306.99
<b>Prop 13 Total</b>		<b>1.000000</b>	<b>84,570.00</b>	<b>\$ 84,570.00</b>		<b>\$ 0.00</b>	<b>\$ 84,570.00</b>
<b><u>Voter Approved Debt</u></b>							
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	591.98	\$ 591.98			\$ 591.98
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,283.38	2,283.38			2,283.38
20610	MARK WEST ELEM 2010 BONDS	0.010000	845.70	845.70			845.70
36702	SR HIGH DIST 2002 BOND	0.013500	1,141.70	1,141.70			1,141.70
36703	SR HIGH DIST 2014 BOND	0.015000	1,268.54	1,268.54			1,268.54
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,099.40	1,099.40			1,099.40
39901	SOCO JR COLLEGE 2014 BOND	0.024000	2,029.68	2,029.68			2,029.68
<b>Ad Valorem Total</b>		<b>0.109500</b>	<b>9,260.38</b>	<b>9,260.38</b>			<b>9,260.38</b>
<b><u>Direct Charges</u></b>							
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			67.50
53901	SO CO FIRE DIST 2006 TAX		437.48	437.48			437.48
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			24.00
96200	SF BAY RESTORATION AUTH		12.00	12.00			12.00
<b>Direct Charge Total</b>			<b>540.98</b>	<b>\$ 540.98</b>			<b>\$ 540.98</b>
<b>Grand Total</b>		<b>1.109500</b>	<b>94,371.36</b>	<b>\$ 94,371.36</b>			<b>\$ 94,371.36</b>

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cont.

**Note:**  
 1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2021-22 certified values.

**Prepared by:** Sonoma County Auditor-Controller Treasurer-Tax Collector  
 5/8/2024

**County of Sonoma**  
**Property Taxes Levied by Taxing Agency**  
**Koi Nation of Northern California**  
**FY 2022-23**

**APN: 059-300-003-000**  
**Situs: 222 E SHILOH RD**  
**Owner: SONOMA ROSE LLC**  
**TRA: 120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,652,578	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	Net of ERAF Total
<b><u>Prop 13 (1%) Levy</u></b>							
01200	COUNTY GENERAL	0.332685	28,785.83	\$ 28,785.83	0.3314985406	\$ (9,542.46)	\$ 19,243.37
01300	COUNTY LIBRARY	0.022276	1,927.45	1,927.45	-	-	1,927.45
01700	ERAF	-	-	-	-	10,148.09	10,148.09
03100	SHILOH CEMETERY	0.008361	723.44	723.44	0.1120287674	(81.05)	642.39
05900	SONOMA COUNTY FIRE DISTRICT	0.079433	6,873.00	6,873.00	0.0637944813	(438.46)	6,434.54
06000	GEN #1 SOCO WATER AGENCY	0.008969	776.05	776.05	0.0828453614	(64.29)	711.76
06100	SPRING LAKE PARK SCWA	0.002893	250.32	250.32	0.0828574114	(20.74)	229.58
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015872	1,373.34	1,373.34	-	-	1,373.34
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002895	250.49	250.49	-	-	250.49
11500	BAY AREA AIR QUALITY MGMT	0.002223	192.35	192.35	-	-	192.35
13200	SONOMA RCD	0.000111	9.60	9.60	0.1131833957	(1.09)	8.51
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0906084479	-	-
30800	MARK WEST ELEM	0.138891	12,017.65	12,017.65	-	-	12,017.65
33700	SANTA ROSA CITY HIGH	0.204736	17,714.94	17,714.94	-	-	17,714.94
34300	SO CO JT JR COLLEGE	0.062876	5,440.39	5,440.39	-	-	5,440.39
34400	SCHOOL SERVICE ADMIN	0.023059	1,995.20	1,995.20	-	-	1,995.20
34800	SANTA ROSA AWUF	0.090971	7,871.34	7,871.34	-	-	7,871.34
35200	SCHOOLS EQUALIZAT AID	0.003749	324.39	324.39	-	-	324.39
<b>Prop 13 Total</b>		<b>1.000000</b>	<b>86,525.78</b>	<b>\$ 86,525.78</b>		<b>\$ (0.00)</b>	<b>\$ 86,525.78</b>
<b><u>Voter Approved Debt</u></b>							
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	605.68	\$ 605.68			\$ 605.68
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,336.18	2,336.18			2,336.18
20610	MARK WEST ELEM 2010 BONDS	0.011000	951.78	951.78			951.78
36702	SR HIGH DIST 2002 BOND	0.011000	951.78	951.78			951.78
36703	SR HIGH DIST 2014 BOND	0.018500	1,600.72	1,600.72			1,600.72
39900	SOCO JR COLLEGE 2002 BOND	0.012000	1,038.30	1,038.30			1,038.30
39901	SOCO JR COLLEGE 2014 BOND	0.023000	1,990.08	1,990.08			1,990.08
<b>Ad Valorem Total</b>		<b>0.109500</b>	<b>9,474.52</b>	<b>9,474.52</b>			<b>9,474.52</b>
<b><u>Direct Charges</u></b>							
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			67.50
53901	SO CO FIRE DIST 2006 TAX		570.20	570.20			570.20
58400	SANTA ROSA PLAIN GSA FEE		1,296.40	1,296.40			1,296.40
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			24.00
96200	SF BAY RESTORATION AUTH		12.00	12.00			12.00
<b>Direct Charge Total</b>			<b>1,970.10</b>	<b>\$ 1,970.10</b>			<b>\$ 1,970.10</b>
<b>Grand Total</b>		<b>1.109500</b>	<b>97,970.40</b>	<b>\$ 97,970.40</b>			<b>\$ 97,970.40</b>

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cont.

**Note:**  
 1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2022-23 certified values.

**Prepared by:** Sonoma County Auditor-Controller Treasurer-Tax Collector  
 5/8/2024

**County of Sonoma**  
**Property Taxes Levied by Taxing Agency**  
**Koi Nation of Northern California**  
**FY 2023-24**

**APN: 059-300-003-000**  
**Situs: 222 E SHILOH RD**  
**Owner: SONOMA ROSE LLC**  
**TRA: 120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 12,545,999	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	Net of ERAF Total
<b><u>Prop 13 (1%) Levy</u></b>							
01200	COUNTY GENERAL	0.332685	41,738.64	\$ 41,738.64	0.3311356897	\$ (13,821.15)	\$ 27,917.49
01300	COUNTY LIBRARY	0.022276	2,794.75	2,794.75	-	-	2,794.75
01700	ERAF	-	-	-	-	14,728.29	14,728.29
03100	SHILOH CEMETERY	0.008361	1,048.97	1,048.97	0.1120143760	(117.50)	931.47
05900	SONOMA COUNTY FIRE DISTRICT	0.079433	9,965.66	9,965.66	0.0667177562	(664.89)	9,300.77
06000	GEN #1 SOCO WATER AGENCY	0.008969	1,125.25	1,125.25	0.0827609724	(93.13)	1,032.12
06100	SPRING LAKE PARK SCWA	0.002893	362.96	362.96	0.0827730183	(30.04)	332.92
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015872	1,991.30	1,991.30	-	-	1,991.30
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002895	363.21	363.21	-	-	363.21
11500	BAY AREA AIR QUALITY MGMT	0.002223	278.90	278.90	-	-	278.90
13200	SONOMA RCD	0.000111	13.93	13.93	0.1130824262	(1.58)	12.35
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0897720282	-	-
30800	MARK WEST ELEM	0.138891	17,425.26	17,425.26	-	-	17,425.26
33700	SANTA ROSA CITY HIGH	0.204736	25,686.18	25,686.18	-	-	25,686.18
34300	SO CO JT JR COLLEGE	0.062876	7,888.42	7,888.42	-	-	7,888.42
34400	SCHOOL SERVICE ADMIN	0.023059	2,892.98	2,892.98	-	-	2,892.98
34800	SANTA ROSA AWUF	0.090971	11,413.22	11,413.22	-	-	11,413.22
35200	SCHOOLS EQUALIZAT AID	0.003749	470.35	470.35	-	-	470.35
<b>Prop 13 Total</b>		<b>1.000000</b>	<b>125,459.98</b>	<b>\$ 125,459.98</b>		<b>\$ (0.00)</b>	<b>\$ 125,459.98</b>
<b><u>Voter Approved Debt</u></b>							
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	878.20	\$ 878.20			\$ 878.20
20603	MARK WEST ELEM 2002 BONDS	0.027000	3,387.40	3,387.40			3,387.40
20610	MARK WEST ELEM 2010 BONDS	0.011000	1,380.04	1,380.04			1,380.04
36702	SR HIGH DIST 2002 BOND	0.010000	1,254.58	1,254.58			1,254.58
36703	SR HIGH DIST 2014 BOND	0.018000	2,258.26	2,258.26			2,258.26
36704	SR HIGH DIST 2022 BOND	0.028000	3,512.86	3,512.86			3,512.86
39900	SOCO JR COLLEGE 2002 BOND	0.011500	1,442.78	1,442.78			1,442.78
39901	SOCO JR COLLEGE 2014 BOND	0.022000	2,760.10	2,760.10			2,760.10
<b>Ad Valorem Total</b>		<b>0.134500</b>	<b>16,874.22</b>	<b>16,874.22</b>			<b>16,874.22</b>
<b><u>Direct Charges</u></b>							
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			67.50
53901	SO CO FIRE DIST 2006 TAX		544.38	544.38			544.38
58400	SANTA ROSA PLAIN GSA FEE		1,296.20	1,296.20			1,296.20
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			24.00
96200	SF BAY RESTORATION AUTH		12.00	12.00			12.00
<b>Direct Charge Total</b>			<b>1,944.08</b>	<b>\$ 1,944.08</b>			<b>\$ 1,944.08</b>
<b>Grand Total</b>		<b>1.134500</b>	<b>144,278.28</b>	<b>\$ 144,278.28</b>			<b>\$ 144,278.28</b>

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cont.

**Note:**  
 1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2023-24 certified values.

**Prepared by:** Sonoma County Auditor-Controller Treasurer-Tax Collector  
 5/8/2024



**Attachment C  
to FTT Comments**

County of Sonoma  
10-Year Property Tax Projection by Taxing Agency  
Koi Nation of Northern California  
FY 2024-25 thru 2033-34

APN: 059-300-003-000  
Situs: 222 E SHILOH RD  
Owner: SONOMA ROSE LLC  
TRA: 120-009  
Projected Annual Assessed Value Increase: 2.00%

Tax Code	Taxing Agencies	Base Year Property Tax FY 2023-24	Projected Annual Property Tax Loss									Total 10-Year Projected Loss	
			FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	FY 2029-30	FY 2030-31	FY 2031-32	FY 2032-33		FY 2033-34
<b>Prop 13 (1%) Levy</b>													
01200	COUNTY GENERAL	27,917.49	28,475.84	29,045.36	29,626.27	30,218.80	30,823.18	31,439.64	32,068.43	32,709.80	33,364.00	34,031.28	311,802.60
01300	COUNTY LIBRARY	2,794.75	2,850.65	2,907.66	2,965.81	3,025.13	3,085.63	3,147.34	3,210.29	3,274.50	3,339.99	3,406.79	31,213.79
01700	ERAF	14,728.29	15,022.86	15,323.32	15,629.79	15,942.39	16,261.24	16,586.46	16,918.19	17,256.55	17,601.68	17,953.71	164,496.19
03100	SHILOH CEMETERY	931.47	950.10	969.10	988.48	1,008.25	1,028.42	1,048.99	1,069.97	1,091.37	1,113.20	1,135.46	10,403.34
05900	SONOMA COUNTY FIRE DISTRICT	9,300.77	9,486.79	9,676.53	9,870.06	10,067.46	10,268.81	10,474.19	10,683.67	10,897.34	11,115.29	11,337.60	103,877.74
06000	GEN #1 SOCO WATER AGENCY	1,032.12	1,052.76	1,073.82	1,095.30	1,117.21	1,139.55	1,162.34	1,185.59	1,209.30	1,233.49	1,258.16	11,527.52
06100	SPRING LAKE PARK SCWA	332.92	339.58	346.37	353.30	360.37	367.58	374.93	382.43	390.08	397.88	405.84	3,718.36
06200	FLOOD ZN 1A LAGUNA-MARK WEST	1,991.30	2,031.13	2,071.75	2,113.19	2,155.45	2,198.56	2,242.53	2,287.38	2,333.13	2,379.79	2,427.39	22,240.30
10000	MARIN/SONOMA MOSQUITO & VECTOR	363.21	370.47	377.88	385.44	393.15	401.01	409.03	417.21	425.55	434.06	442.74	4,056.54
11500	BAY AREA AIR QUALITY MGMT	278.90	284.48	290.17	295.97	301.89	307.93	314.09	320.37	326.78	333.32	339.99	3,114.99
13200	SONOMA RCD	12.35	12.60	12.85	13.11	13.37	13.64	13.91	14.19	14.47	14.76	15.06	137.96
30800	MARK WEST ELEM	17,425.26	17,773.77	18,129.25	18,491.84	18,861.68	19,238.91	19,623.69	20,016.16	20,416.48	20,824.81	21,241.31	194,617.90
33700	SANTA ROSA CITY HIGH	25,686.18	26,199.90	26,723.90	27,258.38	27,803.55	28,359.62	28,926.81	29,505.35	30,095.46	30,697.37	31,311.32	286,881.66
34300	SO CO JT JR COLLEGE	7,888.42	8,046.19	8,207.11	8,371.25	8,538.68	8,709.45	8,883.64	9,061.31	9,242.54	9,427.39	9,615.94	88,103.50
34400	SCHOOL SERVICE ADMIN	2,892.98	2,950.84	3,009.86	3,070.06	3,131.46	3,194.09	3,257.97	3,323.13	3,389.59	3,457.38	3,526.53	32,310.91
34800	SANTA ROSA AWUF	11,413.22	11,641.48	11,874.31	12,111.80	12,354.04	12,601.12	12,853.14	13,110.20	13,372.40	13,639.85	13,912.65	127,470.99
35200	SCHOOLS EQUALIZAT AID	470.35	479.76	489.36	499.15	509.13	519.31	529.70	540.29	551.10	562.12	573.36	5,253.28
<b>Prop 13 Total</b>		<b>125,459.98</b>	<b>127,969.20</b>	<b>130,528.60</b>	<b>133,139.20</b>	<b>135,802.01</b>	<b>138,518.05</b>	<b>141,288.40</b>	<b>144,114.16</b>	<b>146,996.44</b>	<b>149,936.38</b>	<b>152,935.13</b>	<b>1,401,227.57</b>
<b>Voter Approved Debt</b>													
06700	WS DAM-RUSSIAN RIVER PROJ	878.20	895.76	913.68	931.95	950.59	969.60	988.99	1,008.77	1,028.95	1,049.53	1,070.52	9,808.34
20603	MARK WEST ELEM 2002 BONDS	3,387.40	3,455.15	3,524.25	3,594.74	3,666.63	3,739.96	3,814.76	3,891.06	3,968.88	4,048.26	4,129.23	37,832.92
20610	MARK WEST ELEM 2010 BONDS	1,380.04	1,407.64	1,435.79	1,464.51	1,493.80	1,523.68	1,554.15	1,585.23	1,616.93	1,649.27	1,682.26	15,413.26
36702	SR HIGH DIST 2002 BOND	1,254.58	1,279.67	1,305.26	1,331.37	1,358.00	1,385.16	1,412.86	1,441.12	1,469.94	1,499.34	1,529.33	14,012.05
36703	SR HIGH DIST 2014 BOND	2,258.26	2,303.43	2,349.50	2,396.49	2,444.42	2,493.31	2,543.18	2,594.04	2,645.92	2,698.84	2,752.82	25,221.95
36704	SR HIGH DIST 2022 BOND	3,512.86	3,583.12	3,654.78	3,727.88	3,802.44	3,878.49	3,956.06	4,035.18	4,115.88	4,198.20	4,282.16	39,234.19
39900	SOCO JR COLLEGE 2002 BOND	1,442.78	1,471.64	1,501.07	1,531.09	1,561.71	1,592.94	1,624.80	1,657.30	1,690.45	1,724.26	1,758.75	16,114.01
39901	SOCO JR COLLEGE 2014 BOND	2,760.10	2,815.30	2,871.61	2,929.04	2,987.62	3,047.37	3,108.32	3,170.49	3,233.90	3,298.58	3,364.55	30,826.78
<b>Ad Valorem Total</b>		<b>16,874.22</b>	<b>17,211.71</b>	<b>17,555.94</b>	<b>17,907.07</b>	<b>18,265.21</b>	<b>18,630.51</b>	<b>19,003.12</b>	<b>19,383.19</b>	<b>19,770.85</b>	<b>20,166.28</b>	<b>20,569.62</b>	<b>188,463.50</b>
<b>Direct Charges</b>													
53900	SO CO FIRE DIST SPEC TAX	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	675.00
53901	SO CO FIRE DIST 2006 TAX	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	5,443.80
58400	SANTA ROSA PLAIN GSA FEE	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	12,962.00
74200	MARIN-SONOMA MOSQUITO #1	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	240.00
96200	SF BAY RESTORATION AUTH	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	120.00
<b>Direct Charge Total</b>		<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>1,944.08</b>	<b>19,440.80</b>
<b>Grand Total</b>		<b>144,278.28</b>	<b>147,124.99</b>	<b>150,028.62</b>	<b>152,990.35</b>	<b>156,011.30</b>	<b>159,092.64</b>	<b>162,235.60</b>	<b>165,441.43</b>	<b>168,711.37</b>	<b>172,046.74</b>	<b>175,448.83</b>	<b>1,609,131.87</b>

Note:  
1) The projected annual assessed value increase of 2% is based on the Prop 13 annual inflation factor limit pursuant to Revenue and Taxation Code §51.  
2) Direct charges are projected to remain flat and are not adjusted by the annual inflation factor.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector  
5/14/2024

A9-93  
cont.

**Attachment D  
to FTT Comments**

Tax Code	Description	Revenue Type	Local Agency Name	Local Agency Contact Name	Local Agency Contact Email	23-24 Tax Bill Amount
01200	COUNTY GENERAL	Prop 13	County of Sonoma	Lindsay VanMidde	lindsay.vanmidde@sonoma-county.org	\$ 27,917.49
01300	COUNTY LIBRARY	Prop 13	Sonoma County Library	Ludmyrna Lopez	accounting@sonomalibrary.org	2,794.75
01700	ERAF		Sonoma County Office of Education	Felicia Aguirre	faguirre@scoe.org	14,728.29
03100	SHILOH CEMETERY	Prop 13	Shiloh District Cemetery	Victor Kunkel	shilohcemetery@gmail.com	931.47
05900	SONOMA COUNTY FIRE DISTRICT	Prop 13	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	9,300.77
06000	GENERAL #1 WATER	Prop 13	Sonoma County Water Agency	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	1,032.12
06100	SPRING LAKE PARK WATER	Prop 13	Sonoma County Spring Lake Park Water	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	332.92
06200	ZN 1A LAGUNA-MARK WEST WATER	Prop 13	Sonoma County Zn1A Laguna-MW Water	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	1,991.30
10000	MARIN-SONOMA MCQITO ABT	Prop 13	Marin/Sonoma Mosquito & Vector Control District	Elizabeth Garcia	LizG@mmsmosquito.org	363.21
11500	BAY AREA AIR QUALITY MGMT	Prop 13	Bay Area Air Quality Management District	Candace Pina	airdistricttax@baaqmd.gov	278.90
13200	SONOMA RCD	Prop 13	Sonoma Resource Conservation District	Erin Rickard	erickard@sonomarcd.org	12.35
30800	MARK WEST ELEM	Prop 13	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	17,425.26
33700	SANTA ROSA CITY HIGH	Prop 13	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	25,686.18
34300	SONOMA COUNTY JC	Prop 13	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	7,888.42
34400	SCHOOL SERVICE	Prop 13	Sonoma County Office of Education	Jeanine Thibeau	jthibeau@scoe.org	2,892.98
34800	SANTA ROSA AWUF	Prop 13	Sonoma County Office of Education	Felicia Aguirre	faguirre@scoe.org	11,413.22
35200	SCHOOL EQUALIZATION AID	Prop 13	Sonoma County Office of Education	Jeanine Thibeau	jthibeau@scoe.org	470.35
06700	WS DAM-RUSSIAN RIVER PROJ	Ad Valorem	Sonoma County Water Agency	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	878.20
20603	MARK WEST ELEM 2002 BONDS	Ad Valorem	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	3,387.40
20610	MARK WEST ELEM 2010 BONDS	Ad Valorem	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	1,380.04
36702	SR HIGH DIST 2002 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	1,254.58
36703	SR HIGH DIST 2014 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	2,258.26
36704	SR HIGH DIST 2022 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	3,512.86
39900	SOCO JR COLLEGE 2002 BOND	Ad Valorem	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	1,442.78
39901	SOCO JR COLLEGE 2014 BOND	Ad Valorem	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	2,760.10
53900	SO CO FIRE DIST SPEC TAX	Direct Charge	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	67.50
53901	SO CO FIRE DIST 2006 TAX	Direct Charge	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	544.38
58400	SANTA ROSA PLAIN GSA FEE	Direct Charge	Santa Rosa Plain Groundwater Sustainability Agency	Andy Rodgers	arodgers@westyost.com	1,296.20
74200	MARIN-SONOMA MCQITO ABT	Direct Charge	Marin/Sonoma Mosquito & Vector Control District	Elizabeth Garcia	LizG@mmsmosquito.org	24.00
96200	SF BAY RESTORATION AUTH	Direct Charge	SF Bay Restoration Authority	Jason Roth	jroth@nbsgov.com	12.00
						\$ 144,278.28

A9-  
93  
cont

Asmt: 059-300-003-000 Feeparcel: 059-300-003-000 Status: ACTIVE Owner: SONOMA ROSE LLC

Situs Address: 222 E SHILOH RD SANTA ROSA  
 Name Address: SONOMA ROSE LLC  
 PO BOX 3162  
 SANTA ROSA CA 95402

Status: ACTIVE Status Date: 10/27/2006  
 Taxability Code: 000 TRA: 120-009

Parcel Description: NORMAL OWNERSHIP

SBE Number: Base Date: 01/01/2022  
 Creating Doc#: 2006I132956 Create Date: 10/27/2006  
 Current Doc#: 2021R100185 Cur Date: 09/03/2021  
 Terminating Doc#: Term Date:  
 Neighborhood Code: WR1 Supl Cnt: 1

Asmt Description: 2007 FM REM 059-300-002 OPEN TO RD PER OR  
 LandUse 1: 0423 IRR VINEYD/PREMIUM W/RES  
 LandUse 2:  
 Zoning 1: Dwell 1: 1  
 Acres: 68.60 SqFt:  
 SSN 1: SSN 2:  
 Comments: FM REM 059-300-002

Values

	Taxroll	Current	Aprdate
Land	7,835,660	7,835,660	
Structure	2,652,000	2,652,000	
FixtureRP	389,415	389,415	
Growing	1,668,924	1,668,924	
Total L&I	12,545,999	12,545,999	
Fixtures			
PPMH			
PP			
Exemption			
Net	12,545,999	12,545,999	
Homesite			

R/C # [ ] TR/Date [ ] Status [ ]  
 Description: ENROLLED is BASE YEAR

- TPZ
- Ag Pres
- Etal
- Bonds
- Multi Situs
- 910 MH
- Flag 1
- Flag 2
- Prop 19
- Asmt PP
- Tax PP
- Appeal
- Split

Main Has Notes Ownership Detail Ownership History Exemptions Prop Exclusions Mfg Homes Attributes Value History Situs Sales Parcel Desc

Attachment E to FTT Comments



**OFFICE OF THE COUNTY CLERK-RECORDER-ASSESSOR-REGISTRAR OF VOTERS DEPARTMENT**

Assessor Division  
585 Fiscal Dr., Rm. 104  
Santa Rosa, CA 95403

(707) 565-1888  
Assessor@sonomacounty.ca.gov

Parcel Information		Value History	
Parcel Number	059-300-003	Roll Year	2023
<b>Situs Address</b>		Land Value	\$7,835,660
Situs Formatted 1	222 E SHILOH RD	Structure Value	\$2,652,000
Situs Formatted 2	SANTA ROSA CA	Growing Value	\$1,668,924
<b>Assessment</b>		Total LI Value	\$12,545,999
Assessment	059300003000	Fixtures Value	\$0
Secured Assessment	1	Fixtures RP Value	\$389,415
Assessment Status	A	PP Business Value	\$0
Assessment Description	2007 FM REM 059-300-002 OPEN TO RD PER OR	PP Mobile Home Value	\$0
<b>Tax Information</b>		Net Value	\$12,545,999
<b>Exemptions</b>		Homeowner Exemption	\$0
Taxability Full	000	Other Exemption	\$0
Taxability Description	NORMAL OWNERSHIP	Other Exemption Code	
Tax Rate Area	120009		

A9-93  
cont.

The information contained in this report is maintained by the Assessor's Office for assessment purposes only. The Assessor's Office is not liable for any error, omission or other defect in the information provided.



**OFFICE OF THE COUNTY CLERK-RECORDER-ASSESSOR-REGISTRAR OF VOTERS DEPARTMENT**

Assessor Division  
585 Fiscal Dr., Rm. 104  
Santa Rosa, CA 95403

(707) 565-1888  
Assessor@sonomacounty.ca.gov

**Property Information**

Use Code 0423  
Use Code Description IRR VINEYD/PREMIUM  
W/RES  
Use Code Type Agricultural  
Current Document # 2021R100185  
Current Document Date 9/3/2021  
Is Restricted 0  
Land Size (SqFt) 0  
Land Size (Acres) 68.59  
Has Pool 1

**Primary Building**

Primary Building 1  
Quality Class D090DM  
Year Built 2004  
Effective Year 2004  
Size 5665  
Bedrooms 3  
Bathrooms 4  
Half Baths 2  
Total Rooms 10  
Attached Garage 896  
Carport  
Building Count 1

**Agriculture**

Contract Effective Date  
Contract Expiration  
Date  
Non Renewal 0

**Secondary Building**

Secondary Building 1  
Size 1000  
Attached Garage  
Detached Garage  
Carport

A9-93  
cont.

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**LYTTON RANCHERIA • Lytton Band of Pomo Indians**



PACIFIC REGIONAL OFFICE

1500 Falling Oak Way • Windsor, California 95492

**T1**

2024 JUL 18 AM 10:36

(707) 575-5917 • Fax (707) 575-6974

**BUREAU OF INDIAN AFFAIRS**

July 12, 2024

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

Re: Koi Nation Environmental Impact Statement and Scotts Valley Environmental Assessment

Dear Director Dutschke:

On behalf of the Lytton Rancheria of California, I write to ask for extensions of the 45-day comment period for the Koi Nation Draft Environmental Impact Statement and the 30-day comment period for the Scotts Valley Environmental Assessment.

T1-1

The Koi Nation EIS consists of approximately 6,000 pages, it is unrealistic to expect affected local tribes and residents of Sonoma County to be able to review all of the documents and submit comment within that period. The Lytton Rancheria also takes great umbrage at the EIS's failure to account for the Tribe's new homeland and the possibility that the Koi Nation project could see it and its members destroyed due to evacuation delays the project will inevitably cause. We encourage the Bureau to meet and meaningfully consult with the Sonoma County Tribes who are understandably upset with such a project being pushed through for a Tribe whose homeland is in a different county and the precedents this would set.

T1-2

As regards the Scotts Valley project, the Lytton Rancheria despite possessing the nearest reservation lands to Vallejo has not received any official notice of the comment period or the release of an Environmental Assessment. We were only informed of the issuance of the Environmental Assessment by fellow concerned local tribes. If the BIA and Scotts Valley are failing to notify the Tribe currently nearest the proposed Scotts Valley project, we can only assume that local affected parties and residents have also not been properly informed of the project and Environmental Assessment. Thus, we implore the BIA to extend the EA comment period and provide proper notice of its issuance.

T1-3



It is for these reasons that we ask the Bureau to extend their public comment periods, to take the concerns of the local tribes and citizens into account, and to engage in actual consultation and meetings with Sonoma County tribes.

T1-3  
cont.

Thank you.



Andy Mejia, Chairperson

Lytton Rancheria of California



**DRY CREEK RANCHERIA  
BAND OF POMO INDIANS**

T2

July 26, 2024

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

Chad Broussard, Environmental Protection  
Specialist Bureau of Indian Affairs, Pacific  
Regional Office 2800 Cottage Way, Room W-  
2820  
Sacramento, CA 95825

Re: Request for Extension of Comment Deadline for Draft Environmental Impact  
Statement for the Koi Nation of Northern California Shiloh Resort and Casino  
Project

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the Dry Creek Rancheria Band of Pomo Indians (the Tribe), I request that the Bureau of Indian Affairs (BIA) formally extend the comment period by 60 days on the Draft Environmental Impact Statement (EIS) for the Koi Nation of Northern California Shiloh Resort and Casino Project (Koi Gaming Proposal). The BIA published notice of the Draft EIS on July 8, 2024, and specified a 45-day comment period, which ends on August 22, 2024.<sup>1</sup>

As you know, the BIA previously issued an Environmental Assessment (EA) for the Koi Gaming Proposal on September 12, 2023. The Tribe submitted comments on the EA on November 13, 2023, raising numerous issues related to the Koi Gaming Proposal which included the EA's failure to adequately address potential environmental impacts, the lack of input from culturally affiliated tribes, and the poorly designed mitigation measures. The Tribe appreciates that BIA has now prepared a Draft EIS given the significant effects of the Koi Gaming Proposal.

The inadequacy of the Bureau of Indian Affairs' (BIA) consultation process under the National Historic Preservation Act (NHPA) Section 106 is a primary concern driving our request for an extension. On July 10, 2024, the State Historic Preservation Officer (SHPO) raised significant objections to the BIA's conclusion of no impact on historic properties. The SHPO's critique highlighted the BIA's "insufficient, inadequate, and not reasonable" efforts in identifying

---

<sup>1</sup> The Notice of Availability of the Draft EIS specifies that comments must arrive no later than 45 days from the date notice is published. Notice was published in the Federal Register on July 8, 2024, making comments due August 22, 2024. 89 Fed. Reg. 55968 (July 8, 2024). However, the online notice provided at <https://www.shilohresortenvironmental.com/> indicates that the public comment period ends August 26, 2024. As a result, the Tribe requests a confirmation of a corrected date if a correction is warranted.

T2-1

historic sites, urging a renewed consultation process with tribes and the SHPO, including a redefinition of the Area of Potential Effects.

Integrating tribal consultations into the Draft Environmental Impact Statement (EIS) is not just best practice; it's a regulatory expectation. The National Environmental Policy Act (NEPA) implementation guidelines, as outlined by the Council on Environmental Quality, emphasize the importance of allocating sufficient time for government-to-government Tribal consultation when setting project timelines (40 C.F.R. § 1501.10(d)(9)). Furthermore, these regulations advocate for the incorporation of tribal consultation outcomes into the Draft EIS before its public release (40 C.F.R. § 1502.24).

Given that the BIA has yet to conduct a Section 106 consultation that meets legal standards with either the tribes or the SHPO regarding the Koi Gaming Proposal, the Draft EIS currently lacks critical input. This omission leaves a significant gap in the environmental impact analysis.

T2-1  
cont.

In light of these circumstances, we are requesting a 60-day extension to the comment period. This additional time would serve three crucial purposes:

1. Allow the BIA to reinitiate and properly conduct the Section 106 consultation process.
2. Provide both the Tribe and the SHPO with a fair opportunity to address and incorporate concerns about historic properties and cultural resources into the assessment.
3. Provide the Tribe and the public a meaningful opportunity to review the large document.<sup>2</sup>

This extension is not just a procedural formality; it's an essential step in ensuring a comprehensive and legally compliant evaluation of the proposed action's impact on our cultural heritage.

If you have any questions about this letter, please contact, Michelle Lee, at (916) 809-8900 or [michelle@thecirclelaw.com](mailto:michelle@thecirclelaw.com).

Sincerely,



Chris Wright, Chairman  
DRY CREEK RANCHERIA BAND OF POMO INDIANS

CC: Chad Broussard at [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

CC: Hon. Deb Haaland, Secretary, U.S. Department of the Interior  
Wizipan Garriott, Principal Deputy Assistant Secretary for Indian Affairs

---

<sup>2</sup> The National Environmental Policy Act and Council on Environmental Quality regulations both direct that an environmental impact statement should not exceed 150 pages, except for proposals of extraordinary complexity. 42 U.S.C. § 4336a(e)(1), 40 C.F.R. § 1502.7.



**DRY CREEK RANCHERIA  
BAND OF POMO INDIANS**

**T3**

August 1, 2024

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

Chad Broussard, Environmental Protection  
Specialist Bureau of Indian Affairs, Pacific  
Regional Office 2800 Cottage Way, Room W-820  
Sacramento, CA 95825

Re: Request for Consultation Regarding Koi Nation EIS and Request for Cultural  
Resource Report and Exhibits to Cultural Report cited in EIS

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the Dry Creek Rancheria Band of Pomo Indians (the Tribe), I request that the Bureau of Indian Affairs (BIA) formally consult with Dry Creek regarding the EIS for the Koi Nation of Northern California Shiloh Resort and Casino Project. The BIA published notice of the Draft EIS on July 8, 2024, and specified a 45-day comment period, which ends on either August 22 or 26, 2024, we are not completely sure of the deadline because different documents contain different dates.<sup>1</sup>

T3-1

We have started our review of the voluminous EIS and cannot begin to express our frustration with the false and misleading information in the general cultural resources section of the EIS. One issue in the document is a statement on page 3-53 that "To date, only the Federated Indians of Graton Rancheria have responded to the request for information." This statement is false. Dry Creek Rancheria has been consistently expressing its frustration that no information is being shared with Dry Creek. Dry Creek is not required to "request" information regarding Section 106 consultation. At no time has Dry Creek been provided with the Cultural Resources report that is referenced in the EIS and to this date does not have it or the listed attachments.

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<sup>1</sup> The Notice of Availability of the Draft EIS specifies that comments must arrive no later than 45 days from the date notice is published. Notice was published in the Federal Register on July 8, 2024, making comments due August 22, 2024. 89 Fed. Reg. 55968 (July 8, 2024). However, the online notice provided at <https://www.shilohresortenvironmental.com/> indicates that the public comment period ends August 26, 2024. As a result, the Tribe requests a confirmation of a corrected date if a correction is warranted.

The inadequacy of the Bureau of Indian Affairs' (BIA) consultation process under the National Historic Preservation Act (NHPA) Section 106 is a primary concern driving our previous request for an extension of time to comment on the EIS. How can the BIA conduct Section 106 consultation with Dry Creek Rancheria if we are not provided the information prepared for the EIS and the evaluation of the impact of the project on tribal cultural resources? It seems clear that the BIA is not interested in actually giving Dry Creek and the other culturally-affiliated tribes a voice in the application to take land into trust in our aboriginal territory.

On July 10, 2024, the State Historic Preservation Officer (SHPO) raised significant objections to the BIA's conclusion of no impact on historic properties. The SHPO's critique highlighted the BIA's "insufficient, inadequate, and not reasonable" efforts in identifying historic sites, urging a renewed consultation process with tribes and the SHPO, including a redefinition of the Area of Potential Effects.

Integrating tribal consultations into the Draft Environmental Impact Statement (EIS) is not just best practice; it's a regulatory expectation. The National Environmental Policy Act (NEPA) implementation guidelines, as outlined by the Council on Environmental Quality, emphasize the importance of allocating sufficient time for government-to-government Tribal consultation when setting project timelines (40 C.F.R. § 1501.10(d)(9)). Furthermore, these regulations advocate for the incorporation of tribal consultation outcomes into the Draft EIS before its public release (40 C.F.R. § 1502.24).

Given that the BIA has yet to conduct a Section 106 consultation for the EIS that meets legal standards with either the tribes or the SHPO regarding the Koi Gaming Proposal, the Draft EIS currently lacks critical input. This omission leaves a significant gap in the environmental impact analysis because the impact on Dry Creek Rancheria and our cultural heritage has been ignored. The EIS should not have been made public without this important step, and Dry Creek being included in the evaluation of the impact of the project on our tribal lands.

If you have any questions about this letter, please contact, Michelle Lee, at (916) 809-8900 o

Sincerely,



Chris Wright, Chairman  
DRY CREEK RANCHERIA BAND OF POMO INDIANS

cc: Chad Broussard at [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)  
cc: Hon. Deb Haaland, Secretary, U.S. Department of the Interior, c/o [Heidi\\_todacheene@ios.doi.gov](mailto:Heidi_todacheene@ios.doi.gov)  
Wizipan Garriott, Principal Deputy Assistant Secretary for Indian Affairs, [wizi\\_garriott@ios.doi.gov](mailto:wizi_garriott@ios.doi.gov).  
Julianne Polanco, State Historic Preservation Officer, [calshpo@parks.ca.gov](mailto:calshpo@parks.ca.gov)

T3-1  
cont.



# Cloverdale Rancheria

PACIFIC REGIONAL OFFICE 55 S. Cloverdale Blvd. ~ Cloverdale, CA 95425  
(707) 894-5775 ~ Fax (707) 894-5727

2024 JUL -5 AM 11:27  
Aug

BUREAU OF INDIAN AFFAIRS



July 30, 2024

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

Re: Koi Nation Environmental Impact Statement Public Comment Period and Application Materials

Dear Director Dutschke,

The Cloverdale Rancheria of Pomo Indians of California requests an extension of the public comment period for the Koi Nation Environmental Impact Statement. The current allotted time is insufficient to review 6,000 pages of environmental documents and to prepare comments. We also politely request the opportunity to review Koi Nation's application materials for this project at the BIA's regional office. We have concerns about the sufficiency of their application and ties to the area.

T4-1

The BIA should be engaging in meaningful consultation with the local tribes affected by this project. It is very concerning that there has been no attempt by the BIA to do so.

Thank you,

Patricia Hermosillo, Chairperson  
Cloverdale Rancheria of Pomo Indians

### CLOVERDALE RANCHERIA TRIBAL COUNCIL

- |   |  |                                 |                                   |   |
|---|--|---------------------------------|-----------------------------------|---|
| <i>Patricia Hermosillo</i><br>Chairperson | <i>Maria Elliott</i><br>Vice-Chairperson | <i>Buffy Roope</i><br>Secretary | <i>Vickey Macias</i><br>Treasurer | <i>Marcos Hermosillo</i><br>Tribal Representative |
|---|--|---------------------------------|-----------------------------------|---|





**LYTTON RANCHERIA • Lytton Band of Pomo Indians**



1500 Falling Oak Way • Windsor, California 95492  
(707) 575-5917 • Fax (707) 575-6974

**T5**

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

Via email to: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

Re: EIS Comments, Koi Nation Shiloh Resort and Casino Project

Dear Ms. Dutschke,

The Lytton Rancheria of California, also known as the Lytton Band of Pomo Indians (“Lytton”), is a federally recognized Indian Tribe with reservation lands in Windsor, California. The Tribe has its homeland 4 miles from the Koi Nation of California’s (“Koi Nation,” or “Tribe”) Shiloh Resort and Casino project. Lytton is on record opposing the Koi Nation’s application to the United States Department of Interior to acquire 68.6 acres of land in trust (“Project Site”) for the benefit of the Koi Nation for gaming purposes (“Proposed Action”). Koi Nation proposes to use the Project Site to develop a casino facility, hotel, spa, and associated infrastructure (“Proposed Project”). But the Koi Nation’s historical and cultural connections are rooted 50 miles away in Lake County—not Sonoma County. Moreover, Lytton has concerns regarding the potential effects of the Proposed Project on local Tribes and the surrounding community, and believes that the draft Environmental Impact Statement (“DEIS”) released by the Bureau of Indian Affairs (“BIA”) is inadequate to address those concerns.

T5-1

Indeed, the DEIS itself recognizes that the Proposed Project poses numerous environmental threats, including to groundwater and biological resources, public services, traffic noise and congestion, wildfire hazards, and wildfire evacuation. But the DEIS relies heavily upon the implementation of certain “Protective Measures and Best Management Practices” (“BMPs”), which are described in part as “voluntary measures” that would be implemented “where applicable.” DEIS at 2-14. Many of these BMPs appear uncertain and likely unenforceable. Other BMPs depend on reports that do not yet exist and agreements not yet entered into. Finally—and though the DEIS cites certain mitigation and monitoring procedures—there is no enforcement mechanism to ensure the Tribe’s compliance with these mitigation measures or BMPs, as the Tribe does not provide any limited waivers of sovereign immunity, and we are not aware of any promises or steps the BIA is taking to enforce these practices if the Tribe fails to follow through.

T5-2



Because the findings of the DEIS itself are based on the assumption that the Tribe will fully comply with the BMPs and mitigation measures, the DEIS may drastically underestimate the impacts the Proposed Project will have if the Tribe cannot or does not fully comply. Lytton is therefore concerned that many of the DEIS' conclusions of less-than-significant impact are not reliable.

T5-2  
cont.

Lytton's primary concern is the impact of the Proposed Project on a wildfire evacuation. The DEIS conclusions on this point rely on assumed future actions not only of the Koi Nation, but of other parties including the Town of Windsor, Sonoma County, California Highway Patrol and CalTrans, which are highly speculative. The DEIS determines that the project impacts to traffic and evacuation will be "Significant." It reaches this consideration based on traffic studies done during the less busy COVID-19 pandemic, and astoundingly without even taking into account the added time needed to evacuate the newly established Lytton Homeland, despite our pleas for you to do so. DEIS at ES-16. Lytton's concerns on this front are discussed further below, along with discussion of additional findings that Lytton believes to be inadequate or questionable as presented in the DEIS.

T5-3

The Lytton Rancheria urges the BIA to either adopt Alternative D, the No-Action Alternative, or, failing adoption of Alternative D, to revisit the environmental analysis underlying the DEIS, which Lytton believes to be inadequate, to address these shortcomings and to allow for careful, complete consideration of the likely impacts of the Proposed Project to the surrounding Tribes and communities.

T5-4

### **I. Limited Time to Respond and Lack of Extension**

We feel it is important to point out that despite our calls for a limited extension of the comment period, none was granted for us, and we were given 45 days to review 6,000 pages of technical scientific documents and then to prepare comments for them. The DEIS was put out over the 4<sup>th</sup> of July holiday along with an Environmental Assessment for a proposed project for the Scotts Valley Band in Solano County, which consisted of an additional 2,000 pages of documents which we also set out to review and provide comments for. We were forced to expend considerable resources to review all of these documents and then compile these comments, as well as to attend the public hearing on July 30<sup>th</sup>. We wish the BIA could have shown greater accommodation in these matters and we are concerned for Sonoma County residents who did not have the resources to pour through these documents to prepare written comments or who did not have the available time or means to appear at the virtual hearing and wait 5 hours to make themselves heard via zoom.

T5-5

### **II. Failure to Adequately Address Previous Comments**

In previous public comment periods, we pointed out multiple deficiencies in the available environmental documents and areas we would like to see addressed in a subsequent DEIS. Shockingly, none of these points have been addressed or incorporated into the DEIS. In our previous comments we noted that there were no waivers of sovereign immunity, nor means to

T5-6



make the Koi Nation adopt the proposed mitigation practices or management practices. That still remains the case. Additionally, we pointed out that the presence of Koi cultural monitors accomplishes nothing as they are from Lake County as evidenced by their lawsuits against the City of Clearlake over the presence of their cultural sites. Though the appendices concerning cultural resources are marked “confidential”, the proposed mitigation measures section includes the provision that “(a)ny ground-disturbing activities that occur within 150 feet of Pruitt Creek or within 50 feet of areas identified by the Canine Field Survey as having an ‘alert’ shall be monitored by a qualified archaeologist, Native American Tribal Monitor from Koi Nation, and/or a Native American Tribal Monitor or archaeologist selected by interested Sonoma County tribes. DEIS at 4-9. This seems to make it acceptable if the project utilizes only Koi Tribal monitors and does not actually require monitors from actual Sonoma County Tribes. DEIS at 4-9 and ES-13.

T5-6  
cont.

And most vitally, there is no mention of the Lytton Rancheria’s new homeland, and the additional considerations and time that will be needed to evacuate it in case of wildfire. We have raised this point repeatedly. The Lytton Rancheria faces existential threat due to this project, and this is never mentioned, and the impacts of this are not analyzed.

T5-7

### **III. The DEIS’ Proposed Mitigation Measures Are Not Only Insufficient, but Unenforceable.**

Throughout the DEIS, there are continual references to various mitigation plans and requirements that have not been developed, or that rely on future agreements with third parties. Some will not be developed until after the Proposed Project is underway. Indeed, a number of the mitigation measures rely on a threshold determination by Koi Nation or another entity that adverse impacts will occur or have already occurred. *See, e.g.*, DEIS at ES-22 (deferring to Town of Windsor’s eventual determination that aquifer connectivity results in a “substantial decrease in water levels”); *id.* (Reliance on Koi to implement an on-site monitoring system and assess the same). Not only does this reliance on as-of-yet undeveloped agreements or determinations make review by Lytton and the public impossible, but it further renders any attempt at monitoring for compliance completely infeasible.

T5-8

And though the ‘Mitigation Measures’ purport to be enforceable by the BIA “or other appropriate consenting agency,” DEIS at 4-1, the DEIS omits any concrete enforcement measures. Nor has the DEIS identified any commitment by the Koi Nation to enact any resolution or ordinance granting the requisite waiver of sovereign immunity to permit enforcement action by interested parties in a court of competent jurisdiction.

The DEIS’ reliance upon mitigation is completely incorrect if mitigation measures are never actually implemented. Without some mechanism for ensuring that the mitigation measures are implemented, the BIA’s conclusions are unsupported by the record. The relevant issue is not whether detrimental impacts **can** be mitigated, but whether they **will** be mitigated. If the necessary mitigation measures are not actually implemented, the acknowledged adverse impacts will remain.

### **IV. The DEIS Fails to Adequately Address—Much Less Mitigate—Wildfire Concerns.**

T5-9

The DEIS affirms that construction of the project alternatives “could increase the risk of wildfire.” DEIS at ES-20. This is an understatement. The Project Site—as the DEIS acknowledges—is identified by the County Wildfire Risk Index (WRI) as “high” wildfire risk. DEIS at 3-120. Moreover, the area has a history of wildland fires:

The most notable fires near the Project Site in the last ten years are the Tubbs Fire and Kincade Fire. Tubbs Fire burned during the month of October 2017 and is the fourth deadliest wildfire in California history, burning approximately 37,000 acres, destroying more than 5,600 structures, and killing 22 people. The Kincade Fire burned from October 23, 2019, to November 6, 2019. By the time of full containment, it had destroyed approximately 374 structures and burned approximately 77,800 acres.

DEIS at 3-120. As the DEIS explains,

[a] project would be considered to have a significant impact if it were to increase wildfire risk on-site or in the surrounding area. This includes, but is not limited to, building in a high-risk fire zone without project design measures to reduce inherent wildfire risk, increasing fuel loads, exacerbating the steepness of the local topography, introducing uses that would increase the chance of igniting fires, eliminating fire barriers, inhibiting local emergency response to or evacuation routes from wildfires, and conflicting with a local wildfire management plan.

DEIS at 3-125. **Each** of these factors is implicated in some fashion by the Proposed Project. The Proposed Project would bring thousands of daily visitors to a site that Sonoma County has already determined to be at “(high) wildfire risk” with sections of the site labeled with an even more severe “very high”. DEIS at 3-120. Indeed, the Project site is situated **directly adjacent** to the burn perimeters of **both** the Tubbs Fire and the Kincade Fire. *Id.* But despite the significant risk to human safety inherent in operating such a large casino facility in such a high-risk location, the DEIS fails to specify how basic fire protection services would be provided and incorrectly concludes that the Project would have no significant impact on wildfire risk and evacuations for the surrounding area.

The DEIS additionally states that “the entire site is essentially free of any dense brush, hardwoods, or timber fuels that could intensify a wildfire.” DEIS at 3-123, and turns once more to voluntary, un-enforceable BMPs as evidence that the Koi Nation will prevent the fuel spillage and sparks that the DEIS establishes—in combination with the WRI “high” risk rating of the area—would result in a finding of significant impact. The same is true for related wildfire evacuation concerns: the DEIS simply relies on the Koi Nation or other local authorities to “be trained on evacuation procedures” or “implement” relevant evacuation measures. DEIS at ES-21.

In short, the only factors preventing the BIA from finding the wildfire risks presented by the Project constitute a significant impact are the hypothetical mitigation measures the Koi Nation **might** take to reduce wildfire risks. The circular finding is unsupported by the record before the BIA, and should be revisited.

T5-9  
cont.



**V. Traffic and Evacuation Concerns**

As mentioned earlier, the largest concern for the Lytton Rancheria is the effect the Proposed Project will have on traffic and ultimately wildfire evacuation for the surrounding area. The DEIS summary of impacts and mitigation measures is filled with questionable findings of potentially significant or less than significant impacts. DEIS at ES-4. However, the two areas where the DEIS deemed the impacts as significant were in “Project Traffic”, DEIS at ES-16, and “Transportation/Circulation” DEIS at ES-25.

The DEIS notes five intersections would operate at an unacceptable Level of Service with Alternative A if mitigation measures are not implemented. DEIS at 3-82. Proposed mitigation measures for the project “include: widening of Shiloh Road; conversion of split phasing at intersection #1 and #2; restriping at Intersections #1, #2 #3, and #5; and optimizing signal time parameters at Intersection #6.” DEIS at 3-157. These are substantial mitigation measures which will require substantial time and resources to implement, however the DEIS itself notes that “(w)hile the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day.” DEIS at 4-11. And again, we emphasize that these proposed measures are illusory and non-binding. There is no explanation of what constitutes good-faith efforts, and there are no standards of what it should like. More alarming is that there are no waivers of sovereign immunity or other means to enforce the Koi Nation’s compliance with these mitigation measures, or to enforce efforts to comply with them. And as was noted in the DEIS even if Koi Nation makes every effort to comply with these mitigation measures, their implementation is dependent on outside parties and largely outside of the Koi Nation’s control. This project should not be moving forwards unless there are sound enforcement mechanisms to ensure the compliance of Koi and the other affected entities.

T5-10

Additionally, the analysis was conducted in January 2022, before Sonoma County had fully recovered from the pandemic and conditions had returned to normal. Appendix I at P. 20. Further, nowhere in the DEIS or appendices is there analysis of the effects on the Shiloh and Faught roads intersection, which is adjacent to the Proposed Project. Faught Road is difficult to travel as is and will surely see increased use in the event the Proposed Project moves forward with the large number of Patrons, and it will be vital in the event of any evacuation. Despite this, nowhere in the DEIS is there an analysis of the Faught and Shiloh intersection nor discussion of mitigation measures to improve the road.

T5-11

The analysis also does not properly account for future growth of the Town of Windsor, as evidenced by a new apartment building constructed near the Proposed Project and new housing projects in the construction phase around the project site which are not accounted for. These developments will surely increase the time needed to evacuate the Proposed Project site and are not properly considered.

T5-12

The most gaping flaw in the estimate contained in Appendix N-2, however, is that it fails to take into account the Lytton Rancheria’s new housing project. The Lytton Rancheria after



decades of being dispossessed, has finally established a homeland for its members consisting of 146 families. Members of the Lytton Rancheria only began moving onto the land in January of 2024, and yet evacuation estimates completely overlooks the impact or additional delay Lytton's housing project will have on the Town of Windsor. In the event of evacuation, the residents of the housing project will be among those forced to flee across Windsor and travel south on Route 101. They will be directly impacted and threatened by the delay the Koi Nation's Proposed Project will impose. These impacts, which are not mentioned in the DEIS could result in the destruction of the Tribe.

T5-12  
cont.

The analysis estimates that in the event of a no-notice evacuation, as was seen in the 2017 Tubbs Fire, the Proposed Project will add 60 minutes to a 2028 evacuation, with the delay growing to 105 minutes by 2040. Appendix N-2 at 9. In the event of a with-notice wildfire evacuation in 2028, it is estimated the project will add 105 minutes to the evacuation timeline, with the additional delay consisting of 15 minutes by 2040. These numbers are concerning enough as is, but the fact that the analyses are almost certainly inaccurate and underestimate the effects the project will have on the surrounding roads and streets is jarring. As noted earlier the DEIS found the underestimated results to already be "significant". Since they are most certainly underestimates, this project should not be moving forwards due to the potential for catastrophe.

T5-13

## VI. The DEIS Fails to Adequately Address Water Resource Concerns.

The DEIS' water resources analysis is incomplete and fails to adequately consider impacts to the Project site, surrounding land, and neighboring vineyards. And though the DEIS recognizes a number of potentially significant impacts to surface- and groundwater resources, the various findings of "less than significant" impact rely **entirely** upon the Koi Nation's speculative implementation of, and long-term adherence to, the BMPs and other "regulatory standards" for which there is no evidence of enforceability against the Koi Nation. DEIS 4-5.

First, the DEIS recognizes that during construction, "[d]ischarges of pollutants, including grease, oil, fuel, and sediments, to surface waters from construction activities and accidents **are a potentially significant impact,**" but ultimately relies upon the Koi Nation's hypothetical "adherence to the NPDES [National Pollutant Discharge Elimination System] permitting program and implementation of the SWPPP [Stormwater Pollution Prevention Plan]" to conclude that in fact the Proposed Project's impact to surface water resources "would" be "less than significant." DEIS at 3-18;3-19.

T5-14

The DEIS states that these potentially significant impacts stem from construction runoff, floodplain occupancy, and the installation of a Wastewater Treatment Plant (WWTP), DEIS at 3-19, but defers to the Koi Nation's hypothetical adherence to certain voluntary, unenforceable BMPs as proof positive that these impacts will be mitigated. The DEIS acknowledges that groundwater impacts "would be" significant if: "runoff from the Project Site causes localized flooding or introduces additional contaminants to stormwater runoff that leaves the Project Site"; "the alternative would impede groundwater recharge or if drawdown caused by pumping the proposed wells at the Project Site would adversely affect local water supply"; and, most alarming:



the alternatives would interfere with the implementation of local groundwater management plans by causing or contributing to: **chronic lowering of groundwater levels; depletion of groundwater storage; water quality degradation** due to induced contaminant migration or interference with cleanup efforts or water quality management plans; **depletion of interconnected surface waters**, including potential flow in Pruitt Creek or impacts to groundwater-dependent ecosystems (GDEs); and/or land subsidence.

DEIS at 3-18. Yet the DEIS again relies upon assumed future—and therefore highly speculative—actions not only by the Koi Nation, but by other third parties, to mitigate these acknowledged risks.

T5-14  
cont.

The DEIS assessment of “less than significant” impacts to surface waters throughout Project operation itself hinges entirely on the Project Site’s compliance with Sonoma County development standards. DEIS at 3-19. And though the Koi Nation intends to build certain Project structures within a 100-year floodplain, the DEIS assumes—without support—that “[e]arthwork within the floodplain **would be** balanced to prevent changes to the delineated floodplain mapping.” DEIS at 3-19 (emphasis added). The DEIS does not establish who would be tasked with balancing the earthwork. As with the remainder of its water resource analysis, the DEIS surface water analysis is conclusory and circular: there will be no significant impact to the area because the Koi Nation ‘would’ ensure there is no significant impact.

Notably, however, the February 2023 Water and Wastewater Feasibility Study attached as Appendix D to the DEIS (Appendix D), expresses uncertainty with respect to a number of feasibility determinations. For instance, Appendix D defers on any feasibility finding with respect to certain anticipated Project discharge, noting that “the Project would need to begin to collect receiving water quality data near the anticipated discharge site and at the Mark West Creek gauge station,” which data would allow the Project to “evaluate the background water quality of the receiving waters, identify potential water quality restrictions, and understand the impacts of the proposed new discharge on the aquatic habitat.” Appendix D at 4-4. But this evaluation should have already occurred. The DEIS cannot assert a “less than significant” impact to surrounding areas and water resources when the underlying water feasibility studies upon which the DEIS relies have not concluded anything of the sort.

T5-15

In its analysis of impact to area groundwater and groundwater supply, the DEIS is similarly speculative: specifically, Alternative A would conclusively “contribute to the overall drawdown” of groundwater resources, and proposed groundwater pumping in conjunction with the potential operation of new wells in the area “could cause drawdown impacts to domestic wells. . .” DEIS at ES-22. In response to these impacts, the DEIS simply defers to other authorities—including the Koi Nation itself—to compel the Tribe to “participate” in certain unspecified monitoring and/ or drawdown activities. DEIS at ES-24; 3-23; 3-24; 3-25. Under Alternative A, for instance, the DEIS explains that though groundwater quality “could be adversely affected if pollutants enter the environment,” the Tribe should “comply with the NPDES General Construction Permit,” which the DEIS presumes would include implementation

T5-16



of yet-undefined BMPs that would address the impacts. Setting aside the DEIS’ total deferral (and delegation) of any meaningful groundwater analysis on this front, there is no enforcement mechanism by which Tribal compliance with the cited BMPs or permits is assured. Not only are BMPs voluntary by the terms of the DEIS itself—with no assurance of full or proper implementation—but nowhere in the DEIS or attached materials does the Tribe commit to any limited waiver of sovereign immunity through which these conditions (upon which the DEIS relies heavily to mitigate potential findings of significant impact) might be enforced by the State Water Resources Control Board, any other state agency, or a court of law.

T5-16  
cont.

In short, the DEIS apparently could not and does not determine whether impacts to surface- and groundwater resources are likely to be significant. Instead, the characteristics of the Proposed Project that the DEIS imposes and relies upon to minimize any adverse impacts consist of: the development of an SWPPP; coverage under certain federal permits; and a number of voluntary, unspecified BMPs. Neither the assessment nor these unenforceable conditions offer surrounding Tribes, organizations, or community members any assurance that that they will not experience adverse impacts to the availability, quality, or disposal of their own surface- or groundwater resources.

## **VII. The DEIS Overlooks Critical Impacts to Wildlife and Other Resources.**

The DEIS establishes potential adverse impacts to Federally Listed or Protected Special-Status species, including—but not limited to—the California Red-Legged Frog, the Northwest Pond Turtle, and certain migratory birds. To justify its findings of no significant impact, however, the DEIS provides that unspecified ‘qualified biologists’ will conduct “preconstruction habitat assessment surveys” for the species, and that—if the species are detected during these surveys—the USFW “shall be contacted immediately to determine the best course of action.” DEIS at 4-6; 4-7.

T5-17

But these so-called mitigation measures do not impose any affirmative restrictions on the Proposed Project to prevent damage to the DEIS-identified biological resources. Nor does the DEIS establish what might occur if the USFW determines that the “best course of action” for the wildlife in question is to halt the Proposed Project entirely. Instead, the DEIS again delegates its own analysis to some future, hypothetical agency action, and concludes—based on that speculative delegation alone—that the Proposed Project does not result in any adverse impacts to scarce (federally-protected) wildlife or biological resources.

## **VIII. Economic Studies**

The economic impact studies for the DEIS are from 2022 and woefully dated and inaccurate. The data itself includes analysis from when Sonoma County was still recovering from the pandemic and does not have a full grasp of the current economic situation. This should have been updated after the EA was determined to be insufficient. The economic impact statement is so dated it doesn’t include mention of the potential Scotts Valley Casino in nearby Vallejo which is also being pushed forwards. App B at 62. As the DEIS itself notes when talking about other potential future casinos in the area, “should these or other similar developments move forward,

T5-18



there would be material impact to the overall market size and competitive effects projections outlined in this report.” App. B at 69.

T5-18  
cont.

The estimates as they stand include losses of local estimated gaming revenue of 25% for River Rock Casino, 15% for Sherwood Valley, 11% for Graton and 4% for San Pablo Lytton Casino. *Id.* With the Scotts Valley casino set to open around the same time as the Proposed Project, and only a stone’s throw from the San Pablo Lytton casino, these estimates, based off the DEIS’ own conclusions, are substantial underestimates. The DEIS also states that the “Dry Creek Band has not provided the BIA with the financial data necessary to verify the ability of the River Rock Casino to remain open or to expand.” DEIS at 3-156. This further leads Lytton to conclude that the environmental impact study is inaccurate in its estimates. The Tribes who are actually located in Sonoma County, stand to lose much more than the DEIS estimates, and it would be farcical for the project to move ahead based off the available economic impact study. Future study should include the actual economic losses to the indigenous Tribes, and the effect this will have on the quality of life and services available to their members.

T5-19

Additionally, the DEIS notes that the project will create approximately 2200 jobs in Sonoma County. App. B at 35. Though the DEIS paints this as a boon, local Tribes and businesses are already struggling to fill positions and hire employees. According to the DEIS, the Sonoma County unemployment rate is at 2.6% far below the rest of the State of California at 3.9% and much lower than Lake County’s which is at 5.7%. DEIS at 3-67. It is clear that Lake County where Koi Nation is from would benefit much more from the Proposed Project. The DEIS lacks analysis of the impacts the project will have in terms of the cannibalization of employees, and the effect this will have on local businesses which will be forced to close due to employment shortages and the harm to the Graton and Dry Creek Casinos which will surely lose additional employees.

T5-20

The economic impact study also does not consider or analyze the harms to the Lytton Rancheria if their tribal homeland and members are destroyed in the event of wildfire and the evacuation delays imposed by the project. The Lytton Rancheria is nearly three times the size of the 89 member Koi Nation, DEIS at 3-66, and no consideration is given to the effects of the loss of tribal lives or homes.

T5-21

**XI. Cultural and Paleontological Resources**

Appendix H which is for “Cultural Resources Information,” DEIS at vi, has been marked as confidential. It is surprising to us, that we as a Sonoma County Tribe are unable to review the cultural materials found on the site or the evidence submitted by Koi Nation, a Lake County Tribe from 50 miles away, of their ties to the area. We fear this may be because significant materials from our ancestors were found on the site, or because there is scant support for the Koi Nation’s application.

T5-22

The previously conducted EA stated that “[t]he presence of Pruitt Creek within the Project Site, presence of scattered obsidian, and results of Native American consultation conducted to date indicate there is a potential for significant subsurface cultural resources to be buried beneath the Project Site with no surface manifestation.” EA at 3-56. The EA also states

T5-23



that a Koi Tribal Monitor was present during excavation of four test pits. EA at 3-55, 4-7. The proposed mitigation measures to avoid impacts to cultural sites allows for only the presence of a Koi Tribal monitor at ground disturbing activities. DEIS at 4-9. Lytton reiterates that the Koi Nation is not indigenous to Sonoma County, but is rather a Southeastern Pomo Tribe indigenous to Lake County. It is imperative that any and all assessments of cultural or archaeological effects of the Proposed Project occur with input and guidance from local Southern and Southwestern Pomo Tribes actually indigenous to Sonoma County with ancestral territory in the vicinity of the Project Site. The option to utilize only a Koi monitor without or in place of a qualified monitor from or approved by local Tribes is unacceptable.

T5-23  
cont.

The DEIS, not the confidential Appendix H, states that “Copies of relevant correspondence are provided in Appendix H-7” as regards Native American Consultation. DEIS at 3-60 and also that “(b)ackground research and archaeological surveys of the Project Site were independently conducted by Archaeological Research and Tom Origer & Associates in February 2022 and May 2022, respectively, to identify and evaluate any prehistoric and historic-period resources within or adjacent to the Project Site that may be impacted by the project alternatives. Additionally, archaeological monitoring was done during excavation for percolation testing on the Project Site in April 2022. Reports documenting the results of these efforts are included in Appendix H.” DEIS at 3-61. The results of these studies should be available to us as a Sonoma County Tribe.

T5-24

It is alarming that the cultural materials from this project are not available to us, a Tribe that actually calls Sonoma County our home. Additionally, any tribal monitors from this project should be from a Sonoma County Tribe, as our sacred sites and remains are the ones placed at risk by this project.

Conclusion

We appreciate the opportunity to provide comment to the BIA, and would like to emphasize our concerns that allowing a Tribe from Lake County to establish this Proposed Project will impinge on the Tribal sovereignty of Sonoma County Tribes as well as dramatically increase the risk of injury and death in the event of a wildfire. We reiterate our request that the Bureau opt for Alternative D or at least create an accurate Environmental Impact Statement which the DEIS is not.

T5-25

Sincerely,

Andy Mejia  
Chairperson  
Lytton Rancheria of California



August 26, 2024

Via Electronic Mail

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

Chad Broussard, Environmental Protection Specialist  
 Bureau of Indian Affairs, Pacific Region  
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Re: EIS Comments, Koi Nation Shiloh Resort and Casino

Dear Regional Director Dutschke and Mr. Broussard:

On behalf of the Federated Indians of Graton Rancheria (FIGR or the Tribe), I submit these comments on the Draft Environmental Impact Statement (EIS) for the fee-to-trust transfer for gaming purposes and casino development project (Project) proposed by the Koi Nation of Northern California (Koi Nation). The Project site is located adjacent to the Town of Windsor in Southern Pomo territory in Sonoma County, California. The U.S. Bureau of Indian Affairs (BIA) published notice of the Draft EIS pursuant to the National Environmental Policy Act (NEPA) on July 8, 2024, and a 45-day public comment period.<sup>1</sup> The BIA previously published a draft environmental assessment (EA) for the Project on September 12, 2023.

The Tribe is composed of Southern Pomo and Coast Miwok people. Our aboriginal territory includes Sonoma County and Marin County. The Tribe's reservation is located adjacent

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<sup>1</sup> Notice of Availability of a Draft Environmental Impact Statement and Draft Conformity Determination for the Koi Nation of Northern California's Proposed Shiloh Resort and Casino Project, Sonoma County, California, 89 Fed. Reg. 55968 (July 8, 2024) (hereafter referred to as the NOA). While the 45-day deadline specified in the NOA would end August 22, 2024, the BIA states on the website for the Project at [www.shilohresortenvironmental.com](http://www.shilohresortenvironmental.com) that comments must be received by August 26, 2024.

to the City of Rohnert Park in Sonoma County, about a 15-minute drive from the Project site. We maintain a close connection to our ancestors and cultural resources throughout our ancestral territory.

FIGR, like many tribes in California, was decimated in place as a result of federal and state policies designed to terminate and erase tribes. The Tribe, however, has never stopped fighting for our sovereignty, our citizens and ancestors, and our cultural resources. Congress ultimately recognized the Tribe’s historic and continued connections to its aboriginal territory within Sonoma and Marin Counties in the Graton Rancheria Restoration Act.<sup>2</sup> While FIGR and other Southern Pomo tribes may have allowed other tribes to trade and travel by permission in their aboriginal territory, this never did and never will entitle outside tribes to our land. Yet the BIA is now poised to approve the Koi Nation’s proposal to dispossess FIGR and other Southern Pomo tribes from a piece of our homeland. *We vehemently oppose this action.*

T6-1  
cont.

The Draft EIS fails, among other things, to consider the Project’s significant adverse effects to the Tribe’s rights and our connection to our ancestors and cultural resources. The purpose of this Draft EIS letter is to: (1) reiterate the need for the BIA to reinitiate consultation and complete the National Historic Preservation Act (NHPA) Section 106 process, (2) highlight the significant effects<sup>3</sup> that this Project<sup>4</sup> will have on the Tribe’s cultural resources, rights, and sovereignty, and (3) request again that the BIA consider an alternative Project location within the Koi Nation’s ancestral territory to avoid these significant impacts. The Tribe also joins with the August 26, 2024 comments in response to the Draft EIS submitted by Shartsis Friese LLP on behalf of FIGR. That letter provides the Tribe’s broader objections to the Draft EIS and details the Project’s environmental effects and extensive deficiencies of the Draft EIS.

## **I. Contextual Background for the Project and NEPA Review**

The Project described for purposes of the Draft EIS is the BIA’s action on the application by the Koi Nation to have the Project site taken into trust pursuant to 25 Code of Federal Regulations (C.F.R.) Part 151.<sup>5</sup> In addition to this pending action, the U.S. Department of the Interior is also evaluating whether the Project site would meet the restored lands exception under the Indian Gaming Regulatory Act (IGRA), which generally prohibits gaming on land taken into trust for a tribe after 1988.<sup>6</sup> In this case, the Project site is being considered for gaming under the restored lands exception provided by IGRA and its implementing regulations at 25 C.F.R. Part

T6-2

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<sup>2</sup> 25 U.S.C. §§ 1300n-1(7), 1300n-3(a), 1300n-4(c).

<sup>3</sup> The NHPA Section 106 primarily uses the term “effects,” while NEPA uses the terms “effects” and “impacts” interchangeably. 36 C.F.R. §§ 800.1(a), 800.16(i); 40 C.F.R. § 1508.1(i).

<sup>4</sup> This letter uses the term Project throughout for NEPA purposes. The corresponding NHPA Section 106 term is “undertaking.” See 36 C.F.R. § 800.16(y).

<sup>5</sup> Draft EIS at ES-1, 1-1.

<sup>6</sup> 25 U.S.C. § 2719.



292.<sup>7</sup> This Project may only move forward if the BIA approves the Koi Nation’s land-into-trust application and the U.S. Department of the Interior finds that the Koi Nation may game on the Project site under IGRA.

The Tribe has explained in detail why the Koi Nation cannot meet the restored lands exception under IGRA and the Project site cannot be taken into trust for gaming purposes. The Tribe’s numerous letters and extensive documentation regarding the NEPA review for this Project, as well as the pending reviews under 25 C.F.R. Part 151 and 25 C.F.R. Part 292, are incorporated by reference.<sup>8</sup> The Tribe supports the Koi Nation seeking a restored homeland and economic development in Lake County. However, this cannot come at the expense of the Tribe and its connection to its ancestors, cultural resources, and aboriginal territory in Sonoma County.

T6-2  
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## II. Deficiencies in BIA’s NEPA and NHPA Section 106 Processes

Compliance with Section 106 of the NHPA and compliance with NEPA go hand-in-hand. NEPA is designed to ensure that agencies engage in informed decision making.<sup>9</sup> NEPA’s implementing regulations further dictate that agencies identify, consider, and disclose relevant information before decisions are made.<sup>10</sup> The NEPA regulations also promote the integration of the NEPA process with other agency planning to facilitate early engagement and consultation with impacted tribal governments.<sup>11</sup> Specifically, agencies are expressly directed to prepare a draft EIS “concurrent and integrated with” the analyses, surveys, and studies required by the

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<sup>7</sup> Draft EIS 1-1. *See* 27 U.S.C. § 2719(b)(1)(B)(iii); 25 C.F.R. § 292.11, 292.12.

<sup>8</sup> All correspondence incorporated into this letter are provided as attachments to this letter. The correspondence includes, but is not limited to, Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Requesting Public Hearing on Scoping & Extension of Comment Deadline for the Koi Casino Proposal (June 14, 2022); Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Providing Scoping Comments on the Koi Casino Proposal (FIGR Scoping Comments) (June 27, 2022); Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Commenting on the Koi Casino EA (FIGR EA Comments) (Nov. 13, 2023); Letter from FIGR Chairman Greg Sarris to Director Paula Hart, Office of Indian Gaming, U.S. Department of the Interior, Commenting on the Koi Nation’s Restored Lands Request (FIGR IGRA Restored Lands Letter) (Jan. 31, 2024); Letter from FIGR Chairman Greg Sarris to Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Commenting on Notice of Intent To Prepare an EIS for the Koi Nation Fee-to-Trust and Casino Project (FIGR NOI Comments) (Apr. 8, 2024); Letter from FIGR Chairman Greg Sarris to Amy Dutschke Commenting on Notice of Gaming Land Acquisition for the Koi Nation (FIGR Part 151 Letter) (Apr. 30, 2024).

<sup>9</sup> *See* 42 U.S.C. § 4332(c) (requiring agencies prepare a detailed statement on reasonably foreseeable environmental effects); *see also South Fork Band Council of Western Shoshone v. Dep’t of Interior*, 588 F.3d 718, 725 (9th Cir. 2009) (“An adequate EIS is essential to informed agency decision-making and informed public participation, without which the environmental objectives of NEPA cannot be achieved.”); *Am. Rivers v. Fed. Energy Regul. Comm’n*, 895 F.3d 32, 49 (D.C. Cir. 2018) (“NEPA’s primary function is information-forcing, compelling federal agencies to take a hard and honest look at the environmental consequences of their decisions.”).

<sup>10</sup> 40 C.F.R. § 1500.1(b).

<sup>11</sup> 40 C.F.R. §§ 1501.1(b), 1501.2(b)(4), 1501.9(a).

NHPA.<sup>12</sup> BIA has utterly failed in this regard. The state officer responsible for advising and assisting federal agencies in meeting their NHPA responsibilities perfectly summed up BIA's efforts for this Project: "insufficient, inadequate, and not reasonable."<sup>13</sup>

A. *Requirements of the NHPA*

Section 106 of the NHPA requires federal agencies to take into account the effects their approvals may have on historic properties, which includes properties of traditional religious and cultural importance to a tribe.<sup>14</sup> Federal agencies are required to comply with the NHPA and its implementing regulations at 36 C.F.R. Part 800.<sup>15</sup> Concurrent review under the NHPA and NEPA, along with consultation requirements, helps improve the efficiency of the NEPA process and head off potential conflicts.<sup>16</sup> The NHPA Section 106 process is designed to provide vital information regarding potential adverse effects to historic properties, including cultural and religious resources, in order to avoid, minimize, or mitigate those effects.<sup>17</sup> It plays an important role in informing the NEPA process and ensuring that an agency has complete information about impacts to historic properties before approving a project.<sup>18</sup>

With respect to tribes, NHPA regulations direct federal agencies to consult with federally recognized tribes that may attach religious and cultural significance to a historic property.<sup>19</sup> This should be done early in the planning process.<sup>20</sup> A tribe should be given a reasonable opportunity to identify its concerns, advise on the identification and evaluation of historic properties, explain

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<sup>12</sup> 40 C.F.R. § 1502.24(a); *see* 36 C.F.R. § 800.8(a) (encouraging agencies to coordinate NHPA and NEPA compliance and to consider their Section 106 responsibilities early in the NEPA process); *see also* Advisory Council on Historic Preservation, Section 106 Archaeology Guidance (ACHP Section 106 Guidance) (Jan. 1, 2009) at 7 (encouraging federal agencies to use existing procedures to meet NHPA Section 106 requirements, but noting that reliance on NEPA efforts alone will not meet Section 106 regulatory requirements).

<sup>13</sup> Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (July 10, 2024) at 3.

<sup>14</sup> 54 U.S.C. § 306108; 36 C.F.R. § 800.3(b); *see also* 36 C.F.R. §§ 800.16(l) (defining historic property), 800.16(y) (defining undertaking).

<sup>15</sup> *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 608 F.3d 592, 607 (9th Cir. 2010) (*citing Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 787 (9th Cir. 2006); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999)).

<sup>16</sup> 40 C.F.R. § 1501.2(a), 1500.5(i); *see also* § 1500.2.

<sup>17</sup> 36 C.F.R. § 800.1(a); *see also* §§ 800.5 (providing criteria for adverse effect), 800.6 (directing consultation with tribes to resolve adverse effects).

<sup>18</sup> 36 C.F.R. § 800.1(c); *see also* § 800.8 (coordination with NEPA review). Where an agency is faced with incomplete information, it must include relevant information that is essential to a reasoned choice among alternatives when the cost of obtaining that information is not unreasonable. 40 C.F.R. § 1502.21.

<sup>19</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

<sup>20</sup> 40 C.F.R. § 800.1; *see* U.S. Dep't of the Interior, *Departmental Manual (DOI Manual)*, 512 DM 5.4 (Nov. 30, 2022) (requiring the BIA to invite tribes early in the planning process to consult on an action with Tribal Implications); *see also* *DOI Manual*, 512 DM 4.3 (defining an action with Tribal Implications as one that may have a substantial effect on tribal cultural practices, resources, and access to traditional areas of cultural or religious importance), § 5.4(G) & Figure 1 (identifying impacts to tribal jurisdiction and cultural rights as an area requiring the greatest degree of consensus and dedicated efforts).

its views on a project's effects to these resources, and participate in resolving adverse effects.<sup>21</sup> The agency must make a "reasonable and good faith effort" to identify historic properties in consultation with any tribe that attaches religious and cultural significance to properties in the area of potential effects (APE).<sup>22</sup> Tribes possess special expertise regarding eligibility for properties that have religious and cultural significance to them.<sup>23</sup>

Agencies are required to evaluate the identified properties with consulting tribes by applying National Register of Historic Places (National Register) criteria.<sup>24</sup> The agency then determines whether any property eligible for the National Register is present and, if so, if the project will have an adverse effect upon the historic property.<sup>25</sup> The State Historic Preservation Officer (SHPO) can either concur or object to the agency's finding of no adverse effect.<sup>26</sup> If the agency finds an adverse effect, it must consult further with the SHPO and consulting tribes to evaluate alternatives or ways to avoid, minimize, or mitigate adverse effects.<sup>27</sup>

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In short, it is essential that an agency understand the potential impacts to historic properties before it decides whether to approve an alternative that will have significant and unavoidable impacts to historic properties with religious and cultural significance to a tribe, and therefore to the tribe itself. Yet the BIA is rushing this Draft EIS forward despite its insufficient and unreasonable efforts to identify historic properties and adverse effects through the NHPA Section 106 process. As discussed in detail below, the BIA has repeatedly failed to engage with the Tribe and meet the clear regulatory mandates of the NHPA Section 106 process.

B. *The BIA Failed to Comply with the NHPA and Did Not Appropriately Consult with the Tribe During the Course of the NEPA Review Process*

The NHPA Section 106 requirement to consult with tribes is not an empty formality.<sup>28</sup> Unfortunately, that is not how BIA has approached the process here.

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The BIA's NHPA Section 106 failures for this Project are well documented. The Tribe first learned of this Project in a July 25, 2022 letter from the BIA's consultant.<sup>29</sup> To the Tribe's surprise, the consultant's letter noted that two field surveys had already been completed for the

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<sup>21</sup> 36 C.F.R. § 800.2(c)(2)(ii).

<sup>22</sup> 36 C.F.R. § 800.4(b).

<sup>23</sup> 36 C.F.R. § 800.4(c).

<sup>24</sup> 36 C.F.R. § 800.4(c).

<sup>25</sup> 36 C.F.R. §§ 800.4(d), 800.5.

<sup>26</sup> 36 C.F.R. §§ 800.4(d), 800.5(c).

<sup>27</sup> 36 C.F.R. § 800.6(a)&(b).

<sup>28</sup> *Quechan Tribe of Fort Yuma Indian Res. v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1108 (S.D. Cal. 2010).

<sup>29</sup> Letter from Thomas Origer to FIGR THPO Buffy McQuillen (July 25, 2022).

Project.<sup>30</sup> It has since become clear that the BIA also allowed test trenching and another field survey to collect obsidian samples for destructive testing before notifying the Tribe.<sup>31</sup> It was improper for these four studies to occur—the Advisory Council on Historic Preservation (ACHP) directs agencies to initiate consultation with tribes *prior to conducting any fieldwork*.<sup>32</sup> Additionally the BIA, not a consultant, is responsible for initiating the NHPA Section 106 process.<sup>33</sup>

Upon learning of the Project and survey work, FIGR wrote to the BIA to protest the conduct of cultural studies outside of the Section 106 process and to request formal consultation when BIA initiated the Section 106 process.<sup>34</sup> The Tribe stated that the Project is located within its ancestral territory, that religious and culturally significant resources are present, and that no further testing should be conducted without FIGR participation.<sup>35</sup> The Tribe also requested copies of all cultural resource records already gathered or generated for the Project.<sup>36</sup> As a result of BIA’s failure to initiate consultation prior to the cultural resource survey work, the Tribe has been unable to verify whether it has received all requested records and whether appropriate record reviews have been completed for the Project site.<sup>37</sup>

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<sup>30</sup> The Tribe understands the letter to be referring to the Historic Property Survey Report and the Cultural Resources Study included as Draft EIS Appendices H-1 and H-2, respectively.

<sup>31</sup> Draft EIS Appendix H-3 at 2 (monitoring of test trenches), Appendix H-4 at 2 (describing the collection of obsidian samples on August 3, 2022).

<sup>32</sup> ACHP Section 106 Guidance at 9; *see also DOI Manual 512 DM 5.4* (requiring early consultation on actions that may have a substantial effect on a tribe’s cultural resources).

<sup>33</sup> 36 C.F.R. § 800.2(c)(4); ACHP Section 106 Guidance at 10 (stating that ACHP regulations “allow a federal agency to authorize an applicant (not consultants or contractors)” to initiate Section 106 consultation and that an agency “may not delegate” its responsibility to consult); *see also* Letter from Thomas Origer to FIGR THPO Buffy McQuillen (July 25, 2022) at 1 (“The Bureau of Indian Affairs will be the federal lead agency for compliance with Section 106 of the National Historic Preservation Act; however, that process has not been initiated at this time.”)

<sup>34</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Aug. 10, 2022) at 1-2.

<sup>35</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Aug. 10, 2022) at 2.

<sup>36</sup> Letter from FIGR THPO Buffy McQuillen to Thomas Origer (Aug. 10, 2022) at 1.

<sup>37</sup> Pre-consultation field survey reports describe a review of historic records and reports at the Northwest Information Center of the California Historical Resources Inventory System (NWIC). Draft EIS Appendices H-1 (Parker) at 13, 14; H-2 at i, 8. It is unclear, however, whether the consultants conducted an independent review of NWIC records. Further adding to this lack of transparency, one pre-consultation field survey report describes outreach to the Native American Heritage Commission on February 3, 2022, requesting a review of the sacred lands file for the Project area. Draft EIS Appendix H-1 at 14. However, the Tribe was not provided a copy of that outreach or any response, including whether the sacred lands file search indicated there were positive records, and has not been able to verify that statement in the report. The Tribe was able to determine that a different consultant who conducted the other pre-consultation field survey did submit a July 25, 2022 request to the Native American Heritage Commission, which responded that the file search indicated sacred sites are present in the area. *See Sacred Lands File & Native American Contacts List Request*, submitted by Taylor Alshuth (July 25, 2022); Letter from NAHC Cultural Resources Analyst Cameron Vela to Taylor Alshuth (August 28, 2022) at 1.

Three months later on November 4, 2022, the BIA notified the Tribe that it was affirming the Tribe's status as a consulting party under the NHPA Section 106 process.<sup>38</sup> This was the first official notification from the BIA of NHPA Section 106 consultation for this Project.

On December 19, 2022, the Tribe reiterated its prior request for copies of cultural resource reports for the Project parcel, reaffirmed that the site has religious and cultural significance to FIGR, and requested a formal consultation meeting once it was provided the records.<sup>39</sup> It again asked that no cultural resource testing be conducted without its participation and that of other culturally affiliated tribes.<sup>40</sup> Unbeknownst to the Tribe, the BIA had conducted another study on August 3, 2022, this time collecting obsidian from the site that was sent to a lab in Oregon for hydration testing, which requires cutting the artifact.<sup>41</sup> In other words, *the BIA authorized artifacts collected from a location with known religious and cultural significance to the Tribe to be sent out of state for destructive testing*, all without notice to the Tribe. The Tribe to this day does not know what has become of those removed artifacts.

Several months later in March 2023, the BIA informed FIGR that it would be providing four cultural resource studies.<sup>42</sup> The Tribe did not receive these documents until July 2023 and requested a few weeks to review the studies.<sup>43</sup> Despite this reasonable request, the BIA rushed ahead without consulting the Tribe and on July 18, 2023, issued its determination that no historic properties would be affected and requested concurrence from the SHPO.<sup>44</sup> The BIA appears to have made this determination based on a consultant's report, but that report recommended a determination of "no adverse effect."<sup>45</sup> A "no adverse effect" determination is only made if there are historic properties that would be affected, which necessarily implies there are historic properties.<sup>46</sup> The BIA, however, does not address this discrepancy between the consultants conclusion of "no adverse effect" to historic properties and its own determination that no historic properties would be affected.

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<sup>38</sup> Letter from BIA Pacific Regional Director Amy Dutschke to FIGR Chairman Greg Sarris (Nov. 4, 2022). This delayed outreach is highly unusual from the normal, early involvement for NHPA Section 106 consultation. See ACHP Section 106 Guidance at 9 (advising agencies to begin the Section 106 process early in project planning to avoid delays in review and head off potential conflicts; stating that many agencies strive to coordinate Section 106 and NEPA requirements and should be prepared to begin consultation early in the NEPA process);

<sup>39</sup> Letter from Buffy McQuillen, FIGR THPO, to Dan Hall, BIA Regional Archaeologist, December 19, 2022.

<sup>40</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Dec. 19, 2022) at 1-2.

<sup>41</sup> Draft EIS at 3-64; Draft EIS Appendix H-4 at 2, 3.

<sup>42</sup> Letter from BIA Acting Pacific Regional Director Ryan Hunter to FIGR THPO Buffy McQuillen (Mar. 7, 2023).

<sup>43</sup> Email from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (July 3, 2023).

<sup>44</sup> Letter from BIA Pacific Regional Director Amy Dutschke to SHPO Julianne Polanco (July 18, 2023).

<sup>45</sup> Draft EIS Appendix H-1.

<sup>46</sup> See 36 C.F.R. §§ 800.4(d), 800.5 (criteria of adverse effect only applied if the agency has determined there are historic properties which may be affected by the undertaking)

In an August 7, 2023 letter, the Tribe detailed its concerns with BIA's handling of the Section 106 process for the Project and with deficiencies in the four cultural resource studies.<sup>47</sup> After reviewing the BIA's concurrence request and the Tribe's letter, the SHPO requested BIA consult with FIGR and other culturally affiliated tribes to assess changes to the APE, the identification and evaluation of historic properties, and the effects determination.<sup>48</sup> Over nine months after the Tribe's original request for a Section 106 consultation meeting regarding the Project, the BIA finally agreed to meet with FIGR.<sup>49</sup>

The Tribe and the BIA held a virtual consultation meeting on November 30, 2023. The Tribe again asked that it be informed of and present at all testing and surveys for cultural resources.<sup>50</sup> Two months later, in direct contravention of the Tribe's request, the BIA conducted a canine survey of the parcel *without notice to the Tribe*.<sup>51</sup> The BIA then told the Tribe that it planned to follow the canine survey with trench excavation work, but it did not have or did not share a testing plan with the Tribe.<sup>52</sup> The BIA notified the Tribe only shortly before the trenching and the Tribe scrambled to arrange staffing so that one of its Tribal monitors could attend.<sup>53</sup> Despite wet and muddy conditions, the trenching went forward. FIGR's Tribal monitor, who is also an archaeologist, attended but was not able to enter the trenches for further investigation because the trench work was done in wet conditions, lacked shoring, and did not meet Occupational Safety and Health Administration regulations.<sup>54</sup> Nevertheless, the trench work revealed the presence of cultural resources and indicated that prior impacts from agriculture were more limited in depth than previously thought.<sup>55</sup>

On May 6, 2024, the BIA moved forward yet again to seek concurrence from the SHPO with its finding that no historic properties would be affected by the Project.<sup>56</sup> The SHPO objected

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<sup>47</sup> Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (Aug. 7, 2023).

<sup>48</sup> Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (Aug. 10, 2023).

<sup>49</sup> Letter from BIA Pacific Regional Director Amy Dutschke to FIGR Chairman Greg Sarris (Aug. 24, 2023). While the letter is dated August 24, 2023, the Tribe did not receive it until September 5, 2023.

<sup>50</sup> See Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (May 29, 2024) at 1.

<sup>51</sup> Draft EIS Appendix H-5; Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 19, 2024); Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Mar. 26, 2024) at 1.

<sup>52</sup> Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 27, 2024); Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024) at 1.

<sup>53</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024) at 1; see also Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 19, 2024); Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 27, 2024).

<sup>54</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024) at 2; see 29 C.F.R. §§ 1926.651, 1926.652; see also Occupational Safety and Health Administration, Trenching and Excavation Safety, OSHA 2226-10R 2015 at 3, 5-6, 10-11 (specifying various types of protective systems for excavation or a "competent person" to examine the ground and find no indication of a potential cave-in for excavations less than five feet deep).

<sup>55</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024) at 2.

<sup>56</sup> Letter from BIA Pacific Regional Director Amy Dutschke to SHPO Julianne Polanco (May 6, 2024).



to BIA’s finding, commenting that the BIA’s efforts to identify historic properties, including those of religious and cultural significance to tribes, was “*insufficient, inadequate, and not reasonable.*”<sup>57</sup> The SHPO requested that BIA reinitiate NHPA Section 106 consultation with tribes and the SHPO by redefining the APE to account for the full geographic area that may result in alterations to historic properties because of the Project.<sup>58</sup> As of the date of this letter, BIA has not reinitiated Section 106 consultation.<sup>59</sup>

Moreover, the BIA’s troubling pattern of excluding the Tribe from cultural surveys at the Project site appears to be ongoing. The Draft EIS lists an Off-Site Traffic Mitigation Improvements Cultural Survey as Appendix H-8. This survey is only mentioned once in the Draft EIS when referencing indirect effects and appears to have been limited to an area along Shiloh Road and Old Redwood Highway.<sup>60</sup> The Tribe was never notified of this testing or of the report and first learned of it when reviewing the Draft EIS. The Tribe had to request a copy of the February 2024 report in Appendix H-8, which it did not receive until August 7, 2024.<sup>61</sup> Upon the Tribe’s initial review, it is clear that impacts to the area, which is nearly one mile of roadway, should be assessed as direct effects of the Project due to traffic improvements and other necessary construction. Additionally, it is inappropriate for the BIA to assume the ineligibility of potential historic properties because they may be located in previously disturbed areas or existing rights of way.

The BIA’s repeated failures to meaningfully engage with the Tribe and comply with NHPA regulations undermines the analysis of cultural resource impacts set forth in the Draft EIS. The Draft EIS acknowledges that the Tribe has stated that religious and culturally significant resources are present at the Project site.<sup>62</sup> The BIA also recognizes the potential for subsurface cultural resources and human remains at the site.<sup>63</sup> Nonetheless, rather than consulting with the Tribe and other culturally affiliated tribes to determine an appropriate APE for the Project and to identify and evaluate historic properties, including cultural resources, the BIA concludes that any potentially significant impacts would be mitigated to less than significant.<sup>64</sup> The BIA bases this conclusion on inadequate mitigation measures (discussed below) and “compliance with Section

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<sup>57</sup> Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (July 10, 2024) at 2 (emphasis added).

<sup>58</sup> Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (July 10, 2024) at 2.

<sup>59</sup> See Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (July 22, 2024) (welcoming the reinitiation of consultation by the BIA).

<sup>60</sup> Draft EIS at 3-166, Figure 3.15-1.

<sup>61</sup> Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Aug. 7, 2024); Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (July 22, 2024). The Tribe also requested a copy of confidential Draft EIS Appendix H-7, which it also received on August 7, 2024. Based on an initial review of that Appendix H-7, it appears to be missing substantial correspondence between the Tribe and the BIA regarding cultural resource concerns.

<sup>62</sup> Draft EIS at 3-60.

<sup>63</sup> Draft EIS at 3-64.

<sup>64</sup> Draft EIS at ES-13, 3-64, 3-65.

106 of the NHPA.”<sup>65</sup> But, as the July 10, 2024 letter from the SHPO makes abundantly clear, the *BIA has not complied with NHPA Section 106.*

The BIA has effectively sidelined FIGR’s input, has not completed the Section 106 process to identify historic properties, and has not taken a hard look at the effects to religious and cultural resources from this Project.<sup>66</sup> As the Tribe has stated before, the BIA cannot assess the full significance of cultural resource impacts without engaging with consulting tribes and completing the NHPA Section 106 process.<sup>67</sup>

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### **III. The BIA Must Work with the Tribe to Determine the Full Scope of the Project’s Significant Impacts to the Tribe’s Sovereignty, Rights, and Cultural Resources**

The BIA’s failure to complete its NHPA Section 106 legal requirements has resulted in uncertainty regarding the APE, an incomplete understanding of cultural resources on and near the Project parcel, and inadequate cultural resource mitigation measures. Nevertheless, it is clear that the Project will have direct and other significant effects on the Tribe’s sovereignty, its rights under state and federal law, and its cultural resources.

#### **A. *The Area of Potential Effects Is Ambiguous and Must Be Delineated Through the NHPA Section 106 Process***

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Many of the problems with the cultural resource discussion in the Draft EIS stem from the BIA’s failure to complete the NHPA Section 106 process, including establishing an appropriate APE. The APE describes the area where an agency’s action may directly or indirectly cause changes to the character or use of historic properties.<sup>68</sup> Generally, the APE should be broad enough initially to capture the full extent of a project’s effects, but its boundaries should not be confused with a project’s construction footprint.<sup>69</sup> The APE is not limited to the surface and its lower limits should take into account the potential to affect buried historic properties.<sup>70</sup> In practice, this often results in delineation of a direct APE, an indirect APE, and a vertical APE. The boundaries of an APE should be adjusted and refined with input from consulting tribes.<sup>71</sup>

The Draft EIS refers to the APE throughout section 3.6 when discussing cultural resources, but the APE is not clearly defined. The Draft EIS states:

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<sup>65</sup> Draft EIS at 3-64.

<sup>66</sup> *See Nat’l Audubon Society v. Dep’t of the Navy*, 2005, 422 F.3d 174 (4th Cir. 2005) (requiring a thorough investigation into the impacts of an agency’s action and acknowledgement of the risks entailed).

<sup>67</sup> FIGR NOI Comments at 7.

<sup>68</sup> 36 C.F.R. § 800.16(d).

<sup>69</sup> ACHP Section 106 Guidance at 19.

<sup>70</sup> ACHP Section 106 Guidance at 20.

<sup>71</sup> ACHP Section 106 Guidance at 19.

Construction, staging, and material stockpiles would occur within the Project Site, and any access improvements would occur within previously disturbed soils. The footprint of these activities constitutes the APE.<sup>72</sup>

This suggests that the Project APE extends to the Project site and areas of Project construction within previously disturbed soils. But elsewhere in the Draft EIS, it is evident that construction will impact undisturbed soils, such as Pruitt Creek and wetlands.<sup>73</sup> The Draft EIS also describes the need for utility connections and road improvements to the Project site, but without detailing if these would be constructed only within disturbed soils.<sup>74</sup> Further confusing the boundaries, the APE described in the cultural resource surveys incorporated in the Draft EIS is limited to the parcel boundaries.<sup>75</sup> Additionally, the area delineated in the Draft EIS Figure 3.15-1 overlaps with the Project parcel boundaries and appears to include road access improvement areas that are part of the direct APE description, but this APE is identified as indirect. Because of these various descriptions it is unclear if the APE is limited to the project footprint, if it includes all off-site road and utility improvement areas, or if it only includes areas with disturbed soils. It is impossible to make an informed decision regarding cultural resource impacts when there is no clear description of the area being considered.

Beyond the contradictory and confusing descriptions of the APE, the vertical extent of the APE must account for the full depth of potential Project ground disturbance. The Project is expected to require significant excavation ranging from the surface to 700 feet deep for water and wastewater infrastructure covering large areas.<sup>76</sup> The APE appears to be limited to four feet based on the project proponent's archaeologist opining that no prehistoric sites within four feet of the surface would remain intact within the vineyard areas.<sup>77</sup> However, during the excavation of trenches on the property, FIGR's archaeologist observed that soil disturbance did not extend to a

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<sup>72</sup> Draft EIS at 3-61.

<sup>73</sup> Draft EIS at 2-7 (construction of up to two wells extending through undisturbed soils to a depth of approximately 700 feet), 2-10 (construction of outfall structure for water discharge to Pruitt Creek), 3-53 (describing development impacts to Pruitt Creek and seasonal wetlands from construction of bridges, outfalls, and access drive and other ground disturbing activities).

<sup>74</sup> Draft EIS at 3-98 (describing extending services to the Project from off-site electrical, natural gas, and telecommunications infrastructure), 4-11, 4-12 (detailing numerous intersection upgrades and road widening for mitigation).

<sup>75</sup> Draft EIS at 3-61, 3-62; Draft EIS Appendix H-1 at 3 (the APE is the footprint of the parcel); Draft EIS Appendix H-3 at 3 (outlining the parcel boundaries as coextensive with the APE).

<sup>76</sup> Draft EIS at 2-7 (two wells may be drilled to a depth of 700 feet), 3-53 (pipeline for gravity sewer main would be installed a minimum of 10 feet below Pruitt Creek if directional drilling is used); Appendix D-3 at 5-2 (water production well depths of 700 feet), 5-6 (75 foot wide by 32 foot tall cylindrical water storage tank resting on an excavated ringwall foundation), 6-1 (wastewater collection system with gravity sewer and lift station), 6-15 (60 foot wide by 43 foot tall recycled water storage tank resting on an excavated ringwall foundation), 6-16 (10-foot deep storage basin).

<sup>77</sup> Draft EIS Appendix H-1 at 4.

significant depth.<sup>78</sup> In addition, a culturally modified obsidian flake was encountered at a depth of six to seven feet.<sup>79</sup> The APE must be revised and its horizontal and vertical extent clearly defined through consultation with the SHPO, the Tribe, and other consulting tribes to ensure the Draft EIS assesses the Project’s direct and indirect effects to historic properties, including those of tribal religious and cultural importance.<sup>80</sup>

T6-5  
cont.

B. *Despite Deficient Cultural Resource Surveys, It Is Clear the Project Site Contains an Extensive Amount of Religious and Culturally Significant Resources*

The BIA failed to give due consideration to the Tribe’s input or properly consider the eligibility criteria for the listing of historic sites on the National Register. Moreover, the BIA has taken a piecemeal approach to the treatment of the numerous cultural resources identified on the Project parcel, considering them as isolates rather than in relationship to each other, to nearby archaeological sites, and to the Tribe and other Southern Pomo tribes.

Historic properties must be assessed using the four eligibility criteria in the National Register.<sup>81</sup> Archaeological sites should be evaluated according to the “Guidelines for Evaluating and Registering Archaeological Resources” published by the National Park Service.<sup>82</sup> Historic properties may include a traditional cultural property, which are eligible for inclusion in the National Register due to their importance to maintaining cultural identity and associations with the cultural practices and traditions of a tribal community.<sup>83</sup> Indian tribes have special expertise in assessing the eligibility of historic properties that may have religious and cultural significance to them.<sup>84</sup> A tribe’s opinion on the National Register significance of such sites should be given due consideration in determining a site’s National Register eligibility.<sup>85</sup>

T6-6

The description in the Draft EIS of each of the first three field surveys all end with a cursory conclusion that National Register eligibility criteria are not met.<sup>86</sup> In addition to the BIA relying on conclusory statements rather than detailed analysis, all of these conclusions stem from surveys conducted before the Tribe was notified of the Project or acknowledged as a Section 106

<sup>78</sup> FIGR Tribal Cultural Monitoring Report (April 3-5, 2024); *see also* Draft EIS Appendix H-3 at 5, 6 (describing stream gravels being encountered at a depth of 40-60 centimeters); Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (July 22, 2024) at 2.

<sup>79</sup> Draft EIS Appendix H-6 at 3, 9; FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) at 27.

<sup>80</sup> 36 C.F.R. §§ 800.4; 800.5; 800.16(d); ACHP Section 106 Guidance at 19.

<sup>81</sup> 36 C.F.R. § 800.4(c).

<sup>82</sup> 36 C.F.R. § 60.4; ACHP Section 106 Guidance at 23; National Park Service, National Register Bulletin No. 36, Guidelines for Evaluating and Registering Archaeological Resources (2000).

<sup>83</sup> National Park Service, National Register Bulletin No. 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties (Revised 1998).

<sup>84</sup> 36 C.F.R. § 800.4(c)(2).

<sup>85</sup> ACHP Section 106 Guidance at 23.

<sup>86</sup> Draft EIS at 3-61, 3-62.

consulting tribe. The failure to consult with the Tribe is particularly troubling because such conduct is flatly inconsistent with the requirements set forth in the NHPA.

The BIA has conducted six tests for cultural and paleontological resources at the Project site.<sup>87</sup> These surveys are deficient, however, as the Tribe has repeatedly documented.<sup>88</sup> Four of these tests were conducted before the BIA had initiated tribal consultation under NHPA Section 106. Even after the Tribe was confirmed by the BIA as a Section 106 consulting tribe, the BIA conducted a fifth test using a canine survey without notice to the Tribe.<sup>89</sup>

In addition, the canine field survey was conducted contrary to best practices, limiting the dogs' ability to detect remains.<sup>90</sup> The report notes wet conditions and standing water on over half of the area, along with concerns about the extent to which the dogs could detect scent as a result of the conditions.<sup>91</sup> The report also describes 100% humidity at the site, conditions which "may dramatically decrease" the dogs probability of detection.<sup>92</sup> The final survey involved trenching, but was done in wet conditions that did not allow the standard practice of screening soils, lacked an appropriate testing plan, and did not have safety procedures in place to allow for close examination for potential resources.<sup>93</sup> None of the surveys nor the Draft EIS provide a detailed description or adequately developed justification regarding National Register eligibility criteria. Instead, BIA relies on statements and recommendations regarding individual items or objects, which it discounts as isolates without considering the broader context and resources on the site.

Despite all of these testing and survey deficiencies, it is clear that the Project site holds a significant number of cultural resources, which should be properly evaluated under the National Register criteria. The first three surveys revealed the presence of a bowl mortar, chert and obsidian flakes, a chert core, a projectile point, bifacial tool fragments, and two dozen pieces of obsidian.<sup>94</sup> FIGR's archaeologist during the trenching work observed a culturally modified obsidian flake and obsidian pebbles and gravel, some with fractures, throughout the Project

T6-6  
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<sup>87</sup> Draft EIS at 3-58, 3-61-3-64; Appendices H-1 through H-6.

<sup>88</sup> Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (Aug. 7, 2023); Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024).

<sup>89</sup> Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Mar. 26, 2024) at 1.

<sup>90</sup> Draft EIS Appendix H-5 at 5, 8, 44, 45 (expressing concerns that water and soil conditions would affect scent detection and high humidity can "dramatically decrease" probability of detection; noting 100% humidity on days of testing); *see also* Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Mar. 26, 2024).

<sup>91</sup> Draft EIS Appendix H-5 at 5.

<sup>92</sup> Draft EIS Appendix H-5 at 8, 44, 45.

<sup>93</sup> FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) at 2; *see also* Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Mar. 26, 2024) at 1.

<sup>94</sup> Draft EIS at 3-61, 3-62.

site.<sup>95</sup> *In total, 45 cultural artifacts already have been identified on the Project parcel and several areas meet the threshold for an archaeological site.*<sup>96</sup>

The extent of identified items is particularly notable because the prior surveys did not cover the entire vineyard areas. One survey was limited to transects for every third vineyard row and another surveyed every four to five rows.<sup>97</sup> While it is normal to begin a survey by walking spaced-out transects, the transect spacing should be reduced when artifacts are found to ensure other cultural items are not missed.<sup>98</sup> This was not done for the parcel. Instead, one study is estimated to have left 58-67% of the Project area unsurveyed, while another only surveyed 20-33% of the Project parcel.<sup>99</sup> Extrapolating from these surveys, well more than 100 artifacts may be present that were not identified due to the failure to appropriately narrow transect spacing.<sup>100</sup>

This conclusion is bolstered by the results of the canine survey. Despite the highly unfavorable conditions, the canine survey demonstrated the extensive presence of human remains, likely human bone fragments, and the high likelihood of burials on the Project site.<sup>101</sup> The dogs were alert to human remains at five locations within the Project development area and numerous areas on the parcel along Pruitt Creek and Old Redwood Highway.<sup>102</sup>

Furthermore, the presence of artifacts and cultural resources on the Project site and its religious and cultural significance is supported by the land's context to other archaeological and cultural resource sites in the area. The BIA appears to rely on a 1908 report to say that there are no ethnographic or camp sites reported within one mile of the APE.<sup>103</sup> However, the Project site is located nearby numerous recorded archaeological sites.<sup>104</sup> The NAHC also reported positive results when it searched its Sacred Lands Files for sacred sites in response to a request for

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<sup>95</sup> FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) at 2.

<sup>96</sup> FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) at 6, 7.

<sup>97</sup> Draft EIS Appendix H-2 at 15; Draft EIS Appendix H-2 at 9.

<sup>98</sup> *See, e.g.*, California Department of Transportation, Standard Environmental Reference, Vol. 2 (June 29, 2021) § 5.4.6.2 (calling for transect spacing to be determined on the basis of ground visibility, lateral visibility, and sensitivity for prehistoric and historic remains); Office of History and Archaeology, Alaska Department of Natural Resources, Historic Preservation Series #18 Survey Methods (Jan. 2024) at 3 (field surveys for Section 106 compliance require a higher level of investigative effort and higher intensity survey efforts with areas considered to have a high probability for identifiable cultural resources to receives greater scrutiny).

<sup>99</sup> FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) at 3, 4.

<sup>100</sup> FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) at 3, 4.

<sup>101</sup> Draft EIS Appendix H-5 at 5.

<sup>102</sup> Draft EIS at 3-62; Draft EIS Appendix H-5 at 5-7.

<sup>103</sup> Draft EIS at 3-61 (referencing Appendix H-2, which on page 8 references a 1908 report).

<sup>104</sup> FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) at 8.



information on the Project.<sup>105</sup> Additionally, previous off-site surveys have identified resources on surrounding areas.<sup>106</sup>

In sum, the quantity and quality of cultural items identified on this parcel, information regarding nearby sites and resources, and the extensive canine alerts warrant a more complete survey that examines each vineyard row individually and evaluates the cultural resources in their totality. The Tribe previously requested that the BIA attempt to identify traditional cultural properties and apply the National Register criteria, rather than relying on the one-off determinations of the Project proponent’s consultants.<sup>107</sup> The BIA has not done so. The presence of extensive cultural artifacts reinforces the need for the BIA to reinitiate consultation for the NHPA Section 106 process in order to appropriately identify historic properties and apply the National Register criteria to determine if an historic property, such as a traditional cultural property, would be affected by this Project. The available information, insufficient as it is, demonstrates what the Tribe has been telling the BIA since the Tribe was first notified of the Project—*religious and culturally significant resources are present at the Project location.*<sup>108</sup>

T6-6  
cont.

*C. Cultural Resource Mitigation Measures Are Inadequate and Must Be Developed in Consultation with the Tribe*

The Draft EIS identifies the preferred alternative as having potentially significant impacts to cultural resources that would be less than significant through mitigation, but the mitigation plan is profoundly flawed.<sup>109</sup> As detailed above, the BIA has not made an adequate, good faith effort to identify and evaluate impacts to cultural resources as required under NEPA and the NHPA. Instead, the BIA appears to be assuming that data recovery is an appropriate measure and has decided to apply pre-determined mitigation measures that do not reflect any input through tribal consultation. Data recovery, however, does not avoid effects to historic sites, it merely preserves “at least some of that information.”<sup>110</sup> The Project site is located within Southern Pomo aboriginal territory, yet the Tribe and other Southern Pomo tribes were not consulted in the development of the Cultural Resource Mitigation Measures.<sup>111</sup> The ripple effect of this glaring

T6-7

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<sup>105</sup> Letter from NAHC Cultural Resources Analyst Cameron Vela to Taylor Alshuth (August 28, 2022) at 1.

<sup>106</sup> FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) at 8.

<sup>107</sup> Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (May 29, 2024) at 2; Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024) at 2; Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (Aug. 7, 2023) at 9.

<sup>108</sup> Draft EIS at 3-60; *see also* Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (July 22, 2024) at 2, 3; Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (Aug. 7, 2023) at 2, 3; Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Dec. 19, 2022) at 1; Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Aug. 10, 2022) at 2.

<sup>109</sup> Draft EIS at ES-13, 3-64, 3-65, 4-8, 4-9

<sup>110</sup> ACHP Section 106 Guidance at 27.

<sup>111</sup> Draft EIS at 3-59. Furthermore, the Tribe’s concerns regarding impacts to cultural resources raised in its November 13, 2023 comment letter on the draft EA remain unaddressed. *See* FIGR EA Comments at 9-15.

omission is evident upon review of each Cultural Resource Mitigation Measure. The BIA should not automatically select these mitigation measures, which are primarily focused on data recovery, and instead should consult with FIGR to consider other more appropriate measures that avoid destroying historic properties.<sup>112</sup>

T6-7  
cont.

Cultural Resource Mitigation Measure A requires monitoring for ground-disturbing activities within 150 feet of Pruitt Creek or within 50 feet of areas where there was an alert during the canine field survey.<sup>113</sup> This area is too limited. Cultural resources have been and are likely to be encountered throughout the Project area, which is known to have a high potential for buried archaeological sites.<sup>114</sup> As noted above, over 45 cultural artifacts have been identified and a culturally modified obsidian flake was found at a depth of 6-7 feet, which is deeper than the soils previously disturbed by agriculture in vineyard areas.<sup>115</sup> A tribal monitor from a culturally affiliated tribe should be required for any ground-disturbing activities on the parcel and for any Project improvements outside of the parcel, such as road upgrades or utility connections.

The Draft EIS is also vague as to which tribes may select a monitor. The Draft EIS specifies that activities will be monitored by “a qualified archaeologist, Native American Tribal Monitor from Koi Nation, and/or a Native American Tribal Monitor or archaeologist selected by interested Sonoma County tribes.”<sup>116</sup> The Tribe is extremely concerned that the current phrasing would not require a tribal monitor from a culturally affiliated tribe. By using “and/or,” the mitigation measure can be read to allow only one monitor: a qualified archaeologist, or a Native American Tribal Monitor from Koi Nation, or a Native American Tribal Monitor or archaeologist selected by interested Sonoma County tribes. Additionally, the phrase “interested Sonoma County tribes” is ambiguous. For example, if BIA approves the Project, would it then treat the Koi Nation as a Sonoma County tribe even though its ancestral territory is in Lake County? The BIA should engage in consultation with the Tribe to ensure the use of Native American Tribal Monitors selected by interested Southern Pomo tribes in Sonoma County and to allow a culturally affiliated tribe, and specifically FIGR, to have an archaeologist and a monitor present. Any changes to Cultural Resource Mitigation Measure A need to be developed in consultation with the Tribe to ensure that FIGR and its sister Southern Pomo tribes are able to select a Native American Tribal Monitor and archaeologist for all ground-disturbing activities of the Project.

T6-8

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<sup>112</sup> See ACHP Section 106 Guidance at 2 (describing data recovery as a way to retrieve important information before a site’s integrity is compromised), 22 (explaining Section 106’s emphasis on resolution through consultation when considering data recovery among a range of archaeological solutions), 27-28 (discussing the need for consultation on mitigation measures and, if a site cannot be avoided and preserved in place, the consideration through consultation of alternative or creative mitigation and potential use of agreed-upon data recovery).

<sup>113</sup> Draft EIS at 4-9.

<sup>114</sup> Draft EIS Appendix H-2 at 11; *see also* FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) at 2, 3; FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) at 6.

<sup>115</sup> Draft EIS Appendix H-6 at 3, 9; FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) at 27.

<sup>116</sup> Draft EIS at 4-9.

The mitigation measure also requires an archaeological monitoring program, but it does not require the involvement of or consultation with FIGR and other culturally affiliated tribes for its establishment.<sup>117</sup> Instead, the program would be developed through consultation between only the consulting archaeologist, the BIA as the lead agency, and the Koi Nation as the Project proponent.<sup>118</sup> Southern Pomo tribes must be consulted and included in the establishment of the monitoring program to ensure that the program is sensitive and responsive to concerns and cultural traditions of Southern Pomo people.

T6-8  
cont.

Cultural Resource Mitigation Measure B addresses the process for handling inadvertent discoveries pursuant to the NHPA Section 106 and 36 C.F.R. § 800.13. If a process to resolve any adverse effects on historic properties likely to be discovered has been established pursuant to NHPA Section 106, that process must be followed.<sup>119</sup> If no process has been established, then the lead agency must consult with the SHPO and consulting tribes to resolve adverse effects.<sup>120</sup> The proposed mitigation measure, however, only requires the BIA to “meet with the archaeologist or paleontologist and project proponent [Koi Nation] to determine the appropriate course of action, . . .”<sup>121</sup> This is inconsistent with NHPA Section 106 and excludes FIGR and other culturally affiliated tribes.

T6-9

Furthermore, the BIA should consult with the Tribe to ensure Cultural Resource Mitigation Measure B appropriately addresses completion of the NHPA Section 106 process and establishment of an Archaeological Research Design and Treatment Plan (ARDTP) to address inadvertent discoveries in accordance with federal law and *Guidelines for Archaeological Research Designs*.<sup>122</sup> Taking these steps is crucial because the BIA has already recognized the possibility that human remains could be encountered during Project construction.<sup>123</sup> It also knows that Southern Pomo ancestors were on the Project site and that religious and culturally significant cultural resources are present.<sup>124</sup> The mitigation measure and ARDTP also must comply with the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Preservation Act (ARPA). NAGPRA directs the process for determining ownership and control of Native American cultural items on tribal lands.<sup>125</sup> ARPA prohibits the removal or damage of archaeological resources on Indian lands.<sup>126</sup> Consultation with the Tribe on appropriate mitigation, completion of the NHPA Section 106 process, and

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<sup>117</sup> Draft EIS at 4-9.

<sup>118</sup> Draft EIS at 4-9.

<sup>119</sup> 36 C.F.R. § 800.13(a).

<sup>120</sup> 36 C.F.R. §§ 800.6, 800.13(b)(1).

<sup>121</sup> Draft EIS at 4-9.

<sup>122</sup> Office of Historic Preservation, California Department of Parks and Recreation, *Guidelines for Archaeological Research Designs* (February 1991).

<sup>123</sup> Draft EIS at 3-64; *see also* Draft EIS Appendix H-5 (noting multiple detections of human remains).

<sup>124</sup> Draft EIS at 3-60.

<sup>125</sup> 25 U.S.C. § 3002(a); 43 C.F.R. §§ 10.2, 10.4.

<sup>126</sup> 16 U.S.C. §§ 470aa–470hh; *see also* 43 C.F.R. § 7.4.

establishment of an ARDTP is the only way to ensure that consulting Southern Pomo tribes are appropriately involved in how subsequent discoveries are handled.

T6-9  
cont.

Cultural Resource Mitigation Measure C in the Draft EIS remains unchanged from the draft EA. It continues to muddle federal and state law by requiring notification of a “Most Likely Descendant” for disposition of human remains. The Project site is currently fee land subject to California state law, but the Project would result in the parcel becoming tribal trust land, making state law inapplicable. The term Most Likely Descendant arises under state law, which establishes a process for the disposition of Native American human remains found on non-federal and non-tribal land.<sup>127</sup> A tribe must establish its ancestry to a particular village site by providing a map of the tribe’s traditional territory and demonstrating a genealogical connection to at least one tribal member.<sup>128</sup> State law prioritizes tribes or individuals that trace ancestry to a particular village site within 12 miles of where the Native American human remains were discovered.<sup>129</sup>

The Koi Nation cannot meet these requirements. It is not considered under state law to have knowledge of cultural resources in the Project area.<sup>130</sup> Once Project land is taken into trust for the Koi Nation, however, California state law regarding the most likely descendant and the disposition of human remains would not apply. As discussed in more detail in the following section, the discovery and disposition of human remains on tribal lands would be controlled by federal law and NAGPRA.<sup>131</sup> Significantly, under NAGPRA ownership of human remains and sacred objects would shift away from the most likely descendant under state law to the tribe on whose tribal lands the cultural item was discovered, that is, the Koi Nation.<sup>132</sup> This would give the Koi Nation, a Southeastern Pomo tribe from Lake County, total control over cultural objects and ancestral remains associated with Southern Pomo tribes from Sonoma County. By approving the Project, BIA would prioritize the Koi Nation over Southern Pomo tribes and remove the only form of control the Southern Pomo tribes have over these resources. Southern Pomo tribes with the closest cultural affiliation to the Project site would be excluded from exercising control over the disposition of discovered human remains and sacred objects found there. *This is an existential impact to the Tribe.* It necessarily means that the Project will cause a significant effect to Southern Pomo tribes and cultural resources that cannot be mitigated.

T6-10

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<sup>127</sup> See Cal. Public Resources Code § 5097.98.

<sup>128</sup> Native American Heritage Commission, Most Likely Descendant Procedures (MLD Procedures) at 5 (available at <https://nahc.ca.gov/wp-content/uploads/2023/01/NAHCMLDProcedures.pdf>) (last visited August 12, 2024).

<sup>129</sup> MLD Procedures at 5.

<sup>130</sup> See Letter from NAHC Cultural Resources Analyst Cameron Vela to Taylor Alshuth (August 28, 2022) (not including the Koi Nation in the list of tribes that may have knowledge of cultural resources in the Project area).

<sup>131</sup> 25 U.S.C. 3002; 43 C.F.R. § 10.4.

<sup>132</sup> 43 C.F.R. § 10.7(a) (absent a known lineal descendant, prioritizing the tribe from whose tribal lands the item was discovered over the tribe with the closest cultural affiliation).

This Project will have adverse effects on historic properties under the NHPA and significant impacts to tribal cultural resources under NEPA. The cultural resource mitigation proposed is inadequate to reduce the impacts to a less than significant level. The BIA must reinitiate NHPA Section 106 consultation so that the cultural resource issues and the deficiencies with the mitigation measures in the Draft EIS can be discussed and addressed through confidential tribal consultation.

T6-10  
cont.

*D. The Draft EIS Fails to Acknowledge That the Project Will Fundamentally Undermine the Tribe's Sovereignty and Rights over Its Own Cultural Resources*

In addition to the direct impacts to on-site cultural resources described above, the Project will also have significant direct, indirect, and cumulative effects on the Tribe's sovereignty, its rights over Southern Pomo ancestors and sacred objects located at the Project site, and the Tribe's control over its cultural resources.<sup>133</sup> These impacts are rooted in state and federal cultural resources law.

As noted above, state law currently applies to the Project site, which is owned in fee. If any Native American human remains are found at a site subject to state law, the county coroner notifies the Native American Heritage Commission (NAHC), which will immediately notify those most likely descended from the Native American decedent.<sup>134</sup> The landowner must then work with the most likely descendants to determine appropriate treatment of the remains and associated cultural resources.<sup>135</sup> A landowner may also develop agreements with appropriate Native American groups for the handling of Native American human remains.<sup>136</sup> The NAHC interprets these provisions to mean that the most likely descendant and the appropriate Native American group will be culturally affiliated with the remains discovered.<sup>137</sup> The NAHC only designates a most likely descendant from the tribal ancestral territory where the remains were discovered.<sup>138</sup> Under state cultural resources law, if Native American human remains are located on the Project site, only a tribe whose ancestral territory includes the parcel could be recognized as culturally affiliated with the land and eligible to be a most likely descendant or reach agreement with the landowner on appropriate treatment and disposition of the remains. The Koi Nation, which is a Southeastern Pomo tribe whose ancestral territory is located near Clearlake, California, would not be considered a most likely descendant or culturally affiliated with the

T6-11

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<sup>133</sup> An agency must consider the extent to which the proposed action may adversely affect cultural resources or sacred sites, violate or be inconsistent with federal, state, or tribal law, or adversely affect the rights of tribes. 40 C.F.R. § 1501.3(d)(2). This includes reasonably foreseeable indirect effects and cumulative effects resulting from other past, present, and reasonably foreseeable actions. 40 C.F.R. § 1508.1(g).

<sup>134</sup> Cal. Public Resources Code § 5097.8; Cal. Health and Safety Code § 7050.5.

<sup>135</sup> Cal. Public Resources Code § 5097.98(b). State law refers to associated cultural items as "associated grave goods." Cal. Public Resources Code § 5097.98(a).

<sup>136</sup> Cal. Public Resources Code § 5097.94(l).

<sup>137</sup> MLD Procedures at 3, 4.

<sup>138</sup> MLD Procedures at 6.

Project site under state law. The Koi Nation lacks knowledge of cultural resources and currently has no say in the disposition of Native American human remains at the Project location.<sup>139</sup>

This changes significantly if the Project site is taken into trust. NAGPRA recognizes that tribes maintain rights in Native American human remains and cultural items, such as funerary and sacred objects.<sup>140</sup> It provides a process for the protection of these items that are found on federal or tribal lands.<sup>141</sup> Upon discovery of human remains or cultural items on a tribe's lands, the discovery must be reported to the tribe and to the BIA as an additional point of contact.<sup>142</sup> If human remains or cultural items are removed, NAGPRA establishes a priority order for their disposition, beginning with:

- 1) A known lineal descendant,
- 2) The tribe whose tribal lands the items were discovered on or removed from,
- 3) The tribe with the closest cultural affiliation.<sup>143</sup>

Cultural affiliation requires a reasonable connection that may be clearly demonstrated by available information or reasonably identified based on the location the item was discovered.<sup>144</sup>

NAGPRA essentially recognizes that a known lineal descendant would have the closest connection to human remains or cultural items, and thus should have the highest priority. Similarly, the tribe on whose land the cultural resources are discovered has the next highest priority because typically that tribe would have the closest cultural connection to the site. Indeed, most tribes in California have reservation lands within their ancestral territory. Therefore, similar to state law, the clear intent of NAGPRA is to ensure that human remains found on federal lands go to either a known lineal descendant or the tribe with the most direct cultural connection to the land where the remains were found.<sup>145</sup>

Taking the Project parcel into trust on behalf of the Koi Nation would turn this approach on its head. The tribes with the greatest cultural affiliation would be dispossessed of these profoundly sensitive cultural resources. Under state law, FIGR and other Southern Pomo tribes in Sonoma County possess the closest cultural affiliation to the Project site and would be the most likely descendant. They would control the disposition of any Native American human remains and associated funerary cultural items found on site. Once the Project parcel is taken into trust, this will no longer be the case. NAGPRA dictates that the Koi Nation would receive priority for

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<sup>139</sup> See Letter from NAHC Cultural Resources Analyst Cameron Vela to Taylor Alshuth (August 28, 2022) (not including the Koi Nation in the contact list of tribes with cultural resource knowledge for the Project area).

<sup>140</sup> 43 C.F.R. §§ 10.1; 10.2 (defining cultural items as a funerary object, sacred object, or object of cultural patrimony according to the traditional knowledge of a lineal descendant or tribe).

<sup>141</sup> 43 C.F.R. § 10.1, 10.5

<sup>142</sup> 43 C.F.R. § 10.5(a).

<sup>143</sup> 43 C.F.R. § 10.7(a).

<sup>144</sup> 43 C.F.R. §§ 10.2; 10.3(e)(1).

<sup>145</sup> 43 C.F.R. § 10.7(a).



ownership and control of these Southern Pomo ancestors.<sup>146</sup> As a result, *the most closely affiliated Southern Pomo tribe will lose its rights to its cultural resources and be prevented under federal law from controlling those resources.*

T6-11  
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The BIA cannot allow the Koi Nation to dispossess Southern Pomo tribes in Sonoma County of their ancestors and sacred objects. Project approval would cause significant impacts to the Tribe’s sovereignty and its rights to its ancestors and cultural resources. There is no way to mitigate the complete loss of this connection to the Tribe’s ancestors. These impacts must be avoided.

#### **IV. The Draft EIS Fails To Consider a Reasonable Alternative Within the Koi Nation’s Ancestral Territory**

The only alternative in the Draft EIS that would avoid significant cultural resource impacts is the environmentally preferred no project alternative. It is not, however, the only alternative available to the Koi Nation. Numerous tribes in Lake County have established casinos and economic development projects in their ancestral territory for the same purpose and need as the Koi Nation—to facilitate tribal self-sufficiency, self-determination, and economic development.

T6-12

The heart of an EIS is the alternatives section.<sup>147</sup> Agencies are required to consider a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need of a proposed project.<sup>148</sup> This may include reasonable alternatives outside of an agency’s jurisdiction.<sup>149</sup> An EIS that fails to examine viable alternatives is inadequate.<sup>150</sup>

The Draft EIS recognizes that the Koi Nation historically lived in Lake County, while Southern Pomo aboriginal territory falls within Sonoma County.<sup>151</sup> The Tribe has highlighted the technical, regulatory, and economic feasibility of a Lake County alternative location in its prior comment letters on this Project.<sup>152</sup> Yet the Draft EIS does not include an alternative location for the Koi Nation gaming project in Lake County. The BIA only passingly considered such a

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<sup>146</sup> While a lineal descendant would have priority over the Koi Nation under NAGPRA, it is extremely unlikely that any human remains discovered on the Project site would be tied to a specific identified person. *See* 43 C.F.R. § 10.2 (defining lineal descendant as requiring a connection to the remains of a “known individual”).

<sup>147</sup> 40 C.F.R. § 1502.14.

<sup>148</sup> 42 USC § 4332(c); 40 C.F.R. § 1502.14(a).

<sup>149</sup> 40 C.F.R. § 1502.14(a).

<sup>150</sup> *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004) (citing *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir. 1998)); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999) (citing *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)).

<sup>151</sup> Draft EIS at 3-59.

<sup>152</sup> FIGR NOI Comments at 2-4; FIGR EA Comments at 7-9; FIGR Scoping Comments at 6.

location in the initial scoping report for the Project.<sup>153</sup> Despite the Tribe's and other commenters demonstrating the reasonableness and viability of this alternative and the Tribe's identification of significant impacts to cultural resources, the BIA has not given this alternative any further consideration.<sup>154</sup>

The September 2022 Scoping Report states that five screening criteria were applied to the selection of development alternatives: 1) the extent to which they meet the Project's purpose and need; 2) technical and economic feasibility; 3) regulatory feasibility, including establishing the requisite connection for a restored lands determination; 4) ability to avoid or minimize environmental impacts; and 5) ability to contribute to a reasonable range of alternatives.<sup>155</sup> An alternative location within Lake County would satisfy all of these criteria.

The stated purpose and need for the Project is to facilitate tribal self-sufficiency, self-determination, and economic development.<sup>156</sup> There are currently four tribal casinos operating in Lake County.<sup>157</sup> Other tribal commercial development enterprises, too, have helped to advance the self-sufficiency, self-determination, and economic development of several tribes in Lake County.<sup>158</sup> Different locations result in different opportunities for economic development, but the ability to satisfy the stated purpose and need and economic feasibility of this Project in Lake County has been demonstrated by other tribes in Lake County.

An alternative location in Lake County is feasible on a technical and regulatory basis. The median property value in Lake County is significantly lower than the property value in Sonoma County.<sup>159</sup> There are also properties available in Lake County that could accommodate

T6-12  
cont.

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<sup>153</sup> September 2022 Scoping Report at 13.

<sup>154</sup> See Draft EIS at ES-13 (potentially significant impacts to cultural resources from all alternatives considered); Draft EIS Appendix A-2 at 3-4 (referring to the September 2022 Scoping Report for previously considered alternatives, but not providing any additional discussion of a location within the Koi Nation's ancestral territory in Lake County).

<sup>155</sup> September 2022 Scoping Report at 8, 12.

<sup>156</sup> Draft EIS at ES-1.

<sup>157</sup> Draft EIS at 55-56, 58-61; see California Gambling Control Commission, Tribal Casino Locations Alphabetical by Tribe as of August 31, 2023 (available at [https://www.cgcc.ca.gov/documents/Tribal/2023/List\\_of-Casinos\\_alpha\\_by\\_tribe\\_name.pdf](https://www.cgcc.ca.gov/documents/Tribal/2023/List_of-Casinos_alpha_by_tribe_name.pdf)) (last visited August 12, 2024). The casinos are operated by the Habematolel Pomo of Upper Lake, Middletown Rancheria of Pomo Indians, Robinson Rancheria, and Big Valley Band of Pomo Indians of the Big Valley Rancheria.

<sup>158</sup> See, e.g., R Pomo Pumps operated by the Robinson Rancheria, Habemco operated by the Habematolel Pomo of Upper Lake, and Uncle Buddy's Pumps operated by the Middletown Rancheria of Pomo Indians. See also page 1-4 of the EA for a fee-to-trust application approved by the BIA for a travel center operated by the Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria with the stated purpose and need of achieving economic self-sufficiency, providing employment opportunities for tribal members, and providing funding for tribal services.

<sup>159</sup> See, e.g., National Association of Realtors, County Median Home Prices Q1 2024 (providing that the median home price in Sonoma County is \$853,750, whereas the median home price in Lake County is \$349,880), <https://www.nar.realtor/research-and-statistics/housing-statistics/county-median-home-prices-and-monthly-mortgage-payment> (last visited August 12, 2024).

tribal development for housing and economic enterprises.<sup>160</sup> Tribal economic development in Lake County is undoubtedly an option and BIA could not reasonably eliminate it due to economic or technical feasibility based on the sparse analysis provided in the September 2022 Scoping Report.

The September 2022 Scoping Report suggests the key regulatory consideration is the ability to satisfy the necessary connection to the land for purposes of restored lands.<sup>161</sup> IGRA generally prohibits a tribe from gaming on land taken into trust after 1988, but provides an exception for restored lands.<sup>162</sup> The restored lands exception requires that a tribe demonstrate a significant historical connection to the land to be taken into trust.<sup>163</sup> The Koi Nation cannot demonstrate that it has a significant historical connection to the Project site, which is located in Southern Pomo ancestral territory.<sup>164</sup> The relocation of some tribal members to various locales in the area does not establish the requisite connection.<sup>165</sup> Nor does more recent movement of tribal members or evidence of travel to the location for trade or interaction with Southern Pomo people.<sup>166</sup> There must be more than a transient presence in the area.<sup>167</sup> There is no dispute that the Koi Nation is a Southeastern Pomo tribe whose historic rancheria and ancestral territory is

T6-12  
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<sup>160</sup> See, e.g., <https://www.sothebysrealty.com/eng/sales/detail/180-l-518-4pnknt/5115-east-highway-20-nice-ca-95464>; <https://www.loopnet.com/Listing/22433-Morgan-Valley-Rd-Lower-Lake-CA/30066864/> (57-acre property on the northeastern shores of Clear Lake, with existing buildings, infrastructure, and winery) (last visited August 12, 2024); <https://www.loopnet.com/Listing/5700-Roland-dr-Lucerne-CA/31159731/> (19.26 acres zoned for planned development commercial in Lucerne on the shore of Clear Lake with additional parcels potentially available) (last visited August 12, 2024); <https://www.loopnet.com/Listing/7590-CA-29-Hwy-Kelseyville-CA/32264455/> (337 acres with existing vineyards and view of Clear Lake near Kelseyville) (last visited August 12, 2024).

<sup>161</sup> September 2022 Scoping Report at 12.

<sup>162</sup> 25 U.S.C. § 2719.

<sup>163</sup> 25 C.F.R. § 292.12(b).

<sup>164</sup> See Draft EIS at 3-59 (describing the Project site in relation to the Southern Pomo homeland); FIGR IGRA Restored Lands Letter; FIGR EA Comments at 7–10, 25–28; FIGR NOI Comments at 3-4. In addition, the Draft EIS continues to rely on the Koi Nation’s consultant for the misleading assertion that Clear Lake Pomo moved into the Russian River drainage and spread this culture through Sonoma and Mendocino Counties. Draft EIS at 3-59. It also ignores the critique of this language movement model by anthropologist Mark Basgall, who argues that the Southern Pomo language developed in place in Sonoma County. Mark Basgall, *Archaeology and Linguistics: Pomoan Prehistory as Viewed from Northern Sonoma County, California*, J. OF CA. & GREAT BASIN ANTHROPOLOGY 4(1):3-22 (1982). Additionally, the Draft EIS does not discuss the Project in relation to the records of sacred lands on or in the vicinity of the Project. See Draft EIS at 3-60 (noting review of the Sacred Lands File found records of sacred lands on or in the vicinity of the APE).

<sup>165</sup> See Decision Letter from Assistant Secretary – Indian Affairs Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 19 (Sept. 1, 2011).

<sup>166</sup> See Decision Letter from Acting Assistant Secretary – Indian Affairs Donald E. Laverdure to the Honorable Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians (May 25, 2012) at 18 (discussing the relocation of individual Band members during the 1920s and 1960s); Decision Letter Assistant Secretary Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians (Sept. 1, 2011) at 14.

<sup>167</sup> Decision Letter Assistant Secretary Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians (Sept. 1, 2011) at 14.

located in Lake County near Clearlake.<sup>168</sup> Consequently, this criteria is more easily satisfied by an alternative location for the Project in Lake County.

A location in Lake County would also avoid the significant impacts to cultural resources described above. By locating the Project within the Koi Nation’s ancestral territory, it would avoid dispossessing the Tribe and other Southern Pomo tribes of control over the remains of their ancestors and the corresponding diminishment of the Tribe’s rights and sovereignty. As previously noted, these are significant impacts that cannot be mitigated and require consideration of an alternative location. The only real choice for the BIA under the Draft EIS is to either take the proposed Sonoma County parcel into trust or not. None of the other Draft EIS development alternatives can avoid the significant impacts to cultural resources that would occur by placing the parcel into trust for the Koi Nation. Not only would an alternative location in Lake County contribute to a reasonable range of alternatives, it would avoid the significant impacts to the Tribe’s sovereignty, rights, and cultural resources detailed in this letter.

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## V. Conclusion

The BIA is rushing the Project and Draft EIS forward without necessary and legally required information regarding cultural resources. NEPA and the NHPA direct the BIA to integrate the Project environmental review with the required Section 106 process to ensure that historic and traditional cultural property information essential to a reasoned choice among alternatives is not lacking when the BIA considers the reasonably foreseeable effects of this Project. The Tribe has joined with the SHPO in requesting the BIA reinstate the NHPA Section 106 consultation process to delineate the APE and identify and evaluate historic properties, including cultural resources, that will be affected by the Project.<sup>169</sup> This process must be completed prior to finalizing the Draft EIS to ensure the environmental review addresses the full scope of impacts to cultural resources from the Project.

T6-13

Despite BIA’s NHPA Section 106 deficiencies, an extensive amount of cultural resources have been documented on the Project site, which has several nearby archaeological sites. The measures proposed to mitigate the significant impact to cultural resources are deficient. They do not appropriately integrate Southern Pomo tribes, do not comply with NAGPRA requirements, and muddle state and federal requirements. They are also insufficient—only the no project

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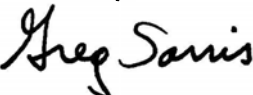
<sup>168</sup> Stephen Dow Beckham and Michelle Tiley, *The Koi Nation of Northern California: An Overview of Traditional Culture and History and Its Documented Historical Connection to Sebastopol and Santa Rosa, Sonoma County, California* (Aug. 2021) at 27; Gregory G. White, *Evidence for the Historical Primacy of the Koi Nation and the Southeastern Pomo in Northwestern California* (May 11, 2022) at 3; *see also* FIGR IGRA Restored Lands Letter at 14-19.

<sup>169</sup> Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (July 10, 2024); *see also* Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (July 22, 2024) (requesting BIA reinstate consultation).

alternative will avoid the significant impacts this Project would impose on the Tribe's sovereignty, its rights over its ancestors, and its cultural resources. It is critical that the Draft EIS include a location in Lake County to provide a clear alternative choice to the existing Draft EIS options that otherwise will have a significant impact on the Tribe's rights and cultural resources. An alternative location in Lake County would meet the purpose and need of the Project while avoiding these impacts.

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Once again, the Tribe asks the BIA to consult with the Tribe, SHPO, and other affected Southern Pomo tribes as required by the NHPA Section 106 process. That process will further demonstrate the need to consider an alternative location within the Koi Nation's ancestral territory in order to avoid the significant cultural resource impacts of this Project. The BIA must objectively and thoroughly evaluate this Project and its impacts as the trustee for all federally recognized tribes, not just the Koi Nation.

Sincerely,  
  
Greg Sarris  
Chairman

Enclosures

- Attachment 1 Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Requesting Public Hearing on Scoping & Extension of Comment Deadline for the Koi Casino Proposal (June 14, 2022)
- Attachment 2 Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Providing Scoping Comments on the Koi Casino Proposal (FIGR Scoping Comments) (June 27, 2022)
- Attachment 3 Sacred Lands File & Native American Contacts List Request, submitted by Taylor Alshuth (July 25, 2022)
- Attachment 4 Letter from Thomas Origer to FIGR THPO Buffy McQuillen (July 25, 2022)
- Attachment 5 Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Aug. 10, 2022)
- Attachment 6 Letter from FIGR THPO Buffy McQuillen to Thomas Origer (Aug. 10, 2022)
- Attachment 7 Letter from NAHC Cultural Resources Analyst Cameron Vela to Taylor Alshuth (August 28, 2022)
- Attachment 8 Letter from BIA Pacific Regional Director Amy Dutschke to FIGR Chairman Greg Sarris (Nov. 4, 2022)

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- Attachment 9 Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Dec. 19, 2022)
- Attachment 10 Letter from BIA Acting Pacific Regional Director Ryan Hunter to FIGR THPO Buffy McQuillen (Mar. 7, 2023)
- Attachment 11 Email from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (July 3, 2023)
- Attachment 12 Letter from BIA Pacific Regional Director Amy Dutschke to SHPO Julianne Polanco (July 18, 2023)
- Attachment 13 Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (Aug. 7, 2023)
- Attachment 14 Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (Aug. 10, 2023)
- Attachment 15 Letter from BIA Pacific Regional Director Amy Dutschke to FIGR Chairman Greg Sarris (Aug. 24, 2023)
- Attachment 16 Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Commenting on the Koi Casino EA (FIGR EA Comments) (Nov. 13, 2023)
- Attachment 17 Letter from FIGR Chairman Greg Sarris to Director Paula Hart, Office of Indian Gaming, U.S. Department of the Interior, Commenting on the Koi Nation’s Restored Lands Request (FIGR IGRA Restored Lands Letter) (Jan. 31, 2024)
- Attachment 18 Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 19, 2024)
- Attachment 19 Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Mar. 26, 2024)
- Attachment 20 Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 27, 2024)
- Attachment 21 FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) (Provided under Separate Cover as Confidential Attachment)
- Attachment 22 Letter from FIGR Chairman Greg Sarris to Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Commenting on Notice of Intent To Prepare an EIS for the Koi Nation Fee-to-Trust and Casino Project (FIGR NOI Comments) (Apr. 8, 2024)
- Attachment 23 Letter from FIGR Chairman Greg Sarris to Amy Dutschke Commenting on Notice of Gaming Land Acquisition for the Koi Nation (FIGR Part 151 Letter) (Apr. 30, 2024)
- Attachment 24 Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024)
- Attachment 25 Letter from BIA Pacific Regional Director Amy Dutschke to SHPO Julianne Polanco (May 6, 2024)
- Attachment 26 Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (May 29, 2024)
- Attachment 27 Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (July 10, 2024)

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cont.



- Attachment 28 Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (July 22, 2024)
- Attachment 29 Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (July 22, 2024)
- Attachment 30 Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Aug. 7, 2024)
- Attachment 31 FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project (Aug. 19, 2024) (Provided under Separate Cover as Confidential Attachment)

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cont.

# ATTACHMENT 1

Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Requesting Public Hearing on Scoping & Extension of Comment Deadline for the Koi Casino Proposal (June 14, 2022)



June 14, 2022

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

Chad Broussard, Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Re: Request for Public Hearing on Scoping & Extension of Comment Deadline for the Koi Casino Proposal

Dear Ms. Dutschke and Mr. Broussard,

On behalf of the Federated Indians of Graton Rancheria (the Tribe), I submit this request for a public scoping hearing and a 30-day extension to submit comments on the Koi gaming proposal located just outside Windsor, California. On May 27, the Bureau of Indian Affairs (BIA) published its notice of preparation of an Environmental Assessment (EA) / Tribal Environmental Impact Report (TEIR), providing a June 27 deadline to submit comments on the appropriate scope of environmental issues to be considered. We request that deadline be extended until July 27 given the scale and complexities of this project and the need for a public scoping hearing. We further request that the project be subject to a full Environmental Impact Statement (EIS), not an EA, and that BIA issue its Indian Gaming Regulatory Act (IGRA) determination prior to moving forward with the environmental process.

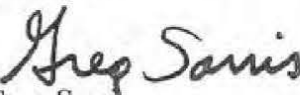
As you know, the proposal involves the development of a large Class III gaming facility—including a “casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure”—in an environmentally sensitive area demonstrably prone to wildfire. The proposed project is also outside the Koi Nation’s ancestral territory. Unsurprisingly, the project is opposed by all of the Sonoma County tribes and the local jurisdictions of Sonoma County and the Town of Windsor. See, for example, the attached County and Town resolutions. A large-scale project such as this should be comprehensively analyzed in a full EIS. An EA would not satisfy the National Environmental Policy Act’s legal

standards or commitment to thorough, fact-based decisionmaking and robust public involvement. It would be helpful to have a more open dialogue with the BIA through a public scoping hearing so that the public may better understand the BIA's preference for an EA, as well as the BIA's unusual decision to fold in a Tribal Environmental Impact Statement under State law prior to the existence of a State compact or any local intergovernmental agreements.

Last, as a matter of agency procedure and efficiency of federal resources, BIA should first conduct a restored lands determination under IGRA before proceeding with the environmental review process. If the Shiloh Road parcel does not qualify as the Koi's "restored lands," a casino cannot be built and there is no point in conducting a lengthy and expensive environmental review of the casino project. The Koi Nation is deeply rooted to the Lower Lake region in Lake County and cannot demonstrate a significant historical connection to this parcel or to Sonoma County, generally.

We respect the tribal sovereignty of the Koi Nation and support them in pursuing tribal self-determination and economic development within their ancestral homelands in Southeastern Pomo territory. However, we are deeply concerned with the Koi Nation's claim that it is historical connected to the lands of the Southern and Southwestern Pomo and with the agency review process as it is currently framed. Thank you for hearing our concerns and considering our requests. We look forward to working with the Department on this issue.

Sincerely,

  
Greg Sarris  
Chairman

Enclosures (2)

## ATTACHMENT 2

Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Providing Scoping Comments on the Koi Casino Proposal (FIGR Scoping Comments) (June 27, 2022)



June 27, 2022

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

Chad Broussard, Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Re: Graton Rancheria Scoping Comments on the Koi Casino Proposal

Dear Ms. Dutschke and Mr. Broussard,

On behalf of the Federated Indians of Graton Rancheria (FIGR or the Tribe), I submit these comments on the Koi fee-to-trust application for a gaming project just outside Windsor, California. On May 27, the Bureau of Indian Affairs (BIA) published its Notice of Preparation (NOP) of an Environmental Assessment (EA) / Tribal Environmental Impact Report (TEIR), providing a June 27 deadline to submit comments on the appropriate scope of environmental issues to be considered.<sup>1</sup> Due to the scale of this project and fundamental agency process concerns, by letter dated June 14 we requested a public scoping hearing and that the deadline be extended 30 days. The BIA denied our request via email on June 24, citing the interest of efficiency and noting that the National Environmental Policy Act (NEPA) does not require a Notice of Preparation or scoping period at this stage of the process. While we respectfully disagree with your decision, as detailed below, we nonetheless provide substantive scoping comments to assist your agency.

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<sup>1</sup> BIA, Notice of Preparation of an Environmental Assessment / Tribal Environmental Impact Report, *available at* <https://www.shilohresortenvironmental.com/> (hereinafter referred to as the NOP).



## **I. The BIA Should Proceed with an Environmental Impact Statement (EIS)**

We start by identifying serious procedural concerns that should be addressed prior to moving forward with the NEPA process. The NOP describes the Koi Nation's application to transfer into trust a 68.6-acre parcel at 222 E. Shiloh Road (the Property) for the purpose of constructing a "casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure," including a wastewater treatment plant.<sup>2</sup> The Koi Nation's website provides more detail, stating that "[t]he project will include a 2,500 Class III gaming machine facility, a 200-room hotel, six restaurant and food service areas, a meeting center and a spa," and the Koi Nation's spokesperson indicated the project will be 1.2 million square feet.<sup>3</sup> Given the project's size and location in an environmentally sensitive area along a wildfire corridor, there are bound to be short and long-term effects that implicate numerous environmental issues and public safety.<sup>4</sup> A project of this scale warrants a full Environmental Impact Statement (EIS) and BIA's practice has long been to conduct the more comprehensive review demanded by an EIS for tribal gaming projects of this nature.<sup>5</sup> BIA has not offered an explanation for why it believes an EA is appropriate in this context.<sup>6</sup>

A public scoping hearing would have been an opportunity for the BIA to explain to the public and impacted tribal sovereigns, such as our own, the rationale for treating this tribal gaming project differently. In fact, our own casino resort project—also a Class III gaming facility of similar size and scope—underwent public and local jurisdiction scoping hearings to

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<sup>2</sup> NOP at 3.

<sup>3</sup> Koi Nation, "Shiloh Resort & Casino," <https://www.koinationsonoma.com/project/> (last visited June 24, 2022); See Paul Bomberger, *Koi Indian tribe unveils plans for \$600 million casino resort in Sonoma County*, THE PRESS DEMOCRAT, Sept. 15, 2021.

<sup>4</sup> See 40 C.F.R. § 1501.3(b).

<sup>5</sup> See, e.g., BIA, Final Environmental Impact Statement, Tejon Indian Tribe Trust Acquisition and Casino Project (Oct. 2020) (hereinafter 2020 Tejon FEIS) (evaluating trust acquisition of 306 acres of land for 715,800 ft<sup>2</sup> Class III gaming facility with casino, restaurants, entertainment and retail space, a fire and police station, RV park, water treatment facilities, and 400-room hotel); BIA, Final Environmental Impact Statement, Tule River Indian Tribe Fee-to-Trust and Eagle Mountain Casino Relocation Project (Apr. 2019) (hereinafter 2019 Tule River FEIS) (evaluating trust acquisition of 40 acres of land for 452,465 ft<sup>2</sup> Class III gaming facility with casino, food and beverage facilities, events center, conference center, parking and 250-room hotel); BIA, Final Environmental Impact Statement / Tribal Project Environmental Document, Wilton Rancheria Fee-to-Trust and Casino Project (Dec. 2016) (hereinafter 2016 Wilton FEIS) (evaluating trust acquisition of 35.92 acres of land for 608,756 ft<sup>2</sup> Class III gaming facility with casino, restaurants, convention center, and 302-room hotel); BIA, Final Environmental Impact Statement, Soboba Band of Luiseño Indians Horseshoe Grande Fee-to-Trust Project (Sept. 2013) (hereinafter 2013 Soboba FEIS) (evaluating trust acquisition of 55 acres of land for 729,500 ft<sup>2</sup> Class III gaming facility with casino, restaurants, retail, a convention center, events arena, and 300-room hotel, as well as two fire stations and gas station).

<sup>6</sup> Relatedly, to our knowledge, it is not typical for the BIA to prepare a TEIR, under State law, alongside its federally required environmental analysis, prior to the existence of a State compact or local governmental agreements. Moreover, the BIA generally has no involvement with a TEIR as the tribe is the lead agency and State and local agencies would be involved. The NOP is unclear how the TEIR would be structured and who would serve as the lead agency.



support the preparation of a full EIS.<sup>7</sup> Yet in this case, the BIA determined not to conduct a scoping hearing, implying that because a public scoping period is not required for an EA, the BIA was already exceeding its procedural obligations by allowing for scoping comments.<sup>8</sup> The irony, of course, is that if the BIA *were* properly proceeding with this project under an EIS, then a public scoping period *would* be required and BIA's practice has long been to hold a public hearing or meeting during scoping when preparing EISs for these types of projects.<sup>9</sup> In any event, we once again urge you to evaluate this project pursuant to an EIS, rather than an EA.

## **II. The BIA Should Issue Its IGRA Determination Prior to Proceeding with NEPA**

We also reiterate our position that BIA should first conduct a restored lands determination under IGRA before it continues with environmental review. The Koi Nation offers novel arguments to support its purported significant historical connection<sup>10</sup> to the Shiloh Parcel. These arguments, anchored on the 20<sup>th</sup> century relocation of certain Koi families from the Nation's ancestral homelands in Lower Lake, California, to Sebastopol and Santa Rosa in Sonoma County, go far beyond the bounds of existing Departmental precedent. The Department has already determined that "relocation of some of [a tribe's] members to various locales throughout the Bay Area does not equate to the [tribe] itself establishing subsistence use or occupancy in the region apart from its Rancheria"<sup>11</sup> and that "evidence of the [tribe's] citizens' movements as late as the 1960s is more of a *modern* era activity, as opposed to *historic*, as those two terms are used in the Part 292 regulations."<sup>12</sup> Accepting the Koi Nation's arguments would require the Department to effectively eliminate the "significant historical connection" requirement set forth in 25 C.F.R. § 292.12(b) or, at the least, to permissively recast its interpretive standard in such a way that dismantles the coherence of this entire body of

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<sup>7</sup> See Environmental Impact Statement Scoping Report for the Graton Rancheria Casino & Hotel Project (Aug. 2004), available at [https://www.gratoneis.com/documents/scoping\\_report/default.htm](https://www.gratoneis.com/documents/scoping_report/default.htm). The environmental review process for our gaming facility was conducted by the National Indian Gaming Commission, a sister agency within the Department of the Interior.

<sup>8</sup> As BIA knows, the Departmental regulations concerning preparation of an EA largely leave public involvement at the discretion of the lead agency. See 43 C.F.R. § 46.305. We are concerned that BIA would nonetheless choose to proceed with an EA for a project of this size and for which the BIA has notice there is substantial public interest.

<sup>9</sup> See, e.g., BIA, Tejon Indian Tribe Trust Acquisition and Casino Project Scoping Report, Appendix C – Scoping Meeting Transcript (Feb. 2019); BIA, Tule River Indian Tribe Fee-to-Trust and Eagle Mountain Casino Relocation Project Scoping Report, Appendix C – Scoping Meeting Transcript (Apr. 2017); BIA, EIS Scoping Report Wilton Rancheria Fee-to-Trust and Casino Project, Appendix C – Scoping Meeting Sign-In Sheet and Transcript (Feb. 2014).

<sup>10</sup> The Koi Nation must demonstrate it has a "significant historical connection" to the Property in order for the Property to qualify as "restored lands" pursuant to 25 C.F.R. § 292.11(b). "Significant historical connection" means "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty," or—as relevant here—by "historical documentation [of] the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." 25 C.F.R. § 292.2.

<sup>11</sup> Decision Letter from Assistant Secretary – Indian Affairs Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 19 (Sept. 1, 2011).

<sup>12</sup> Decision Letter from Acting Assistant Secretary – Indian Affairs Donald E. Laverdure to the Honorable Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians at 18 (May 25, 2012) (discussing the relocation of individual Band members during the 1920s and 1960s) (emphasis in original).

Departmental precedent. The novelty and potential ramifications of the Koi Nation's restored lands arguments should be addressed head on by the Department before scarce agency resources are further expended on environmental review (particularly if the BIA's decision to proceed as an EA and not an EIS has been driven in part by resource concerns).<sup>13</sup>

The question of a significant historical connection between the Koi Nation and the Property is not simply a matter of regulatory compliance to our Tribe. Our people are from this region. Our sacred sites, burial grounds, ancestral villages, and traditional plant and animal species are rooted here. We are not the only ones and we recognize this shared heritage with our sister tribes in Sonoma County: the Lytton Rancheria of California, the Dry Creek Rancheria Band of Pomo Indians, the Cloverdale Rancheria of Pomo Indians, and the Kashia Band of Pomo Indians. Others, such as the Koi Nation's ancestors, the Southeastern Pomo, have traveled through this region and have certain descendants who made their homes here in modern times. It is an affront, however, to treat those histories as synonymous. Moreover, if the federal government were to reverse its policies and treat these histories as equal, it would undermine our ability to claim and protect our tribal cultural heritage, with cascading impacts that go far beyond the fee-to-trust application at hand.

### **III. The Appropriate Scope of Issues to be Evaluated through NEPA**

Once this proposal is ripe for environmental review, we agree with the BIA that the issue areas identified in the NOP must be considered. These include: land resources/geology and soils; water resources; air quality/greenhouse gases; biological resources; cultural resources; socioeconomic conditions/environmental justice; transportation and circulation; land use; public services and utilities; noise; hazardous materials; aesthetics; and cumulative, indirect, and growth-inducing effects. This project site is located in our ancestral territory. Moreover, our Tribal Citizens and employees live in the vicinity of the project.<sup>14</sup> Therefore, we are deeply invested in the BIA's thorough and objective analysis of the project's impacts.

We particularly wish to emphasize the importance of considering cultural resources and proper National Historic Preservation Act (NHPA) review. As already stated, this Property is within the ancestral territory of the Southern Pomo people, which today includes a number of federally recognized tribes, such as our own. Beyond the presence of a nearby recorded

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<sup>13</sup> This is not a matter of conjecture or hyperbole. As of March 31, 2022, there were 162 pending fee-to-trust applications in the Pacific Region, including one for our Tribe. *See* BIA, Fee-to-Trust Consortium, Status as of March 31, 2022 (circulated by the Pacific Region during the April 6, 2022 quarterly consortium meeting). Most of these applications have been pending for over five years, some for much longer. All of these applications necessitate environmental review pursuant to NEPA and are impacted when the BIA must channel its strapped resources towards projects such as this one.

<sup>14</sup> For example, 89 FIGR Citizens live in the zip code of the project location (95403) and the two nearest zip codes (95492 and 95439). The FIGR government office and the Graton Resort and Casino are approximately an 18-minute drive from the Shiloh parcel.

archaeological site, as noted in the NOP,<sup>15</sup> initial review by our Tribal Heritage Preservation Officer (THPO) indicates that Southern Pomo ancestors were likely on this land and that tribal cultural resources are present. Moreover, the scale of ground disturbance contemplated here—construction of a casino, 200-room hotel, conference/event center, restaurant/bars, parking and infrastructure, and a wastewater treatment plant—means the project has potential to cause effects to a property of traditional religious and cultural importance to our Tribe.<sup>16</sup> The fact that the Property has undergone a low level of prior disturbance due to grading for agriculture and a residential building in no way precludes the presence of and impacts on cultural or historic resources. Moreover, the BIA cannot presuppose or begin to identify mitigation as an option before it fully understands what the effects will be. Accordingly, the BIA must undertake review pursuant to the NHPA and consult with the State Historic Preservation Office (SHPO) and THPOs, including concurrence on the Area of Potential Effects (APE) and necessary identification and evaluation of cultural and historic resources and the project’s impacts.

Regarding groundwater resources, the Santa Rosa Plain groundwater basin is designated by the California Department of Water Resources as a medium priority groundwater basin subject to the Sustainable Groundwater Management Act. Our Tribe is an advisory committee member of the Santa Rosa Plain Groundwater Sustainability Agency (GSA), which is working to achieve groundwater sustainability in the region. The GSP documents that groundwater storage is declining at a rate of 2,100 acre-feet per year. Our Tribe implements an on-going well monitoring program on our land as and other nearby wells, as well as mitigation measures to reduce impacts to the groundwater basin. The project would result in an increase in water use and wastewater demand that could significantly drawdown on regional wells and the overall groundwater basin, even with implementation of an on-site tertiary wastewater treatment plant. The EA/TEIR should include a comprehensive water/wastewater assessment, and explain how the proposed project’s impacts can be mitigated through funding implementation actions identified in the GSP or through other mitigation measures.

Without yet knowing the actual project design, and given that the NOP provides vague reassurances that “[t]o the extent feasible, the Proposed Project would avoid development within Pruitt Creek and associated riparian corridor,”<sup>17</sup> we recommend that BIA carefully consider impacts to Pruitt Creek and associated riparian areas and/or potential wetlands and whether permitting is required under the Clean Water Act. This is another example of why a full EIS is

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<sup>15</sup> NOP at 6 (stating that the “nearest recorded archaeological resource is a lithic scatter approximately ¼ to ½ mile east of the Project site”).

<sup>16</sup> See 54 U.S.C. § 302706 (providing that properties of traditional religious and cultural importance to Indian tribes may be eligible for inclusion on the National Register and requiring federal consultation with tribes on these types of properties); Indian Affairs National Environmental Policy Act (NEPA) Guidebook at 13 (Aug. 2012) (“It should be noted it is the type of activity that is critical for making this [no potential to cause effects] determination, not the presence or absence of a historic property. Consultation with the SHPO/THPO will normally be required to make any further determination regarding the scope of identification efforts and any effects to historic properties.”)

<sup>17</sup> NOP at 6 (emphasis added).



necessary. The BIA should also consider the fact that Project site is located within a FEMA special flood hazard area and whether coordination with FEMA is necessary.

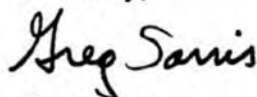
Regarding biological resources, due to the uncertain proximity of the project to Pruitt Creek, which is protected habitat under various federal laws, the BIA should consider Section 7 consultation under the Endangered Species Act. The BIA should also examine the potential presence of special status plant species.

Additionally, while the NOP identifies traffic and public services, generally, as issues to be considered, it is important that BIA seriously evaluate the intersection between wildfire propensity, traffic/evacuation routes, and the concurrent risk to public safety. This project, which will easily bring in tens of thousands of visitors a day, is proposed in a demonstrably wildfire prone area with limited evacuation routes. The risk of wildfire to human health and safety is unfortunately very real to those of us who live in this region and careful planning is essential.

Finally, we urge the BIA to consider additional alternatives, such as alternative project locations that are within the Koi Nation's aboriginal territory of Lake County.<sup>18</sup> According to the NOP, the alternatives presently under consideration are limited to the project as proposed by the Koi Nation, a reduced-intensity alternative, a non-gaming alternative, and a no action alternative. As such, only action or inaction on the Shiloh Road Property is considered. Again, if this project were properly proceeding as an EIS, then NEPA requires, and BIA practice supports, that a reasonable range of alternatives (including other project locations) must be considered.<sup>19</sup>

We thank you again for hearing our concerns and hope you will consider them seriously.

Sincerely,



Greg Sarris  
Chairman

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<sup>18</sup> See, e.g., 2016 Wilton FEIS, Section 2 – Alternatives (Dec. 2016) (considering, among the alternatives, the tribe's former historic rancharia site).

<sup>19</sup> See, e.g., BIA, 2020 Tejon FEIS, Section 2- Alternatives (Oct. 2020) (analyzing various project alternatives at two different sites and additionally considering but eliminating from further analysis two additional sites); BIA, Final Environmental Impact Statement, North Fork Casino North Fork Rancharia of Mono Indians Fee-to-Trust and Casino/Hotel Project, Section 2 - Alternatives (analyzing various project alternatives at two different sites and additionally considering but eliminating from further analyses 11 additional sites).

## ATTACHMENT 3

Sacred Lands File & Native American Contacts List Request, submitted by Taylor Alshuth (July 25, 2022)



## **Sacred Lands File & Native American Contacts List Request**

### **NATIVE AMERICAN HERITAGE COMMISSION**

1550 Harbor Blvd., Suite 100  
West Sacramento, CA 95691  
(916) 373-3710  
(916) 373-5471 – Fax  
nahc@nahc.ca.gov

*Information Below is Required for a Sacred Lands File Search*

Project: Koi Nation Shiloh Resort and Casino  
County: Sonoma

USGS Quadrangles  
Name: Healdsburg  
Township 8N Range 8W Section(s) 20 MDBM

Date: July 25, 2022  
Company/Firm/Agency: Tom Origer & Associates  
Contact Person: Taylor Alshuth

Address: PO Box 1531  
City: Rohnert Park                      Zip: 94927  
Phone: (707) 584-8200                  Fax: (707) 584-8300  
Email: taylor@origer.com

Project Description:  
The project area is approximately 68 acres. The project includes development of a resort and casino in Windsor.

## ATTACHMENT 4

Letter from Thomas Origer to FIGR THPO Buffy McQuillen (July 25, 2022)

# Tom Origer & Associates

Archaeology / Historical Research

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July 25, 2022

Buffy McQuillen  
Federated Indians of Graton Rancheria  
6400 Redwood Drive, Suite 300  
Rohnert Park, California 94928

Re: Koi Nation Shiloh Resort and Casino Project

Dear Ms. McQuillen:

This letter concerns a proposed project involving the conveyance of land from fee to federal trust status within Sonoma County at 222 East Shiloh Road, Windsor. A figure showing the location of the proposed project is attached. The project includes development of a resort and casino.

We are writing to notify you of the project and provide the opportunity to share any information regarding cultural resources which may be present on the property. This project is not subject to the California Environmental Quality Act, and AB 52 consultation will not apply. The Bureau of Indian Affairs will be the federal lead agency for compliance with Section 106 of the National Historic Preservation Act; however, that process has not been initiated at this time.

Archival research shows that, with one small exception along Old Redwood Highway, the property had not been previously subjected to archaeological survey and no previously recorded Historic Properties are present. Currently, two field surveys of the property were completed for the project. The studies resulted in the discovery of several widely scattered artifacts and broken obsidian pieces of unknown origin. Because the property is marked by the presence of natural obsidian pebbles, and because the property has been tilled for orchards and vineyards, the broken obsidian pieces could be products of agricultural practices (e.g., tilling) or they could be products of prehistoric knapping to make chipped stone tools. Further study is planned to determine their origin, as well as whether buried cultural strata are likely to be present.

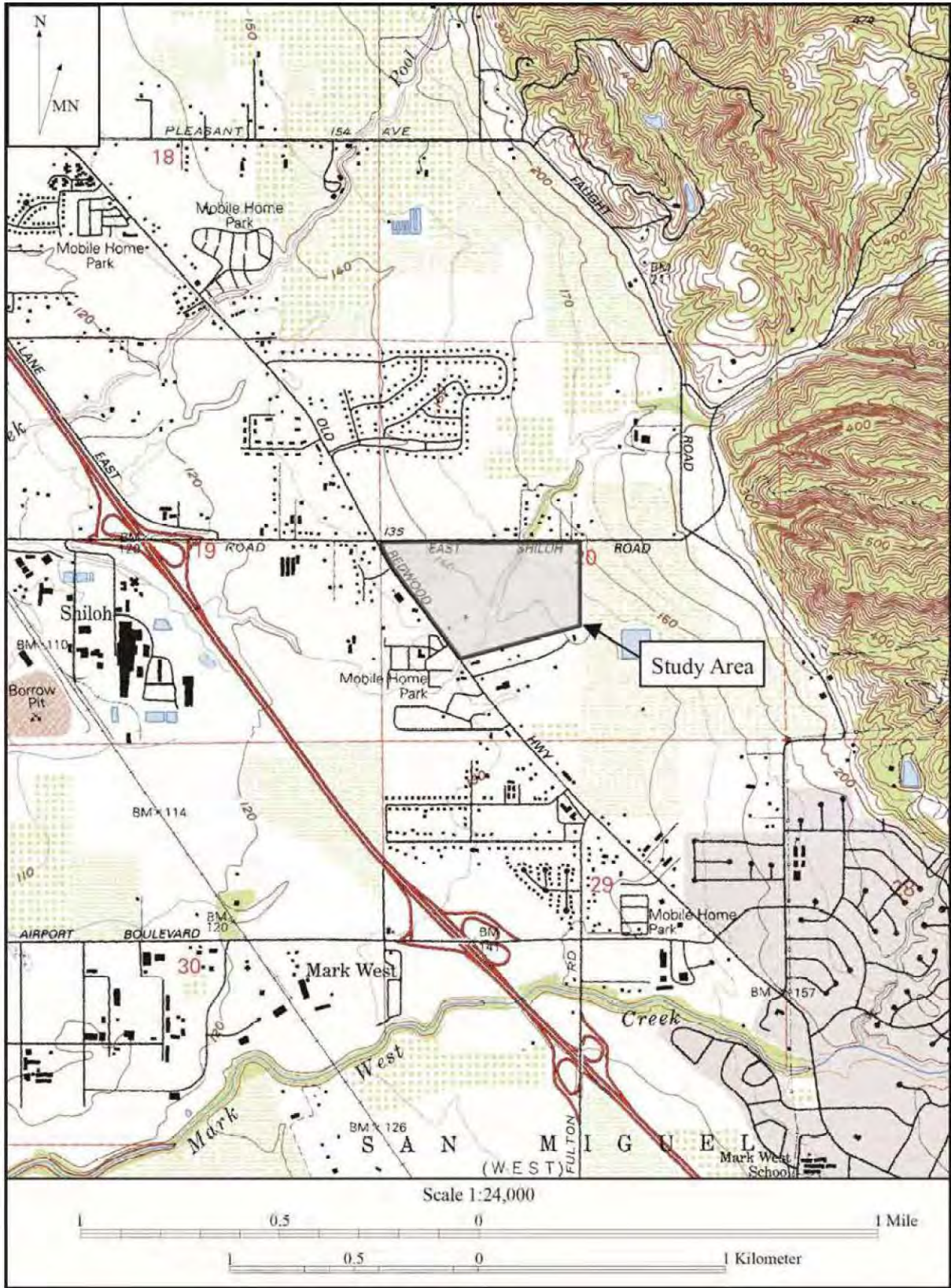
If you have information regarding the presence of cultural resources on or in the immediate vicinity of the property, please contact us as soon as possible using the information at the bottom of this letter. If you prefer, you can contact Dan Hall, Regional Archeologist, at the Bureau of Indian Affairs directly ([harold.hall@bia.gov](mailto:harold.hall@bia.gov)).

Cordially,



Thomas M. Origer  
Registered Professional Archaeologist (#10333)  
Email: [origer@origer.com](mailto:origer@origer.com)





## ATTACHMENT 5

Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Aug. 10, 2022)





August 10, 2022

Dan Hall  
Regional Archaeologist  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Section 106 Consultation for Koi Nation Shiloh Resort and Casino Project**

Dear Mr. Hall,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write to request consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA).

By letter dated July 25, 2022, Tom Origer notified the Tribe that potential cultural resources were being studied at 222 East Shiloh Road in furtherance of the proposed Koi Nation resort and casino project and in anticipation of Section 106 of the NHPA. Mr. Origer indicated that while the Bureau of Indian Affairs (BIA) has not yet initiated the Section 106 process, the Tribe could directly contact you about this project.

As a threshold matter, the BIA has already commenced the National Environmental Policy Act (NEPA) process. The BIA therefore has an obligation to determine if the federal action here constitutes a federal undertaking and then proceed with tribal consultation and identification pursuant to the NHPA and accompanying regulations.<sup>1</sup> The fact that cultural resources are being studied outside of the formal Section 106 process is unacceptable. Completion of these cultural studies in anticipation of, but external to, the imminent NHPA process does not conform with the Section 106 regulations and guidance.<sup>2</sup> We further question

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<sup>1</sup> See 36 C.F.R. § 800.3 (requiring the agency to determine if the federal action constitutes an undertaking and to “make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties,” also providing that tribes that request in writing to be a consulting party “shall be one”). See also 36 C.F.R. § 800.4 (requiring the agency to identify historic properties by, among other things, “gather[ing] information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.”).

<sup>2</sup> For example, the ACHP Archaeological Guidance states that “the ACHP’s regulations [36 CFR § 800.4(a)(3)] require federal agencies to seek information from certain parties, such as the SHPO/THPO, Indian tribes, or NHOs,



whether such independently conducted studies outside the Section 106 process could appropriately be relied upon to satisfy the Section 106 requirements. This work should be conducted only once the BIA has initiated the Section 106 process, and we wish to be formally consulted through that established process.

As we have stated to Mr. Origer, this property is within the ancestral territory of the Southern Pomo people, which today includes a number of federally recognized tribes, such as our own. Moreover, as explained to the BIA in our June 27, 2022, environmental scoping letter, our initial review indicates that Southern Pomo ancestors were likely on this land and that religious and culturally significant tribal cultural resources are present. Mr. Origer's preliminary studies serve as further confirmation. Therefore, no testing of potential cultural resources should be conducted without the participation and oversight of the culturally affiliated tribes to this project site, which include FIGR.<sup>3</sup>

Finally, we must emphasize that any participation by the Tribe in cultural resource review for the project does *not* equal acquiescence to or support of the proposed project. The Tribe has repeatedly stated it does not believe this project is lawful under the Indian Gaming Regulatory Act and that the Department of Interior should address that critical issue prior to conducting the environmental review. The Tribe also has serious concerns with the adequacy of the BIA's environmental review process and the fact that this project is currently proceeding with an Environmental Assessment rather than a full Environmental Impact Statement. Any participation by Tribe in the identification and review of cultural resources arises solely from the Tribe's obligation to actively protect its important cultural resources—since it is clear these resources are already being handled—and in no way reflects the Tribe's views about the legality or appropriateness of this project.

Thank you and we look forward to working with you.

Sincerely,



Buffy McQuillen

FIGR Tribal Heritage Preservation Officer

CC: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Amy Dutschke, Regional Director, Bureau of Indian Affairs

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before conducting an archaeological survey. *It is imperative, therefore, that the agency initiate consultation prior to conducting any such archaeological fieldwork.*" ACHP Section 106 Archaeology Guidance at 9 (dated Jan. 1, 2009) (emphasis added).

<sup>3</sup> See, e.g., Advisory Council on Historic Preservation (ACHP) Section 106 Archaeology Guidance at 18 (dated Jan. 1, 2009) ("When planning to conduct identification studies it is essential to consult with the SHPO/THPO, Indian tribes, or NHOs that might ascribe traditional religious and cultural significance to listed or eligible archaeological sites in the APE and others knowledgeable about the region and its past *before any survey and field testing begins.*") (emphasis added).

## ATTACHMENT 6

Letter from FIGR THPO Buffy McQuillen to Thomas Origer (Aug. 10, 2022)



August 10, 2022

Tom Origer & Associates  
P.O. Box 1531  
Rohnert Park, CA 94927

**Re: Koi Nation Shiloh Resort and Casino Project**

Dear Mr. Origer,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I confirm our receipt of your identical letters, dated July 25, 2022, addressed to myself, Chairman Greg Sarris, and FIGR cultural expert, Gene Buvelot, concerning the Koi Nation's proposed resort and casino project at 222 East Shiloh Road. Thank you for the notification of cultural resource work being conducted in furtherance of this project and in anticipation of Section 106 of the National Historic Preservation Act (NHPA).

This property is within the ancestral territory of the Southern Pomo people, which today includes a number of federally recognized tribes, such as our own. As stated in our June 27, 2022, environmental scoping letter to the Bureau of Indian Affairs (BIA), our initial review indicates that Southern Pomo ancestors were likely on this land and that religious and culturally significant tribal cultural resources are present. Your preliminary studies, as outlined in your letter, serve as further confirmation. Therefore, as a threshold matter, no surveys, collecting, or testing of potential cultural resources should be conducted without the participation and oversight of the culturally affiliated tribes to this project site, which include FIGR.<sup>1</sup> Moreover, we expect that you will abide by Section 106, the professional requirements set forth in the Register of Professional Archaeologists (RPA) Code & Standards, and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. At this juncture, the Tribe requests copies of all records that you have already gathered or generated. The Tribe further requests you inform your client that you cannot proceed with further study of potential cultural resources without the participation of the culturally affiliated tribes.

Given that the BIA has already commenced the National Environmental Policy Act (NEPA) process, the BIA has an obligation to determine if this project constitutes a federal

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<sup>1</sup> See, e.g., Advisory Council on Historic Preservation (ACHP) Section 106 Archaeology Guidance at 18 (dated Jan. 1, 2009) ("When planning to conduct identification studies it is essential to consult with the SHPO/THPO, Indian tribes, or NHOs that might ascribe traditional religious and cultural significance to listed or eligible archaeological sites in the APE and others knowledgeable about the region and its past *before any survey and field testing begins.*") (emphasis added).

undertaking and then proceed with tribal consultation and identification pursuant to the NHPA.<sup>2</sup> The fact that cultural resources are being studied outside of the formal Section 106 process is unacceptable. Completion of these cultural studies in anticipation of, but external to, the NHPA process does not conform with the Section 106 regulations and guidance.<sup>3</sup> We further question whether such independently conducted studies outside the Section 106 process could appropriately be relied upon to satisfy the Section 106 requirements. The Tribe is therefore separately requesting consultation with the BIA on this project pursuant to the established Section 106 process and we request that you discontinue further studies until that process has properly commenced.

Finally, we must emphasize that any participation by the Tribe in this cultural resource review does *not* equal acquiescence to or support of the proposed project. The Tribe has repeatedly stated it does not believe this project is lawful under the Indian Gaming Regulatory Act and that the Department of Interior should address that critical issue prior to conducting the environmental review. The Tribe also has serious concerns with the adequacy of the BIA environmental review process and the fact that this project is currently proceeding with an Environmental Assessment rather than a full Environmental Impact Statement. Any participation by the Tribe in the identification and review of cultural resources arises solely from the Tribe's obligation to actively protect its important cultural resources—since it is clear these resources are already being handled—and in no way reflects the Tribe's views about the legality or appropriateness of this project.

Sincerely,



Buffy McQuillen

FIGR Tribal Heritage Preservation Officer

CC: Julianne Polanco, State Historic Preservation Officer  
Dan Hall, Regional Archaeologist, Bureau of Indian Affairs  
Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Amy Dutschke, Regional Director, Bureau of Indian Affairs

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<sup>2</sup> See 36 C.F.R. § 800.3 (requiring the agency to determine if the federal action constitutes an undertaking and to “make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties,” also providing that tribes that request in writing to be a consulting party “shall be one”). See also 36 C.F.R. § 800.4 (requiring the agency to identify historic properties by, among other things, “gather[ing] information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.”).

<sup>3</sup> For example, the ACHP Archaeological Guidance states that “the ACHP’s regulations [36 CFR § 800.4(a)(3)] require federal agencies to seek information from certain parties, such as the SHPO/THPO, Indian tribes, or NHOs, before conducting an archaeological survey. *It is imperative, therefore, that the agency initiate consultation prior to conducting any such archaeological fieldwork.*” ACHP Section 106 Archaeology Guidance at 9 (dated Jan. 1, 2009) (emphasis added).



## ATTACHMENT 7

Letter from NAHC Cultural Resources Analyst Cameron Vela to Taylor Alshuth (August 28, 2022)

## NATIVE AMERICAN HERITAGE COMMISSION

August 28, 2022

Taylor Alshuth  
Tom Origer and Associates

Via Email to: [taylor@origer.com](mailto:taylor@origer.com)

**Re: Koi Nation Shiloh Resort and Casino Project, Sonoma County**

Dear Mr. Alshuth:

A record search of the Native American Heritage Commission (NAHC) Sacred Lands File (SLF) was completed for the information submitted for the above referenced project. The results were positive. Please contact the Mishewal-Wappo Tribe of Alexander Valley on the attached list for information. Please note that tribes do not always record their sacred sites in the SLF, nor are they required to do so. A SLF search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with a project's geographic area. Other sources of cultural resources should also be contacted for information regarding known and recorded sites, such as the appropriate regional California Historical Research Information System (CHRIS) archaeological Information Center for the presence of recorded archaeological sites.

Attached is a list of Native American tribes who may also have knowledge of cultural resources in the project area. This list should provide a starting place in locating areas of potential adverse impact within the proposed project area. Please contact all of those listed; if they cannot supply information, they may recommend others with specific knowledge. By contacting all those listed, your organization will be better able to respond to claims of failure to consult with the appropriate tribe. If a response has not been received within two weeks of notification, the Commission requests that you follow-up with a telephone call or email to ensure that the project information has been received.

If you receive notification of change of addresses and phone numbers from tribes, please notify the NAHC. With your assistance, we can assure that our lists contain current information.

If you have any questions or need additional information, please contact me at my email address: [Cameron.vela@nahc.ca.gov](mailto:Cameron.vela@nahc.ca.gov).

Sincerely,

*Cameron Vela*

Cameron Vela  
Cultural Resources Analyst

Attachment



CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

SECRETARY  
**Sara Dutschke**  
Miwok

COMMISSIONER  
**William Mungary**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Isaac Bojorquez**  
Ohlone-Costanoan

COMMISSIONER  
**Buffy McQuillen**  
Yokayo Pomo, Yuki,  
Nomlaki

COMMISSIONER  
**Wayne Nelson**  
Luiseño

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

EXECUTIVE SECRETARY  
**Raymond C. Hitchcock**  
Miwok/Nisenan

**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)



**Native American Heritage Commission  
Native American Contact List  
Sonoma County  
8/29/2022**

***Cloverdale Rancheria of Pomo Indians***

Patricia Hermosillo, Chairperson  
555 S. Cloverdale Blvd., Suite A Pomo  
Cloverdale, CA, 95425  
Phone: (707) 894 - 5775  
Fax: (707) 894-5727  
info@cloverdalerancheria.com

***Dry Creek Rancheria of Pomo Indians***

Chris Wright, Chairperson  
P.O. Box 607 Pomo  
Geyserville, CA, 95441  
Phone: (707) 814 - 4150  
lynnl@drycreekrancheria.com

***Federated Indians of Graton Rancheria***

Gene Buvelot,  
6400 Redwood Drive, Suite 300 Coast Miwok  
Rohnert Park, CA, 94928 Pomo  
Phone: (707) 566 - 2288  
Fax: (415) 279-4844  
gbuvelot@gratonrancheria.com

***Federated Indians of Graton Rancheria***

Greg Sarris, Chairperson  
6400 Redwood Drive, Ste 300 Coast Miwok  
Rohnert Park, CA, 94928 Pomo  
Phone: (707) 566 - 2288  
Fax: (707) 566-2291  
gbuvelot@gratonrancheria.com

***Guidiville Indian Rancheria***

Donald Duncan, Chairperson  
P.O. Box 339 Pomo  
Talmage, CA, 95481  
Phone: (707) 462 - 3682  
Fax: (707) 462-9183  
admin@guidiville.net

***Kashia Band of Pomo Indians of the Stewarts Point Rancheria***

Loren Smith, Tribal Historic  
Preservation Officer  
1420 Guerneville Road, Ste 1 Pomo  
Santa Rosa, CA, 95403  
Phone: (707) 591 - 0580  
Fax: (707) 591-0583

***Kashia Band of Pomo Indians of the Stewarts Point Rancheria***

Dino Franklin, Chairperson  
1420 Guerneville Road, Ste 1 Pomo  
Santa Rosa, CA, 95403  
Phone: (707) 591 - 0580  
Fax: (707) 591-0583  
dino@stewartspoint.org

***Lytton Rancheria***

Marjorie Mejia, Chairperson  
437 Aviation Boulevard Pomo  
Santa Rosa, CA, 95403  
Phone: (707) 575 - 5917  
Fax: (707) 575-6974  
margiemejia@aol.com

***Middletown Rancheria of Pomo Indians***

Jose Simon, Chairperson  
P.O. Box 1035 Lake Miwok  
Middletown, CA, 95461 Pomo  
Phone: (707) 987 - 3670  
Fax: (707) 987-9091  
sshope@middletownrancheria.com

***Middletown Rancheria***

Sally Peterson, THPO  
P.O. Box 1658 Lake Miwok  
Middletown, CA, 95461 Pomo  
Phone: (707) 987 - 3670  
THPO@middletownrancheria.com

***Mishewal-Wappo Tribe of Alexander Valley***

Scott Gabaldon, Chairperson  
2275 Silk Road Wappo  
Windsor, CA, 95492  
Phone: (707) 494 - 9159  
scottg@mishewalwappotribe.com

This list is current only as of the date of this document. Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resource Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources assessment for the proposed Koi Nation Shiloh Resort and Casino Project, Sonoma County.

Native American Heritage Commission  
Native American Contact List  
Sonoma County  
8/29/2022

**Pinoleville Pomo Nation**

Erica Carson, Tribal Historic  
Preservation Officer  
500 B Pinoleville Drive Pomo  
Ukiah, CA, 95482  
Phone: (707) 463 - 1454  
Fax: (707) 463-6601

**Pinoleville Pomo Nation**

Leona Willams, Chairperson  
500 B Pinoleville Drive Pomo  
Ukiah, CA, 95482  
Phone: (707) 463 - 1454  
Fax: (707) 463-6601

**Robinson Rancheria of Pomo  
Indians**

Beniakem Cromwell, Chairperson  
P.O. Box 4015 Pomo  
Nice, CA, 95464  
Phone: (707) 275 - 0527  
Fax: (707) 275-0235  
bcromwell@rrcbc-nsn.gov

This list is current only as of the date of this document. Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resource Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources assessment for the proposed Koi Nation Shiloh Resort and Casino Project, Sonoma County.

## ATTACHMENT 8

Letter from BIA Pacific Regional Director Amy Dutschke to FIGR Chairman Greg Sarris (Nov. 4, 2022)





# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

IN REPLY REFER TO:  
TR-4302-P5 J51 622 Koi FTT Section 106 Consultation

Honorable Greg Sarris, Chairman  
Federated Indians of Graton Rancheria  
6400 Redwood Drive, Suite 300  
Rohnert Park, CA 94928

Dear Chairman Sarris,

Under the provisions of Section 106 of the National Historic Preservation Act (NHPA) as amended, the Bureau of Indian Affairs (BIA), Pacific Region, Division of Environmental, Cultural Resource Management and Safety, Cultural Resource Management (CRM) Section is affirming the Federated Indians of Graton Rancheria request to participate as a consulting party for a proposed Federal undertaking that concerns the approval of a fee-to-trust land conveyance in Sonoma County, California. The Koi Nation of Northern California is requesting that the BIA, Pacific Region take approximately 68.6 acres into Federal trust on their behalf for development of a resort and casino (Project). The Project Site is located at 222 E. Shiloh Road, Windsor, Sonoma County, California (APN: 059-300-003-000).

If the Tribe has any knowledge of, or concerns about historic properties with which you ascribe religious or cultural importance in relation to this proposed Federal undertaking, the CRM Section would like to include such comments or information in our continuation of Section 106 consultation with you, other consulting parties and the State Historic Preservation Office (SHPO). The BIA, Pacific Region understands the sensitive nature of cultural resources information, and that it is to be used only to meet the requirements under Section 101(d)(6)(B) of the NHPA, thereby affording tribes the opportunity to comment on proposed actions that may have the potential to affect historic properties.

If you have any questions, or require additional information, please contact Dan Hall, Regional Archaeologist, at (916) 978-6041, or Felix Kitto Deputy Regional Director, Office of Indian Services at (916) 978-6147.

Sincerely,

**AMY**  
**DUTSCHKE**

Digitally signed by  
AMY DUTSCHKE  
Date: 2022.11.04  
12:07:20 -07'00'

Regional Director

Enclosures

cc: Tribal Historic Preservation Officer, Federated Indians of Graton Rancheria

## ATTACHMENT 9

Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Dec. 19, 2022)



December 19, 2022

Dan Hall  
Regional Archaeologist  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Section 106 Consultation and Renewed Request for Records (Koi Nation Shiloh Resort and Casino Project)**

Dear Mr. Hall,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write to follow-up on our previous correspondence concerning the National Historic Preservation Act (NHPA) Section 106 review for the Koi Nation's proposed resort and casino project at 222 E. Shiloh Road.

First, thank you for your letter dated November 4, 2022 affirming the Tribe's status as a consulting party under Section 106. In order to proceed with consultation, we reiterate our request for copies of all records generated by the project proponent's archaeological consultant, Tom Origer & Associates. A letter from Tom Origer dated July 25, 2022, states that at least two field surveys were completed for the project, which resulted in the discovery of several widely scattered artifacts and broken obsidian pieces. Mr. Origer indicated further studies were planned to determine the origin of the obsidian pieces. Please see the attached copy of his letter. On August 10, 2022, we sent a letter to Mr. Origer (copying the BIA) requesting these documents, but we have not received a reply or responsive records. We need these records in order to meaningfully consult pursuant to Section 106 and determine the property's eligibility for listing in the National Register of Historic Places. This consultation must happen before BIA decides whether to concur with any recommendations by the project proponent's archaeologist.

Moreover, even without these records, our initial review indicates that Southern Pomo people—from whom there are many present-day descendants enrolled in the Tribe—attach religious and cultural significance to the land along with the existing cultural resource deposits. Mr. Origer's preliminary studies, as described in his July 25, 2022 letter, serve as further confirmation. We strongly urge that no testing of potential cultural resources be conducted without the participation and oversight of the culturally affiliated tribes to this project site, which

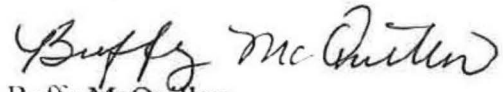


include FIGR.<sup>1</sup> Further, we request to schedule a consultation meeting with the BIA once we have received and reviewed the requested records.

Finally, we must again emphasize that any participation by the Tribe in cultural resource review for the project does *not* equal acquiescence to or support of the proposed project. The Tribe has repeatedly stated it does not believe this project is lawful under the Indian Gaming Regulatory Act and the Department of Interior should address that critical issue prior to conducting the environmental review. The Tribe also has serious concerns with the adequacy of the BIA's environmental review process and the fact that this project is currently proceeding with an Environmental Assessment rather than a full Environmental Impact Statement. Given what we know about the site and the location of cultural resources, the proposed project *will* have a significant impact on irreplaceable cultural resources. Therefore, BIA must conduct a more robust environmental analysis pursuant to an Environmental Impact Statement.

Thank you and we look forward to meeting with you on this project.

Sincerely,



Buffy McQuillen

FIGR Tribal Heritage Preservation Officer

Enclosures (1)

CC: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Amy Dutschke, Regional Director, Bureau of Indian Affairs

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<sup>1</sup> See, e.g., Advisory Council on Historic Preservation (ACHP) Section 106 Archaeology Guidance at 18 (dated Jan. 1, 2009) (“When planning to conduct identification studies it is essential to consult with the SHPO/THPO, Indian tribes, or NHOs that might ascribe traditional religious and cultural significance to listed or eligible archaeological sites in the APE and others knowledgeable about the region and its past *before any survey and field testing begins.*”) (emphasis added).

## ATTACHMENT 10

Letter from BIA Acting Pacific Regional Director Ryan Hunter to FIGR THPO Buffy McQuillen  
(Mar. 7, 2023)



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

IN REPLY REFER TO:  
TR-4303-P5 Section 106 documents concerning Koi land conveyance

Buffy McQuillen  
Tribal Heritage Preservation Officer  
Federated Indians of Graton Rancheria  
6400 Redwood Drive, Suite 300  
Rohnert Park, CA 94928

Dear Ms. McQuillen,

As a consulting party under Section 106 of the National Historic Preservation Act, you have requested for review, reports pertaining to cultural resources studies undertaken in connection with a proposed fee-to-trust land conveyance and future development of a casino and resort (Project) for the Koi Nation of the Lower Lake Rancheria (Koi Nation). The Project area is a 68.6-acre property that currently contains vineyards, a single-family residence and garage. It is located at 222 E. Shiloh Road, Windsor, Sonoma County, California (APN: 059-300-003-000).

To date, four reports have been produced from cultural resources investigations conducted within the proposed Project location. In response to your request, the Bureau of Indian Affairs, Pacific Region, Division of Environmental, Cultural Resources Management and Safety, Cultural Resource Management Section is providing your office with these documents.

If you have any questions, or require additional information, please contact Dan Hall, Regional Archaeologist, at (916) 978-6041, or Felix Kitto Deputy Regional Director, Office of Indian Services at (916) 978-6147.

Sincerely,

**RYAN HUNTER** Digitally signed by RYAN HUNTER  
Date: 2023.03.07 09:11:27 -08'00'

Acting Regional Director

Enclosures

## ATTACHMENT 11

Email from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (July 3, 2023)

**From:** Buffy McQuillen <[BMcQuillen@gratonrancheria.com](mailto:BMcQuillen@gratonrancheria.com)>  
**Sent:** Monday, July 3, 2023 3:48 PM  
**To:** Hall, Harold <[Harold.Hall@bia.gov](mailto:Harold.Hall@bia.gov)>  
**Cc:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>  
**Subject:** [EXTERNAL] RE: Cultural resources documents for review concerning Koi Nation Shilo Land Conveyance

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Hi Dan, unfortunately, I didn't see this email come in until today. It looks like there are a few reports from March 7, 2023. However, they will take at least a few weeks to review. Have you submitted to the SHPO as you indicated you would likely do by June 5?

Buffy

**Buffy McQuillen**  
6400 Redwood Drive, Suite 300  
Rohnert Park, CA 94928  
(707) 566-2288 (Office)  
(707) 318-0485 (Mobile)

[bmcquillen@gratonrancheria.com](mailto:bmcquillen@gratonrancheria.com)

**Federated Indians of Graton Rancheria: Proprietary and Confidential**

**Confidentiality Notice:** This transmittal is a confidential communication or may otherwise be privileged. If you are not the intended recipient, you are hereby notified that you have received this transmittal in error and that any review, dissemination, distribution or copying of this transmittal is strictly prohibited. If you have received this communication in error, please notify this office and immediately delete this message and all its attachments, if any.

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**From:** Hall, Harold <[Harold.Hall@bia.gov](mailto:Harold.Hall@bia.gov)>  
**Sent:** Tuesday, May 23, 2023 9:36 AM  
**To:** Buffy McQuillen <[BMcQuillen@gratonrancheria.com](mailto:BMcQuillen@gratonrancheria.com)>  
**Cc:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>  
**Subject:** Re: Cultural resources documents for review concerning Koi Nation Shilo Land Conveyance

Hello Buffy,

This email is to confirm your receipt of cultural resources documents concerning a land conveyance for Lower Lake (Koi Nation), and that were sent to you on March 7, 2023. If you would like to submit comments or concerns regarding this federal action, please forward your submittal to this office no later than June 5 so the BIA may include them with its Section 106 review request to the SHPO.

Best regards,

Dan

Dan Hall

Regional Archeologist

Bureau of Indian Affairs-Pacific Region

2800 Cottage Way

Sacramento, CA 95825  
916.978.6041  
[harold.hall@bia.gov](mailto:harold.hall@bia.gov)

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**From:** Hall, Harold <[Harold.Hall@bia.gov](mailto:Harold.Hall@bia.gov)>  
**Sent:** Tuesday, March 7, 2023 1:52 PM  
**To:** 'bmcquillen@gratonrancheria.com' <[bmcquillen@gratonrancheria.com](mailto:bmcquillen@gratonrancheria.com)>  
**Subject:** Re: Cultural resources documents for review concerning Koi Nation Shilo Land Conveyance  
Hello Buffy,

Here are the two remaining reports.

Best regards,

Dan

Dan Hall

Regional Archeologist

Bureau of Indian Affairs-Pacific Region

2800 Cottage Way

Sacramento, CA 95825

916.978.6041

[harold.hall@bia.gov](mailto:harold.hall@bia.gov)

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**From:** Hall, Harold  
**Sent:** Tuesday, March 7, 2023 1:48 PM  
**To:** 'bmcquillen@gratonrancheria.com' <[bmcquillen@gratonrancheria.com](mailto:bmcquillen@gratonrancheria.com)>  
**Subject:** Cultural resources documents for review concerning Koi Nation Shilo Land Conveyance  
Hello Buffy,  
Please find attached, two of four reports and BIA's cover letter for your review and comment as a consulting party under Section 106 of the NHPA for this federal undertaking. Due to file size the remaining two reports will follow in a subsequent email.

Best regards,

Dan

Dan Hall

Regional Archeologist

Bureau of Indian Affairs-Pacific Region

2800 Cottage Way

Sacramento, CA 95825

916.978.6041

[harold.hall@bia.gov](mailto:harold.hall@bia.gov)



## ATTACHMENT 12

Letter from BIA Pacific Regional Director Amy Dutschke to SHPO Julianne Polanco (July 18, 2023)



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

IN REPLY REFER TO:  
4303-P5 J52 538T Strawberry Fields Fee-to-Trust

Julianne Polanco  
State Historic Preservation Officer  
Office of Historic Preservation  
Department of Parks and Recreation  
1725 23<sup>rd</sup> St. Suite 100  
Sacramento, CA 95816

Dear Ms. Polanco,

The Bureau of Indian Affairs (BIA) Pacific Region, Division of Environmental Cultural Resource Management and Safety, Cultural Resource Management (CRM) Section wishes to initiate Section 106 consultation with the State Historic Preservation Office (SHPO) concerning a fee-to-trust transfer of approximately 68.6 acres of land at 222 E. Shiloh Road, Windsor, Sonoma County, California for the Koi Nation of the Lower Lake Rancheria (Tribe), Lake and Sonoma Counties, California. The Tribe proposes to have this property conveyed into federal trust status for the purpose of gaming (Project). Project elements include the development of a resort that includes a casino, hotel, event center, meeting space, spa and associated parking and infrastructure. This proposed undertaking is pursuant to regulations under 25 CFR 151 (Land Acquisitions). Project implementation is contingent, in part, upon the BIA meeting its obligations under Section 106 of the National Historic Preservation Act (NHPA), as amended.

The 68.6-acre property that constitutes the Area of Potential Effects (APE) for this action is located in the SW  $\frac{1}{4}$  of Section 20 in Township 8 North, Range 8 West Mount Diablo Base and Meridian. The APE is bounded on the north by East Shiloh Road, on the west by the Old Redwood Highway and is bisected by Pruitt Creek. With the exception of a narrow riparian corridor along the creek, the property is primarily developed as a vineyard. The northeastern portion of the property includes a modern single-family residence and associated outbuildings, which from aerial photography, show to have been constructed in 2004.

Four cultural resources investigations have been undertaken in the context of this Project. In February of 2022, Dr. John Parker and staff of Wolf Creek Archaeology conducted a pedestrian survey of the Project APE. A records search performed at the Northwest Information Center of the California Historical Resources Inventory System indicated that there have been no previous surveys conducted or cultural resources identified within the Project APE. Other background sources indicated the possible presence of a historic homestead. Parker's survey resulted in the identification of the remains from this homestead which he recorded as Historic

Site 1. The residence, which is no longer standing was demolished sometime before 2003 and the foundation remains were pushed to the bank of Pruitt Creek. A moderately dense artifact scatter associated with the homestead was identified and includes historic ceramics, glass, brick, and metal fragments. A variety of isolated artifacts were noted to be widely spread across the property. These artifacts include flakes of chert and obsidian, one core, one biface tip, a broken bowl mortar located in the creek bottom, as well as fragments of historic glass, brick, and metal. There were no artifact concentrations that would suggest the presence of a discrete site.

In April of 2022 Dr. Parker returned to the Project area to assist in geotechnical studies by monitoring the excavation of four trenches in the event buried cultural deposits or features were present. With the exception of an isolated horseshoe identified in Trench D along the Old Redwood Highway, no other cultural resources were located within the geotechnical study areas.

Tom Origer and Associates performed a subsequent intensive survey of the Project APE in May of 2022. Prior to the survey a records search was performed, the results of which conformed with those of Parker. Origer's survey was complemented by the employment of a 4-inch diameter hand auger at four locations along Pruitt Creek. Two isolated bifacial tool fragments as well as a wide scattering of "modified" obsidian pieces were identified. There were also naturally occurring obsidian pebbles present, thereby complicating the evaluation of the observed obsidian pieces to determine if they were intentionally "modified" or were resultant from agricultural discing. No cultural resources were present at any of the four hand auger locations. At the site of the former homestead noted in Parker's report (Historic Site 1), Origer documented only an occasional fragment of glass and ceramics.

An obsidian hydration analysis was commissioned to better understand the nature of those obsidian pieces that had possibly been modified through flint knapping activities. In August of 2022 Dr. John Parker collected seventeen of the widely scattered obsidian fragments for analysis by Willamette Analytics, Corvallis, Oregon. Five of the seventeen samples were found to have hydration rims that suggest human manufacturing activity. However, these five samples were collected from dispersed locations across the Project APE and were representative of three different time periods. These results are indicative of isolated artifact occurrences, and not a discrete archaeological site. The hydration analysis demonstrated the remaining twelve samples to be naturally occurring obsidian pieces or recently modified as the result of agricultural activities.

The CRM Section contacted several federally recognized tribes that may have an interest in the Project to inquire if they desire to be consulting parties in the Section 106 process. Three of these tribes: Federated Indians of Graton Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Dry Creek Rancheria Band of Pomo Indians (Dry Creek) affirmed their interest. On March 7, 2023, the CRM Section forwarded copies of each of the four studies discussed above to these three consulting parties for their review and comment. Due to an oversight, three of these reports were not sent to Dry Creek until May 23, 2023. The CRM Section reached out via email to each of these tribes on May 23, 2023, to confirm receipt of the reports and requested that any comments be forwarded to the CRM Section no later than June 5, 2023. Dry Creek was afforded an additional two weeks to respond owing to their late receipt of

three documents. As of this date, there have been no comments or other responses received from these tribes.

The results of the four studies conducted within the Project APE indicate the presence of one historic site, and a widely dispersed scatter of prehistoric and historic cultural material. The historic homestead, Parker's Historic Site 1, was completely demolished sometime between 2003-2004. The foundation remains have been pushed aside and all that exists is a scatter of glass, ceramics, brick and metal. Site integrity is totally absent. There was no information to suggest this site was connected with an important event or person in history (National Register Criteria A and B). As noted above, there are no intact architectural remains, so the site can not be evaluated under Criterion C. The remaining scatter of cultural material offers nothing in the way of research potential that would provide a better understanding of early and mid-twentieth century history (Criterion D). It is the CRM Section's determination that this site is therefore not eligible for inclusion to the National Register of Historic Places (NRHP). A widely dispersed scatter of prehistoric and historic artifacts was noted by both Parker and Origer. These materials were all deemed to be isolated occurrences due to their distribution with no discernible concentrations and for this reason, not subject to further review or evaluation for significance. Furthermore, results of the obsidian hydration analysis corroborated field findings and analysis indicating that most of the obsidian fragments found within the APE represent background noise and have not been modified by human activity.

Results of these studies provide sufficient evidence for the CRM Section to request SHPO concurrence on the determination that Historic Site 1 is ineligible for inclusion to the NRHP and our finding of *No Historic Properties Affected* for this proposed federal action. Your concurrence with this determination and finding shall confirm the BIA, Pacific Region fulfillment of federal regulations pursuant to 36 CFR 800.4(d)(1), and in compliance with Section 106 of the NHPA. If you require additional information, please contact Dan Hall, Regional Archaeologist, at (916) 978-6041 or Felix Kitto, Deputy Regional Director, Office of Indian Services at (916) 978-6147.

Sincerely,

Regional Director

Enclosures

## ATTACHMENT 13

Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke  
(Aug. 7, 2023)





August 7, 2023

Amy Dutschke  
Regional Director  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Section 106 Consultation on Koi Nation Shiloh Resort and Casino Project**

Dear Ms. Dutschke,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write to share our serious concerns with the National Historic Preservation Act (NHPA) Section 106 review for the Koi Nation's proposed resort and casino project at 222 E. Shiloh Road (the Project Site). We detail these concerns below and include our requests and recommendations to remedy this deeply flawed process.

**A. The BIA has failed to meaningfully consult with FIGR.**

To start, we are disappointed that the project proponent's archaeologist never responded to our request for records. We appreciate that the Bureau of Indian Affairs (BIA) eventually shared the following reports:

- John Parker, Historic Property Survey Report of One Parcel to be Transferred to Trust Status: Parcel 004-021-008, 222 East Shiloh Rd., Santa Rosa (Mar. 1, 2022) (referred to hereinafter as Parker Cultural Resources Report).
- John Parker, Archaeological Monitoring of Soil Test Trenches on Parcel 004-021-008, 222 East Shiloh Rd., Santa Rosa (Apr. 28, 2022) (referred to hereinafter as Parker Test Trenches Report).
- Thomas M. Origer, Cultural Resources Study of the Property at 222 E. Shiloh Road, Windsor; Sonoma County, California (May 11, 2022) (referred to hereinafter as Origer Cultural Resources Report).
- John Parker, Obsidian Hydration Results from Parcel 004-021-008, 222 East Shiloh Rd., Santa Rosa (Sept. 13, 2022) (referred to hereinafter as the Parker Obsidian Hydration Report).

Nonetheless, the BIA's process of sharing this information and of seeking FIGR input falls far short of the BIA's duty to meaningfully consult with the Tribe as required by Section



106 of the NHPA and a myriad of other federal laws and policies.<sup>1</sup> As you know, we submitted a letter to your office on August 10, 2022, requesting Section 106 consultation on this project and notifying you that we believe religious and culturally significant tribal cultural resources are present.<sup>2</sup> On the same day, we also copied the BIA on a letter to Dr. Tom Origer, one of the project proponent's archaeologists, requesting a copy of all the records and that no further studies be conducted without the involvement of the culturally affiliated tribes, particularly our own. The BIA confirmed our status as a consulting party on November 4, 2022.<sup>3</sup> On December 19, 2022, we sent your office another letter, reiterating our request for the records, explaining that we cannot meaningfully consult without those records, and reminding BIA of its legal obligation to conduct this consultation *before* the BIA decides whether to concur with any recommendations by the project proponent's archaeologist.<sup>4</sup> Further, we requested to schedule a consultation meeting with the BIA once we received and reviewed the records.

On March 7, 2023, Dan Hall, the BIA regional archaeologist, apparently emailed the four archaeology studies referenced above to my email address. On May 23, 2023, Mr. Hall followed up with another email to "confirm" my receipt of the reports and request FIGR's comments by June 5, 2023, so the BIA could include such comments with its Section 106 review request to the SHPO. Mr. Hall never received confirmation from me or anyone else from the Tribe that we had received these reports. And as I explained in my July 7, 2023, the BIA's March and May emails were lost in our computer system such that I did not receive those emails until early July. We have checked our records and as far as we know, your office made no effort to send this documentation via certified mail or to call the Tribal office when the BIA received no response to its emails. Further, despite the fact that my July 7 email clearly stated the Tribe would need at least a few weeks to review, the BIA nonetheless proceeded on July 18 to issue a determination that no historic properties would be affected and request concurrence from the State Historic Preservation Officer (SHPO), all without engaging in actual, meaningful consultation with our Tribe.

Tribal consultation serves many purposes. It honors the government-to-government relationship between the Tribe and the federal government. It is critical information gathering, providing the agency with the requisite data to make well-informed, justified decisions.<sup>5</sup> And

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<sup>1</sup> See 54 U.S.C. § 302706 (requiring consultation with Indian tribes that attach religious and cultural significance to historic properties); 36 C.F.R. § 800.2(c)(2)(ii) (reiterating this consultation requirement pursuant to the NHPA and expressly recognizing that the "Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions."); see also Department of the Interior Departmental Manual, Chapter 4: Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations, 512 DM 4, § 4.4 (effective Nov. 9, 2015) (Setting forth the Department's policy to "consult with tribes on a government-to-government basis whenever DOI plans or actions have tribal implications" and requiring all bureaus to "comply with and participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process").

<sup>2</sup> Letter from FIGR Tribal Heritage Preservation Officer, Buffy McQuillen, to BIA Regional Archaeologist, Dan Hall, re: Section 106 Consultation for Koi Nation Shiloh Resort and Casino Project (Aug. 10, 2022).

<sup>3</sup> Letter from BIA Regional Director, Amy Dutschke, to FIGR Chairman, Greg Sarris (Nov. 4, 2022).

<sup>4</sup> FIGR Tribal Heritage Preservation Officer, Buffy McQuillen, to BIA Regional Archaeologist, Dan Hall, re: Section 106 Consultation and Renewed Request for Records (Koi Nation Shiloh Resort and Casino Project) (Dec. 19, 2022).

<sup>5</sup> See 36 C.F.R. § 800.4 (requiring the agency to identify historic properties by, among other things, "gather[ing] information from any Indian tribe...identified pursuant to § 800.3(f) to assist in identifying properties, including

importantly, it satisfies the federal government’s obligations pursuant to federal law and policy, including and beyond the NHPA Section 106 process. The BIA’s failure to contact the Tribe beyond a few emails and its decision to proceed with a determination under Section 106—when it knew with certainty that the Tribe is concerned with the project and believes the Project Site to be culturally and religiously significant—constitutes a failure to consult with the Tribe and provide it with a “reasonable opportunity” to identify its concerns, advise on the identification and evaluation of historic properties, and articulate its views on the undertaking’s effects on such properties.<sup>6</sup> The BIA’s actions failed to “facilitate [the Tribe’s] full participation,” as required by the Advisory Council on Historic Properties.<sup>7</sup> We are further dismayed that the BIA misrepresented to the SHPO via letter dated July 18, that BIA had received no responses from any consulting tribes, despite the fact that I notified Mr. Hall on July 7 that we had only just received the materials and needed time to review. Collectively, this falls far short of the agency’s responsibility to make “a reasonable and good faith effort” to identify whether the Project Site might be considered historic due to its religious and cultural significance to our Tribe.<sup>8</sup> Given these alarming circumstances, we have done our best to quickly review the reports and provide initial comments, as detailed below. Due to the lack of consultation and the obvious deficiencies in the studies previously conducted, we request the BIA rescind its determination and request for concurrence from the SHPO, set up a meeting with our Tribal representatives to discuss the process going forward, and proceed with the other actions described in Section F.

**B. Field surveys and testing were done without any involvement of the consulting, culturally affiliated tribes.**

As a threshold matter, early in the agency process we confirmed that this project is within our and other tribes’ ancestral territory, the site is likely of traditional religious and cultural importance, and consultation with the appropriate Tribal Historic/Heritage Preservation Officers (THPOs) is required under the NHPA.<sup>9</sup> In fact, the site’s location in Southern Pomo territory is explicitly acknowledged in the archaeological studies presented by the project proponent’s own archaeologists.<sup>10</sup> We further explained that no studies should be conducted, including the testing of artifacts, without formal commencement of the Section 106 process and without our involvement.<sup>11</sup> Yet these reports show that all studies and testing were done outside of the

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those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register.”).

<sup>6</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

<sup>7</sup> Advisory Council on Historic Preservation, *Consultation with Indian Tribes in the Section 106 Review Process: the Handbook* at Sec. IV(6) (June 2021).

<sup>8</sup> 36 C.F.R. § 800.4(b)(1).

<sup>9</sup> See Letter from Chairman Greg Sarris to Amy Dutschke (BIA Regional Director) and Chad Broussard (BIA Environmental Protection Specialist), Graton Rancheria Scoping Comments on the Koi Casino Proposal at 4-5 (June 27, 2022).

<sup>10</sup> Parker Cultural Resources Report at 9 (“Prior to European arrival, the project area was situated within the Southern Pomo culture area.”); Origer Cultural Resources Report at 6 (“At the time of Euroamerican settlement, people inhabiting this area spoke Southern Pomo, one of seven mutually unintelligible Pomoan languages belonging to the Hokan language stock. The Southern Pomo’s aboriginal territory falls within present-day Sonoma County.”).

<sup>11</sup> See Letter from Buffy McQuillen (FIGR THPO) to Tom Origer & Associates re Koi Nation Shiloh Resort and Casino Project (Aug. 10, 2022); Letter from Buffy McQuillen (FIGR THPO) to Tom Origer & Associates re Koi Nation Shiloh Resort and Casino Project (Aug. 10, 2022); Letter from Buffy McQuillen (FIGR THPO) to Dan Hall

Section 106 process and without our involvement. This includes testing of cultural artifacts memorialized in the Sept. 13, 2022 Parker report, which clearly occurred after we provided notice to both the BIA and the project proponent that no such testing should be conducted in our absence. This failure to include and consult with the culturally affiliated tribes is not only offensive but fails to comply with the spirit and language of the Section 106 process and accompanying regulations.<sup>12</sup> Moreover, *had* we been notified and allowed to participate in any these studies, we could have identified and helped address many of the issues presented below.

### **C. Concerns with field surveys and accompanying cultural reports.**

It appears that the project proponent has two different archaeologists for this project, Tom Origer and John Parker. As such, two different field surveys were conducted, and different conclusions reached. The first field survey was conducted by John Parker between February 17 and February 20, 2022, as memorialized in the Parker Cultural Resources Report. The second was conducted by Tom Origer on May 3, 2022, as memorialized in the Origer Cultural Resources Report. As we already noted, FIGR was not invited to participate in these field surveys. Nor is there any explanation in the record as to why two different field surveys were conducted several months apart by different archaeologists, or any attempted reconciliation of the different conclusions reached in each report.

#### **a. Parker Cultural Resources Report**

The Parker Cultural Resources Report is deeply flawed. It is filled with bald assertions and half-baked analysis, all of which lead to the unsupported conclusion that nothing on the Project Site is eligible for inclusion in the National Register and therefore a determination of no adverse effects is appropriate.

To begin, Dr. Parker states that his archaeological work is being conducted to comply with the California Environmental Quality Act (CEQA), in addition to Section 106 of the NHPA.<sup>13</sup> Yet there is no indication in his report or other materials generated in the Section 106 record as to who is the lead agency or whether tribal consultation, as legally required by California State Assembly Bill 52 (AB 52),<sup>14</sup> has been conducted.

Dr. Parker then provides background research showing the existence of 12 cultural sites within one mile of the Project's Area of Potential Effects (APE), three of which are prehistorical, including a major village site.<sup>15</sup> Dr. Parker's report states he reviewed resources and reports at the Northwest Information Center of the California Historical Resources Inventory System (CHRIS). In the short time we were afforded, we were not able to track down every study

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(BIA Regional Archaeologist) re Section 106 Consultation for Koi Nation Shiloh Resort and Casino Project (Aug. 10, 2022).

<sup>12</sup> See, e.g., 36 C.F.R. § 800.2(c)(2)(ii)(A) (requiring the lead agency to "ensure that consultation in the section 106 process provides the Indian tribe...a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects"). This regulatory section further provides that "[c]onsultation should commence *early* in the planning process, in order to identify and discuss relevant preservation issues." *Id.* (emphasis added).

<sup>13</sup> Parker Cultural Resources Report at 3.

<sup>14</sup> AB 52 was enacted in 2014 and codified in various sections of the California Public Resources Code.

<sup>15</sup> Parker Cultural Resources Report at 13.



referenced in his report.<sup>16</sup> Additionally, Dr. Parker did not provide a graphic or map illustrating the location of these nearby recorded sites in relation to the Project Site, which is common practice.

Dr. Parker also assumes that the APE is coterminous with the boundaries of the Project Site.<sup>17</sup> This APE was determined without Tribal concurrence, as we previously requested during the scoping of the BIA's review pursuant to the National Environmental Protection Act.<sup>18</sup> We also question whether this APE is appropriate given there will inevitably be utility work required for this project and therefore the APE should extend to the public right-of-way along Old Redwood Highway and Shiloh Road.

During his field survey, Dr. Parker discovered a historic cultural site consisting of the remains of a residence from the early 1900s, and associated artifacts, such as ceramics, brick and metal fragments dating back to 1880.<sup>19</sup>

Dr. Parker also discovered a number of cultural resources, including a broken bowl mortar, obsidian and chert flakes, one obsidian point fragment and one chert core.<sup>20</sup> Yet Mr. Parker dismisses the significance of the mortar out of hand, concluding, without further analysis, that the mortar probably washed down the creek from a major site upstream.<sup>21</sup> Even if true (which there is no supporting analysis or sources to support his assertion), that does not automatically mean the artifact is without significance. In fact, if many artifacts were to naturally accumulate in the same area due to streamflow, it could result in archaeological deposit worthy of protection.

Mr. Parker also rejects the possible significance of any of the "isolated artifacts," stating that "[a]lthough isolated materials often contain a small amount of information about past human activities, they are not considered 'significant' cultural resources and do not meet the criteria necessary for inclusion on the National Register of Historic Places."<sup>22</sup> This falsely assumes that just because artifacts are isolated, they cannot be historically significant pursuant to the NHPA, ignoring Congress' determination that historical places can be "objects."<sup>23</sup> Furthermore, Dr. Parker characterizes his fieldwork as a "complete walking inspection of the entire APE," but it was, in fact, conducted in transect sweeps in intervals spaced 8 to 10 meters (roughly 26 to 32 feet) apart. It is not only possible, but likely, that Dr. Parker missed additional artifacts in between those sweeps. Further, the fact that such sweeps were significantly spaced apart would falsely lead to the conclusion that found artifacts are "isolated" from one another. Moreover, it is not at all clear what is the dividing line between isolated artifacts and a "site." Between Dr.

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<sup>16</sup> See *id.* at 14.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> See Letter from FIGR Chairman, Greg Sarris, to BIA Regional Director, Amy Dutschke, re Graton Rancheria Scoping Comments on the Koi Casino Project at 5 (June 27, 2022).

<sup>19</sup> Parker Cultural Resources Report at 15-16.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 19.

<sup>23</sup> See 54 U.S.C. § 300308 (defining the term "historic property" as "any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object") (emphasis added).

Parker and Dr. Origer's field work, numerous "isolated" artifacts have been discovered which, when considered as a whole, could be an archaeological site.

After dismissing the possible significance of these "isolated" artifacts, Dr. Parker makes the incredible conclusion that "[a]lthough no subsurface testing was performed, surface indications, and knowledge of vineyard ground preparation suggest that neither the historic site, nor any possible prehistoric site within a depth of 4 feet of the ground surface would remain intact within the vineyard areas."<sup>24</sup> Dr. Parker offers no support for his presupposition that vineyard ground preparation is limited to a depth of fourth feet nor does he address whether the casino development is likely to involve greater depths of ground disturbance. Moreover, his conclusion is at odds with that of Dr. Origer, who concluded that "there is a high potential for buried archaeological site indicators within the APE" and recommended that additional studies be done to determine the presence or absence of buried sites.

Additionally, Dr. Parker concludes, with minimal analysis, that the historic site consisting of the remains of a residential structure dating back to the early 1900s does not meet the criteria necessary to be considered eligible for the National Register.<sup>25</sup> In the same vein, Dr. Parker concludes, with minimal analysis, that the isolated historic and prehistoric cultural items do not meet the criteria necessary to be considered eligible for the National Register.<sup>26</sup> In our experience, such eligibility determinations are typically made following lengthy analysis and full consideration of the pre-historical and historical context, rather than a couple paragraphs of conclusory statements. Dr. Parker states that "none of the resources encountered are likely to contain information important to the understanding of local or regional prehistory as defined by criterion 'D' for listing in the National Register of Historic Places."<sup>27</sup> However, he fails to even acknowledge or address criterion A, B, or C.<sup>28</sup> Furthermore, Dr. Parker could not properly make any determination as to eligibility pursuant to the National Register criteria without engaging in tribal consultation. As such, Dr. Parker's determinations of eligibility are insufficient and unsupported; much more information should be considered and addressed in arriving at any determinations of eligibility.

Dr. Parker finally concludes that "[a]s the limited cultural resources encountered were either isolated or previously disturbed, It[sic] has been determined that commercial use development will not adversely effect[sic] any National Register eligible properties" and "[i]t is this author's recommendation that a determination of 'no adverse effect' be made concerning this undertaking."<sup>29</sup> Yet, as already explained, Mr. Parker failed to properly analyze the information at hand or even consider the design and scope of the commercial development, including, but not limited, the depth or expanse of ground disturbance required by construction.

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<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 3-4.

<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.*

<sup>28</sup> See 36 C.F.R. § 60.4.

<sup>29</sup> *Id.*



## **b. Origer Cultural Resources Report**

Several months after Dr. Parker's field survey, the project proponent commissioned a second, more intensive archaeological field survey to be conducted by Dr. Origer. Again, the record does not explain *why* a second field survey was conducted by a different archaeologist.

There are a number of discrepancies between Dr. Parker's report and that produced by Dr. Origer. For example, Dr. Parker located historic resources (though he summarily dismissed their significance), while Dr. Origer reported there were no historic resources located at the Project Site. Additionally, Dr. Parker's archival research revealed the existence of a prehistorical village site within one mile of the Project Site, whereas Dr. Origer concluded that there are no ethnographic village or camp sites within one mile of the Project Site based on his archival research. Nothing in the record attempts to explain these discrepancies.

Importantly, Dr. Origer discovered two bifacial tool fragments (one chert and one obsidian), as well as approximately two dozen pieces of obsidian that could be tool manufacturing debris.<sup>30</sup> In regard to these discoveries, Origer concludes that:

At this time it appears that several are likely to date to prehistoric times; however they are widely scattered and do not meet criteria for classification as an archaeological site. We conclude that they could be indicators of prehistoric use of the land and they could be indicators of buried archaeological sites. Application of the buried sites model indicates a high potential for buried resources.

Dr. Origer recommended that four additional studies be done to determine the timing of creation of the archaeological specimens and the presence or absence of buried sites: obsidian hydration analysis, canine survey, Ground Penetrating Radar survey, and backhoe trenching. Despite his recommendations, only two of these studies were actually done—obsidian hydration analysis and backhoe trenching—as discussed below. Nothing in the record attempts to explain why the remaining studies were not conducted.

## **D. Dr. Parker's Testing of Artifacts and Conclusions**

As a threshold matter, and directly in violation of our prior request that no further studies be conducted without our involvement, Dr. Parker conducted obsidian hydration testing of numerous discovered artifacts without the Tribe present. It is important to note that this testing is destructive to artifacts, which cannot be replaced.

There is no explanation in the record as to why the project proponent utilized Dr. Parker for this study when, unlike Dr. Parker, Dr. Origer is a known expert in obsidian hydration testing techniques.<sup>31</sup> We are concerned that the project proponent is picking and choosing hired experts in order to produce desired results. This is exemplified by Dr. Parker's questionable sampling strategy. Dr. Parker offers no explanation for why he chose to only select obsidian sample from both sides of Pruitt Creek. If obsidian has already been subject to regular exposure to water, then the hydration levels are impacted. Furthermore, in our view obsidian that is 50 or so meters from

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<sup>30</sup> Origer Cultural Resources Report at 9.

<sup>31</sup> See Dr. Origer's website detailing his obsidian laboratory, experience, and credentials. <https://origer.com/origers-obsidian-laboratory/> (last visited July 26, 2023).



the creek bed is more likely to be culturally modified since it is near water sources (which attract human settlements and use) but may be less impacted from viticulture disturbance.

Importantly, it appears—although the report does not address—that Dr. Parker’s 17 samples did not include any of the artifacts previously located by Dr. Origer during his May field survey or those previously found by Dr. Parker during his February field survey. In fact, the record gives no indication of the disposition of any of those artifacts.

Dr. Parker concludes that only five of the samples had “readable hydration rims that fell within the range of human use.”<sup>32</sup> Dr. Parker further concludes that “the widely dispersed locations of [these samples] and the fact that three completely different time periods of chipping were found support the conclusion that these were isolated pieces and do not represent an intact cultural feature or site.”<sup>33</sup> Yet Dr. Parker does not specify the time periods, nor do we agree with his characterization of these samples as widely dispersed when several appear to have been in close proximity.

#### **E. Dr. Parker’s Report on Soil Test Trenches**

As a threshold matter, we must again raise the fundamental issue that our Tribe was not consulted or invited to participate in this study. In fact, Dr. Parker’s report indicates that a tribal monitor from the project proponent, Koi Nation, was present during the trench excavation, even though the Koi Nation is comprised of Southeastern Pomo people whose aboriginal territory is based in Lake County.<sup>34</sup>

It is also important to flag that these trenches were dug for geotechnical purposes, not as part of the evaluation of cultural resources pursuant to Section 106.<sup>35</sup> While the report offers no explanation for why the trenching took places in the four locations chosen, we assume they were sited in these locations to gather information to inform the project design and construction rather than to produce meaningful data about the location of possible buried sites, as Dr. Origer had recommended.

The report states that no cultural materials were found, except for an aged horseshoe in Trench D along the Old Redwood Highway. Dr. Parker broadly concludes that because “the geotech trenches failed to encounter any significant historic or prehistoric cultural features or sites, it has been determined that no buried cultural resources exist in these locations.”<sup>36</sup> It is not clear whether his conclusion is limited to the exact location of the trenches, anything within the vicinity of those trenches, or the Project Site as a whole. Nor does he address the fact that this trench work was not at all designed to investigate the possible existence of such resources or sites.

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<sup>32</sup> Parker Obsidian Hydration Report at 2.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> See Parker Test Trenches Report at 2.

<sup>35</sup> *Id.* (explaining that Dr. Parker was requested to assist with “geotech studies” by monitoring the excavation of test trenches).

<sup>36</sup> *Id.* at 7.

**F. BIA erred in adopting the determination made by the project archaeologists and moving forward with seeking SHPO concurrence.**

Despite these clear deficiencies, and without any feedback from the consulting tribes, and specifically our Tribe, the BIA adopted the conclusions offered by the archaeologist hired and paid for by the project proponent.<sup>37</sup> Specifically, BIA, through its Cultural Resource Management (CRM) Section, determined that the historic site consisting of the historic homestead is ineligible for inclusion in the National Register of Historic Place and therefore not historic properties would be affected by the proposed federal action.<sup>38</sup> Although the CRM Section did not make an explicit eligibility determination for the prehistoric artifacts, it reiterated the findings of the project proponent's archaeologist that these were "isolated occurrences" and further review or evaluation of significance was not necessary.<sup>39</sup> BIA reached these conclusions relying entirely on the studies and reports described above, without any independent analysis of the integrity of those reports or the conclusions that were drawn.<sup>40</sup>

As we have already detailed, the existing studies are questionable at best and conducted without any involvement of the Tribe as a consulting party. And of critical importance is the fact that without the involvement of FIGR or any culturally affiliated tribes, BIA lacked the requisite information to determine whether the Project Site is religiously and culturally significant. As the Section 106 regulations recognize, "Indian tribes...possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them."<sup>41</sup> The Advisory Council on Historic Preservation (ACHP) recognizes the central role of culturally affiliated Indian tribes in conducting this identification and assessment, advising agencies that "[t]he appropriate individual to carry out the identification and evaluation of historic properties of significance to an Indian tribe is the representative designated by the tribe for this purpose."<sup>42</sup> The ACHP further recognizes that face-to-face meetings and site visits are important tools for conducting tribal consultation and identifying these types of properties.<sup>43</sup>

In addition to these deficiencies, the BIA's determination, as captured in its July 18 letter to the SHPO, completely failed to consider the size or scope of the project development and how that may impact buried resources. The BIA also failed to reference the correct project in requesting the SHPO's reply, instead citing 4303-P5 J52 538T Strawberry Fields Fee-to-Trust.<sup>44</sup>

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<sup>37</sup> See Letter from BIA Regional Director, Amy Dutschke, to State Historic Preservation Officer, Julianne Polanco (July 18, 2023).

<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* (summarizing the studies in two and a half pages, then concluding that the "[r]esults of these studies provide sufficient evidence for the CRM Section to request SHPO concurrence".).

<sup>41</sup> 36 C.F.R. § 800.4(c).

<sup>42</sup> Advisory Council on Historic Preservation, *Consultation with Indian Tribes in the Section 106 Review Process: the Handbook* at Sec. 5.B(1) (June 2021).

<sup>43</sup> *Id.* at Sec. IV.6, Sec. V.B(1).

<sup>44</sup> Letter from BIA Regional Director, Amy Dutschke, to State Historic Preservation Officer, Julianne Polanco, at 1 (July 18, 2023).

### **G. FIGR's Recommendation and Request for Additional Studies**

The only way BIA can rectify this litany of procedural errors and analytic flaws is to rescind its initial determination and request for SHPO concurrence, and begin to engage in actual, meaningful consultation with the Tribe. We request a consultation meeting with the BIA and the SHPO at your earliest convenience to discuss these issues and figure out a path forward. In order to meaningfully evaluate impacts, we need a copy of the project design plans. Further, we request permission to conduct our own field survey and trenching of the Project Site. We further request that the BIA perform additional studies at the Project Site, including a canine survey and Ground Penetrating Radar survey.

As a final note, we wish to reiterate this is direct government-to-government consultation between the Tribe and the federal government, with support from the SHPO. We do not consent to sharing our comments with the project proponent or its archaeological consultants.

Thank you and we look forward to meeting with you on this project. Please reach out to Hector Garcia at [HGarcia@gratonrancheria.com](mailto:HGarcia@gratonrancheria.com) to schedule a consultation meeting with the Tribe at your earliest convenience.

Sincerely,



Buffy McQuillen  
FIGR Tribal Heritage Preservation Officer

CC: Julianne Polanco, State Historic Preservation Officer  
Dan Hall, Regional Archaeologist, Bureau of Indian Affairs  
Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs

## ATTACHMENT 14

Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (Aug. 10, 2023)





**DEPARTMENT OF PARKS AND RECREATION  
OFFICE OF HISTORIC PRESERVATION**

Armando Quintero, Director

Julianne Polanco, State Historic Preservation Officer

1725 23rd Street, Suite 100, Sacramento, CA 95816-7100

Telephone: (916) 445-7000 FAX: (916) 445-7053

calshpo.ohp@parks.ca.gov [www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

August 10, 2023

Reply In Reference To: BIA\_2023\_0719\_001

**VIA ELECTRONIC MAIL**

Amy Dutschke – Regional Director  
United States Department of Interior  
Bureau of Indian Affairs – Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

RE: Section 106 consultation - Fee-to-Trust Transfer of Approximately 68.6 Acres at 222 E. Shiloh Road, Windsor, Sonoma County, California for the Koi Nation of the Lower Lake Rancheria, Lake and Sonoma Counties, California

Dear Ms. Dutschke;

The State Historic Preservation Officer (SHPO) received the Bureau of Indian Affairs (BIA) letter of 18 July 2023 initiating consultation on the above referenced undertaking pursuant to 36 CFR Part 800 (as amended 8-05-04) regulations implementing Section 106 of the National Historic Preservation Act (NHPA). BIA requests SHPO concurrence on a proposed finding of *"no historic properties affected."*

As described in BIA's letter to the SHPO, the undertaking would transfer an estimated 68.6-acres into federal trust status for the Koi Nation of the Lower Lake Rancheria for *"the purpose of gaming."* Project work was described as including *"the development of a resort (with) a casino, hotel, event center, meeting space, spa and associated parking and infrastructure."*

On 7 August 2023 the SHPO received a letter sent directly to her and a copy of a letter sent to BIA on the same date from the Federated Indians of Graton Rancheria (FIGR) concerning the proposed undertaking. Based on a review of the letters, at this time the SHPO cannot comment on the consultation of 18 July 2023 and requests BIA to continue consulting with the FIGR, as well as with the other tribes who were contacted in BIA's Section 106 efforts, to further assess potential changes to the Area of Potential Effects (APE), the identification and evaluation of historic properties listed on or potentially eligible for listing on the National Register, and the effects determination.

Amy Dutschke  
August 10, 2023  
Page 2 of 2

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The Office of Historic Preservation remains committed to working in partnership with all parties to this proposed undertaking and to supporting BIA in its continuing efforts to comply with Section 106 of the NHPA. Please direct questions to Jeff Brooke, Associate State Archaeologist, at (916) 445-7003 or [Jeff.Brooke@parks.ca.gov](mailto:Jeff.Brooke@parks.ca.gov).

Sincerely,



Julianne Polanco  
State Historic Preservation Officer

CC: Buffy McQuillen, THPO, Federated Indians of Graton Rancheria



## ATTACHMENT 15

Letter from BIA Pacific Regional Director Amy Dutschke to FIGR Chairman Greg Sarris (Aug. 24, 2023)



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

IN REPLY REFER TO:  
4303-P5 Koi Nation of Northern California Fee-to-Trust Land Conveyance

Honorable Greg Sarris, Chairman  
Federated Indians of Graton Rancheria  
6400 Redwood Drive, Suite 300  
Rohnert Park, CA 94928

Dear Chairman Sarris,

In response to the letter of August 7, 2023 the Bureau of Indian Affairs, Division of Environmental, Cultural Resource Management and Safety, Cultural Resource Management (CRM) Section received from your Tribal Historic Preservation Officer (THPO) it is acknowledged that Graton Rancheria has requested a consultation meeting under the provisions of Section 106 of the National Historic Preservation Act as amended, that concerns the approval of a fee-to-trust land conveyance for the Koi Nation of Northern California in Sonoma County, California. Please advise us as to the preferred venue for this meeting whether it be face-to-face or in a virtual setting. Upon your response, and as requested by your THPO, the CRM Section will contact Hector Garcia to schedule the meeting.

In the last section of the letter cited above, it is requested that the CRM Section not share the THPO's comments with the project proponent or its archaeological consultants. However, so that we may better address the concerns expressed in this letter we intend to provide these comments to our archaeological contractors as their role is to assist the CRM Section in its Section 106 compliance responsibilities.

We look forward to the opportunity to advance the Section 106 process concerning this proposed land conveyance. If there are additional concerns that need addressed prior to the consultation meeting, please contact Dan Hall, Regional Archaeologist, at (916) 978-6041, or Felix Kitto Deputy Regional Director, Office of Indian Services at (916) 978-6147.

Sincerely,

AMY  
DUTSCHKE

Digitally signed by  
AMY DUTSCHKE  
Date: 2023.08.24  
09:25:22 -07'00'

Regional Director

Enclosure

cc: Tribal Historic Preservation Officer, Federated Indians of Graton Rancheria

## ATTACHMENT 16

Letter from FIGR Chairman Greg Sarris to BIA Pacific Regional Director Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Commenting on the Koi Casino EA (FIGR EA Comments) (Nov. 13, 2023)



November 13, 2023

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

Chad Broussard, Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Re: Graton Rancheria Comments on the Koi Casino Environmental Assessment

Dear Ms. Dutschke and Mr. Broussard,

On behalf of the Federated Indians of Graton Rancheria (FIGR or the Tribe), I submit these comments on the draft Environmental Assessment (EA) for the Koi Casino (Project), published by the Bureau of Indian Affairs (BIA) on September 12, 2023. As we have voiced several times, we are extremely concerned with the Project due to both the serious environmental impacts and the irreparable impacts to our tribal sovereignty.

As a reminder, the Tribe is comprised of Southern Pomo and Coast Miwok people. Our aboriginal territory includes Sonoma County, in addition to Marin County, and our reservation is located just outside the City of Rohnert Park, in Sonoma County. Many of our ancestors and irreplaceable cultural resources are located here in Sonoma County. Moreover, a large number of our 1,500 Tribal Citizens reside in Sonoma County. In fact, many FIGR Citizens (at our last count, 89) live in the vicinity of the Project.<sup>1</sup> The FIGR government office and the Graton Resort and Casino are an approximately 18-minute drive from the Project site.

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<sup>1</sup> 89 FIGR Citizens live in the zip code of the project location (95403) and the two nearest zip codes (95492 and 95439).

This Project raises substantial concerns with regards to cultural resources, wildfire, public safety, water usage, transportation, and more. Up until now, BIA has understood the depth of these impacts and has subjected similarly situated tribal gaming projects to the rigor of a full Environmental Impact Statement (EIS). The impacts here will be real, and significant, to both the Tribe and our individual Tribal Citizens. Moreover, this bald attempt by a Lake County tribe to claim a historical right to the ancestral territory of our tribe and other Sonoma County tribes strikes at the very heart of our tribal sovereignty. It is with this perspective that we present the following comments.

## I. Overview and Guiding Authority

I would like to begin by noting that on September 28, 2023, we requested a 60-day extension to review the draft EA and provide our written comments. While I appreciate the 15-day extension granted by BIA, more time is necessary for the public to fully digest and meaningfully comment on the 217-page EA<sup>2</sup> and the over 1300 pages of accompanying appendices. With the time we were granted, we could not address every issue area in the EA.

The goal of the National Environmental Policy Act (NEPA) is to ensure that agencies engage in informed decision-making before approving federal actions that may have significant environmental impacts.<sup>3</sup> A critical aspect of informed decision making is notifying the public of the proposed action, sharing the relevant data and studies, and providing a meaningful opportunity for public comment.<sup>4</sup> Public comment allows the agency to better understand the nature and severity of impacts, i.e., the “significance” of impacts, which in turn informs the agency’s decision whether to prepare a full Environmental Impact Statement (EIS). We fear that in this case, due to the compressed comment period, the BIA lacks important information needed to properly evaluate significance.

Nonetheless, and as discussed in detail below, the information that *is* available clearly demonstrates that the foreseeable impacts of this Project are highly significant and span across

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<sup>2</sup> In fact, the current NEPA regulations require that an EA not exceed 75 pages unless a senior official has approved otherwise. The draft EA is nearly three times that length and as such, requires additional time to consider. *See* 40 C.F.R. § 1501.5(f).

<sup>3</sup> *See* 42 U.S.C. § 4332(c); *see also South Fork Band Council of Western Shoshone v. Dep’t of Interior*, 588 F.3d 718, 725 (9th Cir. 2009) (“An adequate EIS is essential to informed agency decision-making and informed public participation, without which the environmental objectives of NEPA cannot be achieved.”); *Am. Rivers v. Fed. Energy Regul. Comm’n*, 895 F.3d 32, 49 (D.C. Cir. 2018) (“NEPA’s primary function is information-forcing, compelling federal agencies to take a hard and honest look at the environmental consequences of their decisions.”) (internal citations and quotations omitted).

<sup>4</sup> *See, e.g., Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004) (explaining the “informational role” that NEPA plays in assuring the public that the agency “has indeed considered environmental concerns in its decisionmaking process,” as well as, “perhaps more significantly, providing a springboard for public comment in the agency decisionmaking process itself”) (internal citations and quotations omitted); *see also* 40 C.F.R. § 1501.5 (e) (requiring agencies to involve the public, state, tribal, and local governments to the extent practicable when preparing EAs).

multiple domains. The NEPA statute is clear that the BIA must issue an EIS for any proposed action that has a “reasonably foreseeable significant effect on the quality of the human environment.”<sup>5</sup> The significance of impacts need not be determined with absolute certainty. As the Ninth Circuit has explained, “an EIS must be prepared if ‘substantial questions are raised as to whether a project ... may cause significant degradation of some human environmental factor.’”<sup>6</sup> The volume and nature of negative public comment may be indicative of the degree to which “substantial questions” have been raised regarding the effects of the proposed action and whether serious doubts have been cast upon “the reasonableness of the agency’s conclusions.”<sup>7</sup> To the extent that public commenters have “urged that the EA’s analysis was incomplete, and the mitigation uncertain, they cast substantial doubt on the adequacy of the [agency’s] methodology and data.”<sup>8</sup> Here, major questions exist regarding the many environmental and human impacts of the Project as well as the adequacy of the EA’s analysis of those impacts.

The EA relies heavily on cursory references to mitigation measures in concluding that significant impacts can be avoided. While mitigation measures can be utilized to reduce a particular impact to less-than-significant levels, federal courts have emphasized that such measures must be detailed and evaluated for efficacy. An agency’s “perfunctory description of mitigating measures is inconsistent with the ‘hard look’ it is required to render under NEPA.”<sup>9</sup> Rather, an “*essential component* of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be *effective*.”<sup>10</sup> Indeed, the Ninth Circuit has expressly warned that “a mitigation discussion without at least *some* evaluation of effectiveness is *useless* in making th[e] determination” of whether anticipated environmental impacts can be avoided.<sup>11</sup> Furthermore, an agency may not take a wait-and-see approach with mitigation, even if certain data is unknown at the time of conducting the EA, because “NEPA requires that a hard look be taken, if possible, *before* the environmentally harmful actions are put into effect.”<sup>12</sup>

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<sup>5</sup> 42 U.S.C. § 4336.

<sup>6</sup> See, e.g., *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (internal citation omitted). Similarly, the D.C. Circuit has long held that if “*any* significant environmental impacts might result from the proposed agency action, then an EIS must be prepared *before* the action is taken.” *Am. Bird Conserv., Inc. v. F.C.C.*, 516 F.3d 1027, 1034 (D.C. Cir. 2008) (per curiam) (quoting *Sierra Club v. Peterson*, 717 F.2d 1409, 1412-13 (D.C. Cir. 1983)).

<sup>7</sup> *Nat’l Parks Conserv. Assoc’n v. Babbitt*, 241 F.3d 722, 736 (9th Cir. 2001) (internal quotations and citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

<sup>10</sup> *South Fork Band*, 588 F.3d at 727 (emphasis added); see also *Neighbors of Cuddy Mountain*, 137 F.3d at 1381-82 (rejecting an EIS as incomplete because, among other flaws, the Forest Service had not “provided an estimate of how effective the mitigation measures would be if adopted”); *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 930-31 (D.C. Cir. 2017) (explaining that courts must ensure that the agency, in deciding not to prepare an EIS, “has shown that even if there is an impact of true significance, an [EIS] is unnecessary because changes and safeguards in the project sufficiently reduce the impact to a minimum.”) (internal quotations omitted).

<sup>11</sup> *South Fork Band*, 588 F.3d at 727 (first emphasis in original, second emphasis added).

<sup>12</sup> *Id.* (holding that the agency’s limited understanding of the site’s hydrologic features did not relieve the agency of its responsibility to assess whether mitigation measures could be effective in avoiding impacts to groundwater).



Ultimately, if the BIA were to issue a Finding of No Significant Impact (FONSI), rather than proceed with an EIS, it must demonstrate that it “has taken a ‘hard look’ at the consequences of its actions, ‘based [its decision] on a consideration of the relevant factors,’ and provided a ‘convincing statement of reasons to explain why a project’s impacts are insignificant.’”<sup>13</sup> In other words, a decision *not* to prepare an EIS “will be considered unreasonable if the agency fails to supply a convincing statement of reasons why potential effects are insignificant.”<sup>14</sup> It is important to always keep in mind both the underlying policy and the real-life stakes. As the Ninth Circuit declared, while quoting the U.S. Supreme Court, “NEPA emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that ‘the agency will not act on incomplete information, only to regret its decision after it is too late to correct.’”<sup>15</sup>

As detailed below—and in the comments raised by numerous individuals, organizations, and government entities during the June 2022 scoping process and the September 27, 2023, virtual public hearing—there are substantial questions regarding the impacts to cultural resources, wildfire evacuation, public safety, water usage, and more. A substantial dispute exists as to whether the evidence, or lack thereof, actually supports the EA’s findings of no significant impact. Furthermore, the mitigation measures offered by the EA are vague, incomplete, and unconvincing. They provide no reasonable assurances that significant impacts will be addressed in a realistic and proportionate matter. Nor are there critical enforcement mechanisms in place to ensure that the Project proponent will keep to its mitigation commitments once the Project is approved. For these reasons, the contemplated mitigation measures do not meaningfully reduce the significance of the likely impacts and are not an adequate replacement for a comprehensive EIS. We urge the BIA not to issue a FONSI based on incomplete information, only to regret its decision after it is too late to correct.

## **II. A Decision Not to Prepare an EIS is Wholly Inconsistent with BIA Practice**

For all the reasons described above and detailed in Section III, the BIA should proceed with preparing an EIS. Furthermore, as a threshold matter, failing to prepare an EIS would be arbitrary, capricious, and inconsistent with BIA practice. The EA describes Alternative A (the project proponent’s preferred alternative) as the acquisition of 68.6 acres in trust to construct a three-story casino with 2,750 gaming devices, 105 table games, a food court, five restaurants, and four service bars—comprising 538,137 square feet. (EA Sec. 2.1.2). There will also be a five-story, 400-room hotel with spa, ballrooms/meeting space, and event center—comprising

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<sup>13</sup> *Nat’l Parks*, 241 F.3d at 730 (internal citations omitted).

<sup>14</sup> *Blue Mountains*, 161 F.3d at 1211 (internal quotation omitted); *see also Am. Wild Horse*, 873 F.3d at 930-31 (holding that an agency’s decision not to prepare an EIS was improper because it “failed to make a convincing case for its finding of no significant impact”) (internal quotation omitted).

<sup>15</sup> *Blue Mountains*, 161 F.3d at 1216 (quoting *Marsh v. Ore. Nat. Res. Council*, 490 U.S. 360, 371 (1989)).

268,930 square feet. Additionally, the site will contain a four-story parking garage and paved surface parking lot providing 5,119 parking spaces—comprising 1,689,380 square feet. (EA Sec. 2.1.2). Lastly, there will be an on-site potable water treatment plant and storage tank, on-site wastewater treatment facilities (including a wastewater treatment plant, 4-acre seasonal storage pond, storage tank, and pump station), as well as “up to” two new water supply wells and potentially a fire station. (EA Sec. 2.1.3, Sec. 3.10.3.2, and Appendix C). The total square footage of ground disturbance will exceed 2.4 million square feet.

When scoping the project, BIA asserted that an EA is “the appropriate level of NEPA document at this time” because it will help BIA determine “whether a proposed action may or will have a significant impact on the quality of the human environment.” (Scoping Report at 26). Yet it is clear that a project of this scale will have a significant impact on the quality of the human environment. In fact, BIA’s practice has long been to conduct the more comprehensive review demanded by an EIS for tribal gaming projects of this nature.

For example, in 2020, BIA issued a final EIS for the Tejon Indian Tribe’s acquisition of land for a casino project similar in scope to the Koi Project. The project involved the trust acquisition of 306 acres of land in order to construct a 715,800 square foot Class III gaming facility with casino, restaurants, entertainment and retail space, a fire and police station, RV park, water treatment facilities, and 400-room hotel.<sup>16</sup> Prior to trust transfer, the site consisted primarily of agricultural land with rural residential housing and commercial development.<sup>17</sup>

Similarly, in 2019, BIA issued a final EIS for the Tule River Indian Tribe’s relocation of its casino—a project involving less acreage, less casino square footage, and a smaller hotel than the Koi Project. Specifically, the Tule River project involved the trust acquisition of 40 acres of land for a 104,637 square foot Class III gaming facility with a casino, food and beverage facilities, events center, conference center, parking and 250-room hotel.<sup>18</sup> The 40-acre site was located next to the municipal airport and had consisted of mixed-use, dominated by agricultural uses, prior to the approval of the project.<sup>19</sup>

Two other recent examples include the BIA’s preparation of an EIS for the Wilton Rancheria casino project and also for the Soboba Band of Luiseño Indians Horseshoe Grande casino project—both of which involved parcels that had already been partially developed. In 2016, BIA finalized its EIS evaluating the trust acquisition of 36 acres of land for the Wilton Rancheria that had already been partially developed as a shopping mall. The Wilton Rancheria

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<sup>16</sup> BIA Final Environmental Impact Statement, Tejon Indian Tribe Trust Acquisition and Casino Project (Oct. 2020) at 2-1 – 2-2.

<sup>17</sup> *Id.* at 2-1.

<sup>18</sup> BIA, Final Environmental Impact Statement, Tule River Indian Tribe Fee-to-Trust and Eagle Mountain Casino Relocation Project (Apr. 2019).

<sup>19</sup> *Id.* at 2-1.

project involved the construction of a 608,756 square foot Class III gaming facility (similar in size to the Koi Casino's 538,137 square foot facility) and 302-room hotel (smaller than the Koi Project's 400-room hotel).<sup>20</sup> In 2013, the BIA issued a final EIS for the trust acquisition of 535 acres of land for the Soboba Band of Luiseño Indians. A portion of the large site was already being used for a tribal golf course, but 55 undeveloped acres were evaluated by the BIA for construction of a 729,500 square foot Class III gaming facility (again, similar in size to the Koi Casino's 538,137 square foot facility), and 300-room hotel (again, smaller than the Koi Project's 400-room hotel), as well as two fire stations and gas station.<sup>21</sup> Importantly, there is no reasonable basis for concluding that these recent tribal casino-resort projects required an EIS but the current Project somehow does not.

Of course, an EA may be appropriate for certain tribal casino projects. For example, the BIA prepared an EA for the Agua Caliente Cathedral City Casino. That project, however, was a fraction of the size of the Koi Project, with only 13 acres of land being acquired in trust for purposes of constructing a small casino (500 gaming devices), parking lot, tribal office space and other ancillary facilities, totaling 125,000 square feet of development.<sup>22</sup> Importantly, the site had already been developed, including utility connections, and the proposed use was consistent with local land use zoning and in furtherance of the Agua Caliente's shared goal with the local municipal entities to redevelop the parcel as part of a larger downtown revitalization project.<sup>23</sup> We also wish to note that the parcel was adjacent to the Agua Caliente's existing reservation, greatly minimizing any potential impacts on the sovereign rights of other tribes.<sup>24</sup>

Here, on the other hand, the Koi's Project site is largely undeveloped, the adjacent land is primarily agricultural and residential, and the site is 50 miles from the Koi's historic rancheria (and within the aboriginal and cultural territory of the Southern Pomo people). The Koi Project is much more like the Tejon, Tule, Soboba, and Wilton projects, all of which were subject to an EIS. Further, the Koi Project is akin to the Nottawaseppi Huron Band of Potawatomi Indians' proposed casino project, for which the D.C. District Court held in an unreported case that the BIA's preparation of an EA was insufficient.<sup>25</sup> That project concerned the acquisition in trust of 79 acres to construct a 200,000 square foot facility, 1,200 to 1,400 slot machines, 60 gaming

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<sup>20</sup> BIA, Final Environmental Impact Statement / Tribal Project Environmental Document, Wilton Rancheria Fee-to-Trust and Casino Project at ES-4–ES-5 (Dec. 2016) (hereinafter 2016 Wilton Rancheria FEIS).

<sup>21</sup> BIA, Final Environmental Impact Statement, Horseshoe Grande Fee-to-Trust Project at ES-1 (Sept. 2013)

<sup>22</sup> BIA, Draft Environmental Assessment / Tribal Environmental Impact Report, Agua Caliente Band of Cahuilla Indians Cathedral City Fee-to-Trust Casino Project at 6–7 (Oct. 2018) (hereinafter 2018 Agua Caliente Draft EA); see also BIA, Final Environmental Assessment / Tribal Environmental Impact Report, Agua Caliente Band of Cahuilla Indians Cathedral City Fee-to-Trust Casino Project at (July 2019).

<sup>23</sup> 2018 Agua Caliente Draft EA at 2, 4, 8, 10, 39–40; see also Tara Sweeny, Assistant Secretary – Indian Affairs, Finding of No Significant Impact for the Agua Caliente Band of Cahuilla Indians Cathedral City Fee-to-Trust Casino Project at 3 (Oct. 7, 2019).

<sup>24</sup> 2018 Agua Caliente Draft EA at 2.

<sup>25</sup> *Citizens Exposing Truth About Casinos v. Norton*, No. CIV A 02-1754 TPI, 2004 WL 5238116 (D.D.C. Apr. 23, 2004), aff'd sub nom. *Citizens Exposing Truth about Casinos v. Kempthorne*, 492 F.3d 460 (D.C. Cir. 2007).

tables, and a 3,100-spot parking lot motor vehicles.<sup>26</sup> Similar to the Koi Project, the Huron casino site was active farmland.<sup>27</sup> The District Court stated that it appeared such a project would entail “a multitude of significant direct impacts,” and remanded the EA’s findings to the contrary back to BIA. Similarly, relying solely on an EA to evaluate the current Project is inappropriate because, as detailed in our comments and those of other members of the public, this Project will have a multitude of significant, direct impacts. It would be arbitrary and capricious for the BIA to conclude otherwise and forego its standard practice of preparing a full EIS for this type of casino project.

### **III. Comments on Specific Draft EA Sections**

We now offer targeted feedback on various impact areas discussed in the draft EA to highlight where the EA’s analysis is insufficient under NEPA and there remains a substantial question as to whether impacts will be significant. Given the lack of adequate review time, we focus on the areas with which we have the greatest concern.

#### **a. Alternatives**

NEPA requires the BIA to consider reasonable alternatives that are “technically and economically feasible, and meet the purpose and need for the proposed action.”<sup>28</sup> While the EA acknowledges that the Koi Nation’s aboriginal territory is in Lake County, it does not consider an alternative project site that is actually within Lake County. (*See* EA at 1-2).<sup>29</sup> The BIA provides a cursory explanation for why it eliminated alternative project sites in the BIA’s September 2022 Scoping Report, which states that Koi Nation has submitted “substantial evidence to the BIA regarding its lengthy and thorough evaluation of alternative sites” but that it is “highly speculative” that alternative locations could support an economic enterprise that would fund the tribal government, or that the Koi Nation could even purchase property in those unspecified alternate locations. (Scoping Report at 13). The Scoping Report does not include any of the data submitted by Koi nor does it specify whether sites within Koi Nation’s aboriginal territory were evaluated. It references a more detailed explanation in a separate “Alternatives Evaluation Report,” but no such report has been disclosed to the public. (Scoping Report at 8, 12).

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<sup>26</sup> *Id.* at 1, 7.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> 40 C.F.R. § 1508.1(z); *see also* EA at 2-25.

<sup>29</sup> We wish to note that the historical background in EA Section 1.3 makes a number of unsupported assertions, including but not limited to the assertion that “the Koi tribal leadership and Koi community relocated [from Lake County] to Sonoma County.” The EA provides no citation for this and other characterizations of Koi history aimed at buttressing Koi’s claims under the Indian Gaming Regulatory Act that it has a “significant historical connection” to Sonoma County.

Dismissing alternative sites due to technical or economic feasibility is not supported by the record. It is not “highly speculative” to claim that Lake County is a viable location for a casino capable of funding tribal government, as four tribal casinos are currently in operation there.<sup>30</sup> While competition from the other casinos may affect the amount of revenue the project could expect, the same assumption can be made for the proposed Project as there are two other tribal casinos in Sonoma County, as well as nearby casinos in Mendocino County.<sup>31</sup> Further, a brief internet search reveals that the median property value in Lake County is substantially lower than in Sonoma County, making investment in Lake County more affordable.<sup>32</sup> Moreover, there are currently available sites in Lake County that are well situated for tourism and large-scale development.<sup>33</sup> Without providing any market data, it is not reasonable for the EA to eliminate consideration of a project site in Lake County due to economic or technical feasibility.

Neither is elimination of a project site in Lake County reasonable due to regulatory feasibility. The Indian Gaming Regulatory Act requires the Koi Nation to demonstrate a “significant historical connection” to a site for it to be eligible for gaming.<sup>34</sup> Certainly, a project site in Koi Nation’s aboriginal territory is no less regulatorily feasible than the proposed Project site outside Windsor. In fact, as we have repeatedly raised, the Koi Nation cannot demonstrate a “significant historical connection” to the Project site, specifically, or Sonoma County, generally, and we will be submitting a separate filing with the Department addressing these specious historical claims. To summarize, Koi Nation is a Southeastern Pomo tribe aboriginally from Lake County, whereas Sonoma County is the aboriginal territory of Southern Pomo and Southwestern Pomo (also known as Kashaya) speaking tribes. Nonetheless, the Koi Nation claims it has a significant historical connection to Sonoma County based on the relocation of certain Koi families from Clear Lake to the Sonoma County area in the 1900s, as well as the use of seasonal trade routes through Sonoma County.<sup>35</sup> The Department has already determined that

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<sup>30</sup> See California’s Clean Air Project, County List of Casino, <https://www.etr.org/ccap/tribal-casinos-in-california/county-list-of-casinos/> (last visited Nov. 7, 2023).

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., National Association of Realtors, County Median Home Prices Q1 2023 (providing that the median home price in Sonoma County is \$818,928, whereas the median home price in Lake County is \$350,835), <https://www.nar.realtor/research-and-statistics/housing-statistics/county-median-home-prices-and-monthly-mortgage-payment> (last visited Nov. 8, 2023).

<sup>33</sup> See, e.g., [https://www.sothebysrealty.com/eng/sales/detail/180-l-518-4pnknt/5115-east-highway-20-nice-ca-95464\\_!!ivohdkk!lnmr8coobvsym3p9hsfe79akfz-33kspwo\\_ds15wmmryk5m6bu9ykmzkvtlco0geqso5v5che9fjd8bteate7jax5q\\$](https://www.sothebysrealty.com/eng/sales/detail/180-l-518-4pnknt/5115-east-highway-20-nice-ca-95464_!!ivohdkk!lnmr8coobvsym3p9hsfe79akfz-33kspwo_ds15wmmryk5m6bu9ykmzkvtlco0geqso5v5che9fjd8bteate7jax5q$) (57-acre property on the northeastern shores of Clear Lake, with existing buildings, infrastructure, and winery); <https://www.loopnet.com/Listing/11474-Spruce-Grove-Rd-Lower-Lake-CA/24889793/> (503-acre largely undeveloped property in Lower Lake).

<sup>34</sup> The Koi Nation must demonstrate it has a “significant historical connection” to the Property in order for the Property to qualify as “restored lands” pursuant to 25 C.F.R. § 292.11(b). “Significant historical connection” means “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty,” or—as relevant here—by “historical documentation [of] the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” 25 C.F.R. § 292.2.

<sup>35</sup> See Koi Nation of Northern California, September 13, 2021 Request for Restored Lands Opinion, March 2023 Supplemental Restored Land Request, and July 2023 Second Supplemental Restored Land Request, and accompanying exhibits, available at <https://www.koinationsonoma.com/documents/> (last visited Nov. 8, 2023).



“relocation of some of [a tribe’s] members to various locales throughout the Bay Area does not equate to the [tribe] itself establishing subsistence use or occupancy in the region apart from its Rancheria”<sup>36</sup> and that “evidence of the [tribe’s] citizens’ movements as late as the 1960s is more of a *modern* era activity, as opposed to *historic*, as those two terms are used in the Part 292 regulations.”<sup>37</sup> Further, the Department has held, in the context of denying a different Lake County tribe’s restored lands request, that it “cannot establish its subsistence use or occupancy based on the fact that its ancestors traveled to various locations to trade and interact with other peoples and then returned to the Clear Lake Region.”<sup>38</sup> Rather, the Department found that “[s]ubsistence use and occupancy requires something more than a transient presence in an area.”<sup>39</sup> Accordingly, the BIA should have considered alternative project sites that are actually within Koi Nation’s aboriginal territory, as the BIA has done for similar projects.<sup>40</sup>

**b. Cultural Resources**

*i. Procedural & Methodological Deficiencies*

We must begin the discussion on cultural resources by noting our utter dismay that the BIA published the draft EA, including its conclusions of less-than-significant impacts to cultural resources, despite the fact that it had not properly consulted with the Tribe pursuant to the National Historic Preservation Act (NHPA) Section 106. Beginning in August 2022, we sent several letters to the BIA and one of the project proponent’s archaeologist, Tom Origer, requesting that the various field surveys and cultural reports be shared with FIGR. We further requested that no testing of cultural resources be done without the participation of our Tribe. In December 2022, we requested to meet with the BIA to discuss this project through formal Section 106 tribal consultation. Despite our efforts, it took almost 9 months for BIA to share those reports (referenced in confidential Appendix H), cultural resources were subjected to destructive obsidian hydration testing without our knowledge or presence, and the BIA failed to respond to our meeting request until September 2023 (after we repeated our meeting request, in

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<sup>36</sup> Decision Letter from Assistant Secretary – Indian Affairs Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 19 (Sept. 1, 2011).

<sup>37</sup> Decision Letter from Acting Assistant Secretary – Indian Affairs Donald E. Laverdure to the Honorable Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians at 18 (May 25, 2012) (discussing the relocation of individual Band members during the 1920s and 1960s) (emphasis in original).

<sup>38</sup> Decision Letter Assistant Secretary Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 14 (Sept. 1, 2011).

<sup>39</sup> *Id.*

<sup>40</sup> *See, e.g.*, 2016 Wilton Rancheria FEIS, Section 2 – Alternatives (Dec. 2016) (considering, among the alternatives, the tribe’s historic rancheria site which was no longer held in trust); Dep’t of Interior, Record of Decision for Trust Acquisition of the 40-acre Yuba County Site in Yuba County, California, for the Enterprise Rancheria of Maidu Indians of California (Nov. 2023) (incorporating the Final EIS and considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for the tribe); BIA, Final Environmental Impact Statement, North Fork Rancheria of Mono Indians (Feb. 2009) (considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for individual North Fork members).

writing, in August 2023). At the time of submitting these comments, the BIA has yet to meet with the Tribe due to BIA staff scheduling challenges.

Even if we *had* the opportunity to meet with BIA prior to the issuance of the EA, we lacked critical details about the project design, including major ground-disturbing components, which were only recently disclosed in the EA. For example, to provide an adequate water supply for the project, up to two new water wells may be dug onsite, exact location unknown, to a depth of approximately 700 feet. (See EA Sec. 2.1.3; Appendix C, Figures 2-3 and 2-4, appearing to propose at least one of the new wells be located within the already crowded water treatment area). Further, the proposed wastewater collection system involves installing a gravity sewer main underneath the existing creek. (See EA Sec. 2.1.4). Additionally, the project design anticipates constructing massive seasonal storage ponds or storage tanks to hold treated effluent until it can be used. (See EA Sec. 2.1.4). Assuming no off-site use of the effluent is available, storage ponds would have a 12.1-million gallon capacity and cover 4.1 acres with a maximum depth of 9 feet, whereas storage tanks would have a 16 million gallon capacity and be 145 feet wide and 65 feet tall. (See Appendix C Sec. 2.3.4.4, including Figures 2-7 and 2-8). These design features demonstrate not only the high degree of uncertainty with the overall project design but also the substantial ground disturbance that will likely result from construction. Moreover, the design seems to contradict conclusions drawn by the project proponent's archaeologist (and implicitly adopted by the BIA) that likely no pre-historic sites would be impacted since prior vineyard agricultural activity had already disturbed the subsurface to a depth of four feet. (See confidential Appendix H-1 at 4). Up to 700 feet of new ground disturbance is certainly distinguishable from four feet of prior ground disturbance.

In addition to these consultation shortfalls, there are numerous issues with EA Section 3.6. First, in Subsection 3.6.2, the EA asserts that around 3,500 BP, many Clear Lake Pomo moved west into the Russian River drainage, married into existing Yukian tribes (bringing with them their language, culture, and technology), and “[e]ventually the Clear Lake Pomo culture spread throughout Sonoma and Mendocino Counties.” (EA at 3-53). This assertion is misleading—likely to preserve the narrative that the Koi Nation is significantly and historically connected with the area—and without proper academic support. Rather than citing to primary source material regarding Pomo origins and the antiquity of the presence of Hokan-speaking peoples in Sonoma County,<sup>41</sup> the EA cites only to the historic property survey report generated for this Project by the Koi Nation's own archaeological consultant, John Parker. (EA at 3-53, citing Appendix H-1). This is a far cry from a comprehensive article on the subject that is peer reviewed and published in an academically reputable journal. Moreover, the hypothetical population movements associated with differentiation and expansion of Pomoan language is

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<sup>41</sup> Hokan is the language family in which Pomo is thought to have originated. See Mark Basgall, *Archaeology and Linguistics: Pomoan Prehistory as Viewed from Northern Sonoma County, California*, J. OF CA. & GREAT BASIN ANTHROPOLOGY 4(1):3-22 (1982).

disputed among academics. For example, anthropologist Mark Basgall's 1982 manuscript *Archaeology and Linguistics: Pomoan Prehistory as Viewed from Northern Sonoma County, California* provides a critique of the early California linguists that model prehistoric language movements as resulting from migration.<sup>42</sup> Basgall argues, quite convincingly, that the Southern Pomo language resulted from in situ development, meaning that Southern Pomo speakers did not replace earlier inhabitants. Instead, Southern Pomo speakers have been present in northern Sonoma County for a long period and the differences in language families is the result of in-situ development rather than population replacement.

Additionally, under the header “Native American Consultation,” the EA notes that the Native American Heritage Commission identified the presence of sacred sites within or near the Area of Potential Effects (APE), yet the EA does not analyze those sites or identify their locations. (EA at 3-51). As such, the EA has not provided adequate identification efforts necessary to determine if the sacred site(s) are present within the APE. Further, even though this subsection notes that FIGR believes religious and significant tribal cultural resources are present within the APE, it does not analyze impacts or provide any resolution of potential adverse effects to those resources—nor could it, since BIA has not actually met with FIGR yet to discuss these issues.

Another issue, which we have raised before, is that the BIA should establish the APE in consultation with the appropriate tribes through the NHPA Section 106 process. Proposed traffic mitigation for this project indicates that the widening of Shiloh Road will eventually become necessary. (EA at 4-9). Additionally, the EA provides that gas and electrical utility extensions and infrastructure improvements will be constructed prior to the Project opening date and paid for by the Koi Nation; while it does not specify the exact locations of such extensions and infrastructure improvements, it is logical to assume some of the work will be conducted off-site. (See EA at 3-86). Accordingly, the APE should be expanded beyond the property boundaries to include any roads or other locations where work is likely to be done.

The discussion of field surveys and evaluations in Subsection 3.6.3.2 are also deficient. The February 2022 archaeological field survey performed by one of Koi Nation’s archaeological consultants, John Parker, resulted in the identification of variety of pre-contact archaeological materials including: a bowl mortar, chert and obsidian flakes, a biface fragment, a core and a projectile point. In addition, historic-era archaeological materials associated with a home site were found. John Parker recommended that neither the pre-contact archaeological materials nor the historic-era items are significant archaeological resources, and therefore are not eligible for listing on the National Register of Historic Places (the National Register). Yet the evaluation of the eligibility for listing on the National Register does not follow the guidelines outlined in the

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<sup>42</sup> Mark Basgall, *Archaeology and Linguistics: Pomoan Prehistory as Viewed from Northern Sonoma County, California*, J. OF CA. & GREAT BASIN ANTHROPOLOGY 4(1):3-22 (1982).

*How to Apply the National Register Criteria for Evaluation* published by the National Park Service. The eligibility criteria (A-D) are not clearly outlined in the EA, neither is how they relate to the archaeological resources. The evaluation lacks a detailed description and offers a poorly developed justification regarding the eligibility of the resource. Relatedly, the EA's description of the May 2022 archaeological field survey performed by another archaeological consultant, Tom Origer & Associates, is misleading. The EA fails to explain that the archaeologist made no recommendation regarding the eligibility of pre-historic resources for inclusion on the National Register and in fact, concluded there *could* be buried archaeological sites and recommended that additional studies be completed, such as obsidian hydration analysis, canine survey, ground penetrating radar survey, and backhoe trenching. (See confidential Appendix H-2 at 11).

In subsection 3.6.3.3, the BIA prematurely and without adequate explanation concludes that the Project would “not result in direct adverse effects to known historic properties” and that while there is a “potentially significant impact” to subsurface prehistoric or historic archaeological resources, those impacts would be reduced to less-than-significant levels with mitigation.<sup>43</sup> As we already stated, such a conclusion should not be rendered prior to meeting with our Tribe and other consulting tribes to discuss the identification of and impact to tribal cultural resources. It is also noteworthy that the State Historic Preservation Officer has not concurred with the BIA's determination of no adverse effects, a fact the draft EA neglects to mention. Further, the EA's conclusion of no adverse effects under the NHPA is undermined by the EA's simultaneous recognition that a number of factors, such as the presence of Pruitt Creek, the presence of scattered obsidian, and the results of Native American consultation “conducted to date” indicate that there is, in fact, a potential for “significant subsurface cultural resources to be buried beneath the Project Site,” which “could be encountered and impacted during project related construction and evacuation activities.” (EA at 3-56). This illustrates that additional identification efforts are merited to determine the presence or absence of buried archaeological resources at the Project site.

#### *ii. Mitigation Deficiencies*

The EA summarily concludes that while there is a potentially significant impact to certain cultural resources, such impact would be reduced to less-than-significant if mitigation measures are employed. (EA at 3-56). Ironically, the section's ethnographic overview acknowledges the Project site is within Southern Pomo aboriginal territory (EA at 3-52), yet these mitigation measures were developed without consultation with the culturally affiliated tribes, including our own. The mitigation measures are poorly designed, fail to incorporate applicable law and leave us with no confidence that mitigation will be implemented properly or with the participation of the culturally affiliated tribes.

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<sup>43</sup> The BIA makes this same conclusion for alternative project designs. See EA at 3.6.3.4 and 3.6.3.5.

To start, Cultural Resource Mitigation Measure A provides that:

Any ground-disturbing activities that occur within 150 feet of Pruitt Creek shall be monitored by a qualified archaeologist and Native American Tribal Monitor. An archaeological monitoring program shall be established that includes consultation between the consulting archaeologist, lead agency, and the project proponent. The program shall clearly define the authority to temporarily halt/redirect construction should resources be encountered.

This mitigation measure is flawed in several respects. It does not specify who may properly serve as a Native American Tribal Monitor and there is no guarantee that the monitor will come from a culturally affiliated tribe. In fact, as noted in the EA at page 3-55, the Koi Nation previously utilized its own tribal monitor for trench studies conducted at the site and we have every reason to believe they will continue to use their own tribal monitor, even though they are not Southern Pomo and not culturally affiliated with this area. Further, the archaeological monitoring program is to include consultation between the consulting archaeologist, lead agency, and the project proponent, but there is no mention of consultation with any of the local tribes. Last, given the array of cultural resources or potential cultural resources discovered throughout the site, as discussed in the confidential appendices, monitoring should be required for ground-disturbing activities *anywhere* at the site, not just those activities that occur within 150 feet of Pruitt Creek.

Next, Cultural Resource Mitigation Measure B provides that:

In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the National Historic Preservation Act as amended (36 CFR Part 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA and other appropriate agencies. If any find is determined to be significant by the archaeologist or paleontologist and project proponent, a BIA representative shall meet with the archaeologist or paleontologist and project proponent to determine the appropriate course of action, including the development of a Treatment Plan and implementation of appropriate avoidance measures or other mitigation.

This mitigation measure again excludes culturally affiliated tribes from the process, securing them no role in assessing the significance of a find or in developing a Treatment Plan or other appropriate course of action. Ironically, and inappropriately, the project proponent *is* guaranteed a voice in this process. Moreover, this mitigation measure fails



to identify and incorporate applicable federal law from the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Preservation Act (ARPA). NAGPRA provides a process for determining the ownership and control of Native American cultural items discovered on tribal lands.<sup>44</sup> ARPA also imposes a number of relevant requirements, including prohibiting the unauthorized evacuation, removal or damage of archaeological resources on Indian lands.<sup>45</sup> Last, this mitigation measure fails to provide a clear explanation or description of how archaeological materials will be treated. While it refers generically to a Treatment Plan, it should specifically require that an Archaeological Research Design and Treatment Plan (ARDTP) be authored to guide archaeological evaluation and mitigation measures. The ARDTP should follow *Guidelines for Archaeological Research Designs* published by the California State Office of Historic Preservation and be reviewed by the BIA and all tribes that requested to be a consulting party. Moreover, the ARDTP should be in place prior to commencing any ground-disturbing construction activities, rather than waiting until a discovery occurs.

Last, Cultural Resource Mitigation Measure C provides that:

If human remains are discovered during ground-disturbing activities a BIA representative shall be contacted immediately. No further disturbance shall occur until the BIA representative has made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant. The Most Likely Descendant is responsible for recommending the appropriate disposition of the remains and any grave goods.

Again, this mitigation measure entirely fails to identify and incorporate applicable federal law and, confusingly, incorporates a California state law process that does not apply to tribal trust lands. Similar to the prior mitigation measure, NAGPRA provides the process for determining the ownership and control of Native American human remains discovered on tribal lands. That process includes a priority for *known* lineal descendants of a deceased Native American individual who has been *identified*.<sup>46</sup> In contrast, the “Most Likely Descendant” procedures under California state law are a completely separate process and do not require the same degree of identification and connection between the deceased and the descendant.<sup>47</sup> This California law simply would not apply here. Moreover, and echoing the pitfalls of the first two mitigation measures, the culturally affiliated tribes are ignored in this mitigation measure and offered no voice or rights in the disposition of our own ancestors.

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<sup>44</sup> 25 U.S.C. § 3002(a); 43 C.F.R. § 10.4.

<sup>45</sup> 16 U.S.C. §§ 470aa–470hh; *see also* 43 C.F.R. §§ 7.4.

<sup>46</sup> *See* 43 C.F.R. §§ 10.2(b)(1) (defining “Lineal Descendant”), 10.4(e) (providing the process for inadvertent discoveries on tribal lands), 10.6 (providing the priority of custody).

<sup>47</sup> *See* California Public Resources Code § 5097.98.

With regards to the second and third mitigation measures, the incorporation of federal law drives home the most concerning, indeed significant, impact of all: the Koi Nation will be afforded superior rights to our Tribe and other culturally affiliated tribes if any cultural resources or human remains are inadvertently discovered during or after the construction of the Project. Why? Because the federal action here will result in the property being transferred into trust for the Koi Nation, thereby becoming the Koi Nation's tribal lands. And under these various federal legal schemes, the Indian tribe on whose tribal lands such remains or objects are found has a custodial priority over Indian tribes with the closest cultural affiliation. We cannot imagine it was Congress' intent to create such an unjust scenario, but Congress likely was not envisioning a scenario where a tribe would acquire trust lands outside of its aboriginal territory and in the aboriginal territory of other tribes.

We reserve the remainder of our comments for confidential tribal consultation through the Section 106 process. Nonetheless, we believe it is important that the BIA, and the public, understand that: 1) contrary to what the EA states, meaningful and complete tribal consultation was *not* conducted prior to the publication of the EA; 2) tribal cultural resources on the property have not been properly analyzed; and 3) the proposed mitigation measures were designed without the input of the culturally affiliated tribes and are woefully inadequate for protecting our cultural resources. The BIA's decision to hold out the EA for public review and input, even though BIA knew critical information was forthcoming on cultural resources, is misleading to the public. As detailed above, there are substantial questions regarding the adequacy of the BIA's evaluation of cultural resources, the significance of the project's impacts on those resources, and the efficacy of the proposed mitigation measures. As such, a full EIS must be prepared.

### c. Fire Risk and Evacuation

The EA does not adequately address the impacts the Project would have on the critical issues of fire safety and wildfire evacuations. The proposed casino-resort would bring thousands of daily visitors to a site that Sonoma County has already determined to have a "high" risk of wildfire. (EA at Fig. 3.12-2). Indeed, the Project site is situated *within a half mile* of the burn perimeter of *both* the Tubbs Fire (2017) and the Kincade Fire (2019)—two of the most devastating wildfires in all of California history. (EA at 3-109, Fig. 3.12-2). Despite the significant risk to human safety inherent in operating such a large casino facility in such a high-risk location, the EA fails to specify how basic fire protection services would be provided and incorrectly concludes that the Project would have no significant impact on wildfire risk and evacuations for the surrounding area.

*i. Fire Protection and Emergency Medical Services*

While the Project site for Alternative A is located within the jurisdiction of the Sonoma County Fire District (SCFD), the SCFD has *not* agreed to provide any particular level of service to the Project Site. The EA primarily relies on a letter of intent between Koi Nation and SCFD to conclude that impacts to fire protection and emergency medical services would be reduced to less than significant. (EA at 3-89). But this bare-bones, one-page letter does not remotely constitute an emergency services plan. Rather, the letter merely states that a Memorandum of Understanding (MOU) between Koi Nation and the SCFD is a *possibility* given the parties' intention "to *negotiate* in good faith an agreement for fire and emergency services." (Appx. O, emphasis added). No specific terms of the potential MOU are outlined—and thus no promise to provide any particular services can be read into the letter, a point that the parties themselves make crystal clear: "In the absence of a duly executed MOU, the Fire District shall have no duty or obligation to provide services to the [Koi] Nation for its proposed gaming facility... ." There is no reasonable basis on which the BIA could conclude that an unnegotiated, undrafted MOU provides an effective mitigation measure.

Nor is Koi Nation required by the EA to ultimately enter into an MOU. The cited mitigation measures only require Koi Nation to "make good faith efforts" to execute such an agreement. (EA at 4-8). Recognizing that Koi Nation has no agreement with SCFD and is not actually required to enter into one, the EA points to an even more speculative back-up plan: if the Koi Nation does not enter into a service agreement with SCFD, then it must build and staff a fire station in the "treatment area" of the Project site. (EA at 4-8). But the EA does not attempt to explain how it determined that the on-site fire station is sufficient to meet the fire protection and emergency services needs of the Project. Moreover, no specifications or building plans for such a station are evaluated (or even described) in the EA, nor is there any discussion of how a fully equipped fire station might impact the design and environmental impact of the overall treatment area. Without that analysis, the EA's analysis of the impacts of the "treatment area" infrastructure is under-developed and deficient.

*ii. Operational Fire Ignition Risk*

The EA concludes that the operation of the proposed casino-resort would not increase wildfire risk onsite or in the surrounding area. (EA at 3-117). This conclusion is fundamentally flawed because it focuses only on building features and landscaping but entirely ignores the effects of extensive *human activity* on the site. The EA proclaims that Alternative A would not "introduce uses that would increase the chance of igniting fires," but it never attempts to assess the potential for the thousands of daily visitors, and the thousands of vehicles entering and

exiting the property each day, to ignite fires from discarded cigarettes,<sup>48</sup> vehicle malfunctions, or other activities. This omission is glaring given the fact that 98% of all wildfires are started by people, including 47 wildfires every year, just in California, that are caused by cigarettes.<sup>49</sup>

For example, the EA fails to consider the possibility of patrons accessing (and causing fires in) the wooded riparian corridor along Pruitt Creek that runs the full length of the Project site and contains significant amounts of flammable vegetation. The EA acknowledges that “Pruitt Creek could provide a pathway for the spread of wildfire through the Project Site, which could be a potentially significant impact.” (EA at 3-117). To mitigate this impact, the EA points to the mitigation measure of developing a “riparian corridor wildfire management plan.” But this management plan only addresses fuel loads and not any potential human interactions with or access to the corridor.

Moreover, the EA fails to acknowledge that the wooded riparian corridor not only runs the length of the Project site, it also extends beyond the Project site through both the residential neighborhood on the north side of the Project site and the mobile home community on the southwest side of the Project site. (*See* EA at Fig. 3.13-1). A visual inspection of these residential neighborhoods (and the adjacent Oak Park subdivision) shows hundreds of homes that appear to lack sufficient defensible space and fire-hardening features. The EA provides no analysis of how effective the mitigation plan would be in preventing a fire on the Project site from spreading to these residential neighborhoods. The failure to even mention, let alone evaluate, the risk of human-caused fires and how such fires might be able to spread to the surrounding area is a gaping hole in the EA. A full EIS is required to properly assess these serious risks.

### *iii. Impairment of Evacuation Plans*

Despite the proposed casino-resort having parking facilities for over 5,000 vehicles, the draft EA concludes that a mass evacuation of the Project site will not significantly impact wildfire evacuation routes. This conclusion defies logic and stems from the absence of any attempt to evaluate the effectiveness of the proposed mitigation measures.

The draft EA relies on Appendix N-2, a technical memorandum opining that evacuating all vehicles from the Project site would take about 2.5 hours (or a combined total of 6-8 hours if the evacuation occurred simultaneously with the rest of the town of Windsor). Without

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<sup>48</sup> The proposed casino-resort would be an entirely non-smoking facility (EA at 2-1), meaning patrons who smoke would necessarily be doing so outdoors, increasing the risk of fires caused by carelessly discarded cigarettes.

<sup>49</sup> Paul Elias, “A cigarette, a care backfire: Small sparks can make big fires.” Associated Press. October 11, 2017 (citing data from Ken Pimlott, Director of CalFire) (accessed at: <https://www.king5.com/article/news/a-cigarette-a-car-backfire-small-sparks-can-make-big-fires/281-482574889>); Patrick McGreevy, “California wildfires fuel a new push to ban smoking at state parks and beaches.” Los Angeles Times. August 30, 2018 (citing 2017 CalFire study) (accessed at: <https://www.latimes.com/politics/la-pol-ca-smoking-ban-beaches-20180830-story.html>).

addressing what these evacuation periods actually mean for the safety of patrons or how they impact the community's evacuation routes, the draft EA summarily concludes that no significant impairment of evacuation routes will occur if an "early evacuation" procedure is adopted as a mitigation measure.

The draft EA fails to identify any metrics that the BIA considered in coming to that conclusion. For example, the draft EA does not indicate the scale of human casualties that might result from evacuation periods of various lengths. Also missing is any attempt to quantify how much the "early evacuation" procedure would reduce the evacuation times. Nor does the draft EA address how the impacts of the cited evacuation periods might vary based on real-world wildfire scenarios, such as different wildfire locations or intensities. Instead, the draft EA simply presents the speculative, conclusory assertion that a 2.5-hour evacuation period (or 6-8 hours if Windsor also evacuates) in conjunction with an early evacuation procedure somehow results in no significant impact. This absence of analysis is legally deficient.<sup>50</sup>

Rather than fill this analytical gap, the draft EA emphasizes that the 2.5-hour estimate is "conservative" because it assumes the parking areas would be full at the time of evacuation. But this estimate also relies on extremely optimistic assumptions—in particular, the radical assumption that *nothing will go wrong* during the evacuation. Appendix N-2 makes no provision for complicating circumstances that are highly foreseeable in a mass evacuation of this magnitude, such as: vehicle accidents and breakdowns that block exit lanes; non-compliant or panicked drivers that ignore evacuation instructions; poor visibility from wildfire smoke; and traffic attendants that are unable to report to duty in challenging wildfire conditions.<sup>51</sup> An issue as grave as wildfire evacuations warrants a robust analysis that addresses these inputs (and more)<sup>52</sup> prior to concluding that a particular evacuation plan is an effective mitigation measure.

Finally, the draft EA's heavy reliance on the supposed advantage of "early evacuation" has an additional fundamental weakness. The rationale stated in the draft EA is that an early evacuation would reduce traffic congestion (by an unquantified amount) by having the Project site evacuated before Sonoma County authorities issue an evacuation order for the larger evacuation zone in which the Project site is located. This would be accomplished by evacuating the Project site as soon as a neighboring evacuation zone is ordered to evacuate. However, it is

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<sup>50</sup> *Nat'l Parks Conserv. Assoc'n*, 241 F.3d at 735 (9th Cir. 2001) ("The EA's speculative and conclusory statements are insufficient to demonstrate that the mitigation measures would render the environmental impact so minor as to not warrant an EIS.").

<sup>51</sup> Rather than incorporate these real-world scenarios, Appendix N-2 generates the 2.5-hour estimate by simply counting the number of vehicles that would be using each of the Project site exits and applying the "typical rate assumed in urban areas" for how many vehicles can pass through an intersection per hour. (Appendix N-2 at 2). This "typical rate" is not specific to evacuation situations.

<sup>52</sup> The draft EA also fails to assess how many patrons would not have a car to use during an evacuation—such as those patrons that arrived at the casino-resort via shuttle, taxi, rideshare, or were dropped off by friends or family. The draft EA does not attempt to evaluate whether the casino-resort would have sufficient capacity to provide emergency transportation to all of these patrons at the same time during a mass evacuation.



quite possible that the Project site’s evacuation zone will receive evacuation orders at the same time as one or more of the neighboring evacuation zones. This is especially true for the largest, most catastrophic wildfires. Thus, “early evacuation” serves no mitigation function during the most serious wildfires that trigger simultaneous multi-zone evacuations, which are the very wildfires for which an effective evacuation plan is the most critical.<sup>53</sup> Furthermore, the draft EA makes no attempt to assess how often such catastrophic fires might occur and offers no mitigation measures to address them. The draft EA does note, however, that climate change is increasing both the frequency and intensity of wildfires (Section 3.14.3 at 3-137), a fact that further imperils the reliance on “early evacuation” as a mitigation measure and bolsters the necessity of conducting a comprehensive analysis of different, real-world wildfire evacuation scenarios in a full EIS. Despite the proposed casino-resort having parking facilities for over 5,000 vehicles, the EA concludes that a mass evacuation of the Project site will not significantly impact wildfire evacuation routes. This conclusion defies logic and stems from the absence of any attempt to evaluate the effectiveness of the proposed mitigation measures.

#### **d. Water Supply and Wastewater Treatment**

##### *i. Impacts on the Groundwater Basin*

The potential depletion of the groundwater basin by the proposed casino-resort should be more fully investigated. Importantly, the existing water use at the Project site is primarily for irrigation of on-site vineyards, which is an inherently seasonal activity. (EA Section 1.4). On agricultural lands like the current vineyards, irrigation demands drop significantly during the wet season, allowing aquifers to recover. In contrast to this seasonal pattern, water usage for the proposed Project would be essentially constant, with the casino-resort operating 24/7 on a year-round basis—thus depriving the aquifers of their normal opportunity for seasonal recharge. Not only would the Project’s water usage be much more constant than existing uses, but the quantity of groundwater consumed by the casino-resort would be approximately 10 times greater than would be consumed by the existing vineyards.<sup>54</sup> Yet the EA does not analyze the implications of this increased, year-round groundwater extraction and the corresponding impairment of seasonal groundwater recharge. Moreover, *none* of the mitigation measures address groundwater recharge, which instead focus entirely on monitoring nearby wells and compensating property owners in the event their wells run dry. (EA at 4-1–4-3).<sup>55</sup>

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<sup>53</sup> Moreover, the draft EA does not define which evacuation zones should be deemed “neighboring” evacuation zones. Therefore, the staff at the casino-resort responsible for evacuation planning do not have clear guidance on how to implement the early evacuation mitigation measures.

<sup>54</sup> Appendix C estimates the annual existing usage of the vineyard/home as 20 acre-feet per year (AFY). (Appx. C at Table 2-1). The projected daily water demand for Alternative A is 170,000 gpd (assuming recycled water is utilized for approved uses), which would equate to an annual figure of approximately 190.4 AFY. (Appx. C at Section 2.2)

<sup>55</sup> In contrast to the cursory treatment of groundwater issues in the EA, the Graton Resort & Casino development was subjected to a full EIS completed in 2009, and FIGR also prepared a Tribal Environmental Impact Report for its casino expansion project in 2023. As part of the EIS, groundwater impacts were extensively analyzed, including a

Furthermore, bypassing the preparation of a full EIS is not appropriate when the EA itself identifies major areas of uncertainty regarding groundwater extraction at the Project site that warrant further study. As one example, the EA acknowledges that it is unknown whether the existing on-site irrigation wells are suitable for use as potable water supply wells—and as a result, it is not known whether new supply wells will be needed, and, if so, where those new wells would be located. (Appx. C at 2-7, 4-1). As another example, the EA concedes that “[s]ite specific monitoring is needed to confirm the hydraulic separation between the upper and lower aquifers underlying the site” before it can be confirmed that there would not be significant impacts to surrounding wells, including the Town of Windsor’s irrigation and potable water wells across the street in Esposti Park. (EA at 3-19). Nothing in the EA suggests that this information is not obtainable. Thus, the relevant data collection and analysis should be performed *before* a final decision is made about the adverse impacts of the Project. An EIS should be prepared in precisely these scenarios when important knowledge gaps can be filled by further investigation.<sup>56</sup>

Lastly, these groundwater issues affect not just the Project site and immediate neighbors but the larger groundwater basin and Russian River watershed. As acknowledged in Appendix C of the EA, the Project site overlies the Santa Rosa Plain sub-basin, which covers 80,000 acres, and is itself a part of the larger Santa Rosa Valley Basin, a groundwater basin covering 101,000 acres and draining toward the Russian River. (Appx. C at Section 3.1). The groundwater basin and the surface waters of the Russian River and its tributaries, such as Pruitt Creek, are interconnected through fissures and other hydrogeologic features. Extensive modeling has demonstrated that excessive groundwater extraction in the region has caused reduced flows in the Russian River and its tributaries, exacerbating existing water quality issues. Indeed, the EA affirms that the entire Russian River watershed is already listed as impaired for sediment and temperature under the Clean Water Act. (EA at 3-10). A comprehensive analysis addressing the risks to the groundwater basin and connected surface waters in this vulnerable watershed should be conducted as part of an EIS for the Project.

## *ii. Wastewater Treatment and Discharge*

The EA’s conclusions about potential impacts of the Project’s wastewater treatment and disposal activities are premature. A finding of no significant impact cannot be reached at this

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groundwater study that used an analytical drawdown model to predict the impact of sustained groundwater pumping on the groundwater sub-basin at both the resort boundary and at greater distances from the proposed wells. *See* NIGC Final Environmental Impact Statement, Graton Rancheria Casino and Hotel Project (Feb. 2009) at Appendix G. Furthermore, for the recent expansion project, mitigation measures were set forth to actually reduce groundwater pumping by approximately 35 gpm. *See* FIGR Final Tribal Environmental Impact Report, Graton Resort & Casino Expansion Project (May 2023) at Table 1-1.

<sup>56</sup> *National Parks*, 241 F.3d at 732-33 (“Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data”).

early stage. The EA merely presents a wide range of different effluent disposal options without indicating which ones are preferred or assessing the relative impacts of each.

Under “Option 1,” effluent from the wastewater treatment plant would be recycled and used on-site for irrigation, toilet flushing, and cooling tower makeup, with the excess effluent not consumed by these uses stored in a massive seasonal storage pond. (Appx. C at 2-25). The proposed on-site storage pond would stretch across 4+ acres and store about 12 million gallons of effluent. (Appx. C at Fig. 2-7). In the wet season, Option 1 would also entail discharging some effluent on-site into Pruitt Creek. (Appx. C at 2-25). “Option 2” would differ by utilizing two 8-million-gallon storage tanks installed in the treatment area rather than the seasonal storage ponds. (Appx. C at Fig. 2-8). Option 3 and Option 4 would adapt Option 1 and Option 2, respectively, by incorporating off-site irrigation as an additional effluent disposal method, thus reducing the size of the seasonal storage pond/tanks. (Appx. C at 2-25). The EA, however, does not suggest which of these Options is preferred or most likely to be adopted, or whether some new combination or modification of these disposal strategies might ultimately be chosen—thus leaving the actual approach, and its impacts, entirely uncertain.

The impacts on the Project site could vary greatly depending on which disposal option(s) are adopted. For example, whether there is a 4-acre effluent storage pond on the Project site, and its location in relation to other facilities such as groundwater wells, is highly relevant to the assessment of environmental impacts. Similarly, if Option 2 is adopted (installing two 8MG seasonal storage tanks in the “treatment area” rather than utilizing a storage pond), it is not clear whether the “treatment area” would still be able to safely fit all of the other infrastructure that is already planned to be located there—including up to two groundwater wells, a potable water treatment plant, a waste water treatment plant, 1MG storage tanks for both potable and recycled water, and a fire station.

Moreover, the EA fails to provide any analysis of the environmental impacts of discharging effluent into Pruitt Creek (which is a feature of all 4 Options). Pruitt Creek, along with other creeks in the Windsor area, flow into the Laguna de Santa Rosa, which is a sacred area and tribal cultural resource of our Tribe. The EA also fails to identify any mitigation measures. Instead, the EA states that no impairment of the downstream waterways would occur from this discharge because it would be subject to a National Pollutant Discharge Elimination System (NPDES) permit from the U.S. EPA. (EA at 3-21). But the mere fact that a future permit would be required does not obviate the need for a complete analysis and disclosure of impacts.<sup>57</sup> Similarly, one of the contemplated effluent disposal methods is off-site irrigation of nearby agricultural lands but no specifics are provided as to how or where this might occur. The use of

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<sup>57</sup> *South Fork Band*, 588 F.3d at 726 (“BLM argues that the off-site impacts need not be evaluated because the Goldstrike facility operates pursuant to a state permit under the Clean Air Act. This argument also is without merit. A non-NEPA document...cannot satisfy a federal agency’s obligations under NEPA.”).

recycled water in the Russian River watershed has the potential to exacerbate existing water quality problems due to issues like nutrient loading, odor, algae growth, and reduction of dissolved oxygen. These issues go unmentioned in the EA. This is a serious flaw in the EA which can only be fixed by a comprehensive EIS.

*iii. Undefined Layout of the “Treatment Area”*

The proposed “treatment area” on the eastern portion of the Project site is slated to house a multitude of major pieces of infrastructure and water-related facilities. But the EA provides no information as to where within the treatment area these facilities will be located or how they will be oriented in relation to each other. Without this basic information, it is premature for the EA to conclude that there is no significant impact from the installation of so much infrastructure in one confined area.

Specifically, the EA indicates that the following infrastructure relating to potable water supply, wastewater treatment, recycled water distribution, and fire protection services are all planned to be installed (or potentially installed) in the “treatment area”:

- **Two water supply wells<sup>58</sup>**: each drilled to a depth of 700ft and each having a 50ft-radius control zone around the well site to avoid contamination (Appx. C at Section 5-1)
- **Potable Water Treatment Plant**: capable of supplying the casino-resort with an average of 170,000 gpd of potable water (overall size not specified) (Appx. C at Section 5.2)
- **Potable Water Storage Tank (1-million-gallon)**: steel tank for storing potable water for the casino-resort (75ft wide X 32ft high) (Appx. C at Section 5.3)
- **Potable Water Pump Station**: for conveying water from the Potable Water Storage Tank to the casino-resort (size not specified) (Appx. C at Section 5.3)
- **Wastewater Treatment Plant**: capable of handling about 400,000 gpd of wastewater generated by the casino-resort (overall size not specified) (Appx. C at Section 6.2)
- **Recycled Water Equalization Storage Tank (1-million-gallon)**: steel tank for on-site use of recycled water for toilets and irrigation (60ft wide X 43ft high) (Appx. C at 6-12)
- **Recycled Water Pump Station**: for pumping water from the Recycled Water Storage Tank to the recycled water distribution system (size not specified) (Appx. C at 6-13)
- **Two Seasonal Storage Tanks (each 8-million-gallon)<sup>59</sup>**: for storing excess effluent until it can be used on-site as recycled water or discharged to Pruitt Creek (each 145ft wide X 65ft high) (EA at 2-8; Appx. C at Fig. 2-8)

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<sup>58</sup> Figure 2-4 of Appendix C shows the proposed location of the new well in the treatment area. According to Appendix C (Section 5.1), it is recommended to have at least two active wells available so that one can be serviced without interrupting the water supply. While there are four existing on-site wells used for irrigation, Appendix C notes that “it is unclear whether these [existing] wells are suitable for use as a potable water supply.” (Appx. C at 2-7). Therefore, up to two new wells may be needed (with one or both potentially located in the treatment area).

<sup>59</sup> The EA states that either seasonal storage ponds (Option 1) or seasonal storage tanks (Option 2) could be used to store excess effluent. The storage pond would be approximately 12 million gallons, covering about 4.1 acres, and

- **Fire Station:** Fully equipped, BIA-certified fire station staffed with at least 3 personnel (overall size not specified) (EA at 4-8)

The EA makes no attempt to determine whether there is actually enough space to fit all these structures and facilities within the irregularly-shaped treatment area—*let alone fit them in a safe manner that does not create significant impacts*. Indeed, the above list omits substantial accompanying infrastructure such as driveways and loading docks for hauling away the sludge produced by the wastewater treatment plant (EA at 2-8), installation of a lift station and a sewage pipeline under Pruitt Creek for transmitting wastewater from the casino-resort to the wastewater treatment plant (Appx. C at Section 6.1), and the pipeline and outfall structure for discharging treated wastewater into Pruitt Creek (Appx. C at Section 6.3.2). No specific location for any of these infrastructure components has been identified either. Thus, it is improper to reach any conclusion regarding their individual or collective impacts or the particular mitigation measures that are needed.

#### **e. Transportation & Circulation**

The analysis of impacts to local roadways and adjacent landowners from traffic generated by the casino is inadequate. Disclosure of all reasonably foreseeable impacts, along with appropriate mitigation is therefore required in a comprehensive EIS.

Specifically, the EA evaluates the impact to Level of Service at several intersections, but omits any analysis of Shiloh Road and Fought Road. This intersection needs to be evaluated and then commented on in a new or recirculated NEPA document.

Traffic mitigation is specified in EA Section 4, including installing traffic signals, adding lanes, widening roads, and constructing entrance driveways to the casino. Over 30 traffic improvements are specified in Section 4, however none of them have been illustrated in such a way as to reasonably ascertain impacts to private property, cultural resources, biological resources, and hazardous materials. Although EA Section 3.15.1 purports to analyze “Indirect Effects of Off-Site Traffic Mitigation,” no actual analysis is provided, just general statements such as “[o]ff-site improvements are anticipated to primarily impact previously disturbed areas, agricultural land, ruderal vegetation, and/or roadside drainage channels,” and then general statements such as “[p]otential off-site improvement projects would be subject to the protection of cultural resources afforded by CEQA.” There is no evidence that the limits of the required traffic mitigation construction areas have been defined (for example, mapped on an aerial photo or map), no evidence that those areas have been surveyed by qualified professionals for cultural

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would presumably need to be located within the vineyard areas because the entire treatment area is only 3.5 acres. (EA at 2-9; Appx. C at Figure 2-7). The draft EA does not indicate which option is more likely to be implemented at the Project site.



resources, biological resources, and hazardous materials contamination, and no actual mitigation has been specified. Also, it is clear that all required improvements cannot be made in public rights-of-way and that private property will need to be condemned to construct some improvements, such as widened roads and traffic signals. The extent of required private property condemnation is not disclosed, and it is not clear that the taking of private property for a commercial development project is an impact that can be mitigated to a level of less-than-significant. When there is no reasonable certainty that an impact can be fully mitigated, a Finding of No Significant Impact (FONSI) cannot be issued by the NEPA federal lead agency, and an EIS must be prepared.

Stating that impacts may be identified in the future, and mitigation would then be required by the California Environmental Quality Act (CEQA), is both a deferment of the required NEPA analysis and associated public disclosure, and also an unlawful deferral of identifying appropriate mitigation. The lack of specificity in the identification, analysis, and mitigation of off-site traffic mitigation is a fatal flaw in the EA, and therefore an EIS is required to properly evaluate this issue.

#### **f. Socioeconomics and Environmental Justice**

Section 3.7 of the EA makes the unsupported and, in our experience, incorrect assertion that “Sonoma County is a highly populated area that has a sufficient labor force focused on the hospitality industry” (EA at 3-64). The EA proceeds to say that “[w]ith several other casino resorts in the market area, as well as other hospitality developments, the population already includes people who are seeking casino and/or hospitality-based employment.” (*Id.*). Yet for the last several years, the Graton Resort & Casino has struggled to find qualified candidates to fill open positions at all levels. This difficulty seems to reflect national trends showing a severe shortage in hospitality workers.<sup>60</sup> Should the Koi Project open, we expect there will be even greater hiring competition for a distressingly limited number of hospitality workers. At the very least, the EA should provide data supporting its conclusion that a sufficient labor market exists in Sonoma County and evaluate the impacts of the Project on neighboring hospitality businesses, particularly tribal hotels and casinos.

Relatedly, in our experience the inability to attract hospitality workers goes hand-in-hand with the lack of nearby affordable housing. The problem is so acute that we have considered whether to provide or subsidize employee housing and, in 2019, we submitted a fee-to-trust application to BIA to acquire trust land for constructing a Graton Resort & Casino employee housing project. While that plan was ultimately scrapped due to the pandemic and other factors, we are nonetheless still evaluating other approaches for supporting employee housing needs.

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<sup>60</sup> See, e.g., American Hotel & Lodging Association, *82% of surveyed hotels report staffing shortages*, <https://www.ahla.com/news/82-surveyed-hotels-report-staffing-shortages> (June 5, 2023).

Accordingly, it is hard to believe the EA’s conclusion that “the small number of housing needs from Alternative A would be filled by existing vacant units” and we urge that more analysis be conducted. (EA at 3-64).

Finally, while the EA correctly quotes the Eastern District of California in upholding Interior’s prior conclusion that “competition...is not sufficient, in and of itself, to conclude [there would be] a detrimental impact on” a tribe, that is distinguishable from concluding that market competition is irrelevant to NEPA. This is particularly true when considering how market competition and the substitution effect on neighboring casinos translates to lower revenues to support tribal government services and tribal citizens. The EA should consider, in regards to the local tribal casinos that will absorb the greatest hit, the fact that the Koi project will support 89 Koi citizens to the detriment of Graton’s 1,500 citizens, Dry Creek’s 900 citizens, and Sherwood Valley’s 450 citizens.<sup>61</sup>

#### **g. Indirect & Cumulative Effects**

The BIA must consider both the indirect and cumulative effects of the proposed action. The Council on Environmental Quality (CEQ) regulations define indirect effects as those “caused by the action, [and] later in time or farther removed in distance, [but] still reasonably foreseeable.”<sup>62</sup> The CEQ regulations further define “cumulative effects” as “the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions.”<sup>63</sup> The EA completely fails to consider both the indirect and cumulative effects of this proposed federal approval on the rights and ability of culturally affiliated tribes to protect their cultural resources and ancestors, both at the site and in the surrounding area, and to engage in co-stewardship and the sharing of Traditional Ecological Knowledge (TEK).

In order for the Department to approve this application, the purpose of which is to conduct gaming, the Department must make a determination pursuant to the Indian Gaming Regulatory Act (IGRA) restored lands exemption. The restored lands exemption requires the applicant tribe, here the Koi Nation, to have a “significant historical connection” with the proposed gaming parcel, such that the Department’s acquisition of the land in trust for the Koi Nation would constitute a “restoration” of the Koi Nation’s tribal lands. The IGRA regulations

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<sup>61</sup> Graton’s citizenship numbers were taken from our in-house records, whereas we offer rough citizenship numbers for Dry Creek Rancheria and Sherwood Valley Rancheria based on internet searches. See Dry Creek Rancheria Band of Pomo Indians, *Community Involvement*, <https://drycreekrancheria.com/#:~:text=Today%20the%20Dry%20Creek%20Rancheria%20Band%20has%20more%20than%20900%20members> (last visited Nov. 6, 2023); Wikipedia site for Sherwood Valley Rancheria, [https://en.wikipedia.org/wiki/Sherwood\\_Valley\\_Rancheria\\_of\\_Pomo\\_Indians\\_of\\_California#:~:text=Sherwood%20Valley%20Rancheria%20of%20Pomo%20Indians%20has%20over%20450%20enrolled,members%20residing%20n%20reservation%20land](https://en.wikipedia.org/wiki/Sherwood_Valley_Rancheria_of_Pomo_Indians_of_California#:~:text=Sherwood%20Valley%20Rancheria%20of%20Pomo%20Indians%20has%20over%20450%20enrolled,members%20residing%20n%20reservation%20land) (last visited Nov. 6, 2023).

<sup>62</sup> 40 C.F.R. § 1508.1(g)(2).

<sup>63</sup> 40 C.F.R. § 1508.1(g)(3).

further define “significant historical connection” as “the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.”<sup>64</sup> The concept of “significant historical connection” is intrinsically wrapped into the concept of “cultural affiliation”—that is, a tribe’s subsistence methods, cultural practices, belief systems, and traditional ecological knowledge are rooted in the geographic area where a tribe was historically located.

A federal decision rubber stamping the Koi Nation’s claim of a significant historical connection to the Russian River Valley and Sonoma County in general will affect the cultural rights of the local, aboriginal tribes in a host of other contexts. For example, NAGPRA requires that the ownership and control of Native American remains and cultural items discovered on Federal or tribal lands shall reside with the following, in order of priority:

- the lineal descendants of the Native American (if known);
- the Indian tribe on whose tribal land such objects were discovered;
- the Indian tribe which has the closest cultural affiliation with such remains or objects.<sup>65</sup>

This is of course alarming because it means any cultural resources or human remains found on the Shiloh Parcel—either during the construction of the Project or at any point in the future—would, assuming no lineal descendant is identified, belong to the Koi Nation. This is so despite the fact that those cultural resources and ancestors are from the Southern Pomo people and should rightfully belong to a Southern Pomo tribe.<sup>66</sup> If, following the BIA approval of this initial acquisition, Koi Nation acquires additional trust land in Sonoma County—which seems highly foreseeable—it will have priority rights to all cultural resources and ancestors on *those* properties. Moreover, for any federal lands in Sonoma County, the Koi Nation can make the argument that it is culturally affiliated and therefore make a claim those cultural resources or human remains, to the detriment of the local, culturally affiliated Southern Pomo and Southwestern Pomo tribes.

Similarly, there are many institutions in the Bay Area with collections that include Southern Pomo and/or Southwestern Pomo human remains, funerary objects, sacred objects, and objects of cultural patrimony that are subject to repatriation under NAGPRA. A tribe may submit a repatriation claim based on its “cultural affiliation” with the remains or object.<sup>67</sup> The NAGPRA regulations define cultural affiliation as “a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of a present-day Indian

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<sup>64</sup> 25 C.F.R. § 292.2.

<sup>65</sup> 25 U.S.C. § 3002(a).

<sup>66</sup> ARPA reinforces this rule by providing that “Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.” 43 C.F.R. § 7.13.

<sup>67</sup> 43 C.F.R. § 10.10(a)(1)(ii) and (b)(1)(ii). Although proposed amendments to the NAGPRA regulations are pending, they nonetheless continue to incorporate the central concept of cultural affiliation.

tribe...and an identifiable earlier group.”<sup>68</sup> Further, cultural affiliation must be established by the preponderance of the evidence based on “geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion.”<sup>69</sup> If the Koi Nation’s application is approved and the federal government determines it has a “significant historical connection” with some or all of Sonoma County, it opens the door for Koi to make competing NAGPRA claims for *our* ancestors and cultural resources, further muddying an already incredibly long and difficult repatriation process.

Similar implications arise under a myriad of other federal laws and policies that provide for tribal consultation, consultation, and co-stewardship. This Administration has been a leader in uplifting the recognition and incorporation of Traditional Ecological Knowledge (TEK) and the essential role tribes should play in co-stewardship of public lands. For example, the *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* provides a framework for the U.S. Department of the Interior and the U.S. Department of Agriculture to manage lands and waters in a manner that protects the “treaty, religious, subsistence and cultural interests” of tribes.<sup>70</sup> This includes pathways to co-stewardship over federal lands and waters, as well as the incorporation of TEK into federal management decisions, both of which involve the foundational question of which tribe(s) are the proper stewards and hold the relevant TEK for a particular area. Additionally, the White House has issued broader guidance to all federal departments and agencies on respecting and incorporating indigenous knowledge into federal research, policies, and decision making.<sup>71</sup> The White House guidance drives home the inherent link between TEK and a tribe’s historical presence in and interaction with a particular environment.<sup>72</sup> Accordingly, a federal decision to approve Koi’s application on the basis of its significant historical connection claim will undermine the ability of Southern Pomo and Southwestern Pomo tribes to utilize federal programs and processes aimed at elevating TEK and stewardship rights for culturally affiliated tribes. This harm will only compound over time as the Koi Nation may use this federal decision as a basis for asserting itself as a “Sonoma County tribe” in all sorts of scenarios.

Beyond these serious indirect and cumulative impacts to tribal cultural resources, there may be indirect impacts on Indian health services provided in Sonoma County. Sonoma County Indian Health Project (SCIHP) provides health care for all Indians living in Sonoma County and performs the functions of the federal Indian Health Service (IHS) in this service area. It is run by a tribal consortium that includes the Cloverdale Rancheria of Pomo Indians, Dry Creek

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<sup>68</sup> 43 C.F.R. § 10.2(e)(i).

<sup>69</sup> *Id.*

<sup>70</sup> U.S. Dep’t of the Interior, U.S. Dep’t of Agriculture, Order No. 2303 (Nov.15, 2021).

<sup>71</sup> *See also* White House Memorandum re: Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022).

<sup>72</sup> *Id.* at 4 (describing indigenous knowledge as “a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment” and specifically referring to it as a “place-based body of knowledge.”)



Rancheria of Pomo Indians, the Federated Indians of Graton Rancheria, Lytton Rancheria of California, and Kashia Band of Pomo Indians.<sup>73</sup> Koi Nation is not a member of the consortium. If the BIA approves this project and allows the Koi to establish a new reservation in Sonoma County, it is only logical that some number of Koi citizens will re-locate to the area and utilize the available IHS services through SCIHP. This is particularly true given that a new SCIHP health care clinic is planned for construction in Santa Rosa, just 11 minutes from the Koi Project site.<sup>74</sup> The indirect effects of this increased demand should be analyzed.

#### **h. Public Services & Utilities**

Our comments concerning water supply, wastewater, and fire services have already been raised, however we wish to flag other glaring unknowns regarding public services and utilities, which will likely have significant impacts. As noted but essentially glossed over in Section 3.10, Pacific Gas & Electric (PG&E), the primary electric and natural gas provider in northern California, “does *not* have capacity for Alternative A as of 2022.” (EA at 3-86 (emphasis added)). The EA then states that PG&E “has electrical infrastructure projects underway that would be completed in 2024/2025 with feeder related infrastructure needing potentially another two years” and therefore these projects would be completed before the 2028 opening date and the Project’s electrical supply needs will be met. (EA at 3-86). There is, of course, an enormous degree of uncertainty in this supposition and a complete lack of discussion concerning the details of those infrastructure projects, whether they have already been permitted, and whether any aspects are contingent on the Koi casino project being approved. It seems that at least portions of these infrastructure improvements would only occur if BIA approves the Koi casino since the EA states that the Koi Nation would be responsible for paying for these “extensions and services,” not the public. *Id.* The BIA must fully describe and analyze these infrastructure improvements, including the on- and off-site environmental impacts, and develop appropriate mitigation measures. The cursory analysis of off-site utility improvements in Section 3.15 (on indirect and growth-inducing effects) is simply insufficient. (See EA at 3-149, providing sparse analysis of only the issue of relocating utility lines).

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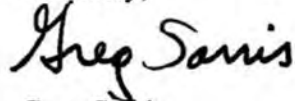
<sup>73</sup> See Sonoma County Indian Health Project, Our History, <https://www.scihp.org/history/> (last visited Nov. 16, 2023).

<sup>74</sup> See *Sonoma County Indian Health Project confirms plans for 70,000-square-foot new clinic in Santa Rosa*, NORTH BAY BUSINESS JOURNAL (July 30, 2020), available at <https://www.northbaybusinessjournal.com/article/industrynews/sonoma-county-indian-health-project-confirms-plans-for-70000sf-new-clinic/>.

#### **IV. Conclusion**

We continue to ask the BIA to seriously, thoroughly, and objectively evaluate this Project and listen to the chorus of concerns raised by Sonoma County tribes, nearby residents, and local governments. We further wish to note that while there is no formal notice and comment process for the Department's consideration of the Koi Nation's "restored lands" claim under the Indian Gaming Regulatory Act (IGRA), we are presently analyzing the thousands of pages of submitted materials and plan to submit our responsive analysis by the end of this year. As a trustee for not only the Koi Nation, but all federally recognized tribes, we strongly urge you not to move forward on any IGRA determination until you have properly consulted with us and other affected tribes.

Sincerely,

A handwritten signature in black ink that reads "Greg Sarris". The signature is written in a cursive, slightly slanted style.

Greg Sarris  
Chairman



## ATTACHMENT 17

Letter from FIGR Chairman Greg Sarris to Director Paula Hart, Office of Indian Gaming, U.S. Department of the Interior, Commenting on the Koi Nation's Restored Lands Request (FIGR IGRA Restored Lands Letter) (Jan. 31, 2024)



January 31, 2024

Paula Hart, Director  
Office of Indian Gaming  
1849 C Street, N.W.  
MS-3543-MIB  
Washington, D.C. 20240

Re: Graton Rancheria Comments on the Koi Nation's Restored Lands Request

Dear Director Hart,

On behalf of the Federated Indians of Graton Rancheria, I submit the enclosed comments regarding the restored lands request submitted by the Koi Nation on September 15, 2021 (as supplemented on March 2, 2023, and July 5, 2023). This restored lands request profoundly impacts our Tribe as it concerns a parcel in Sonoma County in the heart of our traditional homeland and very close to our current reservation.

We thank you for hearing our concerns and hope you will consider them seriously.

Sincerely,  
  
Greg Sarris  
Chairman

cc: Bryan Newland, Assistant Secretary – Indian Affairs, DOI  
Wizipan Garriott, Principal Deputy Assistant Secretary – Indian Affairs, DOI  
Robert Anderson, Solicitor, DOI  
Eric Shepherd, Associate Solicitor, Division of Indian Affairs, DOI

# THE FEDERATED INDIANS OF GRATON RANCHERIA

## RESPONSE TO THE KOI NATION'S REQUEST FOR A RESTORED LANDS OPINION

Submitted January 31, 2024

### I. Introduction

As you are aware, the Koi Nation of Northern California (referred to herein as Koi Nation, Koi tribe, or Koi) has submitted a restored lands request for a parcel of land located at 222 E. Shiloh Road in Sonoma County. The Koi Nation's effort to acquire a reservation and gaming site near the Town of Windsor in Sonoma County, California, as tribally "restored lands" is an attempt to re-write both history and the law. The facts are simple. The Koi Nation, formally known as the Lower Lake Rancheria, is aboriginally from Koi Island and the southeastern part of Clear Lake, in Lake County, California. Like every other tribe in California, the Koi Nation faced incredible challenges in holding on to its aboriginal lands, despite the federal government's set aside of a rancheria near Clear Lake for the tribe in 1916, which Congress later unwound via statutory action in 1956. And, like all tribal people in California, in the last century individual Koi members migrated to other locales to seek employment and economic opportunities. For the reasons explained below, however, such recent migration of individual Koi members—even members who were prominent in the pan-Indian movement—does not amount to the relocation of *the tribe* or create some sort of de facto rancheria or Indian village (which it was certainly not understood to be at the time). Nor do general claims concerning the Pomo people as a whole, or popular trade routes used by Pomo people generally, suffice to show that the Koi tribe is significantly connected to Sonoma County. To find otherwise defies reason and undermines Congress' intent to facilitate the *restoration of tribal* lands when it created the "restored lands" exception in the Indian Gaming Regulatory Act (IGRA). Granting Koi's restored lands request would serve as a grave affront to the sovereignty of our Tribe, the Federated Indians of Graton Rancheria, and the four other federally recognized tribes whose ancestral territory includes Sonoma County. Moreover, the ramifications would extend beyond Indian gaming and undermine other federal laws, policies, and decisions that rely on the concept of historical or cultural affiliation.

To be clear—we do support our tribal brothers and sisters in seeking a restored homeland and economic development. Every tribe deserves a land base and the ability to support its citizens. However, we believe that such efforts must be carried out in accordance with the law and on the basis of facts. Further, IGRA has provided a mechanism to handle the very situation of a tribe desiring to acquire gaming land located in other regions. If the Koi Nation wishes to proceed with a gaming application in Sonoma County, then it should do so pursuant to the two-part Secretarial determination process provided by 25 U.S.C. § 2719(b)(1)(A), as explained below.

## II. Applicable Law

### a. The Indian Gaming Regulatory Act and Part 292 Regulations

In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA), which set forth the legal framework to govern gaming on Indian lands. In doing so, Congress prohibited Indian gaming on trust lands acquired by a tribe after October 17, 1988, except in limited, express circumstances.<sup>1</sup> Several of these exceptions—restored lands, settlement of a land claim, and initial reservation—are referred to as the “equal footing” exceptions.<sup>2</sup> Additionally, there is the “two-part” exception for when the Secretary determines that an off-reservation gaming application would be in the best interest of the applicant tribe and not detrimental to the surrounding community, and the governor of that state concurs.<sup>3</sup>

Koi’s application invokes the restored lands exception, which allows gaming on lands taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition.”<sup>4</sup> The federal courts have illuminated the Congressional policy and purpose behind this exception. As explained by the District Court for the Western District of Michigan, “given the plain meaning of the language, the term ‘restoration’ may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion.”<sup>5</sup> Further, as explained by the Ninth Circuit, the restored lands exception “was not intended to give restored tribes an open-ended license to game on newly acquired lands. Rather, its purpose was to promote parity between established tribes, which had substantial land holdings at the time of IGRA’s passage, and restored tribes, which did not.”<sup>6</sup> Further, in administering this exception via regulation, “the Secretary needs to ensure that tribes do not take advantage of the exception to expand gaming operations unduly and to the detriment of other tribes’ gaming operations.”<sup>7</sup>

While Congress did not elucidate the meaning of “restoration of lands for an Indian tribe that is restored to Federal recognition,” the Department of Interior fleshed out the requirements via regulation at 25 C.F.R. Part 292, incorporating the relevant body of judicial precedent that

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<sup>1</sup> See 25 U.S.C. § 2719.

<sup>2</sup> See Testimony of Kevin K. Washburn, Assistant Secretary for Indian Affairs, U.S. Dep’t of Interior, before the Senate Committee on Indian Affairs Oversight Hearing on “Indian Gaming – The Next 25 Years” (July 23, 2014), <https://www.bia.gov/sites/default/files/dup/assets/as-ia/pdf/idc1-027379.pdf>.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.* § 2719(b)(1)(B)(iii).

<sup>5</sup> *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 934–35 (W.D. Mich. 2002) (*Grand Traverse II*), *aff’d* 369 F.3d 960 (6th Cir. 2004).

<sup>6</sup> *Redding Rancheria v. Jewell*, 776 F.3d 706, 711 (9th Cir. 2015).

<sup>7</sup> *Id.* The Ninth Circuit underscored the Department’s reasonable goal to avoid giving restored tribes an “unfair advantage” over established tribes who are generally limited in where they can conduct gaming to their lands pre-dating IGRA. *Id.* at 712.

had developed since the statute's enactment in 1988.<sup>8</sup> In order to satisfy the restored lands exception, the regulations impose a number of requirements, including that the applicant tribe constitute a "restored" tribe and there exist a modern, temporal, and "significant historical connection" to lands for which the applicant tribe is seeking restoration.<sup>9</sup> In turn, the regulations define "significant historical connection" as meaning:

the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.<sup>10</sup>

Prior to the final enactment of the Part 292 regulations, the draft regulations explicitly required that a tribe have both "significant historical *and cultural connections*" to the land where it was seeking to game.<sup>11</sup> In promulgating the final rule, the Department deleted the "cultural connection" language—not because it believed cultural connection was irrelevant but rather the opposite: the Department agreed with commenters that cultural connection is essentially baked into the concept of "historical connection" and it would therefore be redundant to include both terms.<sup>12</sup> Additionally, the Department underscored the importance of the word "significant" by rejecting commenters' requests to delete the word "significant" because, in the Department's view, "the word reinforces the notion that the connection must be something more than 'any' connection."<sup>13</sup>

The draft 292 regulations included language that "[t]he land is located in an area to which the tribe has significant documented historical connections, significant weight being given to historical connections documented by official records of the Bureau of Indian Affairs or the Department of the Interior, or by the Indian Claims Commission, other Federal court, or congressional findings."<sup>14</sup> While the Department ultimately deleted the language that significant weight would be given to federal documentation because it determined the language was "unnecessarily restrictive," it is clear that the Department understood federal documentation to be highly relevant to the analysis.<sup>15</sup>

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<sup>8</sup> See, e.g., *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 164 (D.D.C. 2000) ("[L]and that could be considered part of such restoration might appropriately be limited by the factual circumstances of the acquisition, the location of the acquisition, or the temporal relationship of the acquisition to the restoration.").

<sup>9</sup> See 25 C.F.R. §§ 292.7–292.12.

<sup>10</sup> 25 C.F.R. § 292.2.

<sup>11</sup> See Department of the Interior, Notice of Proposed Rulemaking, Gaming on Trust Lands Acquired After October 17, 1988, 71 Fed. Reg. 58769, proposed 25 C.F.R. § 292.6(c) (Oct. 5, 2006) (emphasis added). The draft regulations considered this term in the context of the initial reservation exception, but adopted the same definition for both the initial reservation and restored lands exceptions when promulgating the final rule.

<sup>12</sup> See Department of the Interior, Final Rule, Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29354, 2930 (May 20, 2008).

<sup>13</sup> 73 Fed. Reg. at 29366.

<sup>14</sup> 71 Fed. Reg. 58769, proposed 25 C.F.R. § 292.12(b)(2).

<sup>15</sup> 73 Fed. Reg. at 29366.



b. Judicial and Departmental Precedent

The federal courts, Department of the Interior (Department), and the National Indian Gaming Commission (NIGC) have considered the question of what constitutes restored lands when applying this IGRA exception to specific tribal circumstances. The following section provides an overview of those decisions, with much of the focus on California due to the unique history of this region. It outlines certain principles or types of evidence that have been considered and determined either to be more or less relevant to the question of restored lands eligibility, particularly as to whether a tribe has a significant historical connection to lands.

To begin, the word “restoration” carries specific meaning. As quoted by the D.C. District Court, the dictionary defines “restore” as:

**1:** to give back (as something lost or taken away): make restitution of: return .... **2:** to put or bring back (as into existence or use). .... **3:** to bring back or put back into a former or original state... .<sup>16</sup>

Congress intended this exception to allow restored tribes to rebuild their land base by *returning* or *bringing back lands* that had formerly been held *by the tribe*. In other words, “evidence should show that the land was ‘important to the tribe throughout its history and remained so immediately on resumption of Federal recognition.’”<sup>17</sup>

In elucidating how a tribe may demonstrate restored lands through the “significant historical connection” requirement in 25 C.F.R. § 292.12, the Department has emphasized the word “significant.” “Indeed, the Department intentionally utilized the term ‘significant’ in order to “reinforce the notion that the [tribe’s historical] connection must be something more than ‘any’ connection” in order to qualify for restored lands status.<sup>18</sup>

Moreover, the connection must be specific to both the applicant tribe and the particular gaming parcel (or within its vicinity). “For purposes of Part 292, an applicant tribe’s historical references must be specific to the applicant tribe,” therefore references to ‘Indians,’ generally, do not suffice.<sup>19</sup> Similarly, the Department has emphasized that evidence cannot concern a general area but rather must be connected to the specific parcel or lands within the vicinity of that parcel:

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<sup>16</sup> *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 928 (W.D. Mich. 2002) (*Grand Traverse II*), *aff’d* 369 F.3d 960 (6th Cir. 2004); *see also* Dep’t of Interior, Elk Valley 2007 Decision at 7 (citing *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt*, 116 F. Supp. 2d 155, 161, 164 (D.D.C. 2000) (“‘Restoration’ denotes a taking back or being put in a former position. It means ‘reacquired.’”)).

<sup>17</sup> Letter from Kevin Washburn, Assistant Secretary – Indian Affairs, Dep’t of Interior, to Chairman Dennis Martinez, Mechoopda Indian Tribe of Chico Rancheria, at 19 (Jan. 24, 2014) (hereinafter 2014 Mechoopda Decision); *see also* Letter from Penny J. Coleman, Acting General Counsel NIGC, to Bradley G. Bledsoe Downes, on behalf of the Karuk Tribe of California, at 6 (Oct. 12, 2004).

<sup>18</sup> Decision Letter from Assistant Secretary – Indian Affairs, Larry Echo Hawk to Chairperson Merlene Sanchez, Guidiville Land of Pomo Indians, at 10 (Sept. 1, 2011) (quoting the Federal Register notice for the promulgation of the Part 292 regulations) (hereinafter 2011 Guidiville Decision).

<sup>19</sup> Decision Letter from Donald Laverdure, Acting Assistant Secretary – Indian Affairs, to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians at 7 (May 25, 2012) (hereinafter 2012 Scotts Valley Decision).



“[H]istorical evidence of a general connection to any land located in any of those counties is not the equivalent of documentation of the Band’s own historical connection to [the gaming parcel], or parcels in its vicinity. Instead, the Band must provide historical documentation of its villages and burial grounds *located at*, or subsistence and occupancy use of, *the Parcel, or lands within its vicinity*. Alternatively, the Band must show the Parcel is located in the vicinity of specific sites or specific areas for which the Band can offer historical documentation.”<sup>20</sup>

*i. Aboriginal Territory*

In addition to the general principles outlined above, an applicant tribe’s ancestral territory is an important part of the restored lands analysis. Koi repeatedly urges in its submissions that it is not required to show an “ancient” or “aboriginal” connection to the gaming parcel. While it is true that there is no bright-line rule limiting restored lands to those that are within the tribal applicant’s aboriginal territory, assessing the tribe’s aboriginal connection to the vicinity of the gaming site is a critical component of the restored lands analysis—especially with respect to the “significant historical connection” requirement.<sup>21</sup> That the location of the tribe’s aboriginal or ancestral territory is of central importance to whether a parcel qualifies for the restored lands exception is readily apparent from federal court, NIGC, and Department precedent both before and after the adoption of the Part 292 regulations.

For example, prior to the enactment of the Part 292 regulations, the District Court for the Western District of Michigan agreed with the National Indian Gaming Commission (NIGC) that the gaming parcel constituted the Grand Traverse Band’s restored lands, relying on the fact that the parcel was within “the heart of the region that comprised the core of the Band’s aboriginal territory and was historically important to the economy and culture of the Band.”<sup>22</sup> Further, the Court found the Band “has occupied the region continuously from at least 100 years before treaty times until the present.”<sup>23</sup> Similarly, in its 2002 restored lands opinion for the Bear River Band of Rohnerville Rancheria, the NIGC relied on the fact that 18 of the tribe’s aboriginal villages were located with a one- to three-mile radius of the proposed gaming parcel.<sup>24</sup> The NIGC also found it

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<sup>20</sup> 2011 Guidiville Decision at 13-14 (emphasis added).

<sup>21</sup> The Department’s decision to not include a bright-line regulatory rule with respect to a tribe’s aboriginal or ancient territory is best understood in light of the history of the federal government’s wholesale removal and relocation of tribes in other parts of the country during the 1800s. Accordingly, the Department’s lack of a rigid requirement applicable to all tribal applicants is likely reflective of the fact that, outside of California, the federal government removed entire tribal nations to new locations, such as many Great Lakes tribes and southeastern tribes to locations west of the Mississippi River, and it would be illogical and unfeasible to require such tribes to only seek after-acquired lands in the places from which they had been long removed. This pattern of large-scale removal was not replicated in California and many tribes remain connected to their aboriginal territory.

<sup>22</sup> *Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney for the W. Dist. of Mich.*, 198 F. Supp. 2d 920, 925 (W.D. Mich. 2002) (*Grand Traverse II*), *aff’d* 369 F.3d 960 (6th Cir. 2004); *see also id.* at 936 (finding the evidence “clearly established that the parcel was of historic, economic and cultural significance to the Band” and that it may be “reasonably considered to be part of a restoration of lands in an historic, archaeological and geographic sense”).

<sup>23</sup> *Id.* at 925.

<sup>24</sup> Memo from NIGC Acting General Counsel to NIGC Chairman Deer re: Whether gaming may take place on lands taken into trust after October 17, 1988, by Bear River Band of Rohnerville Rancheria, at 12 (Aug. 5, 2002), (relying

significant that several important sites in traditional Bear River Band folk lore were located within four miles of the gaming parcel.<sup>25</sup> In determining that a parcel constituted the restored lands of the Habematolel Pomo Indians of Upper Lake, the Department relied on the fact that it was located centrally within the tribe's aboriginal and sacred territory.<sup>26</sup> Similarly, in determining that a parcel located in Del Norte County qualified as restored lands for the Elk Valley Rancheria, the Department found that Del Norte County was "part of their aboriginal territory."<sup>27</sup> Likewise, the NIGC issued a restored lands determination for the Karuk Tribe of California on the basis of aboriginal camp sites at the location of the gaming site, itself, as well as at other nearby locations.<sup>28</sup>

During and following promulgation of the Part 292 regulations in 2008, restored lands determinations have continued to rely heavily on evidence demonstrating that a tribe has an aboriginal connection to the gaming site. In our own Tribe's restored lands determination, the NIGC extensively considered the traditional location of the Tribe's ancestors, the Coast Miwok and Southern Pomo people. The NIGC found that "the Rohnert Park site is within traditional Coast Miwok territory, near the aboriginal boundary between the Coast Miwok and Pomo peoples."<sup>29</sup> The NIGC explained that "Coast Miwok territory encompasses Marin County and the southern part of Sonoma County" and that the Coast Miwok "possessed the Sonoma Valley and had strong ties to the area of the proposed gaming site."<sup>30</sup> The NIGC highlighted the location of "many ancient village sites within a short radius of Rohnert Park [the location of the gaming site], including three around Cotati, five around Petaluma, and three in the area of Freestone."<sup>31</sup> In considering our Tribe's Southern Pomo history, the NIGC explained that:

The border between the Coast Miwok and Southern Pomo ran from the Russian River at Freestone east through the low hills between Freestone and Sebastopol. Sebastopol was once the site of a large, permanently inhabited Southern Pomo village. Sebastopol is approximately ten miles northwest of Rohnert Park. The

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on the fact that within a 1-mile radius of the gaming site were two aboriginal villages, within a 3-mile radius were five aboriginal villages, and within 6-mile radius were eleven aboriginal villages).

<sup>25</sup> *Id.*

<sup>26</sup> Memorandum from Kaush Arha, Associate Solicitor, Indian Affairs, to Carl J. Artman, Assistant Secretary – Indian Affairs re: Pomo of Upper Lake Indian Lands Determination at 6–7 (Nov. 21, 2007).

<sup>27</sup> Memorandum from Kaush Arha, Associate Solicitor, Indian Affairs, to Carl J. Artman, Assistant Secretary – Indian Affairs re: Elk Valley Indian Lands Determination at 1 (July 13, 2007); *id.* at 7 ("Martin's Ranch [the gaming parcel] is located in the middle of many sites that were used by the Tolowa people. According to Krober's, 'Handbook of the Indians of California,' the subject property is located nearly equidistant between the northern and southern boundaries and close to the coast where much of the Tolowa activities occurred, i.e., villages, fishing and food gathering.").

<sup>28</sup> Letter from National Indian Gaming Commission, Chairwoman Tracie Stevens, to Chairman Attebery, Karuk Tribe at 10 (Apr. 9, 2012) (conveying Apr. 3, 2012 memo re Modification of 2004 Legal Opinion, Karuk Tribe of California; Yreka Trust Property, from John Hay to Tracie Stevens).

<sup>29</sup> NIGC Restored Lands Opinion for Graton Rancheria at 6 (Feb. 10, 2009). It appears that NIGC issued an internal Indian lands determination prior to the finalization of the Part 292 regulations, then later reaffirmed that determination pursuant to the Part 292 regulations.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 7 (further noting that Cotati is approximately one mile from Rohnert Park, Petaluma approximately ten, and Freestone approximately seventeen).

Southern Pomo also had villages near Windsor, Healdsburg, and Guerneville, approximately 18, 24, and 27 miles from Rohnert Park.<sup>32</sup>

Similarly, the Department issued a restored lands determination for the Cloverdale Rancheria of Pomo Indians of California, another Southern Pomo tribe located in Sonoma County, and relied on evidence demonstrating the tribe's "ancestral and indigenous use of the lands in Cloverdale."<sup>33</sup>

The Department's restored lands determination for the Mechoopda Indian Tribe of Chico Rancheria also considered at length the tribe's aboriginal roots to the area of the gaming site, located outside the City of Chico. The Department found the tribe was "able to use its early history to demonstrate its significant historical connection to the land," including evidence of the tribe's summer encampments and hunting and subsistence practices, and further that "the subject parcels are no more than 8 miles from the site of the primary Mechoopda village in pre-contact times."<sup>34</sup>

In contrast, the Department has rejected a restored lands request in California where the applicant tribe was unable to demonstrate any aboriginal connection to the gaming site. The Department found that a proposed gaming parcel in Richmond, California did not qualify as the Guidiville Band of Pomo Indians' restored lands where, among other reasons, "the Band is unable to demonstrate it had any village or burial ground anywhere in the City of Richmond or within Contra Costa County."<sup>35</sup>

As a final note, the Department has clarified that eligible restored lands are not "*any* aboriginal land that the restored tribe ever occupied."<sup>36</sup> The applicant tribe must still demonstrate the significance of its connection to the proposed gaming parcel.<sup>37</sup>

## *ii. Location of Historic Rancheria*

In California, the distance between a gaming parcel and the applicant tribe's historic rancheria is a prominent factor in considering the land's eligibility for gaming. The location of the historic rancheria can also illuminate a tribe's ancestral territory since the federal government acquired rancheria sites for the homeless Indians already living in or near that area, often since pre-contact times.<sup>38</sup> In the early 1900s, following increasing public scrutiny of the abysmal

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<sup>32</sup> *Id.*

<sup>33</sup> Letter from George Skibine, Acting Deputy Assistant Secretary – Policy and Economic Development, Department of the Interior, to Chairperson Patricia Hermosillo, Cloverdale Rancheria of Pomo Indians of California (Dec. 12, 2008) (hereinafter 2008 Cloverdale Decision).

<sup>34</sup> 2014 Mechoopda Decision at 22-22, 25 (this decision analyzed the restored lands question under both the pre-regulation and post-regulation legal authority). The Department also noted that the subject parcels were only one mile from three buttes carrying cultural significance to the tribe. *Id.* at 22.

<sup>35</sup> 2011 Guidiville Decision at 19.

<sup>36</sup> *Id.* at 10 and fn.39 (quoting U.S. Dep't of Interior, Office of the Solicitor's Memorandum re: *Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt* at 8) (emphasis added).

<sup>37</sup> *Id.*

<sup>38</sup> See, e.g., Memorandum from John R. Hay, Staff Attorney, to Philip N. Hogen, Chairman NIGC re: Mooretown Rancheria Restored Lands at 5 (Oct. 25, 2007) (explaining how in 1915–16, BIA special agents investigated and

conditions of California Indians and Congress' failure to ratify treaties that would have provided them with a protected land base, Congress enacted a series of appropriations acts to fund small land acquisitions for groups of homeless Indians living in different areas.<sup>39</sup> The Indian Affairs officials charged with administering this program sought to acquire land where groups of Indians were already living (often technically “squatting”).<sup>40</sup> When unable to do so, they would procure parcels located in the general proximity and the deeds for those acquisitions often identified the beneficiary Indian group or groups by their geographic affiliation.<sup>41</sup>

We are aware of at least 12 positive restored lands determinations that have been issued for California tribes. Proposed gaming parcels have qualified as “restored lands” where they were located directly adjacent to or up to 15 miles from the historic rancheria.<sup>42</sup> In the rarer cases involving a restoration act expressly delineating whole counties in which the federal government could acquire land for the restored tribe, gaming parcels have been located up to 26 miles from the historic rancheria.<sup>43</sup> For example, the Department issued a positive restored lands determination for the Cloverdale Rancheria because the gaming parcel was “not only in the vicinity where the Cloverdale Tribe once occupied and subsided on land, but actually contiguous to and within the former Cloverdale Rancheria.”<sup>44</sup> Similarly, the Department found that a gaming parcel about one mile from the historic rancheria constituted restored lands in the cases of the

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spearheaded the purchase of an 80-acre parcel to become part of the rancheria for the local Mooretown Indians already living in the area).

<sup>39</sup> See, e.g., Act of June 21, 1906, ch. 3504, 34 Stat. 325; Act of May 18, 1916, ch. 125, 39 Stat. 123; Act of Feb. 14, 1931, ch. 187, 46 Stat. 1115.

<sup>40</sup> See Stephen Dow Beckham and Michelle Tiley, *The Koi Nation of Northern California: An Overview of Traditional Culture and History and Its Documented Historical Connection to Sebastopol and Santa Rosa, Sonoma County, California* at 70–72 (Aug. 2021) (hereinafter 2021 Beckham Report) (describing federal agents attempts to “find land near the Lower Lake and Sulphur Bank Koi villages,” ultimately resulting in the purchase of the Purvis tract between the towns of Lower Lake and Clear Lake Highlands); Department Record of Decision for the Trust Acquisition of the 228.04-acre Plymouth Site in Amador County, California, for the Ione Band of Miwok Indians at 54 (May 2012) (describing the efforts of federal agents to acquire as a rancheria a parcel of land consisting of the Band’s “ancient village”); Memorandum from Robert S. Hitchcock, Attorney-Advisor, to Amy Dutschke, Regional Director, BIA Pacific Region re: Federal Jurisdiction Status of Tejon Indian Tribe in 1934 (June 30, 2020) at 7–8 (describing the federal government’s extensive efforts in the early 1900s to procure for the Tejon Band a tract of land on which the Band members had been living for many years).

<sup>41</sup> See, e.g., Amy Dutschke, Regional Director, Bureau of Indian Affairs Notice of Decision for Graton Fee-to-Trust Application at 13–15 (May 19, 2023) (describing how in the case of our Tribe, Special Agent John Terrell recommended purchase of the 15.45-acre rancheria near Sebastopol “for Indians located in the area,” which included our ancestral Indian groups in Sebastopol, Marshall, Bodega, and Tomales).

<sup>42</sup> Bear River Band of the Rohnerville Rancheria (approx. 6 miles), Cloverdale Rancheria of Pomo Indians of California (contiguous and within), Elk Valley Rancheria (approx. 1 mile), Habematolel Pomo of Upper Lake (approx. 1 mile), Ione Band of Miwok Indians of California (no formal historic rancheria, but approx. 11 miles from parcel federal government had attempted to acquire as a rancheria), Karuk Tribe (no historic rancheria), Mechoopda Indian Tribe of Chico Rancheria (approx. 10 miles), Mooretown Rancheria of Maidu Indians of California (approx. 15 miles), and Wilton Rancheria (appx. 6 miles).

<sup>43</sup> Federated Indians of Graton Rancheria (approx. 13 miles), United Auburn Indian Community of the Auburn Rancheria of California (approx. 15 miles), Paskenta Band of Nomlaki Indians of California (approximately 26 miles).

<sup>44</sup> See 2008 Cloverdale Decision at 5. While not a restored lands evaluation, in 2018 the NIGC found that the Big Lagoon Rancheria could game on an after-acquired parcel where it was “contiguous” to the tribe’s historic rancheria, which remained in trust. Letter from Michael Hoenig, General Counsel, NIGC, to Chairperson Virgil Moorehead, Sr., Big Lagoon Rancheria at 12–13.

Elk Valley Rancheria and Habematolel Pomo of Upper Lake, respectively.<sup>45</sup> More recently, in 2017, the Department issued a positive restored lands decision for the Wilton Rancheria for a gaming parcel located 6 miles from the tribe's historic rancheria, noting that "[a] parcel's proximity to a tribe's historic reservation or rancheria is evidence that the tribe has a significant historical connection to that parcel."<sup>46</sup>

In contrast, the Department has found that an applicant tribe lacked a significant historical connection—and therefore the parcel could not qualify as "restored lands"—where the gaming parcel was 78 to 100 miles from the historic rancheria.<sup>47</sup>

*iii. Post-Contact Movement of the Tribe Versus Individual Tribal Members*

California lacked the largescale movement of entire tribal communities seen in other parts of the country, in large part due to the failure of the United States to ratify the 1851-1852 treaties that would have set up eighteen reservations to which the signatory tribes would have relocated. Nonetheless, the location or re-location of a tribe *as a whole* in the 1800s can be evidence of a significant historical connection. For example, in its 2014 restored lands determination for the Mechoopda Indian Tribe of Chico Rancheria, the Department considered at length the establishment of a Mechoopda Indian village near the non-Indian John Bidwell Ranch (which later became the center of the Town of Chico) in the mid-1800s.<sup>48</sup> 250 Mechoopda Indians were brought by their headman to the village for the purpose of employment and protection from encroaching settlers and other Indians.<sup>49</sup> It should be noted that the village was located within the Mechoopda's ancestral territory and there were several other pre-existing Mechoopda villages close to the site.<sup>50</sup> Moreover, while the village and surrounding area grew over time with a more diverse population, the Mechoopda community remained "culturally and politically intact."<sup>51</sup>

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<sup>45</sup> 2017 Elk Valley Decision at 7; Memorandum from Kaush Arha, Associate Solicitor, Indian Affairs, to Carl J. Artman, Assistant Secretary – Indian Affairs re: Pomo of Upper Lake Indian Lands Determination at 6 (Nov. 21, 2007). Similarly, in 2012 the Department found that Redding Rancheria had a significant historical connection to a gaming parcel located less than two miles from the tribe's historic rancheria, but denied the restored lands request on other grounds. Letter from Larry Echo Hawk, Assistant Secretary – Indian Affairs, Dep't of Interior, to Chairperson Jason Hart, Redding Rancheria at 7 (Dec. 22, 2010).

<sup>46</sup> Department of Interior, Record of Decision re: Trust Acquisition of 35.92+/- acres in the City of Elk Grove, California, for the Wilton Rancheria at 67 (Jan. 2017).

<sup>47</sup> See 2011 Guidiville Decision at 3, 8 ("The Band's Rancheria is located in Ukiah, California, over 100 miles driving distance from the Parcel"); 2012 Scotts Valley Decision at 1 ("[The parcels] are approximately 78 miles south of the Band's current tribal headquarters and former Scotts Valley Rancheria, both located in the Clear Lake area in Lake County, California.").

<sup>48</sup> 2014 Mechoopda Decision at 11–14.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.* at 9–12.

<sup>51</sup> *Id.* at 21 ("It is undisputed that during the late Nineteenth Century, the Mechoopda resided on the Bidwell Ranch, which later became the center of the Town of Chico and the Tribe's Rancheria. As discussed above, the Tribe adapted to its environs as it confronted the trials and tragedies of white settlement, including disease, disruption, relocation, and pressure to assimilate into European culture. That the Mechoopda lived and worked on the ranch, absorbed a succession of other Indians into the Tribe, and were affected by the dictates of the Bidwells signifies to us a dynamic community that was willing to change in order to survive, but remained culturally and politically intact.").

In contrast, the movement of individual Indians during the missionary and Mexican rancho period, through to the United States' assumption of control of California, does not itself demonstrate a tribe's relocation, or significant historical connection, to a new place. Rather, there must be more significant evidence linking the specific tribe as an entity to the vicinity of the proposed gaming site.<sup>52</sup> The Department has determined that "relocation of some of [a tribe's] members to various locales throughout the Bay Area does not equate to the [tribe] itself establishing subsistence use or occupancy in the region apart from its Rancheria."<sup>53</sup>

#### *iv. Evidence Concerning Language Groups*

The Department has been very clear that evidence concerning a broad language group, as opposed to a specific tribe (or its political predecessors), is not sufficient to demonstrate a tribe's significant historical connection to an area. As the Department previously explained, in California common language did not connote a common political or social unit. Rather, tribes with common languages were divided into smaller, independent sociopolitical units.

Before the arrival of Euro-American settlers, the indigenous peoples living in the area now known as California consisted of approximately 600 polities, which scholars have deemed 'village communities' or 'tribelets.' While these people shared common languages, the tribes within these linguistic territories were wholly autonomous.<sup>54</sup>

Indeed, tribes within larger common language families sometimes spoke regional dialects that were mutually unintelligible to other tribes within the language family, as was the case for the Pomo language family.<sup>55</sup> There were significant cultural, political, and social differences between the various tribal village communities.<sup>56</sup>

Accordingly, the Department has rejected evidence pertaining to large language families, such as Pomo, when such evidence could not be tied to the specific tribe at issue. In its 2011

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<sup>52</sup> 2011 Guidiville Decision at 16–17 (rejecting the tribe's claims that the presence of Pomo ancestors at Spanish missions and Mexican ranchos across the Bay Area amounts to a significant historical connection between the tribe, specifically, and the proposed gaming parcel at Point Molate), 18 (finding that "evidence that individual tribal members were born at various locales in the Bay Area is not necessarily indicative of *tribal* occupation of subsistence use of a parcel located fifty miles away").

<sup>53</sup> *Id.* at 19.

<sup>54</sup> 2014 Mechoopda Decision at 8. The Department proceeded to quote linguistic historian Victor Golla, explaining that "[w]hile most Californian languages shared a number of structural traits...the most important of the defining features of the California language area was not linguistic but sociopolitical. More precisely, it was the absence of a congruence between the linguistic and the sociopolitical. In this region, uniquely in North America, the idea that a distinct and common language is the social glue that holds together a tribe or nation played no significant role." *Id.*

<sup>55</sup> See William C. Sturtevant, ed., and Robert F. Heizer, ed., HANDBOOK OF NORTH AMERICAN INDIANS Vol. 8 (Smithsonian Institution 1978), *Pomo: Introduction* by Sally McLendon and Robert L. Oswalt, at 274 (hereinafter 1978 HANDBOOK OF NORTH AMERICAN INDIANS) ("From the second half of the nineteenth century on, speakers of seven distinct and mutually unintelligible languages in northern California have been referred to in the anthropological literature as a single group, primarily under the rubric Pomo. It is common in this literature to speak of Pomo baskets or Pomo houses or Pomo mythology analogous to the way in which one refers to Navajo baskets or Navajo mythology; however, the social and linguistic groups referred to under the rubric Pomo differ in a number of important respects from the social and linguistic group referred to as Navajo.").

<sup>56</sup> *Id.* at 275–276 (describing the cultural, social and political distinctions between the different Pomo groups).



decision regarding the Guidiville Band, the Department found that “[t]he Band relies on the common history of Pomo-speaking Indians” and that “[i]t is important to note that evidence of Pomo use and occupancy does not, without more, indicate use or occupancy by this particular band of Pomo, the Guidiville Band.”<sup>57</sup> Similarly, in its 2012 decision concerning the Scotts Valley Band’s application for a gaming parcel in Richmond, California, the Department emphasized the importance of relying only on the history of the particular tribal applicant, holding that “[w]hether demonstrating restored tribe status or a significant historical connection, a tribe must use history that is its own.”<sup>58</sup> Accordingly, “the applicant tribe must demonstrate, for example through a line of political succession or significant genealogical descent, that a particular historical reference is part of the applicant tribe’s history.”<sup>59</sup>

#### v. *Trade Routes*

The existence of trade routes through a larger territory has not been considered independently sufficient to demonstrate a significant historical connection via subsistence use and occupancy. Rather, “something more than evidence that a tribe merely passed through a particular area is needed to establish a significant historical connection to the land.”<sup>60</sup>

In considering the Guidiville Band’s arguments based on a trade route between the tribe’s aboriginal land in Clear Lake and the San Pablo Bay northern shore, the Department found that:

even assuming such a trade route existed (a conclusion that is not supported by the record), the Band cannot establish its subsistence use or occupancy based on the fact that its ancestors traveled to various locations to trade and interact with other peoples and then returned to the Clear Lake Region. **Subsistence use and occupancy requires something more than a transient presence in an area.**<sup>61</sup>

The Department shed further light on what is meant by “subsistence” and “occupancy,” as utilized in the regulatory definition of “significant historical connection.” The Department explained that:

‘Subsistence’ is defined as ‘a means of subsisting as the *minimum* (as of food and shelter) necessary to support life. Accordingly, activities that would tend to show a tribe was using land for subsistence purposes might include sowing, tending, harvesting, gathering and hunting on lands and waters. ‘Occupancy’ can be demonstrated by a consistent presence in a region supported by the existence of dwellings, villages or burial grounds, as alluded to in the regulations. The Band’s

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<sup>57</sup> 2011 Guidiville Decision at 13. Similarly, the Department found that “[n]or has the Band has[sic] provided documentation sufficient to demonstrate that its ancestors, as opposed to other Pomo Indians or Indian peoples in the area, engaged in subsistence use or occupancy upon or in the vicinity of the Point Molate Parcel.” *Id.* at 19.

<sup>58</sup> 2012 Scotts Valley Decision at 7.

<sup>59</sup> *Id.* at 7–8.

<sup>60</sup> 2011 Guidiville Decision at 14–15 (quoting the preamble to the Part 292 regulations at 73 Fed. Reg. 29,366).

<sup>61</sup> *Id.* at 14 (emphasis added).

claims with respect to a trade route do not demonstrate occupancy or subsistence use or activities on the Parcel or in its vicinity.<sup>62</sup>

To the extent that trade routes have been afforded any favorable treatment, it has been as a secondary point, buttressing the applicant tribe's larger and more significant connections with the gaming parcel. For example, in its 2014 decision concerning the Mechoopda Band, the Department provided that "[i]t is difficult to determine how far south the Mechoopda's territory extended from this primary village, but even if the Tribe's territory did not cover the subject parcels [located 8 miles from the primary pre-contact village and 10 miles from its former Rancheria], we reasonably can deduce that the Tribe ventured at least as far south as the parcels for trade, ceremonies, and subsistence use by agreement with neighboring tribes."<sup>63</sup> Similarly, the Department's 2021 Indian lands decision concerning the Mashpee Wampanoag Tribe considered the location of "major travel routes," but the Department was clear that those travel routes were secondary evidence and only considered "in conjunction with *direct evidence related to historical occupation at multiple sites*" near the subject parcel.<sup>64</sup> In particular, the Department noted in the Mashpee decision that (i) the National Park Service had previously confirmed the existence of a Mashpee burial site about 11 miles from the subject parcel; (ii) numerous Mashpee cultural items had been recovered from three additional sites within 20 miles from the subject parcel and had been repatriated to the Mashpee by the National Park Service and Smithsonian Institution; and (iii) the Massachusetts Historical Commission had documented three major pre-contact settlements of Mashpee's predecessor tribe within 10 miles or less of the subject parcel.<sup>65</sup>

*vi. Evidence from the 20th Century*

The Department has never placed meaningful weight on new connections with an area unilaterally formed during the 20th century, after the establishment of rancherias, to demonstrate a "significant historical connection" as this type of evidence is more recent and often concerns individuals as opposed to a tribe as a whole. For example, the Department rejected evidence submitted by a tribe that 15 of its ancestors participated in the BIA Outing Program between 1929 and 1936 and were located throughout the Bay Area.<sup>66</sup> The Department found that "[w]hile the Outing Program, in particular, relocated individual Indians, many Band members remained in Ukiah on the Rancheria," therefore "the relocation of some of the Band's members to various locales throughout the Bay Area does not equate to the Band itself establishing subsistence use or occupancy in the region apart from its Rancheria in Ukiah."<sup>67</sup> Further, in discussing the relocation of individual tribal members during the 1920s and 1960s, the Department has found that "evidence of the [tribe's] citizens' movements as late as the 1960s is more of a *modern* era activity, as opposed to *historic*, as those two terms are used in the Part 292 regulations."<sup>68</sup>

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<sup>62</sup> *Id.* (quoting Webster's New Collegiate Dictionary) (emphasis in original).

<sup>63</sup> 2014 Mechoopda Decision at 25–26.

<sup>64</sup> Decision Letter from Assistant Secretary – Indian Affairs, Bryan Newland to Chairman Brian Weeden, Mashpee Wampanoag Tribe, at 50 (Dec. 22, 2021) (emphasis added) (hereinafter 2021 Mashpee Decision).

<sup>65</sup> *Id.* at 46-49.

<sup>66</sup> 2011 Guidiville Decision at 18–19.

<sup>67</sup> *Id.* at 19.

<sup>68</sup> 2012 Scotts Valley Decision at 18.

Evidence from the 1900s is typically only used to demonstrate a continuity of habitation that began well before the turn of the century, rather than constituting “historic” ties on its own. For example, the federal district court in *Grand Traverse II* noted that in the twentieth century, “Band members continued to live on the east shore [of Grand Traverse Bay] and maintained an economic, spiritual and cultural connection to the area.”<sup>69</sup> However, this mention followed the court’s analysis of the applicant tribe’s aboriginal and historical connection to the area and was primarily used to demonstrate the uninterrupted presence of the tribe dating back thousands of years through to modern times.<sup>70</sup>

### **III. The Koi Nation Lacks a Significant Historical Connection to the Shiloh Parcel**

The Koi Nation’s restored lands request rests on the unsupportable assertion that it has a “significant historical connection” to the Shiloh Parcel in Sonoma County. Yet the Koi Nation is aboriginally from Clear Lake in Lake County and does not traditionally speak the same Pomo language as the tribes of Sonoma County. To this day, the Koi Nation has maintained a tribal presence in and connection to the Clear Lake area. In fact, the Koi Nation is a zealous advocate of protecting its sacred cultural resources in the Clear Lake area, much as our Tribe and other Southern Pomo people remain inextricably connected to and protective of our culture and history in the area surrounding the Shiloh Parcel in Sonoma County.

A specific evidentiary showing is required to establish a “significant historical connection” under the Part 292 regulations. The Koi Nation is unable to make that showing because it cannot demonstrate “by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of” the Shiloh Parcel in Sonoma County.<sup>71</sup> Unable to identify any traditional Koi villages or burial grounds anywhere in Sonoma County, the Koi Nation relies heavily on newspaper sources from the 1900s that document the presence of one Koi family—namely, the extended family of pan-Indian advocate Tom Johnson, who resided in the Sebastopol-Santa Rosa area in the 1920s-1940s—to allege the creation of a de facto Koi settlement to which the tribe purportedly relocated. But the historical record provides no evidence of anyone referring to Mr. Johnson’s family home as a Koi settlement or village. Nor does the historical record support Koi’s assertion of a mass relocation of the Koi community to the vicinity of Mr. Johnson’s family home. To the contrary, Koi *had* a recognized rancheria and Indian settlement in Clear Lake in the 1900s and the documentary evidence plainly shows that the tribe continued to live in and assert its rights to that area.

To the extent it considers activities pre-dating the 20<sup>th</sup> century, the Koi Nation relies on evidence pertaining to Pomo people as a larger language group, including the transient use of trade routes through Sonoma County. Both types of evidence have already been rejected by the Department as insufficient to establish a “significant historical connection.” Moreover, the expert

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<sup>69</sup> 198 F. Supp. 920, 925.

<sup>70</sup> *Id.*

<sup>71</sup> See 25 C.F.R. § 292.2, defining “Significant historical connection.” Nor has the Koi Nation attempted to satisfy the other portion of the definition, i.e. that “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty.”

reports submitted by Koi routinely over-state or mischaracterize the underlying evidence, offering a narrative that is often without support in the actual record.

We detail our serious concerns with the Koi Nation's arguments below.

a. The Koi Nation is Aboriginally and Historically Connected to the Clear Lake Region

As a threshold matter, it is uncontested that the homeland of the Koi Nation, a Southeastern Pomo tribe, is the Clear Lake region of Lake County, California, over 50 miles from the Shiloh Parcel. Koi Nation's own admissions, the establishment of its rancheria next to Clear Lake, and the overwhelming weight of ethnographic and historical evidence definitively demonstrate that Koi Nation is aboriginally and culturally tied to Clear Lake.<sup>72</sup> In fact, in its restored land request, the Koi Nation unequivocally states: "From time immemorial, our Tribe lived at Clear Lake. It was our ancestral home."<sup>73</sup>

The expert reports submitted by Koi further recognize Koi's historical roots in Clear Lake. For example, Koi's historians, Stephen Beckham and Michelle Tiley, affirm the Koi's homeland on the southeastern portion of Clear Lake, known as Lower Lake:

The Southeastern Pomo to which Koi belong were somewhat different from other Pomo because of their emphasis on lake resources and their concomitant dependence on boats (balsa, tule rafts). The Southeastern Pomo communities consisted of three, autonomous political entities: Koi, Kamdot, and Elem. Each community had lands bordering Lower Lake and had their primary villages on islands.<sup>74</sup>

The maps below from ethnographers Fred B. Kniffen and Edward W. Gifford, respectively, both of whom are cited extensively by Koi and its experts, depict the location of the Koi community on Lower Lake near the Cache Creek outlet.<sup>75</sup>

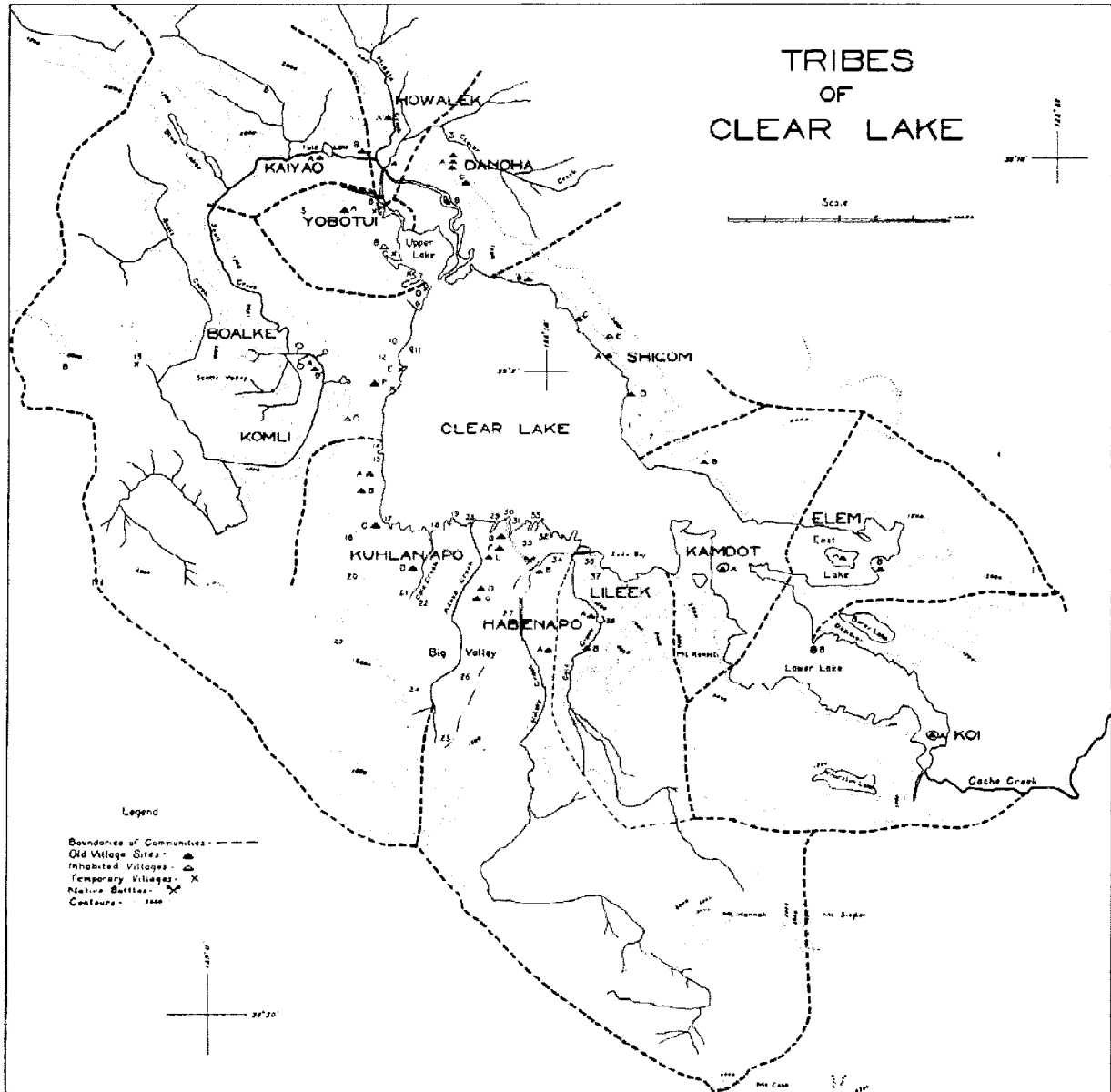
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<sup>72</sup> See, e.g., 1978 HANDBOOK OF NORTH AMERICAN INDIANS at 306 (Providing that "[t]he Southeastern Pomo lived around East Lake and Lower Lake," with three main villages on Anderson Island, Rattlesnake or Sulphur Bank Island and on Lower Lake Island).

<sup>73</sup> Koi Nation Request for Restored Land Opinion at 16 (Sept. 15, 2021) (hereinafter 2021 Restored Land Request).

<sup>74</sup> Stephen Dow Beckham and Michelle Tiley, *The Koi Nation of Northern California: An Overview of Traditional Culture and History and Its Documented Historical Connection to Sebastopol and Santa Rosa, Sonoma County, California* at 27 (Aug. 2021) (hereinafter 2021 Beckham Report).

<sup>75</sup> Fred B. Kniffen, *Pomo Geography*, 36 U. OF CAL. PUBLICATIONS IN AM. ARCHAEOLOGY & ETHNOLOGY 353, Map 1 (1939) (hereinafter Kniffen (1939)), also excerpted in 2021 Beckham Report at 27; Edward W. Gifford, *Pomo Lands on Clear Lake*, 20 U. OF CAL. PUBLICATIONS IN AM. ARCHAEOLOGY & ETHNOLOGY 77 at 79 (1923).



Map. 1. Pomo of Clear Lake.

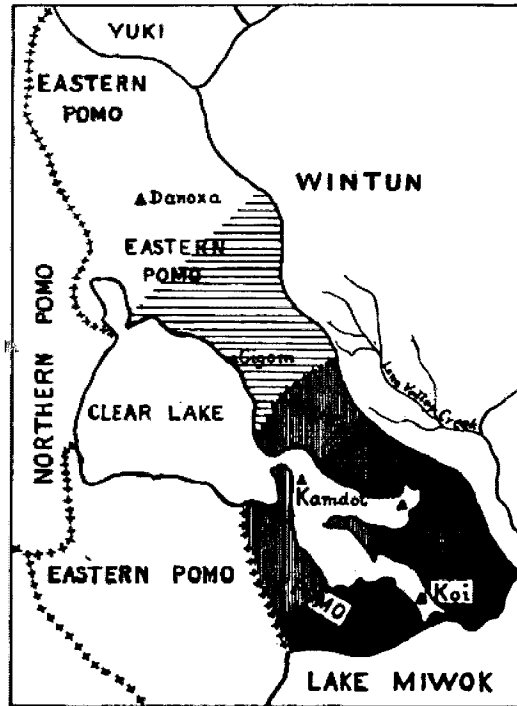


Fig. 1. Territories of the Pomo villages of Koi, Kamdot, Elem, and Cigom.

Similarly, Koi’s expert on Pomo archaeology and linguistics, Dr. Gregory White, describes the seven distinct Pomoan language units and explains that the “Southeastern Pomo” language area includes “Koi ancestors *whose traditional tribal territories were situated in eastern Clear Lake basin, in Lake County.*”<sup>76</sup>

Recognizing the location of Koi’s homeland in Lower Lake, the federal government acquired a 141-acre tract in 1916 at the southern end of Lower Lake to create the Lower Lake Rancheria as a federally-protected land base for the Koi.<sup>77</sup> However, because the Lower Lake Rancheria lacked key improvements and did not provide direct access to Clear Lake or Cache Creek, few Koi members moved onto the Rancheria.<sup>78</sup> But the majority of Koi families nonetheless stayed nearby—an inconvenient fact that Koi avoids in its submissions—with many of them squatting on private lands adjacent to Cache Creek.<sup>79</sup> In 1938, over twenty years after

<sup>76</sup> Gregory G. White, *Evidence for the Historical Primacy of the Koi Nation and the Southeastern Pomo in Northwestern California* at 3 (May 11, 2022) (emphasis added) (hereinafter 2022 White Historical Primacy Report).

<sup>77</sup> 2021 Restored Land Request at 4, 20-21.

<sup>78</sup> *Id.*

<sup>79</sup> 2021 Beckham Report at 59-60 (“Following displacement from their island villages, the Koi sought a secure place to live. Some went to *Elem*. Others inhabited Rock Pile, presently headquarters of Anderson Ranch State Historic Park [bordering Clear Lake and Cache Creek]....Eventually they were forced from the village at Rock Pile and moved to Bedai. Bedai, also called *Ba-di-chow-claul*, or Creek Home, was an old camp site on level land adjacent to Cache Creek then belonging to Clifford Barker, superintendent of the Spring Valley Company Stock Ranch....Koi families lived at Bedai from the 1870s to the 1950s....Locals considered this village an Indian rancheria and believed the Indians owned it. Bedai was not located on the Purvis Tract, but because it was a Koi village it gained local reference as ‘Lower Lake Rancheria’ even though it was not federal fee land for Indian purposes.”) (internal



the creation of Lower Lake Rancheria, a Department of Interior report noted that this Lower Lake Indian community still “will not consider leaving the shore of Clear Lake or Cache Creek” despite the hardships they were facing as squatters, and thus urged the federal government to acquire additional land next to the Lower Lake Rancheria that provided direct access to Clear Lake or Cache Creek.<sup>80</sup>

The Koi Nation continues to be proactive in protecting its cultural resources and sacred sites located in Clear Lake. In a lawsuit filed in 2023 by the Koi Nation against the City of Clearlake for alleged violations of the California Environmental Quality Act (CEQA), Koi argued that the City is “located within the aboriginal territory and area of traditional and cultural affiliation of the Tribe” and therefore the City has an obligation to properly consult with the Koi Nation regarding proposed development projects that would impact tribal cultural resources (TCRs).<sup>81</sup> The Koi Nation says that the site itself is part of a significant TCR landscape given the close proximity to a major pre-historical archaeological site, the former Lower Lake Rancheria, and the homesite of important tribal cultural practitioners and healers, Harry Johnson and Margaret Johnson McCloud.<sup>82</sup> As the Koi Nation explained, “[s]ites within the City include sacred sites, village sites, burial grounds, dance pits, ceremonial sites, tool and trade blank making sites, currency making sites, hunting and gathering areas, fishing areas, gathering areas for plants, medicines, ceremonial plants, food, fiber, or basketry material, TCR cultural landscapes, and the original location of the Lower Lake Rancheria.”<sup>83</sup>

In stark contrast, Sonoma County is the aboriginal territory of different Pomo people, specifically the *Southern Pomo* in the Russian River Valley and the *Southwestern Pomo/Kashaya* along the Pacific coast.<sup>84</sup> There are five federally recognized tribes that have a demonstrated, aboriginal connection to Sonoma County: the Federated Indians of Graton Rancheria, Dry Creek Rancheria Band of Pomo Indians, Cloverdale Rancheria of Pomo Indians, Lytton Band of Pomo Indians, and Kashia Band of Pomo Indians.

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citations omitted); *see also* Section III(c)(i) *infra* for a review of the evidence demonstrating that the majority of the Koi population lived in Lake County, not Sonoma County, during the first half of the 20<sup>th</sup> century.

<sup>80</sup> 2021 Beckham Report Exhibit 138 (Letter from Fred Baker, Land Field Agent, to J.M. Stewart, Director of Lands, Sacramento Indian Agency) (April 22, 1938) at Bates No. 315.

<sup>81</sup> *See Koi Nation of Northern California v. City of Clearlake*, Verified Petition for Writ of Mandate and Complaint for Declaratory Relief, Injunctive Relief, and for Attorneys’ Fees ¶¶ 9, 97 (filed Mar. 2, 2023) (Superior Court of the State of California, County of Lake, CV 423786) (hereinafter Petition and Complaint for Airport Property Project). This litigation concerns the City’s environmental review of a proposed hotel and infrastructure project on the former airport site, in close proximity to the Koi’s former rancheria. *Id.* ¶¶ 22, 23.

<sup>82</sup> Petition and Complaint for Airport Property Project ¶¶ 57-60. *See also id.* at § 75 (emphasizing the “existence of TCR throughout numerous sites within the City in very close proximity to the Project site”).

<sup>83</sup> *Id.* ¶ 102.

<sup>84</sup> *See* 1978 HANDBOOK OF NORTH AMERICAN INDIANS at 279 (“The aboriginal territory of the Southern Pomo lay in Sonoma County and extended from about five miles south of Santa Rosa northward for 40 miles”), 278 (“Aboriginally, the Kashaya occupied about 30 miles of the coast of northwest Sonoma County and extended inland for 5 to 13 miles). The southern part of Sonoma County also includes part of the Coast Miwok aboriginal territory. *Id.* at 414–15.

In particular, the Sebastopol-Santa Rosa area now claimed by the Koi Nation is clearly recognized by the federal government and scholars as Southern Pomo territory.<sup>85</sup> For example, the NIGC, in ruling on Graton Rancheria’s own restored lands request, determined that “Sebastopol was once the site of a large, permanently inhabited Southern Pomo village....The Southern Pomo also had villages near Windsor, Healdsburg, and Guerneville.”<sup>86</sup> The map below, generated by linguist Victor Golla and included in Koi’s own historical report, clearly shows all of these towns as within Southern Pomo territory, far outside the bounds of Koi’s Southeastern Pomo homeland on Lower Lake.<sup>87</sup> There is no genuine dispute on this point as both Koi and all of its own experts uniformly recognize the portion of Sonoma County at issue here as being located within the traditional territory of the Southern Pomo people—and outside the traditional territory of the Koi/Southeastern Pomo tribal communities in Lake County.<sup>88</sup>

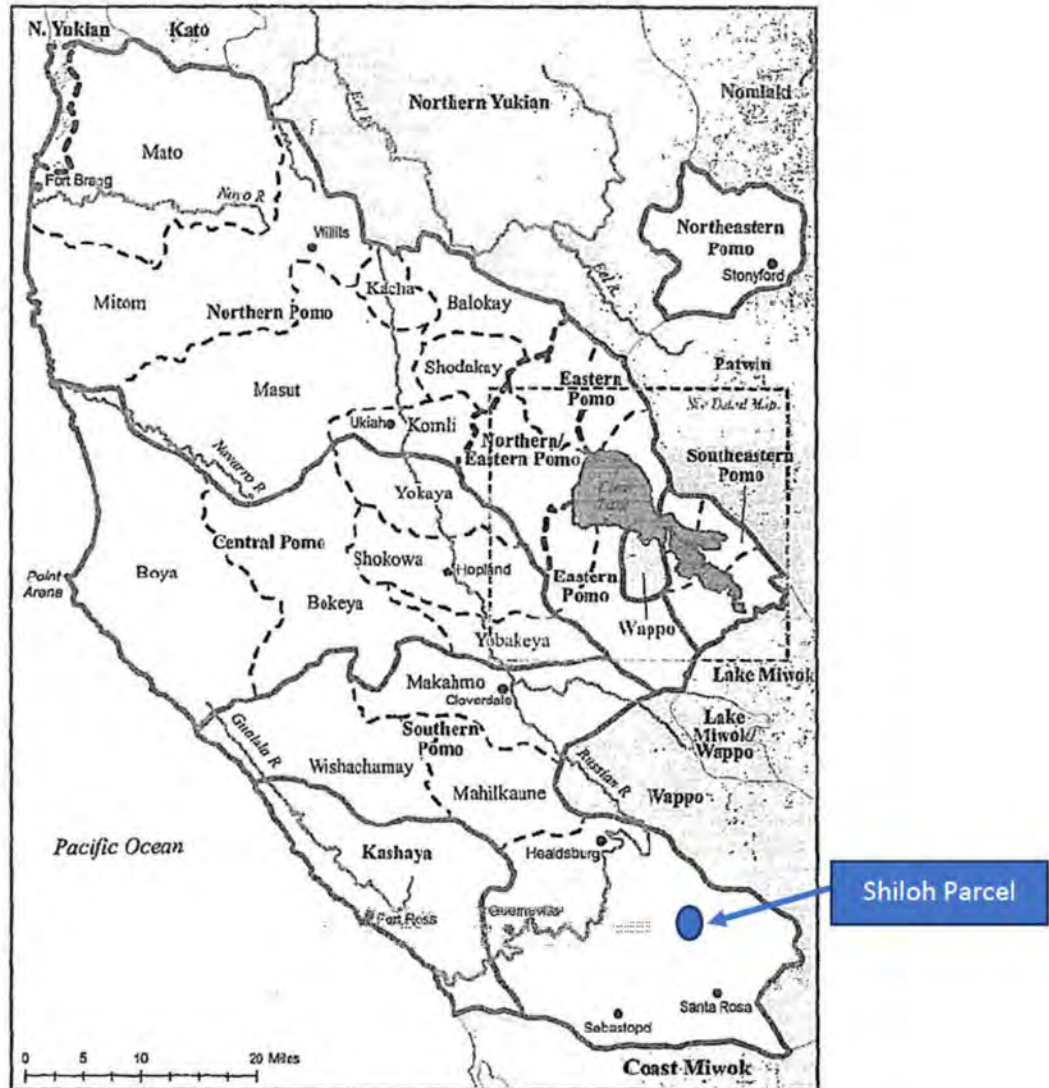
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<sup>85</sup> See, e.g., NIGC Restored Lands Opinion for Graton Rancheria at 7 (Feb. 10, 2009) (“Sebastopol was once the site of a large, permanently inhabited Southern Pomo village. Sebastopol is approximately ten miles northwest of Rohnert Park. The Southern Pomo also had villages near Windsor, Healdsburg, and Guerneville.”).

<sup>86</sup> *Id.* at 7.

<sup>87</sup> Map is reprinted from 2021 Beckham Report at 22 (approximate location of Shiloh Parcel shown for reference)

<sup>88</sup> See, e.g., Koi Nation of Northern California Supplement to September 15, 2021 Restored Land Request to the Department of the Interior, Office of Indian Gaming at 38 (Mar. 2023) (hereinafter referred to as First Supplemental Restored Land Request) (“An extensive trail system existed... to connect the Eastern and Southeastern Pomo of Clear Lake Basin (Lake County) with the Northern Pomo, Central Pomo, and Southern Pomo of the Russian River (Mendocino and Sonoma County) and ultimately with the coast.”); John Parker, *Southeastern Pomo (Koi) Trade and Travel 5,000 Years Ago to Today* at 5 (2021) (hereinafter 2021 Parker Report) (“...the areas covered by this research include the territories of the Southeastern Pomo (Clear Lake), Eastern Pomo (Clear Lake), the Southern Pomo (Russian River, Cloverdale to Sebastopol) and Western Wappo (Alexander Valley)”); 2021 Beckham Report at Fig. 7 (map depicting geographic relationship of Pomo groups); 2022 White Historical Primacy Report (listing the Pomo language areas as follows: “Southeastern Pomo[,] including Koi ancestors whose traditional tribal territories were situated in eastern Clear Lake basin, in Lake County...Southern Pomo, occupying the southern Sonoma County coastal range to the coast...Southwestern (Kashaya) Pomo, occupying the Gualala River and lower Russian River drainages of the immediate Sonoma County coast.”).



MAP 17. Pomo languages and their major dialects.

As depicted in the map immediately above, and explained by ethnographers and Koi’s own experts, the cultural and linguistic differentiation that occurred between Pomo tribal groups over the centuries is significant. A total of seven different, distinct languages were spoken in the overall Pomoan language-speaking world spanning from Clear Lake, throughout the Russian River Valley and across to the Pacific Ocean.<sup>89</sup> Three of these Pomo languages were spoken in the Clear Lake Basin alone—Northern Pomo, Eastern Pomo, and Southeastern (Koi) Pomo—thus highlighting the high degree of differentiation.<sup>90</sup> Accompanying these linguistic boundaries were real territorial boundaries that persisted over millennia. Koi concedes that by “3,000 years ago,” tribal territorial boundaries established around Clear Lake “were *clearly defined* and

<sup>89</sup> 2022 White Historic Primacy Report at 2.

<sup>90</sup> See, e.g., 2021 Beckham Report at Fig. 8; Kniffen (1939) at 358 (“Clear Lake was overwhelmingly a Pomo Lake.... There was no political unity, in fact there was not true linguistic unity, as three distinct dialects or languages of Pomo were represented.”).

remained stable until the European invasion,” and further affirms that, beyond Clear Lake, “tribal territories were established *throughout the Pomo Culture Area*” during a similar time frame.<sup>91</sup>

b. The Koi Nation’s Claims Concerning the Aboriginal Presence of Pomo People as a Whole Does Not Amount to a Significant Historical Connection to Sonoma County

As demonstrated above, there is no dispute that (1) Koi’s aboriginal territory is the southeastern corner of Clear Lake, (2) the Southeastern (Koi) Pomo in Lake County spoke a different language from the Southern Pomo people whose aboriginal territory is in Sonoma County, and (3) the territorial boundaries separating the various Pomo tribes remained firmly in place for millennia. Undeterred by this overwhelming evidence, Koi nonetheless claims it also has an aboriginal connection to Sonoma County—in addition to Lake County—sufficient to grant “restored lands” there.

The first strategy Koi employs is to obfuscate the undisputed distinctions between Pomo tribes and subtly attach the Koi tribe to Pomo people generally. For example, Koi claims that it is “descended from ancestors who lived in the area around Lower Lake in the Clear Lake Basin *and* in the Russian River Valley of Northwestern California.”<sup>92</sup> The ancestors referred to in this broad geographic area are Pomo people generally, not the Southeastern Pomo or the Lower Lake Indians, as Koi goes on to state that “Pomo speakers” had “dozens of villages and hundreds of campsites in the Russian River Valley, Coast Range Mountains, and the Clear Lake Basin.”<sup>93</sup> But the territorial range of “*Pomo speakers*” is not relevant to whether the *Koi tribe* has a “significant historical connection” to the Shiloh Parcel. As explained, *supra*, an applicant cannot rely on evidence concerning a broad language family like Pomo to support a significant historical connection, particularly where there are distinct languages within that overarching group, accompanied by independent socio-political units and unique cultural identifiers. Indeed, in its Guidiville decision, the Department expressly rejected such an attempt to rely on “the common history of Pomo-speaking Indians” and reiterated that “[i]t is important to note that evidence of Pomo use and occupancy does not, without more, indicate use or occupancy by this particular band of Pomo.”<sup>94</sup>

The next strategy that Koi employs to claim an ancient connection to Sonoma County is by putting forth a theory that Pomo language originated in the Clear Lake area and then subsequently spread across Sonoma and Mendocino Counties.<sup>95</sup> This theory is premised on an original “Proto-Pomo” language that is hypothesized to have existed thousands of years ago and to have eventually evolved and differentiated over the millennia into the seven different Pomo

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<sup>91</sup> First Supplemental Restored Land Request at 34 (emphasis added); *see also* 2021 Parker Report at 2.

<sup>92</sup> 2021 Restored Land Request at 17 (emphasis added).

<sup>93</sup> *See id.* The Koi’s submittal also holds out a large body of scholarly work largely concerning Pomo people, generally, or various subgroups of Pomo, as work with “Koi Nation ancestors and relatives.” *Id.*; *compare with* 2021 Beckham Report at 2–22 (describing in more detail each of these scholarly works).

<sup>94</sup> 2011 Guidiville Decision at 13. Similarly, the Department found that “[n]or has the Band has[sic] provided documentation sufficient to demonstrate that its ancestors, as opposed to other Pomo Indians or Indian peoples in the area, engaged in subsistence use or occupancy upon or in the vicinity of the Point Molate Parcel.” *Id.* at 19.

<sup>95</sup> *See, e.g.*, First Supplemental Restored Land Request at 34-35; 2022 White Historical Primacy Report at 2-6.

languages spoken in Northern California.<sup>96</sup> Koi claims that the hypothesized “Proto-Pomo” language may have originated in the Clear Lake Basin because various linguistic models provide evidence that the Southeastern and Eastern Pomo languages from that area are “older” than the Pomo languages spoken in Sonoma County and more similar to the hypothesized Proto-Pomo. In sum, Koi is suggesting some nebulous common ancestry among Pomo people in Sonoma County and Lake County reaching back to the original “Proto-Pomo” speakers theorized to be from the Clear Lake Basin. As an initial matter, the comparative dating of related languages is not an exact science and there is of course no determinative record of exactly when or where ancient, hypothesized proto-languages were first spoken.<sup>97</sup> Moreover, Koi’s linguistic theory is merely an extreme form of what the Department expressly rejected in its Guidiville decision—reliance on the “common history of Pomo-speaking Indians” rather than specific evidence of use and occupancy by a particular Pomo tribe, i.e., the Koi Nation.<sup>98</sup>

While the question of which of the seven Pomo languages is the oldest or most similar to the hypothesized Proto-Pomo language may be a fascinating academic debate, it is irrelevant to this restored lands determination. The sole issue here is, as set forth in 25 C.F.R. § 292.2, whether the *Koi tribe* can “demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use” in the vicinity of the Shiloh Parcel. An unproven theory about the point of origin of a hypothesized proto-language is not “historical documentation” at all, let alone evidence that the *Koi tribe* (as opposed to some unidentified Proto-Pomo speakers from Clear Lake) maintained villages or otherwise occupied Sonoma County.

To the extent Koi is arguing that the hypothesized group of Proto-Pomo speakers from Clear Lake that purportedly fanned out to Sonoma County thousands of years ago is a predecessor tribe of the Koi Nation, such an argument fails under the Department’s precedent. In its Mashpee and Scotts Valley decisions, the Department made clear that there are “two methods by which a tribe can establish the requisite nexus to a tribal predecessor: (1) through a line of political succession or (2) through significant genealogical descent.”<sup>99</sup> Koi cannot satisfy either one. In terms of showing a “line of political succession” among Pomo tribes, the Department has already found that the various Pomo-speaking tribes were never part of one

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<sup>96</sup> See 2022 White Historical Primacy Report at 3.

<sup>97</sup> The use of glottochronology, the study of the temporal relationship between languages, is not widespread today and remains a subject of debate. See, e.g., <https://www.britannica.com/topic/glottochronology>. While it attempts to trace language divergence over millennia, many linguists question its reliability, viewing glottochronology more as a probabilistic tool than a definitive measure. See, e.g., Harriet J. Ottenheimer, *THE ANTHROPOLOGY OF LANGUAGE* (Cengage Learning 2006) at 292-93. Reflective of how imprecise the comparative dating of languages can be, Koi’s own experts appear to disagree as to whether the Hokan language family, of which the Pomo languages are a member, or the Yukian language family was the first to arrive in the Clear Lake Basin. Compare 2021 Parker Report at 3 (“Sometime in the distant past, the Yukian speakers inhabited the coast range of California from San Francisco Bay north... Later in time, the Hokan speakers moved into the Clear Lake Basin, either displacing or marrying into the existing Yukian speaking communities.”) with 2022 White Historical Primacy Report at 2 (“the pattern of linguist isolation indicates that tribes of the Hokan Stock... are the most ancient occupants, likely to be the state’s first arrivals”).

<sup>98</sup> See 2011 Guidiville Decision at 13.

<sup>99</sup> 2021 Mashpee Decision at 35 (citing 2012 Scotts Valley Decision at 8).



political whole: “the Pomo were a language or dialect group *not tied together as a sovereign political entity*.”<sup>100</sup> As discussed above, the territorial boundaries between the Pomo tribes and other tribes near Clear Lake were clearly defined and very stable. Even among the Pomo tribes around Clear Lake, Koi’s own ethnographic sources expressly note that “[t]here was *no political unity*, in fact there was not true linguistic unity, as three distinct dialects or languages of Pomo were represented.”<sup>101</sup> This is in stark contrast to the situation in the Mashpee decision, in which historical evidence was presented showing that the Mashpee and their predecessor tribe “were organized into a coalition of loosely confederation chiefdoms,” and that specifically identified tribal chiefs “provided unified leadership for the [Mashpee and their predecessor tribe] during the important period in time when tribes were dealing with the colonist encroachment on land.”<sup>102</sup> Regarding the “significant genealogical descent” prong, Koi has no evidence whatsoever, as these Proto-Pomo speakers are a hypothesized group, not a verifiable tribe with known individuals or leaders.

Koi also attempts to show an aboriginal connection to Sonoma County by pointing to archaeological evidence that certain cultural characteristics of the Clear Lake Basin—such as the predominant use of mortar and pestle and Excelsior-series points—spread to both the east and west of the Clear Lake Basin around 2,500 years ago.<sup>103</sup> Koi appears to be arguing that whatever group helped spread these cultural features outside of the Clear Lake Basin may be some nebulous common ancestor of both the Sonoma County Pomo tribes and the Lake County Pomo tribes. However, this cultural evolution theory fails for essentially the same reasons as Koi’s linguistic evolution theory. While the questions of who invented the mortar and pestle and Excelsior-series points and how they spread through Lake and Sonoma Counties are interesting topics for academic debate, they are not relevant to the “significant historical connection” analysis under the federal regulations. Nowhere in Koi’s submissions or its expert reports is there any contention that the *Koi tribe* brought these cultural features to Sonoma County by settling and occupying that territory. Thus, Koi has not offered any evidence relevant to its requirement to “demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use” in the vicinity of the Shiloh Parcel. And to the extent that Koi is arguing that the people responsible for this purported cultural diffusion are a predecessor tribe, Koi’s argument cannot pass muster with the Department’s precedent for the same reasons explained above with respect to Koi’s linguistic theory.

In sum, while a tribe’s historical connection to an area need not be exclusive—as illustrated by the fact that five different federally recognized tribes are aboriginally from Sonoma

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<sup>100</sup> 2021 Mashpee Decision at 43 (emphasis added).

<sup>101</sup> Kniffen (1939) at 358 (emphasis added). Also, as explained by scholar Alfred Kroeber (whom Koi quotes), Pomo political structure was based on village communities and autonomy. “The boundaries of the land owned by the group were, however, definite; and as regards other groups, the rights of property and utilization were clearly established.” Alfred Louis Kroeber, HANDBOOK OF THE INDIANS OF CALIFORNIA, Bureau of American Ethnology Bulletin 78 at 228–229 (Washington, D.C., Smithsonian Institution 1925), as quoted by 2021 Beckham Report at 15.

<sup>102</sup> 2021 Mashpee Decision at 43.

<sup>103</sup> See, e.g., Second Supplemental Restored Land Request at 4-5.



County—there is no evidence that the Koi Nation had a meaningful aboriginal connection to the area.

c. Koi Nation’s Primary Arguments Hinge on the 20<sup>th</sup> Century Relocation of a Koi Family and the Pan-Indian Activities of a Family Member

The Koi Nation relies on post-contact, 20<sup>th</sup> century records concerning a Koi family that fails to represent the tribe as a whole or demonstrate the establishment of “the tribe’s village” pursuant to the regulations.<sup>104</sup> The Department has already rejected the claim that the movement of individuals, particularly in more recent history, can demonstrate a *tribe’s* significant *historical*<sup>105</sup> connection to a parcel of land. There is also a complete lack of federal records supporting the notion that the Koi Nation as a tribe re-located to or created a known secondary presence in the greater Santa Rosa area.<sup>106</sup> Rather, the primary sources proffered by Koi Nation consist mostly of contemporaneous news sources concerning the pan-Indian activities of Koi ancestor Tom Johnson, who made his home in Sonoma County.

i. *There is no evidence characterizing the Tom Johnson property as a Koi village, reservation, rancheria, or Indian settlement.*

None of the underlying evidence refers to or indicates that Tom Johnson’s homes near Sebastopol or in Santa Rosa were known as the “‘de facto’ capital of the Koi Pomo throughout the 1920s, 1930s and 1940s”<sup>107</sup> or otherwise seen as an Indian community, reservation, rancheria, or village. Even though Koi states that “[t]he Johnson homes at Gold Ridge near Sebastopol and in nearby Santa Rosa were meeting locations for the Koi,” they provide no documentary support to show that *the tribe* held meetings there.<sup>108</sup> Further, while Koi claims that

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<sup>104</sup> See 25 C.F.R. § 292.2, defining “Significant historical connection.”

<sup>105</sup> Koi argues that “historical” could be interpreted to mean anything older than 50 years, relying on National Historic Preservation Act (NHPA) guidance and unsupported claims about “BIA practice.” See 2021 Restored Land Request at 10; Second Supplemental Restored Land Request at 4 n.5. It goes without saying that IGRA and the NHPA were enacted for very different purposes. Taken to its logical conclusion, a 50-year rule in the IGRA restored lands context would mean that the Koi, or any other tribe petitioning for restored lands at this time, could rely solely on records from the 1960s and 1970s to establish a “significant historical connection.” Given that many restored tribes were terminated prior to or during that period, it is hard to imagine Congress was intending to “restore” lands for which a tribe’s (or individual tribal members’) only connection was post-termination. Additionally, to the extent BIA has considered such records, it was almost certainly to determine whether or not a tribal applicant qualified as a “restored tribe,” not whether the underlying lands constitute restored lands to which the tribe has a significant historical connection. If BIA *has* considered such records in the restored lands context (although Koi has provided no example) it was likely because such records memorialize earlier information about a tribe, such as where its rancheria was established in the early 1900s.

<sup>106</sup> While Koi argues that “it does not seem reasonable to limit historical documentation of a tribe’s villages, burial grounds, occupancy or subsistence use to federal documents,” we are unaware of any restored lands determinations that were based on a record devoid of federal documentation supporting the major claims. See 2021 Restored Land Request at 10.

<sup>107</sup> 2021 Restored Land Request at 5.

<sup>108</sup> See *id.* Page five cites of the 2021 Beckham Report cross-references pages 84 and 97, which again makes this assertion and then broadly cite a different 20-page section of the 2021 Beckham Report, none of which relies on any primary documents showing that the Koi/Lower Lake tribe held meetings at the Johnson residences. Rather, the historical report baldly asserts that Tom Johnson’s “farm and home served as a gathering place for his extended family, other Pomo Indians, and tribal leaders in northwestern California.” *Id.* at 92. The only specific mention of a

Tom Johnson “employed many of his tribesmen at his Sebastopol ranch,” the only historical evidence offered is largely illegible and does not support this proposition.<sup>109</sup> Rather, these sources make clear that these places were simply his personal residence and orchard.<sup>110</sup>

Significantly, when Tom Johnson did engage in business specifically concerning the tribe—rather than California Indians generally—the documentary record shows that he *returned to Lower Lake* to do so.<sup>111</sup> In fact, these same records refer to “the Lake County tribe” and “Lake County Indians,” indicating that the Koi people had not lost their Lake county affiliation or taken on a new geographic affiliation.<sup>112</sup> Several members of the extended Johnson family, such as Tom Johnson’s brothers, either stayed in Lake County or returned to live in Lake County at various points.<sup>113</sup>

Koi also claims that by 1920, most of the Koi Nation’s members lived in the Santa Rosa-Sebastopol area—which is yet another claim belied by the very historical records to which Koi and its experts cite.<sup>114</sup> The 1920 federal census records summarized in Dr. Beckham’s 2021 report indicate that only 8 Johnson family members were living in Sonoma County at this time, as compared to 35 individuals in Lower Lake and 16 additional individuals in other parts of Lake County.<sup>115</sup> The vast majority of the community remained in Lower Lake according to the 1940 federal census.<sup>116</sup> In fact, the 1952 “base roll” relied upon by Koi includes the following

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“meeting” at the Johnson home was a Thanksgiving dinner attended by many Indian leaders. *Id.* at 96 (citing a 1928 news article, Exhibit 43).

<sup>109</sup> See 2021 Beckham Report at 97, citing Exhibit 41 (1928 Santa Rosa Republican article titled “Indian Orchardist Would have Name of Race Changed; Blames His Present Title to Columbus”).

<sup>110</sup> See First Supplemental Restored Land Request at 19 (quoting Senator Herbert W. Slater’s description of his friend Tom Johnson and how he “operates an apple and berry orchard in the Gold Ridge district”); Stephen Beckham, *Koi Nation’s Residency in the Russian River Valley and Leadership in California Indian Affairs* (Jan. 2023) (hereinafter 2023 Beckham Report), Exhibit - Anonymous 1928c (“Sebastopol News” *The Press Democrat*) (referring to the “home” of Tom Johnson near Sebastopol); 2023 Beckham Report Exhibit - Anonymous 1933a (“Lea Aiding in Indian’s Suit” *Santa Rosa Republican*) (referring to Tom Johnson’s “apple orchard near Sebastopol”); 2023 Beckham Report Exhibit - Anonymous 1935a (“Tom Johnson is Promised Action on Indian Claims” *Sonoma West Times and News*) (referring to Tom Johnson’s “home” in Santa Rosa).

<sup>111</sup> See 2021 Beckham Report Exhibit 83 (1939 *Press Democrat* article describing Tom Johnson’s attendance of a reunion of 100 members of “the Lake county tribe” at the “Clifford ranch near Lower Lake”); 2021 Beckham Report Exhibit 85 (1940 *Santa Rosa Republican* article stating “Tom Johnson, widely known Santa Rosa Indian leader, returned home over the weekend from Lake county where he spent two weeks with relatives and attended several important meetings of Lake County Indians”).

<sup>112</sup> *Id.*

<sup>113</sup> While Koi Nation asserts that Tom’s three brothers “John, Louis and Ned Johnson,” all relocated to Sebastopol, their historical report paints a different picture. See 2021 Restored Land Request at 5. The 2021 Beckham Report indicates that two of his brothers (John and Ned) moved back to Lake County at different points in life and the third brother, whose name was actually Henry, never left Lower Lake. See 2021 Beckham Report at 85 (referring to Tom Johnson’s brothers as Ned, *Henry*, and John Johnson), 89 (indicating that Ned Johnson was recorded as living in Lower Lake from 1868–1910, Sonoma County in 1920, then died in Middletown, Lake County in 1944), 89–90 (indicating that Henry was recorded as born in Lake County and living there throughout his life), 90 (indicating that John Johnson was recorded as born in Lower Lake, apparently moved to Sonoma County in 1918, returned to Lower Lake in 1920, then moved back to Sonoma County in 1930).

<sup>114</sup> See 2021 Restored Land Request at 4.

<sup>115</sup> 2021 Beckham Report at 117–120.

<sup>116</sup> *Id.* at 129–130.

notation: “Stella Johnson says all these Indians intend to make their homes on Lower Lake Rancheria sometime.”<sup>117</sup>

The ongoing, primary presence of the Koi people in Lake County is reinforced by the fact that during this same time (the 1930s), the federal government held a vote on adoption of the Indian Reorganization Act (IRA) for Koi *at the Lower Lake Rancheria*.<sup>118</sup> While Koi claims that “this community” (ostensibly the Johnson family) “organized the Koi under the Indian Reorganization Act of 1934” it does not appear that Tom Johnson, John Johnson, or Ned Johnson were on the 1935 Office of Indian Affairs list of certified voters for the IRA election at Lower Lake Rancheria. Moreover, the list of eligible voters included 20 names, of which the majority appear to have been living in Lower Lake at that time.<sup>119</sup>

Further contradicting Koi’s claims about the tribe’s relocation to Sebastopol by 1920 is the lack of any contemporaneous evidence that federal officials believed that the Koi tribe had relocated—especially federal officials who directly engaged with the Koi tribal members. For example, during the 1930s the federal government was actively exploring the acquisition of additional lands for the tribe very close to both their historic rancheria and a nearby property on which tribal members were squatting next to Cache Creek in Lower Lake.<sup>120</sup> Not only were many Koi tribal members still living in Lower Lake, but these tribal members *were eager to stay*. As described in a 1938 report to the Department’s Sacramento Indian Agency, one of the Department’s Land Field Agents explained that he held “several meetings with the Indians” of the Lower Lake/Koi Band during which they expressed that they “will not leave the shore of Clear Lake or Cache Creek, its main outlet.”<sup>121</sup> Indeed, unlike Tom Johnson’s family home in Sebastopol, the locals living near this Koi community “considered this village an Indian rancheria and believed the Indians owned it.”<sup>122</sup> The Land Field Agent went on to explain that

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<sup>117</sup> 2021 Beckham Report Exhibit 234 (1952 Base Rolle of Koi Nation) at Bates No. 671.

<sup>118</sup> 2021 Restored Land Request at 6 (citing Exhibit 3, but relevant materials are found in Exhibits 1 and 2 of that submission, as well as the First Supplemental Restored Land Request at Bates No. 265).

<sup>119</sup> See NARA-SB RG75 SA Ind. Reorg. Act Refernd. & Elec. Rec. Bx 1 Rec. #2 Voters on the Lower Lake Rancheria (June 3, 1935), located in First Supplemental Restored Land Request at Bates No. 265. Compare names in *id.* with names in summaries of 1920, 1923, 1930, and 1940 Indian and federal censuses, 2021 Beckham Report at 117–123, 128–130. Koi claims that six of these individuals—specifically Henry Johnson, Maggie Johnson, Manuella Johnson, Lewis (Louis) Johnson, Harry Johnson, and Stella Johnson—were “Sonoma County, California” residents, however it supplied no citation and the federal census records indicate that all were in Lower Lake (except Henry Johnson and Maggie Johnson, who were not included in the 1930 census). See also 2021 Beckham Report at 89–90 (summarizing Henry Johnson’s census records, all of which connected him and his wife to Lower Lake). The record is unclear as the 1928 judgment fund roll applications indicate that some of these six individuals claimed Sebastopol as their homes. See First Supplemental Restored Land Request at Bates No. 234–263. In any event, at least 14 individuals or a majority of the voters were residing in Lower Lake.

<sup>120</sup> 2021 Beckham Report at 77–78; 2021 Beckham Report Exhibit 252 (Letter from Roy Nash, Superintendent, Sacramento Indian Agency, to J.M. Stewart, Director of Lands, Sacramento Indian Agency (Dec. 25, 1935) (proposing to purchase the Garner tract for the Cache Creek, Sulphur Banks, and Lower Lake Indians and noting that groups were “now living within a few miles of each other”); *id.* (further noting that Lower Lake Indians were “squatters on land across the creek from the farm” Roy Nash proposed to purchase).

<sup>121</sup> 2021 Beckham Report Exhibit 138 (Letter from Fred Baker, Land Field Agent, to J.M. Stewart, Director of Lands, Sacramento Indian Agency) (April 22, 1938) at Bates No. 315.

<sup>122</sup> 2021 Beckham Report at 59–60 (noting that, from the 1870s–1950s, Koi families squatted on land adjacent to Cache Creek that was owned by the superintendent of the Spring Valley Company Stock Ranch, which became

the Lower Lake/Koi Indians “are still desirous of having acquired for them the Garner Tract,” a parcel located on Cache Creek that the federal government had been considering purchasing for the tribe for years.<sup>123</sup> This report makes no mention whatsoever of Sonoma County or any population or settlement of Lower Lake/Koi tribal members located there. Clearly, the federal government would not have expended time and resources on this effort if the Koi Nation had in fact “relocated its tribal community” from the Lower Lake area to the Sebastopol area as Koi asserts.<sup>124</sup>

The handful of Koi individuals that relocated to Sonoma County is clearly distinguishable from the facts underlying the Department’s positive 2014 restored determination for the Mechoopda tribe. Mechoopda involved the re-location of 250 Mechoopda Indians to a village near the Bidwell Ranch in the mid-1800s.<sup>125</sup> The new village was within Mechoopda’s ancestral territory and close to several other older Mechoopda village sites.<sup>126</sup> Moreover, the Mechoopda community remained culturally and politically distinct.<sup>127</sup> In contrast, here a portion of a Koi family simply moved to a new location in the 1900s. The Koi tribe, however, remained in Lower Lake.

As a final matter, it bears emphasizing that during this time (the 1920s through the 1960s), there *was* a federally established, Indian rancheria in the Sebastopol area—ours. In fact, the Graton Rancheria was sometimes referred to as the Sebastopol Rancheria or Reservation.<sup>128</sup> It is hard to reconcile that indisputable fact, which is firmly supported by the historical record including Congress’ actions to restore our tribe in 2000,<sup>129</sup> with the Koi Nation’s claim that it effectively set up a new village in that exact area, for which it was allegedly significantly, culturally, and politically connected.

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known as the village of “Bedai,” and further noting that “[l]ocals considered this village an Indian rancheria and believed the Indians owned it.”).

<sup>123</sup> *Id.*

<sup>124</sup> First Supplemental Restored Land Request at 10.

<sup>125</sup> 2014 Mechoopda Decision at 11–14.

<sup>126</sup> *Id.* at 9–12.

<sup>127</sup> *Id.* at 21 (“It is undisputed that during the late Nineteenth Century, the Mechoopda resided on the Bidwell Ranch, which later became the center of the Town of Chico and the Tribe’s Rancheria. As discussed above, the Tribe adapted to its environs as it confronted the trials and tragedies of white settlement, including disease, disruption, relocation, and pressure to assimilate into European culture. That the Mechoopda lived and worked on the ranch, absorbed a succession of other Indians into the Tribe, and were affected by the dictates of the Bidwells signifies to us a dynamic community that was willing to change in order to survive, but remained culturally and politically intact.”).

<sup>128</sup> *See, e.g.*, Theodore Haas, Ten Years of Tribal Government Under IRA at 3 and Table A (1947).

<sup>129</sup> *See, e.g.*, Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, Notice of Decision at 14–18 (May 19, 2023) (discussing the federal government’s acquisition of the Graton Rancheria in 1920 for certain local Indian groups and its administration of the rancheria until termination in 1966, followed by Congressional restoration in 2000); Graton Restoration Act, Pub. L. 106-568, title XIV, § 1401, Dec. 27, 2000, 114 Stat. 2939.

- ii. *The evidence fails to demonstrate that Tom Johnson was acting as a duly appointed representative of the Koi Nation as opposed to a general advocate for California Indians*

Furthermore, while the Koi Nation claims that Tom Johnson’s advocacy was pursuant to his role as the official leader for the Koi Nation in the 1900s,<sup>130</sup> nothing in the record supports that assertion. Rather, every source provided by Koi indicates that Tom Johnson was an active *pan-Indian* leader, advocating on behalf of California Indians generally or regional groups of Indians.<sup>131</sup> He is described generically as a representative of “California natives” and is himself quoted as referring to “his people from every part of California.”<sup>132</sup> Tom Johnson advocated for the rights of *all* California Indians to be compensated for their lost lands and failed treaties.<sup>133</sup> While his dedicated advocacy is admirable, the evidence fails to show that he was acting on behalf of or as the designated leader of the Koi Nation as a tribe.<sup>134</sup>

To the extent news sources referred to him as a Sonoma County or Santa Rosa Indian leader, such references are best understood as based on his physical residence in that area, not because he was the leader of a specific tribe in Sonoma County or Santa Rosa.<sup>135</sup> Some of the same 20<sup>th</sup> century sources referring to Tom Johnson as a Santa Rosa Indian leader also specifically connect him to the “Lake County Indians” that are described as being located *in Lower Lake at that time* (i.e. the Koi Nation).<sup>136</sup>

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<sup>130</sup> See, e.g., 2021 Restored Land Opinion at 4 (“The orchard area became the center of the Koi Nation community and Tom Johnson, as Captain, for decades exercised regular political duties on behalf of Koi Nation until his death in 1949.”).

<sup>131</sup> See, e.g., First Supplemental Restored Land Request at 12–13 (summarizing Tom Johnson’s attendance at various pan-Indian gatherings and meetings and characterizing him as there “as a representative of the Koi” even though none of the underlying sources refer to him as such).

<sup>132</sup> See, e.g., 2023 Beckham Report Exhibit - Anonymous 1924b (*Tom Johnson Attends First Indian Celebration* Sonoma West Times and News (Sebastopol, CA)) (describing “Tom Johnson, Sebastopol’s well known Indian berry grower and orchardist, as among representatives of the real California natives from this section” and citing Tom Johnson for stating that “representatives of his people from every part of California were present”)

<sup>133</sup> First Supplemental Restored Lands Request at 15; 2021 Beckham Exhibit 62 (1935 Sonoma West Times and News article stating “Tom Johnson, who has for a number of years led the movement of Indians of California to seek recompense for land wrested from them by whites... ”); 2021 Beckham Report Exhibit 49 (1930 article from the Press Democrat describing Tom Johnson’s advocacy regarding the land claims of all California Indians).

<sup>134</sup> In fact, Tom Johnson appeared involved with various Indian groups, as evidenced by his role in facilitating a meeting between Round Valley Indians from Mendocino County and Congressman Clarence F. Lea. See 2021 Beckham Exhibit 72 (1937 Santa Rosa Republican article describing a delegation of Indians from Round Valley, Mendocino county, who were introduced by Tom Johnson to Congressman Clarence F. Lea to discuss Indian land claims).

<sup>135</sup> See, e.g., 2021 Beckham Report Exhibit 65 (1936 Press Democrat article referring to Tom Johnson as a “Sonoma County Indian leader”); 2021 Beckham Report Exhibit 79 (1939 Santa Rosa Republican article describing Tom Johnson as “a local Indian leader... who lives on Scott street”).

<sup>136</sup> See 2021 Beckham Report Exhibit 83 (1939 Press Democrat article describing Tom Johnson’s attendance of a reunion of 100 members of “the Lake county tribe” at the “Clifford ranch near Lower Lake”) (likely referring to Clifford Salvadore, an important Koi elder); 2021 Beckham Report Exhibit 85 (1940 Santa Rosa Republican article stating “Tom Johnson, widely known Santa Rosa Indian leader, returned home over the weekend from Lake county where he spent two weeks with relatives and attended several important meetings of Lake county Indians”). In fact, one source describes Tom Johnson as a “former member of the Sulfur Bank Rancheria” (now known as the Elem

Further, while Koi claims he was the “Captain,” or chief or head of the community—allegedly a political “successor” to his father John Johnson—these assertions lack evidentiary support and Koi’s experts simply parrot these claims without any citations to the record. To the extent any evidence is cited, it is mischaracterized as specifically asserting Tom Johnson acted as a Koi/Lower Lake political representative and spokesperson when the underlying evidence *makes no mention of the Koi/Lower Lake tribe*.<sup>137</sup> In fact, the record contains evidence indicating that other contemporaneous individuals were understood to serve as Koi’s leadership.<sup>138</sup>

iii. *Koi attempts to stretch the regulatory term “occupancy or subsistence use” beyond any reasonable interpretation.*

Koi has failed to put forth evidence establishing the “significant historical connection” required by the Part 292 regulations. Under 25 C.F.R. § 292.2, if the proposed gaming parcel is not within the boundaries of the tribe’s prior reservation—as is the case here—the tribe must demonstrate “by historical documentation the existence of the *tribe*’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” (Emphasis added). Koi does not attempt to identify any traditional Koi “villages” or “burial grounds” located in Sonoma County, let alone in the vicinity of the Shiloh Parcel. This omission is not surprising given the uniform understanding of federal officials, historians, ethnographers, and the Koi Nation itself, that Koi’s aboriginal territory is the southeastern portion of Clear Lake.

Therefore, Koi is left with the burden to prove a “significant historical connection” through “occupancy or subsistence use.” Koi unsuccessfully attempts to meet this burden by pointing to: (1) Tom Johnson’s home and orchard in Sebastopol; (2) Indian agricultural laborers in the Russian River Valley during the late 19<sup>th</sup> and early 20<sup>th</sup> century; and (3) trade routes crossing between Clear Lake and the Pacific Ocean. Each will be addressed in turn.

Tom Johnson’s family residence in Sebastopol (in Sonoma County) during the 1920s-1940s timeframe does not satisfy the “occupancy” requirement because it does not reflect the occupancy of the *tribe*, as required by Section 292.2. As previously discussed, Koi’s claim that the Johnson family’s move to Sebastopol represented the relocation of the Koi *tribe*—as opposed to the relocation of one particular *family*—is meritless. At no point during the Johnson family’s residence in Sonoma County did a majority of Koi tribal members live in Sonoma County, let

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Indian Colony), which is a tribal group distinct from the Lower Lake Rancheria (now known as the Koi Nation). See 2021 Beckham Report Exhibit 28 (1924 article from the Petaluma Daily Morning Courier).

<sup>137</sup> See, e.g., 2021 Restored Land Request at 5, 21 (citing 2021 Beckham Report at 85, which itself cites no primary sources to support the claim that Tom Johnson was the “captain” or “chief” of the Lower Lake Pomo, having succeeded to his father’s role as leader); First Supplemental Restored Land Request at 11 (stating “Tom Johnson, a Koi leader and successor to his father John Johnson as head of Koi” and offering no cite for that proposition); *id.* at 19 (saying that a 1948 article “reported the residency of aged Tom Johnson, longtime chair and spokesman for the Koi Pomo” but quoting and relying on an article that says nothing about his position and/or representation of the Koi Pomo).

<sup>138</sup> See, e.g., 2021 Beckham Report at 35 (identifying the Koi leaders as Sam Patch in 1880s; Tom Johnson in 1900; Clifford Salvador and John Johnson, a brother of Tom Johnson, in 1916; and George Patch and Kelsey (full name not provided) in 1926); 2021 Beckham Report Exhibit 93 (Oct. 23, 1942 Press Democrat Article “Indian Leader Here”) (referring to Tom’s brother Ned Johnson as an “aged Indian leader of Lake County,” who had come to Santa Rosa to visit his brother Tom Johnson).



alone near the Johnson residence. In fact, Koi’s own experts concede that not even the entire extended Johnson family lived in Sonoma County.<sup>139</sup>

It is also telling that *none* of the historical documents cited by the Koi Nation refer to the Johnson residence as the de facto center of the Koi *tribe*. The only instances of such claims are Koi’s bald assertions in its restored lands submissions. In direct contrast to Koi’s claims of a new tribal homebase, Department of Interior officials who directly engaged with the Koi/Lower Lake tribal community in the 1930s made no mention of any new tribal center or settlement in Sebastopol or anywhere in Sonoma County. As discussed above, the Department reiterated that the Koi/Lower Lake tribal members were eager for the Federal Government to acquire additional land in trust for the tribe *on Clear Lake or Cache Creek* in Lake County.<sup>140</sup>

There is simply no legal precedent holding that a tribal *family* moving to a new town creates a “significant historical connection” to that area that can be attributed to the entire *tribe*. Koi cites to no such precedent and the Department should not create one here. Rather, the Department’s conclusion in its Guidiville restored land decision is applicable: “the relocation of some of the Band’s members to various locales throughout the Bay Area does not equate to the Band itself establishing subsistence use or occupancy in the region” away from where its Rancheria is located.<sup>141</sup>

The notion that Tom Johnson’s orchard in Sebastopol is evidence of “subsistence use” can be quickly dismissed. Koi repeatedly refers to the orchard as a “*commercial* orchard” and describes Tom Johnson as a “successful orchardist and *merchant*.”<sup>142</sup> Commercial activities conducted for profit are the exact opposite of “subsistence,” which Department precedent explains is best understood as “the minimum (as food and shelter) necessary to support life.”<sup>143</sup> And the commercial activities of one *family business* certainly do not equate to the “subsistence use” of an entire *tribe*, as would be required under the Part 292 regulations.

Similarly, Koi’s reliance on the existence of Indian agricultural laborers in the hop fields and vineyards of Russian River Valley a century ago also fails to establish “occupancy or subsistence use” of the Koi tribe. As an initial matter, *none* of Koi’s cited evidence about agricultural laborers actually refers specifically to Koi tribal members as being among the laborers. This fact alone makes it impossible for Koi to “demonstrate by historical evidence” that the Koi tribe, by virtue of an alleged multitude of Koi agricultural workers, maintained “occupancy or subsistence use” in Sonoma County—much less the vicinity of the Shiloh Parcel. Indeed, only one of the cited documents specifically refers to “Lower Lake Indians” at all. Yet that document only notes that several Lower Lake Indians were passing through the area one day

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<sup>139</sup> See, e.g., 2021 Beckham Report at 89–90, 98 (summarizing census records showing that Tom Johnson’s brother Henry and Henry’s wife lived in Lower Lake and noting that Henry had a ranch 4-miles from Lower Lake), 99-100 (noting that Tom Johnson’s daughter Helen and son-in-law Peter William lived near the Klamath River); 2021 Restored Land Request at 5 (noting that Tom Johnson’s nephew Harry Johnson relocated to Sebastopol but later moved back to the Clear Lake area).

<sup>140</sup> See discussion *supra* at Section III(c)(i).

<sup>141</sup> 2011 Guidiville Decision at 19.

<sup>142</sup> 2021 Restored Land Request at 3, 5, and 15 (emphasis added).

<sup>143</sup> 2011 Guidiville Decision at 14.

in 1884 on their way to *San Quentin Prison in Marin County*—not on their way to any agricultural fields in Sonoma County.<sup>144</sup> The majority of the other cited documents merely refer generically to “Indians” working in the vineyards and hop fields, thus making the cited evidence insufficient to demonstrate “occupancy or subsistence use” by the Koi tribe specifically.<sup>145</sup>

Furthermore, working in the commercial hop fields and vineyards of the Russian River Valley is not “subsistence use” under the Part 292 regulations. Not even Koi or any of its experts contend that hops and wine grapes were “subsistence” foods of the Koi tribe. Merely working for wages as an agricultural laborer is not a “subsistence” activity within the meaning of the regulations. If it were, every tribe could claim that any tribal member with a job is engaged in “subsistence use” of the area where they are employed, which would stretch the federal regulations to the breaking point. This conclusion is supported by the Department’s Guidiville decision, in which the Department determined that Pomo women working as domestic servants near the proposed gaming site during the early 20<sup>th</sup> century were not engaged in “subsistence use.”<sup>146</sup> If mere employment equated “subsistence use,” then the Department could not have reached that conclusion.<sup>147</sup>

Finally, Koi unavailingly argues that California Indian trade routes that crossed Sonoma County establish Koi “occupancy and subsistence use” near the Shiloh Parcel. Despite the dozens of pages of Koi’s supplemental submission and expert reports addressing trade routes, Koi is merely conveying the uncontroversial understanding that there were trails connecting the

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<sup>144</sup> 2021 Beckham Report Exhibit 7 (1884 article from *The Petaluma Courier*).

<sup>145</sup> See 2021 Beckham Report at 62 (quoting an 1883 observer who referred generically to “the remnants of every tribe within a 100 miles of the Russian River” without identifying any specific tribes); 2021 Beckham Report Exhibit 2 (1875 article from the *Petaluma Weekly Argus* referring to “Indian” hop pickers), Exhibit 3 (1877 article from *Petaluma Courier* referring to “boys” and “hop pickers” without mentioning whether they are Indian workers), Exhibit 4 (1878 advertisement from *Petaluma Courier* stating that only “white” workers are eligible for employment), Exhibit 5 (1880 article from *Cloverdale Reveille* referring to “Indians”), and Exhibit 6 (1883 article from *Cloverdale Reveille* referring to “Indians”). While the 2021 Beckham Report Exhibit 8 (1901 article from *Cloverdale Reveille*) and Exhibit 14 (1915 article from *Petaluma Argus-Courier*) do refer to “Lake county Indians,” this term can apply to multiple different Pomo tribes. The term “Lower Lake” or other names of the “Koi” tribe do not appear in Exhibits 8 or 14. Furthermore, Koi Nation and its experts incorrectly state that Exhibit 8 refers to “Lower Lake Indians” when it actually refers to “Lake county Indians,” as discussed above. See 2021 Restored Land Request at 19; 2021 Beckham Report at 62. Importantly, none of the cited evidence indicates where any of the laborers resided or how long they stayed in the Russian River Valley, making it impossible to establish whether any presence of Indian agricultural workers in the Russian River Valley rises to the level “occupancy” in the vicinity of the Shiloh Parcel.

<sup>146</sup> 2011 Guidiville Decision at 18-19. In addition, the Department noted in its Guidiville determination that working as domestic servants was not “occupancy or subsistence use” in part because the employment usually lasted only a few months or less. *Id.* at 19. Similarly, Koi’s own evidence indicates that the hops harvest was only about one-month long. See 2021 Restored Land Request at 19 (“As the *month* of hop-picking approaches, the remnants of every tribe within a hundred miles of the Russian River straggle into the opulent valley...” (emphasis added, quoting 2021 Beckham Report at 62)).

<sup>147</sup> In addition, the Department noted in its Guidiville determination that working as domestic servants was not “occupancy or subsistence use” in part because the employment usually lasted only a few months or less. 2011 Guidiville Decision at 19. Similarly, Koi’s own evidence indicates that the hops harvest was only about one-month long. See 2021 Restored Land Request at 19 (“As the *month* of hop-picking approaches, the remnants of every tribe within a hundred miles of the Russian River straggle into the opulent valley...” (emphasis added, quoting 2021 Beckham Report at 62)).

Clear Lake area (and other inland areas of Northern California) to the Pacific coast. According to the cited evidence, it took a couple days on foot to travel from Clear Lake to the coast, where the travelers would visit for a few days in late summer to trade for clams and other marine items before returning back to Clear Lake.<sup>148</sup> These temporary, trade-based interactions are precisely the kind of circumstances that the Department has already declared to be insufficient to establish “occupancy and subsistence use.” In the Guidiville decision, addressing similar arguments from another Pomo tribe in the Clear Lake region, DOI made crystal clear that “the Band cannot establish its subsistence use or occupancy based on the fact that **its ancestors traveled to various locations to trade and interact with other peoples and then returned to the Clear Lake Region.**” Moreover, it bears emphasizing that to the extent Koi ancestors were using trade routes to acquire resources in other locations, those resources were not obtained from anywhere in the vicinity of the Shiloh Parcel.

Nor is there any contention that the Koi tribe itself was responsible for blazing these trails or was the only tribe that used them. Instead, Koi’s own cited evidence makes clear that the trails in Sonoma County were part of a regional network used by many tribes—including “all Pomo tribes”—with trade goods flowing in multiple directions.<sup>149</sup> While trade was certainly a part of life for all California tribes, Koi’s own cited evidence affirms that trading relationships did not hold a uniquely important role for the Koi compared to other tribes. In a 1939 study of the Pomo, which is cited by Koi and its experts, scholar Fred Kniffen notes that the Pomo on Clear Lake historically “were not great travelers” and “[m]any persons in their whole lifetime never left the bound of their communities.”<sup>150</sup> He concluded that “[r]arely did the lake people find it necessary to leave their own country to obtain the necessities of life.”<sup>151</sup> Consequently, the precedent set in the Department’s Guidiville is directly on point and there is no basis for departing from it.

In addition to being contrary to Department precedent, Koi’s argument that its historic use of trade routes entitles it to a reservation in the territory of *other tribes* would turn the notion of tribal sovereignty on its head. Koi’s own evidence shows that these trade routes existed in a cultural context in which a tribe’s sovereignty over its territory was respected by trade partners. There is no dispute that travelers venturing from Clear Lake or other inland locations to the Pacific coast would be entering territory belonging to other tribes. For example, Koi expressly concedes that the trail system included “trails leading to *Kashaya (Southwest) Pomo territory* north of the mouth of Russian River and another set leading to *Coast Miwok territory* at Bodega.”<sup>152</sup> Indeed, Koi further admits that these trails were specifically located to minimize the

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<sup>148</sup> See First Supplemental Restored Land Request at 27-30.

<sup>149</sup> See, e.g., Gregory G. White, *Evidence for Koi Nation Trade and Trails in the Vicinity of the Shiloh Road Property* at 14 (June 23, 2022) (concluding that ethnographic evidence demonstrates that “*all Pomo tribes* practiced universal territorial access on long-established and well recognized trade and trail routes.”) (emphasis added); Kniffen (1939) at 361 (“The lake people received visitors regularly. The Mutuho, Potter Valley people [Pomo from the Russian River Valley], came regularly to hunt and fish with the Kaiyo. The Yokaia [from the Russian River Valley] came each year to fish....The Cache Creek Patwin [living to the east] and the Coyote Valley Miwok came to Lower and East Lakes, and the Long Valley Patwin to Sigom and Upper Lake.”) (as quoted in 2021 Beckham Report at 19).

<sup>150</sup> Kniffen (1939) at 361.

<sup>151</sup> *Id.* at 372.

<sup>152</sup> First Supplemental Restored Land Request at 27 (emphasis added).

amount of encroachment on the territories of other tribes: “The need to travel long distances through *other group’s territories* required a trail system that did not encroach on these ‘private lands.’ For the most part, trails followed the boundary ridges between territories.”<sup>153</sup> To the extent encroachment occurred, it was done with the permission of the local tribal groups.<sup>154</sup>

Thus, these trade routes are an expression of tribal sovereignty and territorial integrity that existed between tribes for centuries. Yet Koi would have the Department interpret the “occupancy and subsistence use” requirement in a manner that debases this long-standing respect for tribal sovereignty and territorial integrity. Following Koi’s logic, every tribe has the right to a reservation on the aboriginal territory of all of its historic trading partners. That cannot be the law. This absurd and manifestly unfair reading of IGRA and the Part 292 regulations would open a Pandora’s box of tribal conflict and should be avoided at all costs.

#### **IV. Other Points of Law & Policy Weigh Against a Positive Restored Lands Determination**

##### **a. The Indian Canon of Construction is Not Applicable Here and Cannot Remedy Koi Nation’s Failure to Show a Significant Historical Connection to the Shiloh Parcel.**

The Indian canon of construction cannot salvage the Koi Nation’s weak claims and has no applicability here. To begin, there is no ambiguous term at issue. The Part 292 regulations provide a clear definition for “significant historical connection”:

the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.<sup>155</sup>

Even if an argument could be made that aspects of that definition are ambiguous, the Department cannot invoke the Indian canon to construe such terms for the benefit of one tribe to the detriment of other tribes. The Ninth Circuit is the only federal circuit court to directly address whether the Indian canon of construction applies when tribes are on both sides of an issue, finding in the negative. In *Rancheria v. Jewell*, a 2015 decision directly concerning the restored lands exception, the Ninth Circuit found the Indian canon inapplicable because not all tribal interests were aligned:

An interpretation of the restored lands exception that would benefit this particular tribe, by allowing unlimited use of restored land for gaming purposes, would not

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<sup>153</sup> *Id.* at 39 (emphasis added); *see also id.* at 27 (The ridgetop trail route...is the most likely route taken by the Koi Tribe to reach Bodega Bay because it would have allowed them to travel along a neutral frontier between the Pomo and Wappo tribes....”) (citations omitted).

<sup>154</sup> *See, e.g.*, 2021 Beckham Report at 39 (“Coast Miwok to the South and the Southern Pomo *allowed* Koi people transit *through their lands* to Bodega in order to gather clams.”) (emphasis added); First Supplemental Restored Land Request at 27 (“The Miwok *allowed* [Pomo travelers] to dig the shells with payment; however, they would pay for shells the bay Indians had already dug”) (emphasis added, internal quotations and citations omitted).

<sup>155</sup> 25 C.F.R. Part 292.2.

necessarily benefit other tribes also engaged in gaming. It might well work to their disadvantage.<sup>156</sup>

In other words, the Indian canon cannot play a role when it forces an interpretation of the restored lands exception that would serve to benefit a particular tribe to the disadvantage of other tribes also engaged in gaming.<sup>157</sup> Why? The answer is simple. The government cannot utilize the Indian canon to favor one tribe over others because “[t]he government owes the same trust duty to all tribes.”<sup>158</sup>

In contrast, the D.C. Circuit has not decided whether this exception to the Indian canon exists. In 2020, a dissenting Circuit Court judge in *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland* offered one take on the Indian canon’s applicability where tribal interests conflict. The case concerned interpretation of the Michigan Indian Land Claims Settlement Act, which named specific tribes—including the plaintiff tribe—as beneficiaries.<sup>159</sup> Opposing intervenor tribes were not subjects of that settlement act. While the D.C. Circuit ultimately concluded the act was unambiguous and therefore did not reach the applicability of the Indian canon, dissenting Judge Kay Henderson opined that if the settlement act *were* ambiguous, it would “make sense” for the Indian canon to “defer[] to the specific tribal beneficiary of a statute (or a signatory to a treaty) versus a third-party tribe.”<sup>160</sup> Judge Henderson caveated that opinion, however, by noting that if another tribal beneficiary of the statute had intervened and disagreed with the plaintiff tribe’s interpretation of the settlement act, “it would make sense not to defer to either tribe’s interpretation.”<sup>161</sup> Interestingly, this dispute is now back before the D.C. Circuit Court following remand. In January of this year, Secretary Haaland argued *against* the application of the Indian canon when there are divergent tribal interests at play, relying on the Ninth Circuit’s decision in *Rancheria v. Jewell* concerning the restored lands exception.<sup>162</sup> She further emphasized the inappropriateness of applying the Indian canon to favor one tribe seeking distant trust land on

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<sup>156</sup> *Rancheria v. Jewell*, 776 F.3d 706, 713 (9<sup>th</sup> Cir. 2015).

<sup>157</sup> *Id.*

<sup>158</sup> *Confed. Tribes of Chehalis Indian Reservation v. State of Wash.*, 96 F.3d 334, 340 (9<sup>th</sup> Cir. 1996).

<sup>159</sup> *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, 25 F.4th 12 (D.C. Cir. 2022), *rev’ing Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 442 F. Supp. 3d 53 (D.D.C. 2020).

<sup>160</sup> *Id.* at 28 (Henderson, J., dissenting).

<sup>161</sup> *Id.* at 29. The underlying District Court decision had further expanded on this idea, finding that while the D.C. Circuit has not decided whether an exception to the Indian canon exists when multiple tribal interests are involved, if a statute names specific beneficiaries, then the interpretation brought forward by those beneficiaries should receive the benefit of the canon. 442 F. Supp. 3d at 80. In contrast, other decisions from the D.C. District have adopted the blanket rule that the Indian canon does not apply when tribes are on both sides of the issue. *See Connecticut v. U.S. Dep’t of the Interior*, 344 F. Supp. 3d 279, 314 (D.D.C. 2018); *Forest County Potawatomi Cmty. v. U.S.*, 330 F. Supp. 3d 269, 280 (D.D.C. 2018).

<sup>162</sup> Initial Answering Brief of Federal Appellees at 21, *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, D.C. Cir. docket no. 23-5076 (Jan. 10, 2024) (“[T]he Indian canon would not apply here, particularly as tribal interests are divergent and some Indian tribes... would be disadvantaged by the Sault’s preferred interpretation”); *id.* at 48 (quoting *Rancheria v. Jewell*, 776 F.3d at 713 for “declining to apply the canon because ‘[a]n interpretation of the restored lands exception that would benefit this particular tribe’ might work to the[] disadvantage’ of ‘other tribes also engaged in gaming’”).

which to build a casino to the detriment of other tribes located in close proximity to the proposed casino location.<sup>163</sup>

While a 2022 D.C. district court case may have injected confusion into this realm, it is a red herring. *Scotts Valley Band of Pomo Indians v. U.S. Department of Interior*, concerning a restored lands gaming application for the Scotts Valley Band, held that the Department must consider the Indian canon of construction when applying the Part 292 regulations to a tribal applicant’s factual circumstances.<sup>164</sup> The court did not squarely address why or how the Indian canon continues to apply, even though opposing tribal interests were raised during the agency process and again at the litigation stage.<sup>165</sup> Rather, the court summarily concluded that the purpose of IGRA “strengthens the Court’s view that it will not forgo applying the canon because of the possibility that a favorable ruling for the Band could result in economic competition for another tribe.”<sup>166</sup> The court said the point of the IGRA restored lands exception was to “provide some sort of recompense – to place a tribe on an equal footing with other tribes that had not been rendered as unable to maintain a connection to their own land or that had been restored earlier.”<sup>167</sup> The court found that “[d]epriving the Band—which was not restored to federal recognition until 1991, three years after the IGRA was passed—of the benefit of the canon of construction at the behest of a better-positioned tribe would frustrate that policy and the purposes behind the canon itself.”<sup>168</sup>

We disagree with the court’s analysis and holding, and further note its lack of precedential value. It bears repeating that the D.C. Circuit has not adopted this approach. Moreover, the reasoning in the D.C. Circuit’s dissent in *Sault St. Marie* is distinguishable from both the *Scotts Valley* decision and the Koi application because it contemplated a carve-out for statutes with specific named tribal beneficiaries. In contrast, both the *Scotts Valley* decision and the current Koi application concern IGRA, a statute of general applicability to Indian tribes.<sup>169</sup>

Even assuming *arguendo* that the *Scotts Valley* approach should be considered, the circumstances are markedly different here due to the conflicting interests of multiple restored tribes. The Koi gaming application affects several other tribes who similarly lost their lands and tribal status, then were later restored. Like the Cloverdale Rancheria and Lytton Rancheria, our sister Sonoma County tribes, our Tribe was terminated in the 1960s pursuant to the 1958 California Rancheria Act. We spent decades fighting to recover our tribal status and a tiny portion of our ancestral lands. In 2000, long after the passage of IGRA, we were successful in

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<sup>163</sup> *Id.* at 49–50.

<sup>164</sup> *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of Interior*, 633 F. Supp. 3d 132 (D.D.C. 2022).

<sup>165</sup> See Brief of the Yocha Dehe Wintun Nation as *Amicus Curiae* in Support of the Federal Defendants at 13–14, *Scotts Valley Band of Pomo Indians v. U.S. Dep’t of Interior*, D.D.C. docket no. 19-cv-1544 (Oct. 22, 2021).

<sup>166</sup> *Scotts Valley*, 633 F. Supp. 3d at 167.

<sup>167</sup> *Id.* at 167–68.

<sup>168</sup> *Id.* at 168.

<sup>169</sup> See *Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 442 F. Supp. 3d at 80 (noting that the Court’s position—that there is no exception to Indian canon for competing tribal interests when the underlying statute concerns specific tribal beneficiaries—is not undermined by cases finding there *is* an exception because those cases concerned “statutes that benefit all Indians generally, *such as IGRA*”) (emphasis added).



obtaining restoration through Congress.<sup>170</sup> Ten years later, we acquired our first trust parcel, located within our aboriginal territory, to re-establish the Tribe’s land base and to pursue gaming.<sup>171</sup> It has been a long, difficult struggle.

As such, this dispute involves several tribes within the class of tribes subject to IGRA’s “equal footing” exceptions. It defies reason to weaponize the Indian canon to the benefit of some tribes within that class, to the detriment of other tribes within the same class. Moreover, it places the Department in the untenable position of cherry picking which tribes will receive the benefit of the trust responsibility on any given decision. Accordingly, the Indian canon can play no role in overriding an evidentiary record that otherwise cannot satisfy the clear regulatory definition of “significant historical connection.”

b. The Department Cannot Preferentially Treat Certain Restored Tribes to the Detriment of Other Restored Tribes and Other Gaming Tribes.

If the Department were to interpret the definition of “significant historical connection” in 25 C.F.R. § 292.2 in the incredibly expansive manner argued by Koi, it would run afoul of the Indian Privileges and Immunities clause. In 1994, Congress amended the IRA to add two related provisions, 25 U.S.C. § 5123(f) and (g) (collectively referred to herein as the Indian Privileges and Immunities clause), in order to prevent the Department or any federal agency from making a decision that effectively discriminates in favor of or against a particular tribe.<sup>172</sup> Specifically, 25 U.S.C. § 5123(f)<sup>173</sup> provides that “[d]epartments or agencies of the United States shall not promulgate any regulation or make any decision or determination pursuant to the Act of June 18, 1934 [the IRA] as amended, *or any other Act of Congress*, with respect to a federally recognized Indian tribe that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.”<sup>174</sup> Its sister provision, 25 U.S.C. § 5123(g), renders any existing agency regulation or decision that enhances or diminishes the privileges and immunities of a particular tribe void and of no effect.<sup>175</sup> The legislative history of these amendments illustrates Congress’ “broad[] goal of making ‘clear’ that ‘it is and has always been Federal law and policy that Indian tribes recognized by the Federal Government stand on an equal footing to each other and to the Federal Government.”<sup>176</sup> This echoes Congress’ goal in enacting the after-acquired land exceptions in

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<sup>170</sup> Graton Restoration Act, Pub. L. 106-568, title XIV, § 1401, Dec. 27, 2000, 114 Stat. 2939.

<sup>171</sup> See Amy Dutschke, Regional Director, Bureau of Indian Affairs Notice of Decision for Graton Fee-to-Trust Application at 29 (May 19, 2023).

<sup>172</sup> See Technical Corrections Act, Pub. L. No. 103-263, 108 Stat. 707 (1994); see also H.R. Rep. No. 103-781, at 3-4 (1994).

<sup>173</sup> Formerly codified at 25 U.S.C. § 476(f).

<sup>174</sup> 25 U.S.C. § 5123(f) (emphasis added).

<sup>175</sup> See 25 U.S.C. § 5123(g) (“Any regulation or administrative decision or determination of a department or agency of the United States that is in existence or effect on May 31, 1994, and that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes shall have no force or effect.”).

<sup>176</sup> 140 Cong. Rec. S6144-03, S6147 (1994) (statement of Senator Inouye). Senator Inouye further remarked that “[e]ach federally recognized Indian tribe is entitled to the same privileges and immunities as other federally recognized tribes” and that “this is true *without regard to the manner in which the Indian tribe became recognized by the United States.*” *Id.* (emphasis added).

IGRA to put later restored tribes on equal, not better, footing than tribes with existing landholdings and casinos.

The import of the Indian Privileges and Immunities clause, as well as its relationship to the IRA's Section 5 land acquisition authority, was addressed in a federal case concerning trust land in Alaska. *Akiachak Native Community v. Salazar* involved a challenge brought by four Alaska Native tribes and one individual Alaska Native against a Departmental rule (known as "the Alaska exception") that excluded lands in Alaska from the IRA fee-to-trust process in 25 C.F.R. Part 151.<sup>177</sup> The Alaska exception was the product of longstanding Departmental confusion and shifting positions over whether the Alaska Native Claims Settlement Act (ANCSA) implicitly repealed the Department's authority to acquire trust land in Alaska pursuant to IRA Section 5.<sup>178</sup> Given the ambiguity in the law, the Department had exercised its discretion by promulgating a rule that prohibited the processing and acceptance of fee-to-trust applications in Alaska.<sup>179</sup>

The U.S. District Court for the District of Columbia held, among other things, that the Alaska exception violated the Indian Privileges and Immunities clause. It determined that "the right to submit a land-into-trust petition is a privilege within the meaning of" the Indian Privileges and Immunities clause.<sup>180</sup> The court found that the Alaska exception diminished this protected privilege, as it relates to Alaska Natives, by providing that the Secretary would not consider their petitions to have land taken into trust.<sup>181</sup> The court held that this rule violated the Indian Privileges and Immunities clause and, therefore, was of "no force or effect."<sup>182</sup> Although the D.C. Circuit in *Akiachak* vacated the lower court decisions as moot due to the Department's promulgation of a new rule removing the Alaska exception,<sup>183</sup> the rationale remains persuasive and relevant to the inquiry here.

While *Akiachak* involved the diminishment of a privilege—specifically the right to seek land into trust—here we are dealing with the potential enhancement of a privilege: the right to seek land into trust after 1988 for purposes of the IGRA restored lands exception. The Indian Privileges and Immunities clause covers not only rights under the IRA, but also those arising

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<sup>177</sup> *Akiachak Native Cmty. v. Jewell*, 935 F. Supp. 2d 195 (D.D.C. 2013), *reconsideration denied on all but one issue and rule vacated*, 995 F. Supp. 2d 1 (D.D.C. 2013), *vacated on other grounds sub nom Akiachak Native Cmty. v. United States Dep't of Interior*, 827 F.3d 100 (D.C. Cir. 2016).

<sup>178</sup> See *Akiachak*, 935 F. Supp. 2d at 198–202. To summarize, in 1936 Congress passed what is commonly referred to as the Alaska IRA, which extended, among other provisions, the trust land acquisition authority in IRA Section 5 to Alaska. In 1971, however, Congress enacted the ANCSA, which explicitly revoked the status of Native reserves in Alaska (except for the Annette Island Reserve inhabited by the Metlakatla Indians) and repealed the Department's authority to issue allotments. Five years later, through the Federal Land Management and Policy Act ("FLPMA"), Congress repealed the Department's authority to declare reservations in Alaska. Neither ANCSA or FLPMA, however, explicitly revoked, repealed, or otherwise addressed the Department's authority to acquire trust land in Alaska.

<sup>179</sup> *Id.* The Metlakatla were excepted from this general prohibition.

<sup>180</sup> *Akiachak*, 995 F. Supp. 2d at 4–5. Moreover, as the court noted, the Department had previously taken this position—that the right to petition for trust land under IRA Section 5 is protected by the Indian Privileges and Immunities clause—in the *Carcieri v. Salazar* litigation. *Id.*

<sup>181</sup> *Akiachak*, 935 F. Supp. 2d at 210–211.

<sup>182</sup> *Id.*; *Akiachak*, 995 F. Supp. 2d at 3, 5–7.

<sup>183</sup> See *Akiachak Native Cmty. v. United States Dep't of Interior*, 827 F.3d at 105, 115.

from other acts of Congress, such as IGRA. If the Department were to issue a restored lands determination for Koi that expands the meaning of “significant historical connection” to include any connection, no matter how significant, recent, or limited to individuals as opposed to a tribe as a whole, it would provide Koi a substantial advantage over all previously restored tribes who complied with a much more rigorous definition of the term. Those previously restored tribes had narrowly tailored options for where they could seek restored lands for gaming. Had they benefited from this expansive definition, they may have made very different choices in where they acquired trust lands and built casinos and some may have had much more economically successful operations. Moreover, a Departmental decision to effectively re-interpret the “significant historical connection” definition in 25 C.F.R. § 292.2 would raise serious questions of Administrative Procedure Act compliance, including but not limited to effectively issuing a new rule without proper notice and comment rulemaking.

c. A Departmental Finding of Significant Historical Connection Would Have Ramifications Beyond IGRA and Would Negatively Impact Tribal Cultural Resources and Tribal Cultural Knowledge

The concept of “significant historical connection” is intrinsically wrapped into the concept of “cultural affiliation”—that is, a tribe’s subsistence methods, cultural practices, belief systems, and traditional ecological knowledge are rooted in the geographic area where a tribe was historically located. Accordingly, a federal decision rubber-stamping the Koi Nation’s claim of a significant historical connection to the Russian River Valley and Sonoma County in general will affect the cultural rights of the local, aboriginal tribes in a host of other contexts. For example, the Native American Graves Protection and Repatriation Act (NAGPRA) requires that the ownership and control of Native American remains and cultural items discovered on Federal or tribal lands shall reside with the following, in order of priority:

- the lineal descendants of the Native American (if known);
- the Indian tribe on whose tribal land such objects were discovered;
- the Indian tribe which has the closest cultural affiliation with such remains or objects.<sup>184</sup>

This is of course alarming because it means any cultural resources or human remains found on the Shiloh Parcel—either during the construction of the Project or at any point in the future—would, assuming no lineal descendant is identified, belong to the Koi Nation. This is so despite the fact that those cultural resources and ancestors are from the Southern Pomo people and should rightfully belong to a Southern Pomo tribe.<sup>185</sup> If, following the BIA approval of this initial acquisition, Koi Nation acquires additional trust land in Sonoma County—which seems highly foreseeable—it will have priority rights to all cultural resources and ancestors on *those* properties. Moreover, for any federal lands in Sonoma County, the Koi Nation can make the argument that it is culturally affiliated and therefore make a claim to those cultural resources or

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<sup>184</sup> 25 U.S.C. § 3002(a).

<sup>185</sup> The Archaeological Resources Protection Act of 1979, as amended, reinforces this rule by providing that “Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.” 43 C.F.R. § 7.13.

human remains, to the detriment of the local, culturally affiliated Southern Pomo and Southwestern Pomo tribes.<sup>186</sup>

Similarly, there are many institutions in the Bay Area with collections that include Southern Pomo and/or Southwestern Pomo human remains, funerary objects, sacred objects, and objects of cultural patrimony that are subject to repatriation under NAGPRA. A tribe may submit a repatriation claim based on its “cultural affiliation” with the remains or object.<sup>187</sup> The NAGPRA regulations define cultural affiliation as “a reasonable connection between human remains or cultural items and an Indian Tribe...based on a relationship of shared group identity,” as may be identified by information concerning “geographic location.”<sup>188</sup> Cultural affiliation can be established by relying on various types of evidence, including geographical and historical evidence.<sup>189</sup> If the federal government determines Koi has a “significant historical connection” with some or all of Sonoma County, it opens the door for Koi to make competing NAGPRA claims for *our* ancestors and cultural resources, further muddying an already incredibly long and difficult repatriation process.

Similar implications arise under a myriad of other federal laws and policies that provide for tribal consultation and co-stewardship. This Administration has been a leader in uplifting the recognition and incorporation of Traditional Ecological Knowledge (TEK) and the essential role tribes should play in co-stewardship of public lands. For example, the *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* provides a framework for the U.S. Department of the Interior and the U.S. Department of Agriculture to manage lands and waters in a manner that protects the “treaty, religious, subsistence and cultural interests” of tribes.<sup>190</sup> This includes pathways to co-stewardship over federal lands and waters, as well as the incorporation of TEK into federal management decisions, both of which involve the foundational question of which tribe(s) are the proper stewards and hold the relevant TEK for a particular area. Additionally, the White House has issued broader guidance to all federal departments and agencies on respecting and incorporating indigenous knowledge into federal research, policies, and decision making.<sup>191</sup> The White House guidance drives home the inherent link between TEK and a tribe’s historical presence in and interaction with a particular environment.<sup>192</sup> Accordingly, a federal decision to approve Koi’s application on the basis of its significant historical connection claim will undermine the ability of Southern Pomo and Southwestern Pomo tribes to utilize federal programs and processes aimed at elevating TEK and stewardship rights for culturally affiliated tribes. This harm will only compound over

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<sup>186</sup> The same concern holds true for human remains and cultural resources from the lower portion of Sonoma County in Coast Miwok aboriginal territory, however the issue is particularly acute for anything with a Pomo subgroup affiliation given Koi’s broad claims based on general Pomo history and culture.

<sup>187</sup> 43 C.F.R. §§ 10.19(d)(3)(ii), 10.10(f)(3)(ii).

<sup>188</sup> 43 C.F.R. § 10.2.

<sup>189</sup> 43 C.F.R. § 10.3(a)(1).

<sup>190</sup> U.S. Dep’t of the Interior, U.S. Dep’t of Agriculture, Order No. 2303 (Nov.15, 2021).

<sup>191</sup> See also White House Memorandum re: Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022).

<sup>192</sup> *Id.* at 4 (describing indigenous knowledge as “a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment” and specifically referring to it as a “place-based body of knowledge.”)

time as the Koi Nation may use this federal decision as a basis for asserting itself as a “Sonoma County tribe” in all sorts of scenarios.<sup>193</sup>

#### **V. The Secretarial Two-Part Process is the Only Appropriate IGRA Exception for the Koi Application**

The only appropriate and lawful way for the Koi Nation to seek to acquire the Shiloh Parcel in trust for gaming is through the Secretarial two-part process, which does not require the tribal applicant to have a “significant historical connection” to the subject parcel.<sup>194</sup> The two-part process provides a means by which tribes can seek a gaming facility in a location it deems more economically favorable, while still balancing important competing interests. It requires the Secretary to consider the potential benefits to the tribal applicant of the gaming project *and* the potential detrimental impacts on the local community.<sup>195</sup> Critically, it gives a voice to the local sovereigns, including Indian nations, by requiring notice and an opportunity to comment on the application.<sup>196</sup>

Such an approach would better align with the Congressional intent in creating the IGRA exceptions, as well as with Departmental precedent in approving gaming activities on after-acquired lands. Moreover, the State of California is no stranger to the IGRA two-part mechanism, and several California tribes have already successfully obtained trust land and casino approvals through that process.<sup>197</sup> Accordingly, we urge the Department to consider this alternative rather than assuming an all-or-nothing approach that would effectively overturn important precedent, violate tribal sovereignty, and undermine the Department’s larger trust responsibility to all tribes.

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<sup>193</sup> This ripple effect extends into state law, policies and programs. For example, in California tribes have a statutory right to consult on impacts to tribal cultural resources arising from development projects subject to the California Environmental Quality Act, commonly referred to as AB 52 consultation. AB 52 consultation includes the right to consult on the appropriate mitigation measures, including removal and repatriation of cultural resources. To invoke AB 52 consultation, a tribe must be culturally affiliated with the area in which the project is taking place and, as discussed, cultural affiliation is inextricably intertwined with a tribe’s history and connection with a place. *See* Assembly Bill 52 § 1 (Ca. 2014), codified at Ca. Pub. Res. Code § 21080.3.1 (finding that “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” and, further, requiring lead agencies to consult with “a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project”).

<sup>194</sup> *See* 25 C.F.R. § 292.17(i) (detailing the components of a Secretarial determination application, including “[e]vidence of significant historical connections, *if any*, to the land”).

<sup>195</sup> *Id.* § 292.21.

<sup>196</sup> *Id.* § 292.19–292.20.

<sup>197</sup> *See, e.g.*, Assistant Secretary -Indian Affairs, Decision to Approve Fee-to-Trust Gaming Application for the Tejon Indian Tribe (Nov. 17, 2022) (describing the Secretarial two-part determination and Governor concurrence for the Tejon casino), [https://www.bia.gov/sites/default/files/dup/inline-files/508\\_compliant\\_2022.11.17\\_tejon\\_mettler\\_site\\_trust\\_acquisition\\_decision\\_for\\_gaming\\_combined\\_final\\_asia\\_1\\_1.17.22\\_tribe\\_1.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/508_compliant_2022.11.17_tejon_mettler_site_trust_acquisition_decision_for_gaming_combined_final_asia_1_1.17.22_tribe_1.pdf); Dep’t of Interior Press Release, *Assistant Secretary Sweeney Approves Tule River Indian Tribe’s Fee-to-Trust for Gaming Application* (Dec. 11, 2020) (describing the Secretarial two-part determination and Governor concurrence for the Tule casino relocation), <https://www.bia.gov/news/assistant-secretary-sweeney-approves-tule-river-indian-tribes-fee-trust-gaming-application>.

## ATTACHMENT 18

Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 19, 2024)



**From:** [Hall, Harold](#)  
**To:** [Buffy McQuillen](#); [Greg Sarris](#)  
**Cc:** [Dutschke, Amy](#); [Broussard, Chad N](#)  
**Subject:** Re: Section 106 consultation regarding land conveyance for the Koi Nation  
**Date:** Tuesday, March 19, 2024 10:47:59 AM  
**Attachments:** [Client Report Shiloh Resort and Casino 240304.pdf](#)

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Hello Buffy,

The Bureau of Indian Affairs in continuation of consultation with the Federated Indians of Graton Rancheria and concerning a proposed land conveyance at 222 E Shiloh Road, Santa Rosa, CA for the Koi Nation of Northern California is providing the attached report of findings from a forensic dog survey that was conducted on the property January 23-24, 2024. This survey produced several canine alerts that warrant further investigation.

This work, involving the employment of a small excavator, is scheduled, weather permitting, April 2-3, possibly extending to April 4, 2024. The BIA is extending an invitation to the Federated Indians of Graton Rancheria, as a consulting party under Section 106 of the National Historic Preservation Act for this federal undertaking, for you, or another individual Chairman Sarris or you may designate, to monitor this effort.

Please advise us at your earliest convenience if you will be having a monitor present to observe this work, so that we may provide directions to the property, access details and start time.

Respectfully,  
Dan Hall

Dan Hall  
Regional Archeologist  
Bureau of Indian Affairs-Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825  
916.978.6041  
[harold.hall@bia.gov](mailto:harold.hall@bia.gov)

## ATTACHMENT 19

Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (Mar. 26, 2024)



Via Electronic Mail: [harold.hall@bia.gov](mailto:harold.hall@bia.gov)

March 26, 2024

Dan Hall  
Regional Archaeologist  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Canine Field Survey and Subsequent Testing for Koi Nation Shiloh Resort and Casino Project**

Dear Mr. Hall,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write concerning the BIA's proposed excavation work in furtherance of the National Historic Preservation Act (NHPA) Section 106 review of the Koi Nation's resort and casino project at 222 E. Shiloh Road (the Project Site). Thank you for speaking with me this morning regarding your March 19, 2024, email and the 63-page report prepared by the Institute for Canine Forensics (ICF) detailing a canine field survey conducted at the Project Site on January 23 and 24, 2024. While we appreciate the BIA's efforts to conduct a complete identification of the area, we are concerned with the proposed work and we request BIA take several actions, specified below.

The ICF field survey was conducted without notice to the Tribe or an invitation to participate. In your transmittal email, you explained that the survey produced several canine alerts that warrant further investigation and invited the Tribe to provide a monitor for follow-up work involving an excavator scheduled for April 2-3, and possibly April 4, 2024. You did not detail the nature of that work or the level of ground disturbance anticipated, nor did you provide a testing plan for our consultation and review. As noted during our telephone call, you stated you would inquire with the archaeologist to determine if a testing plan has been or is being developed. At this late date, this will not give us an opportunity to review or consult on the plan, which should be afforded to us as a consulting party. Further, as I shared with you, the Tribe does not consent to any efforts to excavate burials. Therefore, these April dates must be canceled.

Now that we have had an opportunity to review the lengthy canine survey report, we wish to first flag the poor weather conditions at the time the survey was conducted. As the report explains, there was rain, mud and standing water at the Project Site resulting from recent rains—conditions that limited the dogs' ability to access scent. *See* ICF Canine Survey Report at 5, 12, 14. In fact, on the second day of surveying, *more than half* the Project Site had standing water due to the previous night's rains. *Id.* at 5. Despite these poor conditions, the survey resulted in numerous canine alerts, signaling the potential presence of human remains. These results confirm the concerns we have raised to the BIA throughout this Section 106 process, namely, that the Project Site is religiously and culturally significant and will be adversely affected by the proposed project.

In order to adequately assess the Project Site and design a responsive testing plan for additional work, the BIA should commission a second canine study to be conducted when weather conditions are much more favorable. The BIA cannot sufficiently determine where follow-up testing should be conducted without knowing the full extent of where human remains may be present. Further, the BIA should notify the Tribe and invite the Tribe to be present when this additional canine fieldwork is conducted.

Once a more adequate canine field study is completed, the BIA must develop a written testing plan in consultation with Tribe and any other Section 106 consulting parties. This should occur ~~before~~ the BIA schedules any onsite work. Moreover, we request the BIA agree to a testing plan that is limited to non-destructive survey techniques or methods which provide analytical value without risking the desecration of our ancestors' possible burial grounds.

Please contact me if you would like to discuss further and to establish a consultation meeting. We look forward to working with the BIA on the next steps as outlined above.

Sincerely,



Buffy McQuillen  
FIGR Tribal Heritage Preservation Officer

CC: Julianne Polanco, State Historic Preservation Officer  
Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Amy Dutschke, Regional Director, Bureau of Indian Affairs

## ATTACHMENT 20

Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Mar. 27, 2024)

**From:** [Hall, Harold](#)  
**To:** [Buffy McQuillen](#)  
**Cc:** [Dutschke, Amy](#); [Broussard, Chad N](#)  
**Subject:** Re: Koi Field Investigation Location and Schedule  
**Date:** Wednesday, March 27, 2024 10:36:04 AM

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Hello Buffy,

The BIA is in receipt of your letter dated March 26th, 2024 concerning the results of the Forensic Canine Survey conducted January 23-24 2024, and your request regarding further exploration on the property at 222 East Shiloh Road, Santa Rosa, CA scheduled for April 2-3 or 4th.

However, this work will proceed without further delay. The BIA is again extending an invitation for Graton Rancheria, as a consulting party under Section 106 of the NHPA, and in connection with the proposed fee-to-trust land conveyance for the Koi Nation, to send a monitor to observe this work.

Sincerely,  
Dan Hall

Dan Hall  
Regional Archeologist  
Bureau of Indian Affairs-Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825  
916.978.6041  
[harold.hall@bia.gov](mailto:harold.hall@bia.gov)

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**From:** Hall, Harold  
**Sent:** Tuesday, March 26, 2024 2:32 PM  
**To:** 'bmcquillen@gratonrancheria.com' <BMcQuillen@gratonrancheria.com>  
**Cc:** Dutschke, Amy <Amy.Dutschke@bia.gov>; Broussard, Chad N <Chad.Broussard@bia.gov>  
**Subject:** Koi Field Investigation Location and Schedule

Hello Buffy,

Thanks for taking the time to speak with me today.  
We have scheduled work on the property for April 2-3 or 4th. The equipment operator will be onsite at 0800 and will begin moving dirt by 0900.

Directions to the property are as follows:



From US Hwy 101 Northbound out of Santa Rosa, take the exit for Shiloh Road.  
Turn east onto Shiloh Road and drive for approximately one mile crossing the Old Redwood Highway enroute.

222 E Shiloh Road will be on the right.

The property is gated, so the monitor will upon arrival need to call me at 916.759.2125 for access.

I have attached a map indicating potential dig locations that align with those alerts shown in the Canine Survey Report provided to you in the previous email.

Please let me know if you have any questions.

Dan Hall  
Regional Archeologist  
Bureau of Indian Affairs-Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825  
916.978.6041  
harold.hall@bia.gov

## ATTACHMENT 21

FIGR Tribal Cultural Monitoring Report (April 3-5, 2024) (Provided under Separate Cover as Confidential Attachment)

## ATTACHMENT 22

Letter from FIGR Chairman Greg Sarris to Amy Dutschke and BIA Environmental Protection Specialist Chad Broussard Commenting on Notice of Intent To Prepare an EIS for the Koi Nation Fee-to-Trust and Casino Project (FIGR NOI Comments) (Apr. 8, 2024)



April 8, 2024

Via Electronic Mail: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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

Chad Broussard, Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825

Re: Graton Rancheria NOI Comments, Koi Nation Fee-to-Trust and Casino Project

Dear Ms. Dutschke and Mr. Broussard,

On behalf of the Federated Indians of Graton Rancheria (FIGR or the Tribe), I submit these scoping comments on the Koi fee-to-trust application for a gaming project outside Windsor, California. On March 8, 2024, the Bureau of Indian Affairs (BIA) published its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS), providing the public 30 days to submit comments on the appropriate scope of environmental issues to be considered.<sup>1</sup> As you know, the BIA had previously issued a draft Environmental Assessment (Draft EA) for the same project.<sup>2</sup> The Tribe, and many other members of the public, submitted comments expressing alarm that a project of this scale will result in numerous significant environmental impacts and therefore requires a full EIS. We thank BIA for listening to our concerns and deciding to move forward with an EIS. We also ask BIA to make publicly available the comments previously submitted on the Draft EA so that the public may better understand the issues already identified.

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<sup>1</sup> BIA, Notice of Intent to Prepare an Environmental Impact Statement for Koi Nation's Proposed Shiloh Road and Casino Project, Sonoma County, California, 89. Fed. Reg. 16782 (Mar. 8, 2024) (hereinafter referred to as the NOI).

<sup>2</sup> See BIA, Draft Environmental Assessment for the Koi Casino (Sept. 12, 2023) (hereinafter referred to as the Draft EA).

As we have repeatedly and emphatically stated, this project site is located in our ancestral territory. Our Tribal Citizens and employees live in the vicinity of the project. Therefore, we are deeply invested in the BIA's thorough and objective analysis of the project's impacts. We generally agree that the issue areas identified in the NOI must be considered. These include: land resources; water resources; air quality; noise; biological resources; cultural and paleontological resources; socioeconomic conditions/environmental justice; transportation and circulation; land use; hazardous materials and hazards; public services and utilities; socioeconomics; environmental justice; visual resources; and cumulative, indirect, and growth-inducing effects. Further, we incorporate by reference our original scoping letter, dated June 27, 2022, and our comment letter on the Draft EA, dated November 13, 2023. All of the environmental issues outlined in our letters remain critical concerns and as we particularly identified in the November 13, 2023 letter, the BIA must do additional analysis of proposed mitigation measures.

In this letter, we wish to elaborate on two specific issues: 1) the range of reasonable alternatives, which should include at least one Lake County site for the proposed gaming facility, and 2) the indirect and cumulative effects of the Department's "restored lands" determination on cultural resources throughout Sonoma County.

## **I. Reasonable Alternatives**

NEPA requires the BIA to consider reasonable alternatives that are "technically and economically feasible, and meet the purpose and need for the proposed action."<sup>3</sup> As we explained in our Nov. 13, 2023 letter, the draft EA acknowledged that the Koi Nation's aboriginal territory is in Lake County, yet did not consider an alternative project site that is actually within Lake County.<sup>4</sup> The BIA provided a cursory explanation for why it eliminated alternative project sites in the BIA's September 2022 Scoping Report, which stated that Koi Nation has submitted "substantial evidence to the BIA regarding its lengthy and thorough evaluation of alternative sites" but that it is "highly speculative" that alternative locations could support an economic enterprise that would fund the tribal government, or that the Koi Nation could even purchase property in those unspecified alternate locations.<sup>5</sup> The Scoping Report did not include any of the data submitted by Koi nor did it specify whether sites within Koi Nation's aboriginal territory were evaluated. It referenced a more detailed explanation in a separate "Alternatives Evaluation Report," but no such report has been disclosed to the public.<sup>6</sup>

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<sup>3</sup>40 C.F.R. § 1508.1(z).

<sup>4</sup> See Draft EA at 1-2.

<sup>5</sup> See Scoping Report at 13.

<sup>6</sup> *Id.* at 8, 12.



Dismissing alternative sites due to technical or economic feasibility is not supported by the record. It is not “highly speculative” to claim that Lake County is a viable location for a casino capable of funding tribal government, as four tribal casinos are currently in operation there.<sup>7</sup> While competition from the other casinos may affect the amount of revenue the project could expect, the same assumption can be made for the proposed Project as there are two other tribal casinos in Sonoma County, as well as nearby casinos in Mendocino County.<sup>8</sup> Further, a brief internet search reveals that the median property value in Lake County is substantially lower than in Sonoma County, making investment in Lake County more affordable.<sup>9</sup> Moreover, there are currently available sites in Lake County that are well situated for tourism and large-scale development.<sup>10</sup> Without providing any market data, it is not reasonable for the EA to eliminate consideration of a project site in Lake County due to economic or technical feasibility.

Neither is elimination of a project site in Lake County reasonable due to regulatory feasibility. The Indian Gaming Regulatory Act requires the Koi Nation to demonstrate a “significant historical connection” to a site for it to be eligible for gaming.<sup>11</sup> Certainly, a project site in Koi Nation’s aboriginal territory is no less regulatorily feasible than the proposed Project site outside Windsor. In fact, as we have repeatedly raised, the Koi Nation cannot demonstrate a “significant historical connection” to the Project site, specifically, or Sonoma County, generally.<sup>12</sup> To summarize, Koi Nation is a Southeastern Pomo tribe aboriginally from Lake County, whereas Sonoma County is the aboriginal territory of Southern Pomo and Southwestern Pomo (also known as Kashaya) speaking tribes. Nonetheless, the Koi Nation claims it has a significant historical connection to Sonoma County based on the relocation of certain Koi families from Clear Lake to the Sonoma County area in the 1900s, as well as the use of seasonal

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<sup>7</sup> See California’s Clean Air Project, County List of Casino, <https://www.etr.org/ccap/tribal-casinos-in-california/county-list-of-casinos/> (last visited Nov. 7, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., National Association of Realtors, County Median Home Prices Q1 2023 (providing that the median home price in Sonoma County is \$818,928, whereas the median home price in Lake County is \$350,835), <https://www.nar.realtor/research-and-statistics/housing-statistics/county-median-home-prices-and-monthly-mortgage-payment> (last visited Nov. 8, 2023).

<sup>10</sup> See, e.g., [https://www.sothebysrealty.com/eng/sales/detail/180-1-518-4pnknt/5115-east-highway-20-nice-ca-95464\\_!!ivohdkk!lnmr8coobvsym3p9hsfe79akfz-33kspwo\\_ds15wmmryk5m6bu9ykmzkvtlco0geqso5v5che9fjd8bteate7jax5q\\$](https://www.sothebysrealty.com/eng/sales/detail/180-1-518-4pnknt/5115-east-highway-20-nice-ca-95464_!!ivohdkk!lnmr8coobvsym3p9hsfe79akfz-33kspwo_ds15wmmryk5m6bu9ykmzkvtlco0geqso5v5che9fjd8bteate7jax5q$) (57-acre property on the northeastern shores of Clear Lake, with existing buildings, infrastructure, and winery); <https://www.loopnet.com/Listing/6051-Ridge-Rd-Lakeport-CA/30829762/> (312-acre largely undeveloped property on southern side of Clear Lake near Lakeport).

<sup>11</sup> The Koi Nation must demonstrate it has a “significant historical connection” to the Property in order for the Property to qualify as “restored lands” pursuant to 25 C.F.R. § 292.11(b). “Significant historical connection” means “the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty,” or—as relevant here—by “historical documentation [of] the existence of the tribe’s villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” 25 C.F.R. § 292.2.

<sup>12</sup> See The Federated Indians of Graton Rancheria Response to the Koi Nation’s Request for a Restored Lands Opinion (submitted to BIA on Jan. 31, 2024); Graton Rancheria Comments on the Koi Casino Environmental Assessment at 7–10, 25–28 (submitted to BIA on Nov. 13, 2023); Graton Rancheria Scoping Comments on the Koi Casino Proposal at 3–4 (submitted to BIA on June 27, 2022).



trade routes through Sonoma County.<sup>13</sup> The Department has already determined that “relocation of some of [a tribe’s] members to various locales throughout the Bay Area does not equate to the [tribe] itself establishing subsistence use or occupancy in the region apart from its Rancheria”<sup>14</sup> and that “evidence of the [tribe’s] citizens’ movements as late as the 1960s is more of a *modern* era activity, as opposed to *historic*, as those two terms are used in the Part 292 regulations.”<sup>15</sup> Further, the Department has held, in the context of denying a different Lake County tribe’s restored lands request, that it “cannot establish its subsistence use or occupancy based on the fact that its ancestors traveled to various locations to trade and interact with other peoples and then returned to the Clear Lake Region;” rather, the Department found that “[s]ubsistence use and occupancy requires something more than a transient presence in an area.”<sup>16</sup> Accordingly, the BIA should consider alternative project sites that are actually within Koi Nation’s aboriginal territory, as the BIA has done for similar projects.<sup>17</sup>

## **II. Consideration of Cultural Resources in Indirect & Cumulative Effects**

The BIA must consider both the indirect and cumulative effects of the proposed action. The Council on Environmental Quality (CEQ) regulations define indirect effects as those “caused by the action, [and] later in time or farther removed in distance, [but] still reasonably foreseeable.”<sup>18</sup> The CEQ regulations further define “cumulative effects” as “the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions.”<sup>19</sup> The Draft EA completely failed to consider both the indirect and cumulative effects of this proposed federal approval on the rights and ability of culturally affiliated Southern Pomo tribes to protect their cultural resources and ancestors, both at the site and in the surrounding area, and to engage in co-stewardship and the sharing of Traditional Ecological Knowledge (TEK).

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<sup>13</sup> See Koi Nation of Northern California, September 13, 2021 Request for Restored Lands Opinion, March 2023 Supplemental Restored Land Request, and July 2023 Second Supplemental Restored Land Request, and accompanying exhibits, available at <https://www.koinationsonoma.com/documents/> (last visited Nov. 8, 2023).

<sup>14</sup> Decision Letter from Assistant Secretary – Indian Affairs Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 19 (Sept. 1, 2011).

<sup>15</sup> Decision Letter from Acting Assistant Secretary – Indian Affairs Donald E. Laverdure to the Honorable Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians at 18 (May 25, 2012) (discussing the relocation of individual Band members during the 1920s and 1960s) (emphasis in original).

<sup>16</sup> Decision Letter Assistant Secretary Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 14 (Sept. 1, 2011).

<sup>17</sup> See, e.g., 2016 Wilton Rancheria FEIS, Section 2 – Alternatives (Dec. 2016) (considering, among the alternatives, the tribe’s historic rancheria site which was no longer held in trust); Dep’t of Interior, Record of Decision for Trust Acquisition of the 40-acre Yuba County Site in Yuba County, California, for the Enterprise Rancheria of Maidu Indians of California (Nov. 2023) (incorporating the Final EIS and considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for the tribe); BIA, Final Environmental Impact Statement, North Fork Rancheria of Mono Indians (Feb. 2009) (considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for individual North Fork members).

<sup>18</sup> 40 C.F.R. § 1508.1(g)(2).

<sup>19</sup> 40 C.F.R. § 1508.1(g)(3).

In order for the Department to approve this application, the purpose of which is to conduct gaming, the Department must make a determination pursuant to the Indian Gaming Regulatory Act (IGRA) restored lands exemption. As we have explained, the restored lands exemption requires the applicant tribe, here the Koi Nation, to have a “significant historical connection” with the proposed gaming parcel, such that the Department’s acquisition of the land in trust for the Koi Nation would constitute a “restoration” of the Koi Nation’s tribal lands. The IGRA regulations further define “significant historical connection” as “the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.”<sup>20</sup> The concept of “significant historical connection” is intrinsically wrapped into the concept of “cultural affiliation”—that is, a tribe’s subsistence methods, cultural practices, belief systems, and traditional ecological knowledge are rooted in the geographic area where a tribe was historically located.

A federal decision rubber stamping the Koi Nation’s claim of a significant historical connection to the Russian River Valley will affect the cultural resource rights of the local tribes in a host of other contexts. For example, NAGPRA requires that the ownership and control of Native American remains and cultural items discovered on Federal or tribal lands shall reside with the following, in order of priority:

- the lineal descendants of the Native American (if known);
- the Indian tribe on whose tribal land such objects were discovered;
- the Indian tribe which has the closest cultural affiliation with such remains or objects.<sup>21</sup>

This is of course alarming because it means any cultural resources or human remains found on the Shiloh Parcel—either during the construction of the Project or at any point in the future—would, assuming no lineal descendant is identified, belong to the Koi Nation. This is so despite the fact that those cultural resources and ancestors are from the Southern Pomo people and should rightfully belong to a Southern Pomo tribe.<sup>22</sup> If, following the BIA approval of this initial acquisition, Koi Nation acquires additional trust land in Sonoma County, which seems highly foreseeable, it will have priority rights to all cultural resources and ancestors on *those* properties. Moreover, for any federal lands in Sonoma County, the Koi Nation can make the argument that it is culturally affiliated and therefore make a claim those cultural resources or human remains, to the detriment of the local, culturally affiliated tribes.

Similarly, there are many institutions in the Bay Area with collections that include Southern Pomo human remains, funerary objects, sacred objects, and objects of cultural patrimony that are subject to repatriation under NAGPRA. A tribe may submit a repatriation

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<sup>20</sup> 25 C.F.R. § 292.2.

<sup>21</sup> 25 U.S.C. § 3002(a).

<sup>22</sup> ARPA reinforces this rule by providing that “Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.” 43 C.F.R. § 7.13.

claim based on its “cultural affiliation” with the remains or object.<sup>23</sup> The NAGPRA regulations define cultural affiliation as “a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity...[which] may be identified clearly by the information available or reasonably by the geographical location or acquisition history of the human remains or cultural items.”<sup>24</sup> The regulations further explain that the relevant types of evidence for determining cultural affiliation specifically include historical and geographical evidence.<sup>25</sup> If the Koi Nation’s application is approved and the federal government determines it has a “significant historical connection” with some or all of Sonoma County, it opens the door for Koi to make competing NAGPRA claims for *our* ancestors and cultural resources, further muddying an already incredibly long and difficult repatriation process.

Similar implications arise under a myriad of other federal laws and policies that provide for tribal consultation, consultation, and co-stewardship. This Administration has been a leader in uplifting the recognition and incorporation of Traditional Ecological Knowledge (TEK) and the essential role tribes should play in co-stewardship of public lands. For example, the *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* provides a framework for the U.S. Department of the Interior and the U.S. Department of Agriculture to manage lands and waters in a manner that protects the “treaty, religious, subsistence and cultural interests” of tribes.<sup>26</sup> This includes pathways to co-stewardship over federal lands and waters, as well as the incorporation of TEK into federal management decisions, both of which involve the foundational question of which tribe(s) are the proper stewards and hold the relevant TEK for a particular area. Additionally, the White House has issued broader guidance to all federal departments and agencies on respecting and incorporating indigenous knowledge into federal research, policies, and decision making.<sup>27</sup> The White House guidance drives home the quintessential link between TEK and a tribe’s historical presence in and interaction with a particular environment.<sup>28</sup> Accordingly, a federal decision to approve Koi’s application on the basis of its significant historical connection claim will undermine the ability of Southern Pomo tribes to utilize federal programs and processes aimed at elevating TEK and stewardship rights for culturally affiliated tribes. This harm will only compound over time as the Koi Nation uses this federal decision as a basis for asserting itself as a “Sonoma County tribe” in all sorts of scenarios.

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<sup>23</sup> 43 C.F.R. §§ 10.9(d)(3)(ii) and 10.10(f)(3).

<sup>24</sup> 43 C.F.R. § 10.2 (defining “cultural affiliation”).

<sup>25</sup> 43 C.F.R. § 10.3.

<sup>26</sup> U.S. Dep’t of the Interior, U.S. Dep’t of Agriculture, Order No. 2303 (Nov.15, 2021).

<sup>27</sup> *See also* White House Memorandum re: Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022).

<sup>28</sup> *Id.* at 4 (describing indigenous knowledge as “a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment” and specifically referring to it as a “place-based body of knowledge.”)

Accordingly, BIA must consider these wide sweeping impacts to cultural resources as part of the indirect and cumulative effects analysis.

As a final note on cultural resources, we must reiterate that the BIA should not issue a draft EIS until it has completed National Historic Preservation Act (NHPA) Section 106 review with the consulting tribes, including our own. Otherwise, BIA will repeat the same mistake it made with the Draft EA, resulting in incomplete and misleading information shared with the public. As we explained in our Nov. 13, 2023 comment letter, the BIA cannot assess the significance of impacts to cultural resources without engaging with consulting tribes as to what those resources are, how the project will threaten such resources, and whether mitigation measures could remedy those threats. Accordingly, the BIA must undertake review pursuant to the NHPA and consult with the State Historic Preservation Office (SHPO) and THPOs, including concurrence on the Area of Potential Effects (APE) and necessary identification and evaluation of cultural and historic resources and the project's impacts, *prior to* issuing a draft EIS.

We thank you again for hearing our concerns and hope you will consider them seriously.

Sincerely,

A handwritten signature in black ink that reads "Greg Sarris". The signature is written in a cursive, slightly slanted style.

Greg Sarris  
Chairman

## ATTACHMENT 23

Letter from FIGR Chairman Greg Sarris to Amy Dutschke Commenting on Notice of Gaming Land Acquisition for the Koi Nation (FIGR Part 151 Letter) (Apr. 30, 2024)



April 30, 2024

Amy Dutschke, Regional Director  
Real Estate Services (TR-4609-P5)  
Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

Re: Notice of Gaming Land Acquisition Application (Case No. 33760) – Koi Nation

Dear Director Dutschke,

On behalf of the Federated Indians of Graton Rancheria (“Tribe”), I submit these comments in response to the *Notice of Gaming Land Acquisition Application* (“Notice Letter”), issued by the Bureau of Indian Affairs (“BIA”) pursuant to 25 C.F.R. Part 151 and received by the Tribe on April 2, 2024. The Notice Letter relates to the application submitted by the Koi Nation requesting the Department of the Interior take into trust approximately 68 acres of land (“the Parcel”) near the town of Windsor in Sonoma County, California. Approving the Koi Nation’s trust application would profoundly interfere with our Tribe’s ability to exercise jurisdiction and maintain tribal sovereignty over important cultural and environmental resources.

As discussed in detail in the Graton Rancheria’s Response to the Koi Nation’s Request for a Restored Land Opinion, dated January 31, 2024, the Koi Nation’s aboriginal territory and historic rancheria are located in the Clear Lake region of Lake County, CA, which is over 50 miles away from the Parcel. The Koi Nation’s ancestors belonged to the Southeastern Pomo language group, which was only spoken in the immediate vicinity of Clear Lake. While the Parcel is far outside of the Koi Nation’s aboriginal territory, it is directly within the traditional homeland of our Tribe and very close to our current reservation in Sonoma County. Our ancestors from this area belonged to a different language group, the Southern Pomo, which was



the aboriginal language spoken in much of Sonoma County.<sup>1</sup> The Koi Nation is thus attempting to obtain trust lands well outside of its aboriginal area and beyond its traditional cultural sphere.

### **A. Applicable Regulatory Standard of Review**

The Part 151 regulations were recently updated at the end of 2023. However, the Notice Letter expressly references the prior edition of the Part 151 regulations in effect at the time Koi Nation originally submitted its trust application. Under those regulations, the Department’s evaluation of trust applications for off-reservation lands must take into consideration “jurisdictional problems and potential conflicts of land use which may arise” as well as the location of the land at issue. *See* 25 C.F.R. §§151.10(f) and 151.11 (4-1-2019 Edition). Moreover, under these prior Part 151 regulations, as the distance between the tribe’s reservation and the land to be acquired increases, so does the level of scrutiny applied to the tribal applications—and greater weight is given to the jurisdictional and land-use concerns of local governments. *See id.* at §151.11(b). The significant distance between the Parcel and the Koi Nation’s aboriginal territory and historic rancheria warrant that heightened scrutiny, especially given the Parcel’s location within the traditional territory of different tribes, such as our own.

Even if the Koi Nation were to elect to have its application evaluated under the newly revised Part 151 regulations, the Parcel’s location and the trust acquisition’s impact on the jurisdiction of other sovereign entities like our Tribe are still key considerations. For both off-reservation acquisitions and initial acquisitions, the current version of Part 151 mandates that the Department “consider the location of the land and potential conflicts of land use” and further mandates that local governments continue to be able to provide comment on jurisdictional issues. *See* 25 C.F.R. §§151.11(c) and 151.12(d) (4-1-2024 Edition) (emphasis added).

### **B. Jurisdictional Conflicts**

Applying either of these regulatory standards, the jurisdictional ramifications of taking the Parcel into trust on behalf of the Koi Nation are broad and severe—as is the potential to undermine the sovereignty of our Tribe. Like all tribal nations, our Tribe’s cultural practices, belief systems, and traditional ecological knowledge are rooted in the geographic area where we were historically located. Accordingly, granting the Koi Nation trust lands within our Tribe’s traditional territory—and affirming the Koi Nation’s specious arguments of a “significant historical connection” to this region of Sonoma County—will affect our cultural rights in a host of contexts. We have explained this sweeping impact on numerous occasions. *See* Graton Rancheria NOI Comments, Koi Nation Fee-to-Trust and Casino Project at 4–6 (submitted to BIA

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<sup>1</sup> Southwestern Pomo/Kashaya and Coast Miwok were also spoken in parts of Sonoma County. *See, e.g.,* Golla, Victor. *California Indian Languages*. Berkeley, University of California Press (2011) at 105, Fig. 17; *Kashaya*, The California Language Archive at University of California, Berkeley, 2024, <https://cla.berkeley.edu/languages/kashaya.html>. Accessed 22 Apr. 2024.

on Apr. 8, 2024); Federated Indians of Graton Rancheria Response to the Koi Nation’s Request for a Restored Lands Opinion at 37–39 (submitted to BIA on Jan. 31, 2024); Graton Rancheria Comments on the Koi Casino Environmental Assessment at 25–28 (submitted to BIA on Nov. 13, 2023). To summarize, the ability to protect tribal cultural resources and ancestors under federal law largely depends on the historical location of a tribe and the implied cultural affiliation with cultural resources or ancestors found in that area. *See, e.g.*, Federated Indians of Graton Rancheria Response to the Koi Nation’s Request for a Restored Lands Opinion at 37–39 (discussing the implications under the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act of 1979, and federal policies on co-stewardship and traditional ecological knowledge).

Similarly, numerous state laws impose a duty on state agencies, local governments, and project developers to consult and actively work with a tribe on the protection of tribal cultural resources and ancestor remains located within a tribe’s aboriginal territory. *See* Senate Bill 18 (Ca. 2003), codified at Ca. Gov’t Code § 65352.3 (requiring local governments to consult with tribes within their jurisdiction on the protection of tribal cultural resources prior to adopting or amending a general or specific plan for that area); Assembly Bill 52 § 1 (Ca. 2014), codified at Ca. Pub. Res. Code § 21080.3.1 (providing tribes a statutory right to consult on impacts to tribal cultural resources resulting from development projects, including determining appropriate mitigation measures such as the removal and repatriation of cultural resources); Ca. Pub. Res. Code § 5097.98 (setting forth procedures for the discovery of Native American remains requiring notice to the person(s) believed to be the most likely descendent(s) for remains located in that geographic area (referred to as MLDs) and providing the MLDs the right to inspect and recommend the appropriate treatment of the human remains); California Native American Graves Protection & Repatriation Act of 2001, Assembly Bill 978 (Ca. 2001) (and subsequently amended by several bills), codified at Ca. Health and Safety Code §§ 8010 *et seq.* (covering gaps in the federal NAGPRA and similarly imposing a duty on all state agencies and museums receiving state funding to identify and repatriate human remains and cultural items to the culturally affiliated tribes).

Acquiring the Parcel into trust for gaming on the basis of Koi Nation’s “significant historical connection” to this area is going to lead to jurisdictional conflicts between the local aboriginal tribes and the Koi Nation in asserting cultural resource rights and repatriation claims under the federal and state legal frameworks identified above. While the conflict will be most acute in the immediate area of the Parcel, which is traditional Southern Pomo territory, conflict will likely arise across Sonoma County, including in places traditionally affiliated with Southwestern Pomo/Kashaya and Coast Miwok people. Moreover, the proposed trust acquisition will heighten confusion and delay at the local jurisdictional level, such as with the Town of Windsor and Sonoma County. These local jurisdictions will not know which tribe(s) to consult with or defer to when implementing legal obligations under state law concerning tribal cultural

resources and ancestor protection. This delay, confusion and in the worst case—complete failure to consult with the appropriate culturally affiliated tribe(s)—will result in real, irreparable harm to our cultural resources and ancestors.

We thank you for hearing our concerns and hope you will consider them seriously.

Sincerely,

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

Greg Sarris  
Chairman

## ATTACHMENT 24

Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (May 1, 2024)



Via Electronic Mail: [harold.hall@bia.gov](mailto:harold.hall@bia.gov)

May 1, 2024

Dan Hall  
Regional Archaeologist  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Section 106 Related Excavation Work for Koi Nation Shiloh Resort and Casino Project**

Dear Mr. Hall,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write concerning the BIA's excavation work performed on April 2, 2024, at the Koi Nation's resort and casino project site at 222 E. Shiloh Road (the Project Site). This work was conducted in furtherance of the National Historic Preservation Act (NHPA) Section 106 review, specifically to investigate canine alerts described in the Institute for Canine Forensics (ICF) report on a canine field survey conducted at the Project Site in January 2024. While we appreciate the BIA's efforts to conduct a complete identification of the area, we wish to relay our concerns with how that work was conducted and the risk that burials sites were not properly investigated.

To begin, we must reiterate the issues raised in our March 26, 2024, letter to you describing insufficiencies with both the canine study (such as the unfavorable weather conditions) and the proposed excavation of archaeological trenches (such as the lack of any written testing plan developed in consultation with the Tribe). We requested that BIA correct these issues before moving forward with the excavation work. On March 27, 2024, you denied our requests via email without further explanation.

Given BIA's decision to move forward with the excavation, the Tribe provided a FIGR tribal cultural monitor, Kyle Rabellino, to observe the work. Mr. Rabellino is a registered archaeologist and GIS specialist, as well as a Tribal employee. He observed a number of issues that we wish to highlight in this letter. First and foremost, as we have already identified, there was no formal testing plan designed for the excavation of archaeological trenches. As a result, there were no procedures or protections in place to ensure non-destructive survey techniques that

would offer analytical value without risking desecration of our ancestors' possible burial grounds.

In lieu of a formal testing plan, eight trench locations were selected primarily on the basis of where the forensic dogs had previously signaled potential human remains (although the extremely wet conditions during the canine survey meant their ability to detect was limited and other potential sites likely exist). The excavator operator had no previous experience excavating archaeological trenches. No trench shoring was provided and trenches were not entered by FIGR's monitor due to safety concerns and Occupational Safety and Health Administration trench regulations.

The BIA's archaeological consultant performing the investigation was John Parker. Mr. Parker stated his concern with the muddy conditions of the Project Site after the recent rains and expressed his preference to have one or two more weeks of sun before proceeding; nonetheless, the work proceeded as scheduled. Mr. Parker did not draw any trench profiles. He spot-checked trench excavation and the spoils by hand, rather than screening any of the spoils. Additionally, Mr. Parker and the excavator worked quickly, typically spending less than half an hour on each trench.

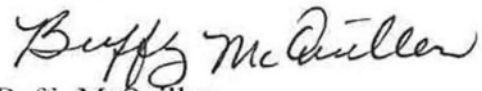
Despite the fact that many of the trenching locations were saturated with water from recent rains, and the wet conditions made it difficult to see soil changes or potential artifacts, one culturally modified obsidian flake was found in the spoils from Trench #6. Mr. Parker did not notice this cultural resource, rather, it was identified by FIGR's monitor. Additionally, obsidian pebbles and gravel, some with fractures, were observed on the ground surface throughout the property. It should also be noted that the soils did not indicate a significant depth of soil disturbance or ripping from prior viticulture land use, as suggested in Mr. Parker's prior cultural resources report. *See* John Parker, Historic Property Survey Report of One Parcel to be Transferred to Trust Status: Parcel 004-021-008, 222 East Shiloh Rd., Santa Rosa at 4 (Mar. 1, 2022). To the degree that prior ripping occurred, we assess it was likely limited to 2 or 3 feet, at maximum, given the presence of thick clay layers at that depth.

We are concerned that archaeological industry standards were not met in conducting this work. More importantly, the numerous problems we have identified with both the excavation work and the underlying canine study undermine the notion that BIA engaged in reasonable and good-faith efforts to identify historic properties, as required by the NHPA. *See* 36 C.F.R. § 800.4(b). Not only does this fail to satisfy the applicable legal requirements, it presents the very real risk that evidence of our ancestors' burial sites has been overlooked or improperly investigated. Accordingly, the work conducted thus far does not rule out the likelihood of discovery of human remains and/or cultural items. While we wish to continue consulting with BIA through this Section 106 process, we feel it important to register our serious concerns. We would also like to see a copy of Mr. Parker's report once it has been finalized.



Please contact me if you would like to discuss further.

Sincerely,

A handwritten signature in cursive script that reads "Buffy McQuillen".

Buffy McQuillen  
FIGR Tribal Heritage Preservation Officer

CC: Julianne Polanco, State Historic Preservation Officer  
Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Amy Dutschke, Regional Director, Bureau of Indian Affairs

## ATTACHMENT 25

Letter from BIA Pacific Regional Director Amy Dutschke to SHPO Julianne Polanco (May 6, 2024)



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

IN REPLY REFER TO:  
4303-PS Koi Nation East Shiloh Property Fee-to-Trust

Julianne Polanco  
State Historic Preservation Officer  
Office of Historic Preservation  
Department of Parks and Recreation  
1725 23<sup>rd</sup> St. Suite 100  
Sacramento, CA 95816

Dear Ms. Polanco:

The Bureau of Indian Affairs (BIA) Pacific Region, Division of Environmental Cultural Resource Management and Safety, Cultural Resource Management (CRM) Section wishes to re-initiate Section 106 consultation with the State Historic Preservation Office (SHPO) concerning a fee-to-trust transfer of approximately 68.6 acres of land at 222 E. Shiloh Road, Windsor, Sonoma County, California for the Koi Nation of Northern California. The Tribe proposes to have this property conveyed into federal trust status for the purpose of gaming. Project elements include the development of a resort that includes a casino, hotel, event center, meeting space, spa and associated parking and infrastructure. This proposed undertaking is pursuant to regulations under 25 CFR 151 (Land Acquisitions). Project implementation is contingent, in part, upon the BIA meeting its obligations under Section 106 of the National Historic Preservation Act (NHPA), as amended. The BIA Pacific Region submitted its original Section 106 review request to your office on July 18, 2023, but was rescinded at the request of the Federated Indians of Graton Rancheria (FIGR).

The 68.6-acre property that constitutes the Area of Potential Effects (APE) for this action is located in the SW  $\frac{1}{4}$  of Section 20 in Township 8 North, Range 8 West Mount Diablo Base Meridian. The APE is bounded on the north by East Shiloh Road, on the west by the Old Redwood Highway and is bisected by Pruitt Creek. With the exception of a narrow riparian corridor along the creek, the property is primarily developed as a vineyard. The northeastern portion of the property includes a modern single-family residence and associated outbuildings, which from aerial photography show to have been constructed in 2004.

Six cultural resources investigations have been undertaken in the context of this Project. Reports representing four of these studies were submitted to your office with our original Section 106 review request on July 18, 2023. These studies include two pedestrian surveys, monitoring of geo-technical trenching, obsidian hydration analysis, a forensic canine survey, and an expanded Phase I testing in connection with results from the forensic canine survey.

In February of 2022 Dr. John Parker and staff of Wolf Creek Archaeology conducted a pedestrian survey of the Project APE. A records search performed at the Northwest Information Center of the California Historical Resources Inventory System (CHRIS) indicated there have been no previous surveys conducted or cultural resources identified within the Project APE. Other background sources indicated the possible presence of a historic homestead. Parker's survey resulted in the identification of the remains from this homestead which he recorded as Historic Site 1. The residence, which is no longer standing, was demolished sometime before 2003 and the foundation remains were pushed to the bank of Pruitt Creek. A moderately dense artifact scatter associated with the homestead was identified and includes historic ceramics, glass, brick, and metal fragments. A variety of isolated pre-contact artifacts were noted to be widely spread across the property. These artifacts include flakes of chert and obsidian, one core, one biface tip, and a broken bowl mortar located in the creek bottom. There were no artifact concentrations that would suggest the presence of a discrete site.

In April of 2022 Dr. Parker returned to the Project area to assist in geotechnical studies by monitoring the excavation of four trenches in the event buried cultural deposits or features were present. With the exception of an isolated horseshoe identified in Trench D along the Old Redwood Highway, no other cultural resources were located within the geotechnical study areas.

Tom Origer and Associates performed a subsequent intensive survey of the Project APE in May of 2022. Prior to the survey a records search was performed, the results of which conformed with those of Parker. Origer's survey was complemented by the employment of a 4-inch diameter hand auger at four locations along Pruitt Creek. Two isolated bifacial tool fragments as well as a wide scattering of "modified" obsidian pieces were identified. There were also naturally occurring obsidian pebbles present, thereby complicating the evaluation of the observed obsidian pieces to determine if they were intentionally "modified" or were resultant from agricultural discing. No cultural resources were present at any of the four hand auger locations. At the site of the former homestead noted in Parker's report (Historic Site 1), Origer documented only an occasional fragment of glass and ceramics.

An obsidian hydration analysis was commissioned to better understand the nature of those obsidian pieces that had possibly been modified through flint knapping activities. In August of 2022 Dr. John Parker collected seventeen of the widely scattered obsidian fragments for analysis by Willamette Analytics, Corvallis, Oregon. Five of the seventeen samples were found to have hydration rims that suggest human manufacturing activity. However, these five samples were collected from dispersed locations across the Project APE and were representative of three different time periods. These results are indicative of isolated artifact occurrences, and not a discrete archaeological site. The hydration analysis demonstrated the remaining twelve samples to be naturally occurring obsidian pieces or recently modified as the result of agricultural activities.

The CRM Section contacted several federally recognized tribes that may have an interest in the Project to inquire if they desire to be consulting parties in the Section 106 process. Three of these tribes: Federated Indians of Graton Rancheria (FIGR), Kashia Band of Pomo Indians of the Stewarts Point Rancheria (Kashia), and Dry Creek Rancheria Band of Pomo Indians (Dry Creek)

affirmed their interest. On March 7, 2023, the CRM Section forwarded copies of each of the four studies discussed above to these three consulting parties for their review and comment. Due to an oversight, three of these reports were not sent to Dry Creek until May 23, 2023. The CRM Section reached out via email to each of these tribes on May 23, 2023, to confirm receipt of the reports and requested that any comments be forwarded to the CRM Section no later than June 5, 2023. Dry Creek was afforded an additional two weeks to respond owing to their late receipt of three documents.

A comment letter was received from Dry Creek on August 29, 2023, and followed on November 9, of 2023 by their request for an in-person consultation meeting. The CRM Section also received a comment letter from FIGR. In this letter dated August 7, 2023, and on which you were copied, it was requested that CRM Section rescind its letter of July 18, 2023, to your office initiating Section 106 consultation concerning the aforementioned undertaking. It was also requested that BIA meet with Graton Rancheria in furtherance of BIA Pacific Region's Section 106 consultation requirements. No comments were received from the Kashia Band of Pomo Indians of the Stewarts Point Rancheria.

On November 30, 2023, a virtual consultation meeting was held between the CRM Section and FIGR. This meeting was followed later that day with a face-to-face consultation meeting between the CRM Section and Dry Creek. These meetings provided a forum for the two consulting parties to reiterate and discuss the issues, concerns and recommendations expressed in the comment letters noted above. One concern that was brought forward by reference to FIGR's recommendation for the employment of a canine survey and/or ground penetrating radar (GPR) technology is for the presence of buried human remains, particularly along Pruitt Creek. Based on FIGR's recommendation, the CRM Section agreed to consider conducting additional studies.

On January 24-25 2024, the Institute for Canine Forensics (ICF) conducted a survey of the entire Project footprint as well as a corridor along both sides of Pruitt Creek. This work performed by eight canines and seven handlers specialized in the identification of subsurface human remains resulted in the identification of scent areas and discrete alerts almost exclusively located either within the western portion of the APE or along the Pruitt Creek corridor. All of these alerts fell within what ICF classifies as "Scattered or Dissipated Remains". Alerts of this category are believed to be resultant from several possible conditions each of which precludes the likelihood of encountering intact burials (see enclosed report).

A sixth study designed to further investigate the findings of the forensic canine survey was conducted on April 2, 2024. This expanded Phase I testing was led by Dr. John Parker along with Tribal monitors representing the Koi Nation, an archaeologist from the FIGR the Tribal Historic Preservation Officer from Dry Creek, and the Regional Archaeologist. This study involved the systematic excavation of backhoe trenches at eight locations corresponding to the alerts identified from the forensic canine survey. The test trenches measured 5 meters in length, 75 cm in width and ranged in depth from approximately 1-2 meters. No evidence of human remains was found within any of the eight excavated trenches. The only cultural material identified was a single piece of chipped obsidian discovered in the backdirt pile of Test Trench 5 (see enclosed report).

The results of the six studies conducted within the Project APE indicate the presence of one historic site, and widely dispersed isolated prehistoric cultural material. The historic homestead, Parker's Historic Site 1, was completely demolished sometime between 2003-2004. The foundation remains have been pushed aside and all that exists is a scatter of glass, ceramics, brick and metal. Site integrity is totally absent. There was no information to suggest this site was connected with an important event or person in history (National Register Criteria A and B). As noted above, there are no intact architectural remains, so the site can not be evaluated under Criterion C. The remaining dispersed scatter of cultural material offers nothing in the way of research potential that would provide a better understanding of early and mid-twentieth century history (Criterion D). It is the CRM Section's determination that this site is therefore not eligible for inclusion to the National Register of Historic Places (NRHP). A widely dispersed scatter of prehistoric artifacts across the APE was noted by both Parker and Origer. These materials were all deemed to be isolated occurrences due to their distribution with no discernible concentrations and for this reason, not subject to further review or evaluation for significance. Furthermore, results of the obsidian hydration analysis corroborated field findings and analysis indicating that most of the obsidian fragments found within the APE represent background noise and have not been modified by human activity. Results of the Forensic Canine Survey and confirmed by subsequent expanded Phase I Testing produced negative results with respect to identifiable human remains.

Sufficient evidence has been provided for the CRM Section to request SHPO agreement on the determination that Historic Site 1 is ineligible for inclusion to the NRHP, that only isolated occurrences of chipped stone are present within the APE, and that the forensic canine survey and subsequent expanded Phase I testing found no identifiable human remains. Therefore, we further request your agreement with our finding of ***No Historic Properties Affected*** for this proposed federal action. Your concurrence with this determination and finding shall confirm BIA Pacific Region's fulfillment of federal regulations pursuant to 36 CFR 800.4(d)(1), and in compliance with Section 106 of the NHPA.

If you require additional information, please contact Dan Hall, Regional Archaeologist, at (916) 978-6041 or Felix Kitto, Deputy Regional Director, Office of Indian Services at (916) 978-6147.

Sincerely,

Regional Director

Enclosures



## ATTACHMENT 26

Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke  
(May 29, 2024)



May 29, 2024

Amy Dutschke  
Regional Archaeologist  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Failure to Properly Conduct Section 106 Consultation & Objection to Finding of "No Historic Properties Affected" (Koi Nation Shiloh Resort and Casino Project)**

Dear Ms. Dutschke,

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write to convey our serious disappointment that BIA ignored and/or denied our numerous requests and concerns regarding BIA's review of the Koi Nation's proposed resort and casino project at 222 E. Shiloh Road (the Project) pursuant to the National Historic Preservation Act (NHPA) Section 106. Instead, BIA decided to again issue a finding of "No Historic Properties Affected" and move forward with seeking State Historic Preservation Officer (SHPO) concurrence, despite the fact that BIA never completed Section 106 consultation with the Tribe. We disagree with BIA's finding and believe reasonable identification efforts were not made.

To summarize, we have communicated many concerns with the studies conducted and Section 106 procedural flaws in our prior letters and during a virtual consultation with BIA on November 30, 2023. *See also*, FIGR THPO Letter to BIA Regional Director Dutschke re *Section 106 Consultation on Koi Nation Shiloh Resort and Casino Project* (Aug. 7, 2023). During the November 30 consultation, we reiterated our request that the Tribe be invited to be present during all field testing and surveys. We also asked for several documents, including copies of the cultural resource studies cited and relied upon by the Project archaeologists, as well as a map of the Project location showing the proximity and location of nearby recorded cultural sites. We also raised numerous questions, including, importantly, the current status and holding location of artifacts discovered on the property by the Project archaeologists and requested an agreement regarding the final disposition of those artifacts. BIA said it would respond in writing to our questions and concerns, as well as provide the requested documents. To date, we have not

received anything of this nature from BIA and we still have no idea who has custody of those cultural artifacts or where they are being housed.

Following our late 2023 consultation, a canine field survey was conducted at the Project Site on January 23 and 24, 2024. BIA did not provide the Tribe notice or invite the Tribe to participate, although BIA subsequently shared the written canine survey report. The Tribe responded via letter explaining its concerns with poor site conditions that existed during the canine survey and with BIA's proposal to conduct follow-up excavation testing without a formal testing plan or procedures to protect possible burials, requesting that BIA take corrective actions. See FIGR THPO Letter to BIA Regional Archaeologist Dan Hall re *Canine Field Survey and Subsequent Testing for Koi Nation Shiloh Resort and Casino Project* (Mar. 26, 2024). The BIA effectively dismissed our concerns and requests, instead notifying the Tribe the next day that it intended to move forward with excavations as originally planned.

On April 2, 2024, BIA, through Project archaeologist John Parker, conducted the excavation work. We appreciate the opportunity to be present during that field testing. We observed that archaeological industry standards did not appear to have been met and, additionally, that certain site conditions undermined conclusions by the Project archaeologist that prior ground disturbance from viticulture activities precluded the possibility that culturally significant sites remain intact. We memorialized these observations and concerns in a letter to BIA. See FIGR THPO Letter to BIA Regional Archaeologist Dan Hall re *Section 106 Related Excavation Work for Koi Nation Shiloh Resort and Casino Project* (May 1, 2024). The BIA never responded to our letter, instead quickly proceeding to issue a finding of no historic properties affected and requesting SHPO concurrence. See BIA Regional Director Amy Dutschke Letter to SHPO Julianne Polanco (signed May 6, 2024, and sent to FIGR on May 7, 2024). It is striking that the BIA's finding letter fails to mention or address efforts to identify traditional cultural properties or tribal cultural resources. Indeed, we are unaware of any report generated by the BIA or the Project archaeologists covering this aspect of the review process.

As we have stated throughout this process, the pervasive and fundamental problems with the cultural resource investigations—including but not limited to the field surveys, canine study, and Phase I excavation work—undermine the notion that BIA engaged in reasonable and good-faith efforts to identify historic properties, including traditional cultural properties, as required by the NHPA. See 36 C.F.R. § 800.4(b). Moreover, the BIA's failure to provide us with requested documents or otherwise respond to our questions falls far short of the BIA's duty to engage in meaningful consultation.<sup>1</sup> It is not simply a matter of box checking legal requirements—there is a very real risk that important tribal cultural sites including, potentially, ancestor burial sites, have been overlooked or improperly investigated. Accordingly, we must disagree with BIA's

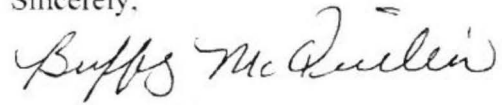
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<sup>1</sup> See 54 U.S.C. § 302706 (requiring consultation with Indian tribes that attach religious and cultural significance to historic properties); 36 C.F.R. § 800.2(c)(2)(ii) (reiterating this consultation requirement pursuant to the NHPA and expressly recognizing that the "Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions."); see also Department of the Interior Departmental Manual, Chapter 4: Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations, 512 DM 4, § 4.4 (effective Nov. 9, 2015) (Setting forth the Department's policy to "consult with tribes on a government-to-government basis whenever DOI plans or actions have tribal implications" and requiring all bureaus to "comply with and participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process").

finding. We are disappointed that our attempts to meaningfully consult with the BIA on this project have not been reciprocated and accordingly, we will seek to consult directly with the SHPO.

Please contact me if you would like to discuss further.

Sincerely,

A handwritten signature in cursive script that reads "Buffy McQuillen".

Buffy McQuillen

FIGR Tribal Heritage Preservation Officer

CC: Julianne Polanco, State Historic Preservation Officer  
Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Dan Hall, Regional Archaeologist, Bureau of Indian Affairs

## ATTACHMENT 27

Letter from SHPO Julianne Polanco to BIA Pacific Regional Director Amy Dutschke (July 10, 2024)





**DEPARTMENT OF PARKS AND RECREATION  
OFFICE OF HISTORIC PRESERVATION**

Armando Quintero, Director

Julianne Polanco, State Historic Preservation Officer

1725 23rd Street, Suite 100, Sacramento, CA 95816-7100

Telephone: (916) 445-7000 FAX: (916) 445-7053

calshpo.ohp@parks.ca.gov [www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

July 10, 2024

VIA EMAIL

In reply refer to: BIA\_2023\_0808\_001

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

RE: Section 106 Consultation, Koi Nation Shiloh Resort and Casino Project

Dear Ms. Dutschke,

The State Historic Preservation Officer (SHPO) received your consultation letter dated May 6, 2024, pursuant to Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 300101), as amended, and its implementing regulation, 36 CFR Part 800.

The Bureau of Indian Affairs (BIA) consults on the above referenced undertaking that involves a fee-to-trust transfer of approximately 68.6 acres of land in Windsor, Sonoma County. The Koi Nation of Northern California proposes to have the property conveyed into federal trust for the purpose of gaming. Project elements include the development of a resort that includes a casino, hotel, event center, meeting space, spa, and associated parking and infrastructure.

BIA has defined the Area of Potential Effects (APE) as the entire 68.6-acre property. Efforts to identify historic properties within the APE included background research and records search at the Northwest Information Center, pedestrian archaeological survey and expanded Phase I archaeological testing, geo-technical trenching, and a forensic canine survey. Present within the APE is a variety of pre-contact isolated artifacts (biface tip and tool fragments, broken bowl mortar, and chert and obsidian debitage) as well as the remains of a possible historic homestead "Historic Site 1" (historic ceramics, glass, brick, and metal fragments). BIA seek SHPO concurrence that this resource is not eligible for inclusion in the National Register of Historic Places (NRHP). Forensics canine survey was conducted at the request of Federated Indians of Graton Rancheria (FIGR); BIA reports that no identifiable human remains are present within the APE.



In addition to seeking SHPO concurrence that Historic Site 1 is not eligible for inclusion in the NRHP, BIA seek SHPO comments on its finding that no historic properties will be affected by the undertaking.

The following documents were provided in support of findings and determinations:

- *Historic Property Survey Report of one parcel to be transferred to trust status: Parcel 004-021-08* (Parker, March 2022)
- *Archaeological Monitoring of Soil Test Trenches on Parcel 004-021-008* (Parker, April 2022)
- *Obsidian Hydration Results from Parcel 004-021-08* (Parker, September 2022)
- *Cultural Resources Study of the Property at 222. E. Shiloh Road, Windsor, Sonoma County, California* (Origer, May 2022)
- *Canine Field Survey Shiloh Resort and Casino* (Institute for Canine Forensics, January 2024)
- *Archaeological Testing of Forensic Dog Locations on Parcel 004-021-08* (Parker, April 2024)

Consultation occurred with FIGR, Kashia Band of Pomo Indians of the Stewarts Point Rancheria (Kashia), and Dry Creek Rancheria Band of Pomo Indians (Dry Creek). Historic property identification reports were shared, and separate consultation meetings were held in November 2023 with Dry Creek and FIGR. The SHPO was either copied on or provided copies of four consultation letters from FIGR to BIA (dated: 9/7/2023, 3/26/2024, 5/1/2024, 5/29/2024).

The letters from FIGR convey that consultation with them was initiated by letter dated August 24, 2023, following more than a year of project planning and efforts to identify historic properties which were conducted from March to May 2022. Subsequent letters express serious disappointment in the nature of the consultation that was conducted pointing out that concerns regarding effects to places of religious and cultural significance were summarily dismissed, requests to review documents ignored, and requests to participate in field surveys and other identification efforts were not taken seriously. FIGR raised concerns regarding insufficiencies in historic property identification efforts including a lack of consultation in planning for them as well as them being performed in wet weather conditions that likely led to inconclusive results, especially in the case of canine forensics survey; BIA did not respond to these concerns. FIGR dispute BIA's finding of no historic properties affected, believe that reasonable and good faith efforts to identify historic properties were not taken, find pervasive and fundamental problems with efforts that were taken, and overall claim that BIA consultation was not conducted in a meaningful manner.

Following review of the supporting documentation and correspondence pertinent to the consultation, I offer the following comments:

- Pursuant to 36 CFR § 800.2(c)(2)(ii)(A), I advise the BIA to conduct consultation in a manner that provides Indian Tribes a reasonable opportunity to identify concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.
- Pursuant to 36 CFR § 800.4(d)(1), I **object** to a finding of no historic properties affected. I find the efforts to identify historic properties, including those of religious and cultural significance to Tribes to be insufficient, inadequate, and not reasonable.
  - As reported in Parker March and April 2022 initial efforts to identify historic properties within the APE were designed in a manner that considered the undertaking to have no potential to affect historic properties as it consisted merely of a fee-to-trust transfer of approximately 68.6 acres of land. Efforts failed to consider the development of a resort that includes a casino, hotel, event center, meeting space, spa, and associated parking and infrastructure, were not designed in consultation with Tribes nor did it include their participation.
  - Subsequent efforts to respond to concerns raised regarding the potential for uncovering human remains or discovering buried archaeological features also seemingly were not designed in a manner that considered the varying depths and degrees of disturbance across the APE and were carried out in a manner that led to inconclusive results.
- I request that BIA reinitiate Section 106 consultation with Indian Tribes and the SHPO by redefining the APE in a manner that considers the geographic area (including vertical extents) within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties and consult on the efforts it proposes to identify historic properties within the APE.

If you have any questions or concerns, please contact Senior State Archaeologist  
Brendon Greenaway at [Brendon.Greenaway@parks.ca.gov](mailto:Brendon.Greenaway@parks.ca.gov).

Sincerely,



Julianne Polanco  
State Historic Preservation Officer

## ATTACHMENT 28

Letter from FIGR THPO Buffy McQuillen to BIA Pacific Regional Director Amy Dutschke (July 22, 2024)



Via Electronic Mail

July 22, 2024

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

**Re: Reinitiation of National Historic Preservation Act Section 106 Consultation for Koi Nation Shiloh Resort and Casino Project**

Dear Ms. Dutschke:

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I write to inform you that we received the July 10, 2024 letter from State Historic Preservation Officer (SHPO) Julianne Polanco responding to your May 6, 2024 letter on behalf of the Bureau of Indian Affairs (BIA) pursuant to Section 106 of the National Historic Preservation Act (NHPA) regarding the Koi Nation Shiloh Resort and Casino project (Project). On behalf of the Tribe, I want to express FIGR's agreement with the SHPO's request that BIA reinitiate the NHPA Section 106 consultation with the Tribe for the Project. Our ongoing concerns with the BIA's attempts to comply with the NHPA Section 106 process to date have been detailed in our virtual consultation on November 30, 2023, and in prior correspondence to BIA.<sup>1</sup>

As noted in the July 10, 2024 letter, the SHPO found that BIA's efforts to identify historic properties were *insufficient, inadequate, and not reasonable* and *objected* pursuant to 36 CFR § 800.4(d)(1) to BIA's finding of no effect upon historic properties. The SHPO requested the BIA reinitiate the NHPA Section 106 consultation with Tribes and the SHPO by redefining the APE to consider the full area that may include effects on the character or use of historic

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<sup>1</sup> The Tribe's correspondence with BIA raising concerns with the NHPA Section 106 process for the Project are dated August 10 and December 19, 2022; July 7, August 7, and September 7, 2023; and March 26, May 1, and May 29, 2024.



properties. The SHPO strongly stated that the BIA failed to conduct consultation with Tribes pursuant to 36 CFR § 800.2(c)(2)(ii)(A) because the BIA failed to provide Tribes a reasonable opportunity to identify our concerns about historic properties and provide advice on the identification and evaluation of historic properties, including those historic properties of traditional religious and cultural importance to the Tribe. Further, the BIA attempted to seek concurrence from the SHPO without allowing the Tribe to articulate our views or fully participate in the NHPA Section 106 process.

The Tribe welcomes a reinitiation of the NHPA Section 106 consultation to redefine the APE (including vertical extents) and identify historic properties, particularly tribal cultural properties and resources, which may be affected by the Project. The Tribe has commented extensively on its concerns regarding the APE and potential impacts to historic properties, particularly tribal cultural resources. A key concern to the Tribe is the limited horizontal and vertical extent of the APE. The APE has been unduly constrained to the property boundaries for the Project, but the Project will require gas, electrical, and other infrastructure improvements that will be conducted off-site, in addition to several anticipated road improvements such as the widening of Shiloh Road. Additionally, the APE has been vertically limited to a subsurface depth of four feet. The Project, however, is expected to require extensive impacts below four feet. For example, the Project anticipates storage ponds for effluent that would hold over 12.1 million gallons and cover 4.1 acres, or storage tanks that would be 145 feet wide and 65 feet tall. The Project may also require numerous wells that extend to depths of 700 feet. All of this work would require extensive ground disturbance and excavation deeper than four feet. Further, Tribal staff during the excavation work conducted on April 2, 2024, observed that the soil disturbance from prior viticulture land use was not to a significant depth, contrary to the suggestion in the March 1, 2022 cultural report that was used to support limiting the APE to four feet in depth. It is critical that BIA consult with the Tribe and SHPO to establish appropriate boundaries for the APE.

The limited horizontal and vertical depth of the APE is exacerbated by the presence of nearby sacred sites. The Native American Heritage Commission has identified the presence of numerous sacred sites within or near the APE and the Tribe believes one or more of these are present within the APE. The BIA has failed, despite FIGR's repeated requests, to appropriately determine if these sacred sites are within the APE or analyze impacts, potential adverse effects, or mitigation. The Tribe remains seriously concerned, particularly after the canine alerts to the potential presence of human remains despite deplorable survey conditions, that the Project is a religiously and culturally significant site.

As FIGR stated in our May 29, 2024 letter to the SHPO, the Tribe disagrees with the BIA's finding that no historic properties would be affected by this federal undertaking. The Tribe has raised concerns with the BIA throughout this NHPA Section 106 process through repeated communications and comments that the Project site is religiously and culturally significant and

*will be* adversely affected by the Project. The Tribe remains ready to engage in meaningful and good faith consultation with the BIA and the SHPO on this Project.

Sincerely,

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

Buffy McQuillen

FIGR Tribal Heritage Preservation Officer

CC: Wzipan Garriott, Principal Deputy Assistant Secretary for Indian Affairs, U.S.  
Department of the Interior  
Julianne Polanco, State Historic Preservation Officer  
Hon. Sara C. Bronin, Chair, Advisory Council on Historic Preservation  
Amelia AM Marchand, Indian Tribe Member, Advisory Council on Historic Preservation



## ATTACHMENT 29

Letter from FIGR THPO Buffy McQuillen to BIA Regional Archaeologist Dan Hall (July 22, 2024)



Via Electronic Mail: harold.hall@bia.gov

July 22, 2024

Dan Hall  
Regional Archaeologist  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Request for Confidential Appendices H-7 and H-8 of the Draft Environmental Impact Statement for the Koi Nation Shiloh Resort and Casino Project**

Dear Mr. Hall:

On behalf of the Federated Indians of Graton Rancheria (the Tribe or FIGR), I am requesting all cultural resource information not previously provided to the Tribe that is contained in confidential Appendix H of the Draft Environmental Impact Statement (Draft EIS) for the Koi Nation Shiloh Resort and Casino Project (Project). More specifically, the Tribe requests a copy of all FIGR correspondence with the Bureau of Indian Affairs (BIA) included in the Draft EIS confidential Appendix H-7 and the Off-Site Traffic Mitigation Improvements Cultural Survey (Cultural Survey) included in confidential Appendix H-8.

As you know, the Tribe has been in continual contact with the BIA regarding this Project and potential impacts to the Tribe's cultural resources. On September 7, 2023, in my letter to BIA Sacramento Regional Director Amy Dutschke, the Tribe requested a copy of *any* reports or technical memoranda prepared by BIA's archaeological contractors for the Project. In reviewing the Draft EIS, the Tribe was disappointed to learn that, in addition to conducting a canine field study in January 2024 without notifying the Tribe, the BIA apparently completed a cultural resources field survey without notice to the Tribe.<sup>1</sup> The BIA has not provided the Tribe a copy of the Cultural Survey. The Tribe cannot possibly be expected to identify its concerns and advise on the identification and evaluation of historic properties pursuant to Section 106 of the National

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<sup>1</sup> The Draft EIS on page 3-166 references Appendix H-8 and states that a cultural resources study was conducted for the Off-site Traffic Mitigation Effect Area.

Historic Preservation Act when it lacks basic information on the Project such as the Cultural Survey. *The BIA failed to provide the Tribe with all the information necessary to identify our concerns about historic properties and provide advice on the identification and evaluation of historic properties, including those historic properties of traditional religious and cultural importance to the Tribe, as required by Section 106 of the National Historic Preservation Act.* This information is necessary to address the full scope of the Project's significant impacts to cultural resources.

Because the Tribe's prior requests for cultural resource information for the Project have not been adequately addressed, the Tribe also requests a copy of all the correspondence between FIGR and the BIA that is included in Appendix H-7. This is necessary to allow the Tribe to verify the Draft EIS accurately reflects the record of the Tribe's engagement with the BIA on our critical cultural resources concerns.

Thank you for considering the Tribe's request for this information so that it can be better informed regarding the potential impacts of this Project to the Tribe's cultural resources.

Sincerely,



Buffy McQuillen

FIGR Tribal Heritage Preservation Officer

CC: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs  
Amy Dutschke, Regional Director, Pacific Regional Office, Bureau of Indian Affairs  
Julianne Polanco, State Historic Preservation Officer  
Hon. Sara C. Bronin, Chair, Advisory Council on Historic Preservation  
Amelia AM Marchand, Indian Tribe Member, Advisory Council on Historic Preservation

## ATTACHMENT 30

Email from BIA Regional Archaeologist Dan Hall to FIGR THPO Buffy McQuillen (Aug. 7, 2024)

**From:** Hall, Harold <[Harold.Hall@bia.gov](mailto:Harold.Hall@bia.gov)>

**Sent:** Wednesday, August 7, 2024 10:10 AM

**To:** [THPO@gratonrancheria.com](mailto:THPO@gratonrancheria.com)

**Cc:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>; Dutschke, Amy <[Amy.Dutschke@bia.gov](mailto:Amy.Dutschke@bia.gov)>; [julianne.polanco@parks.ca.gov](mailto:julianne.polanco@parks.ca.gov); [chair@achp.gov](mailto:chair@achp.gov)

**Subject:** Re: [EXTERNAL] Request for Confidential Appendices for the Koi Nation Shiloh Resort Casino Project

Hello Buffy,

Please find attached the requested confidential appendices H-7 and H-8 regarding the Koi Nation land conveyance.

Sincerely,  
Dan Hall

Dan Hall  
Regional Archeologist  
Bureau of Indian Affairs-Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825  
916.978.6041  
[harold.hall@bia.gov](mailto:harold.hall@bia.gov)

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**From:** [THPO@gratonrancheria.com](mailto:THPO@gratonrancheria.com) <[THPO@gratonrancheria.com](mailto:THPO@gratonrancheria.com)>

**Sent:** Monday, July 22, 2024 4:46 PM

**To:** Hall, Harold <[Harold.Hall@bia.gov](mailto:Harold.Hall@bia.gov)>

**Cc:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>; Dutschke, Amy <[Amy.Dutschke@bia.gov](mailto:Amy.Dutschke@bia.gov)>; [julianne.polanco@parks.ca.gov](mailto:julianne.polanco@parks.ca.gov) <[julianne.polanco@parks.ca.gov](mailto:julianne.polanco@parks.ca.gov)>; [chair@achp.gov](mailto:chair@achp.gov) <[chair@achp.gov](mailto:chair@achp.gov)>

**Subject:** [EXTERNAL] Request for Confidential Appendices for the Koi Nation Shiloh Resort Casino Project

**This email has been received from outside of DOI - Use caution before clicking on**

**links, opening attachments, or responding.**

Dear Mr. Hall,

Please see the attached letter regarding the request for confidential appendices H-7 and H-8.

Sincerely,

Buffy McQuillen

Tribal Heritage Preservation Officer (THPO)

Native American Graves Protection and Repatriation Act (NAGPRA)

Office: 707.566.2288; ext. 137

Cell: 707.318.0485

FAX: 707.566.2291



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**Federated Indians of Graton Rancheria: Proprietary and Confidential**

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# ATTACHMENT 31

FIGR Confidential Cultural Resources Report on the Koi Nation Resort and Casino Project  
(Aug. 19, 2024) (Provided under Separate Cover as Confidential Attachment)



**DRY CREEK RANCHERIA  
BAND OF POMO INDIANS**

August 26, 2024

Via Email: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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

Chad Broussard  
Bureau of Indian Affairs, Pacific Region  
2800 Cottage Way  
Sacramento, CA 95825

**Re: Dry Creek Rancheria Comment to Shiloh Resort and Casino Project  
Environmental Impact Statement**

Dear Director Dutschke,

The Dry Creek Rancheria Band of Pomo Indians, California (“Dry Creek”), is a federally recognized Indian tribe with aboriginal homelands and reservation located in what is now called Sonoma County, California. For the past two years, Dry Creek has expressed its opposition to the Koi Nation’s application to the United States Department of the Interior (“Interior”) to acquire sixty-eight (68) acres of land in trust for a casino and resort (the “Sonoma County Site” and “Project”). The Sonoma County Site is located in unincorporated Sonoma County (“County”), adjacent to the City of Windsor (“City”), which is approximately fifty (50) miles from the Koi Nation’s ancestral territory.

I am writing to again express our opposition to the trust acquisition for the Koi Nation (“Koi” or “Tribe”) in Dry Creek ancestral territory, which will have severe impacts on the community and specifically Dry Creek Rancheria and our tribal members. This letter also sets out our comments to the Environmental Impact Report (“EIS”) published in July 2024.

**I. Background Regarding the Dry Creek Rancheria’s Struggle to Develop an  
Economic Base to Provide for the Tribal Government and Citizens.**

The Dry Creek Rancheria is comprised of Dry Creek Mihilakawna and Makahmo Pomo people, Southern Pomo from the region that includes the Sonoma County Site. Dry Creek Rancheria is located a mere nineteen (19) miles from the Sonoma County Site. Dry Creek currently has 1337 tribal members and 50% of those tribal members live in Sonoma County. Official recognition of the Tribe as a sovereign nation occurred in 1915, when the federal government created the Dry Creek Rancheria and named the Tribe the Dry Creek Rancheria Band of Pomo Indians. The Rancheria occupies 75 steep acres between Healdsburg and Geyserville off Highway 128 -- a sliver of the Tribe's historic land.

Like Koi's original rancheria, the Dry Creek Rancheria is rocky, lacked infrastructure and is very challenging to build on. However, Dry Creek members held onto the land and have struggled to develop infrastructure to support tribal government functions and its primary economic development enterprise, the River Rock Casino. Despite our best efforts, River Rock Casino has struggled to create a viable economic base to provide for the needs of Dry Creek Rancheria tribal citizens. River Rock Casino generates only enough revenue to support the Tribal government and provide a very conservative general welfare payment to our Tribal citizens.

Unfortunately, the proposed Koi Nation Casino project will severely impact our ability to continue to provide for our Tribal Citizens. This letter highlights the need for a meaningful analysis of the impact of Koi's proposed acquisition on the Dry Creek Rancheria. In addition, the EIS has little meaningful analysis in all categories of review, because it appears to be a hastily prepared rewrite of the EA. Data is provided, however there is little to no actual analysis of the impact of the proposed acquisition on the local community and provides little to no actual mitigation.

The EIS was obviously rushed to try to get final approval through the waning days of the Biden Administration in the Department of the Interior. NEPA requires more, and we urge the Department to stop rushing this project and defer approvals to the next Administration so that conflicts of interest can be avoided. This EIS is not ready for approval, but requires a significant revision with more detailed analysis as set forth in this letter. The draft EIS is essentially a data dump with no analysis and most of the essential categories of impact are labelled as "no mitigation required." The Department cannot certify this document as final because it falls far short of the requirements of NEPA.

## **II. The EIS Fails to Address the Impact of the Proposed Koi Casino on Dry Creek Rancheria and its Citizens.**

The EIS provides no analysis of the impact of the Project on the Dry Creek Rancheria tribal government and its citizens. Dry Creek's River Rock Casino struggled against tremendous legal obstacles that were presented by the Alexander Valley Association and Sonoma County which put the Tribe in a perilous financial position. The approximate total cost of County opposition and litigation equals roughly \$186 million in loss of revenue to the Tribe over the course of ten years between 2005 and 2015. The addition of Graton Casino and Resort in the local market resulted in a loss of fifty (50) percent of River Rock's gaming revenue from the original numbers to this day. The combined impact of these factors, along with the Great Recession

T7-1  
cont.

resulted in Dry Creek being stymied with nearly \$300 million in debt and as a result, the planned permanent resort and casino were never built.

It is important to note here that Graton Rancheria was restored to federal recognition in 2000 and although the initial restoration of lands to Graton Rancheria were to be located merely thirty-three (33) miles from the Dry Creek Rancheria, Dry Creek did not oppose the acquisition of Graton's restored lands. The primary reason for the lack of opposition by Dry Creek was that Graton was acquiring lands *within its aboriginal territory*. While the development and opening of Graton Casino and Resort resulted in a loss of 50% of River Rock Casino's revenue, it was something that Dry Creek could not challenge. However, the Koi Project will be located in between the Dry Creek Rancheria and Graton Rancheria, further cutting off an important local market and adding a 2750 machine casino less than twenty miles away from River Rock Casino, which operates fewer than 1,100 machines.

The EIS sets out a chart that projects the financial impact to Dry Creek on page 69 of Appendix B, where a graph shows the estimated percentage impact that each regional gaming facility is expected to experience on their local market gaming revenue. The graph indicates that River Rock Casino would suffer the highest level of impact at an estimated 24.24% in reduced gaming revenue. This impact cannot be sustained by River Rock Casino as it exists today.

Currently, River Rock Casino operates in what was supposed to be a temporary facility, on a slim margin to provide essential revenues to fund the tribal government and provide basic services to its Tribal Citizens. The approval of Koi's Sonoma County Site into trust for gaming would prevent Dry Creek from being able to finally fund a permanent casino and it would result in significant financial impact to the Tribe that cannot be mitigated. Moreover, as will be set forth below, tribal members have not yet achieved financial stability in a region that has an increasingly high cost of living.

The EIS mentions this scenario on page 3-156, however it states:

“Dry Creek Rancheria has not provided the BIA with the financial data necessary to verify the ability of the River Rock Casino to remain open or to expand. Therefore, in the absence of such data, the potential for competitive effects resulting from Alternative A in combination with the Graton Resort and Casino expansion to the River Rock Casino is considered a potentially significant cumulative impact.”

We note here that there is no reference to the proposed Scotts Valley Casino, although its EA was also prepared by the same consultant as the Koi EIS, Acorn Consulting. The fact that there is no mention of the proposed Scotts Valley gaming acquisition in the Koi EIS is noteworthy, despite the Consultant having full knowledge of the scope of that project and the fact that it projects an impact to River Rock at a rate of 12%. There is no analysis of the cumulative impact of both the Koi and Scotts Valley off-reservation acquisitions, both outside of those Tribes' aboriginal territories, on the local tribes. Why the reference to Graton's expansion, which may have little additional impact on Dry Creek, but no reference to Scotts Valley is a failure of the EIS.

T7-1  
cont.

The combined cumulative impact of all three projects is **87%**. In fact, the number could even be higher because the Scotts Valley project forecasts its impact to be on Dry Creek's revenue *after* construction of the River Rock permanent facility, which means that Scotts Valleys impact on the *current* facility would be greater than 12%. If an impact of at least 87% is not enough information to show the BIA that River Rock Casino might have to close, what other data is needed?

The EIS states that Dry Creek hasn't provided enough data to the BIA to fully consider the impact. However, there has not been any outreach from the BIA to obtain that sensitive, proprietary information. We note that the burden is on the agency to develop the data necessary for the analysis in the EIS, however Dry Creek has continued to be available and seeking consultation on this project, to no avail.

There is not sufficient time or resources available to conduct our own study of the dramatic impact of a tribe from another region of the state building a massive casino and resort less than twenty miles away from Dry Creek Rancheria, in addition to a second massive urban casino in Vallejo just fifty miles away. However, we did obtain a Gaming Impact Analysis which indicated at least a 25% reduction of revenues from baseline if the Koi Project is approved. Based on the one figure on page 69 of Appendix B, it can be stated that the negative impact will be significant and life altering for Dry Creek and its citizens, with no way to mitigate that impact. While the Department appears to be taking the position that it is not required to consider the impact of the Koi acquisition on Dry Creek, we believe that the National Environmental Policy Act, Pub. L. 91-190, 42 U.S.C. § 4321 *et seq.* and the current implementing regulations at 40 C.F.R. Part 1501 *do* require such an analysis:

Specifically, 40 C.F.R. Part 1501.3 (d)(2)(viii) requires that the agency "analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship with one another." In doing so, the agency must consider the "degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders." Clearly, a direct and sustained, unmitigable impact to Dry Creek's rights under the Indian Gaming Regulatory Act ("IGRA") falls in this category and requires such an analysis.

The Koi EIS lacks any analysis of the adverse effect on Dry Creek, Graton, Cloverdale, Kashia and Lytton, all of which will be impacted in every NEPA category, as set forth herein. In fact, there is a list of nearby tribal gaming facilities, and a list of the range of impact to each tribe's gaming operation, but there is *no analysis* of those impacts. How will the tribal communities be impacted by an out-of-area tribe moving into Sonoma County? In addition to financial impacts, there are many other impacts including impacts to already limited affordable housing in the area, to traffic congestion and fire dangers. The impacts to the way of life for all tribal citizens who live in Sonoma County are not identified or analyzed anywhere in the EIS, despite the fact that there are five (5) aboriginal tribes with significant numbers of tribal members residing in the area. The BIA is the trustee, and should be looking at those impacts.

T7-1  
cont.

There is no analysis of what this impact means to each of the tribes and their citizens or how those impact could be mitigated. Such an analysis would need to consider how such a reduction of already limited revenues would impact Dry Creek’s rights under the IGRA as well as NAGPRA, NEPA, NHPA and Self-Determination Act.

We have only begun to assess the impact of the Shiloh Project on our Tribal sovereign rights. The fact that the Department of Interior seems to be doing everything in its power to support reservation shopping is apparent from the recent changes to 25 C.F.R. 151 and a shift from supporting and protecting rural tribal gaming facilities within aboriginal territories to an emphasis on encouraging certain off-reservation urban casinos that will potentially result in the closure of more rural, but established tribal gaming facilities. The EIS does not analyze that potential impact, and it also does not include a discussion of the Scotts Valley proposed acquisition or the cumulative impacts of both off-reservation projects which are outside of their aboriginal territory, which can only be classified as “reservation shopping” projects. Appendix B provides some interesting reading and information about all of the nineteen (19) tribal government gaming operations that will be impacted by the Koi project, but there is no analysis of what that impact means for each of the nineteen (19) tribes, and there is no mitigation identified to remedy those harms.

Currently, River Rock Casino operates in what was supposed to be a temporary facility, on a slim margin to provide essential revenues to fund the tribal government and provide basic services to its Tribal Citizens. The ill-conceived and rushed Koi EIS has already had a negative impact on our ability to obtain financing for our Reduced-Size Casino and Resort Project. If we are unable to obtain the necessary funding for improving and upgrading the existing temporary facility, we will suffer a significant financial impact to the Tribe that cannot be mitigated. Moreover, Tribal citizens have not yet achieved financial stability in a region that has an increasingly high cost of living and an already saturated gaming market.

The Indian Gaming Regulatory Act was enacted to secure the rights of tribes like Dry Creek to provide for their citizens, which we are trying to do—but our efforts are threatened by efforts by Koi to take land into trust less than twenty (20) miles from our Rancheria. This new trend, which also includes waivers of the existing rules for restored lands acquisitions using waiver under 25 C.F.R. §1.2 will change tribal gaming in California forever. This is an impact that must be considered under the NEPA, as we show herein.

### **III. The Issue is Not “Competition” it is about Upholding the Intent of IGRA and Complying with NEPA.**

There is not sufficient time or resources available to conduct our own study of the dramatic impact of a Tribe from another region of the state building a massive casino and resort just nineteen (19) miles away from Dry Creek Rancheria. However, Appendix A and the EIS attempt to cast the impacts as one based on “competition”. The EIS states on page 3-48:

“As upheld by the United States District Court for the Eastern District of California, “competition...is not sufficient, in and of itself, to conclude [there would be] a detrimental

T7-1  
cont.



impact on” a tribe (*Citizens for a Better Way, et al. v. United States Department of the Interior*, E.D. Cal., 2015). However, should competition effects be so severe as to cause closure of a facility, it could result in environmental effects associated with abandoned buildings and vacant lots, referred to as “urban blight”. Additionally, in the case of tribal casinos, facility closure could result in socioeconomic effects to tribal communities from decreased availability and/or quality of governmental services.”<sup>1</sup>

The issue here is not “competition.” The EIS also presents the impacts to other Tribal Nations as a “Competitive Impacts Study”. There is no analysis of the true impact to the **twenty (20)** tribal governments and their constituent communities that will be impacted by the off-reservation casino planned outside of Koi’s aboriginal territory and in the heart of the area that those tribal communities depend upon for their housing, education, health and other services. The issue is not about competition—it is about a threat to tribal governmental stability and the services that those governments provide for their tribal communities, which of course includes, their broader local communities.

The Koi acquisition would result in “socioeconomic effects to tribal communities from decreased availability and/or quality of governmental services” and could cause impacts so severe that it could result in “facility closures for some tribes that could result in environmental effects associated with abandoned buildings and vacant lots, referred to as “urban blight”.” The EIS calls these topics out on page 3-75 of the EIS in one complicated and confusing paragraph that seems to be the only “analysis” given regarding the impact on other tribes but focused only on Dry Creek. Despite the fact that there is a financial impact identified, there is no further analysis of other impacts to the Tribe and its citizens and no mitigation measures are identified to remedy those impacts.

T7-1  
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#### **IV. The Department is Required to Consider the Impacts to the Rights of Tribal Nations That Have Been Reserved Through Statutes and Executive Orders.**

The Department appears to be taking the position that it is not required to consider the impact of the Koi acquisition on Dry Creek and other Tribes.<sup>2</sup> However, the National Environmental Policy Act<sup>3</sup> and the current implementing regulations at 40 C.F.R. Part 1501 *do* require such an analysis.

Specifically, 40 C.F.R. Part 1501.3 (d)(2)(viii) requires that the agency “analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship with one another.” In doing so, the agency must consider the “degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties,

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<sup>1</sup> We note that this exact language is included in the Scotts Valley EA. It is a cut-and-paste which shows that the impacts are similar and a more detailed cumulative analysis should be conducted.

<sup>2</sup> See, Letter from B. Newland to Congressman Bruce Westerman, Chairman, House Natural Resources Committee dated August 13, 2024

<sup>3</sup> Pub. L. 91-190, 42 U.S.C. §.4321 *et seq*

statutes, or Executive Orders.” Clearly, a direct and sustained, unmitigable impact to Dry Creek’s rights under the Indian Gaming Regulatory Act (“IGRA”) falls in this category and requires such an analysis. In addition, the Dry Creek Rancheria has established important rights under the Clean Water Act that allow it to be treated as a State for purposes of the Clean Water Act, and those rights are implicated by the Koi EIS. The clearly identified direct impact to twenty (20) other Tribal Nations requires a detailed analysis, not just a cursory list of percentages of lost gaming revenue.

The Koi EA lacks any analysis of the adverse effect on Dry Creek and all nineteen other tribal nations that will be impacted in disastrous ways. In fact, there is a list of nearby tribal gaming facilities, and a list of the range of financial impact to each tribe’s gaming operation, but there is *no analysis of those impacts on the rights of those Tribal Nations secured by IGRA*. There is no section devoted to an analysis of what this impact means to each of the tribes and certainly no analysis of how an assumed 11.6% reduction in revenues for River Rock Casino will impact Dry Creek’s 1337 tribal citizens, or how that impact could be mitigated. Such an analysis would need to consider how such a reduction of already limited revenues would impact Dry Creek’s rights under the IGRA as well as NAGPRA, NEPA, NHPA, Clean Water and several Executive Orders.

We have only begun to assess the impact of the Koi project on our Tribal sovereign rights. The fact that the Department of Interior seems to be doing everything in its power to support reservation shopping is apparent from the changes to 25 C.F.R. 151 and the rushed NEPA process that provided only 15 days of extension for comments. The EIS is not sufficient to provide a thorough public process, because it lacks any real analysis for the impacts that are identified. The Department must determine that there are significant environmental impacts that require a deeper level of analysis which requires an environmental impact statement.

We urge Secretary Deb Haaland to step in and slow down the rush to decision that is currently underway, and putting all tribes in California in harm’s way.

T7-1  
cont.

**V. Acorn Environmental, Koi’s Consultant and Preparer of the EIS has a Conflict of Interest and the EIS Must be Rewritten.**

Dry Creek hired Acorn Environmental (“Acorn”) to prepare a Supplemental Environmental Study (“SES”) for the River Rock Casino and Resort Project in March of 2023 and to prepare an Environmental Assessment for a non-gaming fee to trust application for its contiguous Bellacana Vineyard properties. However, the Tribe was also seeking to initiate the long-delated Reduced-Size Casino and Resort Project. After successfully renegotiating the Tribe’s Memorandum of Agreement (“MOA”) with Sonoma County earlier that year, Dry Creek pivoted to prepare a Supplemental Environmental Study to comply with the Amended MOA. At no time did representatives of Acorn inform Dry Creek that they had also been engaged to prepare the Koi NEPA documents for the Shiloh Project.

T7-2

Instead, Dry Creek worked with Acorn consultants in good faith to prepare the SES, which required the disclosure of confidential and proprietary information related to Dry Creek’s projects. Acorn failed to disclose that they were preparing the Koi EA last year and it only became known when Jennifer Wade was introduced at the Scoping Hearing for the Shiloh Project EA.

The fact that Acorn had knowledge of Dry Creek’s struggles to develop the Reduced-Size Casino and Resort Project, but failed to disclose that they were also preparing the EA for Koi, which would have a grave impact on Dry Creek’s project is a shocking conflict of interest. However, given the difficulty in moving to a new environmental consultant when the SES was well underway, Dry Creek had no choice but to continue working with Acorn. However, it became clear that working with Acorn was impossible because of the breach of trust that prevented full collaboration and we have terminated that relationship.

Interestingly, Acorn would have been the ideal consultant to prepare an impact analysis of the Koi project on Dry Creek, but it failed to do so in the EA or the EIS, despite the clear requirement to do so in the NEPA regulations, as stated above, which requires the agency to consider the “degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.” Acorn consultants had detailed knowledge of the impact that the Shiloh Project would have on Dry Creek and should have known that an analysis of that impact is required by 40 C.F.R. Part 1501.3 (d)(2)(viii).

A failure to include the impact of Koi’s proposed acquisition on not only Dry Creek, but the other surrounding Sonoma County tribes is not defensible, despite recent claims by the Assistant Secretary that such considerations are not required. While there may not be a requirement in 25 C.F.R. 151, there is a requirement in the NEPA regulations, which the Secretary of Interior and Assistant Secretary of Indian Affairs pushed for. It is illogical that other entities would be required to analyze impacts of projects on Tribal Nations, but the BIA would not have to conduct such an analysis.

**VI. The Indian Canon of Construction Requires that the NEPA Regulations be Interpreted in Favor of Dry Creek.**

The United States District Court for the District of Columbia in *Scotts Valley Band of Pomo Indians v. United States Department of Interior* recently held that any ambiguous historical evidence Scotts Valley presents in support of its application must be read in its favor, even to the detriment of other tribes that have a greater historic connection to the land in question. Our concern arises from the district court's extension of the Indian law canon of construction to the Department's administrative decision-making process. This extension is without legal support or judicial precedent. It is well-accepted in common law that the Indian law canon is a rule of judicial construction that is applied by the court when interpreting *statutes*, not administrative decisions.

If the Department must interpret a statute in the light most favorable to a tribe, then the Department must read the NEPA regulations and IGRA in the light most favorable to Dry Creek

T7-2  
cont.

T7-3

Rancheria. Our rights are inherent and our actions in furtherance of the IGRA must be protected. It is clear that the judge in the *Scotts Valley* case got it wrong and the ruling will be viewed negatively by courts in the future. However, the true Indian canon of construction—the one upheld by many courts including the United State Supreme Court, requires the Department to read the new NEPA regulations at 40 C.F.R. Part 1501.3 (d)(2)(viii), and determine that a the Koi EIS must include an analysis of the impacts of the propose application on Dry Creek Rancheria on the nineteen (19) tribal governments who will be impacted by that decision.

T7-3  
cont.

It is contrary to logic that Interior would require lead agencies to analyze potential impacts to Tribal Nations, unless the lead agency is the Bureau of Indian Affairs.

**VII. The BIA Failed to Consult with Dry Creek Pursuant to Section 106 and Failed to Require Dry Creek Tribal Cultural Monitoring During Trenching and Site Evaluation.**

The Scoping Report to the EA failed to provide Dry Creek Rancheria the opportunity to assign cultural monitors to monitor site work that included trenching. The Archaeological Monitoring report, prepared by John W. Parker, states that “Rob Morgan (Koi Tribal Monitor) was also monitoring on behalf of the Tribe.”<sup>4</sup> Koi had no legal right to monitor trenching work on Dry Creek aboriginal land for a federal project. Koi had no right to monitor Dry Creek cultural sites for a project that triggers NEPA and the NHPA. Although Dry Creek has raised concerns about this harm to Dry Creek’s tribal cultural resources, there was nothing done to rectify this blatant error. Although the EA was determined by the lead agency to be insufficient for purposes of NEPA analysis, no formal new study was conducted or prepared for the EIS, at least nothing that was shared directly with Dry Creek Rancheria. Instead, the same documents were just reused, with one important exception—cadaver dogs were brought in to test the proposed site and identified human remains.<sup>5</sup>

T7-4

Despite the possible discovery of Native American human remains within the APE, there has still not been adequate tribal consultation as required by the National Historic Preservation Act (“NHPA”) Section 106 with Dry Creek on this project. Over the Dry Creek’s objection, the BIA sent notification to the State Historic Preservation Officer that Section 106 consultation has been completed, and the EA and EIS were both published. In September 2022, after publication of the Scoping Report we sent a letter to the BIA requesting that the various field surveys and cultural reports be shared with Dry Creek. In December 2022, we again requested consultation, requested information, and stated our preferences for the treatment of our tribal cultural resources, which included on-site monitoring for the required additional studies. Despite our efforts, it took almost 9 months for BIA to share those reports (referenced in confidential Appendix H) and it was then

<sup>4</sup> Archaeological Monitoring of Soil Test Trenches on Parcel 004-021-08, Prepared by John W. Parker, April 28, 2022, at page 2.

<sup>5</sup> See, page 3-62 to 3-63.

that we discovered that cultural resources were subjected to destructive obsidian hydration testing without our knowledge, presence, or consent.

The lack of transparency and information sharing regarding the Koi Project has been abysmal and as a result, our tribal cultural resources have been negatively affected already. At the time of this letter, the BIA has met once with Dry Creek and provided no additional information. The “consultation” consisted of one meeting with Regional Director, Amy Dutschke and NEPA Specialist, Chad Broussard. No additional information has been provided, no additional study has been provided (except for the information in the EIS) and no consultation was initiated by the Department, despite a legal requirement to do so.

T7-4  
cont.

In fact, the State Historic Preservation Officer (“SHPO”) recently sent a letter to Director Dutschke which states that the BIA has failed to provide the necessary documentation to the SHPO as well as Dry Creek.<sup>6</sup> It appears that the BIA is rushing this project through so that it can be hastily approved before a new federal administration in Washington DC is in place. There is no rational reason why this project should not be the focus of a rigorous compliance process, however, the BIA has allowed conflicts of interest and back room lobbying by Koi and its developers, the Chickasaw Nation to control this project rather than the applicable laws.

**VIII. Koi Nation Cannot Demonstrate a Significant Historical Connection to the Sonoma County Site To Meet the Restored Lands Requirements Because its Aboriginal Lands are Located in Lake County.**

On September 15, 2021, Koi applied to Interior to have the Sonoma County Site taken into trust for gaming purposes. The proposed gaming facility would reportedly include 2,500 class III gaming machines, a 200-room hotel, six restaurants and food service areas, a meeting center, and a spa.

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In pursuit of its efforts, Koi intends to utilize the “restored lands” exception to the Indian Gaming Regulatory Act’s (“IGRA”) general prohibition on gaming on Indian lands, and on Sept 13, 2021, submitted a request for restored land decision from the Office of Indian Gaming (“Restored Land Request”). In 2019, Koi received a favorable judgment from the United States District Court for the District of Columbia which found that the Tribe satisfied one requirement of the “restored lands” exception—the federal government had “restored” the Tribe’s federal recognition in 2000. *Koi Nation of Northern California v. U.S. Dep’t of Interior*, 361 F. Supp. 3d 14, 46 (D.D.C. 2019). There is still not a “restored lands” opinion for the Sonoma County Site, which is contrary to the way such projects have been processed by the BIA in the past. We question why the NEPA process is underway when the restored lands opinion has not been issued.

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<sup>6</sup> See, letter from Julianne Polanco, State Historic Preservation Officer, dated July 10, 2024.

The Court’s determination did not mean that Koi can now conduct gaming on *any* site it chooses—the Tribe must still demonstrate that it has a “significant historical connection” to any proposed gaming site. 25 C.F.R. § 292.12(b). However, Koi cannot establish such a connection to the Sonoma County Site as required by IGRA’s implementing regulations.

A “significant historical connection” means “the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by historical documentation the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land.” *Id.* at § 292.2. The Sonoma County Site is not within the boundaries of the Koi Nation’s last reservation, nor can the Tribe demonstrate that its villages, burial grounds, occupancy, or subsistence use traditionally occurred in the vicinity of the Sonoma County Site. In addition, unratified treaty documents in California are full of errors and omissions that leave them fraught with discrepancy and subject to conflicting interpretations, whereas, traditional tribal territory areas are, today, well established. While Dry Creek shares family ties and thus ancestral ties with certain other Sonoma tribes, and thus those tribes have historical ties to the Sonoma County Site, it lies squarely within Dry Creek’s aboriginal territory. There is no more knowledgeable expert on the occupancy and use of the Sonoma County Site than Dry Creek Rancheria because it has a significant historical connection to the Site.

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i. **Koi’s Tribal Territory is in Clear Lake, California and the EA Failed to Consider the Impact of the Koi Project on Sonoma County Tribes and Dry Creek Rancheria.**

As Koi itself recognizes, its aboriginal territory is near Clear Lake, upwards of fifty (50) miles northeast of the Sonoma County Site.<sup>7</sup> If travelling by car, the distance is not an easy one to travel and it can take at least one hour and twenty minutes to travel from Clear Lake, California, the site of Koi’s original rancheria, to the Sonoma County Site. In 1916, the federal government established the Lower Lake Rancheria for the Tribe (then known as “Lower Lake Rancheria”) in Lake County, California within the Tribe’s aboriginal territory. Although the land was largely abandoned by Koi people and it was sold pursuant to Congressional authorization in 1956, the Lower Lake Rancheria is the Tribe’s “last reservation” for purposes of the “restored lands” exception. It is Dry Creek’s understanding that a municipal airport was planned for the site of the

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<sup>7</sup> See, *Koi Nation v. City of Clearlake*, Lake County Superior Court, Case No. CV 423786. California Attorney General Rob Bonta announced on October 20, 2023 that the Lake County Superior Court has granted the Department of Justice’s application to file an amicus brief in support of the Koi Nation of Northern California’s lawsuit against the City of Clearlake. The Koi Nation contends that the site of a proposed 75-room hotel — known as the Airport Hotel and 18th Avenue Extension in Clear Lake, California — contains Koi tribal cultural resources and that the city did not adequately conduct consultation with the Koi Nation or consider the project’s impacts on Koi tribal cultural resources, in violation of the California Environmental Quality Act’s (CEQA) tribal consultation requirements added by Assembly Bill 52 (AB 52). The Department of Justice’s amicus brief supports the Koi Nation’s position, providing information on the legislative history and intent of AB 52’s requirements.



Lower Lake Rancheria when it was sold in 1956, but the airport was never built. Thus, there is no indication that existing development at the former rancheria site is an obstacle to Koi's use of the former rancheria as a potential site for their proposed casino.

As stated above, because the Sonoma County Site is not within or near the boundaries of the former rancheria in Lake County, Koi cannot satisfy the "significant historical connection" requirement of the "restored lands" exception unless it has historical documentation of Koi's occupancy or use of the lands as a Tribe. But there is no historical documentation that would adequately support such a claim. As mentioned above, the Sonoma County Site is within the boundaries of Dry Creek's aboriginal territory and Koi has not historically occupied or used it. Dry Creek has occupied the Sonoma County Site lands and subsisted on the resources found there since time immemorial. The tribal cultural material found during the archaeological investigation is evidence of Dry Creek's use and occupation of the Site.

Tribal cultural resources were found at the Sonoma County Site. As stated above, the EIS was published before Section 106 Consultation was deemed completed by the SHPO. If Native American human remains are discovered on the Sonoma County Site today, the Dry Creek Rancheria would be the Most Likely Descendant of such ancestors. No other tribe has a closer, more documented affiliation with the specific parcel, and the tribal cultural resources that were found on the Sonoma County Site are culturally affiliated with Dry Creek. The other Sonoma County tribes recognize this important point, however Koi has failed to do so.

Koi asserts that its modern tie to Sonoma County is due to individual tribal members moving to the town of Sebastopol. Sebastopol is nearly twenty miles from Windsor, and it is the aboriginal territory of Graton Rancheria. Koi cannot claim a "significant historical connection" with Sebastopol as defined in 25 C.F.R. § 292.2, only a *modern* connection. Only Graton Rancheria can claim a significant historical connection to Sebastopol, and that is why its initial reservation was located nearby (within five (5) miles) when it was restored to federal recognition in December of 2000. Moreover, a historic connection to Sebastopol due to tribal members living there, does not create any kind of connection to the Windsor site. Koi's connection to the Windsor site is only a few years—since it was purchased by Koi's developer.

If Koi can use a voluntary move by tribal members in the 1950's to Sebastopol to establish the legal basis for restored lands, then the rules for taking land into trust have been expanded in a way that makes the exception the rule. "Restoration" would not require original land being "lost" and then "restored," but instead, it would allow tribes to relocate to better locations despite the lack of historical cultural connection, and despite the obvious impact to aboriginal tribes who already suffer from a lack of sufficient resources.

The EIS fails to consider these larger policy issues and the tremendous cost and significant impacts to local tribes and specifically Dry Creek Rancheria. The EIS glosses over the immediate impact of the Project on nearby tribes, which unlike Koi, are actually aboriginal tribes. The failure to adequately study the larger potential impacts of taking land into trust for gaming outside of a

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Tribe's area has already resulted in negative impacts to Dry Creek, as well as to the other aboriginal tribes.

Merely having to focus finite and limited resources to review and analyze the EA without first having a determination that the lands qualify as restored lands under the IGRA is a significant impact to limited tribal resources. The only way to reduce this unnecessary impact on Dry Creek and other local tribes is for the BIA to withdraw the EIS from consideration until there is a decision on Koi's request for a restored lands opinion.

**ii. Koi was Administratively Restored, Which Requires a Different Analysis than a Tribe Restored or Recognized by Congress.**

In a recent letter from Assistant Secretary Bryan Newland to Congressman Bruce Westerman, the Department appears to take the position that a restored tribe may be granted restored lands through a broad "framework of restitution to remedy decades of improper treatment of terminated tribes and as compensation for not only what a Tribe may have lost by the act of termination but also for lost opportunities in the interim."<sup>8</sup> However, the Newland Letter does not cite to any decision as standing for the proposition that Koi has a right to locate its new lands to the detriment of nineteen (19) other tribes.

There seems to be a focus by the Assistant Secretary on providing compensation to restored tribes for what they "lost by federal termination" and "opportunities the Tribes lost in the interim while terminated" and there is a focus on the test for restoring lands to tribes that are restored by Congress, but Koi was not restored by Congress.<sup>9</sup> Moreover, Secretary Newland asserts that he specifically rejected the inclusion of language in the update regulations at 25 C.F.R. Sec. 292.11 because "it did not have a basis in IGRA." However, the looser terminology *also* does not have a basis in IGRA. The IGRA does however have clear language concerning balancing state and federal interests, and we assert that aboriginal territory is an important concept that is well-developed in State cultural resource protection policies and laws.

Assistant Secretary Newland seems to be creating new law based on the Department's current political stance. The recently updated fee-to-trust regulations, 25 C.F.R 151 have completely eliminated the need to analyze the impact of taking lands into trust for a restored tribe on the local community, including other tribes. He states, "nothing in IGRA or its implementing regulations requires the Department to take into consideration the operation of another Indian Tribe's existing casino when processing a Tribe's restored lands application."<sup>10</sup> However, the IGRA itself, which is the law that requires balancing of local, state and tribal interests, doesn't

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<sup>8</sup> Letter dated August 13, 2024 from Assistant Secretary Bryan Newland to Congressman Bruce Westerman, Chairman, Committee on Natural Resources.

<sup>9</sup> *Id.* at page 3.

<sup>10</sup> *Id.*

contemplate the expansion of tribal gaming into areas outside of what was commonly understood as “Indian lands”.

Assistant Secretary Newland is conflating the intent of Congress when it restores a tribe through legislation that provides for restored lands, with the requirements governing agency discretion. His administration is seeking to expand the restored land process to Koi in a manner that is not consistent with IGRA’s intent, and which mischaracterizes what IGRA “doesn’t say.” ASIA Newland admits in his letter, that many Indian Country commenters sought to include aboriginal territory in the regulations, but he rejected those comments. Clearly, this area of the law is controversial, and therefore subject to judicial review.

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iii. **Koi’s Tribal Territory is in Clear Lake, California and the EA Failed to Consider Koi Building Its Project in Clear Lake.**

NEPA requires the BIA to consider reasonable alternatives that are “technically and economically feasible and meet the purpose and need for the proposed action.”<sup>11</sup> While the EIS acknowledges that the Koi Nation’s aboriginal territory is in Lake County, it does not consider an alternative project site that is actually within Lake County.<sup>12</sup> The BIA provides a cursory explanation for why it eliminated alternative project sites in the BIA’s September 2022 Scoping Report, which states that Koi Nation has submitted “substantial evidence to the BIA regarding its lengthy and thorough evaluation of alternative sites”<sup>13</sup> but that it is “highly speculative” that alternative locations could support an economic enterprise that would fund the tribal government, or that the Koi Nation could even purchase property in those unspecified alternate locations.<sup>14</sup>

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The Scoping Report does not include any of the data submitted by Koi nor does it specify whether sites within Koi Nation’s aboriginal territory were evaluated. It references a more detailed explanation in a separate “Alternatives Evaluation Report,” but no such report has been disclosed to the public.<sup>15</sup> In fact, more space in the Scoping Report is devoted to Section 2.5- Alternatives Considered But Eliminated From Further Consideration, than any other topic in the Scoping Report, but none of the actual basis for the conclusions have been made publicly available, despite references to data being considered.

In Lake County there are currently four small tribal casinos. It is not “highly speculative” that a project in Lake County could fund a tribal government. A review of the reports on California Gambling Control Commission website reveals that out of 110 federally recognized Indian tribes in California, seventy-two (72) tribes are eligible for the Revenue Sharing Trust

<sup>11</sup> 40 C.F.R. § 1508.1(z); See also, EA at 2025.

<sup>12</sup> See EA at 1-2.

<sup>13</sup> Scoping Report, at page 13.

<sup>14</sup> *Id.*

<sup>15</sup> Scoping Report at 8, 12.

Fund (“RSTF”).<sup>16</sup> Out of those 72 tribes, twenty-six (26) operate a casino with less than 350 gaming devices. Those tribes operate a small gaming facility (some also have a hotel) and also receive \$1.1 million from the RSTF, and they are also eligible to receive payments from the Tribal Nations Grant Fund.<sup>17</sup> Given the small size of the Koi citizenship (90 members), it is not “highly speculative” that a project in Lake County could fund a tribal government. At this point in the gaming industry however, tribes must consider all the factors before making a decision to initiate a gaming project. Dry Creek can speak directly to the difficulties in establishing a gaming project in Sonoma County.

The Scoping Report and the EIA both appear to assume that if a restored tribe was originally located in an area with a limited gaming market, that the restored tribe may just choose a new reservation in a “better” gaming market and move there. This assumption is flawed, because the regulations specifically require a “significant historical connection.” 25 C.F.R. § 292.12(b).

The Department has already determined that “relocation of some of [a tribe’s] members to various locales throughout the Bay Area does not equate to the [tribe] itself establishing subsistence use or occupancy in the region apart from its Rancheria”<sup>18</sup> and that “evidence of the [tribe’s] citizens’ movements as late as the 1960s is more of a *modern* era activity, as opposed to *historic*, as those two terms are used in the Part 292 regulations.”<sup>19</sup> Further, the Department has held, in the context of denying a different Lake County tribe’s restored lands request, that it “cannot establish its subsistence use or occupancy based on the fact that its ancestors traveled to various locations to trade and interact with other peoples and then returned to the Clear Lake Region;” rather, the Department found that “[s]ubsistence use and occupancy requires something more than a transient presence in an area.”<sup>20</sup> Accordingly, the BIA should have considered alternative project sites that are actually within Koi Nation’s aboriginal territory, as the BIA has done for similar projects.<sup>21</sup>

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<sup>16</sup> The Revenue Sharing Trust Fund was established in the “1999 Compacts” and provides each tribe operating fewer than 350 gaming devices with a payment of up to \$1.1 million per year. *See*, [http://www.cgcc.ca.gov/documents/Tribal/2023/List\\_of\\_RSTF\\_Eligible\\_Tribes\\_10-6-23.pdf](http://www.cgcc.ca.gov/documents/Tribal/2023/List_of_RSTF_Eligible_Tribes_10-6-23.pdf)

<sup>17</sup> The Tribal Nations Grant fund was first established in the Graton Rancheria Tribal-State Gaming Compact, dated March 27, 2012, a copy of which may be found on [www.cgcc.ca.gov](http://www.cgcc.ca.gov).

<sup>18</sup> Decision letter from Assistant Secretary – Indian Affairs Larry Echo Hawk to the Honorable Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians at 19 (Sept. 1, 2011)(“Guidiville Letter”).

<sup>19</sup> Decision Letter from Acting Assistant Secretary – Indian Affairs Donald E. Laverdure to the Honorable Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians at 18 (May 25, 2012) (discussing the relocation of individual Band members during the 1920s and 1960s) (emphasis in original).

<sup>20</sup> Guidiville Letter at 14.

<sup>21</sup> *See, e.g.*, 2016 Wilton Rancheria FEIS, Section 2 – Alternatives (Dec. 2016) (considering, among the alternatives, the tribe’s historic rancheria site which was no longer held in trust); Dep’t of Interior, Record of Decision for Trust Acquisition of the 40-acre Yuba County Site in Yuba County, California, for the Enterprise Rancheria of Maidu Indians of California (Nov. 2023) (incorporating the Final EIS and considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for the tribe); BIA, Final Environmental Impact Statement, North Fork Rancheria of Mono Indians (Feb. 2009) (considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for individual North Fork members).

The median property value in Lake County is substantially lower than in Sonoma County.<sup>22</sup> It is not reasonable for the EIS to eliminate consideration of a project site in Lake County due to economic feasibility without providing any market data for that proposition. It is likewise not reasonable to eliminate a project site in Lake County due to technical or regulatory feasibility. There are available sites in Lake County that are well situated for tourism and large-scale development that could be taken into trust for Koi.<sup>23</sup>

Regardless of what the EIS states, the IGRA requires Koi to demonstrate a “significant historical connection” to the proposed site for it to be eligible for gaming. Given this requirement, the *most reasonable* location to study for a gaming acquisition under a restored lands analysis would be within Koi’s aboriginal territory. It is not reasonable for the EIS to focus only on the Sonoma County Site because Koi cannot demonstrate a “significant historical connection” to the Sonoma County Site or Sonoma County, generally. The only way to reduce unnecessary impact on Dry Creek and other local tribes is for the BIA to withdraw the EIS from consideration until there is a decision on Koi’s request for a restored lands opinion.

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**IX. Misuse of the Restored Lands Process is Reservation Shopping and Should be Rejected by BIA Because it Creates Impacts to Aboriginal Tribes That Is not Properly Analyzed in the EA and Can’t Be Mitigated.**

Dry Creek is concerned that Koi is reservation shopping—exploiting any minor connection to the Sonoma County Site because Koi (and its financial backer) believes it will make a larger profit from any gaming venture in Sonoma County than in its aboriginal territory. We ask that Interior reject Koi’s proposal which could set a dangerous precedent for gaming tribes in California. When California voters authorized exclusive tribal class III gaming through propositions 5 and 1A in 1998 and 1999, they did so on the condition that tribal gaming would be limited to then-existing reservations.<sup>24</sup> Every proposed casino that is outside of a tribe’s aboriginal territory does an about-face of the promises made to the voters. California is nothing like Oklahoma, which has a very different history. The California electorate has time and again rejected off-reservation gaming and Koi’s Project has already been met with furious backlash from the

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<sup>22</sup> See, e.g., National Association of Realtors, County Median Home Prices Q1 2023 (providing that the median home price in Sonoma County is \$818,928, whereas the median home price in Lake County is \$350,835), <https://www.nar.realtor/research-and-statistics/housing-statistics/county-median-home-prices-and-monthly-mortgage-payment> (last visited Nov. 8, 2023).

<sup>23</sup> See, e.g., [https://www.sothebysrealty.com/eng/sales/detail/180-l-518-4pnknt/5115-east-highway-20-nice-ca-95464-!!ivohdkk!lnmr8coobvsym3p9hsfe79akfz-33kspwo\\_ds15wmmryk5m6bu9ykmzkvtlco0geqso5v5sche9fjd8bteate7jax5q\\$](https://www.sothebysrealty.com/eng/sales/detail/180-l-518-4pnknt/5115-east-highway-20-nice-ca-95464-!!ivohdkk!lnmr8coobvsym3p9hsfe79akfz-33kspwo_ds15wmmryk5m6bu9ykmzkvtlco0geqso5v5sche9fjd8bteate7jax5q$) (57-acre property on the northeastern shores of Clear Lake, with existing buildings, infrastructure, and winery); <https://www.loopnet.com/Listing/11474-Spruce-Grove-Rd-Lower-Lake-CA/24889793/> (503-acre largely undeveloped property in Lower Lake).

<sup>24</sup> [https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2163&context=ca\\_ballot\\_props](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2163&context=ca_ballot_props).

local and state-wide community.<sup>25</sup> Ultimately, Koi's Project not only threatens the sovereignty of Sonoma County tribes, but it threatens tribal exclusivity in the California gaming market, endangering the continuing prosperity of all California gaming tribes.

Koi has a well-documented history of attempted reservation shopping, and this iteration is strikingly similar to past efforts by Koi. They have again partnered with an out-of-state developer, the Chickasaw Nation,<sup>26</sup> except that instead of seeking to enter the Bay Area market, (within the aboriginal territory of unrecognized California tribes), they seek to select a site in the middle of the aboriginal territory of five recognized tribes.

**i. Koi's Original Plan to Build a Casino, Resort and Spa in Oakland.**

This proposed gaming acquisition is not the first for Koi Nation, which is evidence of its blatant effort to "reservation shop". In 2005, Koi officially announced its plans to build a "world-class" tribal government gaming facility, resort and spa near the Oakland International Airport.<sup>27</sup> The Tribe's Crystal Bay Casino, Resort & Spa project was said to create an estimated 4,440 new jobs, 2,200 directly, annual payroll approaching \$80 million and \$1 billion in overall annual economic activity for the local area. The Tribe also began talks with the city to explore potential benefits the project could bring to the local economy. Discussions included a proposal for annual payments from the Tribe to mitigate impacts to city services, including funding for additional police and fire protection, reimbursement for lost property taxes and parking tax revenue, and road and traffic improvements. The proposal was funded by Florida real estate developer Alan Ginsburg. Facing incredible community opposition, the Tribe dropped its plans.

**ii. Koi Tries its Luck on Another Site in Vallejo.**

Rather than taking the lesson that could be learned from the battle over taking land into trust for gaming in Oakland to heart, and looking at possible gaming sites in the Clear Lake area, Koi was one of eight applicants for the development of a site in Vallejo, California in 2014.<sup>28</sup> The Tribe partnered with developer Cordish Company for a proposed \$850 million project, promising to pay the city between \$10 million and \$20 million a year, along with generating thousands of jobs. Cordish is a development company based in Baltimore, Maryland, and whose focus is mixed-use entertainment districts. In January 2015, after considerable controversy, the Vallejo City

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<sup>25</sup> All five federally recognized Sonoma County tribes have approved a resolution opposing the Koi Nation project. The project is also opposed by the County Board of Supervisors, the City of Windsor, Senator Mike McGuire, Assemblyman Bill Dodd, Congressman Mike Thompson, Senator Alex Padilla and former Senator Diane Feinstein.

<sup>26</sup> The Chickasaw Nation is a very large tribe that owns twenty-three (23) casinos in Oklahoma. It is a commercially successful tribe, with at least 200 business ventures. Its long list of gaming establishments include WinStar World Casino and Resort in Thackerville, Oklahoma, which the tribe bills as the *largest casino in the world*. See, <https://www.pressdemocrat.com/article/news/koi-partnering-with-chickasaw-nation-on-shiloh-casino/>

<sup>27</sup> Material in this section is found on the Koi Nation Wikipedia page, [https://en.wikipedia.org/wiki/Koi\\_Nation](https://en.wikipedia.org/wiki/Koi_Nation). The Page includes links to many news articles that tell the story of Koi's attempts to take lands into trust that are well outside of the Tribe's ancestral territory and were all rejected by local governments and voters.

<sup>28</sup> *Id.*



Council voted to reject all gambling proposals and to concentrate solely on industrial proposals for the site.

**iii. The Koi Nation Project Could Harm Tribal Exclusivity by Evading Limitations on Off-Reservation Gaming Approved by California Voters.**

Californians legalized certain tribal class III gaming through referenda in 1998 and 1999. In doing so, California voters were promised that all Indian gaming would be “strictly limit[ed]” to tribal land and “[t]he claim that casinos could be built anywhere is totally false.”<sup>29</sup> In assuring voters that the passage of Propositions 5 and 1A would not result in massive increases in slot machines across the State, proponents stated “[t]he majority of Indian Tribes are located on remote reservations and the fact is their markets will only support a limited number of machines.”<sup>30</sup> Both propositions passed with overwhelming support—almost two-thirds of voters were persuaded to grant Indian tribes exclusivity over class III gaming in the State.

The impact of the voters’ decisions has been striking—the growth of Indian gaming in California over the past two decades has helped to lift many tribes and tribal members out of poverty, fostered educational and employment opportunities, and fast-tracked non-gaming economic development. Non-gaming and limited gaming tribes even receive funds from more prosperous tribes who have better gaming locations. But the continued prosperity of California gaming tribes is not guaranteed. If California voters become disillusioned with tribal gaming as a result of reservation shopping, all tribes stand to lose their exclusivity and the benefits realized in the last two decades.

In fact, this is an issue still on the forefront of many voters’ minds. As recently as 2014, the voters handily rejected a proposal by the North Fork Tribe to conduct off-reservation gaming, rejecting the compact Governor Brown had negotiated with North Fork and nullifying the Governor’s concurrence in the two-part determination that would allow such gaming.<sup>31</sup> Just last year, two sports betting initiatives that were the most expensive in California history, and would have included California tribes, received record low support by California voters—one, Proposition 27, had the lowest vote of support in California history.<sup>32</sup>

The unanimous opposition to the Koi Project in the tribal and local community is consistent with that statewide view. The Koi Project is the antithesis of what the voters agreed to—the Sonoma County Site is not just outside of Koi’s aboriginal territory, it is planned at a highly-visible location which has already drawn much attention and public outcry.<sup>33</sup> Koi’s project would break the promises made by tribes statewide during the campaigns for Propositions 5 and 1A and could

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<sup>29</sup> State of California, Office of the Attorney General, Official Title and Summary Prepared by the Attorney General, Gambling on Tribal Lands, Legislative Constitutional Amendment, Rebuttal to Argument Against Proposition 1A, at 7.

<sup>30</sup> *Id.*

<sup>31</sup> See *Stand Up for California! v. State of California*, No. F069302, 2021 WL 1933336 (May 13, 2021).

<sup>32</sup> See <https://www.nbclosangeles.com/news/local/prop-26-27-california-sports-betting-gambling-fail/3029890/>.

<sup>33</sup> See *supra* note 21.

ultimately be a tipping point that results in a loss of exclusivity for tribal gaming in California. The Koi project could shift the delicate balance that exists in the legislature and with the voters, which is already challenging with the increasing threat of non-tribal cardroom operations that seek to expand with new locations and new games.

Because the application seeks to shift the rules for taking land into trust, the EA should consider the negative impact on all tribes that would be called to commit significant resources to protect tribal exclusivity and aboriginal territory. The EA fails to consider these larger policy issues and the tremendous cost and impact to local tribes and perhaps even tribes across the entire state that would result from the Project. The EA focuses on the immediate financial impact of the Project on nearby tribal casinos, however there is no analysis of the impact of the reduction of such revenues to the tribal governments and their citizens.

The failure to adequately study the larger potential impacts of taking land into trust for gaming outside of a Tribe's area has already resulted in negative impacts to Dry Creek, as well as to the other aboriginal tribes because of the drain on finite and limited resources that is necessitated by the publication of an EA without first having a determination that the lands qualify as restored lands under the IGRA. Again, the only way to reduce this unnecessary impact on Dry Creek and other local tribes is for the BIA to withdraw the EA until there is a final decision on Koi's request for a restored lands opinion.

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**X. The Sonoma County Site Does Not Qualify as Restored Lands for Koi Nation Under the Indian Gaming Regulatory Act Because It Is Located in Dry Creek's Aboriginal Territory.**

IGRA prohibits gaming on lands acquired after 1988 except under certain circumstances. Specifically, Section 20(a) of IGRA provides that if lands are acquired in trust after October 17, 1988, the lands may not be used for gaming, unless one of the following statutory exceptions applies:

- (1) The lands are located within or contiguous to the boundaries of the tribe's reservation as it existed on October 17, 1988;
- (2) The tribe has no reservation on October 17, 1988, and "the lands are located...within the Indian tribe's last recognized reservation within the state or states where the tribe is presently located;"
- (3) The "lands are taken into trust as part of: (i) the settlement of a land claim; (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process; or (iii) the restoration of lands for an Indian tribe that is restored to Federal recognition. . . ."

Under the "restored lands exception," found in IGRA Section 20(b)(1)(B)(iii) (25 U.S.C. § 2719(b)(1)(B)(iii)), a tribe must first document that it has been "restored"— meaning that it had

federal recognition, lost it, and then regained recognition. It then must document that the land it wants to use for gaming is on a site that constitutes a restoration of land to the tribe. The notion of “restoration” of lands means that the land has been returned to tribal ownership and control and that it lies within the historic tribal occupancy area. The “restored land” provision is poorly understood and has frequently compelled tribes to file briefs and reports with the National Indian Gaming Commission (“NIGC”) or to litigate to get the facts confirming its eligibility under the restored lands exception into a forum to prove its case and secure trust status of lands for gaming. In analyzing whether lands have been “restored,” the NIGC examines whether the “land acquisition in some way restores to the Tribe what it previously had.”<sup>34</sup>

When the BIA has evaluated this issue, it has analyzed historical tribal ties to the lands to determine if the proposed gaming site is within a tribe’s aboriginal territory. In testimony regarding off-reservation gaming and newly restored lands, then-Principal Deputy Secretary Aurene Martin stated:

For instance, to qualify under the “initial reservation” exception, the Department requires that the tribe have strong geographical, historical and traditional ties to the land. To qualify under the “restoration of lands” exception, the Department requires that either the land is either made available to a restored tribe as part of its restoration legislation or that there exist strong historical, geographical, and temporal indicia between the land and the restoration of the tribe. The Department’s definition of restored land has been guided by fairly recent federal court decisions in Michigan, California, and Oregon.<sup>35</sup>

While Koi has outwardly advocated that it has a connection to the Sonoma County Site, it cannot make an adequate legal claim to aboriginal title or restored lands for the Sonoma County Site because the land is accepted by all Sonoma County tribes as being the aboriginal land of the Dry Creek Rancheria. The Sonoma County Site is located well *outside* of the Koi’s aboriginal area and *within* the aboriginal area of several other tribes, but primarily Dry Creek. Consequently, the land cannot be *restored* to Koi when it is the territory of another tribe.

#### **XI. Comments Regarding the Environmental Impacts to Dry Creek Homelands That Will Result from the Project.**

The following list provides our comments on other aspects of the EIS that are concerning to Dry Creek, however, we wish to note that we requested an additional sixty days so that we could

<sup>34</sup> U.S. Dep’t of the Interior, Office of the Solicitor, Memorandum: Elk Valley Indian Lands Determination, at 7 (July 13, 2007).

<sup>35</sup> Testimony of Aurene M. Martin Principal Deputy Assistant Secretary – Indian Affairs, Department of the Interior, at the Oversight Hearing Before the Committee on Resources, U.S. House of Representatives Concerning Gaming on Off-Reservation, Restored and Newly-Acquired Lands, July 13, 2004

T7-7  
cont.

T7-8

properly analyze the EIS, however the BIA only granted a 15-day extension for our comments. That was not sufficient for us to prepare the detailed comments that we had hoped to make here.

T7-8  
cont.

1. Water

Sonoma County is currently facing dramatic water shortages that are drought-related, but also systemic. Dry Creek often faces curtailment orders (along with other Alexander Valley vineyards) and it is vital that the basin be protected from overdraft of the water table. The EIS does not analyze the implications of increased, year-round groundwater extraction and the corresponding impairment of seasonal groundwater recharge that the Project would create. To make matters worse, most of the categories of impacts to water resources in the Executive Summary note that “No mitigation is required.” How is that possible? Where is the analysis of the impact and the mitigation? The EIS does provide data, but no analysis.

T7-9

2. Air Quality/Greenhouse Gases

The Koi Project will cause increased air emissions within the area due to traffic and congestion created by the location of the Sonoma County Site. Additional greenhouse gases (GHG) will be emitted for patrons, employees and in the operation of the facility. The Project will contribute to a cumulative impact to impaired air quality, as the Shiloh site is located in a non-attainment area subject to significant traffic congestion. The EIS not specifically address the potential cumulative health impacts that occur from combined Project emissions and increased traffic emissions from roadways and the nearby freeway, and other industrial uses in the vicinity. A more detailed examination of the potential for cumulatively significant air impacts in the region is needed to make an informed decision regarding the proposed project. The Executive Summary note that “No mitigation is required.” Where is the analysis of the impact and the mitigation? The EIS does provide data, but no analysis.

T7-10

3. Biological Resource

The EIS identifies Pruitt Creek, which bisects the site, is “designated as critical habitat (pursuant to the federal Endangered Species Act), designated as essential fish habitat (pursuant to the Magnuson-Stevens Fishery Conservation and Management Act), and provides potential habitat for several federally listed salmonids”. Given that an NPDES permit is necessary for the Koi Project, which will discharge into critical habitat, there should be a more detailed level of analysis for the Koi Project. The failure to require an EIS indicates a lack of diligence on the part of the BIA for this undertaking. The Executive Summary merely lists out best management practices and already applicable requirements note that “No mitigation is required.”

T7-11

4. Cultural Resources

Despite the fact that the Shiloh site is has been previously impacted by some development, it is nonetheless within the aboriginal territory of the Dry Creek Mihilakawna and Makahmo Pomo people, as well as neighboring Sonoma County tribes. The site contains tribal cultural resources important to the Dry Creek people. Preparation of an EIS should have provided time for a scoping

T7-12

process that would allow us to gain more information in order to properly assess the potential impact of the Proposed Project on our tribal cultural resources. Unfortunately, the rushed preparation of the EIS merely led to a recitation of the earlier narrative with little involvement of Dry Creek Rancheria, despite the Project Site being located squarely in Dry Creek’s aboriginal territory.

Moreover, the design seems to contradict conclusions drawn by the project proponent’s archaeologist (and implicitly adopted by the BIA) that likely no pre-historic sites would be impacted since prior vineyard agricultural activity had already disturbed the subsurface to a depth of four feet.<sup>36</sup> Up to 700 feet of ground disturbance is certainly distinguishable from four feet of ground disturbance.

In addition to the failed consultation with local aboriginal tribes, the EIS Section 3.6 provides misleading information. Subsection 3.6.2, the EA asserts that around 3,500 BP, many Clear Lake Pomo moved west into the Russian River drainage, married into existing Yukian tribes (bringing with them their language, culture, and technology), and “[e]ventually the Clear Lake Pomo culture spread throughout Sonoma and Mendocino Counties.”<sup>37</sup> This assertion is misleading—likely to preserve the narrative that Koi is significantly and historically connected with the area—and without any academic or ethnographic support. Nowhere does the EIS state that the Sonoma County Site lies within the territory of Dry Creek.

Rather than citing to primary source material regarding Pomo origins and the antiquity of the presence of Hokan speaking peoples in Sonoma County, the EIS cites only to the historic property survey report generated for this Project by Koi own archaeological consultant, John Parker.<sup>38</sup> This is a far cry from a comprehensive article on the subject that is peer reviewed and published in an academically reputable journal. Moreover, the hypothetical population movements associated with differentiation and expansion of Pomoan language is disputed among academics. For example, anthropologist Mark Basgall’s 1982 manuscript *Archaeology and Linguistics: Pomoan Prehistory as Viewed from Northern Sonoma County, California* provides a critique of the early California linguists that model prehistoric language movements as resulting from migration.<sup>39</sup> Basgall argues, quite convincingly, that the Southern Pomo language resulted from in situ development, meaning that Pomo speakers did not replace earlier inhabitants. Instead, Pomo speakers have been present in northern Sonoma County for a long period and the differences in language families is the result of in-situ development rather than population replacement. This conclusion is consistent with Dry Creek oral tradition, which must be given great weight under DOI’s Tribal Ecological Knowledge Policy.

T7-12  
cont.

<sup>36</sup> See confidential Appendix H-1 at 4.

<sup>37</sup> EA at 3-53.

<sup>38</sup> EA at 3-53, citing Appendix H-1.

<sup>39</sup> Mark Basgall, *Archaeology and Linguistics: Pomoan Prehistory as Viewed from Northern Sonoma County, California*, J. OF CA. & GREAT BASIN ANTHROPOLOGY 4(1):3-22 (1982).

Additionally, under the heading “Native American Consultation,” the EA notes that the Native American Heritage Commission identified the presence of sacred sites within or near the Area of Potential Effects (APE), yet the EIS does not analyze those sites or identify their locations. As such, the EIS has not provided adequate identification efforts necessary to determine if the sacred site(s) are present within the APE. Although this subsection notes that Graton Rancheria believes religious and significant tribal cultural resources are present within the APE, it does not analyze impacts or provide any resolution of potential adverse effects to those resources—nor could it, since BIA has not actually met with Graton or any of the local tribe to discuss these issues.

T7-13

In order for the impact analysis to be complete for the Project, the APE should be developed in consultation with the appropriate tribes through the NHPA Section 106 process. Proposed traffic mitigation for this project indicates that the widening of Shiloh Road will eventually become necessary.<sup>40</sup> Additionally, the EIS provides that gas and electrical utility extensions and infrastructure improvements will be constructed prior to the Project opening date and paid for by the Koi Nation, however the EIS does not specify the exact locations of such extensions and infrastructure improvements. Since some of that work will be conducted off-site, Dry Creek tribal cultural monitors should be required for all such work. For these reasons, the APE should be expanded beyond the property boundaries to include any roads or other locations where work is likely to be done, and appropriate tribal cultural monitoring agreements should be required.

T7-14

The discussion of field surveys and evaluations in Subsection 3.6.3.2 are also deficient. The February 2022 archaeological field survey performed by one of Koi Nation’s archaeological consultants, John Parker, resulted in the identification of variety of pre-contact archaeological materials including: a bowl mortar, chert and obsidian flakes, a biface fragment, a core and a projectile point. In addition, historic-era archaeological materials associated with a home site were found. John Parker recommended that neither the pre-contact archaeological materials nor the historic-era items are significant archaeological resources, and therefore are not eligible for listing on the National Register of Historic Places (the National Register). Yet the evaluation of the eligibility for listing on the National Register does not follow the guidelines outlined in the *How to Apply the National Register Criteria for Evaluation* published by the National Park Service. The eligibility criteria (A-D) are not clearly outlined in the EA, neither is how they relate to the archaeological resources.

T7-15

Not surprisingly, because the EIS lacks meaningful input from the culturally affiliated tribes, the evaluation lacks a detailed description and offers a poorly developed justification regarding the eligibility of the resource. The EIS’s description of the May 2022 archaeological field survey performed by another archaeological consultant, Tom Origer & Associates, is also misleading. The EIS fails to explain that the archaeologist made no recommendation regarding

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<sup>40</sup> EA at 4-9.



the eligibility of pre-historic resources for inclusion on the National Register and in fact, concluded there *could* be buried archaeological sites.<sup>41</sup>

T7-15  
cont.

These important issues and questions should not be left to the public comment period of the EIS, these cultural concerns should be discussed in a meaningful and respectful way with a respect for confidentiality of the site information. In fact, *too* much tribal cultural resource information is revealed in the EIS, an apparent effort to make the EIS appear to be thorough, but if Section 106 consultation had occurred, Dry Creek would not want to have such detail disclosed to the public in the EIS.

However, Koi and BIA have run roughshod over the Section 106 process. The irony of this is not lost on us given the fact that Koi has filed a lawsuit against the city of Clear Lake alleging the lack of meaningful consultation on a project that would impact Koi cultural resources. Koi was so concerned about the lack of meaningful consultation that they obtained an amicus brief from the California Attorney General, but in the case of Dry Creek, Kashia and Graton, requests for consultation have gone unanswered.<sup>42</sup>

T7-16

Despite the lack of any tribal consultation, in Section 3.6.3.3, the BIA prematurely and without adequate explanation concludes that the Project would “not result in direct adverse effects to known historic properties” and that while there is a “potentially significant impact” to subsurface prehistoric or historic archaeological resources, those impacts would be reduced to less-than-significant levels with mitigation.<sup>43</sup> As we already stated, such a conclusion should not be rendered prior to meeting with our Tribe and other consulting tribes to discuss the identification of and impact to tribal cultural resources.

The State Historic Preservation Officer has not concurred with the BIA’s determination of no adverse effects, a fact the draft EA neglects to mention. But the SHPO is correct in the withholding of concurrence because no tribal consultation has occurred. Further, the EA’s conclusion of no adverse effects under the NHPA is undermined by the EA’s simultaneous recognition that a number of factors, such as the presence of Pruitt Creek, the presence of scattered obsidian, and the results of Native American consultation “conducted to date” indicate that there is, in fact, a potential for “significant subsurface cultural resources to be buried beneath the Project Site,” which “could be encountered and impacted during project related construction and evacuation activities.”<sup>44</sup> This illustrates that additional identification efforts are merited to determine the presence or absence of buried archaeological resources at the Project site.

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<sup>41</sup> See confidential Appendix H-2 at 11.

<sup>42</sup> EA at 3-53.

<sup>43</sup> The BIA makes this same conclusion for alternative project designs. See, EA at 3.6.3.4 and 3.6.3.5.

<sup>44</sup> EA at 3-56.

i. Mitigation Deficiencies

The EA summarily concludes that while there is a potentially significant impact to certain cultural resources, such impact would be reduced to less-than-significant if mitigation measures are employed.<sup>45</sup> The section's ethnographic overview acknowledges the Project site is in Southern Pomo aboriginal territory, yet these mitigation measures were developed without consultation with the culturally affiliated tribes, including Dry Creek. The mitigation measures are poorly designed, fail to incorporate applicable law and leave us with no confidence that mitigation will be

Cultural Resource Mitigation Measure A provides that:

Any ground-disturbing activities that occur within 150 feet of Pruitt Creek shall be monitored by a qualified archaeologist and Native American Tribal Monitor. An archaeological monitoring program shall be established that includes consultation between the consulting archaeologist, lead agency, and the project proponent. The program shall clearly define the authority to temporarily halt/redirect construction should resources be encountered.

This mitigation measure is flawed in several respects. It does not specify who may properly serve as a Native American Tribal Monitor and there is no guarantee that the monitor will come from a culturally affiliated tribe. In fact, as noted in the EA at page 3-55, the Koi Nation previously utilized its own tribal monitor for trench studies conducted at the site and we have every reason to believe they will continue to use their own tribal monitor, even though they are not Southern Pomo and not culturally affiliated with this area. Further, the archaeological monitoring program is to include consultation between the consulting archaeologist, lead agency, and the project proponent, but there is no mention of consultation with any of the Southern Pomo tribes. Last, given the array of cultural resources or potential cultural resources discovered throughout the site, as discussed in the confidential appendices, monitoring should be required for ground- disturbing activities *anywhere* at the site, not just those activities that occur within 150 feet of Pruitt Creek.

Cultural Resource Mitigation Measure B provides that:

In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all such finds shall be subject to Section 106 of the National Historic Preservation Act as amended (36 CFR Part 800). Specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13 shall be followed. All work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance

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<sup>45</sup> *Id.*

of the find in consultation with the BIA and other appropriate agencies. If any find is determined to be significant by the archaeologist or paleontologist and project proponent, a BIA representative shall meet with the archaeologist or paleontologist and project proponent to determine the appropriate course of action, including the development of a Treatment Plan and implementation of appropriate avoidance measures or other mitigation.

This mitigation measure again excludes culturally affiliated tribes from the process, providing us no role in assessing the significance of a find or in developing a Treatment Plan or other appropriate course of action. To add insult to injury, the project proponent *is* guaranteed a voice in this process, merely because they are another Indian tribe.

Mitigation Measure B also fails to identify and incorporate applicable federal law from the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Preservation Act (ARPA). NAGPRA provides a process for determining the ownership and control of Native American cultural items discovered on tribal lands.<sup>46</sup> ARPA also imposes a number of relevant requirements, including prohibiting the unauthorized evacuation, removal or damage of archaeological resources on Indian lands.<sup>47</sup> Last, this mitigation measure fails to provide a clear explanation or description of how archaeological materials will be treated. While it refers generically to a Treatment Plan, it should specifically require that an Archaeological Research Design and Treatment Plan (ARDTP) be authored to guide archaeological evaluation and mitigation measures. The ARDTP should follow *Guidelines for Archaeological Research Designs* published by the California State Office of Historic Preservation and be reviewed by the BIA and all tribes that requested to be a consulting party. Moreover, the ARDTP should be in place prior to commencing any ground-disturbing construction activities, rather than waiting until a discovery occurs.

Lastly, Cultural Resource Mitigation Measure C provides that:

If human remains are discovered during ground-disturbing activities a BIA representative shall be contacted immediately. No further disturbance shall occur until the BIA representative has made the necessary findings as to the origin and disposition. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant. The Most Likely Descendant is responsible for recommending the appropriate disposition of the remains and any grave goods.

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<sup>46</sup> 25 U.S.C. § 3002(a); 43 C.F.R. § 10.4.

<sup>47</sup> 16 U.S.C. §§ 470aa-470hh;

Again, this mitigation measure entirely fails to identify and incorporate applicable federal law and, confusingly, incorporates a California state law process that does not apply to tribal trust lands. Similar to the prior mitigation measure, NAGPRA provides the process for determining the ownership and control of Native American human remains discovered on tribal lands. That process includes a priority for *known* lineal descendants of a deceased Native American individual who has been *identified*.<sup>43</sup> In contrast, the “Most Likely Descendant” procedures under California state law are a completely separate process and do not require the same degree of identification and connection between the deceased and the descendant.<sup>44</sup> This California law simply would not apply here. Moreover, and echoing the pitfalls of the first two mitigation measures, the culturally affiliated tribes are ignored in this mitigation measure and offered no voice or rights in the disposition of our own ancestors.

T7-19  
cont.

With regards to the second and third mitigation measures, the incorporation of federal law drives home the most concerning, indeed significant, impact of all: the Koi Nation will be afforded superior rights to our Tribe and other Southern Pomo tribes if any cultural resources or human remains are inadvertently discovered during or after the construction of the Project. Why? Because the federal action here will result in the property being transferred into trust for the Koi Nation, thereby becoming the Koi Nation’s tribal lands. And under these various federal legal schemes, the Indian tribe on whose tribal lands such remains or objects are found has a custodial priority over Indian tribes with the closest cultural affiliation. We cannot imagine it was Congress’ intent to create such an unjust scenario, but Congress likely was not envisioning a scenario where a tribe would acquire trust lands outside of its aboriginal territory and in the aboriginal territory of other tribes.

T7-20

We reserve the remainder of our comments for confidential tribal consultation through the Section 106 process. Nonetheless, we believe it is important that the BIA, and the public, understand that: 1) contrary to what the EIS states, meaningful and complete tribal consultation was *not* conducted prior to the publication of the EIS; 2) tribal cultural resources on the property have not been properly analyzed; and 3) the proposed mitigation measures were designed without the input of the culturally affiliated tribes and are woefully inadequate for protecting our cultural resources. The BIA’s decision to hold out the EIS for public review and input, even though BIA knew critical information was forthcoming on cultural resources, is misleading to the public. As detailed above, there are substantial questions regarding the adequacy of the BIA’s evaluation of cultural resources, the significance of the project’s impacts on those resources, and the efficacy of the proposed mitigation measures.

## I. CONCLUSION

The Tribe appreciates the opportunity to submit this public comment and looks forward to meeting with the BIA to address our concerns, In the spirit of that commitment, we request a meeting with BIA to discuss our concerns since we were not given the opportunity to participate in a public scoping meeting for a more appropriate EIS. Thank you for considering our comments.

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If you have any questions about this letter, please contact Michelle Lee, at (916) 809-8900 or [michelle@thecirclelaw.com](mailto:michelle@thecirclelaw.com).

Sincerely,

A handwritten signature in black ink, appearing to read "CWright". The signature is written in a cursive style with a large initial "C" and a long horizontal stroke extending to the right.

Chris Wright, Chairman  
DRY CREEK RANCHERIA BAND OF POMO INDIANS



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August 26, 2024

**Via Electronic Transmission (chad.broussard@bia.gov)**

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Re: **Draft Environmental Impact Statement Comments  
Shiloh Resort and Casino Project**

Dear Ms. Dutschke and Mr. Broussard:

We represent the Federated Indians of Graton Rancheria (“FIGR”) and hereby provide written comments on FIGR’s behalf regarding the Draft Environmental Impact Statement (“Draft EIS”) for the Koi Nation of Northern California Shiloh Resort and Casino Project (“Koi Project”).<sup>1</sup> Kindly ensure that these comments are made a part of the administrative record for all federal proceedings relating to the Koi Project.

FIGR is comprised of Southern Pomo and Coast Miwok people. FIGR’s aboriginal territory includes Sonoma and Marin Counties<sup>2</sup> and its reservation is located next to the City of Rohnert Park in Sonoma County. Its congressionally recognized service area includes Sonoma

<sup>1</sup> The Notice of Availability of the Draft EIS for the Koi Project (“Notice”) was published in the Federal Register on July 8, 2024. 89 Fed. Reg. 55968. The public comments on the Draft EIS are due on August 26, 2024. <https://www.shilohresortenvironmental.com/>

<sup>2</sup> Graton Rancheria Restoration Act, 25 U.S.C. § 1300n-4(c).



and Marin Counties.<sup>3</sup> Many of FIGR’s ancestors and its irreplaceable cultural resources are located in Sonoma County, and many of the 1,500 FIGR citizens reside in Sonoma County. FIGR’s government offices and the Graton Resort and Casino (“GRC”) in Sonoma County are only an approximate 15-minute drive from the site of the proposed Koi Project (“Koi Site”). The cultural, environmental and economic interests of FIGR will be significantly and irreversibly adversely affected if the Koi Project is approved.

The U.S. Department of the Interior (“DOI”) must take three related actions to fully approve the proposed Koi Project. First, the U.S. Bureau of Indian Affairs (“BIA”) must prepare and approve a Final Environmental Impact Statement (“Final EIS”) before deciding whether to take the Koi Site into trust for the Koi Project. Second, the BIA must determine whether the Koi Nation’s application requesting that the DOI take into trust the 68.6-acre Koi Site meets federal requirements, including the applicable regulations in 25 C.F.R. Part 151. Third, the DOI must determine whether the Koi Nation’s request to operate a casino on the Koi Site satisfies the “restored lands exception” to the general prohibition of gaming on Indian lands contained in the Indian Gaming Regulatory Act (“IGRA”) and its implementing regulations. 25 U.S.C. §§ 2701, *et seq.*; 25 C.F.R. Part 292. The second and third determinations are proceeding on separate administrative tracks and have their own administrative records.<sup>4</sup> However, they raise interrelated issues with the NEPA analyses and will be referred to herein when appropriate.

This letter is one of two major sets of comments being submitted by FIGR regarding the Draft EIS for the Koi Project. This comment letter will focus on the full range of substantial factual and legal inadequacies of the Koi Project under the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* (“NEPA”). The second letter, dated August 26, 2024 and authored by Chairman Greg Sarris (“Chairman Sarris Letter”), focuses on three critical issues: (1) the patent procedural and substantive deficiencies that require the BIA to reinitiate and complete the government-to-government consultation process required by Section 106 of the National Historic Preservation Act (“NHPA”); (2) the significant adverse effects of the Koi Project on FIGR’s rights and cultural resources; and (3) the important cultural context and legal requirements that compel inclusion of an alternative Koi Project location in Lake County, where the Koi Nation’s ancestral territory is located. In addition, FIGR anticipates that individual FIGR citizens will submit their personal comments on the Draft EIS for the Koi Project.

In deciding to prepare a Draft EIS, the BIA has determined that the Koi Project is a “major federal action significantly affecting the quality of the human environment” under NEPA. However, as explained in this letter, the Draft EIS is fundamentally deficient in many important respects. These serious inadequacies cannot be remedied by a few tweaks or even major

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<sup>3</sup> *Id.*, § 1300n-1(7).

<sup>4</sup> FIGR has provided extensive comments to BIA on both the “taking land into trust” decision governed by 25 C.F.R. Part 151 and the IGRA “restored lands exception” decision under 25 C.F.R. Part 292. These comment letters are enclosed in the Attachments to the Chairman Sarris Letter and are specifically incorporated herein by reference. These comments conclusively demonstrate that BIA should deny the Koi Nation’s requests and applications for the Koi Project.

modifications that appear for the first time in the Final EIS. Rather, to meet NEPA’s public information and agency decision requirements, a revised Draft EIS must be recirculated for public comment *before* a Final EIS can be completed. 40 C.F.R. § 1502.9(a); *Natural Resources Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 812-13 (9th Cir. 2005) (the presence of misleading information significant to the evaluation of alternatives required revision of an EIS); *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (“Where the information in the initial EIS was so incomplete or misleading that the decisionmaker and the public could not make an informed comparison of the alternatives, revision of an EIS may be necessary to provide ‘a reasonable, good faith, and objective presentation of the subjects required by NEPA.’”).

We enclose five Appendices to this letter comprised of technical reports prepared by expert consultants in the areas of wildfire risks and public safety, traffic/transportation impacts, biological resource impacts, water/wastewater effects, and environmental justice/socioeconomic issues. Each set of experts has determined that the Draft EIS is substantially inadequate in analyzing environmental effects, identifying their significance, and purporting to identify effective mitigation measures in these subject areas. These experts have determined that findings of “no significant impacts” or “less than significant impacts” are unsupported and unreasonable, that important data gaps exist, that the best available science has not been used, and that impacts are much more severe than represented. These reports are specifically incorporated by reference into this comment letter.

### **INTRODUCTION AND SUMMARY**

The Draft EIS for the Koi Project is a deeply flawed document that fails to meet the procedural and substantive requirements of NEPA, thereby preventing it from serving as a legally compliant public information document or as a platform for the important underlying DOI and BIA decisions. The significant and permanent adverse impacts of the Koi Project on Indian tribes (including FIGR) in Sonoma County, the nearby communities, local public agencies, and on the environment have not been adequately studied, evaluated or mitigated. The required comparison of Project alternatives has been fatally undermined by the failure to include a reasonable range of alternatives and by the legal deficiencies in key environmental analyses.

NEPA compels federal agencies to “take a hard look at environmental consequences” of their proposed actions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). This “hard look” is essential to ensure that an EIS serves its public informational and agency decisional purposes. *See Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004) (explaining the “informational role” that NEPA plays in assuring the public that the agency “has indeed considered environmental concerns in its decision making process” and “providing a springboard for public comment in the agency decision making process itself”) (internal citations and quotations omitted); *American Rivers v. Fed. Energy Regul. Comm’n*, 895 F.3d 32, 49 (D.C. Cir. 2018) (“NEPA’s primary function is information-forcing, compelling federal agencies to take a hard and honest look at the environmental consequences of their decisions.”) (internal citations and quotations omitted); *South Fork Band Council of Western Shoshone v. Dep’t of Interior*, 588 F.3d 718, 725 (9th Cir. 2009) (“An adequate EIS is essential to informed agency decision-making

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and informed public participation, without which the environmental objectives of NEPA cannot be achieved.”).

Unfortunately, the rampant deficiencies in this Draft EIS prevent it from meeting these standards. Moreover, these defects are compounded by the erroneous cultural context in which the Koi Project has arisen. The proposed Koi Site is located in FIGR’s ancestral territory. In contrast, the Koi Nation’s aboriginal territory and historic rancheria are located in the Clear Lake region of Lake County, which is over 50 miles north of the Project Site. FIGR and its ancestors from the Koi Site belong to a different language group, the Southern Pomo, which is the aboriginal language spoken in much of Sonoma County. Koi Nation and its ancestors, however, belonged to the Southeastern Pomo language group, which was historically found only in Lake County. Thus, the Koi Nation is improperly attempting to establish trust lands for gaming outside of its aboriginal area and beyond its traditional cultural sphere.

These issues are critical to the NEPA analyses in the Draft EIS. As explained in Chairman Sarris’s August 26, 2024 comment letter, the BIA has failed abysmally in performing its Section 106 tribal consultation requirements under the National Historic Preservation Act (“NHPA”). BIA is required by NEPA and the NHPA to meaningfully consult with FIGR on cultural resources. FIGR made extensive efforts for more than two years to meaningfully consult with BIA on the identification and evaluation of cultural resources and to directly participate in the resolution of adverse effects. Instead, the BIA has ignored, deflected and rejected FIGR’s efforts to participate. In so doing, the BIA is undermining the sovereignty of FIGR and effectively foreclosing FIGR’s ability to protect its tribal cultural resources and ancestral remains.

FIGR’s comments on the Draft EIS are set forth in the sections below and in the Chairman Sarris Letter. For the convenience of the reader, the major inadequacies in the Draft EIS can be summarized as follows:

- **Fatally Flawed Alternatives Analysis:** The Draft EIS inexplicably fails to include any alternative site within Lake County, where the Koi Nation’s demonstrated ancestral territory is located, or any other off-site location. Rather, in defiance of NEPA’s requirements, the Draft EIS caters to the wishes of the proponent to consider only the site that the Koi Nation unilaterally selected. However, the consideration of alternative locations is common in environmental impact statements for other Indian reservation gaming proposals. The Draft EIS asserts without support that no other location is economically or technically feasible, essentially because another site is not currently owned by the Koi Nation. However, the Koi Nation and its financial backers have the demonstrated ability to buy large sites and several eligible sites are available in Lake County. This major omission constitutes a patent failure to evaluate a reasonable range of alternatives as required by NEPA. (*See Section 2, infra.*)

- **NHPA Consultation Failures:** The NHPA and its implementing regulations place an important responsibility on the BIA to initiate, conduct and conclude government-to-government consultations with tribes that attach cultural significance to historic properties that may be affected by a development project. Despite the facts that the Koi Site is within FIGR’s

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cont.

ancestral territory and that FIGR has repeatedly requested inclusion and participation in the identification and evaluation of such resources, it has been rebuffed at every turn by the BIA. As a result of these and other BIA consultation failures, the California State Historic Preservation Officer (“SHPO”) has now objected to the NHPA finding underlying the Draft EIS that no historic properties will be affected by the Koi Project and has labelled the BIA’s consultation efforts with the tribes as “insufficient, inadequate and unreasonable.” (*See* Section 3.6, *infra.*)

- **Clear and Present Wildfire Risks:** The immediate area where the Koi Site is located has recently experienced two major fires: the Tubbs Fire in 2017 (the fourth largest fire in California history) and the Kincade Fire in 2019. Both fires triggered large-scale evacuations and demonstrated that this is a wildfire prone area. The Draft EIS determines, contrary to all evidence, that wildfire hazards are not a significant risk at the Koi Site. This implausible conclusion is buried in a “Hazardous Materials and Hazards” section and is based on implementation of a couple of mitigation measures that FIGR’s wildfire experts have determined are totally ineffective. Remarkably, the Draft EIS even fails to include an emergency evacuation plan. According to the enclosed expert analysis (Appendix 1), this Site is tremendously vulnerable to future wildfires, and the Draft EIS’s cursory analysis of these potential impacts is simplistic, incomplete and wholly inadequate. It is nonsensical for the Draft EIS to claim that wildfire hazards at the Koi Site are not significant. (*See* Section 3.12, *infra.*)

- **Water/Wastewater Issues:** The Koi Site lacks any municipal water or sewage system services. This is a major issue because, at peak times, the site will have 9,000 or more people on site, which is the size of a small city. As a result, the Project proposes to construct and operate new water wells, a water treatment plant, water storage facilities, an extensive wastewater treatment plant, large wastewater storage tanks and storage ponds, and a complicated network of pipelines. All of these facilities will supposedly (but not realistically) be jammed into a 3.5-acre area. Most significantly, the Koi Project proposes to discharge tens of millions of gallons of wastewater each year into Pruitt Creek (an intermittent waterway used by endangered salmonids), but will not be allowed to do so from May through October each year. Instead, this wastewater would be put in large ponds on site and/or in tall (up to 45 feet) storage tanks. The Draft EIS never presents or specifically analyzes exactly where these various wastewater facilities will be located or how they will be operated in a manner protecting the creek and its extremely sensitive salmonid species. FIGR’s water/wastewater expert has prepared a Technical Memorandum enclosed as Appendix 2 describing these fundamental inadequacies. (*See* Section 3.3, *infra.*)

- **Wholly Inadequate Traffic Studies:** The Draft EIS claims that the traffic impacts of the Koi Project will be less than significant based almost completely on a traffic study that relies on flawed data to analyze trip generation, intersections, street segments and potential mitigation. FIGR requested an experienced traffic engineering firm to peer review this study and they concluded that it is wholly inadequate. At the outset, this expert analysis (Appendix 3 to this letter) determined that the trip generation analysis is “fatally flawed” because it calculates the number of Koi Project trips to be only 11,000 per weekday, when in fact using accepted industry standards, the actual number should be over 29,000 trips per weekday, which is almost *triple* the number of trips. This huge error is compounded by other study problems, including that the study area was

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inadequate, the actual number of impacted intersection and street segments cannot be determined, and the level of proposed mitigation is insufficient. The peer review concludes that “there is no empirical basis to support a conclusion that the Project transportation impacts will be less than significant, with or without mitigation.” The Draft EIS’s trip generation errors and other miscalculations also fatally undermine the associated air quality impact analyses and the proposed Federal General Conformity Determination. (*See* Section 3.8, *infra*.)

- **Major Land Use Conflicts:** The Koi Project would be built in the midst of quiet residential neighborhoods near schools, a church and vineyards. The Koi Site is located in unincorporated Sonoma County and is zoned for agriculture. It is part of the County’s “Community Separator” areas, which are “voter-approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development*.” County of Sonoma 11/13/23 letter, p. 18 (emphasis in original). Under these current land use restrictions, the Koi Project would be prohibited in this location. However, by putting the Koi Site in federal trust lands, the Koi Nation can avoid these local land use restrictions which are legally (but not environmentally) inapplicable to federal lands. The Draft EIS mistakenly concludes that land use impacts will not be significant because it falsely equates the elimination of local/state land use restrictions when it becomes federal land with the elimination of land use impacts. In so doing, the Draft EIS mistakenly fails to identify and address the fact that this Project threatens to destroy the residential neighborhood and agricultural character of this area and undermine the County’s thoughtful land use decisions over decades. (*See* Section 3.9, *infra*.)

- **Major Unassessed Environmental Justice Issues:** The Draft EIS is affirmatively misleading and legally flawed by failing to recognize that FIGR, whose ancestral territory includes the Koi Site, is an environmental justice community of concern whose cultural resources (and ancestral remains) located on the Koi Site will be adversely impacted by the Project. Instead, the Draft EIS erroneously concludes that the Koi Project will have less than significant impacts on FIGR and other tribal environmental justice communities. The BIA’s flawed decision to reject FIGR’s request that the Draft EIS analyze in depth a Lake County alternative site (which would avoid cultural conflicts) wholly undermines any valid comparison of the alternatives based on environmental justice impacts. In addition, the Draft EIS economic study analyzing the financial impacts of the Koi Project greatly understates financial losses to FIGR’s government and their resulting significant environmental justice impacts. FIGR encloses as Appendix 4 to this comment letter a leading expert’s assessment of the many inadequacies in the Draft EIS study on this issue. (*See* Section 3.7, *infra*.)

- **Biological Resource Impacts:** The biological resources section of the Draft EIS is notable for its major deficiencies in the applicable project description, the mis-timed botanical surveys (performed during non-blooming periods when many protected plants cannot be detected), and the lack of empirical data to support premature conclusions that the Koi Project supposedly will not significantly impact biological resources. The most prominent inadequacy is the failure to properly analyze the impacts caused by the massive wastewater discharge (tens of millions of gallons per year) to Pruitt Creek, which is a tributary to the Russian River and is formally

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designated as critical habitat for steelhead and contains two other federally listed salmon species. The Draft EIS fails to identify exactly where the discharges will occur or to specify the temperature and chemical constituents of the proposed discharges for these very sensitive species and recklessly leaps to an unsupported conclusion that no significant impacts will occur. The short cumulative impact analysis on this important issue suffers the same flaws. As set forth in the biological peer review (Appendix 5), these flaws completely undermine the “significance” conclusions. (*See* Section 3.5, *infra*.)

- **Increased Air Quality Impacts and A Flawed Federal General Conformity Determination:** As explained in the traffic study/impact section above, the Draft EIS mistakenly calculates the number of daily vehicle trips for the Koi Project. The addition of approximately 18,000 daily weekday vehicle trips will cause significant unreported and unanalyzed air quality impacts because the majority of air quality impacts from the Koi Project are a result of vehicle trips. The Draft EIS must start all over again in quantifying and calculating the air quality impacts of Koi Project operations. The significant errors in the underlying traffic analysis also significantly undermine the Federal General Conformity Determination, which is based largely on mobile source emissions of carbon monoxide, ozone and other pollutants. Thus, both the Draft EIS air quality analysis and the draft Federal General Conformity Determination are factually and legally inadequate for NEPA purposes. (*See* Section 3.4, *infra*.)

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## TABLE OF CONTENTS

We provide the following table of contents to FIGR’s written comments on the Draft EIS for the convenience of the reader. The section numbers of these comments correspond to the Sections of the Draft EIS:

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## **SECTION 1 - INTRODUCTION**

The Introduction to the Draft EIS contains two confusing (and potentially misleading) ambiguities. First, in Section 1.1 (page 1-1), entitled “Summary of the Proposed Action and Environmental Review Process,” the Draft EIS includes the standards in 25 C.F.R. Part 151 governing the BIA decision on whether to grant the Koi Nation’s land trust application and a discussion of the BIA decision regarding the “restored lands exception” in IGRA. Although we understand that the BIA decision regarding whether or not to take the Koi Site into federal trust triggered this NEPA review, we did not understand that comments on that underlying decision are being sought here. The placement of this discussion in the Draft EIS indicates that these are part of the environmental review process and proposed action for which the BIA seeks comments during this comment period. However, the application for DOI “acquisition in trust” is only mentioned in the Federal Register Notice for background purposes, and the IGRA decision is not mentioned in the Notice.

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Thus, based on the Federal Register Notice of Availability, FIGR believes that the substantive merits of these two BIA decisions likely are *not* included within the scope of the comments being sought by the BIA at this time. However, to the extent comments on these two BIA decisions are being sought now during the comment period, FIGR specifically incorporates herein by reference all of the information, letters, and analyses previously submitted to the BIA that are referred to in footnote 4 of this letter.

Second, in Sections 1.2 and 1.3 (pp. 1-3 to 1-4), the BIA appears to improperly prejudge the outcome of the NEPA process by stating that the proposed action will satisfy the DOI land acquisition policies and the IGRA goals. However, these statements are premature until the NEPA process has been successfully completed and the two related BIA decisions have been made for the Koi Project.

## **SECTION 2 - PROPOSED PROJECT AND ALTERNATIVES**

### **A. Incomplete Description of the Proposed Koi Project**

Section 2.1 of the Draft EIS provides the project description (designated “Alternative A - Proposed Project”) for the Koi Project. Although this description has some helpful information regarding the Project, it has critical information “gaps” on important environmental effects of the Project. These deficiencies will be discussed in greater detail in later sections, but are summarized here as follows:

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- Key information essential to evaluating wildfire hazards and environmental effects is missing from the Koi Project description. As described in the enclosed expert wildfire risk report (Appendix 1), and contrary to common practice in EIS documents, there is no specific information on (1) the exact identification or physical layout of fire facilities (on-site storage ponds, fire hydrants, etc.) for fighting fires; (2) industry-standard site plans; (3) a specification of “specific

individual actions required to implement the project and comprehensive illustrative materials (e.g., tables, charts, site plans, etc.)” relating to wildfire risks; and (4) any evacuation plans, riparian management plans, or agreements with the Sonoma County Fire District commonly expected in a project description for a NEPA EIS in California areas prone to wildfires.

- FIGR’s expert consultants in both the water/wastewater and biological resource subject areas identified the lack of important project location, facilities and discharge structure information relating to the Koi Project’s planned discharge of wastewater into Pruitt Creek as a key deficiency in the project description. According to the wastewater expert: “Section 2 of the Draft EIS fails to adequately describe important water and wastewater components of the Proposed Project, and as a consequence, the Draft EIS in later sections fails to evaluate the water resources, biological, cultural, aesthetic, land use, noise, hazardous materials, and odor impacts of these components.” (Appendix 2, at p. 3.) The biological resources peer review report expresses similar concerns. (Appendix 5.)
- The biological resources report also states that Section 2.1.8 of the Draft EIS (p. 2-14) is not clear regarding the potential for utility extensions and upgrades necessary to implement Alternative A to require off-site ground disturbance, with potential impacts to biological resources. The Project description is inadequate without these Project elements because it prevents a full assessment of potential impacts and the identification of adequate mitigation measures.

These serious Koi Project description inadequacies undermine not only the analyses of the presence of significant impacts, but also impair the ability to compare alternatives across these environmental parameters.

## **B. Failure To Identify A Reasonable Range of Alternatives**

The Alternatives section is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA and its implementing regulations require the careful development and discussion of alternatives. 42 U.S.C. §§ 4332(2)(C)(iii) and 2(E); 40 C.F.R. § 1502.10(e). In fact, NEPA requires an exceptionally robust discussion of alternatives in which the EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives,” “discuss each alternative considered in detail,” and “include reasonable alternatives not within the jurisdiction of the lead agency.” 40 C.F.R. § 1502.14.

The Draft EIS evaluates only four alternatives: (1) the proposed resort/casino project, (2) a reduced intensity resort/casino project, (3) a hotel/spa/winery project, and (4) the “No Action” alternative. *See* Draft EIS, at Section 2. Remarkably, all three of the development alternatives only constitute projects that would be constructed and operated *on the Koi Site*. Conspicuously absent is any off-site alternative and, in particular, any alternative that would be constructed in

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Lake County, where the Koi Nation’s ancestral homeland is located. This omission is fatal to the Draft EIS.

The Draft EIS fails to credibly explain or factually support its blanket rejection of any off-site alternatives that would not be considered in detail in this document. Section 2.6 of the Draft EIS (entitled “Alternatives Eliminated From Further Analysis”) incorporates the original Scoping Report and the Supplemental Scoping Report enclosed at Appendix A-2.

Section 2.6 of the Draft EIS (entitled “Alternatives Eliminated from Further Analysis”) states that five criteria were used to reject alternatives: (1) whether they meet the purpose and need for the Proposed Action; (2) whether they are feasible from a technical or economic standpoint; (3) whether they are feasible from a regulatory standpoint (including ability to meet the requirements for establishing connections to newly acquired lands for the purposes of the “restored lands” exception set forth in 25 C.F.R. § 292.12); (4) whether they avoid or minimize environmental impacts; and/or (5) whether they contribute to a reasonable range of alternatives. The section then refers to the Supplemental Scoping Report for a description and explanation of the eliminated alternatives.

It is undisputed that an off-site alternative here could and would meet the “purpose and need” for this proposed action. Here, the “purpose” of the proposed action “is to facilitate tribal self-sufficiency, self-determination, and economic development.” Draft EIS, Section 1.2. The “need” is for the Department to act in conformance with its governing Section 151 regulations. *Id.* Thus, neither the purpose nor need are limited to evaluating only one particular site proposed by the Koi Nation. Rather, the general purpose (and accompanying need) of facilitating tribal self-sufficiency, self-sufficiency and economic development can be accomplished in many locations. The Draft EIS does not assert otherwise.<sup>5</sup>

The DOI’s NEPA regulations (which are binding on BIA) emphasize that the lodestone for the selection of alternatives is the agency’s purpose and need: “It is the bureau’s purpose and need for action that will determine the range of alternatives and provide the basis for the selection of an alternative in a decision.” 43 C.F.R. § 46.420(a)(2). Moreover, these regulations emphasize that the complete range of alternatives must be vigorously evaluated: “... a reasonable number of examples covering the *full spectrum* of reasonable alternatives, *each of which must be rigorously explored and objectively evaluated, ...*” 43 C.F.R. § 46.420(c) (emphasis added). The case law teaches that “[t]he broader the purpose, the wider the range of alternatives; and vice versa” and “[i]f the agency constricts the definition of the project’s purpose and thereby excludes what truly

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<sup>5</sup> This Draft EIS “purpose” formulation is very close, but not identical, to the purpose of IGRA of “promot[ing] tribal economic development, tribal self-sufficiency, and strong tribal governments.” 25 U.S.C. § 2701. The key difference is that “strong tribal governments” has been replaced with “self-determination” in the purpose statement. To the extent that the BIA is attempting to utilize this addition of “self-determination” to direct BIA to only consider the Koi Site and no other locations, this approach would violate NEPA because it would impermissibly inject the proponent’s desires for project location into the purpose statement as described in the following paragraphs above.

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are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act.” *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666. (7th Cir. 1997).

Here the purpose of the BIA’s action has been defined broadly and is not specific in locational terms. The facilitation of tribal self-sufficiency, self-determination and economic development could be successful anywhere within Lake County, which is the location of the Koi Nation’s aboriginal territory. Accordingly, the BIA is mandated to “rigorously explore” the “full spectrum” of reasonable alternatives that achieve this broad purpose and need. By refusing to consider a development proposal on any site other than the one selected by the Koi Nation, the Draft EIS fails to fulfill its role and the BIA has failed to satisfy NEPA.

The two Draft EIS scoping reports incorrectly reject *all* off-site alternatives at the outset on the basis of three arguments that do not meet the articulated selection criteria. These reasons are: (1) the Koi Nation does not currently own or have an option on any suitable off-site property; (2) it is “speculative” whether the Koi Nation could purchase an alternative site that would meet its needs, thereby supposedly making all other sites infeasible from an economic and technical standpoint; and (3) evaluation of an alternative site would not meet the definition of a “reasonable alternative.” In fact, each reason why a Lake County site supposedly is not reasonable is false, as described below.

First, the Koi Nation clearly had the financial ability (with the backing of its financial partner) to recently purchase the Koi Site. There is no reason to believe that it could not sell this property and purchase an equivalent property in Lake County. We have been informed that a review of available land for sale in the vicinity of Lower Lake, Lake County, indicates several potentially suitable parcels that are for sale. *See* Chairman Sarris Letter, at pp. 22-23. Such a Lake County parcel would be more likely to be determined to be “Restored Land” by the BIA than a property 50 plus miles away in a neighboring county within the ancestral jurisdiction of another tribe that objects to the invasion of its territory. A Lake County casino site would be a “reasonable alternative” that must be fully evaluated in a revised Draft EIS, which should then be recirculated for a new comment period.

Second, from a NEPA legal viewpoint, the blanket rejection of all off-site alternatives on the basis that the Koi Nation does not own or have an option yet on them constitutes prohibited applicant control over the selection of alternatives that has been consistently rejected by the courts. Here, the Koi Nation has essentially been allowed to define the scope of the alternatives by owning and proposing only its recently purchased property for the Koi Project. However, this contravenes applicable law. 43 C.F.R. § 46.420(a)(2) (“The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau’s purpose and need for action.”); *National Parks & Conservation Ass’n v. BLM*, 586 F.3d 735, 747-48 (9th Cir. 2009) (court invalidates Final EIS because the BLM alternatives were too narrowly drawn to make sure that the applicant’s “private needs be met”). *Simmons*, 120 F.3d at 669 (“[a]n agency cannot restrict its analysis to those ‘alternative means by which a particular applicant can reach his goals.’”).

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Indeed, courts have not hesitated to hold that a Final EIS is invalid when an agency fails to rigorously examine a reasonable range of alternatives. *See, e.g., National Parks*, 586 F.3d at 746-48; *New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 708-711 (10th Cir. 2009) (BLM failed to take a “hard look at all reasonable options before it” by foreclosing an alternative that would close an area to development); *Simmons*, 120 F.3d at 668-70 (court holds that it was error for the Corps to reject consideration of “one concrete alternative that seems reasonable” for a water project); *Wilderness Society v. Wisely*, 524 F. Supp. 2d 1285 (D. Colo. 2007) (court finds Environmental Assessment inadequate because a directional drilling alternative from outside the action area was not technically or economically infeasible); *Matthews v. U.S. Dept. of Transportation*, 527 F. Supp. 1055, 1056 (W.D. N.C. 1981) (final EIS for transportation project was insufficient because it “failed to give adequate consideration to the [town] bypass alternative in the EIS.”)

Finally, as BIA is well aware, it routinely includes off-site project alternatives in NEPA documents for Indian gaming proposals. *See, e.g., 2016 Wilton Rancheria Final EIS, Section 2 – Alternatives* (Dec. 2016) (considering, among the alternatives, the tribe’s historic rancheria site which was no longer held in trust); Dep’t of Interior, Record of Decision for Trust Acquisition of the 40-acre Yuba County Site in Yuba County, California, for the Enterprise Rancheria of Maidu Indians of California (Nov. 2023) (incorporating the Final EIS and considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for the tribe); BIA, Final Environmental Impact Statement, North Fork Rancheria of Mono Indians (Feb. 2009) (considering, among the alternatives, the tribe’s historic rancheria site which was held in trust for individual North Fork members).

In sum, the BIA’s early rejection of an off-site alternative, particularly one located in Lake County, renders the Draft EIS wholly inadequate because this alternative fully complies with the agency purpose and need for the Koi Project, is not economically or technically infeasible, is necessary to fulfill the agency’s mandate to “evaluate the full spectrum of reasonable alternatives,” comports with the dictates of NEPA case law, and is consistent with the practices of BIA and DOI in EISs for other Indian gaming projects in California.

### **SECTION 3.3 - WATER RESOURCES**

The Draft EIS’s evaluation of groundwater, wastewater, and Pruitt Creek impacts is wholly inadequate. In fact, the complicated sets of wastewater facilities and proposed discharges to Pruitt Creek are an “Achilles’ heel” for the Koi Project. Since the Koi Project (which will often be hosting 9,000 or more guests) would not be served by municipal water or sewage treatment systems, the proponent is scrambling to try to find a way to provide these services but does not have reasonable options. As a result, this messy and unfocused portion of the Draft EIS lacks a specific and stable project description, proposes unacceptable options (such as massive discharges of treated wastewater to a creek reported to host endangered salmonids), and is unsupported and totally inadequate under NEPA.

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FIGR’s water/wastewater expert, AVD Management (“AVD”), has prepared a Technical Memorandum, included as Appendix 2 to this letter, regarding the Draft EIS’s inadequacies in the water resource subject areas (“AVD Report”). AVD’s conclusions are included in the factual and legal discussions set forth below.

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### A. Groundwater Supply

Currently, two shallow groundwater wells provide water to the Koi Site for vineyards and a residence. The Draft EIS states that it is unknown whether the Project will be able to use the two existing on-site wells. Accordingly, the Draft EIS proposes to drill two more on-site wells in deep aquifers to meet the Project’s demand of approximately 170,000 gallons per day (“gpd”) of potable water and 108,000 gpd of recycled water.

It appears highly unlikely that the Project will be able to utilize the existing wells for its potable water. Historically, groundwater has been used at the Project Site to support agriculture. *See* Draft EIS, Section 3.3.2 at p. 3-16. In vineyards, irrigation demands drop significantly during the wet season, allowing the groundwater basin to recover. In contrast, water usage for the Koi Project would be essentially constant, with the casino/resort operating 24/7 on a year-round basis. There are other groundwater extractors in this same portion of the aquifer including the City of Windsor and agricultural and domestic well owners. According to the AVD Report, “the casino demand would not allow the groundwater aquifer to recover during the rainy season as now occurs with agricultural pumping on the site” and “[t]he Draft EIS fails to disclose this distinction and evaluate the effects of the year-round groundwater withdrawal and the effects to the aquifer’s resiliency in normal and drought years.” AVD Report, at p. 4.

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Yet, the Draft EIS inexplicably concludes that the Project’s impact on groundwater recharge would be less than significant. Draft EIS, ES-5, Table ES-1. According to the Draft EIS, “[t]he development of bioswales and a detention basin for capturing stormwater runoff onsite have been designed to maintain the stormwater discharge from impervious surfaces constructed for the [Project] that are no greater than current level” which will “result in stormwater percolation similar to historic rates.” *Id.*, Sect. 3.3.3.2 at p. 3-20. Additionally, the Draft EIS cites to the groundwater resources impact assessment which “determined that most of the vineyard’s water demand on the Project Site is met by soil water storage derived from precipitation” and that “the reduction in vineyard areas on the Project Site would result in some of the soil moisture that is currently being used by the vineyard percolating downwards and recharging the groundwater table.” *Id.*, Appendix D-4.

As a preliminary matter, even though the Draft EIS states there are no significant impacts and “no mitigation is required” in Section 4 of the Draft EIS, a series of mitigation measures are listed, presumably to address significant environmental impacts of increased groundwater pumping. *Compare* Draft EIS, ES-5, Table ES-1 *and* Section 3.3.3.2 *with* Appendix D-4. Thus, it is unclear from the Draft EIS whether BIA has determined that there is a significant impact. But it is clear from our review that groundwater will be significantly impacted.

On a substantive level, the conclusion that the Project’s impact on groundwater recharge would be less than significant is unsupported by fact or logic. First, whether the bioswales and detention basin would capture stormwater runoff that would result in stormwater percolation similar to historic rates is, at best, speculative. The Draft EIS provides no support for this conclusion. This assumption alone cannot serve as a basis for the Draft EIS’s conclusion. *See Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.*, 373 F.Supp.2d 1069, 1085 (E.D. Cal. 2004) (concluding that simply describing mitigation measures without further discussion regarding their efficacy is insufficient).

Second, it is difficult to understand how a reduction in the vineyard areas on the Koi Site would result in enough water to recharge the groundwater basin when the existing demand of the vineyard is only 20 acre-feet per year (“AFY”), whereas the Koi Project would have an average annual demand of 315 AFY. Draft EIS, Appendix D-1, Table 2-1. The quantity of groundwater for the Koi Project would be more than 15 times greater than the vineyard is currently using. The minimal amount of soil moisture that may percolate downwards would not be sufficient to recharge the groundwater basin. The Draft EIS’s reliance on this incorrect assumption to determine that the Project’s impact on groundwater recharge would be less than significant is contrary to prevailing law. *See, e.g., Environmental Def. Ctr. v. Bureau of Ocean Energy Mgmt*, 36 F.4th 850, 874 (9th Cir. 2022) (agreeing with plaintiff “that the agencies’ excessive reliance on the asserted low usage of well stimulation treatments distorted the agencies’ consideration of the significance and severity of potential impacts.”); *City of Los Angeles v. Fed. Aviation Adm’n*, 63 F.4th 835 (9th Cir. 2023) (finding that the FAA did not take a hard look at noise impacts from the Project because its analysis rested on an unsupported and irrational assumption).

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Moreover, the addition of the two proposed on-site wells will cause large groundwater drawdowns and impair the overall groundwater supply. The Draft EIS concluded that the impact is less than significant and only provides one mitigation measure to be implemented under a scenario in which the Town of Windsor operates two new municipal wells under multiple dry year conditions. Draft EIS, ES-5, Table ES-1 at p. ES-5 and Section 4 at pp. 4-1 to 4-2. The Draft EIS suggests that, where there are multiple dry years, the Koi Nation would participate in developing and implementing an interference drawdown monitoring and mitigation plan. However, the Draft EIS does not specify how the plan would be developed or implemented. Instead, it leaves the development and implementation of the plan solely up to the Koi Nation and not to the other Basin extractors affected by the Project.

Additionally, the mitigation measure states only that the Koi Nation may, “at its *sole discretion*, elect to connect the claimant to an alternative potable water source such as the casino’s water system at the Tribe’s expense.” *Id.*, Section 4 at p. 4-1 to 4-2 (emphasis added). There are no proposed mitigation measures that would assure that all water supply needs would be met or that the well owners would be compensated for the drawdown on their water supplies under non-dry year conditions.

Furthermore, reimbursement does not remedy the decreases in groundwater supply and loss of function of existing wells. In proposing that Koi Nation could elect to connect well owners

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to alternative potable water sources, the Draft EIS failed to discuss the indirect effects of this proposed alternative. According to the AVD Report, “[s]uch connections would require trenching for pipelines, which could impact cultural and/or biological resources. Pipeline installation also could affect traffic if construction in public roads is required.” AVD Report at p. 5. However, the Draft EIS lacks any analysis of the proposed potable water pipelines from alternative sources to the neighboring properties.

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Additionally, groundwater extraction could also degrade its quality. In fact, the Draft EIS admitted that “[g]roundwater quality could be adversely affected if pollutants enter the environment during construction or operation of [the resort/casino].” Draft EIS, Section 3.3.3.2 at p. 3-25. Other than this conclusory statement, the Draft EIS does not provide any details or information regarding to the possible impact of extraction on groundwater quality. Such a conclusory statement is legally insufficient under NEPA. *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 995 (9th Cir. 2004).

Despite admitting that the groundwater quality could be adversely affected, the Draft EIS dismisses this potential adverse effect by stating that the Koi Nation “would comply with the NPDES General Construction Permit from the USEPA for construction site runoff during the construction phase in compliance with the CWA” and that “[d]uring operation . . . an on-site stormwater system would include a detention basin, bioswales, and WWTP treatment to treat pollutants from stormwater runoff such as total suspended solids, hydrocarbons, nutrients, metals, and other common pollutants.” Draft EIS, Section 3.3.3.2 at p. 3-25. That is not good enough.

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The Draft EIS fails to provide any discussion as to whether these “precautions” would actually work, which is legally insufficient under NEPA. *See Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722 (9th Cir. 2001) (finding that the National Park Service erred in making a finding of no significant impact where it was unknown whether mitigation measures would work). The Draft EIS dismisses the need for mitigation measures by simply stating that the use of best management practices would minimize the impacts on groundwater quality, without offering any detail as to how these “best management practices” would be implemented and how those practices would ensure the quality of groundwater would not be impacted. *Id.*; Draft EIS, Table ES-1, at p. ES-5.

## **B. Wastewater Treatment and Disposal**

Similarly, the Draft EIS’s conclusions regarding the impact of the Project’s vague and woefully incomplete wastewater treatment and disposal plans are deficient and unsupported by facts. The Draft EIS concluded that there is no significant impact without providing any analysis or data related to the foreseeable environmental impacts. This conclusion is legally insufficient.

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The Project is estimated to generate an average wastewater flow of 232,000 gallons per day (“gpd”) and a peak weekend flow of 335,000 gpd. Appx. D-1, Section 2.3.2.1, Table 2-5. This enormous quantity of wastewater would need to be properly treated, stored and disposed of on a daily basis to protect human health and the environment. Treatment of wastewater from the

Project would require the construction of an onsite wastewater treatment plant (“WWTP”) to provide primary, secondary, and tertiary treatment of on-site sewage for both reuse and discharge into Pruitt Creek. Based on this estimate, “the WWTP must have the capability to treat and/or convey the Project’s maximum weekend demand of approximately 335,000 gpd.” *Id.* at p. 2-10.

The Draft EIS attempts unsuccessfully to describe a complicated series of wastewater treatment and storage options. Per the Draft EIS, “[t]reated effluent would be recycled and used on-site for toilet flushing and cooling tower makeup, as well as for irrigation of approximately 4.4 acres of landscaping and 12.2 to 17.4 acres of on-site vineyards at agronomic rates.” Draft EIS, Section 2.1.4 at p. 2-9. “During the wet season (approximately October 1 through May 14), treated effluent may be discharged on-site to Pruitt Creek, a tributary to the Russian River, subject to a USEPA NPDES discharge permit.” *Id.* “Excess effluent that cannot be immediately reused or discharged to Pruitt Creek would be stored in a lined seasonal storage pond or enclosed tanks.”<sup>6</sup> *Id.* The Draft EIS concludes that the “potential impacts to surface water and groundwater resources from wastewater treatment and disposal activities associated with [the Project] would be less than significant.” *Id.*, Section 3.3.3.2 at p. 3-26. This conclusion is legally inadequate because it is speculative and does not include any meaningful analysis of the direct, indirect, or cumulative impact of the Project’s wastewater treatment and disposal activities.

T8-9

A National Pollution Discharge Elimination System (“NPDES”) permit is required to discharge wastewater into Pruitt Creek. However, this permit has not yet been applied for or issued. Further, if issued, this permit may or may not include requirements equivalent to the state regulations that are cited in the Draft EIS. Therefore, whether a permit will be issued and the requirements contained therein is entirely speculative.

Regardless of whether or not an NPDES discharge permit will be applied for and obtained at a later date, NEPA requires the Draft EIS to present an analysis of the direct, indirect, and cumulative impacts of the Project, which it fails to do. *350 Montana v. Haaland*, 50 F.4th 1254, 1272 (9th Cir. 2022) (citing *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1136, 1141 (9th Cir. 2011); see also *Killgore v. SpecPro Professional Services, LLC*, 51 F.4th 973, 989-90 (9th Cir. 2022) (“while... federal agencies have substantial discretion to define the scope of NEPA review, an agency may not disregard its statutory obligation to take a ‘hard look’ at the environmental consequences of a proposed action, including its cumulative impacts, where appropriate.”) (citing *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212, 1214-15 (9th Cir. 1998)).

Significantly, the Draft EIS merely defers to the HydroScience Study in making its conclusion that the wastewater treatment and disposal activities will have less than significant environmental impacts. Draft EIS, Section 3.3.3.2 at p. 3-25. This deferral is misplaced because the HydroScience Study admits that it does not have any data to support the conclusion that

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<sup>6</sup> The HydroScience Study noted that “[o]ther common disposal alternatives include evaporative ponds, disposal to ocean, deep well injection, incineration, additional treatment to concentrate waste, etc.” Appendix D-1, Section 2.3.4 at p. 2-16. However, “[g]iven the limited area for additional treatment or evaporative ponds, it is anticipated that the brine will be disposed of off-site.” *Id.*

discharging treated wastewater into Pruitt Creek is feasible. In fact, the HydroScience Study specifically states that “[i]n order to begin detailed discussions with the RWQCB on the feasibility of discharging to the Pruitt Creek, the Project would need to begin to collect receiving water quality data near the anticipated discharge site and at the Mark West Creek gauge station.” *Id.*, Appendix D-1, Section 4.3.1 at p. 4-4. Yet, to date, no such study has been conducted. Without such a study, any “conclusion” regarding the impacts of the proposed discharge of treated wastewater is premature and unsupported.<sup>7</sup> Under NEPA, the Draft EIS may not defer the analysis of foreseeable impacts that arise from a plan by arguing that their consequences are unclear or that they will be analyzed later when a site-specific program is proposed pursuant that implements the plan. *See Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002).

T8-9  
cont.

Furthermore, the Draft EIS fails to identify any mitigation measures. Draft EIS, Table ES-1 at p. ES-5. Instead, the Draft EIS incorrectly states that no impairment of the downstream waterways would occur from this discharge because it would be subject to a future NPDES permit from the U.S. Environmental Protection Agency (“EPA”). *Id.*, Section 3.3.3.2 at p. 3-26. However, the mere fact that a future permit would be required does not obviate the need for a complete analysis and disclosure of impacts. *350 Montana*, 50 F.4th at 1272; *see Killgore*, 51 F.4th at 989-90; *see also South Fork Band Council of Western Shoshone* at 726 (“BLM argues that the off-site impacts need not be evaluated because the Goldstrike facility operates pursuant to a state permit under the Clean Air Act. This argument also is without merit. A non-NEPA document...cannot satisfy a federal agency’s obligations under NEPA.”).

The proposed on-site WWTP “would use various hazardous chemicals in the treatment process. These chemicals, if released to the environment, would cause devastating impacts to aquatic species.” Appendix 2 at p. 7. However, the quantities of hazardous chemicals that would be used in the WWTP treatment process were not disclosed. Moreover, potential impacts were not identified or properly discussed. The Draft EIS’s claim that the WWTP would only require a “limited quantity of chemicals” is not supported. Draft EIS, Section 3.12.3.2 at p. 3-126. “[F]or a WWTP treating hundreds of thousands of gallons of wastewater every day, thousands of gallons of hazardous materials would typically be required, not ‘small’ or ‘limited’ quantities.” AVD Report at p. 7. Moreover, “[t]hese liquid hazardous materials would typically be delivered on pallets of 55-gallon drums or by tanker truck.” *Id.* Yet, protective measures and best management practices in Draft EIS do not specifically identify what measures and practices would apply to these highly toxic chemicals. Draft EIS, Section 2.1.10, Table 2.1-3.

T8-10

The Draft EIS also fails to provide meaningful mitigation measures to protect the native salmonid species in Pruitt Creek. The Draft EIS admits that the “Coho salmon could be impacted by the project” and noted that there is potentially significant impact. Yet, the Draft EIS does not provide a meaningful method of addressing the impact. *See* 40 C.F.R. § 1502.16(a)(11) (stating

T8-11

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<sup>7</sup> The HydroScience Study also proposes “acquiring additional property for turf grass irrigation.” Draft EIS, Appx. D-1, Sect. 7.2 at p. 7-1. However, acquiring property is not identified in the Draft EIS as being part of the proposed Project and the impacts of such acquisition and corresponding mitigation measures were not identified.

that an EIS “shall include an analysis of . . . [m]eans to mitigate adverse environmental impacts”). Instead, the Draft EIS attempts to circumvent this obligation by relying on the incorrect assumption that Mitigation Measure I would be sufficient to address the impact of the Project, which merely states that there would be a “[c]onsultation with the National Oceanic and Atmospheric Administration Fisheries for impacts to fish and essential fish habitat shall be conducted” and fails to provide details as to how this would mitigate the adverse environmental impacts. *See* 40 C.F.R. § 1502.16(a)(11). “Mitigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.’” *Carmel–By–the–Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)). “A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Northwest Indian Cemetery Protective Ass’n. v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1985), rev’d on other grounds, 485 U.S. 439 (1988).

T8-11  
cont.

### C. Proposed “Treatment Area”

The Draft EIS proposes to site all or most of the water and wastewater treatment facilities in a tiny area of the property depicted as the “3.5 Acre Treatment Area.” *See* Draft EIS, Figure 2.1.1 at p. 2-3. Not surprisingly, the Draft EIS fails to depict where each of these facilities will go. Rather, the facilities that supposedly will be jammed into this area include two deep water wells, a water treatment facility, storage facilities for pumped water, a tertiary wastewater treatment plant, wastewater storage facilities (including either or both of large treatment ponds or 45-foot tall metal storage tanks), and extensive pipelines and pumps to service all of the facilities. It appears impossible to fit these facilities there, and no detailed analyses of effects have been made if these facilities are constructed elsewhere on the Site.

T8-12

One unusual hallmark of the Koi Project is that it will need to store vast amounts of wastewater for a four plus month period between May 15 and September 30. Once wastewater is treated, it would be pumped into the recycled water storage reservoir and/or tanks which will also be located at the southeast corner of the Project. Draft EIS, Section 2.1.4 at p. 2-9. However, the Draft EIS failed to provide information as to where within the treatment area these facilities will be located or how they will be oriented in relation to each other. Nevertheless, and without any factual support, the Draft EIS improperly concludes that there is no significant impact from the installation of so much infrastructure in one confined area. *Id.*, Section 3.3.3.2 at p. 3-26. This conclusion is improper as it is unsupported by any facts.

Although the Supplemental Wastewater Memorandum in Appendix D-2 of the Draft EIS (hereinafter “Wastewater Memo”) provides some information on the possible locations of WWTP storage tanks (*see* Draft EIS Appendix D-2), the Draft EIS and its accompanying appendices are silent as to the other WWTP components. This information is crucial because there are limitations as to where certain facilities could be within the proposed treatment area. For example, treated effluent cannot be discharged near the groundwater wells because the treated effluent could contaminate the groundwater. Thus, without knowing the proposed location for each individual component, it is improper for the Draft EIS to reach any conclusion regarding the individual or collective impacts or the particular mitigation measures that are needed.



Moreover, as admitted in the HydroScience Study, there are significant space limitations within the Koi Site that require any wastewater treatment process to provide high quality effluent on a small footprint. Draft EIS Appendix D-1, Section 2.3.3 at p. 2-13. Indeed, it is clear from the general site plans provided that the designated WWTP is inadequate to house the required facilities. As explained in the AVD Report (Appendix 2) at page 2:

Appendix D-2 Attachment A Figures 1 and 2 show that the two large wastewater storage tanks (140 or 160 feet in diameter and 65 feet tall) consume almost the entire usable area of the triangular 3.5-acre “treatment area”, leaving little to no room for the other required water and wastewater facilities. In fact, for “Option 6 and 8” shown on Attachment A Figure 2 of Appendix D-2, the 3.5-acre treatment area is not large enough to contain the three required 10-million-gallon storage tanks, and therefore the third required tank is shown in the casino parking lot.

Yet, the Draft EIS makes no attempt to determine whether there is actually enough space to fit all of these structures and facilities within the irregularly-shaped treatment area—let alone fit them in a safe manner that does not create significant impacts.

Given the large volume of wastewater that the Project is expected to generate, the WWTP component parts are very large. Therefore, visual impacts must be assessed by the Draft EIS. As currently composed, the Draft EIS provides little information for any person or entity to make this assessment. Section 6.2 of the HydroScience Study does provide generic illustrations of various pieces of mechanical equipment but each illustration is marked “NTS” (i.e., not to scale) which makes it impossible to determine the size of the water and wastewater facilities. See Draft EIS, Appendix D-1, Section 6.2, Figure 6-3. As a result, the impact those facilities may have cannot be determined. Instead, the WWTP component parts must be properly shown in a site plan and in architectural renditions for visual impacts to be reasonably assessed. Additionally, “due to the industrial nature of these facilities and since the nearest adjacent home appears to be less than 50-feet away, impacts such as noise, odor, and aesthetics must be, but were not, properly evaluated. This analysis and corresponding mitigation are currently absent in the Draft EIS.” Appendix 2, at pp. 2-3.

In sum, this section of the Draft EIS is completely inadequate under NEPA. The law requires the Draft EIS to give a “hard look” at the Project’s foreseeable environmental impacts. *Killgore*, 51 F.4th at 989-90. The “hard look” “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made,” *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000), and the final EIS must include a “discussion of adverse impacts that does not improperly minimize negative side effects.” *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1159 (9th Cir. 2006), abrogated on other grounds by *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7 (2008). General statements about possible effects and some risks, such as the ones found in the Draft EIS, do not constitute a hard look absent a justification regarding why more definitive information could not be provided. *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 491 (9th Cir. 2011).

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T8-13

T8-14

### **SECTION 3.4 - AIR QUALITY**

Section 3.4 of the Draft EIS covers topics involving air quality and the proposed Federal General Conformity Determination. Based on the dramatically inaccurate trip generation and associated errors in the Draft EIS traffic study discussed in Section 3.8 herein, the air quality analyses, and the associated Federal General Conformity Determination in Section 3.4, are inaccurate, are based on faulty empirical data, and must be completely redone. The significance level and other determinations in this Draft EIS section are therefore invalid under NEPA.

There are many sensitive receptors in the Koi Project area who will be impacted by air quality issues:

Sensitive receptors adjacent to the Project Site include residential areas north and west, Shiloh Neighborhood Church to the west, Esposti Park to the north, and a few households to the south. Sensitive receptors near the Project Site include additional residential development beyond the adjacent residential development: Little House School (preschool) that is approximately 0.45 miles south, and Le Elen Manor (assisted living facility) that is approximately 0.38 miles south.

Draft EIS, Section 3.4.2 at p. 3-33.

The Draft EIS mistakenly assumed that the Koi Project would "... generate 11,213 total daily weekday trips and 15,779 total daily Saturday trips, including 473 weekday a.m. peak hour trips (279 in, 194 out), 1,205 weekday p.m. peak hour trips (710 in, 495 out), and 1,340 midday Saturday peak hour trips (657 in, 683 out)." Draft EIS, Section 3.8.2.3 at p. 3-81. In fact, as explained in Appendix 3 to this letter and in Section 3.8 herein, the Koi Project will actually generate over 29,000 total daily weekday trips. Besides fatally undermining the traffic impact calculations in Section 3.8, the addition of over 18,000 daily vehicle trips will cause significant unreported air quality impacts because the majority of air quality impacts from the Koi Project are a result of mobile emissions from vehicle trips.

As explained in Draft EIS Section 3.4.3.2, Methodology, "Annual operation emissions for the project alternatives were calculated using CalEEMod" and "Trip generation rates were provided from Appendix I ..." EIS Appendix I, Table 8: Alternative A (Trip Generation), lists 11,213 daily trips as the Trip Generation Rates to be used for the air quality model. The correct trip generation rate of 29,000 weekday daily trips is almost three times higher than what was disclosed in the Draft EIS. Therefore, mobile air emissions from the Koi Project would also be approximately three times more than reported in the Draft EIS. This dramatic under-reporting of air emissions changes the conclusions and required mitigation in the Draft EIS, effectively invalidating the air quality analysis that was provided.

For the same underlying reasons, the draft Federal General Conformity Determination is not based on the correct data and cannot be adopted in its current form. Since the Koi Site is located in an area that is not in attainment for ozone and is a maintenance area for carbon dioxide

(two pollutants that are closely associated with emissions from vehicles), the calculations based on Appendix I results are invalid. These calculations must be completely redone and reanalyzed and a new proposed Federal General Conformity Determination must be recirculated with a revised Draft EIS for public comment.

T8-15  
cont.

### **SECTION 3.5 - BIOLOGICAL RESOURCES**

The Biological Resources section of the Draft EIS contains a series of errors that have been made in providing a sufficient project description, in making sure all surveys are done at the appropriate time, in defining the proper scope of the assessment of species, and in providing the empirical data needed to support important “significance” conclusions. These and other Draft EIR inadequacies are explained in the biological resources peer review prepared by WRA Environmental Consultants, which is enclosed with this letter as Appendix 5 (“WRA Report”).

The Project Description in Section 2.1 is insufficient. There are two major project description deficiencies. First, the Draft EIS states that a variety of wastewater discharge structures will be constructed into Pruitt Creek, along with pipelines to and under Pruitt Creek, that are not specifically described or even plotted on a map. This lack of project specificity impairs the public’s ability to specifically evaluate the precise impacts of the planned wastewater facilities and discharge on the wetlands, creek and federally protected species that likely are present in the Creek. Since this reach of Pruitt Creek is designated critical habitat for steelhead under the Endangered Species Act, this information is critical to assess the extent of adverse modification caused by these facilities.

T8-16

Second, Section 2.1.8 of the Draft EIS (p. 2-14) is not clear regarding the potential for utility extensions and upgrades necessary to implement the Koi Project to require off-site ground disturbance, with potential impacts to biological resources. The Koi Project description is inadequate without these project elements. The lack of this information prevents a full assessment of potential impacts or the identification of adequate mitigation measures included.

#### **A. Effects on Intermittent Drainage (Pruitt Creek) and Riparian Corridor**

The Draft EIS concedes that the development of the Project could disturb Pruitt Creek and its associated Riparian Corridor, a federally-designated sensitive habitat. Draft EIS, Section ES-5, Table ES-1 at p. ES-6. Nevertheless, the Draft EIS concludes that “[w]ith adherence to the conditions of applicable permits and implementation of [best management practices] . . . and mitigation measures . . . , [the Project] would have a less-than-significant effect on Pruitt Creek and the riparian corridor.” *Id.*, Section 3.5.3.3 at p. 3-54.

T8-17

As a preliminary matter, the Draft EIS does not provide enough information to make an adequate assessment of the Project’s impact on Pruitt Creek and the Riparian Corridor. For example, to assess whether construction and operation of the Project has any adverse effects on Pruitt Creek’s streamflow, information regarding the current water level is needed. That information is not provided.

The Project also proposes developing pipelines and outfall structures for treated effluent discharge (and stormwater drainage) within approximately 600 square feet of the riparian corridor and bed, bank, and channel of Pruitt Creek and states that “[t]he gravity sewer main from the resort facility to the proposed lift station and WWTP would be installed either beneath Pruitt Creek by horizontal directional drilling or other trenchless construction methods or over Pruitt Creek by attaching it to either the proposed pedestrian or vehicle bridge to avoid impacts to the creek and riparian corridor.” Draft EIS, Section 3.5.3.3 at p. 3-53. In making this proposal, the Draft EIS completely overlooks many reasonably foreseeable effects<sup>8</sup> from the development of the infrastructure needed to dispose effluent, without any explanation.

It is unclear why the Draft EIS failed to discuss any of the reasonably foreseeable impacts of the development of the required infrastructure. To the extent that the Draft EIS is silent on this topic due to the lack of information, Section 1502.21 of the Code of Federal Regulations is instructive. *See* 40 C.F.R. § 1502.21. The agency “shall make clear that ... information is lacking.” *Id.* If the missing information is “relevant to reasonably foreseeable significant effects” and is “essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable,” the agency must include that information in the EIS. *Id.* If the missing information “cannot be obtained because the overall costs of obtaining it are unreasonable or the means to obtain it are not known,” the agency must include the following in the EIS: (1) a statement that such information is “incomplete or unavailable”; (2) a statement of the “relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment”; (3) a “summary of existing credible scientific evidence ... relevant to evaluating the reasonably foreseeable adverse impacts”; and (4) the agency’s “evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.” *Id.*

T8-18

For instance, drilling into any land would obviously generate adverse environmental impacts, including the potential to unearth cultural resources, yet the Draft EIS is completely silent on this topic. NEPA requires the Draft EIS to take a “hard look” at potential environmental consequences, which includes “considering all foreseeable direct and indirect impacts.” *N. Alaska Environmental. Ctr. v. Kempthorne*, 457 F.3d 969, 975 (9th Cir. 2006) (internal quotation marks and citation omitted). The Draft EIS’s silence as to any adverse potential impact runs afoul to the requirements set forth by NEPA.

The Draft EIS proposes discharging treated effluent into Pruitt Creek. *See* Draft EIS, Section 2.1.4. Other than noting that “[e]ffluent discharged into Pruitt Creek would require an NPDES discharge permit,” the Draft EIS does not provide any analysis or disclosure as to the impact of disposing treated effluent into Pruitt Creek. It is well-established that the mere fact that a future permit is required does not obviate the BIA’s obligations to prepare a complete analysis and disclosure of foreseeable environmental impacts. *See 350 Montana*, 50 F.4th at 1272; *Killgore*, 51 F.4th at 989-90; *S. Fork Band Council of Western Shoshone*, 588 F.3d at 727 (“A non-

T8-19

<sup>8</sup> Reasonably foreseeable effects “include[ ] effects which have catastrophic consequences, even if their probability of occurrence is low.” 40 C.F.R. § 1502.21(d).

NEPA document . . . cannot satisfy a federal agency’s obligations under NEPA”); *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 998. Similarly, there is no meaningful discussion in the Draft EIS as to how the hazardous materials used for construction of the other aspects of the casino-resort would impact Pruitt Creek and its associated riparian corridor. Instead, the Draft EIS merely states that Koi Nation would comply with the NPDES General Construction Permit for construction site runoff during the construction phase in compliance with the CWA. Draft EIS, Section 3.5.3.3 at p. 3-53.

T8-19  
cont.

The Draft EIS also takes the position that “with implementation of mitigation measures in Section 4, including the requirement to consult with NOAA Fisheries, Alternative A would have a less-than-significant impact on special-status fish species.” Draft EIS at p. 3-55. However, this does not qualify as a mitigation measure. As FIGR’s expert biological resources report states” “consultation with NMFS is not itself a mitigation measure that reduces effects deemed potentially significant by the Draft EIS; rather, the Draft EIS must prescribe measures which themselves reduce effects to less than significant levels (and such measures may be updated if the consultation process results in additional measures and/or stricter procedures).” Appendix 5 at p. 6. This is a phantom mitigation measure that fails to comply with NEPA.

T8-20

The omission of a reasonably complete discussion of possible mitigation measures undermines the action-forcing function of NEPA. *See Robertson*, 490 U.S. at 352. Even though NEPA does not require the adverse harms to actually be mitigated, it does require the Draft EIS to discuss mitigation measures with “sufficient detail to ensure that environmental consequences have been fairly evaluated.” *Id.* Here, the Draft EIS does not discuss Mitigation Measures A through C with enough detail.<sup>9</sup> This is especially true given the fact that the Draft EIS does not address whether each mitigation method can be effective. “A mitigation discussion without at least some evaluation of effectiveness is useless in making [a] determination [whether anticipate environmental impacts can be avoided].” *S. Fork Band Council of Western Shoshone*, 588 F.3d at 727.

T8-21

For example, an attempt to mitigate environmental impacts to Pruitt Creek and its associated riparian corridor, the Draft EIS proposes Mitigation Measure B, which provides that “[a] qualified biologist shall delineate an Environmentally Sensitive Area along Pruitt Creek” and “the contractor shall install high-visibility fence to prevent accidentally incursion on the Environmentally Sensitive Area.” Draft EIS, Section ES-5, Table ES-1 at p. ES-7. The Draft EIS does not specify the party that would select the biologist or what selection criteria would be used. The Draft EIS also fails to establish guidelines for the biologist to determine which area around Pruitt Creek is “Environmentally Sensitive.” Additionally, the Draft EIS does not specify the type of fence that would be installed and provides no information as to the effectiveness of installing a high-visibility fence to prevent accidental incursion. Under NEPA, the Draft EIS “must provide ‘an assessment of whether the proposed mitigation measures can be effective . . . [and] whether anticipated environmental impacts can be avoided.’” *Protect Our Communities Found. v. Jewell*,

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<sup>9</sup> Mitigation Measures A through C are legally inadequate under NEPA for many of the same reasons. To avoid duplicity, only Mitigation Measures B and C will be discussed.

825 F.3d 571, 582 (9th Cir. 2016) (citing *S. Fork Band Council of Western Shoshone*, 588 F.3d at 727.)

T8-21  
cont.

**B. Effects to Federally Listed or Protected Special-Status Species and State Listed Special-Status Species**

At the outset, the WRA Report points out several key deficiencies in the identification and search for protected plants. First, the Sequoia biological report on which the plant impact analysis is based used only a 3-mile search radius for plant species that may potentially be present, when instead the accepted standard practice is the larger “9-quadrangle search.” Appendix 5 at p. 3. Second, the Draft EIS consultant conducted the botanical surveys at the wrong time of year to detect the presence of many protected species. According to WRA, “the botanical surveys are also deficient because they occurred during months when many protected species are not blooming, which makes them very difficult to detect and/or identify.” *Id.* The surveys in question were conducted in the winter (February), while the accepted practice is to conduct surveys in the spring between March and May, with perhaps a late-season survey in June to August. *Id.* at 4. As a result, many protected species that may have been present on the Koi Site went undetected, thereby impairing the survey results.

T8-22

The Draft EIS admits that the Project could other impact certain special-status species such as: (1) special-status fish species; (2) the California red-legged frog; and (3) Northwestern pond turtle. Draft EIS, Section ES-5, Table ES-1 at pp. ES-9 - ES-12. Nevertheless, the Draft EIS insists that the Project would have less than significant impact on these protected species. *Id.*, Section 3.5.3.3 at p. 3-54. In reaching its conclusion, the Draft EIS primarily relies on the Biological Assessment (“Biological Assessment”) in Appendix G-1 and G-2.

According to the Biological Assessment, the anticipated effects to all three types of special-status fish species—chinook salmon, coho salmon, and steelhead—are similar “and will come from potential changes in water quality and associated changes in downstream habitat suitability, as the reach of Pruitt Creek, particularly the section within the Project footprint, is generally poor-quality breeding habitat for all salmonids due to hydrological period and water quality parameters.” Draft EIS, Appendix G-2 at p. 38. According to the Biological Assessment, “[t]he potential for Pacific salmonids to occur and use habitat in this far east portion of the Russian River Basin [in other words, Pruitt Creek] is temporally and physically limited.” *Id.* However, federally listed steelhead, *Oncorhynchus mykiss*, 79 Fed. Reg. 20802, 20807 (2014), are known to exist in Pruitt Creek and it is formally designated as “critical habitat” for this species. This incorrect assumption as to the presence of salmonids in Pruitt Creek underscores the Draft EIS’s failure to give a hard look at impacts from the Koi Project. *City of Los Angeles*, 63 F.4th 835 (finding that the FAA did not take a hard look at noise impacts from the Project because its analysis rested on an unsupported and irrational assumption that construction equipment would not operate simultaneously).

T8-23

With regard to the California red-legged frog (“CRLF”), the Biological Assessment determined that there are no recorded occurrences of CRLF within 3 miles of the Project Site.

T8-24



Appx. G-1, Sect. 6.2.2 at p. 21. The Biological Assessment relied on data from 2022 which is outdated. In fact, as discussed in the following paragraph, *infra*, the Draft EIS admits that a new study to determine whether any CRLF are present must be conducted. *Northwest Ecosystem Alliance v. Rey*, 380 F. Supp. 2d 1175 (W.D. Wash. 2005) (stressing that relying on outdated data or not acknowledging the limitations in a methodology are grounds for setting aside an EIS). The Draft EIS admits that “if CRLF were to be present at the time of construction of [the Project], construction related activities have the potential to cause CRLF mortality, which would be a potentially significant adverse effect.” Draft EIS, Sect. 3.5.3.3 at p. 3-55. Nevertheless, the Draft EIS concludes that “[p]otential adverse effects to CRLF would be avoided or minimized to less-than-significant levels with implementation of [best management practices] and mitigation measures [J through L].” *Id.* However, for many of the same reasons discussed in Section 3.5, Mitigation Measures J through L are defective.

T8-24  
cont.

The report by FIGR’s expert biology team also criticized the “exceptionally cursory examination” of potential cumulative biological resource impacts of the Koi Project in combination with five identified projects in the vicinity. Appendix 5 at p. 7. Rather than “make any reference to or discussion of relevant biological data,” this analysis found less than significant impacts would occur based on the unsupported assumption that these projects would have mitigation measures that would prevent them from being significant. The WRA Report concludes that this is a “serious flaw in the EIS” and “there is no basis to reach the conclusion that there is “no significant cumulative impact.” *Id.*

T8-25

### **SECTION 3.6 - CULTURAL AND PALEONTOLOGICAL RESOURCES**

The Bureau of Indian Affairs has failed to meet its important consultation responsibilities under Section 106 of the National Historic Preservation Act, 54 U.S.C. §§ 300101, *et seq.* (“NHPA”). The Draft EIS conveys the false impression that the BIA has properly consulted and completed these statutory duties. However, the reality is quite different. The August 26, 2024 comment letter that is being concurrently submitted by FIGR Chairman Sarris addresses these failures in detail and is specifically incorporated by reference herein. In this comment letter, we will further address the NEPA implications of these legal inadequacies.

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NHPA Section 106 requires all federal agencies, including the BIA, to consider the impact on historic properties and cultural resources for any project or activity “requiring a Federal permit, license, or approval.” 54 U.S.C. §§ 306108, 300320. As applicable here, the NHPA implementing regulations specifically require the BIA to undertake two consultations, which usually occur concurrently. First, the BIA must initiate a meaningful government-to-government consultation with any tribe that “attaches religious and cultural significance to historic properties that may be affected by an undertaking.” 36 C.F.R. § 800.2(c)(2)(ii). Second, the BIA must consult with California’s SHPO and seek concurrence that no property resources are eligible for inclusion in the National Register of Historic Places. 36 C.F.R. § 800.4(a). In this case, the BIA has clearly failed to diligently pursue and complete this consultation process.

First, BIA failed to make a reasonable and good faith effort to consult with FIGR regarding historic properties in its ancestral area that may be affected by the proposed action. FIGR sent many rounds of consultation letters to BIA that specifically identified serious procedural and substantive inadequacies in the consultation process, including the BIA's failure to provide key documents, the BIA's disregard of FIGR's concerns, and the BIA's lack of meaningful engagement with the Tribe on these issues. The BIA's patently inadequate consultations with FIGR and other interested tribes led SHPO, in a July 10, 2024 letter to the BIA, to advise the BIA to "conduct consultation in a manner that provides Indian Tribes a reasonable opportunity to identify its concerns about historic properties, *advise on the identification and evaluation of historic properties*, including those of traditional religious and cultural importance, *articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.*" (emphasis added).

Second, the BIA failed to properly complete consultation with the SHPO. In its July 10, 2024 letter, the SHPO stated: "***I object to a finding of no historic properties affected. I find the efforts to identify historic properties, including those of religious and cultural significance to Tribes to be insufficient, inadequate and unreasonable.***" (emphasis added)<sup>a</sup> As a result, the SHPO letter concludes:

I request that BIA reinstate Section 106 consultation with Indian Tribes and the SHPO by redefining the APE [Area of Potential Effects] in a manner that considers the geographic area (including vertical extents) within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties and consult on the efforts it proposed to identify historic properties within the APE.

The Draft EIS attempts to "paper over" these striking inadequacies in the Section 106 consultation process with the tribes. Section 3.6 briefly mentions that FIGR and two other tribes requested to be consulted by the BIA (p. 3-60). However, the Draft EIS fails to specifically present and discuss the serious, persuasive concerns regarding the consultation process and study inadequacies identified by FIGR and other tribes. Instead, as a result of its partial and incomplete analyses, and its inadequate and unreasonable consultation with the tribes, the BIA wrongly concludes that it "did not identify any resources that met the criteria for inclusion on the NRHP" and that the Koi Project "would not result in direct adverse effects to known historic properties."

From a NEPA viewpoint, these premature, factually incorrect and unsupported conclusions on historic property issues by themselves fundamentally undermine the findings and conclusions in the Draft EIS. Not only have the public and the decisionmakers not been presented with a full and accurate analysis of the Koi Project's effects on cultural resources, but these inadequacies prevent a robust examination of alternatives to the proposed project on this critical parameter. This problem is exacerbated by the failure of the BIA to include any alternative within Lake County, where the Koi Nation's historic homeland is located, that would eliminate these cultural resource impacts.

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The BIA’s failure to properly conduct and complete the consultations required by the NHPA and its implementing regulations is not reviewed under an “arbitrary and capricious” standard. The NHPA regulations make it clear that the BIA has the burden and important responsibility to conduct and complete these consultations in accordance with law. 36 C.F.R. §§ 800.2, *et seq.* Thus, the BIA must abide by these requirements and must further conduct the consultations “to ensure that historic properties are taking into consideration at all levels of planning and development . . .” and “in a manner sensitive to the concerns and needs of the Indian tribe....” 36 C.F.R. §§ 800.2(c)(1)(i), (2)(ii)(A),(C).

In contrast, as vividly illustrated in the Chairman Sarris and SHPO Letters, the BIA indisputably failed to perform its responsibilities. The BIA’s high-handed approach here violates these standards and undermines the credibility of the Draft EIS. In situations where projects were approved without adequate consultation under NHPA, courts have set aside the agency’s action and/or corresponding Final EIS. *See e.g., Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Dept. of Interior*, 755 F.Supp.2d 1104 (S.D. Cal. 2010) (“*Quechan Tribe*”) (finding that because the project was approved without adequate consultation under NHPA, the tribe is entitled to have the actions of the Bureau of Land Management set aside under 5 U.S.C. section 706(2)(D)); *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768 (9th Cir. 2006) (holding that the agencies violated NHPA and NEPA by failing to conduct consultation or consideration of historical sites before extending leases and setting aside, among other things, the EIS); *Attakai v. U.S.*, 746 F.Supp. 1395 (D. Ariz. 1990) (granting the motion for injunctive relief for violations of Section 106 on the basis that defendants did not adequately take into account the effect of the undertakings on historic properties).

The need for strict adherence to the NHPA consultation requirements is highlighted in the *Quechan Tribe* and *Attakai* cases. In *Quechan Tribe*, the district court found that the consulting efforts by BIA were insufficient because, among other things, the tribe’s requests for information and meetings were often rebuffed or responses were delayed. 755 F.Supp.2d at 1118-19. Additionally, the BIA’s consulting efforts “amounted to little more than a general request for the Tribe to gather its own information about all sites within the area and disclose it at public meetings.” *Id.* In *Attakai*, the district court found that even though the BIA conducted a survey of the land at issue, BIA did not adequately take into account the effects of the undertakings on historic properties because it failed to, among other things, consult with the SHPO to determine information needed to identify historic properties which may be affected. 746 F.Supp. at 1407. As explained by the district court, “[w]ithout consultation with the SHPO . . . the [BIA] has no reasonable basis under the regulations to determine what additional investigation . . . may be warranted.” *Id.*

Here, like the plaintiffs in *Quechan Tribe*, FIGR’s government consultation rights under the NHPA were not respected by the BIA. FIGR first learned about the Project when it received a letter from one of the BIA’s consultants in July 2022. FIGR informed the BIA that the Project would be located within its ancestral territory, that religious and culturally significant cultural resources are present, and that no further testing should be conducted without its participation.

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The Tribe also requested copies of all cultural resource records already gathered or generated for the Project.

Nevertheless, the BIA continued to conduct several studies without informing FIGR. Additionally, the BIA failed to respond to FIGR’s many requests for copies of the cultural resource reports until July 2023. FIGR then requested time to review the reports. Instead, the BIA rushed ahead without consulting FIGR and, on July 18, 2023, issued its determination that no historic properties would be affected and requested concurrence from the SHPO. After reviewing the BIA’s concurrence request and FIGR’s letters, the SHPO requested that BIA consult with FIGR and other culturally affiliated tribes to assess changes to the APE, the identification and evaluation of historic properties, and the effects determination.

Over nine months after FIGR’s original consultation request, the BIA finally agreed to meet with FIGR. At this November 2023 virtual consultation meeting, FIGR again asked that it be informed of and present at all testing and surveys for cultural resources. Nevertheless, two months later, in direct contravention of FIGR’s request, the BIA conducted a canine survey of the parcel without notice to the Tribe. On May 6, 2024, the BIA moved forward yet again to seek concurrence from the SHPO with its finding that no historic properties would be affected by the Project. The SHPO objected to BIA’s finding, pointing out that the BIA’s efforts to identify historic properties, including those of religious and cultural significance to tribes, was “insufficient, inadequate, and not reasonable.” The SHPO requested that BIA reinstate NHPA Section 106 consultation with FIGR and the SHPO. As of the date of this letter, BIA has not reinstated Section 106 consultation.

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### **SECTION 3.7 - SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE**

There are three major interconnected problems with Section 3.7 of the Draft EIS, entitled “Socioeconomic Conditions and Environmental Justice.” First, the analysis fails to correctly define the scope of environmental justice effects that must be evaluated in the NEPA context. Second, the analysis improperly applies the governing environmental justice framework to the proposed Koi Project. Third, as discussed further in the expert review enclosed as Appendix 4, the economic analysis upon which the socioeconomic findings in the Draft EIS are predicated is fundamentally flawed and undependable.

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#### **A. NEPA Environmental Justice Principles**

Environmental justice principles have a special role in the NEPA process. Over the last three decades, numerous Executive Orders have required all federal agencies to “make achieving environmental justice part of its mission....” Executive Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994), at 1; *see also* Executive Order 14096, 88 Fed. Reg. 25251 (April 21, 2023) (“the Federal Government must build upon and strengthen its commitment to deliver environmental justice to all communities across America.”). The President’s Council on Environmental Quality, which issued the implementing regulations for NEPA, has also issued guidance on how federal agencies

should apply environmental justice principles during the NEPA process. Environmental Justice, Guidance Under the National Environmental Policy Act (Dec. 10, 1997) (“CEQ Guidance”).

At the outset, it is well accepted that Indian tribes are considered environmental justice communities of concern both generally and for purposes of NEPA. CEQ Guidance, at 1 (“The Executive Order [No. 12898] makes clear that its provisions apply fully to programs involving Native Americans.”). The CEQ Guidance also includes “important ways to consider environmental justice under NEPA,” and leads with the following requirement:

Each Federal agency should analyze the *environmental effects, including human health, economic and social effects* of Federal actions, *including effects on minority populations, low-income populations, and Indian tribes*, when such analysis is required by NEPA.

*Id.*, at 4 (emphasis added). Thus, this Guidance directs that, in NEPA’s environmental justice context, analysis of “environmental effects” includes analysis of both economic and social effects on Indian tribes. Moreover, these effects include direct, indirect and cumulative effects. 40 C.F.R. § 1508.1 (the terms “effects” and “impacts” are defined to include “. . . historic, cultural, economic, social, or health. . . whether direct, indirect, or cumulative.”)

These environmental justice requirements also have a special application in the development, comparison and selection of NEPA alternatives. A federal agency (BIA here) must encourage members of environmental justice communities “to help develop and comment on possible alternatives to the proposed agency action as early as possible in the process.” CEQ Guidance, at 15. Moreover, when there are high and disproportionate environmental impacts on Indian tribes, “the distribution as well as the magnitude of the disproportionate impacts in these communities should be a factor in determining the environmentally preferable alternative.” *Id.* Moreover, “[m]itigation measures identified in an EIS . . . should reflect the needs and preferences of . . . Indian tribes to the extent practicable.” *Id.*, at 16.

**B. The BIA Misapplied These NEPA Environmental Justice Principles With Regard To FIGR And Other Indian Tribes.**

The Draft EIS admits that environmental effects on a Native American tribe would be an adverse environmental justice impact (p. 3-68) and identifies the Koi Nation as such a Tribe (p. 3-66). However, the only analysis it makes regarding the Koi Project’s impacts to tribes, apart from “gaming substitution impacts” (discussed below), is that the Project will cause *positive* economic impacts including beneficial impacts to the economy immediately around the Koi Project and to the Koi Nation, while ignoring the panoply of *negative* impacts on Sonoma County tribes culturally affiliated with the Koi Site and the 19 tribes that its economic consultants identified. *Id.*, Section 3.7.3.2 at p. 3-76. As a result of this unreasonably one-sided analysis, the Draft EIS concludes that the Koi Project “would not result in disproportionately high and adverse impacts to minority or low-income communities, including the [Koi] Tribe.” *Id.*

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This analysis is wholly insufficient for multiple reasons. First, it fails to analyze the potential environmental effects of the Koi Project on FIGR or any other tribe except the Project proponent (Koi Nation). Second, it fails to recognize that these “environmental effects” include cultural, economic and social impacts, which for FIGR includes the cultural resources and ancestral remains of their ancestors which are likely present on the site. Third, it fails to recognize both direct and indirect impacts, which certainly includes the detrimental financial impacts to tribal governments discussed below. Fourth, as explained in Section 3.6 herein, the BIA completely disregarded the environmental justice requirements applicable to the selection and consideration of alternatives. Not only did the BIA fail to meaningfully consult with FIGR about its cultural concerns, but it rejected at the outset FIGR’s repeated requests that the Draft EIS select and evaluate an off-site alternative in Lake County, where the Koi Nation’s historic homeland is located. As a predictable result, FIGR’s concerns played absolutely no role in BIA’s selection of the preferred alternative.

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In sum, the conclusion that the Koi Project will have less than significant adverse impacts on Indian tribes lacks any factual support or legal validity. The flawed decision to reject FIGR’s request for consideration of an off-site alternative in Lake County that would avoid these significant cultural impacts also ensured that there was no development alternative that would promote environmental justice for the Sonoma County tribes. All of these BIA actions and omissions were arbitrary and capricious and represent prejudicial failures to follow NEPA’s environmental justice requirements.

**C. The Draft EIS Analysis Of Adverse Economic Impacts On The Tribes Is Both Fatally Flawed And Also Violates NEPA’s Environmental Justice Requirements.**

The Draft EIS also conducts an analysis that it calls “Gaming Substitution Effects” in which it essentially evaluates the economic impact on other gaming facilities of operating the new Koi casino facility at the Koi Site. Draft EIS, Section 3.7.3.2 at pp. 3-74 to 3-75. The analysis concludes that several nearby existing Indian gaming facilities would lose future gaming revenues. For example, it calculates that the Graton Casino revenues would decrease by 11.45%. *Id.* As discussed in Appendix 4, the decrease in business revenues has a direct effect on the funds upon which tribal governments depend to provide governmental services to their citizens, including public safety, environmental and cultural resources protection, health care, and other matters that affect the human environment of the affected tribal communities. Moreover, because the funds transferred to tribal governments are a share of net revenues, the percentage decreases in gross revenues projected by the Draft EIS translate necessarily into larger percentage decreases in funds to support the tribal governments and tribal citizens.

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The Draft EIS relies on studies by Global Market Advisors (“GMA”) in Appendices B-1 to B-3. These documents assert that these direct economic losses to environmental justice communities do not qualify as adverse effects, and therefore (with the exception of one tribal casino) do not have significant impacts on FIGR or other Sonoma County tribes. The Draft EIS makes no attempt whatsoever to analyze the socioeconomic effects that lower net revenues at the 19 affected tribal casinos will have on the non-Indian communities that benefit from the casinos



through direct funding of local government, infrastructure, and charitable giving, and indirect support through increased economic activity, and tax revenues, among other things. Instead, the Draft EIS chooses to focus almost entirely on the positive economic impacts for the Koi Nation except where it must acknowledge that the income to the Koi Nation will come mostly from the casino businesses of their fellow tribal governments.

The Draft EIS clearly has misunderstood and misapplied the applicable law. The demonstrated future loss of gaming revenues for disadvantaged tribal communities clearly constitute direct or indirect adverse environmental impacts on FIGR and other Indian tribes that are similarly situated for the reasons explained above. Moreover, the BIA's abrupt rejection of an off-site alternative in Lake County that would avoid these adverse NEPA effects precluded the possibility of choosing an alternative that would avoid this impact.

Finally, the study attempting to calculate these future gaming losses is included as Appendix B-2 to the Draft EIS. FIGR engaged a leading expert in this field -- Meister Economic Consulting -- to assess the validity of this analysis and its assessment report is included as Appendix 4 to this letter.

Meister Economic Consulting ("MEC") found that Acorn built its socioeconomic conclusions on a faulty report by Global Market Advisors ("GMA"), and therefore its conclusions are perforce faulty themselves. The cracks in the foundation begin with GMA's reliance upon an analysis of a casino on the Shiloh site done by MEC itself on a previous version of what became Alternative A. GMA, however, among other things, failed to update the outdated report, which was based on pre-pandemic data and a different set of competitors; did not and could not understand the assumptions and analysis in MEC's work because those were not included in the work itself and GMA did not consult MEC; and changed the nature of the project meaningfully from the one MEC analyzed without changing the revenue or cost projections. Appendix 4 at 2-3. When a conclusion is drawn from incorrect premises it is inherently unreliable. In this case, however, MEC has demonstrated that the assumptions and conclusions GMA used to find that the proposed Koi Nation casino would have less than significant socioeconomic impacts are incorrect, not just unreliable.

Perhaps the greatest flaw in the GMA analysis is that the competition from the proposed Koi Nation casino would not significantly and adversely affect tribal communities, which are definitionally one of the concerns of environmental justice analysis under NEPA. That flaw derives from minimizing the impacts on other tribal casinos and then only focusing on the effects on those casinos' gross revenues rather than the effects on the tribal owners that depend on the profits from the casinos to run their governments to benefit their citizens. MEC found that GMA artificially limited the revenue impacts on the competing casinos. GMA relied on incorrect premises including those of MEC's own now-outdated study to find that 54% of the proposed casino's revenues would come from growing its own market even though the market is mature and saturated with 17 existing and 2 planned tribal casinos. *Id.* at 4. Among other things GMA did to minimize the competitive impact of the proposed casino was to invent an ambiguous "outer market," contributing revenue from "nowhere." *Id.* at 5-6. Because the market is mature with loyal

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customer bases built up by the existing tribes over a long period of time, most of the proposed casino's revenue will come from cannibalization of other Indian tribal governments' businesses contrary to the rosy projections of GMA adopted by the BIA.

Despite the efforts to minimize the effects by crediting the proposed casino with new markets from "nowhere," GMA did admit to significant detrimental impacts on other Indian tribes' casinos. MEC found, however, that by focusing only on gross revenues from the casinos, and defining significance to only include those cases where a casino would go out of business, which GMA admits that at least one may do, GMA and the BIA failed to address the obvious socioeconomic impacts on the tribal government owners and their tribal citizens that would occur far short of that dire consequence, not to mention the socioeconomic impacts on their surrounding, non-tribal communities and governments from reductions in employment, economic activity, tax revenues, and direct support from the tribes. MEC found that, even taking at face value the impacts that GMA projected, such as the 11.45% reduction in FIGR's casino's gross revenues, they would translate into "a loss of governmental revenue to [FIGR], such that it will have to substantially reduce expenditures on tribal programs and services to its tribal members." *Id.* at 4-5. The same would be true of all the tribal owners of the competing casinos because they also depend on profits from their casinos to fund their governmental programs such as public safety, health, employment, and cultural and environmental protection, among the many other things that tribal governments do. *Id.* at 8, 10, 12. Some may have to eliminate government programs depending on the profit margins of their casinos. *Id.* at 8.

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The BIA and GMA also attempt to characterize the impacts as temporary because they would "dissipate" and because some casinos in very different circumstances have managed to stay open. MEC found, however, that there is simply no basis for the assumption that the competitive effect of a new casino would dissipate over time even if the competing casinos regained the nominal revenue they had before the entrance of the new competitor. *Id.* at 6. Moreover, the examples that GMA chose to show that casinos need not close did not support their conclusions because they were not akin to the market that Koi Nation seeks to enter, suffered revenue losses due to the Great Recession as well as in some cases competition, in some cases had to take heroic efforts to survive, did not regain their economic positions, and, in several cases did not even manage to survive. *Id.* at 8-9. Just as it ignored the socioeconomic impacts on the tribes and tribal members affected by Koi Nation's entry into a mature market outside of its homeland, GMA did not concern itself with the impacts on the only two tribal governments and tribal members included in its examples. *Id.*

MEC identified a number of other failings of the socioeconomic analysis that undermine the BIA's conclusions in the Draft EIS. Among other things, GMA failed to properly account for the diminishment of tax revenues on the federal, state, and local governments, much less how that would affect the human environment, (*id.* at 11) failed to analyze Alternative C, (*id.* at 10) failed to give enough information on its premises or analysis of the economic impacts of the proposed casino on the surrounding area to make it possible for MEC or other readers to understand what analysis was done and therefore what the effects would be. *Id.* at 11.

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Moreover, the BIA and GMA tell only the rosy story of the positive socioeconomic impacts, by, among other things, artificially excluding the negative impacts. While they acknowledge that the proposed casino’s success depends on cannibalizing the business of existing tribes’ casinos, as noted above, they do not tell the story of that impact on the tribes and their citizens, or even include it in the overall socioeconomic impact of the project, failing to address the negative socioeconomic impacts on the communities around the competing casinos that will face decreased economic activity, job losses, tax revenues, and direct payments from the casinos. *Id.* at 12.

Finally, GMA failed to account for the negative socioeconomic effects of its projections of the Koi Nation’s success due to the tight labor and housing markets in Sonoma County. *Id.* at 12-13. The growth of employment that GMA anticipates, albeit based on its outdated data and mismatched models, would outpace the availability of local residents to fill those positions, driving local population growth and upward pressure on housing prices, or increasing commuting to Sonoma County, or both. *Id.* Acorn did not analyze the environmental effects of those outcomes, instead merely quoting outdated figures for unemployment and housing in Sonoma County without an ounce of analysis to support the incorrect conclusions that there would be no shortage of housing or employees, contrary to the experience of those already in the market.

MEC found that due to the lack of transparency of GMA’s analysis the socioeconomic effects are impossible to quantify, despite facile conclusions otherwise. E.g., *id.* at Appendix 4 pp. 9, 10. Therefore, BIA cannot effectively assess the impact on the 19 tribal governments who are, equally with the Koi Nation, the intended beneficiaries of the Indian Gaming Regulatory Act and the federal government’s trustee relationship with tribes. These tribal governments would be significantly and adversely affected socioeconomically by taking the Shiloh site into trust and finding it eligible for gaming.

### **SECTION 3.8 - TRANSPORTATION AND CIRCULATION**

Section 3.8 of the Draft EIS, entitled “Transportation and Circulation,” is almost completely focused on the effects of the proposed Koi Project, and its alternatives, on the current and projected future traffic conditions and transportation infrastructure in the area of the Koi Site. This analysis, in turn, is based almost entirely on a Traffic Impact Analysis (“TIA”) conducted for the Koi Project by TJKM, dated April 17, 2024, and enclosed as Appendix I to the Draft EIS. The TIA evaluates existing road and intersection conditions and attempts to calculate trip generation and related information for the future construction and operation of the Koi Project. The results of this TIA led the BIA to conclude in the Draft EIS that five intersections would operate at an unacceptable level of service (“LOS”), but that with adoption of a few modest mitigation measures, there would be an acceptable LOS at these intersections and that traffic effects would thereby be reduced to a less than significant level. Draft EIS, Section 3.8.2.3 at pp. 3-81 to 3-82.

FIGR engaged the firm of LLG Engineers to conduct a peer review of this TIA and their written report is enclosed as Appendix 3 to this letter (“LLG Review”). The LLG Review concluded that the trip generation calculations were “fatally flawed” and “*under reported by over*

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18,000 trips” every day. While the TIA concluded that the Koi Project would generate 11,213 total daily weekday trips, the LLG Review reveals that the accurately calculated number of such trips should have been “over 29,000” daily weekday trips during operation using industry standard methodology. Since “trip generation” is the heart of the traffic impact analysis for Koi Project operations, this huge error completely undermines the Draft EIS conclusions. This means that the correct number of trips is *almost triple as many trips as the Draft EIS assumed*.

This is only the beginning of the major TIA insufficiencies identified by the LLG Review. Among other issues: (1) the TIA omitted discussion of over 30 other approved projects in the area that should have been discussed and potentially included in the TIA; (2) the TIA’s Vehicle Miles Traveled analysis “ignores all trips other than employees,” which excludes patrons “who will very likely have long trip lengths” that are not accounted for; (3) the TIA significantly overestimates the carrying capacity of Shiloh Road (which would be the main access road to the Koi Project); (4) the TIA fails to analyze intersections that should have been included; (5) the TIA trip generation for events appears to use an inflated Vehicle Occupancy Rate (over 5 rather than 3 people per vehicle) that significantly understates the number of event trips; and (6) the proposed mitigation is not specified in concept plans and is wholly inadequate.

Based on its analysis of the TIA, LLG provides this summary of its findings:

Overall, LLG found that the Project trips were severely under-reported, the study area was inadequate, some of the analysis was done incorrectly, and the analysis results in the appendix do not match what is reported in the analysis tables in some cases. Therefore, the report is inadequate to determine the actual number of impacted intersections and street segments and where impacts were determined, the level of mitigation proposed is insufficient. *As a result, there is no empirical basis to support a conclusion that the Project transportation impacts will be less than significant, with or without mitigation.*

Appendix 3 at p. 1 (emphasis added). Clearly, the transportation conclusions in Section 3.8, which are based on the tremendously flawed and unreliable TIA have no factual basis or analytical credibility. The Draft EIS conclusion of “less than significant impacts with mitigation” is patently incorrect and it would constitute a serious legal error to rely on this TIA in a Final EIS.

The extensive inadequacies in the TIA’s transportation effect/impact analysis also completely undercuts the air impact analysis and conclusions and the proposed Federal General Conformity Determination analyses as set forth in Section 3.4 of this letter. Since these analyses, particularly for Koi Project operations, are predicated in large part upon the amount of pollutant emissions from vehicles (mobile sources), the huge disparity between the trip generation figures used in the TIA and those calculated by LLG using industry standard sources means that a very large volume and amount of such emissions have not been taken into account.

Given the importance of this interrelated set of traffic, air quality and Federal General Conformity Determination analyses, accepted NEPA law dictates that the Draft EIS must be

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substantially revised and recirculated to the public so that the incomplete and misleading information currently in these sections, as well as in other key parts of this Draft EIS, is corrected and a credible comparative analysis of Koi Project alternatives can occur.

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### SECTION 3.9 - LAND USE

Section 3.9 of the Draft EIS purports to fully evaluate the land use impacts of the proposed Koi Project. It lists each of the current state and local land use laws, ordinances and plans for the Koi Site and then breezily asserts that, since none of these state and local legal requirements will apply to the Koi Site once it obtains federal trust status, these laws and the associated impacts on the immediate community are immaterial and can be disregarded. Moreover, the analysis includes a generic sentence stating (without support) that the proposed mitigation measures for other types of effects will (supposedly) address all of these concerns. The Draft EIS then quickly concludes that the Koi Project “would result in less-than-significant impacts associated with land use conflicts.” Draft EIS, Section 3.9.3.2 at p. 3-92.

This analysis is wholly inadequate and incorrectly trivializes the very strong concerns (expressed in oral testimony at the Draft EIS public hearing and in prior written comments) by hundreds of neighbors, the City of Windsor and the County of Sonoma regarding Koi Project land use issues. In fact, as the BIA should realize, this Draft EIS conclusion ignores the land use “elephant in the room,” which is that the Koi Project threatens to destroy the quiet residential character of this area that has been established over decades by the thoughtful and purposeful land use policies of the County and City. The BIA is mistaken in assuming that the fact that state and local land use laws will be superseded by federal law also serves to eliminate any land use impacts caused by the Koi Project. In fact, the massive impacts of the Koi Project on this neighborhood cannot be disregarded just because the current regulatory regime will be trumped by federal law.

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The Koi Project would parachute into the middle of a neighborhood that includes residential areas, a church, several schools, some vineyard lands and parks (which the Draft EIS labels a “rural wine country character”). The Koi Site is within a “Community Separator,” whose purpose “is to maintain a greenbelt between the more densely developed areas of Sonoma County.” City of Windsor Resolution No. 3743-22, April 20, 2022. According to the County, the Community Separator areas are “voter approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development.*” Sonoma County comment letter dated November 13, 2023, at p. 18 (emphasis in original). The Sonoma County General Plan land use designation for this site is “Land Intensive Agriculture,” which is “best suited for permanent agricultural use.” The City’s Shiloh Road Vision Plan envisions development of this corridor to promote walking and biking. It is beyond dispute that the current land use regulatory regime would prohibit siting of the commercial Koi Project in this location.

Koi Nation instead plans to create the equivalent of a small city on this land parcel which focuses on a 24/7/365 casino complex in this quiet residential area. The Draft EIS avoids discussing the number of visitors that are expected at the casino during peak hours. However,

buried in an Appendix is a statement that the casino/resort complex has a capacity of approximately 20,000 people and, based on accepted calculations based on the number of planned parking spaces, there would be at least 9,000 people on site at peak times. The massive anticipated increases in traffic, noise, crime, etc. will quickly and permanently transform the character of this special neighborhood.

However, the Draft EIS incorrectly uses the “federal trust property status” elimination of these important land use laws as a proxy for the elimination of the neighborhood land use impacts, thereby finding that the Koi Project will not have a significant adverse effect on the existing neighborhood and land uses. This sleight-of-hand lacks any credibility and violates the purpose and intent of NEPA to fully evaluate and mitigate adverse land use impacts.

In short, the Draft EIS is inadequate because it fails to identify and examine the true land use effects of the Project, falsely eliminates consideration of the actual land use impacts by equating the elimination of local land use laws with elimination of the far-reaching land use impacts of the Koi Project in reaching a “no significant effect” conclusion, and fails to make meaningful efforts to identify off-site alternative locations or specific mitigation measures for these very significant effects.

### **SECTION 3.10 - PUBLIC SERVICES AND UTILITIES**

The Koi Project contemplates utilizing solid waste services, electricity and natural gas services, law enforcement, fire protection, and emergency medical services. Draft EIS, Section 3.10. An increased use of any of these public services and utilities to support a project of this size would place undue burdens on these resources (i.e., cause adverse impacts to the services and utilities). Since they are not equipped to accommodate the Koi Project’s anticipated use. However, the BIA dismisses these very real consequences by finding that the public service and utility impacts caused by the construction and operation of the Project would be less than significant. This conclusion is factually unsupported and based solely on faulty assumptions. Thus, this section of the Draft EIS is inadequate under NEPA.

#### **A. Solid Waste Services**

The Draft EIS concedes that both construction and operation of the Project could generate quantities or types of waste that cannot be accommodated by regional waste disposal facilities. *Id.*, ES-5, Table ES-1 at p. ES-18. The Project anticipates generating solid waste from construction which may include “vegetation removal (e.g., grapevines), packing material (e.g., paper, wood, glass, aluminum, and plastics), waste lumber, insulation, empty non-hazardous chemical containers, concrete, metal, and electrical wiring.” *Id.*, Section 3.10.3.2 at p. 3-97. Additionally, the Project anticipates generating approximately 10,516 pounds of solid waste per day. Yet, somehow, the Draft EIS concludes that Project construction and operation would have a less than significant impact on solid waste services. *Id.*

According to the Draft EIS, construction waste “would *most likely* be collected by Sonoma County Resource Recovery’s service trucks after being contracted for services prior to

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construction” and “Central Landfill is permitted to accept waste from construction and, therefore, the solid waste *could be* deposited there for processing.” *Id.* (emphasis added). Based on the language used in the Draft EIS, it appears that the plans for the disposal of construction waste completely hinges upon the assumption that there will be a contract in place with Sonoma County Resource Recovery and that Central Landfill will accept the construction waste. With regard to operations-generated waste, it appears that this waste would be sent to Healdsburg Transfer Stations and Central Landfill. *Id.* However, it is unclear from the Draft EIS whether there is a contract in place for disposal of operations-generated waste or whether negotiations for a service agreement have begun. Therefore, the plans for the disposal of the solid waste generated during construction and operation of the Project are, at best, speculative.

Equally concerning, the Draft EIS fails to propose any mitigation measures, even though it admits that both construction and operation of the Project could generate quantities or types of waste that cannot be accommodated by regional waste disposal facilities. *Id.*, ES-5, Table ES-1 at p. ES-18. It is clear under NEPA that where adverse impacts exist, the Draft EIS must identify and evaluate mitigation measures. 40 C.F.R. § 1502.16(a)(11). Without citing to any data or supporting evidence, the Draft EIS claims that no mitigation is needed to address the impacts of solid waste generated during construction and operation of the Project. Such conclusory statements are legally insufficient under NEPA. *Klamath-Siskiyou Wildlands Ctr*, 387 F.3d at 995.

T8-32  
cont.

With regard to operation-generated waste, the Draft EIS maintains that the use of “best management practices” (“BMPs”) would minimize the impacts of operation-generated waste and, thus, no mitigation is required. Draft EIS, ES-5, Table ES-1 at p. ES-18. However, Table 2.1-3 in the Draft EIS, noted only one “best management practice” for solid waste services, which calls for “[a] solid waste management plan [to] be developed and adopted by [Koi Nation] that addresses recycling and solid waste reduction and proper disposal onsite during construction and operation.” *Id.*, Section 2.1.10, Table 2.1-3 at p. 2-19. This purported BMP is insufficient.

First, the power to develop and implement the solid waste management plan is completely delegated to Koi Nation. Thus, at Koi Nation’s discretion, it can choose to prepare and execute a plan without input from interested/affected parties, such as Windsor residents. Since multiple parties will be affected by the Project and the huge stress the Project will impose on solid waste services, these parties should be required participants in any solid waste management plan development and implementation. Second, this practice lacks clear and specific guidelines and does not identify what is required for a solid waste management plan to be considered sufficient.

## **B. Electricity and Natural Gas**

“PG&E would provide electrical services to [the Koi Project]. If natural gas is ultimately needed PG&E would provide this service as well.” *Id.*, Section 3.10.3.2 at p. 3-98. Currently, as the Draft EIS concedes, PG&E electrical infrastructure cannot support Koi Project operations. *Id.* Nevertheless, the Draft EIS concludes that “there would [be] adequate electrical capacity for PG&E to supply the needs of the project components” because PG&E supposedly has electrical infrastructure projects underway that would be completed in 2024/2025 with feeder related

T8-33

infrastructure that would be completed two years after that. *Id.* This conclusion is flawed as it is based on speculation and unsupported assumptions.

As of the date of this letter, it is unknown if the initial phase of PG&E electrical infrastructure projects has been completed. Even if that initial phase is complete, there is no way to ensure that the “feeder related infrastructure” phase will be completed before the proposed 2028 Project opening date. Furthermore, it is unclear whether PG&E has agreed to power the Project components or whether the parties have engaged in any discussions regarding the same. Therefore, the BIA has not given a hard look at the electrical and natural gas impacts from the Project as required by NEPA. *See City of Los Angeles*, 63 F.4th 835 (finding that the FAA did not take a hard look at noise impacts from the Project because its analysis rested on an unsupported and irrational assumption that construction equipment would not operate simultaneously).

T8-33  
cont.

Additionally, the Draft EIS fails to address the realistic possibility that the addition of electricity and natural gas lines could increase wildfire hazards in an already high-risk area.

### C. Law Enforcement, Fire Response, and Medical Emergency Services

Providing law enforcement, fire response, and medical emergency services to a project of this size will inevitably impact these entities and their ability to serve other members of Sonoma County. Per the Draft EIS, “it is anticipated that the increased concentration of people due to [the Project] would lead to an increase in the number of service calls to local law enforcement.” Draft EIS, Section 3.10.3.2 at p. 3-99. The Draft EIS also acknowledges that “during construction, construction vehicles and equipment, such as welders, torches, and grinders, may accidentally spark and ignite vegetation or building materials” and that the operation of the Project would increase demand for fire protection and emergency services. *Id.* at pp. 3-99 - 3-100. Nevertheless, the Draft EIS concludes that the impact on these public services will be less than significant. *Id.*, ES-5, Table ES-1 at p. ES-19.

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The Draft EIS claims that a handful of proposed mitigation measures and “best management practices” will alleviate any adverse impacts caused by the Project. Such mitigation measures include Koi Nation entering into future service agreements with Sonoma County Sheriff’s Office (“SCSO”) and Sonoma County Fire District (“SCFD”). However, the mere fact that a hypothetical service agreement may at some future time be in place does not mean that the increased demand for SCSO and SCFD services will not negatively impact these services. It is also important to note that as of the date of this letter, there are no service agreements in place to ensure that the law enforcement, fire response, or medical emergency services would be provided to the Project. Draft EIS, Section 3.10.3.2 at pp. 3-99 to 3-100.

### SECTION 3.12 - HAZARDS, WILDFIRE AND EVACUATION IMPACTS

The Draft EIS inexplicably pays very little attention to wildfire risks and public safety evacuation issues, which it only joins to the hazardous material discussion in this section. This should have been one of the most prominent issues in the Draft EIS. Instead, it is only an

T8-35

afterthought. FIGR engaged the wildfire consulting firm of TSS Consultants to review the adequacy of the Draft EIS analysis on these issues and they issued a report that is enclosed as Appendix 1 (“TSS Review”).

The TSS Review begins with the observation that the Koi Project area has an “elevated vulnerability” to wildfire impacts. It points out that “[o]ver the last 10 years the Windsor area has experienced four significant wildfires impacting over 213,190 acres: Tubbs, Kincade, Glass, and Walbridge. The western edge of the Tubbs and Kincade fires burned to within 0.6 miles of the Project site. Appendix 1 at p. 3. This aligns closely with a guidance document from the California Attorney General, which states that “[m]ore acres of California have burned in the past decade than in the previous 90 years and eight of the State’s ten largest fires since 1932 have occurred in the last decade.” Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act, Office of Attorney General) at p. 2. Clearly, wildfire hazards and impacts are critical subjects for analysis in environmental review documents for California projects.

#### **A. Wildfire Hazards**

The Draft EIS acknowledges that the Project is in a designated high fire risk area and concedes that the construction of the Project could increase the risks of wildfires. Draft EIS, ES-5, Table ES-1 at p. ES-20; see Section 3.12.2 at Figure 3.12-2. Yet, it somehow reached the implausible conclusion that wildfire hazards and impacts are not significant. However, the Draft EIS reaches this conclusion without providing a meaningful analysis of the direct, indirect, and cumulative effects of the Project’s construction on wildfire risks as required under NEPA. *350 Montana*, 50 F. 4th at 1272 (citing *Barnes*, 655 F.3d at 1136, 1141; see also *Killgore*, 51 F.4th at 989-90 (“while... federal agencies have substantial discretion to define the scope of NEPA review, an agency may not disregard its statutory obligation to take a ‘hard look’ at the environmental consequences of a proposed action, including its cumulative impacts, where appropriate.”) (citing *Blue Mountains Biodiversity Project*, 161 F.3d at 1212,1214-15).

In fact, throughout the 278-page Draft EIS, only one paragraph was dedicated to discussing this issue. In this paragraph, the Draft EIS concludes that the “construction of [the Project] would not increase wildfire risk onsite or in the surrounding area” because the implementation of best management practices, which includes “the prevention of fuel being spilled and putting spark arresters on equipment having the potential to create sparks,” would “reduce the probability of igniting a fire during construction.” Draft EIS, Section 3.12.3.2 at p. 3-127. The Draft EIS seemingly suggests that there is little on-site wildfire risk because the Project Site is “relatively flat with very little change in slope or topography and Pruitt Creek and associated riparian area intersecting through the middle of the property. There is very limited flammable vegetation on the Project Site due to the planted rows of grapevines.” Draft EIS, Section 3.12.2 at p. 3-123. This focus on the Koi Site and lack of consideration of the surrounding areas renders the Draft EIS inadequate.

T8-35  
cont.

In contrast to the wholly insufficient wildfire analysis in the Draft EIR, TSS conducted a robust investigation. TSS conducted a site visit in which it identified key Koi Project area and site features “capable of producing dangerous wildfire behavior (the vineyard and riparian formations, the unfortunate alignment of the Pruitt Creek gallery with the prevailing winds, and the potentially long delays to vacate the site....” *Id.* at p. 16. TSS is also very critical of the Koi Project description information, which lacked any information regarding water storage ponds or tanks, fire hydrant locations, or other fire suppression features that are particularly important on this site because it will not be served with municipal water. *Id.* In addition, no industry-standard wildfire hazard and risk assessment was prepared, much less a wildfire emergency evacuation plan. *Id.* at 17.

In sum, TSS concludes that these failures “render the wildfire analysis in the DEIS simplistic, analytically deficient, and completely inadequate for assessing the actual risk or making any determination that these risks are less than significant. In fact, based on the DEIS record, it must be determined that these risks are very significant and no effective mitigation has been identified to take them to less than significant levels.” A complete reading of Appendix 1 provides many details supporting these conclusions. This is a very strong indictment of a very poor Draft EIS wildfire risk analysis.

## **B. Wildfire Evacuation**

Given these clear and present wildfire risks, evacuation issues cannot be dismissed as insignificant in Sonoma County. However, that is exactly what the Draft EIS does. The Draft EIS is outcome-oriented and, as a result, fails to substantively examine evacuation risks and propose adequate mitigation measures.

Despite proposing a casino/resort facility that has over 5,000 parking spots, the Draft EIS concludes a mass evacuation of the Project “would not significantly inhibit local emergency response to or evacuation from wildfire or conflict with a local wildfire management plan.” Draft EIS, Section 3.12.3.2 at p. 3-132. This conclusion defies logic.

The Draft EIS states that without the Koi Project, it would take an estimated four to six hours to evacuate the Town of Windsor. With the Project, the evacuation time could increase to six to eight hours. *Id.*, Section 3.14.11, Table 3.14-5 at p. 3-162. The underlying analysis does not consider that the mountainous areas (residences/properties such as Shiloh Estates and Mayacama) east of the Town, located in the Wildland-Urban Interface (WUI) area, have only two evacuation routes to US 101 (through Pleasant Avenue and Shiloh Road) and has a high structure to exit ratio and could compound the issues at the intersection of Shiloh and ORH. Further, there is no consideration given to how panic and general human error would affect the time needed for a mass evacuation.

Additionally, there is a willful ignorance of recent history. The area surrounding the Project Site is no stranger to wildfire evacuations, and any mass evacuation study should consider how long it has taken for mass evacuations to be completed during those wildfire events. The law requires the Draft EIS to give a “hard look” at the Project’s foreseeable environmental impacts.

T8-35  
cont.

T8-36

*Killgore*, 51 F. 4th at 989-90. The “hard look” “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made,” *Metcalf*, 214 F.3d at 1142, and must include a “discussion of adverse impacts that does not improperly minimize negative side effects.” *Earth Island Inst.*, 442 F.3d at 1159, abrogated on other grounds by *Winter*, 555 U.S. 7. The Draft EIS does not do any of this for wildfire hazards and public safety and thus is inadequate.

The only mitigation measure related to evacuations offered in the Draft EIS is the stated intention to “develop a project-specific evacuation plan” prior to occupancy. This mitigation measure is legally insufficient under NEPA because there is no way to ensure that this mitigation measure will adequately reduce the impact or impairment of evacuation plans. *See Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1381-82 (rejecting an EIS as incomplete because, among other flaws, the Forest Service had not “provided an estimate of how effective the mitigation measures would be if adopted”); *see also National Parks & Conservation Ass’n*, 241 F.3d 722 (finding that the National Park Service erred in making a finding of no significant impact despite the National Park Service’s proposed mitigation measures where there was no information about practical effects of increased traffic in park, air and water quality, and resident animal population, and it was unknown whether mitigation measures would work); *Klamath-Siskiyou Wildlands Ctr.*, 373 F.Supp.2d at 1085 (concluding that simply describing mitigation measures without further discussion regarding their efficacy is insufficient).

T8-36  
cont.

### C. Other Wildfire Concerns

In addition to the above, the Draft EIS also fails to adequately address other wildfire-related concerns.

First, despite acknowledging the significant fire risks of Sonoma County and the increased risk during construction, the Draft EIS fails to adequately address response measures for fire incidents at the Project Site. Draft EIS, Section 3.10.3.2 at p. 3-99. Per the Draft EIS, the closest SCFD fire station is Station 1, which is less than two miles northwest of the Project Site. *Id.* at p. 3-100. While the Project Site is within the jurisdiction of SCFD, the SCFD has not agreed to provide any particular level of service to the Project Site. Although there is a Letter of Intent between Koi Nation and SCFD (*See* Draft EIS, Appendix A at p. 145), this letter does not guarantee that the SCFD would actually respond to fire incidents at the Project Site. Nevertheless, the Draft EIS concludes that potential impacts to fire protection plans is less than significant. *Id.*, Section 3.10.3.2 at p. 3-100. NEPA prohibits reliance on assumptions such as this one. *See e.g., Environmental Def. Ctr.*, 36 F.4th at 874 (agreeing with plaintiff “that the agencies’ excessive reliance on the asserted low usage of well stimulation treatments distorted the agencies’ consideration of the significance and severity of potential impacts.”); *City of Los Angeles*, 63 F. 4th 835 (finding that the FAA did not take a hard look at noise impacts from the Project because its analysis rested on an unsupported and irrational assumption that construction equipment would not operate simultaneously).

T8-37

The speculative nature of whether the SCFD will actually serve the Project Site is underscored by the fact that the Draft EIS contemplates that “[i]f [Koi Nation] does not enter into a service agreement with a fire district/department, [Koi Nation] will establish, equip, and staff a fire department and station on the Project Site, within the ‘treatment area’ designated in the eastern portion of the Project Site.” Draft EIS, Section 3.10.3.2 at p. 3-100. Other than stating that Koi Nation would establish an on-site fire department, there is no discussion in the Draft EIS of the feasibility and environmental impacts associated with this proposal. This is insufficient under NEPA. *Northwest Indian Cemetery Protective Ass’n.*, 795 F.2d at 697, rev’d on other grounds, 485 U.S. 439 (“[a] mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA”).

T8-37  
cont.

The purpose of NEPA is to ensure informed agency action. *Citizens for Better Forestry v. US. Dept. of Agriculture*, 341 F.3d 961, 970 (9th Cir. 2003). However, the Draft EIS completely misses the mark here.

### **SECTION 3.14 - CUMULATIVE EFFECTS**

Section 3.14 of the Draft EIS evaluates the potential for the Koi Project to contribute to cumulative environmental impacts. The CEQ regulations define cumulative effects as effects “on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions. 40 C.F.R. § 1508.1(i)(3). The Draft EIR defines the “cumulative setting” to include “the growth and development envisioned in the Sonoma County General Plan and Town of Windsor 2040 General Plan.” Draft EIS at p. 3-144. The following sections will address certain of the cumulative resource impact assessments in particular subject areas.

T8-38

#### **A. Water Resources**

Section 3.14.2 attempts to analyze the cumulative impacts to groundwater, groundwater dependent ecosystems, and wastewater discharge issues arising from the Koi Project and other reasonably foreseeable actions and projects. For the reasons stated herein and in Section 3.3 of this letter, these analyses are fundamentally flawed in multiple respects.

For the long-term groundwater extraction analysis, the Draft EIS concluded that the only additional wells that needed to be included in its analysis are two new municipal wells described in the City of Windsor’s 2020 Urban Management Plan. This assumption is misplaced because this an area that has many vineyards for which it is highly likely that more agricultural wells will come online or existing agricultural wells will be more intensively used as climate change continues to occur. Instead, the Draft EIS should have made an aggressive effort to determine the use of current and projected future agricultural extraction wells so that it can assess the cumulative impacts of extractions from both municipal and agricultural wells over time. The Draft EIS analysis is also insufficient because it simulates pumping only during dry years rather than throughout the year. Due to anticipated climate change impacts, more year-round pumping is



likely. Finally, the model used by the Draft EIS apparently assumes that groundwater will rebound after a series of dry years, which is not an appropriate assumption.

Applying these incorrect assumptions to the cumulative domestic well (only) impacts in shallow and intermediate zones, the model calculates that drawdowns in both shallow wells and average well depths will be 5.91 feet and 9.08 feet respectively, both of which exceed the Draft EIS assumed threshold (assigned significance level) of 5 feet of drawdown. Although this calculation should result in a finding of cumulatively significant impacts, the Draft EIS incorrectly “assumes away” this significant impact by resorting to its incorrect assumption that these drawdowns will be restored at the end of dry weather period pumping. However, since agricultural well extractions (which will occur in both wet and dry years) are not included in the analysis and the wet year restoration is not justified, these cumulative impacts cannot be reduced to less than significant levels.

T8-38  
cont.

The fundamental flaws in this model methodology become starkly apparent when the analysis is applied to deep zone municipal wells. Rather than sticking with a 5-foot drawdown threshold, the Draft EIS adopts a different and wholly unrealistic new “significance” threshold of a 20-foot drawdown for these wells. It then calculates that the drawdowns in the deep aquifer wells would range from 8.08 to 17.49 feet. Because it adopted a wholly inappropriate and huge drawdown standard of 20-feet and the model results reflect a drawdown range is below that number, the Draft EIS erroneously concludes that these are less than significant impacts.

California’s Sustainable Groundwater Management Act, (“SGMA”), adopted in 2014, is California’s first comprehensive law for the regulation of groundwater. One of the goals of SGMA is to protect wetland, riparian and other surface ecosystems that are dependent on groundwater, which are called Groundwater Dependent Ecosystems or GDEs. A significant level of drawdown will adversely impact plants, trees and wetland ecosystems with shallow roots and water needs that depend on the interconnected groundwater. The wetlands and riparian hardwood areas along Pruitt Creek qualify as GDEs. The cumulative impact analysis for these GDEs in the Draft EIS concludes that the projected cumulative drawdowns within and along the Creek, including the Koi Project extractions, are about 6 feet during dry years. The Draft EIS concedes that these are cumulative significant impacts.

T8-39

Nevertheless, the Draft EIS tries to minimize these impacts by arguing that Koi Project contributions are less than those of the municipal well extractions. This argument misunderstands the nature of cumulative impact analysis, which is to look at the total impacts across a larger area rather than focus on individual contributions. The Draft EIS then blithely assumes that its proposed mitigation measures in Section 4 will reduce all of these cumulative impacts to less than significant levels. However, the mitigation measures at issue will not effectively mitigate for the reasons stated in Section 3.3 herein. Accordingly, this remains a significant cumulative impact on GDEs.

Finally, in an unsupported sleight of hand, the Draft EIS “assumes away” the potentially cumulative impact of its proposed massive discharges of wastewater to Pruitt Creek. It makes the unsupported assumption that other area development projects would be required to comply with

T8-40

federal, state and local permitting requirements and thereby would not result in significant adverse cumulative impacts to water quality. To the contrary, and as set forth in the biological resources report attached as Appendix 5, the Draft EIS has failed to gather and properly analyze the cumulative impacts of the Koi Project and these projects on water quality, and therefore the “no significant impact” conclusion is not credible.

T8-40  
cont.

**B. Air Quality**

As described in detail in Sections 3.4 and 3.8 herein, the traffic impact analysis underlying the air quality calculations in the Draft EIS is fatally flawed in multiple respects and therefore fails to provide a empirically supported or analytically adequate basis for cumulative impact analyses relating to air quality. Thus, the analysis of cumulative adverse air quality impacts in Section 3.14.3 lacks a proper empirical foundation and is wholly inadequate. These calculations need to be completely redone once a proper scientific foundation has been established.

T8-41

**C. Biological Resources**

The analysis of cumulative biological resource impacts in Section 3.14.4 totals only three sentences and mysteriously announces that, because regulatory agencies will be issuing future permits relating to biological resources, that will sufficiently protect biological resources for the Koi Project and all other development projects in the vicinity, there supposedly are no significant cumulative impacts. Of course, as established in Section 3.5 herein and in the expert biological resources report enclosed as Exhibit 5, the anticipated receipt of future permits for a project does not constitute a mitigation measure and does not therefore reduce significant impacts to less than significant levels. This simplistic and erroneous analysis is patently inadequate and instead it must be concluded that these impacts will be significant.

T8-42

**D. Transportation and Circulation**

Section 3.14.7 of the Draft EIS purports to calculate the cumulative transportation impacts of the Koi Project with a subset of the many other new development projects for the Koi Project area. However, for all of the reasons that the TIA underlying the original traffic impact calculations for the Koi Project is wholly inadequate to evaluate Koi Project impacts, this flawed traffic study is not an acceptable platform on which conduct a further transportation cumulative impact analysis. The resulting analysis in this section should be entirely disregarded.

T8-43

**E. Wildfire Hazards and Evacuation Plans**

It is astonishing that the Draft EIS is completely silent on cumulative impacts related to wildfire hazards and evacuation plans. No section of the Draft EIS covers this cumulative impact analysis. Just as in other subject areas, it is essential to determine whether the Koi Project, in conjunction with the many other area development projects, will have a cumulatively significant impact of increasing wildfire hazards or adversely impacting evacuation times and associated

T8-44

issues for this area. The Draft EIS’s failure to analyze this important cumulative impact issue represents yet another major inadequacy in the Draft EIS.

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cont.

#### SECTION 4 - MITIGATION MEASURES

Section 4 of the Draft EIS is essentially a compendium of the mitigation measures identified elsewhere in this document. Rather than repeating earlier portions of this letter that explain how many of these mitigation measures are inadequate, insufficient or unenforceable, FIGR incorporates in full herein its discussions of mitigation measures in all other portions of this letter and the Chairman Sarris Letter.

However, a few critical issues that impair the identification and potentially block the imposition of mitigation measures across the board must be discussed. First, in what may be an effort to avoid the imposition of mitigation measures, the Draft EIS purports to identify what should be mitigation measures as “Protective Measures and Best Management Practices” (“BMPs”) (*see* Draft EIS< Section 2.1.10 and Table 2.1-3). According to the Draft EIS, these BMPs will voluntarily be incorporated into the Koi Project by the Koi Nation. However, this representation begs two important questions. What enforcement authority, if any, is present for BIA to compel the Koi Nation to actually implement these BMPs once it becomes the sovereign over the Koi Site? Second, who will monitor and implement these BMPs? No enforcement authority is discussed or confirmed to be available. Accordingly, these BMPs, which may never be implemented, must be viewed as phantom mitigation.

T8-45

Second, as mentioned in several portions of this letter, there are many claimed BMPs and/or mitigation measures which are no more than a promise to formulate a plan or seek a permit in the future, which constitutes improper future deferral of mitigation in violation of NEPA. Thus, for example, two mitigation measures would require the Koi Nation, “prior to opening day,” to develop a “riparian corridor wildfire management plan” and, “prior to occupancy,” to develop a “project-specific evacuation plan.” By failing to analyze the very serious wildfire risks now or to closely analyze the evacuation risks (as FIGR’s wildfire consultant explains in detail), all of which are important for determining the severity and potential mitigation of risks, as well for effectively using the wildfire parameter to choose among alternatives, this improper future deferral essentially eliminates the Koi Project’s huge wildfire risk parameter at the Koi Site as a NEPA decisional tool.

T8-46

Applicable case law rejects this approach. *See South Fork Band Council of Western Shoshone* at 726 (“BLM argues that the off-site impacts need not be evaluated because the Goldstrike facility operates pursuant to a state permit under the Clean Air Act. This argument also is without merit. A non-NEPA document...cannot satisfy a federal agency’s obligations under NEPA.”); *see also Northern Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1084 (9th Cir. 2011) (Agencies may not avoid gathering the information needed to assess a proposed project's environmental impact by committing to “mitigation measures” that take the form of information gathering efforts to be taken after the project commences).

## CONCLUSION

FIGR requests that the BIA withdraw this Draft EIS and the proposed Federal General Conformity Determination. The Draft EIS is riddled with major errors, fails to use “best available science,” and is notable for its significantly flawed analyses of environmental impacts and its identification of phantom and/or ineffective mitigation measures. It is a textbook example of an EIS that fails to comply with NEPA and associated case law.

The Draft EIS does not evaluate any alternative project sites, including within Lake County (where the Koi Nation’s ancestral territory is located), which constitutes a patent failure to rigorously and objectively evaluate a reasonable range of alternatives. The required NHPA Section 106 consultations with FIGR and other tribes have been “insufficient, inadequate and unreasonable.” The important transportation and air quality analyses are critically undermined by a fatally flawed traffic study that grossly underestimates the trips this project would generate. The conclusions of “no significant impact” or “less than significant impact” in many key impact areas (including biological resources, land use, and wastewater discharges to a creek hosting federally protected salmonids) are wholly unsupported. And the Draft EIS conclusion that wildfire hazards are not significant in this community (which has suffered two major wildfires with large evacuations in the last seven years) lacks any credibility.

If the Koi Nation decides to continue pursuing this project on Shiloh Road, an area to which it has no valid ancestral or modern ties, and the BIA entertains this project, a new legally-compliant Draft EIS must be prepared and recirculated for public comment. The gulf between the Draft EIS and an acceptable Final EIS is so great that it cannot be bridged merely with a response to comments section, unenforceable mitigation measures, and creative reinterpretations of the flawed studies that fail to support BIA’s conclusions of no significant impact. The new Draft EIS must include alternative off-site locations and it must correct the many inadequacies and the misleading information contained in the current document so that the robust evaluation of alternatives by BIA and the public envisioned by NEPA can occur.

Please let us know if we can answer any questions or provide further information.

Very truly yours,

*/s/ Paul P. Spaulding, III*

Paul P. “Skip” Spaulding, III

PPS:vak

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**Enclosures:**

- Appendix 1 TSS Consultants  
Wildfire Risk Assessment and Draft EIS Review For A Proposed Casino  
Complex at Windsor, California (August 24, 2024)
- Appendix 2 AVD Management LLC  
Technical Memorandum - Water Resources (August 19, 2024)
- Appendix 3 LLG Engineers  
Shiloh Resort & Casino, Traffic Report Review (August 26, 2024)
- Appendix 4 Meister Economic Consulting, LLC  
Preliminary Assessment of Socioeconomic Information in the May 2024  
Draft Environmental Impact Statement for the Koi Nation of Northern California  
(August 25, 2024)
- Appendix 5 WRA Environmental Consultants  
Peer Review of Biological Resource Documents: Koi Nation of Northern  
California Resort and Casino Project (August 26, 2024)

# APPENDIX 1



# WILDFIRE RISK ASSESSMENT AND DRAFT EIS REVIEW FOR A PROPOSED CASINO COMPLEX AT WINDSOR, CALIFORNIA



Prepared For:



Prepared By:



August 24, 2024  
Final Report

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# Introduction

## Purpose of the Review

TSS Consultants (TSS) was retained to conduct a review of the Koi Nation's (Tribe) Shiloh Casino Facility Draft Environmental Impact Study (DEIS) for its adequacy in addressing wildfire, and wildfire-related emergency evacuation, issues. The review was conducted within the context established by (1) the provisions of the National Environmental Policy Act (NEPA)<sup>1</sup>, and (2) policy and implementation guideline materials prepared by the United States Department of the Interior's Bureau of Indian Affairs (USDI/BIA). NEPA is considered to be the nation's basic national charter for protection of the environment. The law (1) establishes national environmental policy, (2) provides for an interdisciplinary framework for agencies to prevent environmental damage, and (3) contains "action-forcing" procedures to ensure that federal agency decision-makers take environmental factors into account<sup>2</sup>. The set of pertinent documents establishes performance standards, that when met, establishes compliance.

These performance standards include those in the areas of:

- Collection and use of empirical evidence in the analyses and decision-making processes;
- The use of "industry-standard" methods and practices; and
- Properly justified decisions regarding the nature (adverse, benign, or beneficial) and intensity (level of significance) of effects resulting from implementation of proposed actions.

The results reported upon herein will be comments pertaining to portions of the DEIS that have inadequately met the effect/impact analyses performance standards pertinent to wildfire issues and wildfire-related emergency evacuations.

## Wildfire History

The Sonoma region is rich in a broad spectrum of land and cultural values. With its mild climate and productive wildlands, the region has supported both residential and migratory tribal groups. The combination of close proximity to San Francisco Bay Area and rich agricultural soils has made it a world renown region characterized by its internationally renowned wine industry, its scenic beauty and recreation opportunities. Unfortunately, the region has also has an elevated vulnerability to impacts from wildfire. Over the last 10 years the Windsor area has experienced four significant wildfires impacting over 213,190 acres: Tubbs, Kincade, Glass, and Walbridge. The western edge of the Tubbs and Kincade fires burned to within 0.6 miles of the Project site.

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<sup>1</sup> 42 U.S.C. §§4321-4347.

<sup>2</sup> 42 U.S.C. §4321; 40 C.F.R. §1500.1.

Given the population density, high land, commercial, recreational, and cultural values in the Sonoma region, wildfire is a critical issue. Unfortunately, the degree to which it is addressed in the DEIS is completely inadequate.

## Wind Environment

In terms of exerting an influence on wildfire behavior, wind is the second-most important factor behind only the presence of vegetation-related fuels. Wildfire responds to three basic types of winds: Prevailing, diurnal, and extraordinary. A preliminary examination showed a topographic setting that was too highly dissected to enable diurnal wind buildups and no opportunities for channeling of movement toward the Project site. Extraordinary winds, in some regions known as Santa Ana Winds (Southern California) and Diablo Winds (Sacramento/San Joaquin Delta to San Francisco Bay Area), are created by macroclimatic temperature and pressure regimes. These warmer, drier winds usually occur in the late fall-to-early winter months and have a northeast-to-southwest bearing. A quick review of monthly wind records from three official weather stations within the project's regional setting did not show any of the parameters typically associated with this class of winds and they were also removed from consideration.

The remaining category was prevailing winds and a quick review of the annually summarized data for wind direction and velocity showed primary lobe winds coming from the north northwest with a secondary lobe (existing in only two of the three station's data) blowing from locations in the southwest around to the south southeast. The originating winds can be deflected by topographic relief and the topographic configuration of the Russian River Valley has this capability. It is notable that this north-south prevailing wind parameter lines up with the north northeast-to-south southwest orientation of the gallery formation along Pruitt Creek and is one of the reasons this feature will have a high degree of risk should it be involved in a wildfire event.

The failure of the Draft EIS to recognize and take into account wind influences at this site is a major inadequacy in the wildfire risk analysis.

## Documents Reviewed

Two categories of documents provided input to this assessment: (1) The pertinent portions of the DEIS that were reviewed, and documents that provided background information regarding policy, and (2) standards of practice. See Attachment A for the full list of documents reviewed.

## Site Visit

On August 12, 2024, Dr. Daus conducted a site visit of the Koi Nation's Shiloh Casino and Resort's location. No arrangements had been made with the Tribe for entry onto the property so all observations were made from roads that were either public or in the ownership of entities that were not affiliated with the Tribe.

T8-48  
cont.

As part of the preparation for the field visit a visual assessment of ground conditions in areas adjacent to the Project parcel was completed by Dr. Daus using satellite imagery, acquired on April 22, 2022, available through the Google Earth Pro web platform. Dr. Daus has academic training and forty-five years of experience that suffice to qualify him as an expert in the application of remote sensing techniques.

The tasks accomplished from the satellite interpretation were:

- Identification of sites at which observations of current ground conditions were to be made and recorded using digital terrain photography (restating that collecting this information did not require entry on to the subject parcel). A total of seventeen sites were identified, however, during the visit an additional two sites were added;
- Generation of a map, over the Google Earth satellite imagery (GESI), showing the location and geographic coordinates (Latitude and Longitude) of each site, and;
- Identification of the array of land uses characterizing a reasonably-sized region around the Project site. The land uses identified were, in order of occupied surface percentage: agriculture, suburban residential, rural residential, commercial development, industrial parks, and wildlands.

The site visit was conducted in the following manner:

- Each of the nineteen sites (seventeen original and two additional) were located via vehicle;
- Each site was visually inspected on foot with no entry onto the subject parcel;
- At each site ground conditions were recorded by (1) taking a set of digital photos using an Apple iPhone 13 and (2) hard-copy field notes, and;
- Paying special attention to the road design and condition with respect to (1) their use by vehicles needed for emergency wildfire response, and (2) their vulnerability to loss of function (LOF) should they be involved in a wildfire event.

### **Results of the Site Visit**

In general, the focus of the site visit was to gain current site information in the two subject areas addressed in TSS's adequacy review of the Applicant's DEIS: wildfire situation and emergency evacuation. Following are summaries of the observation with the full report being presented in Attachment B.

#### ***Wildfire***

Field observations showed three vegetation formations that were within the footprint of the project or within a reasonable distance. These three features were the riparian gallery along Pruitt Creek, vineyards, and a mixed hardwood woodland. These three vegetation types represent industry-standard fuel models that have the potential for generating dangerous wildfire behavior if involved in a wildfire event, and they should have been addressed in the DEIS process.

T8-48  
cont.

### **Evacuation**

During the site visit close attention was paid to the three access/egress (A/E) points shown in the concept maps in the DEIS. The location designated as “A/E 2” (refer to Figure 2 in the full version of the site visit report (presented in Attachment B) represents the highest concern and constitute a significant and fatal flaw in the project design and determination of impact significance. This A/E location for the Project is directly opposite an A/E point for a suburban housing development with about 100 single family homes. This is an intersection where, under normal conditions, the use competition between the Project and the homeowners may not be a significant issue. However, the same competition in an emergency evacuation use scenario could create harms that are much more significant and unmitigatable.

Shiloh Road has a lower service level designation than the Old Redwood Highway to the west end and the Faught Road system on the east. However, as observed there was moderate-to-periodically heavy volume of traffic, using Shiloh Road as a “cross-over”. As of this point in the review process, a thorough discussion of current traffic patterns and volumes for Shiloh Road, and how it will function under a wildfire-related emergency evacuation, has not been addressed in the DEIS. Looking at the “A/E 2” situation the core question would be how long would it take to get all of the involved people (Project and housing development) out of harm’s way? And, when it comes down to it, there may not be a traffic engineering solution to the shorter time requirements typical of an emergency evacuation scenario; other solutions need to be identified and explored in EIS process.

T8-49

### **Conclusions from the Site Visit**

The combination of on-site vegetation types capable of producing dangerous wildfire behavior, the alignment of the Pruitt Creek riparian features with the prevailing winds, and the relatively long delays to vacate the project site opens up a realistic potential for creating significant levels of harm to the Project’s occupants. Given the locations of the three A/E points it does not appear an appropriate in situ analysis has been completed that addresses traffic in an emergency wildfire evacuation scenario.

## **Industry-Standard Practices**

The most critical pathway to preparing a compliant EIS document includes the (1) the involvement of qualified individuals, (2) collection of empirical data pertinent to the subject(s) being assessed, (3) use of industry-standard analysis procedures that employ performance standards thresholds, and (4) decision models that use empirical evidence as inputs, and produce findings and conclusions that are consistent, and comparable to, the performance standards.

T8-50

Both the phenomena of wildfire and evacuation involve movement over a landscape with the patterns of the movement and the intensity of its ability to make changes in the landscapes features as it moves from one location to another being dependent on the elements of the setting present. In order to properly gather empirical data for these mobile phenomena an in situ analysis needs to be completed. Such an analysis in this project situation would have to be comprised of the following elements to provide adequate empirical evidence support for a NEPA compliant wildfire-related impact assessment:



- Identify a reasonably-sized, and configured, assessment area and locate its boundaries on a suitable mapping base;
- Locate the proposed project’s footprint on the mapping base within the full assessment area;
- Identify features, or environmental phenomena (in the aggregate referred to as “ground condition categories” (GCC)), that have direct influence over wildfire behavior. An industry-standard set of these features, or phenomena, include terrain slope percentage, terrain aspect, soil types, wind direction and velocities of three wind types (prevailing, diurnal, and extraordinary), vegetation type (cross-walked to industry-standard fuel models), and land use;
- Prepare a map of the distributions of the presence, or zone of influence, of each GCC;
- Identify the attributes of each GCC selected for inclusion in the analysis (these attributes must align with the performance standards in order to achieve a NEPA-compliant impact assessment);
- Conduct a multi-variable analysis to predict, for both the project footprint and the full assessment area, the hazard (likelihood that wildfire could be present) and risk (how damaging the wildfire could be) levels, and;
- Determine the types and intensities of effect/impacts for two different scenarios: (1) should wildfire encounter the project area, and (2) should a fire ignite within the project footprint and move into the full assessment area.

T8-50  
cont.

Regardless of the subject being analyzed, these industry-standard procedures employ similar data collection procedures, use of empirical data wherever possible, use of professional judgment when empirical data is lacking, decision models compliant with accepted standards of performance, and similar reporting bases, formats, and terminology. In both the areas of wildfire and emergency wildfire-related-evacuation, assessing the results of an in situ analysis is a core process. This DEIS is inadequate because it fails to present any evidence that these analyses were conducted.

### **Role of Empirical Evidence**

Empirical evidence (EE) is typically defined as information obtained through observation and documentation of certain behavior and patterns or through an experiment. In this assessment EE fills three primary roles:

- It provides factual data in the project description that enables reviewers (1) a better understanding of the nature, and intensity, of any potential adverse effects or impacts on the sensitive resources addressed in the EIS, and (2) information upon which, allows identification of the need for mitigating actions;
- It provides links between the DEIS document and the various technical reports of studies completed in support of the preparation of the DEIS, and;
- Fully supports the decision models involved in determining whether an effect/impact is adverse or not and the level of significance of the effect or impact.

T8-51

An example of the first role is provided by the situation in this DEIS pertaining to emergency water that would be needed for fire suppression (focusing on wildfire). The DEIS does describe the location of the 1,000,000-gallon capacity of water, and mentions that it is to be available for emergency fire suppression. However, what is completely lacking is empirical evidence describing:

- The proportional allocation of emergency water for within-in structure sprinkler systems versus that for wildland fire suppression;
- “Stamped” (Professional Engineer approved) site maps of the emergency water distribution system within the facility showing piping locations and a hydrant system map, and;
- Associated tables presenting specifications for the hydrant system (location, type, flow ranges, etc.) and the piping system (volume and pressure).

T8-51  
cont.

The traffic impact analysis report (delivered by Fehr and Peers) used predictive models normalized to the entirety of Sonoma County, did not have results of an in situ analysis and was not well connected to effects on, or from, the Project. No analysis was conducted for a wildfire-related emergency evacuation scenario; a major issue given the wildfire history within the region.

T8-52

Without clear statements of the empirical evidence used in support of determining the significant levels of the effects/impacts, as was the case throughout this DEIS, it was not possible to determine the accuracy of the conclusions.

### Inadequacy Identification Criteria

TSS identified several inadequacies in the processes and/or analyses typically associated with conducting a NEPA-compliant environmental effects/impacts study. Identification of these inadequacies were based on the professional qualifications of the authors: Tad Mason, California Registered Professional Forester and Steven Daus, Ph.D. and retired California Registered Professional Forester. Both Mr. Mason and Dr. Daus qualify, (1) to use professional judgment where appropriate, and (2) to serve as expert witnesses based on their academic training, certification, and experience. Biographic information, appropriate to this review, can be found in Attachment C.

The general types of inadequacies that were identified in the review process include but are not limited to:

- Absence of figures that provide a level of informational specificity that permit an assessment of the compliance with performance standards;
- Absence of analyses that characterize industry standard effect/impact studies;
- Including level of significance determinations that are unsupported by an analysis of empirical data, and;
- Recommending mitigations that are, in the professional judgment of the authors, not reasonably implementable and/or not adequate to bring impacts to a more desirable “less than significant” level.

T8-53

### Overall Framing Comments

After a thorough review of the DEIS, the associated documents, (see Attachment A for complete list), two overall, or baseline, comments emerged relative to the adequacy of the DEIS in the wildfire and emergency evacuation subject areas:



- Lack of adequate levels of empirical data to support a compliant assessment of effects/impacts that could result from implementation of the project as proposed, and;
- Mostly pertinent in the wildfire subject area, the influences of overlapping jurisdictions could result in significant constraints on the ability to implement fuels reduction management.

T8-53  
cont.

## Lack of Empirical Data

The generation of empirical data pertinent to a specific Project situation is typically provided through the conduct of an in situ analysis that is tailored to the Project’s specific information needs. This type of analysis starts with establishing a reasonably-sized study area and then identifying, for the conditions within the defined study area (1) the effects on, or impacts to, the Project, based on its location within the operational setting, and (2) effects on, or impacts to, any, or all, of the elements of the operational setting within the study area, as a result of implementing the Project. However, the approach employed in the preparation of the DEIS was to obtain information by (1) using traffic flow figures modeled at the Sonoma County level and (2) and then augmenting this information using direct observations (primarily traffic volume figures) at very localized sites (in this case the set of intersections studied). The results from this effort did not provide empirical data regarding a wildfire-related emergency evacuation scenario specific to the Applicant’s project.

T8-54

In the wildfire subject area this type deficiency could hinder the ability of potential service providers to assess the situation in which they would be providing services. For example, without a more factual presentation of the emergency water delivery system within the Project’s footprint (e.g., flow volumes and pressures, hydrant locations) Sonoma County Fire Department (SCFD) cannot properly assess the means by which they would respond to either a structure, or wildland, type of incident.

## Overlapping Jurisdictions

In this Project situation there are, in effect, four categories of regulatory entities: Sovereign Koi Nation, Bureau of Indian Affairs (BIA), State of California, and Sonoma County. Especially in the wildfire subject area, this number of responsible parties can lead to (1) overlapping mandates and responsibilities with respect to managing the resources associated with the Project area and surrounding lands, and (2) mandate conflicts.

T8-55

A very clear example is provided by the defining of appropriate management actions for the riparian gallery formation along Pruitt Creek. In its position shown in the set of conceptual site plans, coupled with ground observation of its current wildfire fuels condition, this feature presents a clear and present ability to result in significant levels of harm to occupants of the Project facility. In general, the sovereign nation status of the Koi tribe means that the normally applicable land use regulatory regimes of Sonoma County and the State, implemented through a County issuance of a Conditional Use Permit (CUP) and enforcement of defensible space regulations, are not applicable. Furthermore, should the Tribe desire to implement a truly adequate level of wildfire fuels reduction management their efforts may be significantly constrained by requirements to comply with provisions of the federal Clean Water

Act (jurisdictional Wetlands) and Endangered Species Act (listed species and communities), Acts. These issues may make it extremely difficult to address and mitigate for this kind of site in this location.

T8-55  
cont.

## Identified Inadequacies

### Inadequacies of a General Nature

- 1. Information Content of Figures Used Throughout the DEIS** – The entire set of figures included in the DEIS were actually of a type that would be considered a presentation of concepts rather than the provision of empirical data in support of making effect/impact significance determinations. T8-56
- 2. Absence of “stamped” (i.e. prepared by a qualified professional) site plans** – Throughout the DEIS document (body and addenda) there is a complete absence of detailed site plans typically found in facility-related projects undergoing impact studies. These industry-standard site plans contain details that permit regulators to make decisions regarding the levels of compliance with their respective standards of performance and the need for mitigation. T8-57
- 3. Absence of in situ analyses** – With the exception of the studies of typical traffic conditions, no analyses were delivered that related the on-site conditions to the more regional setting conditions. These analyses address both, (1) the potential direct, indirect, and cumulative effects/impacts that implementing the project, at its designated location, can have on setting conditions in reasonably adjacent areas, and (2) what effects ground conditions, and or phenomena, in reasonably adjacent areas can have on the proposed facility and its occupants. T8-58
- 4. Absence of a Wildfire-Related Emergency Evacuation (WREE) scenario in the impact analyses** – Prior to accepting the results of the current traffic analysis an industry-standard in situ analysis needs to be completed that addresses volumes and directions of traffic flows that are under conditions of a WREE. Without this detailed analysis, there is no factual basis on which to conclude that wildfire risks will be less than significant. T8-59
- 5. Sequencing in tasking** – Typically, a DEIS contains, as part of the project description, a level of detail that supports a robust analysis of the potential effects, or impacts, should the project be implemented. In order to do this successfully, a significant effort needs to be put into the preparation of a project description prior to the preparation of a DEIS. The effort must involve expert input to describe the project in terms of the specific individual actions required to implement the project and comprehensive, illustrative materials (e.g., tables, charts, site plans, etc.). In contrast, this DEIS appears to be out of proper sequencing by proposing to leave some critical planning activities (e.g., riparian management plan, evacuation plan, and entering into agreements with SCFD for emergency services) to an unspecified future point in time where the subsequent planning effort has to deal with an “as built” situation (already in place roads, property ingress/egress points, structures, infrastructures, etc.). This deferral of wildfire T8-59

analyses and mitigation measures impairs the ability to assess wildfire and evacuation risks in the DEIS and significantly limits the ability of the Applicant to make changes needed to the Project.

T8-59  
cont.

## Inadequacies Demonstrated in Specific Content Areas

We examined the DEIS contents for two general subject groups: (1) the potential for causing, or being impacted by, harms resulting from being involved in a wildfire event, and (2) effects/impacts on wildfire-related emergency evacuations.

T8-60

### Wildfire

1. **Reference: Executive Summary, Table ES-1 Section 3.3 Groundwater (2)** – No information is presented to determine whether recharge rates are sufficient to provide water needed for fire suppression, (either structure fire or wildfire). Specific to wildfire issues the finding of a “Less than Significant” (LS) effect lacks any factual or scientific support.
2. **Reference: Executive Summary, Table ES-1 Section 3.5 Biological Resources, Mitigation Measures (MM) A through C** – The conditioning statement in MM A that “Alterations to riparian vegetation shall be avoided to the maximum extent possible”, basically precludes the ability to manage this feature in a way that will significantly reduce the ability to cause harm if it should be involved in a wildfire event. As noted, there are no plans for vegetation management within the riparian area (Pruitt Creek), which eliminates the opportunity to reduce hazardous fuels. The finding that the level of effect significance can be taken from “Potential Significance” (PS) to “Less than Significant” (LS) is not supported by information presented in the DEIS.
3. **Reference: Executive Summary, Table ES-1 Section 3.10 Public Services Fire Protection and Emergency Medical Services (1) and (2), Page ES-19** – The absence in the DEIS of an analysis of the wildfire behavior-related hazard and risk levels associated with the riparian gallery formation and the vineyards creates an analytical gap with the LS and PS-to-LS effects findings.
4. **Reference: Executive Summary, Table ES-1 Section 3.12 Construction Wildfire Risk, Page ES-20** – No consideration was given in the DEIS to the wildfire situation when the project goes into its operational phase. Two features, the riparian gallery formation and vineyards, have the potential for producing harmful wildfire behaviors and no assurances or mitigation measures are identified that ensure that there would be appropriate wildfire response services available. The finding of LS effect levels has not been properly supported in the DEIS.
5. **Reference: DEIS Section 4 (Mitigation Measures-Public Services and Utilities), Item B, Page 4-10** – The timing statement “Prior to operation” could mean any time from project inception to completion of construction. This deferral of specific wildfire response information and risk analyses within the DEIS impairs the ability to determine now whether these mitigations will reduce risks to lower levels. With only the conceptual figures available, the SCFD will not have site details essential for scoping out the services the Applicant needs, or that are reasonably

T8-61

T8-62

possible to deliver. “Stamped” site plans need to be put into the SCFD’s hands so that they can compare what is being proposed to what is required in regulatory codes (access, emergency water system, construction design and materials used, etc.).

6. **Reference: DEIS Section 3.3.3.2, Alternative A-Proposed Project, Page 3-20** – There is information cited from standard reports prepared by professional hydrologists, but none relates to (1) sufficiency of water required for suppression of wildfire, (2) sources (holding tank(s), surface ponds, hydrant system, etc.) that is/are dedicated to emergency needs, or (3) a detailed description of the hydrant system supported by site maps and system specifications. The lack of this information completely forestalls the ability of service providers (fire departments, medical emergency responders, law enforcement agencies, regulators mandated to have responsibility for wildfire issues, insurance companies, etc.) to accurately evaluate and mitigate the risks involved. These major omissions also create a critical data gap that eliminates the ability to make less than significant impact findings.

T8-62  
cont.

7. **Reference: Section VII (Hazards and Hazardous Materials), Item d) of the DEIS Appendix A : Off-Reservation Environmental Impact Analysis Checklist, Page 5** - There is no empirical evidence presented in the DEIS, or indication that an analysis has been completed, demonstrating that the mitigation measures detailed in Section 3.12 will actually result in significant changes in fuels conditions, and their associated risks, due to limitations imposed on management actions by protective provisions of the Endangered Species (direct impacts and wildlife habitat modification), and Clean Water (Jurisdictional Wetlands) Acts.

T8-63

8. **Reference: Section XIII (Public Services), Item i) of the DEIS Appendix A: Off-Reservation Environmental Impact Analysis Checklist, Page 11** – With regard to the preparation of the Riparian Wildfire Protection Plan, and entering into a service agreement with Sonoma County Fire Department (SCFD), there is a significant potential for there to be regulatory agency mandate conflict that will hamper achieving the fuels reduction objectives. In this case the entry of a Notice of Intent with SCFD is not a sufficient mitigation measure in itself. The details of what the eventual MOU must provide must be specified in the document to provide assurances that this measure will be effective.

T8-64

10. **Reference: DEIS Section 4 (Mitigation Measures-Biological Resources), Page 4-4** – Considering the framing statement in Item A of the Biological Resources section (i.e. “Alterations to riparian vegetation shall be avoided to the maximum extent possible”) means significant changes in the hazardous fuels conditions may not be possible.

T8-65

11. **Reference: DEIS Section 4 (Mitigation Measures-Biological Resources), Pages 4-4 and 4-5** – There needs to be specific times in the project schedule when actions Items A, B, and C are to be concluded. If not defined they could be left to a time when they have to “work around” as-built conditions.

T8-66



12. **Reference: DEIS Section 4 (Mitigation Measures-Biological Resources), Page 4-5** – There are no “stamped” site plans showing these areas and the figures provided are simply too conceptual in terms of conducting an effects/impacts analysis. T8-67
13. **Reference: DEIS Section 4 (Mitigation Measures-Public Services and Utilities), Item C, Page 4-10** – For the facility proposed, establishing an independent on-site emergency unit could be unreasonably complex and difficult to facilitate. The emergency response facility would need to be equipped and staffed to address three task areas: (1) wildland fire, (2) commercial structure fire, and (3) medical emergencies. Entering into a service delivery agreement with SCFD would be the most desirable but it would require adhering to an appropriate delivery of empirical data that is not supported within the current DEIS. T8-68
14. **Reference: DEIS Section 4 (Mitigation Measures-Hazardous Materials and Hazard, Wildfire Hazards), Item A, Page 4-16** – The “Prior to opening day” is an unreasonable specification; the transition treatment in the riparian corridor (removing relatively large volumes and sizes of vegetative material that is required to accomplish a significant mitigation of wildfire behavior potential) needs to be completed prior to the construction of the immediately adjacent structures. Historic wildfire incidents (e.g., 2007 Angora Fire) confirm the potential for riparian areas (like Pruitt Creek) to act as chimneys to accelerate wildfire spread. T8-69
15. **Reference: DEIS Section 4 (Mitigation Measures-Hazardous Materials and Hazard, Wildfire Hazards), Item A, Page 4-16** – Confining the work in the transition phase to employing manual labor and hand tools will not allow the removal of the required vegetative materials needed to accomplish hazardous fuels reduction objectives.
16. **Reference: DEIS Section 3.3.3.2, Page 3-48** – No discussions were included in the DEIS regarding potential harms to on-site occupants, or the general public, resulting from wildfire behavior. The BIA policy makes no distinction between the requirement to protect lives, health, and welfare of Sovereign Nation people versus guest and customers who will be on the Project site. Given (1) the recent wildfire history in the immediate Project area, (2) the risks of dangerous wildfire behaviors being generated should the riparian gallery formation and acreages of vineyards become involved, and (3) the current level of uncertainty regarding emergency wildfire response, the failure of the DEIS drafters to prepare an industry-standard wildfire hazard and risk assessment for inclusion in the DEIS nullifies its less than significant effect/impact determination due to the lack of important empirical data. T8-70
17. **Reference: DEIS Section 3.3.3.2, Page 3-48** – Significant surface occupation by vineyards is part of the Applicant’s proposal but its role as a fuel bed in a wildfire is not given adequate consideration. A vineyard, under normal-to-extreme fire weather conditions, can generate fire behavior similar to that of a natural brush field. This occupied surface area needs to be given greater consideration when assessing the level of harm that involvement in a wildfire event could produce.

18. **Reference: DEIS Section 3.3.3.2, Page 3-48** – Conditions within the riparian gallery formation (RGF) along Pruitt Creek were observed during a field visit from several off-property locations<sup>3</sup>. Field observations confirm that this feature, because of its fuel bed conditions and immediate proximity to structures that comprise the facility, has significant potential for resulting in harm to the occupants in the facility. This feature is, however, problematic from the standpoint of (1) implementing fuel reduction management that could result in significant harm production and (2) its protection under the federal Endangered Species Act and Clean Water Act. The project description and development of impact mitigations reflected the need to meet federal regulations and resulted in a management approach that will not significantly reduce wildfire behavior potential.

T8-70  
cont.

19. **Reference: DEIS Section 3.3.3.2, Page 3-20** – Neither the DEIS nor HydroScience’s report provide a breakdown of water supply infrastructure to be used for fire suppression. In addition, there are no “Stamped” site plans that show the emergency water distribution system or hydrant locations. Lastly, no flow volume and pressure requirements (typically set by the local fire authorities) are addressed. These are significant omissions that prevent a determination of whether the proposed well system will provide sufficient recharge rates for both wildfire and structure-related fire suppression.

T8-71

### Emergency Evacuation

1. **Reference: Section XV (Transportation/Traffic), Items a), b), and d) of the DEIS Appendix A: Off-Reservation Environmental Impact Analysis Checklist, Page 12** – The DEIS document (body and addenda) reflect a complete absence of consideration of traffic effect/impacts if a wildfire emergency evacuation scenario occurs. The TJKM traffic study shows expected occupancy (staff and guests) at 5,606 individuals on weekdays and 7,900 individuals on weekends. Even considering the mitigation measures (e.g., adding turn lanes, restriping pavement) described in Section 3.12 (actions that don’t significantly augment traffic volume capacity), the Less Than Significant with implemented Mitigations (LS/M) finding cannot be justified when the additional 5,606, or 7,900, individuals need to exit the area in vehicles during a wildfire evacuation.

T8-72

2. **Reference: Section XVII (Cumulative Effects), Item a), of the DEIS Appendix A: Off-Reservation Environmental Impact Analysis Checklist, Page 14** – Table 23 (opening year 2028) and Table 31 (year 2040) clearly show a reduction in the Level of Service (LOS ) for examined intersections (seven instances in 2028 where the LOSs were in the “E” or “F” categories up to twenty-one instances in 2040). This designation of “Less than Significant when considering Mitigations” cannot be justified given, (1) the “non-capacity increasing” effects of re-striping and traffic light sequencing, (2) thousands of potential vehicle trips originating in the Applicant’s proposed project, and (3) the development projects that are already underway and in the planning process.

T8-73

3. **Reference: Executive Summary, Table ES-1 Section 3.8 Transportation/Circulation, Both Construction and Project traffic subsections, Pages ES-16 and 17** - In the DEIS no consideration

T8-74

<sup>3</sup> August 12, 2024 site visit by Dr. Steven Daus, TSS Consultants.

was given to the special traffic requirements when a wildfire-related emergency evacuation scenario is underway. Not considered were (1) the extraordinary volumes and mix of vehicle types that would characterize the traffic, and (2) the need to have people, and their portable effects, clear the area of potential harm in as short a time period as possible. Without consideration of the needs in this special scenario the taking of the “Significant” (S) level designation to one of LS is not reasonably supportable.

T8-74  
cont.

4. **Reference: Executive Summary, Table ES-1 Section 3.12 Evacuation Impacts, Page ES-20** – The mitigation measures listed in this section did not take into consideration the most basic need when in a wildfire-related evacuation scenario: An increased physical capacity to clear the evacuation area in reasonably short periods of time. In this particular situation the PS-to-LS findings are not justifiable by the information presented in the DEIS.

T8-75

5. **Reference: Executive Summary, Table ES-1 Section 3.14, Cumulative Effects, Transportation/Circulation. Page ES-25** – No consideration was given in the DEIS to the wildfire-related evacuation scenario when evaluating cumulative effects on traffic patterns or flows. Without this information the findings of a S-to-LS changes are not justifiable.

T8-76

6. **Reference: DEIS Section 4 (Mitigation Measures-Transportation and Circulation), Page 4-11** – Given the high level of uncertainty expressed in this section, i.e. that the actual funding and implementation of the mitigations is out of the Tribe’s control, the actions described cannot be reasonably considered as viable mitigations.

T8-77

7. **Reference: DEIS Section 4 (Mitigation Measures-Transportation and Circulation), Page 4-11** – For the intersections addressed, the proposed mitigating actions will not result in a significantly increased volume capacity and will, therefore, not be a mitigating factor in a wildfire evacuation scenario.

T8-78

8. **Reference: DEIS Section 4 (Mitigation Measures-Hazardous Materials and Hazard, Wildfire Hazards), Item B, Page 4-17** – To be consistent with the “Prior to occupancy” specification, this emergency evacuation plan would have to “work around” the as built situation. The completion of the Project’s infrastructure will set the nature and volume of traffic flow and circulation, both within the parcel boundaries and at the exit points. Since none of the planning has been done in consideration of wildfire evacuation requirements unintended consequences could result.

T8-79

9. **Reference: DEIS Section 4 (Mitigation Measures-Hazardous Materials and Hazard, Wildfire Hazards), Item B, Page 4-17** – The meaning of “complement the County of Sonoma’s Emergency Evacuation Plan” is ambiguous and without a more detailed definition will create uncertainty in the readers of the DEIS. These types actionable statements need to be fully described in terms of the performance standards that must be met to achieve such a “complementary” status.

T8-80

10. **Reference: DEIS Section 3, Table 3.12-2 and Figure 3.12-5, Page 3-129** – The traffic study developed time estimates to fully clear a fixed assessment area centered around Windsor. With respect to the Applicant’s project site, clearance times were high: 4.5 hrs. for the With Project-

T8-81

No Notice scenario and 5.0 hrs. for the With Project-With Notice scenario. No mechanistic reason were included in the discussion to explain the high clearance times (and the fact that With Notice clearance time is higher than No Notice clearance time). In order to get information that is more pertinent to (1) the Applicant project's location and (2) potential need for high volume of evacuation traffic needs, an in situ analysis must be completed. Until this is done, an adequate EIS discussion of the wildfire evacuate issues is not possible. This study must establish a reasonable study area around the Project site and specify that the primary performance standard would be clearance time.

T8-81  
cont.

11. **General Observation** – Typically, when (1) the proposed project has a high occupancy aspect, (2) there is a road system comprised of roadways with relatively low traffic flow volume capacities, and, (3) a significant expansion in system capacity is possible, a Shelter-in-Place (SIP) location is part of the design of the facility. There are no discussions within the DEIS addressing this alternative.

T8-82

## Conclusions From the DEIS Review Process

In summary, from, (1) our analysis of the DEIS section and appendices on wildfire risks and evacuation issues, and (2) results of our field visit, we conclude as follows:

1. The project site has a high level of vulnerability to wildfire risk and is located in an area that has experienced a recent history of major catastrophic wildfires.
2. Our site visit identified key features that were present on/or near the site, including features capable of producing dangerous wildlife behavior (the vineyard and riparian formations), the unfortunate alignment of the Pruitt Creek gallery with the prevailing winds, and the potentially long delays to vacate the site, which would typically result in a significant increase to the potential harms level at this particular location.
3. The basic project description information relating to the sufficiency of water for the suppression of wildfire, the precise sources of on-site water (holding tanks, surface ponds, hydrant system, etc.), the exact water supply infrastructure, and the details of a hydrant system supported by site maps and system specifications, is completely missing from the DEIS. The absence of this data prevents a determination that wildfire impacts will be less than significant. To the contrary, they could be extremely significant and unavoidable.
4. The failure to prepare and include in the DEIS an industry-standard wildfire hazard and risk assessment nullifies its conclusion that any such impacts would be less than significant.
5. The DEIS is wholly deficient for its failure to include a consideration of traffic effects/impacts if a wildfire emergency evacuation occurs.

T8-83

6. There is no wildfire emergency evacuation plan.

Taken as a whole, these failures to provide important project description and wildfire risk data, to conduct an industry-standard wildfire risk and evacuation analysis render the wildfire analysis in the DEIS simplistic, analytically deficient, and completely inadequate for assessing the actual risk or making any determination that these risks are less than significant. In fact, based on the DEIS record, it must be determined that these risks are very significant and no effective mitigation has been identified to take them to less than significant levels.

T8-83  
cont.

## Attachment A – Glossary of Terms, Abbreviations and Documents Reviewed

### Glossary of Terms

This set of terms is being provided in order to support a better understanding of their meaning as they are used in this assessment.

**As Built** – The status of elements of a construction project that are completed and uses of those elements are dictated by what is already in place.

**Effect** – An influence that has the potential for creating change in the baseline setting in which actions occur.

**Effect/Impact** – A convention used in this report to refer to a situation where a project action produces an influencing effect that is then experienced as an impact (change in the nature) by resources of concern.

**Impact** – A change in elements of the baseline condition in response to an effect produced by an action having been implemented. Impacts can be either beneficial or adverse, with the actual determination being the result of a logical consideration of performance standards.

**Industry Standard** – A set of criteria or practices within an industry relating to the standard functioning and carrying out of operations in their respective fields of endeavor.

**Level of Service** – Road and highway classification system used by the California Department of Transportation. The highest classification, one that is characterized by high volume capacities and low levels of constriction, is Level A. The levels move to the lowest level, F, as volume capacity diminishes and potential points of constriction increase in number and/or effect.

**Operational Setting** – The full set of elements, including physical aspects and environmental phenomena, that have the capability to change the nature, or state, of a feature, or resource, of interest.

**Performance Standards** – Thresholds of observable actions that, when passed, indicate compliance with regulatory requirements. Performance standards should be objective, measurable, realistic, and stated clearly in writing (or otherwise recorded). The standards should be written in terms of specific measures that will be used to appraise performance.

**Professional Judgment** – Decisions made where one's scientific training, certification, and experience qualifies the decision-maker to predict, with some degree of certainty, the results of a proposed action, or to reach a conclusion based on an interpretation of facts. This decision-making process is allowable

T8-84



within the contexts created by the National Environment Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

**Shelter-in-Place** – Provision of a fire-free location or a “hardened” structure (i.e. not subject to ignition in the event of being involved in a wildfire event). One objective is to provide short-term protection (generally in terms of hours) such that the occupants do not need to enter into the flow of evacuation traffic.

**Transition Treatment** – The phase in fuels reduction vegetation management where stand conditions are taken from undesirable to more desirable. This phase typically removes (1) a significant volume of the standing material, and (2) some materials with of relatively large size.

### List of Abbreviations

BIA	Bureau of Indian Affairs (US Department of the Interior (USDOII))
CAL FIRE	California Department of Forestry and Fire Protection
Caltrans	California Department of Transportation
CDF&W	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CUP	Conditional Use Permit
EE	Empirical Evidence
GCC	Ground Condition Categories
GESI	Google Earth Satellite Image
LOF	Loss of Function
LOS	Level of Service
LS	Less Than Significant Effect or Impact
M	Mitigation
NEPA	National Environmental Policy Act
PS	Potentially Significant Effect or Impact
RGF	Riparian Gallery Formation
SC	Sonoma County
SCFD	Sonoma County Fire Department
SIP	Shelter-in-Place
TSS	TSS Consultants, Inc.
USF&WS	United States Fish and Wildlife Service
WREE	Wildfire-Related Emergency Evacuation

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cont.

### Pertinent Portions of the DEIS

The portions of the DEIS document distributed for the purposes of soliciting comment included:

- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement. Lead Agency: Bureau of Indian Affairs (BIA). May 2024.



- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix I: Draft Traffic Impact Analysis Report. April 17, 2024.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix I: Draft Traffic Impact Analysis Report, Appendix A – Existing Turning Movement Counts and Average Daily Traffic Counts. Un-dated.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix A: Off-Reservation Environmental Impact Analysis Checklist. Un-dated.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix D-1: Water and Waste Water Study. Prepared by HydroScience Engineers. February, 2023.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix N-1: Fire and Emergency Response Memorandum. December 2, 2022
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix N-2: Evacuation Travel Time Assessment. January 31, 2024.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix N-3: Evacuation Recommendations Memorandum. November 30, 2022.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix N-4: Evacuation Mitigation Plan. February 19, 2024.
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix O: Sonoma Fire District Letter of Intent. June 13, 2023.

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cont.

### General Background Documents

- United States Department of the Interior, Bureau of Indian Affairs. Wildfire Prevention Program Handbook. 90 IAM 5-H. December 19, 2022. <https://www.bia.gov/policy-forms/handbooks/90-iam-5-h-wildfire-prevention-program-handbook>
- United States Department of the Interior, Bureau of Indian Affairs. Fuels Management Program. 2008. <https://www.bia.gov/service/fuels-management>
- Interagency Federal Wildland Fire Policy Review Working Group. Review and Update of the 1995 Federal Wildland Fire Management Policy. January 2001<sup>4</sup>. <https://www.nifc.gov/sites/default/files/policies/FederalWildlandFireManagementPolicy.pdf>
- Koi Nation of Northern California, Shiloh Resort and Casino Project. Draft Environmental Impact Statement, Appendix M: Phase I Environmental Site Assessment-222 East Shiloh Road, Sonoma County, California. August, 2021.
- Sonoma County. Emergency Operations Plan-Sonoma County Operational Area. Undated. <https://sonomacounty.ca.gov/Main%20County%20Site/Administrative%20Support%20%26%20Fiscal%20Services/Emergency%20Management/Documents/Plans/Sonoma-County-Emergency-Operations-Plan-English.pdf>

<sup>4</sup> <https://www.doi.gov/sites/doi.gov/files/uploads/2001-wfm-policy-review.pdf>

## Attachment B – Site Visit Report

### Subject

Report of results from a site visit to the proposed Koi Nation casino, hotel, and spa location in an unincorporated area of Sonoma County near Windsor, California.

### Site Visit Metadata

The visit took place on August 12, 2024 and was completed by Steven Daus, Ph.D. No permission to enter the project site was sought and all observations were made from either public road rights of way, or those privately-owned, where the ownership was not legally connected to the Koi Nation.

### Pre-visit Preparation

As part of the preparation for the field visit a visual assessment of ground conditions in areas adjacent to the Project parcel was completed by Dr. Daus using the satellite imagery, acquired on April 22, 2022, available through the Google Earth Pro web platform. Dr. Daus has academic training and forty-five years of application experience that suffice to qualify him as an expert in the application of remotes sensing techniques.

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cont.

The tasks accomplished from the satellite interpretation were:

- Identification of sites at which observations of current ground conditions were to be made and recorded using digital terrain photography (restating that collecting this information did not require entry on to the subject parcel). A total of seventeen sites were identified;
- Generation of a map, over the Google Earth satellite imagery (GESI), showing the location and geographic coordinates (Latitude and Longitude) of each site, and;
- Identification of the array of land uses characterizing a reasonably-sized region around the Project site. The land uses identified were, in order of occupied surface percentage: agriculture, suburban residential, rural residential, commercial development, industrial parks, and wildlands.

During the course two additional recording sites were added and the full map is shown in Figure 1, below. Each location is indicated by a red circle and sequentially attributed with bright yellow numbers. The city limits of the Town of Windsor are indicated by the bright cyan lines.

### Conduct of the Site Visit

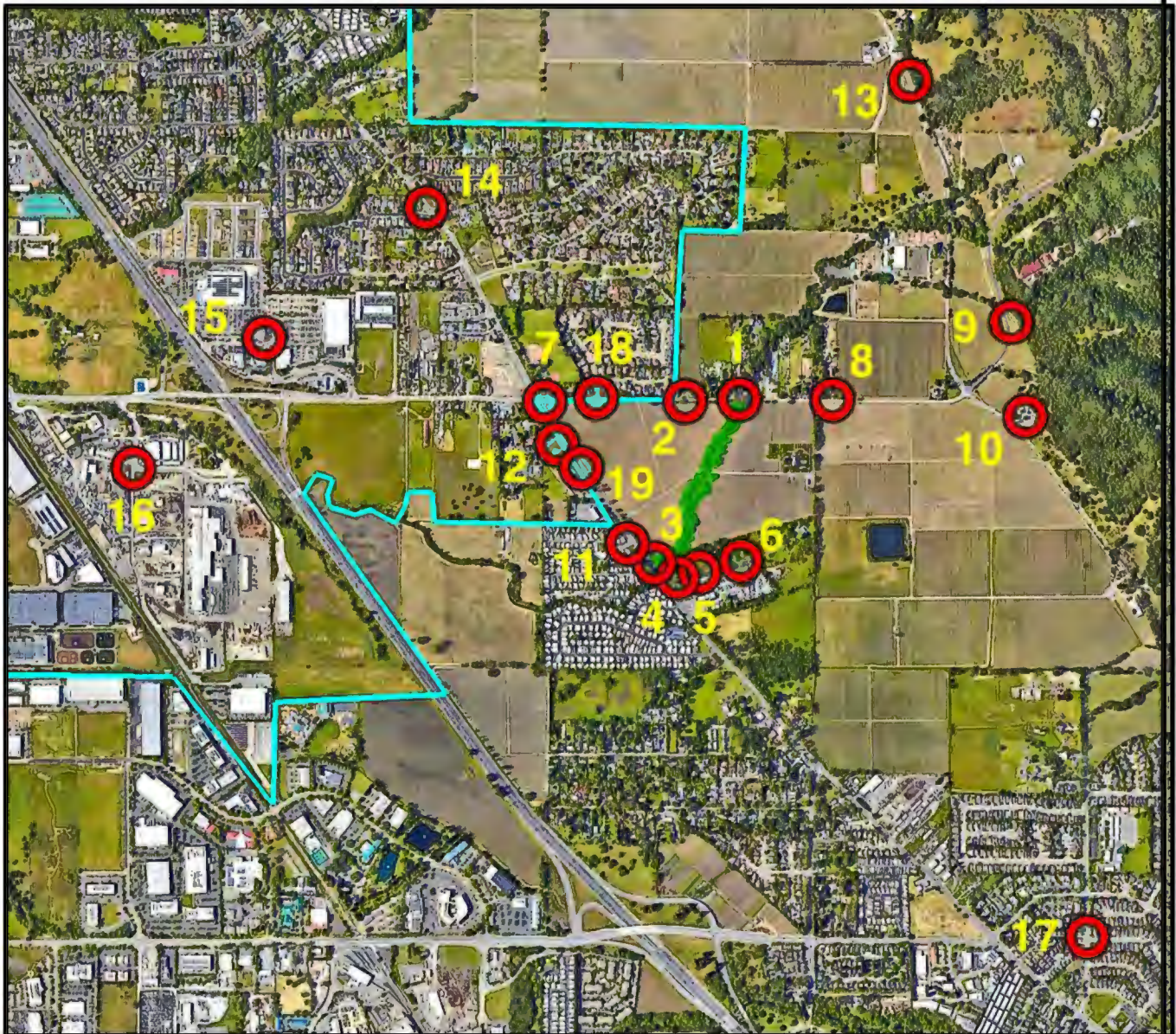
The site visit was conducted in the following manner:

- Each of the nineteen sites (seventeen original and two additional) were located via vehicle;
- Each site was visually inspected on foot with no entry onto the subject parcel;



- At each site ground conditions were recorded by (1) taking a set of digital photos using an Apple iPhone 13 and (2) hard-copy field notes, and;
- Paying special attention to the road design and condition with respect to (1) their use by vehicles needed for emergency wildfire response, and (2) their vulnerability to loss of function (LOF) should they be involved in a wildfire event.

*Figure 1. Location of the ground condition recording sites.*



T8-84  
cont.

## Results of the Site Visit

In general, the focus of the site visit was to gain current site information in the two subject areas addressed in TSS's adequacy review of the Applicant's DEIS: Wildfire situation and emergency evacuation.

### Wildfire

The riparian gallery formation represents the on-site feature with the greatest potential for causing direct harm. It is a very dense, multi-layered formation of native species and exotics. Fuel-bed continuity is high both vertically ("ladder" fuels) and horizontally (both on the surface and in the overhead crown). Furthermore, the northeast-to southwest alignment of the gallery corresponds to potential strong prevailing winds. Should this gallery formation be involved in a wildfire event the fire behavior generated would most likely mirror those in the Standard Fuel Model TL9 (Scott and Burgan, 2005). Figures in the DEIS show this gallery feature in direct contact with structural elements of the facility (including a foot bridge connecting the parking garage to the main structure).

The DEIS describes the retention of a considerable area of vineyard and this could pose potential harms if a wildfire should enter onto the parcel. Vineyards, although often considered "just an agricultural crop type and not related to wildland fire", does have structural and fuel specifications similar to Standard Fuel Model SH5 (Scott and Burgan, 2005). If the inter-vine row areas are not kept clear of the annual species cover crop (grasses and herbs) as they dry, a ground fire could get onto the crown area of the vines and exhibit fire behavior similar to a brush fire. It needs to be determined if the vines are no longer treated as a commercial crop. Maintenance might cease and ground fire could occur with subsequent crowning.

A large block of mixed hardwood woodland on elevated ground was identified during the interpretation of the GESI as being approximately  $\frac{3}{4}$  miles and to the northeast of the Project site. If north prevailing wind conditions occur this would place the Project site in a downwind position and the embers produced should the woodland burned could reach, in significant quantities, the project site.

### Evacuation

During the site visit close attention was paid to the three access/egress (A/E) points shown in the figures in the DEIS. The three, that correspond to Photo Stations 8, 18, and 19, are shown in Figure 2, below. The A/E 2 location represents the highest concern and, perhaps, a significant, and fatal flaw in the Project design and determination of impact significance. The Project's A/E location is directly opposite an A/E point for a suburban housing development with about 100 single family homes. What is being set up is an intersection where, under normal conditions, the use competition between the Project and the homeowners may not be a significant issue. However, the same competition in an evacuation use scenario could create harms that are much more significant and un-mitigatable.

Shiloh Road is a lower service level than the Old Redwood Highway to the west and the Faught Road system on the east. As of yet I have not seen any linking of current traffic flow volumes and intersection capacities to requirements under a wildfire-related emergency evacuation. Looking at the A/E 2

T8-84  
cont.







## Attachment C – Biographic Information for the Report Authors

### **Tad Mason, Chief Executive Officer, Registered Professional Forester**

Tad Mason has over 43 years of experience in the fields of natural resources management, and hazardous forest fuels reduction. Mr. Mason has hands-on experience in all aspects of natural resources management, from preparation of forest/range management plans to advising decision makers on key land management/resource utilization policies.

As the CEO of TSS Consultants, and a Registered Professional Forester, Mr. Mason leads a team of professionals who are well versed in the tasks required to successfully develop and implement natural resources management projects. Critical tasks such as developing resource management plans, submittal of state and federal regulatory compliance documents, obtaining environmental permits, recruiting contractors to conduct work on the ground, providing contractor oversight to assure project outcomes consistent with client goals. Mr. Mason also assists clients with development and implementation of communications plans targeting community stakeholders, peer groups and state/federal policymakers. Community support is often an integral component of natural resources management projects.

Mr. Mason has worked closely with a variety of resource managers in the forest sector. Clients range from forestland owners, investment banks, public utilities, NGO's, public agencies and Indian Tribes. Much of his forest restoration work is in support of fire resilient landscapes.

Mr. Mason received his B.S. degree in Forestry from the University of California at Berkeley in 1979. Mr. Mason and TSS Consultants have managed natural resource management projects throughout North America (28 states and 6 provinces). Mr. Mason is an active member of the California Society of American Foresters and the California Licensed Foresters Association. He has served on numerous committees and task forces, including the Western Governors' Association Biomass Task Force, University of California Forest Products Laboratory Advisory Board, Western Governors' Association Forest Health Advisory Committee, California Forest Products Commission Board of Directors, University of California Woody Biomass Utilization Work Group, California Oak Mortality Task Force, and the Oregon Forest Biomass Work Group.

### **Steven Daus Ph.D., Senior Planner/Project Manager**

In his 41-year professional career Dr. Daus has served both national and international clients with natural resources project needs. Between 1979 and 1998, as both a short- and long-term contractor for private companies and international agencies, he participated in natural resources development and regulatory compliance projects in 12 countries throughout South-east Asia, the Indian sub-continent, and Africa. Elements common to all of these projects included, project identification and detailed scoping, regulatory compliance, project implementation assistance, and mentorship-based technology transfer. His clients included Louis Berger International, Inc., World Bank, United Nations Development Program, and the United States Agency for International Development (USAID).

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cont.

Since 1990 Dr. Daus, currently working out of the San Francisco Bay Area, has served national clients requiring the expertise of an experienced specialist in wildland fire and fuels planning and management, oak woodland assessment and management, and regulatory compliance. These clients included individual landowners, community groups, residential developers, federal, state, and county agencies, and non-governmental organizations. He has provided project assistance to clients that have been privately funded, California State funded, or supported through grants (various CAL FIRE programs and federal sources: USDA, FEMA, etc.).

Over the span of his career Dr. Daus has had direct project-related experience with a broad spectrum of legal and regulatory frameworks including:

- Federal statutes and their associated regulatory codes:
  - National Environmental Policy Act (NEPA);
  - Code of Federal Regulations, Sub-Chapter Q, Part 161 (Environmental Protection);
  - Endanger Species Act (ESA);
  - National Historic Preservation Act of 1966 (NHPA);
  - Clean Water Act and subsequent revisions (CWA);
  - National Forest Management Act of 1976;
  - Healthy Forest Restoration Act (HFRA);
  - Clean Air Act;
  - Robert T. Stafford Disaster Relief and Recovery Act (Stafford Act);
  - And Wild and Scenic Rivers Act.
- California state statutes and their associated regulatory codes:
  - Z'Berg-Nejedly Forest Practice Act of 1973 and the associated Forest Practices Rules;
  - California Endangered Species Act of 1970 (as amended);
  - California Code of Regulations, §§ 5020 – 5097.9 (California State Law and Historic Preservation);
  - Porter-Cologne Water Quality Control Act;
  - And Oak Woodlands Conservation Act.
- Ordinances and Codes from 16 California counties

Dr. Daus received a Bachelor of Science degree from the School of Forestry, University of California, Berkeley in 1970. His areas of emphasis included general forest management, range science, and remote sensing-aided inventories. He remained at the School of Forestry and subsequently received a Master of Science degree in Wildland Resource Science in 1972 with emphasis on forest and range ecosystem dynamics and remote sensing applications. He then completed a course of study with the Graduate Ecology Group at UC Davis and received a Doctorate in Ecology in 1979.

Dr. Daus provided services as a California Registered Professional Forester with an associated Archaeological Survey certification until his retirement in 2017. He has had past affiliations with the California Licensed Foresters Association, the American Planning Association-California Chapter, California Oak Foundation, and is a current member of the Society of American Foresters and the International Society of Tropical Foresters.

T8-84  
cont.

# **APPENDIX 2**

# Technical Memorandum - Water Resources

## **Review of Water Resources Analysis in Koi Nation of Northern California Shilo Resort and Casino Project Draft EIS, May 2024**

Prepared For: Federated Indians of Graton Rancheria

Prepared By: David Zweig, P.E., AVD Management LLC, dzweig@avdmanagementllc.com

Date: August 19, 2024

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This Technical Memorandum presents a review of water resources issues in the Koi Nation of Northern California Shilo Resort and Casino Project Draft EIS, May 2024 (Draft EIS). The Draft EIS was released by the Bureau of Indian Affairs for public review and comment on July 8, 2024. Proposed facilities related to stormwater, water supply, groundwater and wastewater are described in Section 2 of the Draft EIS. The affected environment and environmental consequences of the Proposed Project and alternatives are discussed in Draft EIS Section 3. Mitigation measures to address significant impacts are specified in Draft EIS Section 4. Technical studies related to water resources issues are provided in Draft EIS Appendix D.

In brief, the Proposed Project consists of construction and operation of a resort hotel and casino with associated parking and infrastructure on a 68.6-acre vineyard property (Project Site) in a residential neighborhood just outside the city limits of Windsor, CA. The resort facility would be located in the western portion of the Project Site and would include a three-story casino, a five-story, 400-room hotel with a spa and pool area, ballrooms and meeting space, and parking areas, access roads, and water and wastewater facilities.

The proposed casino would be over a half-million square feet. Under the Proposed Project (Alternative A), approximately 46 acres of existing vineyard would be removed to construct project facilities. The remaining approximately 14 acres of vineyard would be retained. According to the Traffic Impact Study in Draft EIS Appendix I, the Proposed Project would generate over 11,000 vehicle trips per day from patrons and employees.

### **1. Summary and Conclusions**

Water resources issues associated with the Proposed Project and alternatives, including stormwater, water use, water quality, and wastewater are all addressed to some degree in the Draft EIS. However, critical information is omitted in certain areas, and the analysis and conclusions provided are therefore incomplete and/or unsupported. Additional information and analysis regarding the proposed water resources facilities must be provided to allow for a reasonable determination of potential impacts to the environment, and the formulation of appropriate mitigation. As described below, in some cases the analysis of water resources impacts is deferred to a later date, and therefore a conclusion regarding the level of impact and the need for mitigation cannot be made. Furthermore, the Draft EIS makes some key conclusory statements that adverse impacts will not occur in some cases which are unsupported because the data required to conduct an appropriate analysis was not available at the time of issuance

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of the Draft EIS. For these reasons which are further explained below, the EIS must be amended and reissued for public comment.

T8-85  
cont.

## 2. Project Description

Section 2 of the Draft EIS describes the Proposed Project and alternatives, which then must be evaluated within subsequent sections of the EIS. Draft EIS Figure 2.1-1 shows a 3.5-acre area on the eastern end of the site designated for water and wastewater facilities. The Draft EIS fails to include a specific layout of these facilities. Based on information scattered throughout the Draft EIS and appendices, it appears that the 3.5-acre “treatment area” would include the following:

1. Two water wells
2. Water treatment plant to remove arsenic and manganese
3. A one-million-gallon (MG) water tank, 75 feet in diameter and 32 feet high
4. Water pump station
5. Wastewater treatment plant (WWTP)
6. WWTP operations building with operations room, MCC room, UV disinfection system, maintenance room, mechanical room, chemical room, and laboratory.
7. WWTP chemical storage building
8. Wastewater sludge handling facility
9. Wastewater pump station
10. Recycled water pump station
11. Either a 12-MG wastewater storage pond or up to an additional 12 MGs of storage tanks, or a combination of these. If storage is provided with tanks, it would require 3 ten MG tanks, each of which would be 160-feet in diameter and 65 feet high.
12. A one MG recycled water welded steel equalization tank
13. Emergency generators
14. Power lines to supply electricity for the water and wastewater facilities
15. Above ground and underground water and wastewater pipelines

T8-86

The water and wastewater facilities, which are essential components of the Proposed Project and alternatives, are not adequately described in Draft EIS, nor are they shown in the figures that are provided to illustrate the proposed site plan and architectural renditions. Draft EIS Appendix D-2, Supplemental Wastewater Memorandum, provides limited additional information on the possible locations of storage tanks. However the general site plans provided make it clear that the designated “treatment area” is inadequate to house the required water and wastewater facilities. Specifically, Appendix D-2 Attachment A Figures 1 and 2 show that the two large wastewater storage tanks (140 or 160 feet in diameter and 65 feet tall) consume almost the entire usable area of the triangular 3.5-acre “treatment area”, leaving little to no room for the other required water and wastewater facilities. In fact, for “Option 6 and 8” shown on Attachment A Figure 2 of Appendix D-2, the 3.5-acre treatment area is not large enough to contain the three required 10-million-gallon storage tanks, and therefore the third required tank is shown in the casino parking lot.

The water and wastewater facilities listed above are very large and intrusive industrial project components, and must be properly shown in a site plan and in architectural renditions for visual impacts to be reasonably assessed. Also, due to the industrial nature of these facilities and since the nearest

adjacent home appears to be less than 50-feet away, impacts such as noise, odor, and aesthetics must be, but were not, properly evaluated. This analysis and corresponding mitigation are currently absent in the Draft EIS. Overall, Section 2 of the Draft EIS fails to adequately describe important water and wastewater components of the Proposed Project, and as a consequence, the Draft EIS in later sections fails to evaluate the water resources, biological, cultural, aesthetic, land use, noise, hazardous materials, and odor impacts of these components. Lacking proper disclosure and analysis of water and wastewater facilities, the Draft EIS then fails to provide mitigation for the impacts of these facilities.

T8-86  
cont.

### 3. Stormwater

The Proposed Project would convert over 1.5 million square feet of the 68.6-acre site from agriculture to impervious buildings and pavement (Draft EIS Appendix D, Table 3-3), thereby drastically increasing stormwater runoff. Stormwater and wastewater outfall structures would be constructed to discharge water to Pruitt Creek, however these structures are not shown on the Proposed Project site plan or described in sufficient detail in the Draft EIS to evaluate potential environmental impacts. Draft EIS Section 2.1.5 acknowledges that stormwater would be discharged from several drainage sub-basins to Pruitt Creek. Sub-areas A, B, and C are located on the west side of the creek, and sub-area D is on the east side. It is not disclosed how many creek discharge points there would be, nor the size of the discharge structures. Draft EIS Section 2.1.4, under the heading “Wastewater Disposal”, states: “... effluent may be discharged on-site to Pruitt Creek, a tributary to the Russian River...” and then in a subsection titled “Seasonal Surface Water Discharge” the wastewater discharge point is described as follows:

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*Facilities associated with the seasonal surface water discharge would include a new discharge pipeline and outfall structure. The outfall structure would be designed to prevent erosion of the natural creek banks and erosion downstream. The outfall pipe outlet would include a duckbill check valve or similar component to protect against settlement/silting inside the pipe or nesting of small animals or rodents. The area around the outfall pipe would be covered with riprap or similar material to prevent natural erosion around the pipe from occurring and to protect the banks during periods of discharge. The pipe material would be suitable for permanent exposure to sunlight and creek water quality conditions.*

Presumably the stormwater discharge points would be of similar design. The Biological Reports in Draft EIS Appendix G simply repeat the same vague description of the discharge structures without providing any indication of the magnitude of potential impact. Since Pruitt Creek contains jurisdictional wetlands and dense riparian habitat on both sides of the creek, it is imperative that these stormwater and wastewater discharge structures are shown in Draft EIS Section 2, and that the impacts be properly disclosed.

Typically “riprap”, as called for in the Draft EIS, consists of large stones placed on the bank of a creek. Installation of riprap would involve clearing native vegetation and riparian habitat. There is no mention of the discharge structures under the Biological Resources heading in Draft EIS Table 2.1-3, Protective Measures and Best Management Practices, nor is there any mention of the discharge structures in Section 4, Mitigation Measures. Given the potential environmental impacts associated with the construction and operation of multiple discharge structures built into the bank of a jurisdictional “Water of the United States” regulated by the Clean Water Act that potentially contains federally protected



species, it is a significant omission in the Draft EIS to not specifically describe, disclose, and evaluate these discharge structures.

Impacts and mitigation are also improperly deferred to future federal permit applications. Similarly, according to Draft EIS Appendix D, stormwater detention facilities would be required to prevent downstream flooding during storm events due to the increased runoff. The size of the detention facilities is calculated in Appendix D (Grading and Hydrology Study). However all of the required stormwater detention facilities have not been incorporated into the Proposed Project site plan (Draft EIS Figure 2.1-1) and therefore it is not possible to determine if the facilities will fit within the site, and what the impacts of those facilities might be.

T8-87  
cont.

#### 4. Water Supply and Groundwater

The Draft EIS estimates that the Proposed Project would consume approximately 170,000 gallons per day (gpd) of potable water and 108,000 gpd of recycled water. The potable water demand would be met by pumping the groundwater aquifer in the area, and would compete with other users of the aquifer. Other users include the City of Windsor and agricultural and domestic well owners in the vicinity who also rely on the underlying aquifer. Unlike the current seasonal agricultural demand of the parcel, the casino potable water demand would occur every day throughout the year, and not just during the summer irrigation season. Therefore, the casino demand would not allow the groundwater aquifer to recover during the rainy season as now occurs with agricultural pumping on the site. The Draft EIS fails to disclose this distinction and evaluate the effects of the year-round groundwater withdrawal and the effects to the aquifer's resiliency in normal and drought years.

The ES-1 Summary Table states that there are no significant impacts related to groundwater supply, groundwater recharge, and groundwater quality, and therefore "no mitigation is required". This conclusion is reached assuming "protective measures and best management practices" (BMPs) listed in Draft EIS Table 2.1-3 are incorporated into the project design and operation.

T8-88

First, only the federal agency in its Record of Decision can decide what mitigation is "required" after considering the entire administrative record including the Draft EIS, public and agency comments, and Final EIS. It is premature for the Bureau of Indian Affairs (BIA) to make the final determination that "no mitigation is required" at the initial Draft EIS stage of the NEPA process. A draft NEPA document typically includes "recommended" mitigation, not "required" mitigation, to allow public agencies and interested parties to weigh-in on the recommendations.

Second, the Draft EIS in Section 4 specifies a series of mitigation measures presumably to address significant environmental impacts of increased groundwater pumping, even though Table ES-1 states there are no significant impacts and "no mitigation is required". This is confusing and it is unclear whether or not the EIS authors believe there is a significant impact.

Mitigation measures in Section 4 include (A) Well interference and Drawdown Mitigation, (B) a Baseline Groundwater Level Monitoring Program, and (C) Groundwater Dependent Ecosystems (GDE) Monitoring and Mitigation. Why are extensive mitigation measures "required" when the Draft EIS concludes in the Executive Summary that there are no groundwater impacts? This issue should be clarified in a Revised and reissued Draft EIS so that it can be reviewed and commented on by interested parties.

Draft EIS Section 3.3.2 discusses Sonoma County's Groundwater Sustainability Plan (GSP), and in Section 3.3.3.2 acknowledges that the Proposed Project will cause the drawdown of the aquifer in the vicinity of the wells providing water to the casino. This drawdown may cause other nearby wells to go dry, and/or damage Pruitt Creek riparian ecosystems. The Water and Wastewater Feasibility Study (Draft EIS Appendix D-1) Section 4.1.1 states that "[t]he Project will evaluate the current GSP to maintain the integrity of the subbasin water quality and available supply for the future." The Supplemental Groundwater Resources Impact Assessment (Draft EIS Appendix D-4) provides an analysis of groundwater impacts from the Proposed Project and primarily relies upon mitigation to be conducted by the Town of Windsor and Sonoma County in the form of monitoring to address potential impacts.

The Draft EIS specifies mitigation to address groundwater impacts, but lacks agreements with the Town of Windsor and Sonoma County that would be needed to conduct and enforce the mitigation. Mitigation Measure A in the Draft EIS would be implemented "at the Tribe's sole discretion". Without such agreements in place, the mitigation is unenforceable and invalid.

Mitigation Measure A in Draft EIS Section 4 states "...the Tribe shall have no obligation to participate in or fund other water supply initiatives or infrastructure improvements". Mitigation Measure A goes on to say that to address the drying up or depletion of neighboring wells, "[a]s an alternative to reimbursement, the Tribe may, at its sole discretion, elect to connect the claimant to an alternative potable water source such as the casino's water system at the Tribe's expense". It is not clear how reimbursement for significant impacts at the Tribe's "sole discretion" constitutes legitimate mitigation for significant impacts. If alternately, the Koi Nation unilaterally decides to connect neighboring properties to the casino water system as suggested in Mitigation Measure A, the additional groundwater demand could be substantial. This additional water demand has not been quantified nor its impacts to the underlying aquifer analyzed in the Draft EIS.

Also, the indirect effects of water connections to neighboring land owners is not assessed in the Draft EIS as required by NEPA. Such connections would require trenching for pipelines, which could impact cultural and/or biological resources. Pipeline installation also could affect traffic if construction in public roads is required. The Draft EIS has sections on "Indirect Effects of Off-Site Traffic Mitigation and Off-Site Irrigation" (Section 3.15.1) and "Indirect Effects of On-Site Riparian Corridor Wildfire Management Plan Mitigation" (Section 3.15.2), however it does not have any analysis of the proposed potable water pipelines from the casino water system to neighboring properties.

## 5. Wastewater

As discussed above in Section 2 of this Technical Memorandum, proposed wastewater facilities are not shown on the Draft EIS site plan (Draft EIS Figure 2.1-1) but are instead described as being located somewhere in a 3.5-acre "treatment area". Draft EIS page 2-8 states: "As detailed in Section 6.2 of Appendix D-1, the on-site WWTP would be located within the "treatment area" designated in the eastern portion of the Project Site (Figure 2.1-1)...", however neither Figure 2.1-1 nor Section 6.2 of Appendix D-1 illustrates how all of the required water and wastewater facilities, including those listed above in Section 2 of this Technical Memorandum, would fit on the 3.5 acre "treatment area". Section 6.2 of Appendix D-1 does provide generic illustrations of various pieces of mechanical equipment but each illustration is marked "NTS" (not to scale) making it impossible to determine the size of the water and wastewater facilities and determine what impact those facilities may have. The generic figures in Appendix D-1 marked "NTS" include Figures 6-1, 6-3, 6-4, and 6-5.

T8-88  
cont.

T8-89

The proposed WWTP would generate an average of 232,000 gallons per day (gpd) of wastewater, and larger amounts on busy weekends. This enormous quantity of wastewater would have to be properly treated, stored or disposed of every day to prevent detrimental impacts to human health and the environment. Despite the challenges of dealing with this quantity of wastewater, the analysis of potential impacts is limited to five short paragraphs starting on the bottom of Draft EIS page 2-25, and concludes "...potential impacts to surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A would be less than significant".

The five paragraphs of discussion in the Draft EIS cite State of California regulations as the reason why the wastewater system would not have any significant impacts. The cited regulations include 1) Title 22 of the California Code of Regulations, 2) Statewide General Order for Recycled Water Use – Order WQ 2016-0068 DDW, 3) Uniform Statewide Recycling Criteria outlined in Title 22 of the California Code of Regulations, and 4) regulations in the California Regional Water Quality Control Board Basin Plan. However, since both the wastewater treatment facilities and wastewater discharge point to Pruitt Creek would be located on federal trust land, these state regulations would not be applicable or enforceable on the project site. According to the Draft EIS (page 3-26):

*[t]he NPDES permit through flow limitation, water quality testing, and other measures, would ensure that effluent disposal does not cause additional impairment of downstream waterbodies and that the beneficial uses of downstream waterbodies is maintained.*

It is correct that an NPDES permit from the U.S. Environmental Protection Agency would be required for the discharge to Pruitt Creek. However, this permit has not yet been applied for or issued, and it may or may not include requirements equivalent to the state regulations that are cited in the Draft EIS. Therefore it is speculative whether a permit will be issued, and what requirements it may contain. Regardless of whether or not an NPDES discharge permit will be applied for and/or obtained at a later date, NEPA requires that an EIS provide an analysis of potential impacts, and if such impacts are determined to be likely, appropriate mitigation. The Draft EIS does not contain this analysis nor any mitigation for impacts from wastewater discharge.

EIS Section 3.5.3.3 says:

*Additionally, water quality in Pruitt Creek has the potential to be impacted by erosion and sedimentation from construction activities, as well as discharge of treated effluent from the on-site WWTP during wet months. This is a potentially significant impact. Impacts to surface water quality from stormwater and treated effluent discharge is discussed in more detail in Section 3.3.*

Although this Draft EIS section identifies a "potentially significant impact" from the discharge of wastewater and refers the reader to Draft EIS Section 3.3, it is not called out as a potentially significant impact in Draft EIS Section 3.3 (Water Resources), and no corresponding mitigation is recommended.

The Water and Wastewater Feasibility Study in Draft EIS Appendix D-1, Section 4.3.1 reiterates the lack of data and analysis of potential water quality impacts:

*The primary unknown regulatory issues associated with the proposed wet season discharge of wastewater to Mark West Creek is the surface water quality at the discharge location. Since there is an existing gauge station at Mark West Creek, and streamflows are highest at that location, this is a logical area to begin baseline water quality monitoring. In order to begin detailed discussions with*

T8-89  
cont.

*the RWQCB on the feasibility of discharging to the Pruitt Creek, the Project would need to begin to collect receiving water quality data near the anticipated discharge site and at the Mark West Creek gauge station. This data would help the RWQCB evaluate the background water quality of the receiving waters, identify potential water quality restrictions, and understand the impacts of the proposed new discharge on the aquatic habitat.*

The Draft EIS again relies on future studies and data which have not yet been collected, and from a state agency with no jurisdiction on federal trust land, to make a determination of impact. This data and analysis should be collected and performed as part of the EIS process, and not deferred to a later date and to an agency with no jurisdiction.

Additionally, Section 7.2 of the Water and Wastewater Feasibility Study (Draft EIS Appendix D1) recommends “acquiring additional property for turf grass irrigation”, however acquiring property is not identified in the Draft EIS as being part of the Proposed Project, and the impacts of such acquisitions and corresponding mitigation is not identified.

The WWTP would use various hazardous chemicals in the treatment process. These chemicals, if released to the environment, would cause devastating impacts to aquatic species. There is no disclosure of the quantities of hazardous chemicals that would be used in the WWTP treatment process (other than to say the quantities would be “small” and “limited”), no identification of potential impacts, and no measures identified to prevent impacts to humans and the natural environment.

Draft EIS Section 3.12.3.2 says:

*The WWTP would require a limited quantity of chemicals to function, which could include liquid chlorine and liquid muriatic acid or dry granular sodium bisulfate. Only qualified personnel would handle these chemicals according to the manufacturer’s guidelines and they would be stored within a secure storage facility. During transportation of these chemicals, no adverse effects are anticipated due to the small quantities, and they would be transported according to applicable regulations.*

Potential impacts from these hazardous materials are dismissed as “Less than Significant” and no mitigation is provided. In fact, for a WWTP treating hundreds of thousands of gallons of wastewater every day, thousands of gallons of hazardous materials would typically be required, not “small” or “limited” quantities. These liquid hazardous materials would typically be delivered on pallets of 55-gallon drums or by tanker truck. Protective measures and best management practices in Draft EIS Table 2.1-3 do not specifically identify what measures and practices would apply to these highly toxic chemicals. This is a deficiency in the Draft EIS that must be corrected in a revised and recirculated document.

T8-89  
cont.

# **APPENDIX 3**



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August 26, 2024

Mr. Skip Spaulding  
 Shartsis Friese LLP  
 425 Market Street, 11<sup>th</sup> Floor  
 San Francisco, CA 94105

Subject: **Shiloh Resort & Casino, Traffic Report Review**

Dear Mr. Spaulding:

Linscott, Law & Greenspan, Engineers (LLG) has reviewed the most recent Traffic Impact Analysis (TIA) report prepared for the project by TJKM dated April 17, 2024. LLG also reviewed the December 22, 2022 report.

Overall, LLG found that the Project trips were severely under-reported, the study area was inadequate, some of the analysis was done incorrectly, and the analysis results in the appendix do not match what is reported in the analysis tables in some cases. Therefore, the report is inadequate to determine the actual number of impacted intersections and street segments and where impacts were determined, the level of mitigation proposed is insufficient. As a result, there is no empirical basis to support a conclusion that the Project transportation impacts will be less than significant, with or without mitigation. The following specific comments are offered.

T8-90

1. The trip generation is fatally flawed. Using the 11<sup>th</sup> Edition Institute of Transportation Engineers (ITE) Trip Generation Manual for land use code 423 (Casino) the project would generate over 29,000 weekday Average Daily Trips (ADT, trips over a 24-hour period) (see *Attachment A*). Page 32 (Table 8) of the TIA, states the source is ITE but inexplicably did not use the casino trip rate. The only source given in Table 8 is the ITE 11th Edition publication. However, the rates used for the casino trip generation are not from ITE. The text vaguely refers to other traffic studies as the source of the trip generation which is not the standard of practice. The trip generation is under reported by over 18,000 weekday daily trips.

T8-91

2. Only three cumulative projects were included in the analysis: (1) Clearwater Traffic Impact Study, (2) Shiloh Crossing Project, and (3) Shiloh Terrace Project. *Attachment B* contains a map of over 30 other approved, under construction, or under review projects that should have been discussed and potentially included in the traffic study. Also, no location data is provided for the 3 projects that were included.

T8-92

David S. Shender, PE  
 John A. Boarman, PE  
 Richard E. Barretto, PE  
 Keil D. Maberry, PE  
 KC Yellapu, PE  
 Dave Roseman, PE  
 Shankar Ramakrishnan, PE





3. The Vehicle Miles Traveled (VMT) analysis ignores all trips other than employees. Employees make a small percentage of overall casino trips. The VMT associated with casino patrons, will very likely have long trip lengths are not accounted for.

T8-93

4. Segment analysis is flawed and uses 22,000 ADT as the carrying capacity of Shiloh Road. The standard of practice for a two-lane road is 16,000 ADT maximum.

T8-94

5. Under Alternatives A and B, Casino Entrance 1 does not account for any vehicles making an inbound westbound left-turn or an outbound northbound right-turn. But trips are assumed for these movements for Alternative C.

T8-95

6. Zero trips were assumed to utilize Lakewood Drive or Windsor River Road. Casino traffic will surely utilize these roads.

T8-96

7. The description of how the study area was chosen is one sentence on page 7, and simply states the study area was selected “based on their proximity to the project site and major thoroughfares.” This results in many intersections not being analyzed when they will be heavily utilized.

The TIA report assumes 45% of the Project trips would come from the south. There will certainly be trips that will use the Airport Boulevard to Fulton Road route and yet, the report assumes zero trips will use this route. Also, there are two signalized intersections along Old Redwood Highway that will carry over 50 peak-hour trips but were not included in the study area. The addition of 50 peak hour project trips to an intersection is a common threshold for determining a study area:

T8-97

- a. Old Redwood Highway / Alden Lane
- b. Old Redwood Highway / Hembree Lane

8. Delays reported in the TIA report for unsignalized intersections incorrectly utilize approach delays rather than the control delays. Approach delays provide an overall delay for each direction but do not account for the varying delays experienced at dedicated turn movements on a minor street, if present. For example, at the Caletti Avenue / Shiloh Road intersection (intersection #5), the northbound direction includes a dedicated right-turn lane and a dedicated left-turn lane on the minor street. The reported approach delay reflects the overall northbound movement, but a closer examination of the turn lane delays reveals that the northbound left-turn lane has significantly higher delays than the northbound right-turn lane, resulting in a Level of Service of E or F under all scenarios. Using approach delays under these circumstances is incorrect.

T8-98



- 9. Page 29, contrary to what the traffic study states, the OPR December 2018 document does not state casinos should use VMT per employee as the analysis metric. T8-99
- 10. The report refers to a model run being conducted for the SCTM model. However, model run data was not provided and therefore cannot be checked. T8-100
- 11. Event trip generation is flawed. Only 512 inbound trips were assumed for the 2,800-seat venue, so either Vehicle Occupancy Rate (VOR) of over 5.0 is assumed or only a partially attended show is assumed. The Event Center trip generation should have been done assuming a sold out event with an appropriate VOR (approximately 3) and an appropriate assumption as to the % of event attendees that are already staying on the property. The 0.37 rate in Table 8 is not explained and is not from ITE as indicated in the footnote. Stating the rate is from another traffic study is insufficient. T8-101
- 12. Page 91 shows a queue increase at intersection # 3 of 265 feet and exceeds the available storage yet no impact found. T8-102
- 13. Figure 8 shows no trip distribution at intersections 10,11 and 12. Zero trips assumed to Lakewood Drive and Windsor River Road which is incorrect. T8-103
- 14. Table 33 states 2040 impacts are mitigated under 2028 conditions. This is incorrect since impacts in 2040 are much higher than 2028 requiring much more mitigation. T8-103
- 15. Page 165 states that ADTs are shown on several figures including Figures 1, 7 and 11, yet no ADTs are found on those figures. T8-104
- 16. There is no summary at the end of the report stating the required mitigation and instead mitigation is sprinkled throughout the report, making it impossible to understand what is being committed to. T8-105
- 17. The intersection mitigation is only described in text. It is very important to show on a Plan how the mitigation will be accomplished and where road widening, restriping, and/or right of way acquisition will be necessary. Otherwise, there is no proof that the improvements can be accomplished. These plans are termed Concept Plans. No Concept Plans are provided in the TIA making it impossible to determine the feasibility of mitigation as is the standard of practice. It appears that the stated mitigation at Shiloh Road / Old Redwood Highway is not feasible within the existing right-of-way. T8-106
- 18. Mitigation measures are vaguely written. For example, page 88 seems to rely on the Town of Windsor to implement the improvement as does the mitigation on page 166. T8-107



- 19. Shiloh as a 4-lane road is assumed to have capacity of 49,800. This is incorrect as four lane roads have a maximum 40,000 ADT as a standard of practice. T8-108
- 20. There is only a very minimal discussion (2 paragraphs) of pedestrian/bike/transit circulation. The standard of practice is to analyze all modes of a travel and the TIA contains no actual analysis of any modes other than driving. T8-109
- 21. There is no “with event” analysis in the traffic study. T8-110
- 22. Appendix E: Existing + Alternative C conditions
  - a. Figure 16 – Lane geometry at intersections #7 , 8, and 9 does not match Synchro analysis sheets. T8-111
  - b. Figure 17 – Peak hour volumes at intersection #7 does not match the Synchro analysis sheets.
- 23. Appendix F: Year 2028 without Project conditions
  - a. Figure 18 – Lane geometry at intersections #7 and 8 does not match the Synchro analysis sheets. T8-112
- 24. Appendix G: Year 2028 + Alternative A conditions
  - a. Table 23 – Delays reported in Table 23 do not match the corresponding Synchro analysis sheet at Intersection #3 under Saturday peak hour. T8-113
- 25. Appendix H: Year 2028 + Alternative B conditions
  - a. Figure 22 – Lane geometry at intersections #7, 8.and 9 does not match the Synchro analysis sheets. T8-114
  - b. Figure 23 – Peak hour movement volumes at intersection #2 does not match the Synchro analysis sheets.
  - c. Table 25 – Delay reported in Table 25 do not match the corresponding Synchro analysis sheet at Intersection #3 under Saturday peak hour.



26. Appendix I: Year 2028 + Alternative C conditions

- a. Figure 24 – Lane geometry at intersections #7, 8, and 9 does not match the Synchro analysis sheets.
- b. Figure 25 – Peak hour movement volumes at intersection #7 and 9 does not match the Synchro analysis sheets.

T8-115

27. Appendix J: Year 2040 without Project conditions

- a. Figure 26 – Lane geometry at intersections #7 and 8 does not match the Synchro analysis sheets.
- b. Table 30 – Queue for SB left movement at Intersection #10 under PM peak hour does not match the Synchro analysis sheet.

T8-116

28. Appendix K: Year 2040 + Alternative A conditions

- a. Figure 29 - Peak hour movement volumes at intersection #8 do not match the Synchro analysis sheet.
- b. Table 32 – Queue for SB left movement at Intersection #10 under PM and Saturday peak hours does not match the Synchro analysis sheets.

T8-117

29. Appendix L: Year 2040 + Alternative B conditions

- a. Figure 31 - Peak hour movement volumes at intersection #2, 8 and 12 does not match the Synchro analysis sheets.
- b. Table 34 – Delay reported in Table 34 do not match the corresponding Synchro analysis sheet under “With Mitigation” at Intersection #12 under Saturday peak hour.
- c. Table 35 – Queue for SB left movement at Intersection #10 under PM and Saturday peak hours does not match the Synchro analysis sheets.

T8-118



30. Appendix M: Year 2040 + Alternative C conditions

- a. Figure 32 – Lane geometry at intersections #7, 8, and 9 does not match the Synchro analysis sheets.
- b. Figure 33 - Peak hour movement volumes at intersection #7 and 8 does not match the Synchro analysis sheets.
- c. Table 35 – Queue for SB left movement at Intersection #10 under PM and Saturday peak hours does not match the Synchro analysis sheets.

T8-119

Please let us know if you have any questions. Thank you.

Sincerely,

**Linscott, Law & Greenspan, Engineers**

Handwritten signature of John Boarman in blue ink.

John Boarman, P.E.  
Principal

Handwritten signature of Renald Espiritu in black ink.

Renald Espiritu  
Transportation Engineer III

cc: File

**ATTACHMENT**

*Attachment A:* Trip Generation Calculations

*Attachment B:* Cumulative Projects Locations

**ATTACHMENT A**

T8-120



**Table A**  
**LLG Trip Generation Calculations**

Land Use	Size	Daily Trip Ends (ADTs)	
		Rate <sup>a</sup>	Volume
Casino Gaming Positions <sup>a</sup>	3,380 Gaming Positions	8.01 /Gaming Position	27,074
Meeting / Conference Space <sup>b</sup>	74.19 KSF	24.96 /KSF	1,852
Event Center <sup>b</sup>	2,800 Seats	0.37 /Seat	1,036
<b>Total Trips</b>			<b>29,962</b>

*Footnotes:*

- a. Rates for Land Use 473 Casino from the 11th Edition of the *Trip Generation* Manual, Institute of Transportation Engineers (ITE)
- b. Trip rates for the meeting space and event center from the Shiloh Resort and Casino Report are used.

**ATTACHMENT B**

**T8-120  
cont.**



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T8-120  
cont.

# APPENDIX 4





**Meister Economic Consulting, LLC**  
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August 25, 2024

Jeff Keohane  
General Counsel  
Graton Economic Development Authority  
630 Park Court  
Rohnert Park, CA 94928

*Re: Preliminary Assessment of Socioeconomic Information in the May 2024 Draft Environmental Impact Statement for the Koi Nation of Northern California*

Dear Mr. Keohane:

Per our engagement, Graton Economic Development Authority commissioned Meister Economic Consulting ("MEC") to assist you on behalf of the Federated Indians of Graton Rancheria (the "Tribe") with your review of the Draft Environmental Impact Statement for the Koi Nation of Northern California ("Koi Nation DEIS") prepared by Acorn Environmental ("Acorn") in connection with the Proposed Shiloh Resort & Casino ("Proposed Koi Nation Casino"). Although the Koi Nation DEIS bears the date, "May 2024," on its cover, the Notice of Availability was not published by the Bureau of Indian Affairs ("BIA") until July 8, 2024. We understand that the comment period for the DEIS expires on August 26, 2024.

Specifically, MEC was tasked with assessing the Socioeconomic Information contained in the Koi Nation DEIS ("Socioeconomic Information"), particularly the May 2022 Impact Study in Appendix B-1, the November 2022 Economic Impact Statement in Appendix B-2, and the March 2024 Supplemental Competitive Effects Assessment in Appendix B-3, all of which were prepared by Global Market Advisors ("GMA").

### ***SUMMARY OF CONCLUSIONS***

Based on our review, and as noted in the assessment below, the Koi Nation DEIS materially understates the negative impacts to existing tribal casinos, local communities, and disadvantaged populations. This significant understatement creates an inaccurate record for the BIA to rely upon in considering whether to approve the Koi Nation DEIS or the Koi Nation's land-in-trust application.

### ***WORK PERFORMED***

In conducting our assessment in the short amount of time available, we reviewed the Socioeconomic Information, conducted independent market research, reviewed historical financial performance and players club data for the Tribe's gaming facility, Graton Resort & Casino, and developed preliminary market and gravity models. We highlight that our use of actual financial and players club data from

one of the largest and most well-established casinos in Northern California, Graton Resort & Casino, provides us with unmatched data and insights into the relevant gaming market that the Koi Nation seeks to enter and the potential competitive impacts on existing competitors. GMA does not appear to have incorporated such data for its studies. If GMA did possess such data from other previous projects for tribal casinos, it would not have been able to use them due to the high level of confidentiality imposed on such data.

### **CAVEATS**

We note that the 46-day comment period (original 45 days plus 1 day given the 45-day period would have ended on a Sunday) given by the Bureau of Indian Affairs is not sufficient to do a complete review, audit, and analysis of the Socioeconomic Information. Thus, we note that the assessment set forth in this document is preliminary in nature. Additional time would be required to conduct a complete original analysis to further evaluate and quantify the issues we identify herein.

T8-121  
cont.

### **ASSESSMENT**

In reviewing the Socioeconomic Information, we identified a wide range of significant flaws in the assumptions, analysis, and results of the market analysis, competitive effects study, economic impact statement, environmental justice assessment, and socioeconomic analysis. Set forth below is a high-level review of key flaws in these areas and the implications thereof, as best as we can identify at this time.

### **GMA's Reliance on Previous Work by Other Consultants**

At several points throughout its studies, GMA admits that work performed by other consultants, namely Meister Economic Consulting, is the fundamental basis and starting point for its competitive effects study and economic impact statement for Alternative A (pp. 27, 28, 29, 33, 45, 65, and 68 of Appendix B-1 and p. 5 of Appendix B-3 to the Koi Nation DEIS). Specifically, GMA relies entirely on our that work for the construction and development costs of Alternative A (pp. 27 and 29 of Appendix B-1 to the Koi Nation DEIS) and the projected financial performance of Alternative A (pp. 28, 33, 45, and 68 of Appendix B-1 and p. 5 of Appendix B-3 to the Koi Nation DEIS). The Koi Nation DEIS even generally relies on our that work for the majority of the proposed scope of the casino in Alternative A and the proposed gaming scope in Alternative B (pp. 2-2 and 2-23 through 2-24 of the Koi Nation DEIS; there are some differences in scope, which we discuss later). However, much of the data, assumptions, and methodologies behind the prior work would not have been known to GMA.

T8-122

We are uniquely positioned to comment on our prior work and on the significant issues that arise due to GMA's dependence on it, which resulted in fundamentally flawed conclusions by GMA regarding competitive effects and economic impacts of Alternatives A and B. These flaws include:

- *GMA Used Outdated Information:* The work on which GMA relied was completed in June 2021, during a time when the gaming industry, like many others, was still grappling with the effects of the COVID-19 pandemic. As a result, our analysis used 2019 as the base year for its

projections, further rendering those analyses outdated because they are nearly five years old and because they pre-date the pandemic. An updated market analysis needs to be done to account for changes in the economy, consumer behavior, competitive dynamics, and other factors.

T8-122  
cont.

- *GMA Did Not Understand Key Underlying Assumptions in the Prior Work it Relied Upon:* GMA could not have fully comprehended the key data, assumptions, variables, and forecasts employed in the gravity model in our previous work that GMA relied upon given these were not disclosed. Consequently, GMA could not have constructed its competitive effects gravity model consistently with our previous work’s gravity model that serves as a baseline for GMA’s gravity model to begin with. This internal inconsistency necessarily results in fatally flawed estimates of competitive effects. For example, GMA included in its competitive effects analysis 19 tribal casinos that would be negatively impacted by the Proposed Koi Nation Casino (17 existing and 2 proposed competitive casinos, p. 69 of Appendix B-1 to the Koi Nation DEIS). However, our prior work only preliminarily modeled an overly simplistic market with a much shorter list of key tribal casinos competitors. Because we were not computing competitive effects at that time, our model did not take into account all 17 existing tribal casinos. This inconsistency alone between the market we used to project potential revenues and the market GMA used to estimate competitive impacts results in flawed conclusions by GMA. The only way to remedy the inconsistency would be to update the market used to project potential revenues.

T8-123

- *GMA Misrepresents Assumptions of the Prior Work it Relied Upon:* Despite GMA's inability to understand the key assumptions in our prior work that they relied upon—because they did not and could not know what they were—GMA claimed that several major assumptions in their own gravity model were consistent with ours (p. 65 of Appendix B-1 to the Koi Nation DEIS). However, this assertion is unequivocally false. Specifically, certain major assumptions made by GMA that were not incorporated into our prior work include:

- Expansion of the Graton Resort & Casino (it had not yet been announced at the time of our prior work);
- Future opening of the new Ione Band Plymouth Casino (a compact between the Tribe and State had not yet been executed); and
- Opening of a new hotel associated with the Coyote Valley Casino.

T8-124

If we had incorporated any of these assumptions in our prior work, it would have changed the results of that work, which in turn would have necessarily changed the results of the competitive effects analysis by GMA. Incorporating these assumptions into our prior work would result in lower projected revenues for the Proposed Koi Nation Casino but a significantly higher percentage of those revenues attributable to cannibalization of existing tribal casinos in the market area.

- *Acorn and GMA Changed Alternative A Project Scope Without Revising Revenue/Cost Projections from the Prior Work They Relied Upon:* While Acorn and GMA utilized the recommended programing for gaming and hotel offerings from our prior work, they modified the scope of

T8-125

the meeting/event space and food and beverage offerings, and added a sportsbook, which is not even legal at this time for California tribes (p. 2-2 of the Koi Nation DEIS). These changes included a significant increase in meeting/event space, as well a moderate increase in the total number of seats at food and beverage outlets. Despite these changes, GMA did not adjust the construction cost estimates (p. 29 of Appendix B-1 to the Koi Nation DEIS) or ancillary revenue forecasts (pp. 28 and 33 of Appendix B-1 to the Koi Nation DEIS) contained in our prior work to properly reflect their expanded project scope. It is also important to note that increases in non-gaming amenities may also warrant adjustment to gaming revenue forecasts as meetings and events would typically draw in more people to the Proposed Koi Nation Casino.

T8-125  
cont.

In summary, GMA's reliance on our prior, outdated work for another purpose that utilized different key assumptions significantly undermines the accuracy and reliability of their analyses and results in significant errors to their competitive effects analysis and economic impact statement.

T8-126

### Competitive Effects Analysis

In conducting our assessment, we identified numerous flaws in the assumptions and methodology of the competitive effects analysis conducted by GMA. As previously noted, GMA's reliance on our previous, outdated study results in significant errors in the competitive effects calculations for Alternative A. Accurate and current baseline revenue projections are essential for evaluating potential competitive effects. Without them, the results are not economically valid. However, even if we set aside this foundational error, the competitive effects analysis contains several other significant flaws that render its conclusions unreliable. We start though with a simple acknowledgement of the key finding of GMA's competitive effects analysis, despite all of the flaws therein.

#### *GMA Identifies Significant, Detrimental Competitive Impacts on Existing and Planned Tribal Casinos*

T8-127

GMA projects that the Proposed Koi Nation Casino Alternative A would generate \$449.4 million in gaming revenue from the local market in 2033 (sixth year of operations, which it has assumed to be a stabilized year), with \$244.2 million (54%) attributed to natural market growth generated by the introduction of the Proposed Koi Nation Casino (pp. 45-46 and 68 of Appendix B-1 to the Koi Nation DEIS). If we take these figures at face value, this means that 46% of Proposed Koi Nation Casino projected gaming revenue will be cannibalized from the 19 other tribal casinos in the market (p. 69 of Appendix B-1 to the Koi Nation DEIS) (we discuss later the various other flaws in GMA's competitive effects analysis). This aggregate loss to Northern California tribal casinos as computed by GMA would have a profoundly detrimental effect on the tribal governments that own and operate those casinos, the services that they provide to their tribal citizens, and the benefits they provide to their surrounding communities, non-tribal governments, and employees.

The competitive impact on Graton Resort & Casino alone is estimated by GMA to be a 11.45% loss of gaming revenue (p. 69 of Appendix B-1 to the Koi Nation DEIS). If we also take this figure at face value, this is a significant reduction that directly translates to a loss of governmental revenue to the

Federated Indians of Graton Rancheria, such that it will have to substantially reduce expenditures on tribal programs and services to its tribal members.

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cont.

*GMA Grossly Understates Total Competitive Impact*

Given the market in which the Proposed Koi Nation Casino Alternative A would operate, there is little chance that it would be able to generate the aforementioned level of market growth, instead the amount of the local market gaming revenue that would come at the expense of other competitive casinos within the market would be far greater than 46%. Based on our preliminary analyses, we estimate that approximately 80% of the Proposed Koi Nation Casino's gaming revenues would come from cannibalization of the revenues of competitors. We discuss below a variety of factors that cause GMA to overestimate market growth generated by the Proposed Koi Nation Casino.

- *Failure to Properly Account for the Market's Advanced Maturity Level:* The local market where Alternative A of the Proposed Koi Nation Casino would operate is a very mature market that already consists of a large number of established casinos (GMA identifies 17 existing and 2 proposed competitive casinos at the time of its study, pp. 45 and 69 of Appendix B-1 to the Koi Nation DEIS). Most of these competitors have loyal customer bases, established marketing strategies, and comprehensive loyalty programs. The introduction of the Proposed Koi Nation Casino would not dramatically expand the market size in such a well-established and near-saturated environment, as GMA erroneously asserts.
- *Overestimation of Unmet Demand:* While our preliminary analyses identify some pockets of unmet demand within the market area that the Proposed Koi Nation Casino could potentially tap into, the extent of this unmet demand is not sufficient to support GMA's unrealistic projection of \$244.2 million attributed to natural market growth generated by the introduction of the Proposed Koi Nation Casino. Our preliminary market analysis and gravity modeling using Graton Resort & Casino's actual data, along with past experience in this market and other markets, indicate that while new casinos can often capture some new segments of the population and stimulate some additional visits, the overall impact on organic growth in a large and mature market is typically much more modest.
- *Inappropriate Exclusion of Numerous Competitors from the Competitive Set in its Market Analysis:* GMA's market model for estimating the competitive impacts for Alternative A of the Proposed Koi Nation Casino presents a significant oversight by failing to include California card rooms, as they directly compete against Northern California tribal casinos in terms of table games given the types of games they offer and their often advantageous locations closer to population centers. GMA's failure to account for card rooms undermines the comprehensiveness and accuracy of its competitive impacts model and it leads to overstatement of achievable natural market growth, understatement of competitive impacts on existing tribal casinos, and omission of competitive impacts on the card rooms.
- *Failure to Include Outer Market Revenue in Competitive Impacts:* Beyond the revenues projected to be generated from within the local market, GMA also projects \$23.7 million in outer market revenues during the sixth year of operation of Alternative A (p. 68 of Appendix B-1 to the Koi Nation DEIS). Not only does GMA not even define the local and outer markets, nor provide any explanation or breakdown of the factors contributing to these figures, it

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excluded outer market revenues from consideration in its competitive effects analysis altogether because “these revenues are not expected to be materially impacted by the introduction of the Project” (p. 48 of Appendix B-1 to the Koi Nation DEIS). Essentially, the \$23.7 million appears out of nowhere. It is only reasonable to assume, however, that if the revenue exists, a portion of the projected outer market revenue would come at the expense of existing casinos, just like the portion that would come from within the local market. For instance, outer market revenue includes revenue from tourists to the region, and at least a portion of their visitation to the Proposed Koi Nation Casino would be cannibalization of existing casinos’ revenues. This dynamic is especially relevant for tourists with extended stays in the area or those planning to visit multiple destinations throughout the region. By excluding outer market revenue from consideration in the competitive impact assessment, GMA has underestimated the competitive impacts on the numerous existing tribal casinos.

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cont.

*Acorn Falsely Claims Competitive Impacts Dissipate Over Time*

Acorn asserts that the competitive impacts of Alternative A would “tend to dissipate over time in a growing economy” (p. 3-75 of the Koi Nation DEIS). However, this opinion is not substantiated by any facts or analysis, and is not even mentioned by GMA in any of its studies. Moreover, Acorn’s assertion that the competitive impact will dissipate over time due to economic growth is patently and demonstrably false. Any natural growth in the market resulting from economic growth is a separate phenomenon that would occur regardless of the opening of the Proposed Koi Nation Casino. Therefore, this natural market growth does not diminish or recover the lost revenue experienced by existing tribal casinos as a result of the Proposed Koi Nation Casino. Acorn’s assumption that the competitive impact will diminish over time does not account for the sustained pressure that a new entrant typically exerts on existing casinos in a market. Furthermore, the introduction of a new casino permanently alters market share dynamics, leading to potential long-term revenue losses for existing casinos. Even with market growth, these losses represent real and ongoing competitive impacts that need to be considered over a longer-term horizon. In essence, while competitive tribal casinos may potentially regain their nominal revenue levels in a growing economy, these revenues, when adjusted for inflation and market changes, will not restore the tribes to the financial position they would have held if a new casino had not entered the market.

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*Acorn Incorrectly Assumes No Non-Gaming Substitution Effects*

Acorn believes that most hotel stays at the Proposed Koi Nation Casino would come from guests drawn to the casino, meaning that these stays would not significantly impact local hotels (p. 3-76 of the Koi Nation DEIS). For other patrons, they note that there will be both positive and negative substitution effects. Positively, they state that the project is expected to increase local hotel demand and create overflow effects, where gaming guests opt to stay at nearby hotels instead of in the casino’s hotel. Negatively, they note that some guests might choose the new project over existing local hotels. Acorn concludes without relying on any facts or analysis that these impacts would be minimal and therefore that the project would have a less-than-significant effect on local hotel substitution (p. 3-66 of the Koi Nation DEIS). Acorn’s analysis regarding the substitution effects of the proposed casino hotel on local non-gaming hotels may present a reasonable argument when considering the potential for overflow effects, but without any facts to support it, one cannot tell.



However, the rest of their rationale is fatally flawed and leads to the incorrect assumption that there are no non-gaming substitution effects.

- *Lack of Support for Acorn's Rationale:* Acorn presents its opinion regarding hotel substitution effects but provides absolutely no facts or analysis to support it, and GMA does not address the subject of non-gaming substitution effects at all in their studies.
- *Ignoring Direct Competition with Regional Non-Gaming Hotels:* Acorn's focus on local non-gaming hotels, while important, neglects the interconnected nature of regional tourism and hospitality markets. The ripple effects of a new casino hotel can extend beyond immediate geographical boundaries, influencing regional tourism flows and accommodation preferences. Thus, regional non-casino hotels should have been examined. To the extent that the Proposed Koi Nation Casino causes substitution effects with regional non-casino hotels, there would certainly be negative competitive impacts on hotel occupancy taxes to local governments. However, this is not addressed by Acorn.
- *Ignoring Direct Competition with Regional Casino Hotels:* Unlike local non-gaming hotels, regional competitive casino hotels cater to a similar market segment as the Proposed Koi Nation Casino. Patrons attracted to the gaming and entertainment offerings of the new casino hotel may choose to stay at the new facility instead of the existing regional competitive casino hotels, resulting in a hotel (and likely other non-gaming) substitution effect.
- *Inconsistent Logic:* While GMA acknowledges there would be competitive impacts on gaming revenues at regional competitive casinos (p. 69 of Appendix B-1 to the Koi Nation DEIS), they fail to extend this logic to the associated hotel demand at the competitive casinos. Gaming and hotel operations at casino resorts are intrinsically linked. The opening of the Proposed Koi Nation Casino will most certainly impact the demand for hotel room nights at other regional competitive casino hotels, given the overlap in target demographics.

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cont.

*Koi Nation DEIS Uses Overtly Narrow and Faulty Interpretation of "Detrimental Impact" on a Tribe*

The Koi Nation DEIS quotes a federal court case regarding the determination of "detrimental impact" on a tribe as a result of a proposed casino: "competition ... is not sufficient, in and of itself, to conclude [there would be] a detrimental impact on" a tribe (p. 3-75 of the Koi Nation DEIS). The DEIS goes on to interpret the aforementioned excerpt to mean that "should competition effects be so severe as to *cause closure of a facility* ... facility closure could result in socioeconomic effects to tribal communities from decreased availability and/or quality of governmental services" (*emphasis added*). However, this interpretation is overly narrow and faulty. While competition alone is not sufficient direct evidence of detrimental impact on a tribe, negative competitive effects on the tribe's casino (i.e., cannibalization or substitution) are direct evidence of detrimental impact on the casino. And in turn, detrimental impact on a tribal casino directly translates into detrimental impact on the tribe as there is less profit available to transfer back to the tribal government consistent with the purposes of the Indian Gaming Regulatory Act, "to promote tribal economic development, tribal self-sufficiency, and strong tribal government" (25 U.S.C. Sec. 2701(4)). Furthermore, this detrimental impact on the casino and correspondingly on the tribe, need not come in the form of closure of the casino. "[D]ecreased availability and/or quality of governmental services" can come

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in the form of any negative competitive effects that do not result in closure of the casino that result in a reduction of tribal government revenue. We find that GMA's estimated reduction of 11.45% of gaming revenue at Graton Resort & Casino due to the Proposed Koi Nation Casino (p. 69 of Appendix B-1 to the Koi Nation DEIS) would result in a reduction of funds that are available to be transferred by the casino to the Tribal government for governmental purposes. Additionally, it would result in a reduction in funds available for community impact mitigations, including support for non-gaming tribes and local community programs.

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cont.

*GMA's Supplemental Competitive Effects Discussion Fails to Address True Detrimental Impact*

GMA states that "[A]fter conducting extensive research and analysis, the consulting team at GMA has identified several markets where casinos have experienced impacts to their gaming revenues by more than 20% and yet managed to remain open" (p. 1 of Appendix B-3 to the Koi Nation DEIS). However, in this exercise, GMA fails to address the true nature of detrimental impact as it matters in a land-in-trust application. Moreover, the markets they identify clearly show detriment.

- *Limited, Irrelevant Examples:* GMA only provides four markets after its "extensive research and analysis" (p. 1 of Appendix B-3 to the Koi Nation DEIS), and three of the four examples are commercial casino markets (Chicagoland, Cincinnati/Southern Indiana, and Atlantic City, pp. 2-4 of Appendix B-3 to the Koi Nation DEIS). These three examples suffer from the very shortcoming raised in the federal court case cited by Acorn (p. 3-75 of the Koi Nation DEIS) - GMA only identifies detriment to the casinos themselves. In large part, that is because the three examples do not even involve tribal casinos, thus there can be no detriment to tribes, which is what is at issue in a land-in-trust application such as that for the Koi Nation. However, in finding no detrimental impact, GMA did not even attempt to analyze the socioeconomic impacts caused by the reductions in casino revenues in the examples that they identified, which may have included reduced governmental services due to decreases in tax revenues, among other things.
- *Limited Examples Do Not Isolate Decreased Revenue from New Competitors:* In all four of GMA's examples, the casinos that experienced revenue declines did so in large part because of factors unrelated to new competitors entering their market. GMA admits that the casinos in its analysis faced significant revenue challenges due to the economic recession and regulatory factors (p. 1 of Appendix B-3 to the Koi Nation DEIS). GMA admits the revenue loss for the casinos in the Chicagoland example was in large part due to the 2008 financial crisis and a smoking ban (one casino was even harmed by a fire) (pp. 2-3 of Appendix B-3 to the Koi Nation DEIS). In the Cincinnati/Southern Indiana example, GMA notes the causes of revenue losses to casinos to include the 2008 financial crisis (pp. 3-4 of Appendix B-3 to the Koi Nation DEIS). In the Atlantic City example, GMA points to the 2008 recession and inadequate management (pp. 2 and 4 of Appendix B-3 to the Koi Nation DEIS). The identified factors in these examples and GMA's failure to account for them obscure the degree to which competition played a role in their decline to begin with.
- *Weak and Unconvincing Examples:* GMA attempts to characterize the four markets as examples of how "casinos were able to adapt and regrow revenue after impact via strategic initiatives, operational changes, and/or product improvement/expansion" (p. 2 of Appendix

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B-3 to the Koi Nation DEIS). No matter how GMA spins it, the casinos in their examples were permanently harmed and experienced revenue losses that cannot be recovered, even if they get back to their original revenue level (as noted earlier in our discussion that *Acorn Falsely Claims Competitive Impacts Dissipate Over Time*). Furthermore, these casinos' attempts to mitigate their losses necessitated significant investments, often requiring substantial financial commitments. In the Chicagoland example, GMA notes how one casino (Grand Victoria) took losses for multiple years and eventually had to be sold and later expanded to keep afloat in the market (pp. 2-3 of Appendix B-3 to the Koi Nation DEIS). In the Atlantic City example, GMA admits that multiple casinos had to close down at least in part due to new competition over time in nearby states, and one casino (Harrah's) had to undergo renovations to try to get back to its previous revenue trajectory path (pp. 2 and 4 of Appendix B-3 to the Koi Nation DEIS). In the Greater Connecticut market, GMA highlights major, costly renovations and expansions two casinos undertook to try to mitigate their losses (p. 4 of Appendix B-3 to the Koi Nation DEIS).

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GMA's focus on how some of the casinos in its examples were able to stay open fails to consider the limitations of investment-driven recovery for the reasons discussed below.

- *Reactive vs. Proactive Investment:* GMA suggests that investments made in response to revenue declines demonstrate effective recovery strategies. However, these investments are largely reactive, forced by necessity to mitigate losses, get back on the previous trajectory, and/or regain lost market share rather than part of a proactive growth strategy. If the casinos had not experienced revenue declines, they might have had the financial flexibility to pursue strategic investments earlier or more aggressively, potentially leading to a stronger competitive position and higher profitability.
- *Opportunity Cost of Revenue Declines:* GMA's analysis fails to consider the opportunity costs associated with revenue declines. Casinos forced to invest in attempted recovery likely diverted resources from other potential growth opportunities or innovative projects. This reallocation can hinder long-term strategic objectives that could have driven additional revenue growth beyond mere recovery.
- *Impact on Financial Health:* The financial strain of revenue declines often necessitates borrowing or reallocating funds from other areas, which can impact a casino's financial health. Increased debt burden or depletion of reserves can restrict future investment capabilities and expose the casino to greater risk during subsequent economic downturns or competitive pressures.

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#### *GMA Does Not Provide Sufficient Information to Evaluate the Results of their Analyses*

GMA did not provide enough detail on competitive effects to allow us to conduct a complete review. Accordingly, GMA's analyses are also necessarily insufficient for Acorn or the BIA to fully analyze the impacts on other Indian tribes. In GMA's competitive effects analysis, competitive impacts are only cited in terms of percentage of lost gaming revenue (p. 69 of Appendix B-1 to the Koi Nation DEIS). They do not provide the impacts in actual dollars. While estimating the revenue impact in terms of a percentage provides a high-level view, it falls short in delivering the specificity

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and clarity needed for an accurate financial impact assessment on the impacted tribal casinos and the respective tribal governments that depend upon them.

Although GMA has estimated competitor revenues within its own gravity model, the lack of disclosure of these figures limits the persuasiveness of the analysis. Estimating and presenting the negative impact on existing competition in actual dollar terms, along with estimated total revenues, would provide more transparency and allow the BIA to see how dramatic the actual losses are to tribal casinos and the tribes that own them. In addition, any percentage of competitive impact can be a significant loss to a tribal casino and the tribe that owns it. For instance, assuming the 11.45% competitive impact GMA calculates for Graton Resort & Casino were accurate, it still means a significant reduction of many, many millions of dollars in governmental revenues for the Tribe. This would create a huge negative impact on the Tribe such that it may not be able to continue to fully fund all of the existing tribal programs and services that it currently does to tribal members.

Moreover, because the negative impacts of the Proposed Koi Nation Casino on other tribes are described only in terms of the percentage reduction in gross casino revenues, they significantly understate the detrimental impacts on the tribal governments that are the intended beneficiaries of the Indian Gaming Regulatory Act. In order to function as governments and provide governmental services to their citizens, tribal governments depend upon a share of casino *profits* not gross revenues. Depending on the casino, a small but significant decrease in gross gaming revenue can translate into a major decrease in casino profits and in turn a major decrease in tribal government funding that supports the tribal government that owns the casino, and thus resulting in elimination or reduction of tribal programs and services it provides to its citizens, ranging from public safety, housing, health, and environmental protection. While some tribes may be able to reduce casino expenses to partially offset decreased revenues, they may not be able to do so without severely harming the quality and service levels of the casino, thus impacting competitive positioning and revenues. In addition, many tribes will be unable to reduce certain casino expenses such as debt service or management fees.

*GMA Fails to Adequately Justify Alternative C's Feasibility*

It is difficult to assess the non-gaming development option set forth in Alternative C given the summary level data and analysis presented by GMA to substantiate their recommendations, projections, and economic impact assessment. There is just one very minimal pro forma income statement table to support it (p. 9 of Appendix B-2 to the Koi Nation DEIS). Market studies typically include a much more robust analysis of historical performance and projected growth trends within the market area in order to draw any meaningful conclusions as to the projected performance and viability of projects. The mere assertion that these projects can be easily absorbed within the market without any meaningful competitive impacts is not convincing without any facts or analysis. It defies logic to deny that elements of Alternative C are likely to result in competitive effects, which were not quantified or addressed in the Koi Nation DEIS.

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## Economic Impact Study

In order to show the economic effects of the Proposed Koi Nation Casino on its surrounding community, GMA prepared an economic impact statement. While there is not sufficient time in the comment period to conduct our own original economic impact analysis so we can fully assess GMA's results, we reviewed and assessed the data, assumptions, methodologies, and results of their economic impact statement, identifying several key flaws below. These are in addition to the significant errors that resulted from GMA using our prior outdated work for another purpose that utilized different key assumptions (see *GMA's Reliance on Previous Work by Other Consultants* section).

### *GMA Does Not Provide Sufficient Information to Adequately Evaluate the Results of their Analyses*

GMA did not provide enough detail on the inputs to their economic impact models to allow us to conduct a complete review. As noted above, without such information, the BIA and the public are also not able to evaluate the socioeconomic impacts on the surrounding community. For GMA's construction impacts, while total construction costs are noted as \$689.2 million (p. 29 of Appendix B-1 to the Koi Nation DEIS), the Direct Output (total economic activity from construction expenditures run through GMA's economic impact model) in their construction impact results is \$308.5 million (p. 30 of Appendix B-1 to the Koi Nation DEIS). For GMA's operation impacts, while Gross Revenue is \$575.3 million and EBITDA is \$146.7 million (p. 33 of Appendix B-1 to the Koi Nation DEIS), the Direct Output (total economic activity from operations run through GMA's economic impact model) in their operation impact results is \$185.6 million (p. 34 of Appendix B-1 to the Koi Nation DEIS). In both cases, GMA does not adequately detail what they did to get the inputs to their models such that they yield the aforementioned Direct Output figures. Specific details must be provided in order to determine whether the modeling was done properly.

### *GMA Fails to Properly Exclude Operations Tax Impacts Koi Nation Would Not Pay as a Tribal Government*

GMA highlighted that in its Alternative A operations related fiscal impact analyses "at the state and local level, adjustments were made to sales tax, property taxes, and State/local non-taxes by the ratio of indirect and induced output to total output to reflect the likely exemption status of direct spending occurring at the facility" (p. 37 of Appendix B-1 to the Koi Nation DEIS). While GMA's reasoning is correct, there appear to be a few flaws with this implementation that cause overinflated fiscal impacts.

- Despite the aforementioned statement by GMA, it appears they did not actually deduct out the stated taxes at the state and local level because GMA later states that "[t]he IMPLAN model creates a projection of the total taxes, such that these discounts are not reflected in the resulting tables" (p. 37 of Appendix B-1 to the Koi Nation DEIS) and "the actual tax benefits will likely vary from those presented in the following tables addressing tax revenues during the operations phase for the Project" (p. 38 of Appendix B-1 to the Koi Nation DEIS).

- At the state and local level, GMA should also have excluded Direct Corporate Profits Tax given that tribes do not pay it. GMA does not state this exclusion anywhere even though it is easily excluded from typical IMPLAN results after running a model.
- GMA should also have excluded Direct Corporate Profits Tax at the federal level as well given tribes do not pay that either. GMA does not state this exclusion anywhere even though it is easily excluded from typical IMPLAN results after running a model.

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cont.

*GMA Overestimates All Economic and Fiscal Impacts for Operation of All Alternatives by Not Accounting for Competitive Effects*

As previously noted, GMA estimated competitive effects on existing tribal casinos, including two in Sonoma County (Graton Resort & Casino and River Rock Casino), the study area of their economic impact study (p. 26 of Appendix B-1 to the Koi Nation DEIS). As we previously pointed out in this assessment, these competitive effects are permanent and can never be recovered, contrary to Acorn's erroneous and unsupported claim. With this in mind, the competitive effects should not be included in the revenue figures used as the input to the operations related economic impact model for all the Alternatives because for instance in Alternatives A and B the competitive effect is not new economic activity to Sonoma County, but just substituting for economic activity that is already generated at existing tribal casinos in the County. It is not readily apparent that GMA excludes these competitive effects from the operations economic impact model because it is not stated anywhere in their studies. By not excluding the competitive effects from these economic impact models, GMA would have overestimated all operations related economic and fiscal impacts of the Proposed Koi Nation Casino (pp. 34-36 and 38 of Appendix B-1 to the Koi Nation DEIS) by the magnitude of competitive effects on Graton Resort & Casino and River Rock Casino.

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**Community Effects**

In its community effects analysis, GMA pointed to the 1,571 jobs that would need to be filled at the Proposed Koi Nation Casino (p. 40 of Appendix B-1 to the Koi Nation DEIS), along with an additional 649 indirect and induced jobs that would also need to be filled, for a total of about 2,220 new jobs in Sonoma County (p. 43 of Appendix B-1 to the Koi Nation DEIS). GMA stated that this increase in jobs in the County would not be a concern "[a]s the incremental number of people employed represents a comparatively small percentage of the unemployed population within the county, there is likely a good degree of availability of people currently residing in the area to fulfill the available positions" (p. 40 of Appendix B-1 to the Koi Nation DEIS). Furthermore, GMA concluded that "[a]s the subject development would not require a large influx of residents to fill positions, and as the new positions will only have a small impact on the amount of unemployed, the housing market will not experience a large increase in home values or demand for new homes, and there would be only a nominal impact on the school system" (p. 40 of Appendix B-1 to the Koi Nation DEIS).

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GMA's community effects analysis ignores the fact that despite existing unemployment, there have not been a sufficient number of qualified or interested people to fill available hospitality industry jobs in Sonoma County. There were 635 accommodation and food service job openings in July 2024



in the Santa Rosa MSA, which is Sonoma County (State of California EDD, Online Job Vacancy Statistics Dashboard ([https://labormarketinfo.edd.ca.gov/data/help-wanted-online\(hwol\)/online-job-ads-data.html](https://labormarketinfo.edd.ca.gov/data/help-wanted-online(hwol)/online-job-ads-data.html)), as of August 16, 2024). If there are not enough people to fill existing job openings, there certainly would not be enough people to fill an additional 1,571 jobs that GMA estimates will be directly created at the Proposed Koi Nation Casino on top of already existing job openings in the County. And if there are not enough people currently in Sonoma County to fill all these jobs, then either there will need to be a sizable influx of new residents to the County or a significant increase in people willing to commute to the County. On the one hand, an influx of new residents to the County would raise questions about housing (low supply of homes, high home prices, and low rental vacancy rates), school crowding, and increased need for local police, fire, and emergency medical services. On the other hand, an increase in commuters to the County might occur instead of or in addition to local population growth. Per discussions with Graton Resort & Casino management, about 11% of its workforce already comes from outside of Sonoma Counties. If commuting increased due to the Proposed Koi Nation Casino, it would create a host of community and environmental concerns that would need to be analyzed (e.g., traffic, transportation, and pollution). But GMA did not analyze any of these issues either.

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### Environmental Justice

While the Koi Nation DEIS acknowledged that tribes are considered minority populations for the purposes of assessing Environmental Justice for Minority, Low-Income, and Other Disadvantaged Populations (pp. 3-68 and 3-70 of the Koi Nation DEIS), it concluded that “the Proposed Project would not result in disproportionately high and adverse environmental effects to minority or low-income communities” (p. 3-76 of the Koi Nation DEIS). This defies simple logic given that GMA finds gaming substitution effects (i.e., cannibalization) with 19 tribal casinos, including Graton Resort & Casino (p. 69 of Appendix B-1 to the Koi Nation DEIS), and therefore 19 tribes, including the Federated Indians of Graton Rancheria, would be harmed due to lost tribal government revenue. Acorn seems to have justified its conclusion by only looking at the vicinity near the Project Site (p. 3-76 of the Koi Nation DEIS). Furthermore, it defies logic to ignore obvious negative socioeconomic effects on other tribes while accepting that they are close enough to be harmed economically. On the one hand, Acorn supported its assertion that the Proposed Koi Nation Casino could succeed financially by demonstrating that it would be able to cannibalize the business of surrounding Indian tribes, resulting in reduced revenues to them, and on the other hand, supported its assertion that the new casino would not have adverse environmental justice impacts by ignoring how it would depend upon that same cannibalization.

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If you have any questions regarding this letter, please do not hesitate to contact me. Thank you for the opportunity to assist the Federated Indians of Graton Rancheria with this important matter.

Sincerely,



Alan Meister, Ph.D.



Jonathan Clough

# **APPENDIX 5**



## MEMORANDUM

<b>TO:</b>	Paul P. "Skip" Spaulding, III Shartsis Friese, LLP SSpaulding@sflaw.com	<b>FROM:</b>	Matt Richmond, Principal Ecologist richmond@wra-ca.com
<b>DATE:</b>	August 26, 2024		
<b>SUBJECT:</b>	Peer Review of Biological Resource Documents: Koi Nation of Northern California Resort and Casino Project		

This memorandum provides a peer review by WRA, Inc. (WRA) of various documents related to biological resources for the proposed Koi Nation of Northern California Shiloh Resort and Casino Project (Project) in Sonoma County, California. The primary document reviewed is the Draft Environmental Impact Statement (hereafter Draft EIS) for the Project by Acorn Environmental (Acorn; 2024a), specifically Section 3.5 ("Biological Resources"). Associated documents including appendices to the Draft EIS were also reviewed as relevant (see below). The Project would involve construction of a gaming and resort facility on an approximately 68-acre parcel (APN 59-300-003) located south of Shiloh Road immediately south of the Town of Windsor limits. The property is owned in fee by the Koi Nation Tribe and currently features a residence and active vineyards; Pruitt Creek bisects the property, an intermittent stream that ultimately drains to the Russian River.

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In addition to the main text of the Draft EIS, WRA reviewed the following Project documents which were included as appendices to the Draft EIS:

- Biological Resources Assessment of the Traffic Mitigation Improvements for the Shiloh Resort and Casino Project (Acorn 2024b)
- Biological Assessment, Proposed Shiloh Resort and Casino Project (Sequoia Ecological Consulting, Inc. [Sequoia] 2024a)
- Biological Assessment, Proposed Shiloh Resort and Casino Project; covering National Marine Fisheries Services (NMFS) covered species and Essential Fish Habitat (Sequoia 2024b)
- CESA-Listed Species Evaluation for the Shiloh Resort and Casino Project (Sequoia 2022a)
- Aquatic Resources Delineation Report, Shiloh Resort and Casino Property (Sequoia 2022b)

Additional supporting materials (e.g., databases, references) used by WRA herein are provided when relevant below. A site visit was performed by WRA Principal Biologist Matt Richmond (primary author) on August 23, 2024; the Project site was assessed from adjacent publicly accessible locations along Shilo Road and Old Redwood Highway. Otherwise, the information provided herein is based on the materials provided, publicly available information, and WRA's professional biological resources experience, which includes many projects on and near the Santa Rosa Plain in Sonoma County.

The following peer review is based primarily on the Draft EIS and its structure, with other supporting documents referenced where relevant. Page numbers cited are from the Draft EIS unless otherwise specified.

## PROJECT DESCRIPTION

It is important for an EIS (both Draft and Final) to have a specific and complete project description. This provides information to evaluate the nature, extent and significance of project effects in many areas, including biological resources.

The Draft EIS is missing key information in the context of determining whether or not the Project will have significant impacts on biological resources. These deficiencies include the following:

- The Draft EIS states that wastewater discharge structures will be constructed adjacent and into the streambed of Pruitt Creek, including pipelines to and under the creek, that are not described in detail or even shown on a map. This lack of specificity impairs our ability to evaluate the impacts of the proposed wastewater facilities and discharge on the wetlands, creek, and federal listed steelhead (*Oncorhynchus mykiss*; Central California Coast DPS) that is known to be present in Pruitt Creek. Additionally, the reach of Pruitt Creek within the Project site is designed as critical habitat for steelhead. As such, structural and operational details are critical to assess the extent of adverse modification to habitat caused by these facilities to analyze whether a prohibited “taking” may occur. See additional comments below.
- Section 2.1.8 of the Draft EIS (p. 2-14) is not clear regarding the potential for utility extensions and upgrades necessary to implement Alternative A to require off-site ground disturbance, with potential impacts to biological resources. The Project description is inadequate without these Project elements. Again, the lack of this information prevents a full assessment of potential impacts or the identification of adequate mitigation measures.

## REGULATORY SETTING & PERMITTING

### Impacts to Aquatic Resources

Section 1.5 of the Draft EIS (Table 1.5-1; p. 1-8) does not include a Section 401 Water Quality Certification permit from the Regional Water Quality Control Board (RWQCB) in connection with the issuance of a Section 404 permit from the U.S. Army Corps of Engineers. This is required for the Project because there are expected to be impacts to wetlands and non-wetland waters of the U.S. While Biological Resources Mitigation Measure (MM) H (p. 4-6) does indicate that a Section 404 permit and 401 Certification would be required if impacts to Waters of the U.S. and “wetland habitat” impacts are unavoidable. However, the extent of these impacts are not quantified.

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## SPECIAL-STATUS SPECIES

### Special-Status Plants

#### Methods

According to Sequoia (2024c), the methodology to assess the potential for occurrence of special-status plants was limited to within a 3-mile radius of the Project site. This is a divergence from the typical 9-quadrangle search, which includes the immediate U.S. Geological Survey (USGS) 7.5-minute quadrangle (Healdsburg in this case) and the eight surrounding quadrangles. Although a 3-mile radius search would capture several of the species with potential to occur in the Project site, it overlooks other special-status plant species with scattered and broad ranges that may also have the potential to occur there. Nine-quad searches of the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB) are referenced in instructions for the database, and considered a standard component of biological reports supporting CEQA/NEPA.<sup>1</sup> This approach provides a high bar of analysis which is warranted for projects of this size and potential impact.

T8-142

A 9-quad query of CNDDDB for special-status plants (as defined in the Draft EIS) yielded 70 species (CDFW 2024), compared to only 14 species included in the analysis of special-status plant potentials by Sequoia (2024c). In contrast Acorn (2024b) purportedly used a standard 9-quadrangle search in their analysis. The limited (sub-9-quadrangle) query area in the Draft EIS is an inadequacy that prevents a full assessment of potential impacts to protected species.

#### Occurrence Potentials and Survey Timing

Sequoia (2024a, 2022a) dismissed the potential presence of Burke's goldfields (*Lasthenia burkei*), Sebastopol meadowfoam (*Limnanthes vinculans*), Sonoma sunshine (*Blennosperma bakeri*), and many-flowered navarretia (*Navarretia leucocephala* ssp. *plieantha*), all of which are federal and state listed. However, the Project site supports seasonal depressional wetlands that ostensibly provide habitat for these species (Sequoia [2024b] p. 13). These species may be directly or indirectly impacted by the project, and due to inadequate surveys, they may be present on-site but remain undetected resulting in unauthorized take of individuals or indirect impacts from degradation of habitat adjacent to ground disturbance due to altering hydrological conditions or other factors. The Draft EIS should reconsider these species and full protocol-level surveys in accordance with protocols from the USFWS (2005; Appendix D) and CDFW (2018).

T8-143

As described in more detail below, the botanical surveys are also deficient because they occurred during months when many protected species are not blooming, which makes them very difficult to detect and/or identify. For example, Sequoia noted that the species above were not observed during surveys in February 2022. However, only Sonoma sunshine would possibly be identifiable at that time (Sequoia [2024a] p. 26), with the other focal listed species effectively not visible or identifiable to species.

Though the Project site itself is mapped in a 'No Effect' area for Santa Rosa Plain listed plants, the survey area of Acorn (2024b; for the traffic mitigation improvements component) overlaps

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<sup>1</sup> E.g., "Frequently Asked Questions about the CNDDDB." Available online: <https://wildlife.ca.gov/Data/CNDDDB/FAQ#:~:text=A%209%2Dquad%20search%20is,surveys%20in%20a%20given%20area.>



with areas listed as “Likely to Adversely Affect” Sonoma sunshine, Sebastopol meadowfoam, and Burke’s goldfields. At a minimum, the Biological Resources Assessment of that Project component should have (but did not) include full protocol-level surveys for the subject species, following USFWS (2005) protocol including two years of surveys in March, April, and May. Additionally, dwarf downingia (*Downingia pusilla*), Boggs Lake hedge-hyssop (*Gratiola heterosepala*), and Baker’s navarretia (*Navarretia leucocephala* ssp. *bakeri*) were analyzed and ruled out despite seasonal wetland habitat (Sequoia [2022a] p. 5). The on-site seasonal wetlands contain indicators of inundation and support species typically associated with these special-status plants.

Furthermore, the site visits detailed by Sequoia (2022a) were conducted on February 23 and 24, 2022, and the site visit conducted by Acorn (2024b) was conducted on February 3, 2024. The timing of the surveys cited above are misaligned with the bloom periods of most special-status plants, i.e., these surveys were conducted in winter when most rare plant species would not have been readily identifiable, and therefore these surveys have limited validity. Typical survey periods considered to be valid for special-status plant species in the Santa Rosa Plain region include spring surveys in March, April, May, and often a late-season (June to August) survey as well. We recommend that additional surveys are conducted covering the bloom periods of all special-status plant species with potential to occur as analyzed using a 9-quadrangle database search.

Regarding the potential for occurrence of additional special-status species, WRA’s assessment is that congested-headed hayfield tarplant (*Hemizonia congesta* ssp. *congesta*; CRPR 1B.2) has a moderate potential to occur in the Project site, and this species would not have been visible in bloom or vegetatively during the site visits. According to CDFW (2024) there are three documented occurrences in CNDDDB within an approximately 1-mile radius. One of those occurrences (#30) has been extirpated, and one (#51) has is from an historic 1947 collection, with a vague location description, mapped by CNDDDB as best guess along Faught Road. However, nearby occurrence #44 is mapped on the “south side of Shiloh Road, north of Pruitt Creek, and East of Hwy 101” within “non-native annual grassland within seasonal wetlands”; these habitats occur within the Project site. Sequoia (2022a) ruled out this species for the following reason: “No serpentine substrates occur on the Project site.” However, this species is not restricted to serpentine substrates; according to Safford and Miller (2020) it is classified as a ‘weak indicator/indifferent’ to such. The bloom period is listed as May to November (Jepson eFlora 2024), and therefore this species could occur within the Project site but may have been missed during baseline surveys.

In summary, the methods, occurrence potentials determinations, and timing and frequency of surveys for special-status plant species included in the Draft EIS and supporting documents feature notable inadequacies, and we recommend that all such species within a 9-quadrangle database search be analyzed for potential to occur. Without full protocol-level surveys for Santa Rosa Plain listed plant species (including two years of March, April, and May surveys, and at least one late-season survey between June and July), the Draft EIS’s conclusion that the impacts to protected plant species are not significant lacks sufficient support.

T8-143  
cont.





## Special-Status Wildlife

### California Red-legged Frog

MMs J to L in the Draft EIS (p. 4-6), covering the federal listed California red-legged frog (CRLF; *Rana draytonii*), are less protective than those typically implemented for projects in the greater Santa Rosa Plain area. Standard measures for CRLF protection are described in the 2014 “Programmatic Biological Opinion” (PBO) for CRLF in the nine Bay Area counties.<sup>2</sup> MM K in the Draft EIS substitutes silt fence for wildlife exclusion fence that is designed for CRLF. Because silt fence is not designed to prevent small animals from entering a construction area, it is less protective than wildlife exclusion fencing designed for CRLF in that it may not be high enough, support stakes are installed on the outside (rather than inside [facing the work area] where they cannot be climbed).

Additionally, no mention of the placement of cover objects to provide refuge for CRLF that may encounter the fence is made. The measure does not include development of a wildlife exclusion fence plan that would be approved by the USFWS. Because an exclusion fence, even when installed properly, has potential to result in “take” (as defined by the federal Endangered Species Act), projects that use exclusion fencing or implement strategies that result in restriction of movement of federal listed species require a Section 7 or Section 10 permit for take of these species. Sequoia (2024a) determined that, through the implementation of the stipulated voluntary measures, the Project would have “no effect” on CRLF. However, because the implementation of one of these voluntary measures could result in take (if CRLF is present), a “May Affect, Likely to Adversely Affect” or at least “May Affect, Not Likely to Adversely Affect” determination would have been more appropriate. The survey methods described in MM J are also less protective than those described in the 2014 PBO, which requires a preconstruction survey within 24 hours of the initiation of ground disturbance.

T8-144

### Northwestern Pond Turtle

MM M in the Draft EIS (p. 4-6) does not include a sufficient description of the survey methods to be used for the federal proposed (for listing) northwestern pond turtle (NPT; *Actinemys marmorata*) to assess if such methods will be sufficiently protective. NPT nests are generally difficult to find, and no mention of methods for nesting searching are included in the survey description. Also, MM N indicates that silt fence will be installed if NPT are detected. As described above for CRLF, silt fencing (as typically installed) is unlikely to prevent NWPT from entering a construction site and is therefore not adequately protective. These deficiencies create concern about the efficacy and potential impacts of this planned mitigation.

T8-145

### Listed Salmonids

The discussion of potential impacts to listed salmonids in Pruitt Creek in the Draft EIS and by Sequoia (2024b) is inadequate. First, the potential presence of steelhead within the on-site reach is framed primarily around a lack of spawning and rearing habitat; this appears based on an assessment of the reach, ostensibly with no field surveys performed. The Project documents acknowledge that steelhead have been recently and consistently documented in the reach upstream from the Project site (including ostensibly migrating/spawning adults), while the on-site reach is described as providing only “seasonally suitable movement habitat” (Sequoia

T8-146

<sup>2</sup> USFWS, June 2014. Available online: [https://suscon.org/wp-content/uploads/2020/06/Programmatic\\_BO\\_CRLF\\_\\_9\\_San\\_Francisco\\_Bay\\_Area\\_Counties.pdf](https://suscon.org/wp-content/uploads/2020/06/Programmatic_BO_CRLF__9_San_Francisco_Bay_Area_Counties.pdf).



[2024b]). Even if this categorization is accurate, then the subject reach is regularly and necessarily used for in-/out-migration by anadromous steelhead, and is also designated critical habitat. As such potential impacts to water quality arising from pollutants and other components of the proposed wastewater discharge (e.g., quantity, temperature, and timing of water released) need to be discussed in detail within this framework. This includes potential impacts to riparian woodland/vegetation along the creek, which could affect habitat quality as well “adversely modify” the critical habitat.

The Draft EIS references the following conclusion (p. 3-55): “...with implementation of mitigation measures in Section 4, including the requirement to consult with NOAA Fisheries, Alternative A would have a less-than-significant effect on special-status fish species.” However, consultation with NMFS is itself not a mitigation measure that reduces effects deemed potentially significant by the Draft EIS; rather, the Draft EIS must prescribe measures which themselves reduce effects to less than significant levels (and such measures may be updated if the consultation process results in additional measures and/or stricter procedures). Similarly, potential effects to federal and state listed species including Coho salmon (*Oncorhynchus kisutch*; known to be present in Mark West Creek, downstream of the Project site) described on p. ES-12 are insufficient as they defer appropriate mitigation. The measure referenced as reducing effects to less than significant levels is MM I, which again outlines consultation with NMFS. In this case water quality protection measures and the inclusion of other specific Project elements related to the wastewater system are needed to demonstrate that potential effects will be reduced to less than significant levels.

The analysis of effects to water quality by Sequoia (2024b) includes the following (p. 39): “Discharge of wastewater directly into Pruitt Creek from the on-site MBR treatment system could potentially decrease water quality. Water discharged into the creek could alter the temperature, hydrogen ion concentration (pH), and dissolved oxygen level. The current projected discharge volume would be greater than 1% of Pruitt Creek flow, which would degrade water conditions on site as well as impact the ability of salmonids to migrate through the site upstream or downstream.”

The analysis ultimately concludes “...though there is potential for direct effects from wastewater discharged into Pruitt Creek, these effects from the Project will be minimized, as the design of the MBR treatment system will implement the water quality and recycled water discharge requirements based on the EPA NPDES permit and those provided in the Basin Plan (NCRWQCB 2018) and Title 22 (SWRCB 2018).” However, as discussed in the “Project Description” section above, Sequoia (2024b) does not include any description or details of the wastewater treatment system. Specifics of the treatment system are vital in understanding how the Project would reduce potential effects to water quality (and by association to listed fishes), and thus the conclusions regarding potentially significant impacts are unsupported. Note that this applies to adverse modification to critical habitat as well.

Finally, the Draft EIS does not appear to include details regarding how water quality within Pruitt Creek, as well as waters from the treatment facility, will be monitored to ensure that the released water does not degrade the stream relative to baseline conditions. This is another notable inadequacy in Project documents related to the proposed wastewater system in the context of maintaining in-stream water quality for fish (and other organisms).

T8-146  
cont.



### Nesting Birds

The Draft EIS references the potential for bird species with baseline protections under the federal Migratory Bird Treaty Act (MBTA) to nest on-site, most especially in riparian trees/vegetation along Pruitt Creek (specific USFWS Birds of Conservation Concern are also referenced, all of which are protected under the MBTA). MMs O to R in the Draft EIS (pp. 4-7, 4-8) address potential impacts to nesting birds and are generally adequate for avoiding or otherwise minimizing these impacts. MM Q, however, stipulates that the USFWS and/or CDFW are to be consulted when the nest of a special-status bird species is involved and “modifying” a no-work exclusion buffer (around the subject active nest) is needed or desired. First, the circumstances under which such a modification would be needed are not clearly defined. Second, while CDFW will typically respond to project-specific nesting bird avoidance queries, it is WRA’s experience that a response from the USFWS is less likely in such situations unless the need for such involvement is already established on a project. Third, MM Q suggests that either or both agencies may approve of relocating an active bird nest (to accommodate construction); if granted (which is itself highly uncertain), such approval would likely take two to three months at a minimum and is not a feasible option for construction. In its current form, this MM must be revised to clarify under which circumstances either or both agencies may be consulted, and remove references to potential nest relocation.

T8-147

### Burrowing Owl

The referenced “Staff Report on Burrowing Owl [*Athene cunicularia*] Mitigation” by CDFW (2012) provides a matrix of recommended setbacks from burrowing owl locations, presumably an occupied burrow or analogous refuge. For “nesting sites,” the smallest construction/work activity setback (under “low disturbance” conditions) is 656 feet (200 meters), notably larger than the 250-foot setback stipulated in MM T (p. 4-8). While it’s plausible that a 250-foot setback during the breeding season would be sufficient to avoid potential nest abandonment under some circumstances (e.g., an occupied burrow in proximity to baseline disturbances, such as a busy road), this mitigation measure is inadequate in its current form because it does not reflect the need for potentially larger setbacks to avoid impacts to breeding owls. Regarding MM V (p. 4-8), note also that non-breeding season exclusion of owls from an occupied burrow/refuge, if required, would necessitate coordination with CDFW.

T8-148

### CUMULATIVE EFFECTS

Section 3.14.4 of the Draft EIS (pp. 3-155) presents an exceptionally cursory examination of potential cumulative effects resulting from the Project in combination with the five identified cumulative projects in the vicinity. There is no basis for the conclusion of less-than-significant cumulative effects provided other than reliance on “similar” mitigation measures being required for each cumulative project. For example, whether the Project has any potential to impact similar resources as those affected by one or more of the cumulative projects. This is an essential component of a cumulative effects analysis that is simply ignored in the Draft EIS. The lack of any reference to or discussion of relevant biological data in the context of potential cumulative effects is a serious flaw in the Draft EIS. In the absence of this analysis, there is no basis to reach the conclusion that there is “no significant cumulative impact.” The Draft EIS does not provide a complete analysis of the project’s potential cumulative effects.

T8-149



## INDIRECT AND GROWTH-INDUCING EFFECTS

Section 3.15.1 of the Draft EIS (p. 3-165) describes the potential for off-site improvements required by the Shiloh Resort development to require tree removal subject to the Sonoma County Tree Protection Ordinance. The County tree ordinance would not apply to tree removal on federal land, but would apply in the event that off-site improvements needed to construct or operate the project require off-site tree removal. If any of the off-site trees to be removed are protected by the County tree ordinance and require replacement at specified ratios, the analysis in the Draft EIS does not discuss whether the required tree replacement would occur (or could occur) within the limits of the Project site or if some off-site planting would be required. Any potential off-site planting represents an expansion of the area of project effects and should have been disclosed and described in the Draft EIS. At a minimum, the Draft EIS should have prescribed a mitigation measure addressing tree removal and replacement.

T8-150

## CONCLUSION

This peer review of the Project's Draft EIS and related biological reports has identified several major instances of insufficient data, inadequate biological surveys, missing project specificity, and inadequate analysis, as detailed in the sections above. These issues include the methods used to assess the potential presence of federally and state-listed special status species, as well as the evaluation of potential impacts on these species (including the federally listed salmonids in Pruitt Creek), and the proposed mitigation measures. Considering these deficiencies, the conclusions of “no significant impact” or “less than significant impact” presented in the Draft EIS with respect to biological resources, are based on an insufficient level of data analysis. As a result, the biological resources impact conclusions in the Draft EIS are inadequate and unsupported.

T8-151



## REFERENCES

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- (Sequoia). 2024b.** Biological Assessment, Proposed Shiloh Resort and Casino Project, Sonoma County California, National Marine Fisheries Service Biological Assessment for Listed Pacific Salmonids, Magnuson-Stevens Fishery Conservation and Management Act, Essential Fish Habitat Consultation. Prepared for: U.S. Department of the Interior, Bureau



of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825. Prepared on behalf of Acorn Environmental, 5170 Golden Foothill Parkway, El Dorado Hills, CA 95762. Prepared by Sequoia Ecological Consulting, Inc. 1342 Creekside Drive, Walnut Creek, CA 94596. Updated April 13, 2024.

**(Sequoia). 2022a.** CESA-Listed Species Evaluation for the Shiloh Resort and Casino Project. To: Bibiana-Sparks Alvarez, Project Manager, Acorn Environmental, 5170 Golden Foothill Parkway, El Dorado Hills, CA 95762 From, Claire Buchanan, Project Manager, Sequoia Ecological Consulting, Inc. Letter dated April 15, 2022.

**(Sequoia). 2022b.** Aquatic Resources Delineation Report, Shiloh Resort and Casino Property, Larkfield-Wikiup, Sonoma County, California. Prepared on behalf of Acorn Environmental, 5170 Golden Foothill Parkway, El Dorado Hills, CA 95762. Prepared by Sequoia Ecological Consulting, Inc. 1342 Creekside Drive, Walnut Creek, CA 94596.

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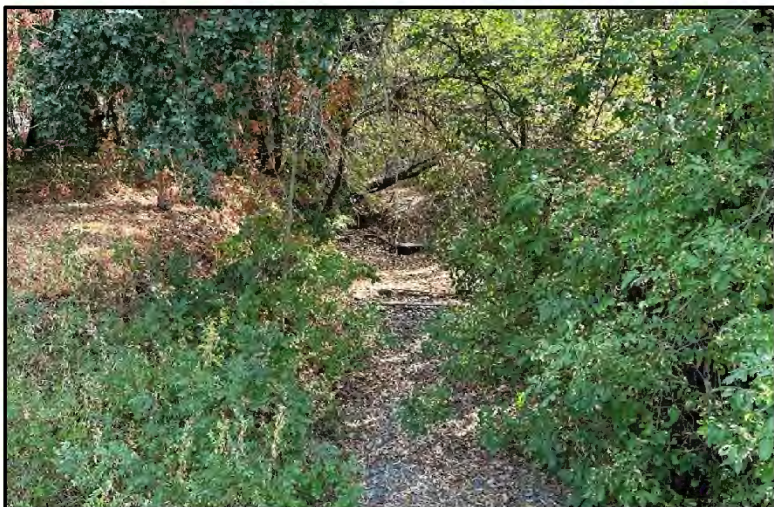




Riparian woodland along Pruitt Creek within the Project site, facing west.



Streambed of Pruitt Creek, facing south-southwest.



Another section of the Pruitt Creek streambed with associated riparian vegetation, facing west-northwest.



Vineyard and riparian woodland within the Project Site, facing south-southwest.

August 6, 2024

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

**Subject: EIS Comments, Koi Nation Shiloh Resort and Casino**

Dear Regional Director Dutschke,

The Koi Nation wants the Bureau of Indian Affairs to take land into trust in Windsor, CA, to build a casino resort. I am a Tribal Citizen of the Federated Indians of Graton Rancheria (FIGR) and resident of Sonoma County. I strongly oppose this project.

FIGR family histories and our cultural traditions clearly show that the proposed project location is in Southern Pomo territory. The Koi Nation, whose historic and ancestral territory is in Lake County, has no right to claim this land. Their customs and language are different from those of our Southern Pomo ancestors. Their ancestral territory is more than a 50-mile drive from the site they claim in Windsor. Although Southern Pomo people may have engaged in trade with Koi Nation ancestors, this does *not* mean they can now claim our land.

If the Bureau of Indian Affairs approves this casino project in Southern Pomo territory, it would set a terrible precedent for all California Indians and significantly impact my Tribe and the cultural resources of Southern Pomo people. It would mean that any tribe could claim lands far from their historic territories, which would threaten our current sovereignty and cut off access to our cultural resources. The Koi Nation's claim that they have a significant historical connection to our Southern Pomo land threatens our cultural resources at the same time the Koi Nation is fighting to protect their cultural resources in Lake County.

The Bureau of Indian Affairs must respect the aboriginal territory of California tribes, who were not removed but were decimated in place. In the early 1900s, the federal government set aside land for our ancestors, the Coast Miwok and Southern Pomo people of Sonoma County. We, the survivors of historic genocide, were recognized as a sovereign nation. This land was lost, but in the year 2000 we were able to re-establish our reservation within Southern Pomo ancestral territory, only seven miles from our original reservation.

My Tribe followed the rules. Koi Nation must do the same for the good of all American Indian people.

Sincerely,

Noah Sharpe

110 W 6th Street  
Apt 316  
Long Beach, California 90802

F1.1-1



**From:** Bryan I <lovmichevy@yahoo.com>  
**Sent:** Tuesday, August 6, 2024 5:54 PM  
**To:** Broussard, Chad N <Chad.Broussard@bia.gov>  
**Subject:** [EXTERNAL] EIS Comments, Koi Nation Shiloh Resort and Casino

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

To Chad :

I am a Tribal Citizen of the Federated Indians of Graton Rancheria and the purpose of this letter is to express my opposition to the Koi Nation of Northern California’s project to establish trust land for gaming in Sonoma County, California.

The Koi Nation, previously known as the Lower Lake Rancheria, submitted a restored lands gaming application to the U.S. Department of the Interior (DOI) for a parcel located outside the Town of Windsor, in Sonoma County. The proposed project location is over a 50-mile drive from the Koi Nation’s ancestral and cultural roots in the Lower Lake area of Lake County, where its historic rancheria was located.

DOI is supposed to protect tribal sovereignty and this precedent setting proposal by the Koi Nation is actually *undoing* tribal sovereignty. DOI is now being put in the position of pitting Indians against Indians here in California. Our tribes were not removed from their ancestral homelands, like tribes in Oklahoma. In California, tribes were not removed, but were decimated in place. As my Tribe and others rebuild, our Tribal Citizens are returning to their ancestral territories.

DOI must consider an alternative location for the Koi Nation in their true homeland in Lake County. DOI would be wrong to allow for Koi Nation to jump into another tribe’s territory by trying to demonstrate a significant historical connection to our Southern Pomo territory based on trade routes or one family moving to our territory. Koi Nation’s application is simply a new twist on their previous efforts to acquire gaming sites *outside* of their ancestral territory, which DOI was correct to deny on the same grounds.

I support the right of all tribes to restore their homelands and pursue gaming on those lands. I cannot, however, support this project. It undermines tribal sovereignty and would be to the detriment of the identity, sovereignty, and cultural rights of the federally recognized tribes in Sonoma County.

I would greatly appreciate you considering another location for the Koi Nation casino in their ancestral territory in Lake County. Otherwise, this project should be denied.

Respectfully,  
Joseph Long

F2.1-1

August 13, 2024

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

**Subject: EIS Comments, Koi Nation Shiloh Resort and Casino**

Dear Regional Director Dutschke:

I am a Sonoma County resident and I oppose the Koi Nation’s proposed fee-to-trust transfer of unincorporated land adjacent to the Town of Windsor for a hotel and casino gaming project. The draft environmental impact statement (DEIS) released on July 8, 2024, contains complex, technical information and is virtually impossible for a layperson to understand or comment on. Moreover, it does not adequately address the significant impacts this project will have on the surrounding community and Sonoma County if it is approved.

Sonoma County and the Town of Windsor have raised numerous concerns related to water supply, wastewater, traffic, wildfire risk and evacuation routes, law enforcement and public safety, and housing and other economic impacts. Sonoma County Tribes have also highlighted the impacts on them and their cultural resources. Many of the mitigation measures in the DEIS are framed as best management practices, but there is no guarantee that they will occur. I am very concerned that the Bureau of Indians Affairs is rushing this process, has not adequately considered the local environmental impacts, and cannot guarantee or enforce the mitigation that is proposed.

We support the local, indigenous tribes. This project is not right for Sonoma County and will do nothing to restore lands to the Koi Nation, whose homeland is in Lake County. The only way to avoid significant environmental impacts is for the Bureau of Indian Affairs to approve the environmentally preferred “no project” alternative in the DEIS.

Sincerely,

Lindsay Amick  
320 Northampton Drive  
Windsor, CA 95492

F3.1-1

Wednesday, Jul 31, 2024

**F4.1**

Aime Graves

abodhilove@hotmail.com

Department of the Interior  
Attn: Bryan Newland, Assistant Secretary - Indian Affairs  
1849 C Street, N.W.  
Washington DC 20240

Dear Bureau of Indian Affairs:

This letter is to express my support of the Koi Nation of Northern California and its application to the Federal Bureau of Indian Affairs to establish trust land in Sonoma County, California.

Approval of this trust land application would make it possible for the Koi Nation to exercise its rights as a federally recognized Tribe and develop a gaming facility that would provide more than 1,000 new, good paying jobs as well as create a substantial, positive economic impact in Sonoma County and other nearby communities.

The Koi Nation has suffered the effects of broken promises by the government and dispossession of its tribal lands for 150 years. This trust land application is an opportunity for the BIA to right these wrongs and enable the Tribe to exercise its inherent, sovereign rights and its ability to build a stable economic base for itself and its members.

We believe the Koi Nation and its partner on this project, Global Gaming Solutions, both have a proven record of being committed community partners. We believe both organizations are committed to working with our region to develop this property in a way that is both environmentally sound and economically viable.

We would appreciate your expedited approval of this application.

F4.1-1

## Form Letters

The main version of each form letter has been included in this attachment. It was determined upon review that the remaining form letters either 1) did not add substantive comment, 2) the concerns raised are already summarized and responded to in the Response to Comment document.

A copy of all form letters is available upon request to Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Region, at (916) 978-6165 or by email at [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov).

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KOI NATION FEE-TO-TRUST AND CASINO PROJECT  
ENVIRONMENTAL IMPACT STATEMENT  
PUBLIC HEARING  
July 30, 2024

Brooke Silvas, CSR 10988  
1174051



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KOI NATION FEE-TO-TRUST AND CASINO PROJECT  
ENVIRONMENTAL IMPACT STATEMENT  
PUBLIC HEARING  
July 30, 2024  
6:00 p.m.

Reported by:  
Brooke Silvas, CSR 10988  
Job No. 1174051

1                   JULY 30, 2024; 6:00 P.M.

2  
3                   CHAD BROUSSARD: Good evening,  
4 everyone. We will give it a couple more minutes  
5 and then we will get started.

6                   Good evening. The Bureau of Indian  
7 Affairs welcomes you to this Public Hearing for  
8 the proposed Koi Nation fee-to-trust and casino  
9 project Environmental Impact Statement, or EIS  
10 for short.

11                  My name is Chad Broussard. And I am an  
12 Environmental Protection Specialist for the  
13 Pacific Region of the Bureau of Indian Affairs,  
14 or BIA for short. The BIA is an agency within  
15 the United States Department of Interior. And I  
16 will be your facilitator at this evening's  
17 public hearing. Here with me are  
18 representatives from Acorn Environmental, the  
19 BIA's consultant.

20                  This hearing will be closed captioned  
21 for the hearing impaired. To activate this  
22 feature, please click on the closed captioning  
23 icon at the bottom of your screen.

24                  The purpose of tonight's hearing is to  
25 facilitate public review and comments on the

1 Draft Environmental Impact Statement for the  
2 proposed fee-to-trust land acquisition in  
3 unincorporated Sonoma County near the Town of  
4 Windsor and the subsequent proposed development  
5 of a casino by the federally recognized Koi  
6 Nation. If the BIA approves the proposed  
7 fee-to-trust acquisition, it will hold the  
8 property in trust for the Tribe, allowing the  
9 development of a gaming facility on the  
10 property. However, the National Environmental  
11 Policy Act, also known as NEPA, requires that  
12 the BIA conduct an environmental review before  
13 deciding whether to accept the land into trust.

14 An Environmental Assessment or EA was  
15 previously prepared as the first step in this  
16 environmental review. We have now prepared a  
17 Draft Environmental Impact Statement as the next  
18 step in the process. We published the Draft EIS  
19 on July 12th, 2024. The purpose of this  
20 evening's hearing is to facilitate public review  
21 and comments on the Draft EIS. We will consider  
22 all comments received during the public comment  
23 period, which ends on August 26th, 2024, and  
24 then we will publish a Final EIS, which will  
25 include responses to all substantive comments.

1           If you would like to make a spoken  
2 comment at the hearing tonight, please use the  
3 Zoom raised hand feature. To raise your hand,  
4 click the raise hand symbol at the bottom of  
5 your screen or enter star 9 if you are joining  
6 by phone. This will place you in line to speak.  
7 We will do our best to take speakers in the  
8 order that the hands are raised. But please  
9 listen carefully because we may go out of that  
10 order occasionally. Listen carefully for your  
11 name. When it is your time -- turn to speak, I  
12 will call your name and unmute your connection  
13 so that you can give your comment. Everyone  
14 will be given three minutes to give their  
15 remarks to ensure that everyone has the  
16 opportunity to speak.

17           A public hearing is not the best forum  
18 for lengthy comments due to constraints of time.  
19 If you have a lengthy comment, we encourage you  
20 to submit a written letter. All comments will  
21 receive equal weight, whether they are spoken or  
22 written. We have a stenographer that will  
23 record your spoken comments word for word so  
24 they can be considered fully as comments on the  
25 record. With that said, please restate your

1 name for the record before giving your comment  
2 and please speak as clearly as possible so that  
3 the stenographer can understand and accurately  
4 document your words.

5 The purpose of tonight's hearing is not  
6 to have a question or answer session or a debate  
7 of any kind. We will not respond to questions  
8 or respond to debate. Instead, we are here to  
9 listen and document your comments. We will then  
10 consider your spoken and written comments  
11 received by the close of the comment period on  
12 August 26th, 2024, and respond to all  
13 substantive comments in the final EIS, which  
14 will be made available to the public for review.

15 Now, I have asked our consultant, Acorn  
16 Environmental, to provide you with a brief  
17 presentation on the Proposed Project, the EIS,  
18 and the NEPA process.

19 MODERATOR: Thank you, Chad.

20 In the following presentation, we will  
21 describe the purpose for this public hearing,  
22 the environmental review process under the  
23 National Environmental Policy Act, commonly  
24 known as NEPA, the proposed action and  
25 alternatives, issues analyzed in the Draft



1 Environmental Impact Statement, or EIS, and how  
2 to make public comments on the Draft EIS.

3 The purpose of the hearing tonight is  
4 to obtain public comments and feedback on the  
5 Draft EIS prepared for the Koi Nation Shiloh  
6 Resort and Casino Project, which will be  
7 referred to as "the Proposed Project" during  
8 this presentation. Prior to inviting the public  
9 to comment on -- this presentation will provide  
10 background on the Proposed Action and the  
11 analysis completed to date.

12 NEPA requires federal agencies to take  
13 into account the environmental impact of federal  
14 actions and resulting projects prior to their  
15 implementation. Environmental Impact Statements  
16 are required for major federal actions that have  
17 a potential to significantly impact the quality  
18 of the environment.

19 In this case, the Koi Nation of  
20 Northern California has submitted an application  
21 to the BIA requesting that the Department of  
22 Interior take approximately 68.6 acres, located  
23 in Sonoma County, into federal trust for the  
24 gaming purposes in accordance with the Indian  
25 Gaming Regulatory Act. This is the proposed

1 federal action being considered by the BIA.

2 If the property is taken into federal  
3 trust, the Tribe proposes to build a resort  
4 facility that includes a casino, hotel,  
5 ballroom/meeting space, event center, spa, and  
6 associated parking and infrastructure.

7 To commence the NEPA process, a notice  
8 of preparation, or NOP, of an Environmental  
9 Assessment was sent to the interested parties,  
10 the State Clearinghouse, and published in the  
11 local newspaper. The NOP announced the BIA's  
12 intent to prepare an EA, and solicited comments  
13 from the public and agencies on the scope of  
14 potential issues, alternatives, and impacts to  
15 be assessed in the environmental analysis. A  
16 scoping report summarizing the results of the EA  
17 scoping process was made available to the public  
18 and agencies through the project website.

19 An EA and associated technical studies  
20 included as appendices were prepared to assess  
21 the environmental impacts resulting from the  
22 Proposed Project. A notice of availability of  
23 the EA was published in the newspaper, posted on  
24 the project website, filed with the State  
25 Clearinghouse, and sent directly to known

1 interested parties. The notice of availability  
2 initiated what was ultimately a 60-day public  
3 comment period on the EA.

4           Once the public comment period ended,  
5 the BIA considered the EA and comments received,  
6 and decided to prepare an Environmental Impact  
7 Statement.

8           The BIA announced its decision to  
9 prepare an EIS through the publication of a  
10 Notice of Intent in the Federal Register and  
11 local newspaper, and through direct mailings and  
12 emails to interested parties. Although initial  
13 scoping had already been conducted through the  
14 EA process, the NOI provided another opportunity  
15 for public and agencies to provide input related  
16 to issues to be addressed in the EIS, including  
17 alternatives, environmental analysis, and  
18 mitigation.

19           The Draft EIS was subsequently prepared  
20 and the notice of availability of the Draft EIS  
21 was published in the Federal Register and local  
22 newspaper, posted on the project website, filed  
23 with the state clearinghouse, and sent directly  
24 to known interested parties. The notice of  
25 availability initiated a 45-day public comment

1 period on the Draft EIS.

2 Comments obtained during this review  
3 period will be considered and responded to in  
4 the Final EIS. Once complete, the Final EIS  
5 will be made available to the public. And  
6 following a 30-day waiting period, the BIA may  
7 issue a record of decision, or ROD, marking the  
8 end of the NEPA process.

9 As seen on this slide, the components  
10 of the Draft EIS are organized into seven  
11 chapters, with the heart of the analysis in  
12 Section 3, affected environment and  
13 environmental consequences. The text of the  
14 Draft EIS, excluding figures and tables, is  
15 under the 150-page limit required under Federal  
16 NEPA guidelines. An overview of the Proposed  
17 Project and the alternatives to the Proposed  
18 Project will be shown on the following slides.

19 This map shows the location of the  
20 Project Site in unincorporated Sonoma County,  
21 outside of, but adjacent to the Town of Windsor.

22 As shown, the Project Site is located  
23 southeast of the intersection of Old Redwood  
24 Highway and Shiloh Road. Regional access is  
25 provided by Highway 101. The Project Site is

1 currently developed with a residence and  
2 operating vineyard and is bisected by Pruitt  
3 Creek. The site is zoned by the County as Land  
4 Intensive Agriculture and land uses in the  
5 immediate surrounding area are a mixture of  
6 residential, agriculture, commercial, and  
7 recreation.

8 The Draft EIS assesses three  
9 development alternatives within the Project  
10 Site, including the Tribe's Proposed Project, or  
11 Alternative A, a reduced intensity alternative,  
12 and a non-gaming alternative, as well as a No  
13 Action Alternative as required by NEPA.

14 Alternative A, the Tribe's Proposed  
15 Project, includes the transfer of 68.6 acres of  
16 land into trust and subsequent development by  
17 the Tribe of a three-story casino with amenities  
18 in addition to ballrooms, meeting space, and  
19 event center, five-story hotel with pool and spa  
20 area, parking garage, and surface parking lots.  
21 Circulation facilities would include two clear  
22 span bridges across Pruitt Creek riparian area,  
23 including a pedestrian bridge and vehicular  
24 bridge. On-site wells, a water treatment plant,  
25 and a wastewater treatment plan, which would

1 provide recycled water for beneficial use  
2 on-site and off-site. The proposed facilities  
3 would conform to applicable requirements of the  
4 Tribe's Building and Safety Code, which is  
5 consistent with the California Building Code and  
6 California Public Safety Code, including  
7 building, electrical, energy, mechanical,  
8 plumbing, fire protection, and safety.

9 A number of protective measures and  
10 Best Management Practices, referred to as  
11 BMPs, including regulatory requirements and  
12 voluntary measures that would be implemented by  
13 the Tribe to avoid or minimize potential  
14 environmental effects, have been incorporated  
15 into the design of the development alternatives.

16 This figure shows the site plan for the  
17 Proposed Project. As can be seen, the riparian  
18 area along Pruitt Creek and some of the existing  
19 vineyards around the perimeter of the Project  
20 Site would be retained, but the on-site  
21 residence would be removed.

22 This slide shows renderings of  
23 Alternative A from the viewpoints of Shiloh Road  
24 and Old Redwood Highway with retained vineyard  
25 buffer areas in the foreground.



1           Alternative B would be similar to  
2 Alternative A, including the size of the gaming  
3 facility. However, the hotel would be smaller  
4 with fewer guest rooms and the event center  
5 would not be constructed. Less parking would  
6 also be constructed, and the supporting  
7 facilities would be smaller in size.

8           This figure shows the site plan for  
9 Alternative B. As shown here, the development  
10 components would be in similar positions as  
11 Alternative A. Under this scenario, more of the  
12 existing vineyard would be preserved due to the  
13 lack of surface parking lot.

14           Under the non-gaming alternative,  
15 Alternative C, development would include a hotel  
16 with 200 guest rooms with spa and pool area as  
17 well as a restaurant, winery and visitor's  
18 center. Alternative C would not include a  
19 casino element. Parking would be reduced in  
20 size and supporting facilities would still be  
21 similar to Alternative A and B, but smaller in  
22 size.

23           This figure shows the site plan for  
24 Alternative C. Under this alternative, more of  
25 the vineyard would be preserved than would occur

1 under Alternatives A and B.

2 With Alternative D, the No Action  
3 Alternative, no land will be taken into trust  
4 for the benefit of the Tribe and no change in  
5 the current land use of the Project Site would  
6 occur. The BIA would take no action under this  
7 alternative.

8 Section 3 of the Draft EIS, titled  
9 Affected Environment and Environmental  
10 Consequences, provides an analysis of the  
11 impacts of the project alternatives associated  
12 with the issue areas listed on this slide,  
13 including direct, indirect, and cumulative  
14 effects.

15 Within each environmental issue area  
16 examined in Section 3, the Draft EIS provides a  
17 description of the regulatory setting, the  
18 affected environment, and the environmental  
19 consequences associated with an implementation  
20 of each alternative. Mitigation measures  
21 necessary to reduce impacts to less than  
22 significant levels are provided in Section 4.

23 This slide identifies areas where  
24 substantive updates have been made to the  
25 environmental analysis in response to comments

1 received on the EA and during the scoping  
2 process of the Draft EIS.

3 The project description and aesthetic  
4 analysis has been supplemented with the  
5 recommendations from the new Appendix C Casino  
6 Site Lighting Design to keep nighttime lighting  
7 within the boundaries of the site and outside of  
8 the on-site riparian area. An architectural  
9 rendering of the Proposed Project at dusk has  
10 been added and daytime architectural renderings  
11 have been updated with renderings that more  
12 accurately show the scale of the project.

13 The number of recommended parking  
14 spaces have been updated to account for  
15 reductions for shared and simultaneous use  
16 functions. Due to the adjustments, the surface  
17 parking lot that was previously described as  
18 paved would only be needed for overflow parking  
19 and could be developed to be permeable using  
20 grass turf, permeable pavement, or similar  
21 methods similar to the EA, treated effluent  
22 would be recycled and used on-site for toilet  
23 flushing and cooling tower makeup, on-site  
24 and/or off-site irrigation landscaping and  
25 vineyards, and possibly discharged to on-site to

1 Pruitt Creek, subject to US EPA NPDES discharge  
2 permit. Based on comments on the EA and  
3 associated Biological Assessment, the EIS  
4 expands the analysis to include a scenario where  
5 little to no recycled water is discharged to  
6 Pruitt Creek, resulting in more off-site  
7 irrigation and significantly larger recycled  
8 water storage facilities within the Project  
9 Site. Edits to the description of seasonal  
10 storage ponds or tanks and water resources  
11 analysis has been made as appropriate to reflect  
12 the range of impacts that could occur.

13 The groundwater analysis has been  
14 updated with the findings of the groundwater  
15 modeling results in Appendix D-4 Supplemental  
16 Groundwater Resources Impact Assessment. This  
17 includes a more detailed assessment of  
18 groundwater conditions in the vicinity of the  
19 Project Site, direct and cumulative impacts from  
20 groundwater drawdown that would result from  
21 pumping on the project site, and consistency  
22 with the Groundwater Sustainability Plan.

23 The discussion of seasonal wetlands was  
24 updated based on an in-field verification with  
25 the U.S. Army Corps of Engineers.

1           An analysis of the northwestern pond  
2 turtle was added as this species was proposed  
3 for listing in Fall of 2023. Observations of  
4 the steelhead upstream of the project in Pruitt  
5 Creek were added in response to comments on the  
6 EA.

7           The cultural resources section has been  
8 updated to include the results of Appendix H-5  
9 Canine Field Survey, Appendix H-6 Archaeological  
10 Testing and Forensic Dog Locations, and Appendix  
11 H-8 Off-Site Traffic Mitigation Improvement  
12 Cultural Survey. Mitigation requiring  
13 monitoring of grading activities in the vicinity  
14 of Pruitt Creek has been expanded to include  
15 monitoring in the vicinity of areas identified  
16 by the Canine Field Survey as having an "alert"  
17 and compliance with Section 106 of the National  
18 Historic Preservation Act.

19           The Socioeconomic and Environmental  
20 Justice section has been expanded to include a  
21 discussion of assessment criteria and the EPA's  
22 Environmental Justice Screening and Mapping  
23 Tool. Additionally, the substitution effect  
24 analysis has been updated to address the  
25 comments submitted on the EA regarding impacts

1 to competing gaming facilities and summarize the  
2 findings of the new Appendix B-3 Supplemental  
3 Competitive Effects Assessment.

4 An analysis of construction traffic has  
5 been added to the Transportation and Circulation  
6 Section.

7 Finally, the wildfire and evacuation  
8 analysis has been updated to include the results  
9 of Appendix N-2 Evacuation Travel Time  
10 Assessment and Appendix N-4 Evacuation  
11 Mitigation Plan. This includes discussion of a  
12 No Notice Scenario and a With Notice Scenario  
13 based on past wildfires affecting the county.  
14 Based on this modeling, mitigation has been  
15 supplemented.

16 This slide lists the new appendices  
17 that support the analysis in the Draft EIS.

18 A digital copy of the Draft EIS can be  
19 reviewed and downloaded from the project website  
20 at [www.shilohresortenvironmental.com](http://www.shilohresortenvironmental.com).

21 A hard copy version of the Draft EIS  
22 can be reviewed at the Windsor Regional Library  
23 or by appointment at the BIA offices in  
24 Sacramento.

25 Written comments on the Draft EIS can



1 be mailed or hand delivered to the Bureau of  
2 Indian Affairs Pacific Regional Office, whose  
3 address is shown on this slide, or you can email  
4 comments to Chad Broussard to  
5 chad.broussard@bia.gov.

6 When submitting written comments,  
7 please include "DEIS Comments, Koi Nation Shiloh  
8 Resort and Casino Project" in the email subject  
9 line or at the top of a written comment letter.

10 For further information on anything  
11 mentioned in the presentation today or other  
12 issues, you can contact Mr. Chad Broussard.

13 This slide concludes the presentation.

14 CHAD BROUSSARD: Thank you, Acorn, for  
15 that presentation.

16 We will now proceed with the public  
17 comments. Remember that all comments will be  
18 limited to three minutes. Please remember to  
19 state your name before speaking and speak as  
20 clearly as possible. Also, to best participate  
21 in this formal hearing process, I offer the  
22 following ground rules and suggestions:

23 First, summarize your main points  
24 within your three-minute public speaking period.  
25 Be as specific as you can. Only substantive

1 comments will be considered for our NEPA  
2 process. In other words, if you tell me that  
3 you do not like the analysis in the EIS, but  
4 give no specific rationale, there will be very  
5 little to which we can consider in our review.

6 Second, avoid personal attacks. We  
7 understand that there may be strong feelings pro  
8 and con regarding this Proposed Project. The  
9 best opportunity to state your views  
10 convincingly is through a brief, factual  
11 presentation.

12 Third, this hearing is not a  
13 referendum. We are not here to count the number  
14 of people for or against the project. The  
15 purpose of this hearing is to collect comments  
16 on the adequacy or the scope of the EIS only and  
17 all comments will be considered equally, no  
18 matter how many times they are made. Please  
19 limit the substance of your comments  
20 accordingly. And if someone ahead of you has  
21 already made your point, there is no need to  
22 repeat it.

23 Also remember to unmute your microphone  
24 before speaking. I will let you know if your  
25 microphone appears to be muted.

1           We may ask you to adjust your system if  
2 audio feedback noises are heard. Typically,  
3 these noises can be eliminated by muting or  
4 turning down the volume on the speakers on your  
5 computer.

6           Offensive language or behavior will not  
7 be tolerated and will result in your immediate  
8 removal from the hearing and possible referral  
9 to the appropriate authorities.

10          Also, everyone that has registered for  
11 this hearing will be added to our notice list.  
12 If you would like to be removed from that list,  
13 let me know during the meeting or send me an  
14 email.

15          Finally, just to repeat the  
16 instructions, if you would like to speak, raise  
17 your hand using the icon on your screen, the  
18 raised hand icon, or press star 9 if calling in  
19 by phone. Once your name is called, please  
20 unmute yourself using the unmute icon or press  
21 star 6 if you are calling in by phone. Then  
22 state your name for the record and state your  
23 remarks.

24          So with that introduction, our first  
25 speaker for this evening will be Dino Beltran,

1 Vice Chair Beltran.

2 DINO BELTRAN: Good evening, everyone.  
3 And thank you for attending the Bureau of Indian  
4 Affairs public comment hearing on the Koi Nation  
5 of Northern California's Shiloh Casino and  
6 Resort Project. I'm Koi Nation Vice Chairman  
7 Dino Beltran. And I'm joined by Chairman Daren  
8 Beltran and Council Secretary Judy Fast Horse.

9 This is the second public hearing on  
10 the Shiloh project. The first was last  
11 December 27th, 2023, during the Environmental  
12 Assessment process. Today's hearing is under  
13 the Environmental Impact Statement, or EIS  
14 process. The Department of Interior will  
15 analyze all comments on the BIA's Draft EIS and  
16 will ultimately make the decision on whether the  
17 EIS record of decision is approved, which we  
18 believe is merited. The Koi Nation believes  
19 this project is in the best interest of our  
20 nation, while also will serve in the interest of  
21 the local community, Sonoma County, and the  
22 regional at large through economic development  
23 opportunities and government-to-government  
24 partnerships.

25 As a Pomo Tribe with thousands of years

PH1-1

1 of history in the Russian River Valley, we will  
2 continue to protect the environment, be a good  
3 neighbor, and construct our facility in a manner  
4 consistent with the best practices in fire  
5 emergency management, groundwater management,  
6 and safety consistent with local community  
7 standards.

8 Our nation has had a long tragic  
9 history with respect to the U.S. and California  
10 government. At long last, the Koi Nation can  
11 charter a positive destiny for the next  
12 generations. We have partnered on this project  
13 with the Chickasaw Nation, an Oklahoma tribal  
14 nation, nationally respected in the medical,  
15 business, and gaming fields.

16 As part of the federal process, Koi  
17 Nation has partnered with Acorn Environmental,  
18 an environmental consultancy firm whose  
19 principles have decades of experience and  
20 success with approved EISs for tribal gaming  
21 facilities. Over a dozen experts in the fields  
22 of traffic, crime, air and water quality, jobs,  
23 fire safety, and other areas of impact have  
24 provided a well-documented Draft EIS that  
25 addresses all potential impacts and demonstrates

PH1-1  
cont.

1 the project will cause no significant impacts to  
2 the environment that cannot be mitigated. We  
3 believe our project can also coexist not only  
4 with the Santa Rosa Regional Airport and the  
5 large commercial shopping area just a couple  
6 street lights away, but also with the local  
7 neighborhood.

8 The Koi Nation is committed to  
9 transparency on our project and has a website  
10 with information on the project. We also have a  
11 Facebook page with important information. We  
12 are pleased that almost 60 Native-American  
13 Tribes support the administrative process for  
14 federal approval, as do labor like the  
15 Carpenters Union, and hundreds of local  
16 citizens. While we know some in the community  
17 have concerns about the project with respect to  
18 traffic, safety, and fire protection, we believe  
19 these items have been addressed in the EIS in a  
20 prudent and comprehensive way.

21 In conclusion, I appreciate all of the  
22 attendees who have joined tonight and we look  
23 forward to your comments.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Chairman Greg

PH1-1  
cont.



1 Sarris.

2 GREG SARRIS: Ready? All right. Good  
3 evening. My name is Greg Sarris. I'm chairman  
4 of the Federated Indians of Graton Rancheria.  
5 We are descendants of Southern Pomo and Coast  
6 Miwok. And Southern Pomo people, our sacred  
7 sites, burial grounds, ancestral villages, and  
8 traditional plant and animal species are here.  
9 Resources we have protected since time  
10 immemorial. Like other California Tribes, we  
11 were never removed, but we were decimated in  
12 place.

13 As a result of the 1910 Rancheria Act,  
14 we were gathered up as knowledge for the Graton  
15 Rancheria established by the federal government  
16 for the landless Indians of Marshall, Bodega  
17 Bay, Tomales Bay, Sebastopol, and vicinities  
18 thereof, including Santa Rosa. By contrast, the  
19 Koi Nation's ancestors, the Southern Pomo, are  
20 from Clear Lake, approximately 50 miles away  
21 from the Project Site. The Koi had land set  
22 aside for them in 1910 -- in the 1910 Rancheria  
23 Act as well in Lake County. Lands which they  
24 still acknowledge as their aboriginal territory.  
25 In fact, they give tours of Marsh Lake in Lake

PH2-1

1 County, their historic lands, and are in a  
2 lawsuit right now against the City of Clear Lake  
3 defending their aboriginal lands and cultural  
4 sites there. The Koi Nation simply does not  
5 have a significant historical connection to  
6 Southern Pomo land in Sonoma County. They did  
7 not care for the lands, plants, or animal  
8 species here. Their language and culture is  
9 different. Yet, they now claim Sonoma County  
10 and Windsor as their historic territory, just  
11 like they claimed Oakland as their historic  
12 territory in 2012 when they tried to get land in  
13 trust there.

14 The problem at the moment is that the  
15 federal government hasn't been listening to this  
16 information. They have refused meetings with us  
17 in the past. The BIA must consider the  
18 devastating impact that approving this proposal  
19 would have on our lives, our sovereignty, and  
20 our cultural resources. And not just ours, but  
21 those of all federally recognized California  
22 Indian Tribes. If the federal government does  
23 not listen to us, they will be violating our  
24 original sovereignty in this area, as well as  
25 our federally recognized sovereignty to govern

PH2-1  
cont.

1 ourselves and protect our people and our culture  
2 and historic lands. Violating our sovereignty  
3 here and now would set a precedent for doing the  
4 same thing to Tribes across California and  
5 around the country, which would mean that any  
6 Tribe anywhere in the country could claim that  
7 traveling across another Tribe's territory,  
8 trading with other Tribes, or moving in modern  
9 times means that they can claim a historical  
10 connection and simply occupy another Tribe's  
11 true historic lands.

12 The federal government must follow the  
13 rules here. They are required to protect the  
14 sovereignty that they gave us with the 1910  
15 California Rancheria Act. As a fellow restored  
16 Tribe, we would certainly be happy to support  
17 Koi in seeking restored lands and pursuing  
18 economic opportunity, but in its original  
19 territory in Lake County, lands which are  
20 rightfully theirs.

21 CHAD BROUSSARD: Thank you, Chairman  
22 Sarris.

23 Our next speaker will be Chairperson  
24 Andy Mejia.

25 ANDY MEJIA: My name is Andy Mejia,

PH2-1  
cont.

PH3-1

1 Chairperson of the Lytton Rancheria of  
2 California, a proud Band of Pomo Indians that  
3 calls the Town of Windsor our home. Lytton  
4 Rancheria, like all Northern Californian Tribes,  
5 including the Koi Nation, has a long history of  
6 suffering under the U.S. government policies.  
7 After we were wrongfully terminated in the  
8 1960s, we were forced to sue to regain our  
9 federal recognition. In order to regain our  
10 recognition, the Lytton Rancheria agreed to  
11 never conduct gaming or build a casino in Sonoma  
12 County. While this agreement created numerous  
13 difficulties for us, we understood that it was  
14 best for our people and Sonoma County.

15 In the decade since this agreement, the  
16 Tribe has worked tirelessly to acquire lands  
17 that were a part of or next to our original  
18 Rancheria. Those efforts culminated past year  
19 as our tribal members were able to move back on  
20 to the Lytton homeland and live together as  
21 unified people for the first time since we were  
22 terminated.

23 I say all of this to illustrate how  
24 insulting and how infuriating it is to see a  
25 Tribe from a completely separate county, a Tribe

PH3-1  
cont.

1 not from here, push a gaming project on our  
2 ancestral lands. This project puts our recently  
3 established homeland and everything we have  
4 fought so hard for at risk, economically and  
5 physically. It is especially frustrating to see  
6 the Bureau of Indian Affairs and the Department  
7 of Interior now move heaven and earth to put a  
8 mega casino and resort in our town, when they  
9 have never shown any interest in advocating for  
10 our Tribe. This is made even more hypocritical  
11 considering Koi Nation's lawsuit against the  
12 City of Clear Lake in which they are seeking to  
13 protect their sacred sites and burial grounds,  
14 all while pushing a project which would infringe  
15 upon our -- and desecrate our ancestors.

16 The EIS itself is over 6,000 pages of  
17 technical jargon and an analysis which we only  
18 have 45 days to review and comment on. The  
19 Lytton Rancheria is expending serious resources  
20 to thoroughly review the EIS. I can only  
21 imagine how challenging this is for our average  
22 Sonoma County and Windsor resident who do not  
23 have such resources. From what we have seen so  
24 far, the new EIS fails to incorporate the  
25 comments given by the Lytton Rancheria for the

PH3-1  
cont.

PH3-2

1 previously completed Environmental Assessment.  
2 Unfortunately this project includes no  
3 enforcement and mechanisms for Koi Nation's  
4 proposed mitigation measures. The people of  
5 Sonoma County have experienced the disaster and  
6 harms imposed by wildfires. This project will  
7 make all of that exponentially worse. And the  
8 Koi Nation will have absolutely no obligation to  
9 try to lessen these harms.

PH3-2  
cont.

10 The EIS, like the EA, despite our  
11 comments, does not account for or discuss the  
12 critical time needed to evacuate the Lytton  
13 Rancheria during a wildfire. We have 146  
14 families that have moved into the Windsor since  
15 the analysis was completed. We know this  
16 project will prolong the time needed to evacuate  
17 by Windsor's hours, which time we may not have  
18 during a wildfire.

PH3-3

19 This should illustrate where the  
20 dangerous momentum for this project is coming  
21 from. A Tribe in Oklahoma is looking to profit  
22 from a management agreement with Koi Nation and  
23 the other non-California tribe want to infringe  
24 on the lands of the other Tribes and their  
25 states. This project will give them precedent

PH3-4



1 to do so. And that is the only reason they are  
2 supporting it.

3 Most importantly I ask this application  
4 be rejected and this shameful charade ended.

5 Thank you.

6 CHAD BROUSSARD: Thank you, Chairman  
7 Mejia.

8 Our next commenter will be Leonard  
9 Basoco. Leonard Basoco.

10 LEONARD BASOCO: Hello. Can you hear  
11 me?

12 CHAD BROUSSARD: Yes, I can.

13 LEONARD BASOCO: All right. My name is  
14 Leonard Basoco. And I urge the Bureau of Indian  
15 Affairs to approve the Environment Impact  
16 Statements. This project is going to create a  
17 lot of jobs, permanent jobs there, and also the  
18 ones doing the construction. All right. I'm  
19 one of -- I'm a carpenter in the Carpenters  
20 Union. And this can be a lot of jobs for  
21 carpenters. Looking forward to that. And there  
22 will be a lot of guys talking tonight. So I'm  
23 going to let you go. And, you know, I am for  
24 this project in Windsor. I would like to see it  
25 get going. Thank you.

1 CHAD BROUSSARD: Thank you for your  
2 comment.

3 Our next speaker will be Seth Howard.  
4 Seth Howard.

5 SETH HOWARD: Hi. My name is Seth  
6 Howard. I urge the BIA's approval of the EIS  
7 for this project. This project is going to  
8 create over 1500 permanent jobs and 1600 jobs  
9 during construction. The top three concerns of  
10 the EIS have been addressed. Once again, I urge  
11 the BIA's approval of the EIS. Thank you.

12 CHAD BROUSSARD: Thank you for your  
13 comment.

14 Our next speaker will be someone that  
15 is calling in and with the phone number ending  
16 in 9471. It's a call-in commenter. Phone  
17 number ending in 9471.

18 CURTIS FERREIRA: Hi. My name is  
19 Curtis Ferreira. I urge the BIA's approval of  
20 the EIS. The project is estimated to create  
21 1,571 permanent jobs once operational. The  
22 project is estimated to create 1,609 jobs during  
23 construction in partnership with the Nor Cal  
24 Carpenters Union. It will be a big boost to the  
25 regional economy and support families and

1 working individuals across Sonoma County. The  
2 mitigation efforts in the EIS genuinely address  
3 the community's top three concerns. First,  
4 fire. The mitigation efforts call for fire  
5 protection services from the County or  
6 sufficiently staffed on-site fire department.  
7 Second, evacuation plans. The plan includes  
8 employee training and coordination with local  
9 governments that will mitigate against increased  
10 evacuation times and minimize wildfire risk.  
11 Thirdly, groundwater. The plan includes  
12 protecting water consumption, as needed,  
13 monitoring, programming, coordination with local  
14 governments, and best management practices that  
15 will help to mitigate against groundwater  
16 depletion. I, again, urge the BIA's approval of  
17 this EIS. Thank you.

18 CHAD BROUSSARD: Thank you.

19 Our next speaker will be Francisco  
20 Martinez. Francisco Martinez.

21 FRANCISCO MARTINEZ: Hello. Can you  
22 hear me?

23 CHAD BROUSSARD: Yes, I can.

24 FRANCISCO MARTINEZ: Wonderful. First  
25 of all, good evening. And thank you for giving

1 me the opportunity of talking here and speaking.  
2 My name is Francisco Martinez. I'm a field rep  
3 with the Carpenters Union. And I just urge the  
4 BIA's approval of this EIS. And, again, I'm  
5 going to echo what one of my -- my coworkers and  
6 partners already said. This project is going to  
7 provide over 1500 permanent jobs once  
8 operational. And the same thing it is going to  
9 do with over 1600 jobs during the construction  
10 phase of this project with the partnership of  
11 the Nor Cal Carpenters Union. And this job  
12 basically, you know -- this mitigation effort,  
13 this EIS, addresses the community top three  
14 concerns. That is the fire, evacuation plans,  
15 and groundwater. So I urge the BIA's approval  
16 for the -- for this EIS. Thank you so much.

17 CHAD BROUSSARD: Thank you.

18 Our next speaker will be Cameron  
19 Barfield. Cameron Barfield.

20 Cameron, make sure to unmute your  
21 microphone.

22 CAMERON BARFIELD: Okay. Sorry.

23 CHAD BROUSSARD: Thank you. I can hear  
24 you now.

25 CAMERON BARFIELD: Okay. My name is

PH8-1

1 Cameron Barfield. And I live in Oak Park, right  
2 across the street from the proposed casino. And  
3 I'm really dismayed by how imbalanced the Shiloh  
4 Resort draft environmental report is regarding  
5 wildfire evacuation times for Alternatives A, B,  
6 and C. The Shiloh Resort Draft Environmental  
7 Impact Statement bias towards the casino  
8 development is based on a lot of false  
9 assumptions, based on incomplete information  
10 about on the impacts of casino and hotel on the  
11 neighborhoods next to the casino resort and  
12 Windsor. The most dangerous assumptions are  
13 about the effect of the casino hotel on wildfire  
14 evacuation time in the area. It ignores and  
15 omits the population growth in South Windsor,  
16 North Santa Rosa area, which will be given fuel  
17 by the casino and hotel. No studies of traffic  
18 flow in Windsor during the different wildfire  
19 scenarios have been performed using current  
20 traffic and projected growth of traffic from  
21 Windsor's population growth. No study has been  
22 performed at Shiloh -- if Shiloh Road will be  
23 able to quickly and efficiently handle  
24 100 percent increase in evacuation traffic  
25 during a Windsor-wide evacuation due to the

PH8-1  
cont.

1 addition of the casino and hotel. The biased  
2 study in the DEIS on evacuation time of the  
3 casino was based on 2021 Windsor traffic data  
4 which was data collected during COVID, when  
5 traffic was much less than it is now. The two  
6 major choke points to a rapid evacuation to  
7 Highway 101 will be the intersections of Shiloh  
8 Road and Hembree Lane and the intersection of  
9 Shiloh Road and Old Redwood Highway. Assuming a  
10 fire from the north of Windsor, like the Kincade  
11 Fire, these intersections will be used by all  
12 residents in the east and north of Windsor, like  
13 the Kincade Fire. I'm sorry. Assuming a fire  
14 from the north of Windsor like the Kincade Fire,  
15 these intersections will be used by all  
16 residents in the east and southeast part of  
17 Windsor, which currently -- currently houses  
18 10,000-plus people as they head towards the  
19 choke points of the two one-lane Highway  
20 101/Shiloh Road southbound on-ramps. The DIS  
21 [sic] assumes fires will always be detected  
22 earlier enough for a full evacuation of these  
23 10,000 Windsor residents and 5,000 cars, plus  
24 the 10,000 at the casino and their 5,000 cars,  
25 and the thousands more Windsor residents that

PH8-1  
cont.



1 will be living off of Shiloh Road in the future.  
2 The DIS [sic] assumes fire control resources in  
3 Sonoma County will always be sufficient and able  
4 to reach and control the fire -- fires in  
5 Windsor, despite the 10,000 cars evacuating from  
6 the eastern side of Windsor. The DIS [sic]  
7 omits the increasing growth rate and increasing  
8 heat that fires will produce in the future due  
9 to global warming. Look at the study on fire  
10 behavior by UC Davis Environmental Health  
11 Sciences Center for the facts.

PH8-1  
cont.

12 CHAD BROUSSARD: Speaker, your time is  
13 up. Can I ask you to conclude your remarks,  
14 please.

15 CAMERON BARFIELD: I'll say one more  
16 thing. The DIS [sic] turns a blind eye to the  
17 human tendency to panic during a wildfire.  
18 These are just a few of the most glaring  
19 omissions in the DIS [sic] about the evacuation  
20 time necessary for Windsor and the casino during  
21 wildfires. Thank you.

PH8-2

22 CHAD BROUSSARD: Thank you.

23 Our next speaker will be Kyle Swarens.  
24 Kyle Swarens.

25 KYLE SWARENS: First off, I would like

1 to say thanks for allowing me to speak tonight.  
2 I'm a field -- a senior field representative for  
3 the Carpenters Union in Sonoma County, at  
4 Carpenters Local 751. I'm calling in support --  
5 to support the Environmental Impact Statement  
6 for the Koi Nation of Northern California's  
7 proposed Shiloh Resort. We have a Tribe making  
8 a commitment to the Carpenters Union, making  
9 sure that workers on this development will have  
10 livable wages, benefits, and an apprenticeship  
11 program to build our next generation of workers.  
12 The Koi Nation has taken steps to show the  
13 community that they are a good partner and has  
14 proposed a development that will lift their own  
15 Tribe and the community. I'm asking the BIA to  
16 approve the Environmental Impact Statement and  
17 make this development one step closer to  
18 breaking ground. Thank you for your time.

19 CHAD BROUSSARD: Thank you.

20 Our next speaker will be William  
21 Verity. William Verity.

22 WILLIAM VERITY: Hello. Can you hear  
23 me?

24 CHAD BROUSSARD: Yes, I can.

25 WILLIAM VERITY: Okay. Great. I'm



PH10-1

1 going to get through this quickly because I only  
2 have three minutes. I'm glad all of the  
3 constituents from the Carpenters Union have  
4 called in. They probably had a concerted  
5 effort. But I'm going to identify some objects  
6 in the environmental report. So the  
7 intersections identified in the traffic report  
8 of which they spent a lot of time and money, I'm  
9 sure, not one of those reports identified Faught  
10 Road and Shiloh. So Acorn should be listening  
11 tonight, Koi Nation, maybe Chickasaw Nation as  
12 well, hopefully Greg Sarris as well. I'm going  
13 to be a champion of this. Faught Road anywhere  
14 north or south is a mecca for bike riding,  
15 hiking, dog walking. An unmonitored four-way  
16 intersection, arguably the closest intersection  
17 to an entrance to the Koi Nation would be at  
18 Faught Road and Shiloh. No traffic studies.  
19 There are -- there are zero riparian  
20 measurements between people that are driving and  
21 walking. We often have to pull into the left or  
22 right lanes, depending upon if you're going  
23 north or south, to accommodate walkers, dog  
24 walkers, and bicyclists. Shiloh Park is a mecca  
25 for mountain bike riding. No indication in the

PH10-1  
cont.

PH10-1  
cont.

1 environmental impact report regarding that.

2 Also, I want to identify to identify --  
3 highlight those traffic studies were done in  
4 COVID times.

PH10-2

5 I also want to know about the Acorn  
6 Environmental company's accountability. How  
7 many of these have they done for the BIA.

PH10-3

8 There's no -- there's no data  
9 representing the new apartment complex at the  
10 corner of Old Redwood Highway and Shiloh Road,  
11 including a new project that just broke ground,  
12 about to start construction just north of that  
13 intersection. There are no indications of the  
14 many recreational teams that have practices in  
15 Shi- -- in Esposti Park throughout the seasons,  
16 as far as those traffic studies are concerned.

PH10-4

17 I also want to indicate the groundwater  
18 studies are -- are really irrelevant. There is  
19 no indication how that is going to impact the  
20 surrounding areas, including the vineyards. How  
21 that will include -- include the vineyards, as  
22 far as their groundwater capacities and what  
23 they draw. And of course -- of course  
24 homeowners like me within three quarters of a  
25 mile of the proposed casino.

PH10-5

1 I think this is all a sham. And I  
2 think you guys -- the environmental impact  
3 should be addressed in a much more substantial  
4 manner. And we should have accountability for  
5 that environmental impact report with the  
6 litigation that may come as well. Thank you.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Richard Boyd.  
9 Richard Boyd.

10 RICHARD BOYD: Yes. Thank you for  
11 taking our comments. My name is Richard Boyd.  
12 A number of these issues that I want to talk  
13 about have already been covered in slightly  
14 different terms. I will probably just read  
15 through this.

16 Let's be real, the 93 members of the  
17 Koi Nation, give or take a few, couldn't  
18 possibly run a casino of the size they propose.  
19 So they enlisted the help of the Chickasaw  
20 Nation. And they certainly know how to run a  
21 casino. But there's a problem here. The  
22 homeland of the Koi is 40 or 50 miles, as I  
23 understand, to the north of the proposed site.  
24 So there's a question about whether they should  
25 even be allowed to operate a casino so far from

1 their traditional homeland. And it isn't really  
2 a Koi proposal anymore, but has become a  
3 Chickasaw proposal. And their homeland is  
4 1,500 miles away. But there are many other  
5 serious problems with the proposal, some of  
6 which cannot possibly be mitigated. And the  
7 main issue here I think is fire. There's no way  
8 that more than a thousand people from the  
9 casino, added to the local population, which, by  
10 the way, has increased from two huge apartment  
11 complexes since the last evacuation could ever  
12 hope to evacuate in case of a fire roaring down  
13 from Shiloh Park. If Shiloh Road were increased  
14 to four lanes or even if Old Redwood Highway was  
15 expanded, the tie-ups would still always be at  
16 the intersections. Adding turn lanes would have  
17 no effect either. Four lanes of people would  
18 get incinerated no matter how they try to  
19 expedite the evacuation traffic. This makes the  
20 first two options of the proposal completely  
21 unworkable and renders the third one extremely  
22 troublesome.

23 Another issue is water. And if -- if  
24 there's a problem with either the -- with  
25 accessing the water, which certainly could



1 happen because I think that analysis was not  
2 well done. Or getting rid of waste, I think  
3 what would end up happening here is that the Koi  
4 Casino would have to rely on Windsor. And I  
5 would really be surprised if Windsor voters  
6 would agree to that.

7 Finally, what happens when the  
8 project's costs overruns the estimates. And for  
9 all of the mitigations that are discussed in the  
10 EIS, these would be ongoing operating expenses.  
11 When either construction costs or the operating  
12 costs go over budget, what gets cut?

13 Mr. Beltran tried to convince local politicians  
14 of the worth of his project. He apparently  
15 contacted many local, County, and State  
16 politicians to make his case. To my knowledge,  
17 not one active politician agreed to support the  
18 Koi proposal. If the BIA only rejects one  
19 proposal in its entire history, the so-called  
20 Koi proposal should surely be the one. Thank  
21 you.

22 CHAD BROUSSARD: Thank you.

23 Our next speaker will be Beatrice  
24 Mirelez. Beatrice Mirelez.

25 BEATRICE MIRELEZ: Yes. Can you hear

1 me?

2 CHAD BROUSSARD: Yes, I can.

3 BEATRICE MIRELEZ: Good evening. My  
4 name is Beatrice Mirelez. And I'm calling in  
5 full support of the Koi Nation proposed resort  
6 and casino. Once again echoing the strong fact  
7 that this project will not only create over 1600  
8 jobs with the construction alone, but also 1500  
9 permanent jobs once operational, bringing an  
10 incredible boost to Sonoma County. Also, I  
11 believe that the Koi Nation has done a great job  
12 reaching out to the public. With these  
13 benefits, I strongly urge the BIA's approval of  
14 the EIS. Thank you.

15 CHAD BROUSSARD: Thank you.

16 And our next speaker will be Doug  
17 Chesshire. Doug Chesshire.

18 DOUG CHESHIRE: Yes. Good evening.  
19 Thank you for giving me the opportunity to speak  
20 this evening. My name is Doug Chesshire. I'm a  
21 26-year member of the Nor Cal Carpenters Union.  
22 And tonight I ask that the BIA approve the  
23 Environmental Impact Statement for the Koi  
24 Nation Shiloh Resort and Casino. Echoing, you  
25 know, this project creates a lot of good jobs

1 once it is operational. But through the  
2 construction process, these jobs will provide  
3 family-sustaining wages with health care and  
4 retirement benefits, providing pathways for  
5 apprenticeship opportunities for local workers  
6 that include minorities, women, and at-risk  
7 youth, helping them develop the skills necessary  
8 to be successful in the construction industry.  
9 In turn, this project will also allow workers to  
10 reinvest earnings into the local economy,  
11 helping keep the community healthy.  
12 Furthermore, the project will contribute to the  
13 local tax base. Providing additional funding  
14 for public services such as schools, health  
15 care, and infrastructure. This project is just  
16 not about building a resort or a casino. It is  
17 about building a stronger community. It is  
18 about investing in our people, our economy, and  
19 our future. With that, I ask that the BIA  
20 approve the Environmental Impact Statement.  
21 Thank you.

22 CHAD BROUSSARD: Thank you.

23 Our next speaker will be Chris Wright.  
24 Chris Wright.

25 CHRIS WRIGHT: Good evening. Can you

1 hear me?

2 CHAD BROUSSARD: Yes, I can.

3 CHRIS WRIGHT: Thank you. My name is  
4 Chris Wright. And I'm the chairman of Dry Creek  
5 Rancheria Band of Pomo Indians. We are an  
6 aboriginal Tribe native to the lands in Sonoma  
7 County. We did not come from some other place.  
8 We have always been here. Koi is claiming a  
9 modern connection to the Windsor site based on  
10 movement of some of its tribal members in the  
11 1950s to Sebastopol. Sebastopol is not  
12 Windsor. Koi has no connection with the Windsor  
13 site at all, other than the fact that their  
14 developer, the Chickasaw Nation, purchased the  
15 land for Koi a few years ago. And now they're  
16 studying a casino on Dry Creek's lands, claiming  
17 it as restored lands. In addition, the cultural  
18 information was not shared with Dry Creek,  
19 despite the BIA saying they sent it to us. We  
20 have not received anything in the mail or by  
21 delivery that included cultural information  
22 needed for compliance with Section 106 of the  
23 National Historic Preservation Act for the EIS.  
24 But in this EIS, they boldly state that Clear  
25 Lake Pomo moved to Sonoma County in 3500BP. If

PH14-1

PH14-2

PH14-3

1 that was the case, why were they living in Lower  
2 Lake in the early 1800s? They need to get the  
3 story straight. The truth is that they are not  
4 from Sonoma County and their project is not  
5 welcome here. The EIS fails to accurately state  
6 in an ethnographical overview and historical  
7 overview that the land is within the ancestral  
8 territory of the Dry Creek Pomo people. They  
9 couldn't even get that right. How can anything  
10 else in the EIS be taken seriously if the  
11 consultants are not able to tell the truth about  
12 the lack of connection of Koi to the land and  
13 that it is our territory. The EIS also wrongly  
14 states that only Graton responded to requests  
15 for information in the Native-American  
16 consultation. Dry Creek has written countless  
17 letters to the Department of Interior and the  
18 State's historical preservation officer. The  
19 consultation with the Dry Creek under Section  
20 106 has not been adequate, as exemplified by the  
21 recent letter from the state historic  
22 preservation officer who stated that she objects  
23 to a finding of no historic properties. We know  
24 that their study was not adequate because they  
25 are using Acorn Environmental consultants, who

PH14-3  
cont.

PH14-4

PH14-5

1 are also consultants for Dry Creek. But they  
2 failed to inform us that they were also working  
3 on the Koi EA and EIS. The lack of transparency  
4 in this process, particularly with Acorn's clear  
5 conflict of interest, in providing environmental  
6 analysis is shocking. The damage to Dry Creek  
7 Rancheria and our full tribal membership by Koi  
8 and Acorn is difficult to measure, but it is  
9 significant. We ask that the EIS be withdrawn  
10 because it is wholly inadequate in every way  
11 possible. The complete failure to analyze the  
12 impact of reservation shopping on Sonoma County  
13 tribes and our surrounding communities and a  
14 failure to consider a casino site within Koi's  
15 aboriginal territory makes it completely  
16 worthless. There is no way to mitigate the  
17 impact of an out-of-the-area Tribe coming into  
18 Sonoma County to build a casino. There is no  
19 remedy to the harm it will cause. I'm just so  
20 disappointed that we're here when you know all  
21 of the Sonoma County Tribes oppose this project.

22 I'll end by just saying thank you for  
23 the opportunity to speak and share our concern  
24 in strong opposition to the Koi Nation casino.  
25 Thank you.

PH14-5  
cont.

PH14-6



1 CHAD BROUSSARD: Thank you. Our next  
2 speaker will be a -- someone calling in. The  
3 last four digits are 1712. So someone with  
4 phone number 1712.

5 KYLE KOWALSKI: Yes. My name is Kyle  
6 Kowalski with the Nor Cal Carpenters. And I  
7 urge the approval of the EIS. Thank you.

8 CHAD BROUSSARD: Thank you.

9 Our next speaker will -- is also  
10 someone calling in. And the last four digits of  
11 their phone number are 1665. 1665.

12 Remember to unmute.

13 MICHAEL DERRY: Good evening, everyone.  
14 My name is Michael Derry. I'm from the  
15 Guidiville Rancheria. Guidiville Rancheria  
16 tribal council has asked me to call in and  
17 express my full -- express our full support  
18 behind our sister Tribe, the Koi Nation. A  
19 couple things we would like to say about the  
20 process. There's been a lot of comments about  
21 whose historical area it is and whose land it  
22 is. It's -- it's true that Dry Creek Rancheria  
23 and Graton Rancheria and Lytton Rancheria have  
24 ties to this area. They don't have exclusive  
25 ties. And this is the result of what has

PH16-1

1 happened in California over the many years after  
2 the War of Extermination and whatnot. So it is  
3 possible and it is likely -- more likely true  
4 than not that numerous Tribes have ties to this  
5 area. I know for Guidiville, we have numerous  
6 ancestors that span many language groups. And  
7 they have become part of our Tribe just because  
8 of the very nature of extermination and  
9 colonization and what has happened. I would  
10 like to urge the Bureau of Indian Affairs in  
11 their deliberation and their decision-making  
12 process that has been, you know, expressed  
13 and -- and ordered by the D.C. courts in other  
14 tribal cases. We would also like to say that  
15 the Tribe itself is the expert on their own  
16 history because they know their own ancestors.  
17 They know who they are and where they came from.  
18 And while that might not make its way into the  
19 EIS, nonetheless, they are the experts. I think  
20 lastly we would just like to say that when  
21 you're considering and speaking about the  
22 history of the Tribe, we want you to consider  
23 the whole history of the Tribe, not the 30 or 40  
24 years where the Tribe temporarily  
25 [indiscernible] established by the federal

PH16-1  
cont.

1 government. Just by simply buying land for  
2 homeless Indians during -- you know, following  
3 the War of Extermination. So, you know, we  
4 would like to see you apply the whole 8- to  
5 10,000-year history, and consider all that, not  
6 just 40 years -- a 40-year period of time in  
7 that 8- or 10,000 years.

8 And then lastly, we would like you to  
9 exercise the BIA's and the federal government's  
10 trust responsibility to advance the economic  
11 interest of all tribal governments. And -- and  
12 protect those.

13 And I think one last comment will be  
14 Indian Tribes are tremendous community partners.  
15 Look at any project that Tribes have been  
16 involved in over the years. When they are  
17 involved, you know, they're extraordinary  
18 generous to other communities. And we have seen  
19 that with the generosity of the Lytton  
20 Rancheria. We have seen that in the generosity  
21 of the Graton Rancheria, to universities and  
22 other tribes. And we would expect the same  
23 thing from the Koi Nation as well. Tribes are  
24 amazing community partners. And if you look at  
25 any project across the nation --

PH16-1  
cont.

1 CHAD BROUSSARD: Mr. Derry, your time  
2 is up. I would ask you to please wrap up your  
3 comments.

4 MICHAEL DERRY: Okay. We are done.  
5 And we will also send a letter in.

6 CHAD BROUSSARD: Okay. Thank you.  
7 Our next speaker will be Chris Seaver.  
8 Chris Seaver.

9 CHRIS SEAVER: Hello. Can you hear me?

10 CHAD BROUSSARD: Yes, I can.

11 CHRIS SEAVER: How is it going? My  
12 name is Chris Seaver. Thank you for letting me  
13 speak tonight. I'm a field rep for Nor Cal  
14 Carpenters. I encourage the BIA to approve the  
15 EIS. I represent my brother and sister members  
16 in the Nor Cal Carpenters. This project will  
17 bring upwards of 1500 construction jobs, as well  
18 as the same amount of permanent jobs once it is  
19 complete. The EIS has generally addressed the  
20 three major community concerns, as well as put  
21 plans in place to ease these concerns. So I  
22 encourage you to approve the EIS. Thank you for  
23 letting me speak.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be someone who is

1 calling in. I don't have a phone number. It  
2 just says iPhone. So if you're calling in with  
3 an iPhone --

4 CHRIS PALOMO: Yes. Can you hear me?

5 CHAD BROUSSARD: Yes, I can.

6 CHRIS PALOMO: My name is Chris Palomo.  
7 And I'm a field rep with the Nor Cal Carpenters  
8 Union. I'm here to speak about the  
9 transformative impact that the Koi Nation Resort  
10 and Casino will have on the Windsor community  
11 and all of Sonoma County. This project is much  
12 more than a resort. It is a catalyst for  
13 economic growth and community development. With  
14 the partnership of the Nor Cal Carpenters Union,  
15 this will create hundreds of well-paying jobs  
16 that will boost the economy. These union jobs  
17 will provide stability and opportunities for our  
18 families. Ensuring that hardworking individuals  
19 receive fair wages and benefits. This ripple  
20 effect of this development will be felt across  
21 Sonoma County, as increased employment leads to  
22 more spending at local businesses, enhancing the  
23 prosperity of our region. Additionally, we can  
24 build a brighter future. And the Koi Nation  
25 Resort and Casino is just the beginning of a new

1 era of growth and opportunity for Windsor and  
2 beyond. I urge the BIA to approve the EIS.  
3 Thank you.

4 CHAD BROUSSARD: Thank you.

5 Our next speaker will be Joel Toscano.  
6 Joel Toscano.

7 JOEL TOSCANO: Yes. Good afternoon.  
8 My name is Joel Toscano. I'm a member of the  
9 Nor Cal Carpenters Union. The Koi Nation Resort  
10 and Casino Project would only benefit the  
11 community by creating more than 1600  
12 construction jobs with the partnership of the  
13 Nor Cal Carpenters Union. Once the project is  
14 completed, it would only benefit the community  
15 across Sonoma County by creating more than 1500  
16 permanent jobs. Today I encourage the approval  
17 of the EIS. Thank you for your time.

18 CHAD BROUSSARD: Thank you.

19 Our next speaker will be Catherine  
20 Dodd. Catherine Dodd.

21 CATHERINE DODD: Hi. My name is  
22 Catherine Dodd. I was surprised to hear at the  
23 beginning of this by the Koi representative that  
24 the -- Acorn works for them. I thought they  
25 were unbiased consultants for the BIA. At any

PH20-1

1 rate, it doesn't surprise me. I live in the  
2 Wikiup neighborhood approximately two miles from  
3 the mammoth complex proposed by the 89 members  
4 of the Koi Nation and financed by the Oklahoma  
5 Chickasaw monopoly which will run the project.  
6 Only a handful of Koi lived on the Shiloh  
7 property for a few months so they could  
8 establish residency. Half of them live in  
9 Sebastopol and half in Lake County, their  
10 ancestral home where they partner with Anderson  
11 Marsh Historic Park to preserve their culture.  
12 Their brochure for the park states the Koi trade  
13 routes went throughout Northern California.  
14 Does that mean that all of Northern California  
15 is their ancestral land? The climate section of  
16 the EIS is inadequate. Temperatures are  
17 increasing each year. We've had the hottest  
18 days in history and we are seeing increased  
19 exponential fire danger because of less  
20 humidity. It is not taken into account in the  
21 EIS. Cal Fire warns us on this and says it is  
22 going to worsen. The climate measurements  
23 neglect to account for the heat island effect of  
24 34 acres of asphalt and building, even if some  
25 of it is covered with grass. And the

PH20-1  
cont.

PH20-2



1 elimination of the existing agriculture of  
2 greenhouse gas sequestration from the vineyards.  
3 Heat islands create dry, hot air that spread to  
4 surrounding areas. Heat islands remove humidity  
5 from the night air, making fires more virulent.  
6 There are currently 4,000 -- over 4,000 fires  
7 burning in California. 5,000 firefighters are  
8 working in Chico where a blaze -- someone dumped  
9 their truck over a ravine, and it went from  
10 20 acres to 370 acres. It is not expected to be  
11 under control for three weeks. What if someone  
12 leaves the casino, goes along -- goes along  
13 Faught Road, and drives their truck and  
14 something ignites or they throw a cigarette out  
15 the window on a warm windy night? I emphasize  
16 that there might be drunk drivers because the  
17 DEIS relies on, quote, alcohol -- responsible  
18 alcohol use. I'm a recovering alcoholic. You  
19 can't expect a bar to rely on responsible  
20 alcohol use. I moved here from San Francisco  
21 while recovering from cancer because it is  
22 beautiful, quiet. And occasionally, I can hear  
23 Highway 101. But I don't hear sirens every  
24 night. The DEIS crime statistics are old, but  
25 they still project three, if not more, siren

PH20-2  
cont.

PH20-3

PH20-4

1 trips to the casino at all hours of the day. I  
2 prefer not to listen to casinos. It refines the  
3 proposed -- how the proposed casino will  
4 evacuate their guests in 270 minutes. Good for  
5 them. What about those who live here? Not in  
6 Windsor, but in Wikiup, south of there. Adding  
7 over 5,000 cars to Shiloh, Old Redwood, and  
8 Faught Road for people taking the back road,  
9 Wikiup will come to a standstill. And I  
10 question the accuracy of the tribal time  
11 assessment model from a three-day summer weekend  
12 just after COVID. Add 5,000 panicked Wikiup  
13 residents who are leaving with their loved ones  
14 and animals. We ignore the streetlights and  
15 stop signs. I have done this twice. There is  
16 no traffic control. The DEIS acknowledges that  
17 Options A and B will have a significant impact  
18 and that the project is a high fire risk area.  
19 You acknowledge that. It is irresponsible --

20 CHAD BROUSSARD: Your time is up. I'm  
21 going to ask you to wrap up your comments,  
22 please.

23 CATHERINE DODD: It puts thousands of  
24 us at risk. And it is irresponsible. Thank  
25 you.

1 CHAD BROUSSARD: Thank you.

2 Our next speaker will be Kevin Maxemin.

3 KEVIN MAXEMIN: Yes. My name is Kevin  
4 Maxemin. And I'm a field rep for Carpenters  
5 Local 751 in Santa Rosa. And I'm also a Sonoma  
6 County resident and a union carpenter. I am for  
7 this project and would love to be part of the  
8 build. Thank you for your time.

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be Giovanni  
11 Ottolini. Giovanni Ottolini.

12 GIOVANNI OTTOLINI: Good evening. My  
13 name is Giovanni Ottolini. I live on Faught  
14 Road. I'm also a proud member of the Nor Cal  
15 Carpenters Union. And I support and urge  
16 approval of this EIS. As a resident of the  
17 impacted area, I fully support this project and  
18 I take pride in having an opportunity to help  
19 build this destination location which will  
20 greatly benefit the economic environment of the  
21 Shiloh Larkfield area. Thank you for your time.

22 CHAD BROUSSARD: Thank you.

23 Our next speaker will be Betsy Mallace.  
24 Betsy Mallace.

25 BETSY MALLACE: Hi. My name is Betsy

1 Mallace. And this is the wrong location for any  
2 large commercial enterprise. It is an  
3 agriculture vineyard between two residential  
4 neighborhoods cornered by a park and a church.  
5 It has a wetlands running through the center, a  
6 regulatory floodway, and a creek. It is also in  
7 a high wildfire risk zone. While they have  
8 identified that during a wildfire evacuation, it  
9 will take an additional 60 to 105 minutes for  
10 everyone to evacuate, and their best practice is  
11 just to have their guests start earlier. I can  
12 tell you in the Kincade Fire, in Windsor, they  
13 gave us six hours to evacuate. Before the  
14 second hour, we tried to evacuate, and we were  
15 in hours and hours of traffic. There's not  
16 always time. So 60 minutes, another 105  
17 minutes, who is not going to make it out after  
18 those minutes? The EIS also fails to mention  
19 any type of evacuation and flood, earthquake, or  
20 loss of electricity. That is completely missing  
21 from the EIS. And that has to be addressed.  
22 The only acceptable option is Option D. I find  
23 the analysis strange that they say there's --  
24 there's significant impact and then there may  
25 not be any impact at all. The traffic is saying

1 that there's significant impact. And they will  
2 in the future pay for 5 to 39 percent of what  
3 needs to be done to correct it. That doesn't  
4 seem like best practice. That doesn't seem like  
5 mitigation. I was sort of surprised to find out  
6 that the information that they retrieved from  
7 Cal Fire and from Sonoma County Fire District  
8 was reviewed from the website. They did not  
9 come here. They did not speak to anybody in  
10 person. And their wildfire risk expert actually  
11 lives in Utah and is nowhere near the area.

12 While I appreciate all of these  
13 carpenters calling in and saying how many jobs  
14 are created -- are going to be created if this  
15 project goes through, if this project goes  
16 through, how many deaths are going to be created  
17 in the evacuation? We barely got everybody out  
18 alive. Coffey Park barely got everybody out  
19 alive. By adding climate change, increased  
20 heat, more apartments on the corners of Old  
21 Redwood Highway and Shiloh and now they're going  
22 to put a casino and they think that everybody is  
23 going to actually get out in an emergency, even  
24 with an extra 60-minutes headway, that is not  
25 best practice. That is just a recipe for

1 disaster. And I think that it needs -- the EIS  
2 needs to be looked at. And they need to get  
3 real data from real times and real people that  
4 has been happening here in Windsor and Sonoma  
5 County. Thank you.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker will be Debora Fudge.  
8 Debora Fudge.

9 DEBORA FUDGE: Hi. My name is Debora  
10 Fudge. I'm a Town Councilmember for the Town of  
11 Windsor and District 3. So this is my district,  
12 adjacent to where the proposed casino would be.  
13 The Town Council will be submitting our official  
14 response to this EIS later in August, after a  
15 further review, primarily from our community  
16 development, public works, and parks department.  
17 But I have some comments at this point.

18 The Draft EIS has made some adjustments  
19 from the EA in regard to comments from the Town  
20 of Windsor, particularly with respect to water  
21 resources, air quality, cultural resources, and  
22 noise. However, the mitigation measures and  
23 project components remain inadequate. The town  
24 still has serious concerns about water storage  
25 and floodplain management, especially given the

PH24-1

PH24-1  
cont.

1 project location and history of flooding in the  
2 area. The Draft EIS does not provide a viable  
3 strategy for avoiding this environmental impact.  
4 The Draft EIS relies on optimistic traffic  
5 models and insufficient planning. The Draft EIS  
6 estimates that evacuation times during a  
7 no-notice event could increase from four to six  
8 hours to six to eight hours with the project.  
9 The mitigation measure proposes to develop a  
10 project specific evacuation plan prior to  
11 occupancy. This mitigation lacks detailed  
12 strategies and assurances it will effectively  
13 reduce the increased evacuation time. The Draft  
14 EIS proposes minor roadway improvements that  
15 does not fully address the increased traffic  
16 load during evacuation and as well as for daily  
17 traffic in the area. The added traffic would  
18 create bottlenecks, severely hindering  
19 evacuation efforts, and potentially increasing  
20 the risk to human life during an emergency.  
21 This proposed mega casino is just feet away from  
22 hundreds of Windsor residents. There is no  
23 other casino that we know of so close to a  
24 residential area in the case of a small town.  
25 And then you add to that Larkfield-Wikiup to the

PH24-2

PH24-3



1 south. The impacts of this project cannot be  
2 sufficiently mitigated given its proposed  
3 location. Our town was incorporated and planned  
4 by residents specifically so that Windsor would  
5 remain a small town. It specifically excluded  
6 this parcel from the urban growth boundary in  
7 1996 so that it would remain rural and be a  
8 community separator to the Larkfield-Wikiup area  
9 of Santa Rosa. This is just simply the wrong  
10 location for such a mega project. Thank you for  
11 hearing me.

12 CHAD BROUSSARD: Thank you.

13 Our next speaker will be Jason Pearce.  
14 Jason Pearce. Remember to unmute your  
15 microphone.

16 JASON PEARCE: Good evening. My name  
17 is Jason Pearce. I ask the BIA's approval of  
18 the EIS. The project is going to bring 1500  
19 permanent jobs, 1600 construction jobs in  
20 partnership with the Nor Cal Carpenters, which  
21 will boost the economy and working individuals  
22 across Sonoma County. The mitigation efforts in  
23 the EIS address the community's top three  
24 concerns -- fire, evacuation plans, and  
25 groundwater. I, again, ask the BIA's approval

1 of the EIS. Thank you for my time to speak.

2 CHAD BROUSSARD: Thank you.

3 Our next speaker will be Richard Cruz.

4 Richard Cruz.

5 RICHARD CRUZ: Yes. Hello. Can you  
6 hear me?

7 CHAD BROUSSARD: Yes, I can.

8 RICHARD CRUZ: Hi. Thank you for  
9 letting me speak. My name is Richard Cruz. I'm  
10 a proud member of the Carpenters Union. And I  
11 would just like to say that I applaud the EIS's  
12 plan for genuinely -- more than genuinely  
13 addressing the community's top three concerns,  
14 of course, fire, evacuation plan, which I would  
15 like to point out has employee training and  
16 coordination with local governments that would  
17 mitigate against long evacuation times and more  
18 speedy evacuation times. Of course, along with  
19 the mitigation against groundwater depletion.  
20 As stated by the Carpenters Union reps, there's  
21 going to be more than 1600 jobs with this  
22 construction plan, along with 1500 permanent  
23 jobs which is just going to boost the economy.  
24 Me as a Carpenters Union member, I have never  
25 built anything close to my home. So it would be

1 a fantastic opportunity for Sonoma residents to  
2 be able to have the local development that they  
3 have partook in, which is now increasing the  
4 community growth. Again, I would just like to  
5 urge the BIA's approval of the EIS. Again,  
6 thank you for letting me speak.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Alexander  
9 Hampton. Alexander Hampton.

10 ALEXANDER HAMPTON: Can you hear me?

11 CHAD BROUSSARD: Yes, I can.

12 ALEXANDER HAMPTON: Hey. How are you  
13 doing? Good evening. My name is Alexander  
14 Hampton. I'm a carpenter for Local 46. And I  
15 urge the BIA's approval of the EIS. The project  
16 will definitely create a large amount of  
17 permanent jobs once the project is complete.  
18 And during the construction, partnering up with  
19 the Nor Cal Carpenters, another large amount of  
20 jobs will be created. And with that being said,  
21 the health care, apprenticeship, prevailing wage  
22 also will come with that. And it is important  
23 for Sonoma County. These jobs will support the  
24 families and help the economy across Sonoma  
25 County. The EIS also addresses the community

1 top concerns, which is very important. This  
2 project covers all bases. And, again, I urge  
3 the BIA approval of the EIS. Thank you very  
4 much for your time.

5 CHAD BROUSSARD: Thank you.

6 Our next speaker will be Antonio  
7 Acevedo. Antonio Acevedo.

8 ANTONIO ACEVEDO: Hi. Can you hear me?

9 CHAD BROUSSARD: Yes, I can.

10 ANTONIO ACEVEDO: Good evening. My  
11 name is Antonio Acevedo. I'm with the Nor Cal  
12 Carpenters Union. Proud carpenter. I urge the  
13 BIA's approval of the EIS. You know, the jobs  
14 created by this project will be a tremendous  
15 boost to our regional economy, providing vital  
16 support to families and hardworking individuals  
17 across Sonoma County. With stable employment  
18 opportunities, we're not just enhancing the  
19 quality of life for many residents, but also  
20 fostering a stronger, more prosperous community.  
21 Together, we're building a brighter, more  
22 hopeful future for Sonoma County. I, again,  
23 urge the BIA's approval of the EIS. Thank you.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Israel Avila.

1 Israel Avila.

2 ISRAEL AVILA: Yes. Can you hear me?

3 CHAD BROUSSARD: Yes, I can.

4 ISRAEL AVILA: First, I would like to  
5 thank you for allowing me to speak. My name is  
6 Israel Avila, a proud member of the Nor Cal  
7 Carpenters Union. And I urge the Bureau of  
8 Indian Affairs to approve the Environmental  
9 Impact Statement, the Shiloh Resort and Casino  
10 Project. This project is created -- is  
11 estimated to create over 1500 -- 1500 permanent  
12 jobs once fully operational. These jobs will be  
13 a big boost to the regional economy and support  
14 families and working individuals across Sonoma  
15 County. I, again, urge the bureau to approve  
16 the EIS. Thank you for your time.

17 CHAD BROUSSARD: Thank you.

18 Our next speaker will be Tim  
19 McLaughlin. Tim McLaughlin.

20 Tim McLaughlin, are you there?

21 TIM McLAUGHLIN: Can you hear me?

22 CHAD BROUSSARD: Yes, I can.

23 TIM McLAUGHLIN: Very sorry. My name  
24 is Tim McLaughlin. And for full disclosure, I'm  
25 a gaming commissioner for the Federated Indians

1 of Graton Rancheria. However, I'm commenting  
2 tonight as a private citizen who lives in  
3 Larkfield-Wikiup, a neighborhood approximately a  
4 mile from the proposed Koi Nation project. For  
5 those of us who live in the area and lived  
6 through the Tubbs Fire in 2017, Kincade in 2019,  
7 and Glass Fire in 2020, we have serious concerns  
8 regarding evacuation management and the  
9 inevitable situation of another major fire in  
10 the immediate area with the congestion that the  
11 project is sure to bring. Entire neighborhoods  
12 will be cut off from the corridor in the event  
13 of another fire event. There are already two  
14 high-density housing projects in the area since  
15 the fires; one at Shiloh and Old Redwood  
16 Highway, currently under construction, and the  
17 other planned for Old Redwood Airport Road. The  
18 Koi Nation Project will certainly exacerbate the  
19 congestion we already are experiencing and  
20 anticipate from these projects. We hope the  
21 concerns of our community are taken into  
22 consideration and the Koi project not move  
23 forward in the interest of public safety. And I  
24 thank you for the opportunity to comment.

25 CHAD BROUSSARD: Thank you.

1           Our next speaker will be Charlena  
2 Valencia. Charlena Valencia.

3           CHARLENA VALENCIA: Hello. Can you  
4 hear me?

5           CHAD BROUSSARD: Yes.

6           CHARLENA VALENCIA: Hello. My name is  
7 Charlena Valencia. And I'm an enrolled citizen  
8 of the Federated Indians of Graton Rancheria.  
9 I'm a basket weaver and [indiscernible]. And  
10 I'm also someone who practices our language. I  
11 have my bachelor's in economics from Cal Poly  
12 Humboldt. And I was born and raised and I'm  
13 from Santa Rosa, California. Today I'm speaking  
14 out about the proposed Koi Nation Casino  
15 Project. I do not support this project because  
16 it is an insult and threat to tribal sovereignty  
17 and precedence for Sonoma County Tribes whose  
18 territories are well historically proven. Koi  
19 Nation has never been a Tribe that has occupied  
20 the lands of what is now known as Sonoma County.  
21 The Koi Nation has always from time immemorial  
22 been a Tribe from Lake County. This is a threat  
23 to Tribal sovereignty everywhere. Because if it  
24 takes place, it will mean that any group,  
25 company, or Tribe that has the funds can invade



1 established tribal territories for personal  
2 gains. This proposed infringement is a threat  
3 to all Sonoma County Tribes ancestral  
4 territories, resources, and histories, which is  
5 not being a, quote/unquote, good neighbor. This  
6 project is a shameful attempt at a land grab by  
7 the Koi Nation and should not be approved  
8 because Sonoma County's lands have never been  
9 their territory, as I said.

10 To the BIA, I plead with you to support  
11 Sonoma County Tribes and uphold your promises  
12 and historical evidence to protect our  
13 sovereignty and our territory. Again, do not  
14 approve this project in any capacity. Thank  
15 you.

16 CHAD BROUSSARD: Thank you.

17 Our next speaker will be Matt Kelly.  
18 Matt Kelly.

19 MATT KELLY: Hi. Can you hear me?

20 CHAD BROUSSARD: Yes, I can.

21 MATT KELLY: My name is Matt Kelly.  
22 I'm speaking today urging the BIA to approve the  
23 EIS for this project. As many people have said  
24 already, the 1500 job permanent jobs that it  
25 will create after the project is complete will

1 be a major boost to the economy. That's not to  
2 mention the 1600 jobs that it will create for  
3 hardworking men and women, many who live in that  
4 area that don't usually get to work in it, may  
5 have to drive to other parts of the Bay Area or  
6 even the Valley. Giving them more time to be  
7 with their families. I truly believe that this  
8 is a good project for the area and I urge the  
9 BIA to approve it. Thank you.

10 CHAD BROUSSARD: Thank you.

11 Our next speaker will be Mitchell  
12 Vinciguerra. Mitchell Vinciguerra.

13 MITCHELL VINCIGUERRA: Yes. I'm here.  
14 Good evening. Thank you for having me tonight.  
15 I appreciate the opportunity to speak. The --  
16 you know, not only will the jobs be a great  
17 boost to the regional economy, but the taxes  
18 that are generated from this casino will also be  
19 a great boost to the regional economy. There's  
20 been a lot of discussion about the EIS and the  
21 mitigation efforts and a huge concern about the  
22 fires. And the taxes that are generated from  
23 this casino could be a huge boost to the local  
24 fire departments. I have a casino less than a  
25 mile from my house. And the fire department

1 that's on-site there has advanced lifesaving  
2 measures that the County and the small cities  
3 around me just can't afford. And I definitely  
4 urge the BIA to approve the EIS for this  
5 project. Thank you.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker is someone calling in.  
8 And the last four digits of the phone number are  
9 7487. So someone calling in from 7487.  
10 Remember to press star 6.

11 MARIO SANTA CRUZ: Can you hear me?

12 CHAD BROUSSARD: Yeah, I can hear you.

13 MARIO SANTA CRUZ: My name is Mario  
14 Santa Cruz. I'm calling in support of the Koi  
15 Nation Shiloh Resort. Urge the BIA to approve  
16 the Environmental Impact Statement. You know,  
17 everybody has mentioned it. The amount of jobs  
18 that it is going to create. I agree with them.  
19 And with the economy the way it is right now in  
20 the state of California, we need to create jobs.  
21 So I'm -- I'm up for this project. I urge to  
22 approve the EIS. Thank you.

23 CHAD BROUSSARD: Thank you.

24 Our next speaker will be Harvey  
25 McKeon. Harvey McKeon.

1 HARVEY McKEON: Hello. Can you hear  
2 me?

3 CHAD BROUSSARD: Yes.

4 HARVEY McKEON: My name is Harvey  
5 McKeon. I am a member of Carpenters Local 713.  
6 I want to thank the BIA for convening this  
7 meeting tonight. And I urge its approval of the  
8 EIS. As many speakers have said before me, this  
9 project is estimated to create collectively over  
10 3,000 jobs. 1,500 during the construction phase  
11 itself. And these are jobs that provide living  
12 wages and other vital benefits, such health  
13 care, to workers and their families. And this  
14 is of great benefit of the California taxpayer  
15 more broadly. Statistically, consider that  
16 studies show construction workers are  
17 disproportionately reliant on public safety net  
18 programs at a great cost to the taxpayer. Jobs  
19 created by projects like this can alleviate that  
20 public cost burden by creating good jobs in  
21 construction, along with the other local  
22 economic benefits that sees money put back into  
23 the local community. From an environmental  
24 perspective, having reviewed the EIS, I am  
25 confident that it has addressed what we

1 understand to be the community's top three  
2 concerns. Namely, mitigation efforts as regards  
3 to fire, evacuation plans, and groundwater. So,  
4 again, I want to thank the BIA for convening  
5 this meeting. And I fully support this project  
6 from an environmental perspective, but also from  
7 an economic perspective, given the 1,600 jobs it  
8 will create during the construction phase and  
9 the 1,500 permanent jobs it will create once it  
10 is operational. Thank you so much. Bye now.

11 CHAD BROUSSARD: Thank you.

12 Our next speaker will be Eric  
13 Chazankin. Eric Chazankin.

14 ERIC CHAZANKIN: There we are. Can you  
15 hear me, Chad?

16 CHAD BROUSSARD: Yes, I can.

17 ERIC CHAZANKIN: Thank you. So I  
18 appreciate your facilitating this discussion. I  
19 live in the area and drive back and forth  
20 between one end of Shiloh Road and to the other  
21 to take care of my elderly mother in Shiloh  
22 Estates on a regular basis. So I traverse  
23 Shiloh Road going past the proposed site  
24 multiple times per week if not multiple times  
25 per day. I find it interesting that on the

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1 topic of evacuation, the report on page 3-127  
2 indicates, quote, analysis of a future  
3 evacuation event is inherently speculative. It  
4 is not speculative for a lot of us who were  
5 there. I was there during the Tubbs Fire. I  
6 was there driving past the clouds of smoke and  
7 ash falling from the sky at the intersections of  
8 Old Redwood Highway and Shiloh and Old Redwood  
9 Highway and Faught Road, rushing out trying to  
10 evacuate my mother and my sister and our animals  
11 out of there, down to my house, where we were  
12 kept for several days with no power, no gas, no  
13 heat. It was quite an adventure. If this  
14 project had been there at that time, she  
15 probably would have died. The report bases  
16 their evacuation times one to two hours  
17 additional on the assumption that the parking  
18 lot will only be half empty. Half full at that  
19 time. 2,450 vehicles instead of a full capacity  
20 of over 5,000. So it will actually be a lot  
21 more time than what the report cites.

22 On the topic of water, this says that  
23 it anticipates a 170,000-gallon-per-day draw  
24 from two new wells. However, the wastewater  
25 discharge will be 232,000 gallons per day. So

PH36-1  
cont.

PH36-2

1 I'm not sure which figure is accurate and which  
2 is inaccurate. It also states that the current  
3 use for agriculture is about 34 acre feet per  
4 year which works out to 11,078,000 gallons, but  
5 that the new rate of 170,000 gallons per day  
6 will be over 62 million gallons per year. So  
7 that is a 5.6 times increase in water usage each  
8 year. And that if anything is going to go wrong  
9 with the drawdown level in the city of the Town  
10 of Windsor's wells, then the Tribe will be  
11 obligated to create an investigation and report  
12 on that, but ultimately has no obligation  
13 whatsoever to contribute to finding any  
14 additional water supplies. And goodness knows  
15 where they would even find them.

16 In addition important issues like  
17 housing, property values, and crime are all  
18 addressed simply by saying that Best Management  
19 Practices will be sufficient to address all of  
20 those with no factual basis whatsoever to  
21 support those allegations. This is the wrong  
22 place with respect to the Tribe to put a project  
23 of this magnitude. People are going to die if  
24 you put this in here. The report is inaccurate  
25 in multiple respects and I urge you to reject

PH36-2  
cont.

PH36-3



1 it. Thank you.

2 CHAD BROUSSARD: Thank you.

3 Our next speaker will be a call-in  
4 speaker with a phone number ending in 0668.

5 Again, a call-in ending in 0668.

6 APRIL ATKINS: Am I being heard?

7 CHAD BROUSSARD: Yes, I can hear you.

8 APRIL ATKINS: Good evening. Thanks  
9 for allowing me to speak. My name is April  
10 Atkins. And I'm a carpenter. I've been a  
11 carpenter for 27 years. I urge the BIA's  
12 approval for this EIS. This project is  
13 estimated to create 1600 jobs as well as over  
14 1500 carpenters. That's going to be  
15 partnership -- this job will be in partnership  
16 with the Nor Cal Carpenters. Again, I urge the  
17 BIA's approval of the EIS. Thank you.

18 CHAD BROUSSARD: Thank you.

19 Our next speaker will be Martin  
20 Espinoza. Martin Espinoza.

21 Please remember to unmute. There you  
22 go.

23 MARTIN ESPINOZA: Yep. Good afternoon.  
24 My name is Martin Espinoza. I'm a  
25 representative of Nor Cal Carpenters Union. I'm

1 in strong support of this project and urge the  
2 BIA's approval of the EIS. This project will  
3 create good livable wages with health care for  
4 our members and families, many of which reside  
5 in this county. Thank you for your time and  
6 consideration.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Sidnee Cox.  
9 Sidnee Cox.

10 SIDNEE COX: I don't see it starting  
11 fresh. Can you hear me?

12 CHAD BROUSSARD: Yes, I can hear you.

13 SIDNEE COX: Okay. Thank you.

14 Thank you for this opportunity to  
15 speak. I think some things are really speaking  
16 in my mind as I hear this. First of all,  
17 there's no enforcement for these mitigations.  
18 And that's quite a concern. And the other thing  
19 is it is location, location, location. We're  
20 not saying carpenters can't have jobs. This EIS  
21 has nothing to do with carpenter jobs. Once it  
22 is built, you carpenters will go away, and we  
23 will be left to deal with this from then on.  
24 All of the impacts, harming things, the air  
25 quality, noise pollution, traffic, well water.

1 It is very shortsighted to say, oh, my goodness,  
2 it will give us all of these jobs. Once the job  
3 is done, you will go away, and we will be left  
4 with the harm. It is going to be a 24/7  
5 facility, which certainly impacts noise. I  
6 don't care what the EIR is saying is mitigation.  
7 They are going to follow best practices. I  
8 can't imagine what the best practices would be  
9 to mitigate air quality from these thousands of  
10 cars in this very, very, very sensitive area as  
11 well as the well waters. Wells will definitely  
12 go dry because there will be lots of water  
13 usage. Even with the treatments and even with  
14 putting the effluent or whatever on the  
15 vineyards, which I don't even know if you can do  
16 that, if they can still sell the grapes. I  
17 don't know how that works. But anyway -- and  
18 the location comparison, Graton -- Graton Casino  
19 is on business industrial property. It is right  
20 there in the middle of the business district in  
21 Rohnert Park. River Rock up in Geyserville is  
22 on rural and remote agriculture, far from  
23 neighbors -- neighbors and homes --  
24 neighborhoods and homes. The Kai casino -- Koi  
25 Casino -- sorry. The Koi Casino, on the other

1 hand, is immediately adjacent to homes, many  
2 homes on both sides, with a well-used park to  
3 the east, and also another well-used park  
4 directly to the north, and a church to the west.  
5 So it is not in the kind of property that would  
6 be conducive to this kind of development.

7 And then the evacuation. During the  
8 Kincade Fire, there were tie-ups at  
9 intersections. It took four hours for the  
10 traffic to lessen. I was one of the last ones  
11 to leave, to wait for the traffic to go down.  
12 And that's -- that is even without the big  
13 apartment complex. I know you have heard all of  
14 this. But I'm just saying -- oh, yeah. And  
15 1500 employees and how many patrons? 20,000?  
16 How are they going to get out? They're just not  
17 going to get out. And, you know, Old Redwood  
18 Highway is only two lanes. They're not going to  
19 enlarge it to four lanes. It's been two lanes  
20 for over a hundred years. It is not getting any  
21 bigger and neither is Shiloh. And Faught Road,  
22 have you driven on Faught Road? Oh, my God. It  
23 is a scary road. It is curvy and dangerous.  
24 That is not a consideration there. And option  
25 3, which is like a -- okay. My time is almost

1 up. Option 3 is not good because of the noise  
2 and air pollution. And the Chickasaw project is  
3 marketing this as a Koi project. And it is  
4 basically a Chickasaw project. And they have no  
5 rights to -- to our lands. Thank you.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker will be Tony Munoz.

8 Tony Munoz.

9 Remember to unmute your microphone.

10 TONY MUNOZ: Can you hear me?

11 CHAD BROUSSARD: Yes, I can.

12 TONY MUNOZ: Thank you for the  
13 opportunity to speak. My name is Tony Munoz. A  
14 28-year member of the Carpenters Union. Calling  
15 in support for the Koi Nation Shiloh Resort  
16 Project. As many people have mentioned already,  
17 you know, this is going to be a project that  
18 will create over 3,000 job opportunities. We  
19 take into consideration the permanent jobs and  
20 the construction jobs that will be created and  
21 will benefit the families of the folks in the  
22 Sonoma County area. This project is also  
23 addressing the community concerns. It calls for  
24 fire protection services. It has a plan to  
25 train employees and work with local governments

1 on evacuation procedures. This is a good  
2 project. It offers great opportunities. Please  
3 approve the Environmental Impact Statement.  
4 Thank you.

5 CHAD BROUSSARD: Thank you.

6 Our next speaker will be Christopher  
7 Frazee. Christopher Frazee.

8 CHRISTOPHER FRAZEE: Hello. Thank you.  
9 My name is Christopher Frazee. I live less than  
10 a mile from the proposed casino site. And  
11 echoing what some of the other residents said, I  
12 was here for the fires. I experienced the  
13 incredible amount of time it took to evacuate.  
14 The just literal gridlock at every intersection.  
15 We are, you know, less than a mile from the  
16 entrance to 101. And it took us multiple hours  
17 to drive that mile. Now, that, of course, was  
18 before the new apartment complexes were built on  
19 the impacted corners. And another development  
20 that is being -- being built right now. I don't  
21 believe that this impact statement can be  
22 considered if it isn't current. I feel like the  
23 only way this could -- this could possibly be  
24 valid is for a current study to be done, current  
25 traffic, with estimates for what the new

1 apartment complexes are going to do. It simply  
2 creates a public safety hazard. I can't imagine  
3 how we could -- how we would possibly get out of  
4 here. It would be -- the idea it is another  
5 hour with thousands of cars and thousands of  
6 employees, it's just -- it's just not sensible.  
7 It has to be reconsidered for this to be valid.  
8 Aside from that, on a personal level we're a  
9 little farther away from the communities right  
10 next to the casino. But the idea of it from a  
11 property value standpoint from the impact just  
12 to people's lives. If you're right across from  
13 the casino with thousands of people, it is going  
14 to change the entire character of this  
15 neighborhood. From a water standpoint as well,  
16 as many people have said, their estimates -- the  
17 estimates in this do not seem valid. The  
18 additional water that would be needed to fight  
19 fires on this area, that's a natural fire break.  
20 That wetland was a natural fire break for many  
21 of these neighborhoods. I think there needs to  
22 be a new evaluation that takes into account  
23 those factors. Thank you very much for hearing  
24 me.

25 CHAD BROUSSARD: Thank you.



1           Our next speaker will be somebody who  
2 is calling in. And the last four digits of the  
3 phone number are 4899. So 4899.

4           HERLINDO ALFARO: Can you hear me?

5           CHAD BROUSSARD: Yes, I can.

6           HERLINDO ALFARO: I urge the approval  
7 the EIS. It will allow carpenters like me to  
8 continue to live in the city and work towards  
9 retirement, will provide the necessary benefits  
10 and income to provide. These jobs will be a big  
11 boost to the regional economy and support  
12 families and working individuals across Sonoma  
13 County. I, again, urge the BIA's approval of  
14 the EIS. Thank you for your time.

15          CHAD BROUSSARD: Thank you.

16          Our next speaker will be Lillian  
17 Fonseca. Lillian Fonseca.

18          LILLIAN FONSECA: Okay. My name is  
19 Lillian Fonseca. Are you able to hear me?

20          CHAD BROUSSARD: Yes, I can.

21          LILLIAN FONSECA: I want to go on the  
22 record and say I'm not a carpenter. And one of  
23 the reasons I'm saying that is because we've  
24 heard so much from the carpenters. And they  
25 seem to be very narrow-minded about this whole

1 situation. They're talking about 1500 jobs  
2 versus the impact that this could have on  
3 thousands of people who are living in the  
4 communities and neighborhoods and areas  
5 surrounding the proposed site. In my opinion,  
6 this is not a good fit for our community. I am  
7 a retired educator. I have chosen to live in  
8 Windsor in order to raise my family in a  
9 small-town community with safety measures in  
10 place. They can ride their bikes, play in the  
11 parks. And I don't have to worry about them.  
12 Now I'm helping to raise my grandson. And I  
13 want the same for him. So I'm not so much  
14 interested in money earning value for carpenters  
15 as I am for the future of Windsor as a small  
16 family-oriented community. And as well as for  
17 the safety of my own family. The proposed  
18 casino is just not a good fit for our area, as  
19 you have been well informed tonight. The church  
20 on one side, the apartment complex that is just  
21 getting built, it is just -- it will be so  
22 disruptive to our community and what it stands  
23 for and what it represents. The chaos that we  
24 all went through during the fires is very vivid  
25 and real still in our minds. And as we know,

1 our climate is in crisis. It is not going to  
2 change. It is only going to get worse. So we  
3 need to think ahead. We can't just think of  
4 money earning and a resort that is going to be  
5 run by a group of Tribes that has a hundred  
6 members. And then the other Tribe is the  
7 Chickasaw that is not even in our state. It  
8 just doesn't make much sense to me. I can see  
9 no justification for this project. I live right  
10 off of Old Redwood Highway, only a mile from the  
11 proposed site. And it would break my heart to  
12 drive past this site once natural and peaceful  
13 and beautiful, destroyed by this huge concrete  
14 monsters, knowing that wildlife that once lived  
15 there is displaced as well as local residents  
16 who have been forced to relocate. That would  
17 break my heart. Any rationale for the  
18 construction of this casino cannot make a  
19 right -- a wrong right. I read the reports, but  
20 I still don't buy it. There is no denying that  
21 this project will impact us in numerous negative  
22 ways. Our natural resources, neighborhoods, and  
23 our community as a whole. I urge the BIA not to  
24 accept this proposal and to go for Option B.  
25 Thank you very much for your time. And

1 everybody have a good evening.

2 CHAD BROUSSARD: Thank you.

3 Our next speaker will be someone  
4 calling in. The last four digits of the phone  
5 number are 0760. 0760. Remember to press star  
6 6 to unmute.

7 SUSAN RODRIGUEZ: Good evening. My  
8 name -- good evening. My name is Susan  
9 Rodriguez. I'm a proud carpenter for 25 years.  
10 I urge the BIA's approval of the EIS. I won't  
11 repeat what has been said. But, again, just  
12 recap. The jobs that it will bring, both during  
13 construction and after construction that are  
14 permanent. The boost to the economy. And  
15 support families and working individuals across  
16 Sonoma County. The mitigation efforts and the  
17 three top concerns -- the fire, the evacuation  
18 plans, as well as groundwater. With that, I  
19 urge the BIA's approval of the EIS. I thank you  
20 for your time for allowing me to speak. Have a  
21 great evening.

22 CHAD BROUSSARD: Thank you.

23 Our next speaker will be Oscar  
24 Mazariegos. Oscar Mazariegos.

25 OSCAR MAZARIEGOS: Hello. Good

1 evening. My name is Oscar Mazariegos. I'm a  
2 drywall lather -- a drywall lather, Carpenter  
3 Local 9868. I'm sorry. I urge the BIA's  
4 approval for this EIS. As I've been listening  
5 to a lot of the residents and members, I know  
6 there's a lot of concern over the fires and  
7 everything that happened. You know, very  
8 recently, I know. And I have seen this EIS  
9 reports and everything that they been done with  
10 the fire mitigation efforts, with the fire  
11 protective services. And even with them having  
12 sufficient -- trying to get a sufficient staff  
13 on-site fire department. The evacuation plans,  
14 the plans include employee training and  
15 coordination with local governments that will  
16 mitigate and minimize wildfires. There's a lot  
17 of stuff that they're taking to try to prevent  
18 these things from happening. But I do urge the  
19 EIS to approve -- I do urge the BIA to approve  
20 the EIS. Not only everything, the steps that  
21 they're taking, but all of the work that is  
22 going to be, you know -- being brought to the  
23 community. Thank you very much.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Joan Harper.

1 Joan Harper.

2 JOAN HARPER: [Speaking non-English]

3 My name is Joan Harper. And the Tribal  
4 Treasurer of Federated Indians of the Graton  
5 Rancheria. I'm providing testimony about the  
6 inadequacy of the Draft EIS and ask the BIA and  
7 all federal agencies to consider the following.  
8 First, the Draft EIS does not recognize or  
9 address the sovereign rights and customary  
10 beliefs and practices of the Federated Indians  
11 of Graton Rancheria Tribe and other Native  
12 people whose ancestral lands are historically  
13 recognized and already well established in  
14 Sonoma County. Throughout recorded history, and  
15 far back as anyone can remember, the Koi Tribe  
16 has never had a historical right to hold title  
17 to resources in Sonoma County. For centuries,  
18 it has been the custom of Native people in  
19 Sonoma County and throughout California to ask  
20 permission from a neighboring Tribe before  
21 seeking to use land and resources outside of  
22 their established territory. The Koi Tribe has  
23 not asked us nor have we given them permission  
24 to use and establish trust land for themselves  
25 in our ancestral territory. The Proposed

1 Project ignores our sovereign right to protect  
2 and defend our sacred cultural resources, tribal  
3 histories, and our traditional and time-honored  
4 customs and beliefs and practices.

5 Second, the project would set the  
6 precedent from allowing a Tribe outside of  
7 Sonoma County to take Sonoma County land into  
8 federal trust status. The Draft EIS does not  
9 adequately address the long-term cumulative and  
10 secondary impacts that the Proposed Project will  
11 have on Indian Nations in Sonoma County. Our  
12 ancestors and the other Native people of Sonoma  
13 County have long used and resided in the  
14 territory that the Koi now seek to claim for  
15 themselves. Allowing the Koi Tribe to establish  
16 trust in our ancestral lands promotes the  
17 practice of reservation shopping. The EIS does  
18 not address the chaos that would result in  
19 California and throughout the nation if Tribes  
20 are permitted to establish trust land boundaries  
21 and casino resorts and businesses on the  
22 ancestral lands of other Tribes. We respect the  
23 right of the Koi Nation to exercise sovereignty  
24 in their long-established ancestral territory,  
25 which is in Lake County.



1 I'm asking the BIA to fulfill its trust  
2 responsibility to protect tribal lands, assets,  
3 resources and rights, and to find that the Draft  
4 EIS does not adequately address the impacts and  
5 harms that the Proposed Project will have on the  
6 Tribal sovereignty of Sonoma County Indian  
7 Nations as well as all Indian nations throughout  
8 the nation. [Speaking non-English]

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be John Belperio.  
11 John Belperio.

12 JOHN BELPERIO: Hello. Can you hear  
13 me?

14 CHAD BROUSSARD: Yes, I can.

15 JOHN BELPERIO: First of all, I want to  
16 say thank you to the BIA for all of the hard  
17 work you're doing considering this. I know it  
18 is not easy. You've heard a lot of comments  
19 tonight. So I applaud you guys for taking this  
20 on. You know, there's a lot of talk about, you  
21 know, jobs. And, you know, I want to applaud  
22 the Koi Nation for partnering with, you know,  
23 some top consultants in the area to make sure  
24 that they address the environmental impacts of  
25 this project. And they have done that. Right.

1 They reached out to the community. They figured  
2 out what the -- what the top concerns were for  
3 the community. And they were fire, evacuation  
4 plans, and groundwater. And they have addressed  
5 all of these. They have partnered with the  
6 largest construction trade union in Northern  
7 California, the Nor Cal Carpenters Union. And  
8 ensured these jobs would not just be jobs, but  
9 living-wage careers. And carpenters don't leave  
10 once the jobs are done. They are entrenched in  
11 the community. And they live in Windsor and  
12 they live in the surrounding areas. You know,  
13 everybody is talking about fire. And yes, the  
14 Kincade Fire was horrible. Prevention is the  
15 key here, right. And they're committed to  
16 working with local fire departments and  
17 establishing their own fire department so that  
18 they can prevent a situation of a fire breaking  
19 out to which you have to have such drastic  
20 evacuations. In committing to -- you know,  
21 create tax revenue that is going to pour money  
22 into local agencies. They can hire more staff,  
23 get air support. So that in the situation of a  
24 fire, it can be handled quick, right. You don't  
25 do that by just avoiding tax. You know, tax

1 increases through, you know, companies moving  
2 in. The evacuation plan, they are going to work  
3 with local governments there. They're going to  
4 create their own water treatment plant. They  
5 have addressed all of the concerns that were  
6 brought up by the community in this  
7 Environmental Impact Statement. And I would ask  
8 and urge the BIA to approve the originally  
9 Proposed Project in the Environmental Impact  
10 Statement. Thank you so much.

11 CHAD BROUSSARD: Thank you.

12 We're going to take a very short break  
13 at this time. And we will reconvene at  
14 8:00 p.m. So in just about five minutes, we  
15 will be reconvening at 8:00. Thank you.

16 (A recess was taken.)

17 CHAD BROUSSARD: Okay. We're going to  
18 reconvene the hearing.

19 Our next speaker will be Naeemah Brown.

20 NAEEMAH BROWN: Hello. Can you hear me  
21 okay?

22 CHAD BROUSSARD: Yes, I can.

23 NAEEMAH BROWN: Great. Thank you.

24 I am in favor of the BIA's approval of  
25 this Environmental Impact Statement. This

1 project serves the interest of Sonoma County  
2 residents by providing jobs that provide health  
3 care, a livable wage, and apprenticeship  
4 programming. The mitigation measures for fire,  
5 the evacuation plans, and groundwater  
6 consumption are extensive. I urge the BIA's  
7 approval of the EIS. Thank you.

8 CHAD BROUSSARD: Thank you.

9 Our next speaker will be Marco  
10 Gonzalez. Marco Gonzalez.

11 MARCO GONZALEZ: Good evening. My name  
12 is Marco Gonzalez. And I urge the approval of  
13 the EIS. Reason why, this will bring a lot of  
14 good projects for a lot of people. And due to  
15 the economy in California right now, we need  
16 good jobs. And these are good jobs with good  
17 paying wages. Livable wages. So I urge you to  
18 approve the EIS. Thank you so much.

19 CHAD BROUSSARD: Thank you.

20 Our next speaker will be Mauricio  
21 Chavez.

22 MAURICIO CHAVEZ: Hi. Can you hear me?

23 CHAD BROUSSARD: Yes, I can.

24 MAURICIO CHAVEZ: Hello.

25 CHAD BROUSSARD: Yes.

1 MAURICIO CHAVEZ: Hi. My name is  
2 Mauricio Chavez, member of Nor Cal Carpenters  
3 Union for 12 years. In strong support and urge  
4 the EIS -- that the EIS be approved. Thank you  
5 for your time.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker will be someone  
8 calling in. Last four digits of the phone  
9 number are 0345. 0345. Remember to press  
10 star 6 to unmute your phone.

11 OMAR HERNANDEZ: Hi. Can you hear me?

12 CHAD BROUSSARD: Yes, I can.

13 OMAR HERNANDEZ: Good evening. My name  
14 is Omar Hernandez. I'm calling to express my  
15 strong support for the Koi Nation's proposed  
16 casino. This job is said to create thousands of  
17 jobs for construction workers and create  
18 opportunities for the local community. It will  
19 provide a significant economic boost to Sonoma  
20 community. The Tribe's predevelopment agreement  
21 with the Chickasaw Nation guarantees the casino  
22 will be managed and operated by a world-class  
23 gaming expert with a proven track record of  
24 success. The Koi Nation has made commendable  
25 efforts to engage with the public about this

1 project. Considering all of these benefits, I  
2 strongly urge the BIA to approve the EIS. Thank  
3 you.

4 CHAD BROUSSARD: Thank you.

5 Our next speaker will be Robert Blunt.  
6 Robert Blunt.

7 ROBERT BLUNT: Hi. My name is Robert  
8 Blunt. I strongly urge the BIA to approve the  
9 EIS. Thank you.

10 CHAD BROUSSARD: Thank you.

11 Our next speaker will be J'Anthony  
12 Menjivar. J'Anthony Menjivar. Please remember  
13 to unmute your microphone. J'Anthony.

14 Okay. If you're having technical  
15 difficulties, we do have a technical difficulty  
16 phone line. The number is (949)861-5954. So if  
17 you're having technical difficulties, please  
18 call that number. Otherwise, we will move to  
19 the next person and we can get back to you later  
20 if you still would like to speak.

21 Our next speaker will be Peter Nelson.  
22 Peter Nelson.

23 PETER NELSON: Hi. Can you hear me?

24 CHAD BROUSSARD: Yes, I can.

25 PETER NELSON: Thank you. My name is

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1 Peter Nelson. And I'm a professor of  
2 Native-American studies at UC Berkeley. I hold  
3 a master's degree and Ph.D. in anthropology from  
4 UC Berkeley. And my area of expertise is  
5 Native-Americans in Central California. In my  
6 first academic post as a professor in American  
7 Indian studies at San Diego State, I also taught  
8 the department's course on Tribal gaming that  
9 was supported by the Sycuan Institute on Tribal  
10 Gaming. That course examined the economic,  
11 social, and political relationships between  
12 Native-American communities and the federal  
13 government to better understand tribal  
14 sovereignty and nation building. This brings me  
15 to a fundamental point of concern within the  
16 case of Koi Nation seeking to build a casino  
17 operation outside of their tribal territory.  
18 Despite what the EIS says, Koi Nation admits  
19 that their historical aboriginal territory is  
20 located within Lake County. Quoting from their  
21 own website, which I viewed and screenshot it as  
22 of today, they state that the ancestors of the  
23 Koi Nation, who are part of the Southeastern  
24 Pomo people, lived on the island village of Koi  
25 in Clear Lake. In 1856, the federal government

PH53-1  
cont.



1 forcibly removed many Pomo Tribes to the  
2 Mendocino Indian Reservation. The Koi, however,  
3 were allowed to remain on Koi Island in Lake  
4 County. Moreover, the historical narrative in  
5 the EIS desperately needs an unbiased expert  
6 peer review. According to Samuel Berrett's 1908  
7 comprehensive work on Pomo ethno-geography, the  
8 boundaries of the Southeastern Pomo area are  
9 within Lake County. In addition, several  
10 Tribes, including those affiliated with Bocul  
11 [phon.], Lake Miwok, Central Pomo, and Southern  
12 Pomo peoples are located between the  
13 southeastern Pomo area and the proposed area in  
14 Sonoma County. Koi Nation has thus never been  
15 historically, culturally affiliated with the  
16 area proposed in the Draft EIS, falsely claiming  
17 a connection to this area by arguing that past  
18 engagement and historic trade with Sonoma County  
19 Tribes or by arguing that some of the modern day  
20 members of Koi Nation live in Sonoma County is  
21 like saying any Tribe can receive land in trust  
22 wherever their citizens happen to travel  
23 throughout California or the United States. As  
24 a Native-American person myself from a restored  
25 local Tribe, Graton Rancheria, and a scholar of

PH53-1  
cont.

1 Native-American studies, I know how powerful  
2 tribal restoration can be for a community.  
3 However, the restoration of a Tribe's  
4 sovereignty, especially in the pursuit of Tribal  
5 gaming and land acquisition, must take place  
6 within their historic aboriginal territory. Koi  
7 Nation cannot be allowed to take the proposed  
8 land into trust that is outside of their  
9 aboriginal territory and build a casino  
10 operation in Sonoma County. This action would  
11 infringe on the sovereignty of Sonoma County  
12 Tribes and set a dangerous precedent of  
13 reservation shopping throughout the state of  
14 California and the United States as a whole.  
15 Please reject this project. Thank you.

16 CHAD BROUSSARD: Thank you.

17 Our next speaker will be Daniel Gregg.  
18 Daniel Gregg.

19 DANIEL GREGG: Good evening, members of  
20 the BIA commission. My name is Daniel Gregg.  
21 I'm a member of Carpenters Industrial Local  
22 2236. We perform work throughout Northern  
23 California. We do primarily architectural  
24 millwork, installation, and manufacturing of  
25 high-end cabinetry. We do trim work. I've

PH53-1  
cont.

1 actually had an opportunity to work on a project  
2 like this in the past. And it really helped me  
3 build my career and support my family as well.  
4 I think it is important that we support  
5 developers that are committed to working with  
6 carpenters who build these projects. I think in  
7 the past every new big development like this has  
8 been opposed by many members of the local  
9 community. Not all members of the local  
10 community. But once the project is completed  
11 and it becomes a focal point of tourism and  
12 excitement in the community and also financial  
13 support for the communities, local residents  
14 change their mind. So I am in full support of  
15 the project. I hope the BIA supports the EIS.  
16 And let's move this project forward. Thank you  
17 for your time.

18 CHAD BROUSSARD: Thank you.

19 Our next speaker will be Paul Pippin.

20 PAUL PIPPIN: Good evening. And thank  
21 you for the opportunity to speak tonight. Since  
22 2008, Global Gaming Solutions has successfully  
23 leveraged the business and technological  
24 expertise of the Chickasaw Nation to invest in  
25 gaming, racing, and entertainment industries.

1 GGS brings extensive experience in development,  
2 management, marketing, and public relations  
3 tribal gaming projects. We have had a  
4 successful history of partnering with Tribes,  
5 such as the Koi Nation, in projects that promise  
6 to provide economic sustainability to their  
7 Tribe and Tribal members. Over the last 16  
8 years, GGS has developed robust relationships in  
9 the gaming industry which has led to  
10 long-lasting partnerships, such as the one we  
11 are currently engaged with with the Koi Nation.  
12 Our experience in regional casino operations,  
13 understanding of the gaming and hospitality  
14 industries, operational philosophy for  
15 interaction with guests and staff, and  
16 commitment to local communities aligns with our  
17 partners in a way that offers the greatest  
18 opportunity to be successful.

19 We are here to discuss the  
20 Environmental Impact Statement process for the  
21 Shiloh Project and to reaffirm our commitment as  
22 a responsible partner and contributor to the  
23 community. In accordance with the National  
24 Environmental Policy Act implementing  
25 regulations, the EIS is thorough in topics

1 ranging from potential soil erosion to the  
2 demand for law enforcement services. This  
3 meticulous review was especially important given  
4 the local community's concern for pressing  
5 issues, such as wildfire safety, traffic  
6 impacts, groundwater usage, cultural resources,  
7 and public services. The EIS thoroughly  
8 addresses these issues in addition to multiple  
9 other community concerns and reflects the Koi  
10 Nation's thoughtful consideration of the local  
11 community's comments throughout the public  
12 notice and comment period.

13           Our commitment to being a good partner  
14 extends beyond the EIS process. As a company,  
15 we pride ourselves on our contributions to the  
16 communities we operate in. Over the years, we  
17 have invested in local infrastructure, supported  
18 educational initiatives, and funded community  
19 programs that drive social and economic  
20 development. Our employees are encouraged to  
21 volunteer. And we regularly participate in  
22 local events and activities.

23           In closing, I want to reiterate that  
24 global gaming solutions is fully committed to  
25 being an excellent partner and contributor to

1 the community through this project. Thank you  
2 for your attention. And we look forward to  
3 building this project which will provide  
4 significant economic impact to the community as  
5 well as our tribal members and partners, the Koi  
6 Nation.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Patricia  
9 Miraz. Patricia Miraz.

10 PATRICIA MIRAZ: Hello. Can you hear  
11 me?

12 CHAD BROUSSARD: Yes.

13 PATRICIA MIRAZ: Hi. My name is  
14 Patricia Miraz. And I serve as the Vice Chair  
15 of the Federated Indians of Graton Rancheria.  
16 It is deeply troubling that the Bureau of Indian  
17 Affairs has dismissed the inclusion of any land  
18 within the Koi Nation's ancestral territory as a  
19 potential site for this project. This omission  
20 represents a stark deviation from the BIA's  
21 established practices and sets a dangerous  
22 precedent. Historically, the BIA has always  
23 considered at least one alternative location  
24 within a Tribe's traditional lands in its  
25 environmental assessments for gaming projects on

PH56-1

1 restored territories. For example, when the BIA  
2 was evaluating proposals for our Tribe, it  
3 adhered to the standard by including land within  
4 our ancestral as part of its thorough review  
5 process. The current approach to the Koi Nation  
6 Project not only contradicts this pattern, but  
7 also fails to uphold the trust responsibility  
8 that is a fundamental duty of the federal  
9 government towards all tribes. This  
10 responsibility necessitates adherence to federal  
11 laws and departmental precedences, which are  
12 designed to ensure a consistent and transparent  
13 process across all Tribal projects. Thereby  
14 preventing inequitable treatment. The BIA's  
15 current failure in this regard is alarming, yet  
16 I remain hopeful. It is imperative that the BIA  
17 reassesses its stance and aligns its actions  
18 with its long-standing obligations, thereby  
19 upholding fairness and integrity in managing  
20 this and future projects. Because BIA did not  
21 consider a Lake County site, the entire process  
22 is flawed. BIA should start over again. This  
23 time considering an alternative site within the  
24 Koi Nation's aboriginal lands.

25 Lastly, I strongly support initiatives

PH56-1  
cont.



1 in fostering job creation and community bonds  
2 within Koi Nation's ancestral lands in Lake  
3 County. This commitment is even more crucial  
4 given the current 5.7 percent unemployment rate  
5 in Clear Lake, a city currently facing legal  
6 action from the Koi Nation -- Koi Nation for not  
7 fulfilling its obligations under the California  
8 Environmental Quality Act. Thank you.

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be Sal Parisi.  
11 Sal Parisi.

12 SAL PARISI: Hi. Good evening. My  
13 name is Sal. I'm a proud member of Millwrights  
14 Local 102. And I am in strong support of the  
15 Koi Nation Shiloh Resort and Casino in Windsor.  
16 This project is a great opportunity for me, as  
17 well as my brothers and sisters, to go to work.  
18 And -- and with so many other projects getting  
19 pushed back or current companies leaving  
20 California, it is nice to see something of this  
21 size coming in, being built with livable wages  
22 and benefits. So I strongly urge the BIA's  
23 approval of the EIS. Thank you.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Dino Franklin.

1 Dino Franklin.

2 DINO FRANKLIN, JR.: Thank you, Chad.

3 I appreciate it. My name is Dino Franklin. I'm  
4 the Tribal Chairman for the Kashia Band of Pomo  
5 Indians. I come because I have a comment to  
6 make for both -- for our Tribe. I want to  
7 remind everybody out there that I'm a servant of  
8 the people. Just because I'm a chairman doesn't  
9 give me the right to speak my own mind. It  
10 doesn't give me the right to speak my own  
11 opinion. So I'm here to represent two halves of  
12 my Tribe. There is a split in how we feel about  
13 Koi Nation's project, their proposed casino.  
14 Half of our people -- I believe around half of  
15 our people are in opposition of the Koi Nation.  
16 Simply for the fact that they are a Tribe that  
17 is not from our aboriginal areas, which is the  
18 Sonoma County areas. I'll be clear that we are  
19 the Tribe on the coast and the northwest corner  
20 of Sonoma County. We are a Tribe who has been  
21 on the lands of our trust lands for the last  
22 hundred years. And we are -- we are one of the  
23 last Tribes to have actual living members, now  
24 with Lytton having members on their trust lands  
25 in Windsor.

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1 I also want to state that half of the  
2 Tribe also feels in -- in support of Koi Nation.  
3 So I'm representing two halves. I've been given  
4 instruction to do that. And so there's our  
5 comments from Kashia. We will be meeting again  
6 here with the general council meeting in August,  
7 which we will bring back to the general  
8 membership again to get their comments some  
9 more. And we will submit some written comments  
10 before August 26.

11 Thank you for your time, Chad.

12 CHAD BROUSSARD: Thank you, Chairman  
13 Franklin.

14 Our next speaker will be Tanya Potter.  
15 Tanya Potter.

16 TANYA POTTER: Good evening. Thank you  
17 so much for the opportunity to speak tonight.  
18 My name is Tanya Potter. And I'm currently the  
19 vice mayor for the Town of Windsor. And as was  
20 stated earlier by Councilmember Fudge, the Town  
21 Council will be submitting in writing our  
22 opinions about the Draft EIS. Although, I did  
23 want to give a few comments this evening.  
24 First, in the Draft EIS, there are no mitigating  
25 comments regarding the 2800-seat event center

PH58-1  
cont.

PH59-1

1 and how the traffic impacts will be mitigated  
2 for each event that occurs. There is limited  
3 egress from the actual proposed event center.  
4 And having an enormous amount of vehicle traffic  
5 leave after each event is troubling. I attended  
6 an event at Thunder Valley Casino. And Thunder  
7 Valley Casino, outside of Sacramento, is  
8 considerably larger. It is about double the  
9 size. But it sits out in the middle of nowhere  
10 and does not sit next to residential areas. And  
11 that casino has a contract with the California  
12 Highway Patrol to mitigate traffic. There is no  
13 talk about any contracts with the California  
14 Highway Patrol to mitigate the traffic in this  
15 area. Only that there would be a good faith  
16 effort to contract with Sonoma County Sheriff's  
17 Department. The Sonoma County Sheriff's  
18 Department does not handle traffic enforcement  
19 on unincorporated roadways in Sonoma County. I  
20 would like to see mitigation efforts in  
21 contracting with the CHP for significant events.

22 Additionally, in the mitigation section  
23 of this report, it does not address -- excuse  
24 me -- it does not address or mention the  
25 approved protected bicycle and pedestrian lanes

PH59-1  
cont.

PH59-2

1 that have been added to -- that will be added to  
2 Shiloh Road before the beginning of this  
3 project. And the -- it is not addressed in the  
4 restriping plan or the widening plan for Shiloh  
5 Road. This is not acceptable mitigation. It  
6 would only be acceptable mitigation if the  
7 bicycle lanes and pedestrian lanes weren't  
8 included. Additionally the restriping is  
9 limited and causes -- and will cause  
10 bottlenecking in the area where traffic  
11 congestion is already high at Shiloh and Old  
12 Redwood Highway. But also puts a burden of the  
13 cost of mitigation on the town, which is  
14 unacceptable. All mitigation costs, not just  
15 fair share, should be covered by the Koi Nation.  
16 This includes creating a comprehensive plan to  
17 assist the Town of Windsor going forward on  
18 roadway maintenance due to the increased traffic  
19 specifically caused by their project.

20 A lot of callers have discussed the  
21 evacuation mitigation, which I believe is  
22 unacceptable. Increasing -- having the amount  
23 of traffic that is currently proposed for the  
24 Koi Nation project causes this area to be  
25 unmitigable for fire evacuation. For it to

PH59-2  
cont.

PH59-3

1 be -- to suggest that evacuations for wildfire  
2 would increase six to eight hours is too much  
3 for this area and would cause the community  
4 members in this area to not be able to safely  
5 evacuate. And I don't believe that there is any  
6 way to properly mitigate this location. I'm  
7 making -- I'm sorry. Inappropriate place for  
8 this project to be built. Additionally --

PH59-3  
cont.

9 CHAD BROUSSARD: Your time is up. I  
10 would ask you to wrap up your comments, please.

11 TANYA POTTER: Great. Thank you.  
12 Additionally, I believe that the -- there needs  
13 to be a better plan for law enforcement to be  
14 able to mitigate the burglary, theft, and human  
15 trafficking that will be brought in by this  
16 project. I can support this project if it is in  
17 a place in the Koi Nation's land of Lake County  
18 and if it is outside of a residential area to  
19 mitigate the ability for people to get out  
20 during evacuations. Thank you.

PH59-4

21 CHAD BROUSSARD: Thank you.

22 Our next speaker will be Melissa Elgin.  
23 Melissa Elgin.

24 MELISSA ELGIN: Hello.

25 CHAD BROUSSARD: Hi.

1           MELISSA ELGIN: Hi. My name is Melissa  
2 Elgin. And I am the Tribal Council Secretary  
3 for the Federated Indians of Graton Rancheria.  
4 As someone who has been working in my tribal  
5 community, especially with tribal elders and  
6 linguists to revitalize our Tribe's culture and  
7 heritage through basketry and language, I'm very  
8 concerned about the impacts of this project to  
9 my Tribe. Graton has been spending countless  
10 resources to build our language program and to  
11 help our tribal citizens reconnect with the  
12 Southern Pomo language. It is disheartening to  
13 hear that another Tribe is now trying to use our  
14 shared language history as justification for  
15 displacing Southern Pomo people from our  
16 ancestral territory. The Southern Pomo language  
17 is one of many Pomo languages. It is unique and  
18 distinct from the Southeastern Pomo language  
19 spoken by the Koi Nation. This feels the same  
20 as someone from Spain saying that their home is  
21 Italy just because they speak Latin languages.  
22 Languages bind us, but they also make us unique.  
23 While we are all Pomo, it is offensive to  
24 suggest that our linguistic ties justify the Koi  
25 Nation moving to our ancestral territory. It

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1 risks destroying what makes us unique as  
2 distinct Pomo peoples and Tribes. For  
3 generations now, the Federated Indians of Graton  
4 Rancheria have been fighting to maintain our  
5 identity in the face of federal and state  
6 policies that seek to erase us. It is my hope  
7 that our languages will not be used against us  
8 to justify this project. Thank you.

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be Matthew  
11 Johnson. Matthew Johnson.

12 MATTHEW JOHNSON: Can you hear me okay?

13 CHAD BROUSSARD: Yes, I can.

14 MATTHEW JOHNSON: Okay. Thank you.

15 Good evening. My name is Matthew  
16 Johnson. And I'm an enrolled Tribal citizen of  
17 the Federated Indians of Graton Rancheria. I  
18 currently serve as a member at large on our  
19 Tribal council. Prior to serving on Tribal  
20 council, I spent many years in our cultural  
21 resources department focusing on sacred site  
22 protection in our ancestral territory. I have  
23 had the deep honor to learn from our tribal  
24 elders the importance of caring for our  
25 ancestors and ensuring that the correct measures

1 are taken to not disturb sacred sites, burial  
2 grounds, or areas of cultural significance. We  
3 have fought long and hard to gain the right to  
4 exercise our responsibilities as stewards and  
5 caretakers of our homelands. And it deeply  
6 troubles me to know that when it comes to the  
7 land designated for the Shiloh Resort and  
8 casino, we may lose that right. Against all  
9 odds, we have taken care of our ancestors and  
10 ancestral lands time immemorial, long before we  
11 were federally recognized. Many of the elders  
12 that have done this work have shown me how to  
13 continue this practice in the traditional way.  
14 It is deeply ingrained in our culture to steward  
15 and care for our ancestral homelands and our  
16 sacred places. And this should not be lost on  
17 any other Tribe in this area who have their own  
18 way to tending to such matters. Our ancestors  
19 have always been respectful of the ancestral  
20 territories of other Tribes. And it is deeply  
21 offensive to know that this respect is not being  
22 continued today. Our ancestors depend on us.  
23 And we must stand for what is right. And  
24 therefore, I strongly urge the BIA to put a halt  
25 to this project and allow us to continue the

1 work we have done for generation upon  
2 generation. Thank you.

3 CHAD BROUSSARD: Thank you.

4 Our next speaker will be Juan Quevedo.  
5 Juan Quevedo.

6 Please remember to unmute your  
7 microphone. Juan Quevedo.

8 Okay. If you're having difficulties,  
9 remember we have a technical support line. And  
10 we will come back to you later.

11 So we're going to move on to Debra  
12 Avanche.

13 JUAN QUEVEDO: Hello. Hello.

14 CHAD BROUSSARD: Juan?

15 JUAN QUEVEDO: Yes. Hello. Can you --

16 CHAD BROUSSARD: Yes, I can hear you.

17 JUAN QUEVEDO: Okay. My name is Juan  
18 Quevedo. I'm a carpenter drywaller from 9068.  
19 I'm 20 years as a carpenter. So I fully support  
20 this project. And I ask the BIA to approve the  
21 EIS. That's all the comment that I say. I am  
22 in full support to this project. Thank you so  
23 much for your time.

24 CHAD BROUSSARD: Thank you.

25 JUAN QUEVEDO: And good evening to

1 everyone.

2 CHAD BROUSSARD: Our next speaker will  
3 be Debra Avanche. Debra Avanche.

4 DEBRA AVANCHE: Hi. My name is Debra  
5 Avanche. And I live on East Shiloh Road. This  
6 has been my family's home for over 34 years now.  
7 My kids and grandkids grew up here. I haven't  
8 heard too many of my neighbors on. I hope  
9 they're still hanging onto this call. Anyway,  
10 thank you for the opportunity to again address  
11 concerns regarding the proposed large-scale  
12 casino on East Shiloh Road. It's been almost  
13 three years since our community was blindsided  
14 by an article in The Press Democrat about the  
15 sale of this 68-acre property in question to the  
16 Lake County-based Koi Tribal nation for the  
17 purpose of developing a casino operation running  
18 24/7. We followed as closely as we can without  
19 the benefit or advice of lawyers, such as are  
20 available to the Koi Tribal members. We have  
21 met with our local elected representatives,  
22 written letters to the Bureau of Indian Affairs,  
23 made phone calls, participated in Zoom meetings  
24 in laying out our concerns. This community has  
25 made our own video to truthfully depict the area

1 bordering our homes, parks, schools, church.  
2 And unlike the misleading professional video  
3 produced by the Oklahoma Chickasaw funds. So  
4 here is another Zoom meeting. And we will state  
5 our concerns again. But I'm disappointed that  
6 the Bureau of Indian Affairs has not answered  
7 any of my correspondence or phone calls  
8 following the initial environmental report. I  
9 had no idea if any of the powers that be have  
10 actually viewed this site in person as I asked.  
11 No response whatsoever. Why was this site  
12 chosen? Why not Lake County? This property is  
13 designated as rural, residential, agricultural,  
14 as well as open space by our representatives in  
15 Sonoma County and bordering towns. How is it  
16 that an Oklahoma casino operation and a  
17 Native-American Tribe from Lake County with  
18 holdings still in Lake County can come in and  
19 upend our community to choose this site in this  
20 area for such an inappropriate use? I  
21 understand and agree that the Koi Tribal members  
22 deserve to be made whole from the harms done to  
23 their own community over the past decades. But  
24 I'm not buying that this is the reasonable  
25 answer. Our own community not only reaps no

1 benefits, but the downsides are egregious. And  
2 many others tonight will speak to these harms to  
3 the land and the riparian wildlife safety  
4 issues, water depletion. I've got a well. Many  
5 of my neighbors have wells. Wildfires and  
6 evacuation. These are all valid existing  
7 concerns. The mitigations and Best Management  
8 Practices noted in the EIS are unrealistic and  
9 enforcement seems largely based on the honor  
10 system. Please heed our concerns in a  
11 reasonable manner. People are passionate about  
12 their community. And the community would like  
13 to remain whole as well and continue to have a  
14 livable environment. No casino. Thank you.

15 CHAD BROUSSARD: Thank you.

16 Our next speaker is a -- someone  
17 calling in. The last four digits of the phone  
18 number are 6694. 6694. Press star 6.

19 ARTURO RODRIGUEZ: Good evening. My  
20 name is Arturo Rodriguez. Carpenters Union  
21 2236. I've had the pleasure to listen to both  
22 sides tonight. And I don't want to go over  
23 everything. But I would like to say that what  
24 comes to mind in this project I'm urging you to  
25 move forward is opportunity. Opportunity for

1 economic growth. Opportunity to have further  
2 discussions. Some of the comments made by the  
3 opposition. I think everything that has been  
4 stated by my brother/sister members, it gives  
5 great hope for -- not only hope, but pathways  
6 for apprentices, for careers, and also pathways  
7 for people to get into the hotel casino  
8 business. I think economic growth here will  
9 help mitigate and bring solutions to some of the  
10 concerns brought forward. But, again, I urge  
11 you to move forward with this project and accept  
12 the EIS. Thank you very much.

13 CHAD BROUSSARD: Thank you.

14 Our next speaker will be Weng Tam.

15 Weng Tam.

16 WENG TAM: Hi. Good evening. My name  
17 is Weng Tam. I've been a carpenter for 30 years  
18 already. So this is a great opportunity for me  
19 to support my family for financial or health  
20 care. So I urge the BIA to approve the EIS.  
21 Thank you. I strongly support this project to  
22 feed my family. Give me an opportunity for  
23 working on this project. Thank you very much.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker is Cesar Plascencia.



1 Cesar Plascencia.

2 CESAR PLASCENCIA: Hello.

3 CHAD BROUSSARD: Hello.

4 CESAR PLASCENCIA: Can you hear me?

5 CHAD BROUSSARD: Yes, I can hear you.

6 CESAR PLASCENCIA: Hello. Yes. My  
7 name is Cesar Plascencia. And I'm a member of  
8 Nor Cal Carpenters Union with an interest for  
9 the future of our community. I am here to wish  
10 my strong support for the proposed casino  
11 resort. And the many worker opportunities  
12 mentioned means steady work and economic  
13 stability for the families in our area. I urge  
14 the BIA to approve the EIS. And thank you for  
15 letting me speak.

16 CHAD BROUSSARD: Thank you.

17 Our next speaker is Silray Garcia.  
18 Silray Garcia.

19 SILRAY GARCIA: Hello. My name is  
20 Silray Garcia. I'm a Northern California  
21 carpenter. I urge the BIA to approve the EIS  
22 project. It will not only bring much needed  
23 long-term revenue and jobs to this community and  
24 the neighboring communities, it will also bring  
25 much needed jobs to our union members. 1600

1 approximately. Jobs that include an  
2 apprenticeship program, fair living wage, local  
3 hire, and health care benefits. Once again, I  
4 urge you to please approve this project. Thank  
5 you. And thank you for having me speak.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker will be Maria Elliott.  
8 Maria Elliott.

9 MARIA ELLIOTT: Can you hear me?

10 CHAD BROUSSARD: Yes, I can.

11 MARIA ELLIOTT: Okay. Hello. My name  
12 is Maria Elliott. I'm the vice chairperson for  
13 Cloverdale Rancheria, Pomo Indians of  
14 California. We are an indigenous Tribe of  
15 Sonoma County. Cloverdale Rancheria have sent  
16 letters of opposition to the Koi Nation coming  
17 into Sonoma County when they obviously are from  
18 Lake County. The Koi Nation is currently suing  
19 the city of Clear Lake to protect their  
20 traditional Koi land. How can they sue Clear  
21 Lake for traditional lands and still say they're  
22 from Sonoma County? It is worrisome that the  
23 Bureau of Indian Affairs and the Department of  
24 Interior have not permitted any Tribe to view  
25 the evidence submitted by Koi Nation regarding

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1 their supposed ties to Windsor. From what we  
2 have seen, this project has little to no  
3 enforcement mechanisms for Koi Nation's proposed  
4 mitigation measures. The people of Sonoma  
5 County have experienced the disaster and harm  
6 from the wildfires. This project will make all  
7 of that much worse. And the Koi Nation by no  
8 means obligated to try and lessen these harms.  
9 We know this will prolong the time needed to  
10 evacuate Windsor by hours. As a resident of  
11 Windsor of over 50 years, I can personally speak  
12 to the experience I faced trying to get out  
13 during that evacuation. And I do find it a bit  
14 offensive when people say, oh, they can mitigate  
15 it. Unless you have lived it and were in it,  
16 you have no idea. I live approximately one and  
17 a half miles from two different freeway  
18 entrances. And it took me over two hours to get  
19 to the freeway. It is unreasonable to say that  
20 they can evacuate an entire casino in one to two  
21 hours. It is not realistic. And it will cause  
22 death. The BIA takes for granted that the Koi  
23 Nation, simply because they have tribal offices  
24 in Santa Rosa, are a Sonoma County Tribe. If  
25 this is the case, how many California Tribes can

PH68-1  
cont.

PH68-2

PH68-3

1 go anywhere in California and say they're from  
2 there? This is not right. This will be setting  
3 precedent and is very dangerous for all  
4 California Tribes, which will allow reservation  
5 shopping. Ultimately Cloverdale Rancheria is  
6 calling for an extension of the public comment  
7 period, for the BIA to hold meaningful  
8 consultations with the affected local Tribes.  
9 For them to let us view Koi Nation's submitted  
10 materials, for the Department of Interior to  
11 stop ignoring our letters, emails, and concerns.  
12 And most importantly, I ask that this  
13 application be rejected. In ending, allowing a  
14 non-Sonoma County Tribe to reservation shop and  
15 have lands in Windsor become restored tribal  
16 lands will hurt all of the Tribes in  
17 California -- Sonoma County. And it will  
18 definitely harm Rancheria tribal members'  
19 futures. Thank you.

20 CHAD BROUSSARD: Thank you.

21 Our next speaker will be Dan Branton.  
22 Dan Branton.

23 DAN BRANTON: Can you hear me?

24 CHAD BROUSSARD: Yes, I can.

25 DAN BRANTON: My name is Dan Branton.

PH68-3  
cont.

PH68-4

1 I just wanted to say that the top environmental  
2 concerns have been heard and thoughtful  
3 mitigations have been put in place. This is a  
4 huge community benefit to this -- you know, to  
5 this project. And I strongly urge the approval  
6 of the EIS. Thank you for your consideration.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Neildon  
9 JnCharles.

10 NEILDON JNCHARLES: Yes. Can you hear  
11 me?

12 CHAD BROUSSARD: Yes, I can.

13 NEILDON JNCHARLES: Okay. Neildon  
14 JnCharles, like you said. I just want to say as  
15 communities continue to grow, the need for jobs  
16 becomes very vital to having a community. And  
17 this project right here is exactly what it is  
18 going to be doing. It is estimated to provide  
19 about 1500 permanent jobs that would be created.  
20 These are jobs for workers that live in Sonoma  
21 County will actually be doing. That is putting  
22 roughly about moneys in 1800 residents in Sonoma  
23 County. The BIA has the authority to put,  
24 again, 1500 permanent jobs to help thousands of  
25 families. But not only permanent jobs, also

1 construction jobs. And I know a few folks have  
2 said it, but we have partnered with the Koi  
3 Tribe to make sure that workers who will be  
4 building this project are highly skilled  
5 workers. And I am also part of the  
6 State-approved apprentice program. Utilizing  
7 contractors that are focused on training the  
8 next generation of construction workers. These  
9 are also workers who will be building this  
10 project. The BIA right now can play a major  
11 part in this -- in the community by reinvesting  
12 into the workforce by approving this project. I  
13 want to urge the BIA to approve the EIS. Thank  
14 you.

15 CHAD BROUSSARD: Thank you.

16 Our next speaker will be Lawrence  
17 Stafford. Lawrence Stafford. Remember to --

18 LAWRENCE STAFFORD: Hi. Can you hear  
19 me?

20 CHAD BROUSSARD: Yes, I can.

21 LAWRENCE STAFFORD: Oh, great. Good  
22 evening. My name is Lawrence Stafford. I'm a  
23 tribal member of the Tribal Council of the  
24 Federated Indians of Graton Rancheria. Tribes  
25 in California were decimated in place by federal

1 and state policies. Unlike Tribes in other  
2 parts of the country that were forcibly  
3 relocated. Many families left their Tribes  
4 ancestral lands to survive. But they returned  
5 to their home territories. And that temporary  
6 relocation did not change their historic  
7 homelands. For example, traveling through other  
8 established tribal nations, ancestral lands does  
9 not constitute a historical connection within  
10 the lands they travel through, and relocating  
11 from Lake County and setting up personal  
12 residence in Sonoma County does not constitute  
13 relocating your tribal government. It's a  
14 reflection of what we had to do to survive since  
15 colonization in California. And we always came  
16 back to our historic homelands. The Koi Nation  
17 picked the proposed site within the heart of  
18 Sonoma County for the sole purpose of gaming.  
19 And not because they have a historic connection  
20 to the land. This is not a gaming monopoly  
21 issue, as they claim. It is a direct assault on  
22 the Tribal sovereignty of the federally  
23 recognized tribal governments within Sonoma  
24 County. I urge the BIA to deny this project.  
25 Thank you.



1 CHAD BROUSSARD: Thank you.

2 Our next speaker will be Matthew  
3 Wardlaw. Matthew Wardlaw.

4 MATTHEW WARDLAW: Good evening. Thank  
5 you for letting me speak tonight. My name is  
6 Matthew Wardlaw. I'm a proud member of  
7 Millwrights Local 102 in the Carpenters Union.  
8 I ask the BIA to please approve this EIS for the  
9 potential jobs of permanent and of the building  
10 of the project. And that's all. Thank you very  
11 much for letting me speak.

12 CHAD BROUSSARD: Thank you. Our next  
13 speaker will be Palemon Frausto. Palemon  
14 Frausto.

15 PALEMON FRAUSTO: Hey. How is it  
16 going? Good evening.

17 CHAD BROUSSARD: Hi.

18 PALEMON FRAUSTO: Can you hear me?

19 CHAD BROUSSARD: Yes, I can.

20 PALEMON FRAUSTO: My name is Palemon  
21 Frausto. And I'm calling in favor of the Koi  
22 Nation Shiloh Resort. This would be a great  
23 asset I think to the community. And this  
24 project would not only bring close to 3200 jobs,  
25 half of them being permanent, local jobs, but a

1 tremendous boost to the local economy. Not to  
2 mention the tax revenue it would bring. And,  
3 you know, these jobs would also support local  
4 working families. Not to mention the mitigation  
5 efforts clearly proposed on the EIS. And,  
6 again, I urge the Bureau of Indian Affairs to  
7 approve the EIS. Thank you.

8 CHAD BROUSSARD: Thank you.

9 Our next speaker will be Beverly Ortiz.  
10 Beverly Ortiz.

11 BEVERLY ORTIZ: Hello. I'm Dr. Beverly  
12 Ortiz, a cultural anthropologist who has worked  
13 on a wide variety of projects with hundreds of  
14 Native Californians from every region of the  
15 state for 48 years. Today I want to address an  
16 aspect of the problematic underlying restored  
17 land claim inherent in this project that hasn't  
18 yet been raised in the same way. The fact that  
19 in relatively recent decades, due to the federal  
20 government's relocation program and for varied  
21 economic reasons, Native people from throughout  
22 the places now known as California and the  
23 greater U.S. left their rural homelands to seek  
24 job opportunities in urban areas, including in  
25 Sonoma County. This is the reason that the

1 state of California has for decades alternated  
2 between having the largest and second largest  
3 population of Native peoples of any state in the  
4 United States, based on the U.S. census, most  
5 from Tribes well beyond present day California's  
6 borders. It is also the reason that if the BIA  
7 puts the land under consideration here in trust  
8 for the Koi Nation, that decision would set a  
9 deeply concerning precedent. The permitting of  
10 landless Tribes to establish trust land far from  
11 their ancestral homelands based on relatively  
12 recent ties to a given location. While I  
13 strongly support the establishment of land in  
14 trust for all Tribes, including the Koi Nation,  
15 I'm concerned that in this case, addressing one  
16 injustice, Koi's current status as a landless  
17 Tribe, will create another far-reaching present  
18 day. One, the aforementioned precedent that  
19 landless Tribes can establish land in trust in  
20 the homeland of other Tribes rather than within  
21 their own.

22 I'm going to follow up this verbal  
23 comment with a written one that details the  
24 underlying tribal territorial issues of this  
25 project, as well as the section 106 review

1 implications of these. Thank you.

2 CHAD BROUSSARD: Thank you. Our next  
3 speaker will be Noah Starr. Noah Starr.

4 NOAH STARR: Good evening. My name is  
5 Noah Starr, speaking on behalf of Singer  
6 Associates. We have the distinct honor of  
7 working for the Koi Nation on this distinct  
8 project. Our agency's founder, Sam Singer, who  
9 unfortunately could not be here, has worked with  
10 the Koi for nearly four years and has known  
11 their leadership for well over a decade. We  
12 urge the BIA's approval of the Draft EIS. Our  
13 agency has studied the EIS carefully, and we  
14 believe the mitigation measures surrounding  
15 wildfire, traffic and circulation and evacuation  
16 times, and groundwater depletion are thoughtful  
17 and they are earnest in their effort to respond  
18 to and address community concerns. As a matter  
19 of law and fact, the Koi are pursuing this  
20 project in the most appropriate way possible.  
21 And we applaud the Tribe's commitment to  
22 transparency and listening to community  
23 concerns. Most importantly, though, the Draft  
24 EIS mitigation efforts reflect how the Koi  
25 Nation is and will continue to be an excellent

1 steward of their land. Not just now but in the  
2 future, as they continue to listen to community  
3 concerns and contribute back to the community.  
4 I want to note finally that the 1600  
5 construction jobs and nearly equal number of  
6 permanent jobs will be a benefit to the economy.  
7 Again, I urge the approval of the Draft EIS and  
8 thank you for your time.

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be Sergio  
11 Jimenez. Sergio Jimenez.

12 SERGIO JIMENEZ: Can you hear me?

13 CHAD BROUSSARD: Yes, I can.

14 SERGIO JIMENEZ: Okay. Good afternoon.  
15 My name is Sergio Jimenez. I am a carpenter  
16 with the Nor Cal Carpenters Union. The EIS  
17 addresses the community's top three concerns,  
18 fire, evacuation, and groundwater. That being  
19 said, all the benefits the community will gain  
20 from the short- and long-term jobs created by  
21 this project in this economy, I have to urge the  
22 BIA's approval of the EIS. And that's all.  
23 Thank you for your time.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Yana Ross.

1 Yana Ross.

2 YANA ROSS: Hi. Can you hear me?

3 CHAD BROUSSARD: Yes, I can.

4 YANA ROSS: Great. Thank you. Good  
5 evening, everyone. This is Yana Ross from Santa  
6 Rosa. Thank you to Amy Dutschke, Pacific  
7 Regional Director, and Brad [sic] Broussard,  
8 Environmental Protection Specialist of the BIA,  
9 for conducting another public hearing on the  
10 Draft Environmental Impact Statement for the  
11 Koi's proposed resort and casino on Shiloh Road.  
12 I understand as a federally recognized Tribe,  
13 the BIA is obligated to entertain this  
14 administrative process, but that's as far as it  
15 should go. In fact, if the federal Department  
16 of the Interior actually puts these 68 acres  
17 into trust for the Koi Tribe -- by the way,  
18 named after their ancestral village in their  
19 ancestral homeland of Lake County, 60 miles  
20 away -- you will have done a grave injustice to  
21 my Tribe, the Southern Pomo and Coast Miwok  
22 People of the Federated Indians of Graton  
23 Rancheria, whose ancestral territory spans  
24 Sonoma and Marin County. And you will be  
25 setting the stage for any Tribe to assert

1 themselves into the homelands of other tribal  
2 nations long established since time immemorial.  
3 It would be a crying shame for the Bureau to  
4 attempt to right the wrongs of the past by  
5 approving more wrongs now and into the future.  
6 What the Koi are doing is the definition of  
7 reservation shopping. And their justification  
8 about having work and trade ties to Sonoma  
9 County is a weak and greedy attempt to create a  
10 false narrative that they belong to this area.  
11 For any other tribal citizens listening, Koi  
12 members, the Chickasaw Tribe of Oklahoma, who is  
13 bank rolling this purchase and process, and  
14 other tribal citizens of Sonoma County, whether  
15 that be Lytton Pomo, Dry Creek Pomo, and Kashia  
16 Pomo, we know and we have to agree that it is  
17 wrong for Koi to come into our tribal territory  
18 this way. Just like it would be if we tried to  
19 pull this stunt on them. Every tribal people is  
20 inextricably linked to their homeland. It is  
21 part of what defines us. Just as Koi is in  
22 Clear Lake in Lake County. No self-respecting  
23 Indian person should stand for this on principle  
24 alone. I'm all for self-determination and  
25 economic development for Indian people in their



1 own territory. When my Tribe was seeking to  
2 find land to put into trust in our traditional  
3 homelands, we had to look at multiple sites. We  
4 didn't just buy a convenient plot of land and  
5 make our case. So I have to ask, why doesn't  
6 Koi have to look at multiple sites on land that  
7 they actually have a legitimate claim to? They  
8 even have a documentary about their ancestral  
9 connection to Clear Lake. That is not disputes.  
10 So I ask the BIA to please stop legitimizing  
11 their false claims. Koi has not proved that it  
12 has standing entitlement to this area because it  
13 doesn't exist. The BIA's mission is to enhance  
14 the quality of life, to promote economic  
15 opportunity, and to carry out the responsibility  
16 to protect and improve the trust assets of  
17 American Indians, Indian Tribes, and Alaskan  
18 Natives. And if you approve that, you would be  
19 going against our Tribe and everything that we  
20 have worked for in our homelands. I'm out of  
21 time. But thank you for the opportunity to  
22 speak and for the hearing. Good evening.

23 CHAD BROUSSARD: Thank you.

24 Our next speaker will be Alan Titus.

25 Alan Titus. Don't forget to unmute your

1 microphone. Alan Titus.

2 Okay. Alan, if you're having technical  
3 difficulties, please call our phone line. And  
4 we will come back to you later and see if you  
5 would still like to make a comment.

6 So we're going to go now to Carrie  
7 Marvin. Carrie Marvin.

8 CARRIE MARVIN: This is Carrie Marvin.  
9 It continues to shock the mind that the BIA is  
10 still considering this project. The fact is  
11 that the Graton Rancheria, Coast Miwok, and  
12 Southern Pomo, and Lytton Rancheria do not want  
13 this casino 15 minutes -- 15 miles away from  
14 them. Just as they are expanding another large  
15 casino to a significantly larger one. Not just  
16 that, by River Rock Casino, run by the Dry Creek  
17 Rancheria, also do not want this casino which is  
18 15 minutes -- miles south of their -- of their  
19 casino. Sorry. I think that is north. And an  
20 Oklahoma Tribe stands to profit, making millions  
21 upon millions of dollars. Nor Cal Carpenters  
22 Union sent their minions from places like Santa  
23 Cruz and beyond, hours away from our small town,  
24 calling in over and over monopolizing the calls,  
25 begging the BIA to approve the project. And

1 these workers do not live here. They're union  
2 workers calling to get work. Nor Cal Union is  
3 based in Oakland, with offices throughout  
4 California. Fresno, Sacramento, San Jose. The  
5 majority of them could care less about our town  
6 as they don't live here. I wonder if they have  
7 been paid to call in. I don't know. But for  
8 sure they just want their construction work. I  
9 can't imagine how they would feel if it was in  
10 their neighborhood. These carpenters care about  
11 their dollar and their next jobs. Jobs are not  
12 an environmental impact. So I'm not sure why  
13 they are calling in over and over, causing local  
14 neighbors to get off of this call. Also, as a  
15 reminder, Sonoma County has a 4 percent  
16 unemployment rate. So it will also be difficult  
17 even to hire local people to fill that casino's  
18 jobs. We all know the Koi are not native to the  
19 Town of Windsor. They are Lake County heritage.  
20 This is not the first piece of land that they  
21 have purchased for this opportunity to casino  
22 shop, as they purchased land in Oakland. Even  
23 in Wikipedia, they talk about how thousands and  
24 thousands of years ago, they were based in Clear  
25 Lake. That is far from us. This is not their

1 aboriginal territory and is clearly casino  
2 shopping. Now the Koi are looking to decimate  
3 our small town that sits in the middle of a fire  
4 zone. They're planning on building such an  
5 enormous casino and hotel that they require over  
6 5,000 parking spots and, I understand, seven  
7 wells. Evacuating during a fire is terrifying.  
8 We know that when there are a lot of cars and  
9 not a lot of places to go, highways backing up  
10 for hours, people can die, like they did in  
11 Lahaina. We continue to have fires. Just had a  
12 small one last week on Chalk Hill Road a week  
13 ago, minutes from this casino. Fires are  
14 inevitable here. And it will be completely  
15 irresponsible to build this casino. If the BIA  
16 causes deaths of Windsor residents and thousands  
17 of casino guests and casino workers trying to  
18 evacuate, I guarantee there will be lawsuits.  
19 We here in our county here, we are warning you,  
20 we are telling you loudly and clearly, that this  
21 casino doesn't belong in this neighborhood. We  
22 are screaming out loud to you that the fire  
23 danger is quite high. It doesn't take into  
24 account how many new people are in Windsor.  
25 These new apartments. That this land was a

1 wetland that was a fire break.

2 CHAD BROUSSARD: Your time is up. Can  
3 I ask you to wrap up your comments, please.

4 CARRIE MARVIN: Yes. Hundreds of us  
5 here, right here in Windsor, have lost our fire  
6 insurance. It is -- you cannot imagine. If you  
7 don't live here, you don't understand. There is  
8 much more that I have to say. And I will  
9 certainly send it in a -- in a letter or an  
10 email to you. And I hope more people, Sonoma  
11 County, live in Windsor, are able to call in and  
12 talk. I already know many who have hung up from  
13 this call. Thank you.

14 CHAD BROUSSARD: Thank you.

15 Our next speaker will be Eugene Morse.  
16 Eugene Morse.

17 EUGENE MORSE: Yeah. Good evening.

18 CHAD BROUSSARD: Hello.

19 EUGENE MORSE: Can you hear me?

20 CHAD BROUSSARD: Yes.

21 EUGENE MORSE: Good evening. Thank you  
22 for taking the time to hear me tonight. My name  
23 is Eugene Morse. I'm a -- I'm with Northern  
24 California Carpenters Union. And I'm calling in  
25 to urge the BIA's approval of the EIS. Now,

1 there's a couple of things that I've heard over  
2 the night that I'm not going to keep repeating.  
3 But I do know that we have at least 1500  
4 residents of Sonoma County that can live local,  
5 work local, and be local. That's the whole  
6 objective of having local projects in local  
7 areas, to provide good health care,  
8 apprenticeship, and work for -- to live local  
9 and be local. Yes, we are carpenters. We do  
10 travel to go to work. But it would be nice to  
11 work at home sometimes. So I think the fire  
12 evacuation plan and groundwater has already been  
13 touched on. So I would just urge the BIA to  
14 give the opportunity of our local residents to  
15 go to work in the local area and provide good  
16 working jobs for their families. Thank you.

17 CHAD BROUSSARD: Thank you.

18 Our next speaker will be Joan Chance.  
19 Joan Chance.

20 JOAN CHANCE: Hi.

21 CHAD BROUSSARD: Hello.

22 JOAN CHANCE: Can you hear me?

23 CHAD BROUSSARD: Yes, I can.

24 JOAN CHANCE: Okay. I'm just wondering  
25 why here? This is a family residential area

1 surrounded by three elementary schools, three  
2 churches, two regional parks. It is not an  
3 appropriate area for a casino to be welcomed  
4 into the community. This is not zoned for  
5 commercial or industrial businesses. Our family  
6 has two major concerns, fire and water. It  
7 would be hard to understand an evacuation unless  
8 you have been in one, like we have. No matter  
9 how well you are prepared, gathering up  
10 last-minute precious belongings, rounding up  
11 pets and livestock, and heading out the driveway  
12 is just the beginning. Not to mention all of  
13 the parents trying to pick up their children at  
14 the three local schools. Then you have to  
15 patiently wait in line to get to the packed  
16 freeway while needless to say nerve-racking.  
17 Our infrastructure cannot support another  
18 evacuation like this last fire with thousands of  
19 patrons of the casino. There would be no  
20 escape. Only gridlock. We also had flames  
21 being chased by the wind raging down Pruitt  
22 Creek towards the proposed casino site. Thanks  
23 to the brave firemen for bringing the flames to  
24 a halt with fire truck parked in every driveway  
25 to back up the Dry Creek bed. Most of us in the



1 immediate area are on wells and are conservative  
2 with our water, especially in the dry years.  
3 According to the economic impact report, the  
4 proposed casino could be using up \$400,000 --  
5 400,000 gallons of water a day, which is much  
6 more than our family would use in a year. One  
7 neighbor had to drill a new well when the  
8 vineyard went in. And our next-door neighbor  
9 has to monitor his shower well on a daily basis  
10 all year round. When the water levels drop in  
11 drought years, the quality of our water is  
12 affected. Water can dry up with the massive  
13 amounts that's the casino would be using. Items  
14 that were addressed in the economic report, such  
15 as air quality and water, stated that there was  
16 no mitigation needed, but it would be helpful  
17 with the MPs. It doesn't sound like a true plan  
18 is in place. Also, there is mention about how  
19 east Shiloh Road will be widened. The report  
20 doesn't mention how this is being done. And  
21 doesn't show on the map if this will be done on  
22 casino property or our property. At least four  
23 neighbors have front doors 35 feet from the  
24 roads as it is. It is completely perplexing why  
25 a casino would be planned in a residential

1 neighborhood. Our quiet community would be  
2 inundated with traffic, drunk driving, public  
3 safety, and continual noise and light pollution.  
4 This is not a place to build a casino. The Town  
5 of Windsor supported the resolution to oppose  
6 the casino, as well as Santa Rosa. The greater  
7 population of neighbors oppose the casino.  
8 Please consider this a plea to build a casino in  
9 a commercial or industrial area. Not here.  
10 Thank you.

11 CHAD BROUSSARD: Thank you.

12 Our next speaker will be Kathy Parnay.  
13 Kathy Parnay.

14 KATHY PARNAY: Hello. Can you hear me?

15 CHAD BROUSSARD: Yes, I can.

16 KATHY PARNAY: Okay. My name is Kathy  
17 Parnay. And my family and I live half a mile  
18 from the Koi Nation site. This is the wrong  
19 location for the Koi Nation projects. Those who  
20 are for the project are expecting job creation.  
21 However, most of these jobs will be short-term.  
22 And what is to prevent the Chickasaw Nation from  
23 bringing in all of their resources and employees  
24 to fill these jobs? It is in their invested  
25 interest to use the resources they already have.

1 Job creation is not enough to validate the Koi  
2 Nation's projects. The reality is there are so  
3 many issues with the Proposed Projects.  
4 Traffic, crime, water, environment, et cetera.  
5 Issues that the mitigations in the EIS only put  
6 surface-level Band-Aids on, with no oversight to  
7 how those mitigations will be enforced. But  
8 what I would really like to know is why no one  
9 is talking about the families who will lose  
10 their homes to accommodate the traffic  
11 mitigations that would be needed in order to  
12 drastically change the roadways to support the  
13 increase in the number of cars traveling daily.  
14 Or the fact that the right -- right across the  
15 street from the site are hundreds of family  
16 homes and two churches. If you look at the  
17 aerial view of the other local casinos, you will  
18 see how grossly misplaced the Koi Nation's land  
19 is for a venture of this type. I am also  
20 wondering why the EIS was not required to  
21 evaluate the traffic patterns after all of the  
22 new development on Shiloh Road has been  
23 completed. These projects will add hundreds of  
24 additional cars, traveling daily on Shiloh Road  
25 and Old Redwood Highway. The mitigations

1 necessary to accommodate such an extensive  
2 project will make our community unrecognizable.  
3 Drastically, irrevocably changing our lives. It  
4 feels like a violation and a takeover. Please  
5 oppose the Koi Nation's project. Thank you.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker will be Catherine  
8 Ernst. Catherine Ernst. Please remember to  
9 unmute your microphone.

10 CATHERINE ERNST: Can you hear me?

11 CHAD BROUSSARD: Yes, I can.

12 CATHERINE ERNST: Okay. Well, it seems  
13 like in three minutes, there's no way -- there's  
14 no way to mention all of the reasons why this  
15 project should not be located in Windsor. I  
16 highly support the local Pomo Tribes that are  
17 here and understand completely why they would  
18 oppose this. We have casinos already 15 minutes  
19 in each direction. And to have a Koi Tribe that  
20 is less -- 90 people or less, and it is really  
21 supported by the Chickasaw Oklahoma Tribe, seems  
22 totally unfair. The thing that I don't know if  
23 the Bureau of Indian Affairs understands is when  
24 they call this project being bought on  
25 agricultural land, it is not what you think of

1 as agricultural land. It is a vineyard, a grape  
2 vineyard. And it is surrounded by hundreds of  
3 homes. It has a regional park where horses and  
4 horse trailers come. It has a local park. It  
5 has churches and schools nearby. And it is our  
6 only little bit of greenbelt, as someone had  
7 mentioned earlier, which is a fire break. Also,  
8 Shiloh Highway and all of the roads that are  
9 around it -- Faught Road, Shiloh, Old Redwood  
10 Highway -- they're one lane each direction. And  
11 to get to the only main thoroughfare in Sonoma  
12 County, which is 101 Highway, it already has  
13 packed traffic at prime times already. And  
14 that's not including with whoever is going to be  
15 moving into the new apartment buildings that are  
16 there on the corner of Shiloh. And I was --  
17 I've been here for 30 years. And the evacuation  
18 back in 2017, we had no warning. None at all.  
19 And our fire resources, they were just trying to  
20 save lives. They couldn't try to stop the  
21 fires. Our impact will happen also to our  
22 airport. Getting to and from the airport. We  
23 are lucky the last couple of years we haven't  
24 had -- we've had a good rainfall. But drought  
25 will be back. And when it is, we will have

1 water rationing. To add a five-story 400-room  
2 hotel is unthinkable. It seems like the only  
3 people that are really for this are the ones  
4 that are going to make money off of this. And I  
5 understand the Carpenters Union and they have  
6 come on in big, but it is because they think  
7 they're going to have jobs. But they're  
8 short-term jobs. We will be here in Windsor for  
9 decades and forever paying the price of having  
10 our resources strained, our police and firemen,  
11 our infrastructure, our quality and our quality  
12 of life. So this is not a project that should  
13 be in Windsor. So I do oppose this and I hope  
14 that -- that the Bureau of Indian Affairs  
15 understands and really looks at where this  
16 project is suggested. The Koi need to go back  
17 to Clear Lake.

18 CHAD BROUSSARD: Thank you.

19 The next speaker will be Russell  
20 Attebery. Russell Attebery. Please remember to  
21 unmute your microphone.

22 Russell Attebery, are you there?

23 So we're not able to hear you on our  
24 end. If you're having a technical difficulty.  
25 Are you there? Russell. If you're having a

1 technical difficulty, please call our phone line  
2 (949)861-5954. But in the interest of time,  
3 we've got to move on. And we will try to come  
4 back to you later.

5 Our next speaker will be Robert  
6 Stafford.

7 ROBERT STAFFORD: Hello. I'm here.

8 CHAD BROUSSARD: Hello.

9 ROBERT STAFFORD: Hi. My name is  
10 Robert Stafford. I'm a member of the Tribal  
11 Council for the Federated Indians of Graton  
12 Rancheria. I wanted to inform everybody that  
13 Graton Rancheria has supported our sister Tribes  
14 and their historic and aboriginal territory.  
15 May I highlight historic and aboriginal  
16 territory. We want every Tribe to care for  
17 their people and create a better future for  
18 them. That is why we give millions of dollars  
19 each year to the non-gaming Sonoma County  
20 Tribes, including the California -- the Sonoma  
21 County Indian Health Project, to help support  
22 their citizens in their homelands. We look  
23 forward to helping any local Tribes work for  
24 their betterment of their citizens. And we do  
25 feel obligated to doing so. So on that note, I



1 would like to -- we would fully support any Koi  
2 gaming development that would be built on -- on  
3 its historic lands in Lake County. We built on  
4 our trust land located within our historic  
5 aboriginal territory near Rohnert Park,  
6 seven miles from our historical Rancheria. We  
7 followed the rules. All I ask from the BIA is  
8 to -- is to require all Tribes to do the same  
9 and follow the rules. Thank you.

10 CHAD BROUSSARD: Thank you. Our next  
11 speaker will be Marco Alfaro. Marco Alfaro.

12 MARCO ALFARO: Hello?

13 CHAD BROUSSARD: Hello.

14 MARCO ALFARO: Hi. My name is Marco  
15 Alfaro. I'm a drywall lather from the Nor Cal  
16 Carpenters Union. I would like to express that  
17 I strongly support this project. And I would --  
18 hello?

19 CHAD BROUSSARD: Yeah. I can hear you.

20 MARCO ALFARO: And I urge the BIA's  
21 approval of the EIS. I would like to point out  
22 that the future jobs that would be there would  
23 be jobs that would create members to advance  
24 their craft and all different types of trades,  
25 including carpenters. And the -- the big boost

1 in the regional economy to support the families  
2 and the working individuals across Sonoma  
3 County. And with that, I, again, urge the BIA's  
4 approval of the EIS. Thank you.

5 CHAD BROUSSARD: Thank you.

6 Our next speaker will be Zennie  
7 Abraham. Zennie Abraham.

8 ZENNIE ABRAHAM: How are you doing?  
9 Thank you for the opportunity to speak on this  
10 project of incredible regional importance. I  
11 urge the BIA to approve the EIS for this  
12 project. A number of people have said that the  
13 project is transformational. And that may sound  
14 like a throw-away line. But consider that 1,571  
15 employees would mark the fifth largest employer  
16 in Sonoma County, one of the largest employers  
17 in the San Francisco, Oakland, San Jose, Bay  
18 Area. Others have said, well, the Carpenters  
19 Union jobs will go away after construction.  
20 Well, that's not true. Consider that this is a  
21 casino resort. And a large one. That means  
22 special events from meetings to weddings, which  
23 means stages. It also means jobs, not just for  
24 the Carpenters Union going forward beyond the  
25 construction period, but artists in Sonoma. New

1 opportunities to play their music, as part of  
2 these events. So the impact of this facility is  
3 underscored. It will benefit many people across  
4 many different lines. And it will solidify  
5 Sonoma's leadership in the casino resort  
6 industry. Thank you.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Dan McCulloch.  
9 Dan McCulloch.

10 DAN McCULLOCH: Yeah. Good evening.  
11 Thanks for having me on tonight. Yeah. Dan  
12 McCulloch. Longtime member of the Carpenters  
13 Union and long-term Sonoma County resident. So  
14 I just want to urge the BIA to approve the EIS  
15 this evening. Thank you for your time.

16 CHAD BROUSSARD: Thank you.

17 Our next speaker will be Timothy Reyff.  
18 Timothy Reyff.

19 TIMOTHY REYFF: Hi. My name is Timothy  
20 Reyff. I'm a carpenter. And I'm calling in to  
21 urge the Bureau of Indian Affairs' approval of  
22 the Draft Environmental Impact Statement. This  
23 project will create a lot of jobs, permanent  
24 jobs and construction jobs. Please approve it.  
25 Thank you very much.

1 CHAD BROUSSARD: Thank you.

2 Our next speaker will be Raquel Garcia.  
3 Raquel Garcia.

4 RAQUEL GARCIA: Hello.

5 CHAD BROUSSARD: Hi.

6 RAQUEL GARCIA: Hi. So let's stick to  
7 the facts. I'm utterly confused why we're  
8 having this meeting and discussion. Will there  
9 be a conflict hearing for the opposing Tribes?  
10 Koi is not even from Sonoma County. They knew  
11 that when they bought the land. The supporters  
12 that they have been calling in are people that  
13 will benefit from the development, such as the  
14 Carpenters Union. I'm all for creating jobs.  
15 But this will only bring temporary jobs for the  
16 construction workers and permanent damage for  
17 local Tribes. Speaking of jobs, Graton and Dry  
18 Creek are hiring. I don't see anyone running  
19 out to apply. So don't cry out this will create  
20 jobs when we have jobs available. And speaking  
21 of special events, both casinos in Sonoma County  
22 currently have special events. But we're not  
23 short of jobs or events. If the BIA allows this  
24 to happen, then they are opening the floodgates  
25 and setting a precedence for any Tribe to take

1 over another Tribe's ancestral territory. Why  
2 would you allow an out-of-state Tribe to benefit  
3 from this, let alone an out-of-country Tribe?  
4 The BIA was set to protect the territories.  
5 This is a reservation shopping, which we all  
6 know Koi is known for doing. There isn't a  
7 Tribe in the entire area that will support this.  
8 So why would the BIA even consider it? Where is  
9 the protection for the local Tribes that have  
10 aboriginal ancestral ties to Sonoma County? I  
11 hope there is going to be a conflict hearing for  
12 the opposing Tribes. And I really think it is  
13 cute how the Carpenters Union employees were  
14 probably paid by Koi to speak tonight. Thank  
15 you.

16 CHAD BROUSSARD: Thank you.

17 Our next speaker will be Robyn Larose.  
18 Robyn Larose.

19 Please remember to unmute your  
20 microphone.

21 Robyn Larose. Are you there? We can't  
22 hear you on this end. If you're having a  
23 technical problem, please call our technical  
24 difficulty line.

25 But we are -- in the interest of time,

1 we need to move to the next commenter. And we  
2 will come back to you at the end.

3 So our next speaker will be Brandon  
4 Phillips. Brandon Phillips.

5 BRANDON PHILLIPS: Hello. Can you hear  
6 me?

7 CHAD BROUSSARD: Yes, I can.

8 BRANDON PHILLIPS: Hi. How are you?  
9 Good evening. My name is Brandon Phillips, a  
10 field representative for the Nor Cal Carpenters  
11 Union. First and foremost, I strongly urge the  
12 BIA's approval for the EIS. During  
13 construction, this project is estimated to  
14 create 1600 jobs in cooperation with the Nor Cal  
15 Carpenters Union. On completion, it will create  
16 1570 jobs. These jobs are crucial in boosting  
17 the economy across Sonoma County. This is a  
18 great new beginning for Sonoma County. Thank  
19 you. And once again, I strongly urge the BIA's  
20 approval for the EIS.

21 CHAD BROUSSARD: Thank you.

22 Our next speaker will be Lynn Darst.  
23 Lynn Darst.

24 LYNN DARST: Hi. Can you hear me?

25 CHAD BROUSSARD: Yes, I can.

1           LYNN DARST: My name is Lynn Darst. I  
2 live in the residential neighborhood directly  
3 across the street from the proposed site. I am  
4 requesting the BIA take special note of the  
5 propensity of favorable comments for the casino  
6 resort tonight. It is from those that would  
7 benefit financially, including the Carpenters  
8 Union, as well as other unions. I am hoping the  
9 BIA realizes that the opposition to this project  
10 has been expressed by those whose lives will be  
11 affected. Bottom line, this is the wrong  
12 location for a business that attracts upwards of  
13 20,000 people a day. There are other areas that  
14 would be more conducive to this project with  
15 considerable less impact. While the resort  
16 claims to be able to create 1100 to 2000 jobs,  
17 it will devastate businesses in Windsor and  
18 Santa Rosa, where businesses are currently  
19 challenged in finding and maintaining proper  
20 staffing levels. In recent times, the local  
21 newspaper, The Press Democrat, referred to this  
22 issue on the front page as a crisis in Sonoma  
23 County. It is shortsighted to say this project  
24 would result in economic growth when existing  
25 businesses will be forced to close due to



1 insufficient staff caused by the casino resort.  
2 I strongly urge the BIA to take no action on  
3 this project. Thank you.

4 CHAD BROUSSARD: Thank you.

5 Our next speaker will be Anne Gray.  
6 Anne Gray.

7 ANNE GRAY: Hello. Can you hear me?

8 CHAD BROUSSARD: Yes, I can.

9 ANNE GRAY: Hi. Hello, everyone. My  
10 name is Anne Gray. And I live in Sonoma County.  
11 I do not live near the proposed site, but I do  
12 live in the county, and I do feel like I will be  
13 impacted. As a side note, I was just on Shiloh  
14 Road the other day, during the week, about  
15 2:00 p.m. Went up north on Old Redwood Highway,  
16 down Shiloh, had the pleasure of doing some  
17 shopping in the area. And then as I tried to  
18 get back onto 101 South, not only was it  
19 2:00 p.m. in the afternoon, just, you know,  
20 bumper-to-bumper. But there is actually one of  
21 those green/red light monitors to get onto 101  
22 South because there is so much traffic that they  
23 have to pace cars going on. So how can you tell  
24 me that 2:00 on a summer day when you can't get  
25 on the freeway that it is okay to add up to

PH91-1

1 55,000 visitors a day to a casino right there?

2 I would like to make three more  
3 official points. And that is, number one, this  
4 has been discussed quite a bit. Section ES2 of  
5 the EIS discusses the project with respect to  
6 giving the Koi self-sufficiency, economic  
7 opportunities. It is not really the Koi that  
8 will get these benefits. It is actually the  
9 Oklahoma Chickasaw Global Gaming Group. Last  
10 time I checked, Oklahoma is not on the west  
11 coast. It is in the southwest. And what  
12 they're doing is spending, funding, building,  
13 and managing a \$600-million-to-start-with casino  
14 that a 90-member small Tribe, that's what the  
15 Koi has, is not going to learn economic  
16 development or self sufficiency from. They're  
17 going to get a small cut of the profit, and the  
18 rest of it is going to go to another state. So  
19 right then, in the opening part of the EIS, is  
20 something that is just not true. We're not  
21 going to right the wrongs of the past and  
22 provide self-determination for the Koi Nation of  
23 Lake County by granting this proposal.

24 Number two, section 3.1, water  
25 resources. California Sustainable Groundwater

PH91-1  
cont.

1 Act passed in 2014 is basically telling us that  
2 by 2042, each area of California that relies on  
3 groundwater must have a plan in place to replace  
4 that groundwater. Basically take no more out  
5 than you put back. For Sonoma County, we have  
6 established the Santa Rosa Plain GSA to  
7 determine how to achieve this. My concern is,  
8 would the Koi be responsible for putting back  
9 400,000 gallons a day or would the rest of us  
10 need to make that up because they would be  
11 exempt and how would that happen?

12 My last point is regarding Section 3.9,  
13 land use. You mentioned the mobile home  
14 communities. Did you know that many are senior  
15 communities that -- and some abut right up to  
16 the property line of where this casino would be  
17 located. Many of them have special needs and  
18 may be impacted with respect to fire evacuation,  
19 noise, and light pollution. That needs to be  
20 accounted for. Thank you very much.

21 CHAD BROUSSARD: Thank you.

22 Next speaker will be Tiffany Erickson.  
23 Tiffany Erickson.

24 Please remember to unmute your  
25 microphone.

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cont.

1           TIFFANY ERICKSON: Thank you. I'm  
2 unmuted. Thank you.

3           CHAD BROUSSARD: Okay. Thanks. We can  
4 hear you.

5           TIFFANY ERICKSON: Pardon me. Tiffany  
6 Erickson. Thank you for holding this meeting  
7 and allowing all of us to speak. I'm going to  
8 address one issue, although I have deep concerns  
9 about the fire and evacuation issues and the  
10 water issues. But I want to talk about a lot of  
11 the things have been said about the economic  
12 issues. As a proud union household, and  
13 respectfully to the Carpenters Union, as others  
14 have said, many of them don't even live here and  
15 they're looking at their economic benefits,  
16 which, yes, we need the jobs. But our  
17 unemployment rate is 4 percent. Lake County is  
18 5.8 percent. So that is not even a valid point  
19 with the Koi Nation not being historically here.  
20 So that's a big concern. Why not go there where  
21 the jobs are needed more? And the other part is  
22 the economic benefits, taxes, and whatnot, the  
23 burden on Cal- -- on Windsor residents will be  
24 more than what we're getting. It is an  
25 unincorporated area where the casino is going to

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1 be located. So we won't reap those benefits of  
2 additional tax revenue. But we will bear the  
3 cost with the burden on our society, on our  
4 roads, on our fire departments, our police  
5 departments, et cetera. So I feel like that's  
6 not a valid argument, that there's going to be  
7 economic benefits. I think there will actually  
8 be economic detriments to our local community.  
9 So I strongly support the selection of D., no  
10 casino whatsoever in that area. It is  
11 completely inappropriate and not meant for our  
12 community. Thank you for taking the time to  
13 listen to me.

14 CHAD BROUSSARD: Thank you. Our next  
15 speaker will be Kristi Selby. Kristi Selby.

16 KRISTI SELBY: Hi. I'm here. My name  
17 is Kristi. I'm a mother of two. I'm also a  
18 nurse at the hospital who -- Sutter Hospital,  
19 which is the closest hospital to the Proposed  
20 Project, which is already incredibly impacted.  
21 And I feel like that needs to be brought up as  
22 well. Because with the Proposed Project, you're  
23 going to be increasing the need for medical  
24 services exponentially at a hospital that is  
25 already severely impacted as are the other two.

PH92-1  
cont.

1 I also want to -- it to be noted that there's a  
2 dance studio that my children go to every day  
3 right across the street. Children go there six  
4 days a week. It is -- my children's safety is  
5 always going to come before proposed temporary  
6 jobs for carpenters. And I am nervous about the  
7 impact of DUIs. I'm nervous about driving my  
8 children on roads where there is a large casino.  
9 The local church across the street holds  
10 Gamblers Anonymous meetings right across the  
11 proposed driveway of a casino. I feel like, you  
12 know, we have heard a lot about jobs from people  
13 who will financially gain from this casino.  
14 Yet, there are currently almost 3500 open  
15 positions in Sonoma County on one job site alone  
16 that aren't being filled. So adding more to  
17 that when we don't have a job crisis in Sonoma  
18 County. We have a housing crisis. And we can't  
19 house the people that are already here. And  
20 adding to that would not be beneficial  
21 whatsoever to our community. I live just a few  
22 hundred feet away from the Proposed Site in a  
23 community that is currently safe and filled with  
24 children. My children go to school in this  
25 community. And as it was said before, I -- I'm

1 not going to reap any benefits from this casino,  
2 yet I will be paying the cost through my kids,  
3 through -- financially. Small businesses will  
4 have to close. I just feel like if we're going  
5 to really look at this, it should be done by an  
6 unbiased. I think Acorn is a biased  
7 organization. And I do not think there's any  
8 mitigations in there that come close to the  
9 impact. I was evacuated twice. I sat there for  
10 hours not knowing. My house almost burnt down  
11 right next to the proposed site. And that needs  
12 to be taken into accountability the fact that  
13 none of these people who are for this had to sit  
14 in traffic and almost lost their homes and  
15 potentially their lives for sitting in traffic  
16 for hours. I appreciate you listening. And I  
17 hope that you do not approve the site. Thank  
18 you.

19 CHAD BROUSSARD: Thank you. Our next  
20 speaker will be Lynn Sabbatini. Lynn Sabbatini.

21 LYNN SABBATINI: Hi there. Good  
22 evening. My name is Lynn Sabbatini. And I'm a  
23 tribal citizen of the Federated Indians of  
24 Graton Rancheria. I'm very concerned that the  
25 BIA is not protecting not only our sovereign



1 rights, but other Sonoma County Tribes. The Koi  
2 Nation is not from here. They are from Lake  
3 County. I think the BIA needs to work with Koi  
4 to find an alternative site for restored lands  
5 within their own cultural ancestral territory.  
6 The Koi Nation should focus their energy within  
7 their tribal land and community. Think of how  
8 wonderful it would be for the Lake County, the  
9 Koi Nation territory, to have all of these 1500  
10 union jobs created and the 1600 jobs within  
11 their community. It would be a great uplift for  
12 the Lake County residents and the community.  
13 Therefore, I'm asking the BIA to please deny  
14 this project. Thank you.

15 CHAD BROUSSARD: Thank you.

16 Our next speaker will be Adina Flores.  
17 Adina Flores.

18 ADINA FLORES: Good evening. Can you  
19 hear me?

20 CHAD BROUSSARD: Yes, I can.

21 ADINA FLORES: Good evening. I am the  
22 leading activist for Sonoma County and an  
23 investigative journalist. And I do not approve  
24 of this EIS. I just found it odd that within  
25 the same month approximately, the beginning of

1 this year, Mr. Darius Anderson was appointed by  
2 Governor Newsom to the California Fish and Game  
3 Commission. And he is the owner of The Press  
4 Democrat. He was the lobbyist for station  
5 casinos when they built Graton. My mom was the  
6 finance director for the City of Rohnert Park at  
7 that time, so I'm very aware of those dealings.  
8 Koi Nation at the same time, at the beginning of  
9 this year, announced their coalition to support  
10 the resort and casino right when Darius Anderson  
11 was appointed to his role. And at that time,  
12 they hired a lobbyist, who is the director of  
13 the Office of Native Affairs or former director  
14 for the Democratic National Committee. She was  
15 a lobbyist for Hillary Clinton and staff  
16 assistant for the White House. So I do have  
17 issues with the fact that the Potter Valley  
18 Project, they are going to remove the dam in  
19 Potter Valley. And essentially, the entire  
20 Sonoma County water supply is based off of  
21 Russian River. And so the way that those  
22 waterways are diverted, we are going to have a  
23 drastic reduction in the water supply. And that  
24 was not included in this EIS. So that's very  
25 concerning with all of the stakeholders who have

1 expressed that they are fearful with the fires  
2 and the evacuations. I echo that concern. I  
3 also echo the concern that I repeatably find  
4 that the fire moneys are going missing and they  
5 are being laundered. And so I have to question  
6 if the fires we are intentionally lacking  
7 resources because people are profiting off these  
8 disasters. That would be unfortunate.

9 Mr. Anderson that I referenced earlier founded  
10 Rebuild North Bay, who lobbied \$2 million for  
11 PG&E. And those moneys were to be attributed to  
12 the fire victims. So that didn't sit well with  
13 me.

14 I would ask that we get these inquiries  
15 answered before moving forward with the EIS as  
16 it stands. And I would like to present myself  
17 also as a researcher or consultant for the City  
18 of Windsor to better represent themselves in  
19 this situation because there are a lot of things  
20 that have not been factored in. And I can be  
21 found on Instagram to see my further findings on  
22 this issue. Thank you.

23 CHAD BROUSSARD: Thank you.

24 Our next speaker will be Elisa  
25 Campbell. Elisa Campbell.

1 ELISA CAMPBELL: Hello. Yes. Can you  
2 hear me?

3 CHAD BROUSSARD: Yes, I can.

4 ELISA CAMPBELL: Hi. Thank you for  
5 calling this meeting so that citizens can -- of  
6 Windsor and this area can give our input. I  
7 live less than a mile from the proposed site on  
8 the corner of Shiloh and Hembree. And I work at  
9 a small school off of Mark West Springs Road.  
10 And I commute every day on Old Redwood Highway  
11 to my job. And my first concern is traffic. To  
12 get to school in the morning, there's already  
13 traffic. And so the idea that there could be  
14 more is disheartening. And it doesn't seem like  
15 the mitigations will be near enough.

16 Second of all, more importantly to me,  
17 I'm very affected by the fires. My small school  
18 was the only school in Sonoma County to burn to  
19 the ground. Not so much as a stapler left. And  
20 that was in 2017. And we still do not have a  
21 complete campus. I teach in a portable. Our  
22 school burned to the ground. And the fire came  
23 through so fast for the Tubbs Fire that we were  
24 told had it been during school hours, we  
25 probably would not have gotten the kids out. It

1 burned pipes underground. There was literally  
2 nothing left. And so when we looked at  
3 scenarios for evacuation, if it is a fire like  
4 the Tubbs was and it came over the hill, like  
5 the -- like the Tubbs Fire did, there are no  
6 four- or five-hour windows to get people out.  
7 So that's a serious concern. The last concern  
8 is environmental. My small little school is  
9 located on about 40 acres and on a creek. And  
10 we utilize our outdoor area. We also  
11 incorporate Native-American education. And  
12 appreciation for the environment. And it just  
13 baffles me that a watershed creek area would be  
14 considered. There's so much wildlife there. In  
15 fact, I was on this call, working at my school,  
16 and while driving home and listening to comments  
17 about it, I drove past the vineyards and past  
18 the site and looked up and saw -- I'm not an  
19 expert, but I saw what looked like a couple  
20 hawks overhead and whatnot. And I just know  
21 that despite best efforts, that that will be  
22 affected in a negative way. So between all the  
23 concerns raised and between traffic, fire  
24 evacuation, all of the above, housing values in  
25 that area. I do agree it will have a negative

1 impact in a small community.

2 And the last thing is Windsor has a  
3 very specific brand. If you look at surrounding  
4 towns, Santa Rosa little bigger, Healdsburg, you  
5 know, is the tourist town. Windsor is branded  
6 where you want to move if you have family. It  
7 is a family town. A family atmosphere. And it  
8 is just -- I agree with a lot of people that say  
9 it can create jobs, but it is the wrong  
10 location. Vote on Measure D and reassess this  
11 to a better location. Thank you.

12 CHAD BROUSSARD: Thank you.

13 Our next speaker will be Lynn Silva.  
14 Lynn Silva.

15 LYNN SILVA: Hello.

16 CHAD BROUSSARD: Hi.

17 LYNN SILVA: My name is Lynn Silva.  
18 And I'm a decedent from the Kashia Band of Pomo  
19 Indians and a citizen of the Federated Indians  
20 of Graton Rancheria. And here is what I would  
21 like to say. The Koi Tribe is currently very  
22 active in Lake County. They're actually tribal  
23 homeland asserting their legal rights as an  
24 indigenous Tribe. With all due respect, the Koi  
25 Tribe should pursue restored lands and economic

1 opportunities within their right aboriginal  
2 territory in Lake County. I am deeply concerned  
3 about the BIA's commitment to protecting tribal  
4 sovereignty, particularly for the Tribes of  
5 Sonoma County. Let's be clear, the Koi Tribe is  
6 not from Sonoma County. Ignoring our  
7 sovereignty would set a harmful precedent  
8 allowing any Tribe to claim historic lands. An  
9 alternative site should be looked at that are  
10 not within the Tribe's cultural and sovereign  
11 lands. So Koi needs to go back to Koi and look  
12 for lands to build a casino there. And we as a  
13 sister Tribe support any Tribe that does that in  
14 their own territory. Thank you.

15 CHAD BROUSSARD: Thank you.

16 Our next speaker will be Anthony  
17 Carroll. Anthony Carroll.

18 ANTHONY CARROLL: Hi. Yes. Can you  
19 hear me?

20 CHAD BROUSSARD: Yes, I can.

21 ANTHONY CARROLL: Yes. Can you hear  
22 me?

23 CHAD BROUSSARD: Yes, I can hear you.

24 ANTHONY CARROLL: Okay. Thank you.

25 Yes. My name is Anthony Carroll. Speaking on



1 also behalf of the Nor Cal Carpenters Union. I  
2 want to thank the BIA for holding this session  
3 and for allowing all of us to speak. I know  
4 that several of my colleagues have touched on  
5 the economic benefit and, you know, surely the  
6 several thousand jobs, both permanent and  
7 construction. But that the Koi Nation Shiloh  
8 Resort and Casino will bring to Sonoma County  
9 and Windsor will be a boom to the local economy  
10 for years to come. But I do just want to speak  
11 on behalf of the EIS in particular. I think  
12 that the Koi Nation has done a wonderful job  
13 reaching out to the community and identifying  
14 the top concerns, those being, you know, fire,  
15 evacuation, and groundwater use. And each of  
16 those are properly addressed in the EIS itself.  
17 They have committed themselves to developing  
18 plans to address each of those as the  
19 development of this project moves forward. And  
20 I think for those reasons and for the several  
21 others we have heard throughout the night that  
22 the BIA should approve the EIS as written.  
23 Thank you for your time.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Riley Ahern.

1 Riley Ahern.

2 RILEY AHERN: Good evening. My name is  
3 Riley Ahern. I'm Congressman Jared Huffman's  
4 Sonoma County Field representative. The  
5 congressman continues to oppose this proposal.  
6 Most recently, he has submitted a letter  
7 requesting a 30-day extension of the public  
8 comment period to allow for more meaningful  
9 engagement with Tribes and interested parties.  
10 This letter was signed by Congressman Thompson,  
11 Congressman Garamendi, and Senator Padilla.  
12 Another letter opposing the project on its  
13 merits is underway. Thank you for your  
14 attention.

15 CHAD BROUSSARD: Thank you.

16 Our next speaker will be William Hitt.  
17 William Hitt.

18 Please remember to unmute your  
19 microphone. William Hitt. If you are there and  
20 you're having technical difficulties, please  
21 contact our technical difficulty phone line.  
22 But in the interest of time, we're going to move  
23 on to the next commenter.

24 Which will be Michael Brook. Michael  
25 Brook.

1           MICHAEL BROOK:  Yes.  Good evening.  
2  Thank you very much for the opportunity to  
3  speak.  I'm a Windsor resident.  I live  
4  2,000 feet from the Proposed Project.  I have  
5  been evacuated three times.  I also suffer from  
6  water rationing when we're lacking water.  I'm  
7  shocked that you would consider a casino across  
8  the street from a Little League park.  And also  
9  the EIS is drastically incorrect as prior  
10 speakers have discussed, the traffic figures  
11 seem to be way out.  Also, it says that the  
12 Kincade Fire stopped .3 of a mile to the east.  
13 It did not.  It hit my roof, which is to the  
14 west of the proposed site.  Slightly to the  
15 north.  It burnt down fences and affected houses  
16 around the outskirts of my development.  So I  
17 would suggest that this should be entirely  
18 relooked at I would say by a non-interested  
19 party who has actual knowledge of the situation.  
20 I cannot see how parking of 5,000 people on top  
21 of which is about, what, 40 -- maybe 40 percent  
22 of the total population of Windsor would only  
23 add an hour to the evacuation time.  I think it  
24 would probably take more than an hour to get off  
25 the casino property.  Certainly when the lights

1 go out, as they frequently do during the fire  
2 times. The impact at Shiloh and Old Redwood  
3 would be catastrophic. Thank you very much for  
4 your time.

5 CHAD BROUSSARD: Thank you.

6 Our next speaker will be Supervisor  
7 James Gore. James Gore.

8 SUPERVISOR JAMES GORE: Can you hear  
9 me?

10 CHAD BROUSSARD: Yes, I can.

11 SUPERVISOR JAMES GORE: Thank you very  
12 much. You know, I want to start with a little  
13 bit of respect. I appreciate the Bureau of  
14 Indian Affairs for the opportunity to weigh in  
15 tonight. I also want to thank, you know,  
16 everybody who is on today. The federally  
17 recognized Tribes, including Mishewal-Wappo,  
18 unfederally recognized Tribe, but a Tribe with  
19 ancestral roots in Sonoma County, and the other  
20 five that we have worked with over the years.  
21 And I want to honor the Koi, a federally  
22 recognized Tribe with roots in Lake County. I  
23 want to thank the neighbors for expressing their  
24 concern, even the carpenters for their desire  
25 for jobs. You know, Sonoma County, we published

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1 comments, we submitted comments on our position  
2 in line with other federally recognized Tribes  
3 here in Sonoma County, expressing our concerns  
4 in opposition to the project as of right now.  
5 There will be more comments based upon the  
6 environmental document. More to come. I want  
7 to provide a little context which is, you know,  
8 Sonoma County has lots of agreements, memorandum  
9 of agreement, understanding mutual understanding  
10 with the Kashia Band of Pomo Indians, who we  
11 have worked with not only Chairman Franklin that  
12 we heard from earlier, but others on access to  
13 the ocean. Long-standing project that we worked  
14 on together and was just a beautiful thing to  
15 honor the Tribe. Dry Creek, we recently  
16 negotiated and updated memorandum of agreement  
17 with Dry Creek on -- which was a hard fought  
18 agreement. Dry Creek was one of the first  
19 Tribes in the state actually to get its right to  
20 put in its casino. Severely impacted by this  
21 project. Graton. We have heard a lot from the  
22 Graton members. I want to thank them for their  
23 astute, germane, and real comments. Cloverdale  
24 Rancheria, we have worked for a long time where  
25 the BIA has actually put their land into trust

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cont.

1 in Cloverdale. Lytton, which was a multi-decade  
2 effort, just like Cloverdale, 15-plus years with  
3 the BIA. I say all this to question the fast  
4 track with respect to this process. You know,  
5 we're talking about five, ten, fifteen years for  
6 all of these other ones to work their way  
7 through. And I also want to offer a little bit  
8 of context, which is here in Sonoma County also,  
9 every permit that we issue has to go out to  
10 federally recognized Tribes. And Mishewal-Wappo  
11 is a federally recognized Tribe in the history  
12 of Sonoma County there has never been a request  
13 from Koi to be part of that cultural and  
14 historical representation. I want to honor  
15 their roots as a Lake County Tribe. Like  
16 everybody else, I want to state not a county  
17 position by my opposition to this project. As  
18 it stands, I think what I have heard from other  
19 Tribes here as well -- and I will finish up --  
20 is that this -- if this action is supported by  
21 the BIA, we're going to see a litany of other  
22 projects put on by other Tribes to -- different  
23 lands into different areas. As a final comment,  
24 we negotiated a long agreement with Lytton to  
25 outlaw gaming on their land. And this is just

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cont.

1 adjacent to it. So the contradictions abound.  
2 Thank you very much for the time.

3 CHAD BROUSSARD: Thank you.

4 Our next speaker will be Dorothy  
5 Morgan.

6 DOROTHY MORGAN: Hi. Thank you for  
7 giving me the time to speak tonight. I am a  
8 senior citizen. And I live in Colonial Park,  
9 which is directly across from the proposed  
10 casino. And, in fact, I live on the creek that  
11 runs through this project. I certainly wish  
12 someone would have contacted me at some point,  
13 either by mail or telephone call, and ask me  
14 about the flooding that occurs here. I have  
15 been unable to evacuate my home at least five  
16 times in the past five years that I've lived  
17 here. I've had 18 inches of water in my yard,  
18 in the cul-de-sac in front of me. The homes  
19 adjacent to mine have all flooded from this  
20 sweet little creek that turns into a raging  
21 river in the wintertime. It can get six to  
22 eight feet deep and ten to fifteen feet wide  
23 carrying huge branches and other debris with it.  
24 So if you pave 60 acres upstream from what, you  
25 know, kind of looks like a drainage ditch in the



1 middle of the summer, come wintertime, we're  
2 going to be flooded out. And not just me, not  
3 just the people on the back of this park who  
4 can't exit because we can't get out because the  
5 water is too deep in front of us, but we won't  
6 be able to get out onto Old Redwood Highway  
7 because it will flood across that section, that  
8 bridge that runs across Old Redwood Highway.  
9 This creek has closed down the south entrance or  
10 exit, entrance to the 101 Freeway more than  
11 once. And it closed it down this past year.  
12 Now, that's without major building directly on  
13 the watershed above it. So I don't know how  
14 they can mitigate that flooding. It is already  
15 happening. It is causing me to think about  
16 moving. And for sure if this casino goes in,  
17 I'm going to move. Because you're talking about  
18 trying to evacuate 500 seniors who live in these  
19 two mobile home parks directly across. And  
20 those people only have one way in and one way  
21 out, which is Old Redwood Highway. So that  
22 means we have to all get out onto that same exit  
23 right across from the casino, which will also be  
24 flooding because all the runoff will be in the  
25 creek. So we need, you know, walkers. There's

PH102-1  
cont.

PH102-1  
cont.

1 people who have wheelchairs. How are you going  
2 to get them out of here when you can't even get  
3 them off of Old Redwood Highway because it is  
4 flooding due to all of the paving from the  
5 creek? I mean, when you pave over something,  
6 that water doesn't go into the water table.  
7 That water runs off and goes into the watershed  
8 and into the creeks. And it does it at a fast  
9 rate of speed because none of it, none of it is  
10 penetrating the soil. So that being said --

11 CHAD BROUSSARD: Your time is up. We  
12 ask you to please wrap up your comments.

13 DOROTHY MORGAN: Oh, well, I'm -- you  
14 know, the traffic, the noise pollution, the  
15 drunk drivers. I mean, this is -- this is a  
16 really sleepy wonderful place to live. It will  
17 not be with that casino. I totally oppose it.  
18 Oh, and I've also had river otters in the creek.  
19 So I don't know how they can mitigate that.

PH102-2

20 CHAD BROUSSARD: Thank you.

21 Our next speaker will be Pamela  
22 Pizzimenti. I'm not sure I got that name right.  
23 Pamela Pizzimenti.

24 PAMELA PIZZIMENTI: You did fine.

25 CHAD BROUSSARD: Thank you.

1 PAMELA PIZZIMENTI: I'm Pamela. I'm  
2 with my husband, Craig Scott. So we're actually  
3 both here together. And he is actually going to  
4 speak on both of our behalves.

5 CRAIG SCOTT: This is Craig Scott. I'm  
6 a civil engineer. I've been working on water  
7 sewer systems for the past 35 years, and for  
8 Sonoma County's Water and Sewer Systems for the  
9 last 20. I'm a resident at Larkfield-Wikiup. I  
10 urge the BIA not to approve the EIS. It  
11 inadequately addresses traffic, water, sewer,  
12 and park recreation resources. Traffic impacts  
13 were inadequately addressed with only the main  
14 access from 101 to Shiloh being evaluated.  
15 Alternative routes will be used. And the EIS  
16 does not address these routes. These are Faught  
17 Road, coming off of Airport. We all know that  
18 these alternative routes are going to be highly  
19 used. And they're not even evaluated in the  
20 EIS. These are narrow roads that go by  
21 elementary schools, you know, all sorts of  
22 resources like the Shiloh Park and the Esposti  
23 Park. So mitigation needs to be addressed for  
24 these routes. And they're available, including  
25 preventing access from that west side. From

PH103-1

PH103-1  
cont.

1 the -- from the Faught Road side. And  
2 traffic-calming measures. The water issue is  
3 not adequately addressed. The EIS states water  
4 use for the site is to increase 11 to 16 times  
5 what is there now. We all know developing new  
6 wells in this area is very challenging, not only  
7 for the amounts of water, but the water quality  
8 and impacts to other wells. The area served by  
9 a water agency that solely relies on  
10 groundwater. And putting these new wells in are  
11 likely, very likely to impact, negatively impact  
12 these existing wells serving local communities.  
13 So that's -- that's completely silent. The EIS  
14 is completely silent on any of those impacts.  
15 The fact that they might not even be able to get  
16 that water at all. American water -- okay. The  
17 sewer, the wastewater is not addressed properly.  
18 The project decided on an independent system.  
19 These systems are complex to operate. Small  
20 systems are unreliable. We have a sewer system  
21 that they are proposing to put within 700 feet  
22 of Shiloh Park. They would smell. Would it go  
23 into the local creek there with raw sewage?  
24 Shiloh and Esposti Parks are right there. It is  
25 a local jam. 850 acres located only 700 feet

PH103-2

PH103-3

PH103-4

1 from the project. The views are spectacular,  
2 but the project threatens to ruin these views.  
3 The project needs to look at building  
4 low-profile buildings. And then mitigating the  
5 wastewater ponds. I've got other reasons, but  
6 for these reasons, I urge the BIA not to approve  
7 the EIS. And thank you for the opportunity to  
8 comment.

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be Rosa Reynoza.  
11 Rosa Reynoza.

12 ROSA REYNOZA: Hi there. This is Rosa  
13 Reynoza. I'm currently the mayor of Windsor.  
14 But I also serve on the Sonoma County Transit  
15 Authority, on the board of directors. Before I  
16 go into my comment, I just want to say thank you  
17 to everyone who is still on the line. I'm kind  
18 of disappointed that we had so many repetitive  
19 comments with the union workers. I support our  
20 union workers. There's lots of deals happening  
21 out there. Live, work, and play in the same  
22 area is a wonderful idea. But I don't -- this  
23 project is not the right project for this  
24 location.

25 Now, going back to the Sonoma County

PH103-4  
cont.

PH104-1

1 Transit Authority, I wanted to mention that one  
2 of our goals is to reduce the vehicle miles  
3 traveled. And that will, in turn, reduce our  
4 greenhouse gas emissions. So the mitigation  
5 with regards to traffic, one of the ideas that  
6 many of us are talking about and sharing is the  
7 traffic calming. And I don't want to --  
8 personally I don't want to see us having to have  
9 more lanes on Shiloh Road. We want to have  
10 people get out of their cars, feel safe walking.  
11 So that large apartment complex happening in the  
12 corner of Old Redwood Highway and Shiloh, we're  
13 hoping we can create safe spaces for people to  
14 bike and ride their bikes. And I cannot picture  
15 thousands of cars on that road and people  
16 feeling safe to walk on that path that we're  
17 going to try to create here hopefully soon. So  
18 if you could take a look at our Sonoma Transit  
19 Authority, Transportation Authority page, and  
20 the vision and the future for Sonoma County to  
21 promote more walkable and bikeable areas. This  
22 just does not fall in line with that. I don't  
23 know how that will be mitigated. And support  
24 those ideas that we have going forward.

25 So thank you again for your time. I

PH104-1  
cont.

1 also wanted to add thank you for listening to  
2 the emotion of many people that they still have  
3 with regards to fires. As you know, we have our  
4 Park Fire up in the northern Chico area  
5 happening right now. And many of our local  
6 firefighters are up there right now, including  
7 my husband. So the emotion is real. The fear  
8 is real. And we're surrounded by the -- that  
9 thought. So I appreciate you taking the time  
10 and listening to those emotions with regard to  
11 that. Thank you. Have a good night, everybody.

12 CHAD BROUSSARD: Thank you. And safe  
13 wishes for your husband.

14 We're going to take just a very short  
15 break, four or five minutes, and we will  
16 reconvene at 10:00 p.m. So just a very short  
17 break here.

18 (A recess was taken.)

19 CHAD BROUSSARD: Okay. We're going to  
20 reconvene the hearing.

21 And we will start with our next speaker  
22 is a call-in speaker with -- the last four are  
23 9334. The last four of the phone number is  
24 9334.

25 GUILLERMO MOLINA: Yes. Good evening.

PH104-1  
cont.



1 My name is Guillermo Molina. And I'm calling to  
2 urge the BIA to approve the EIS. I'm in full  
3 support of this Proposed Project. And I'm  
4 calling on behalf of the Carpenters Union.  
5 Thank you.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker will be Walter  
8 Bruszewski. Walter Bruszewski. Remember to  
9 unmute your microphone. Yes, I can hear you.

10 WALTER BRUSZEWSKI: Thank you for the  
11 opportunity to comment on the EIS. My name is  
12 Walter Bruszewski. My wife and I are retired  
13 and live less than a hundred feet from the  
14 Project Site. Shiloh borders our backyard. We  
15 evacuated in both the Tubbs Fire and the Kincade  
16 Fire. I urge the BIA to reject this EIS. The  
17 credibility of this document is questionable.  
18 Some of the conclusions in this EIS almost defy  
19 the imagination. For example, Alternative A has  
20 been shown by methods, which are not described  
21 anywhere in the document to have a less -- to  
22 have a less than significant impact. I have  
23 lived across from this site since 2009. And I  
24 can say that at night there are no sounds, other  
25 than the occasional coyote coming from across

1 Shiloh. And there is no light. But Acorn  
2 believes the difference between nothing than  
3 vineyards and a casino event complex with  
4 thousands of cars and people is less than  
5 significant. The EIS claims to have done away  
6 with any concern about well water crowds,  
7 traffic, crime or fire declaration with their  
8 Best Management Practices and mediations.  
9 Rendering every impact less than significant.  
10 Nonsense. Thank you for your time.

11 CHAD BROUSSARD: Thank you. Our next  
12 speaker is a phone-in speaker with the last four  
13 digits of the phone number being 5092. 5092.  
14 Oh, there we go.

15 RICH OWENS: Yeah. Okay. Thanks for  
16 letting me speak. My name is Rich Owens. And I  
17 live about 150 yards from the proposed entrance  
18 to the casino. And I have a couple of issues.  
19 One is the BIA's inconsistency of if they choose  
20 to approve this project. And the other issue is  
21 just the issue of regulatory compliance on both  
22 sides of the equation, either on the part of the  
23 Tribe and also the regulatory agencies that are  
24 allegedly going to be overseeing compliance with  
25 respect to what the Tribe does. For the BIA,

1 all you have to do is look at other Rancherias  
2 that they have approved. There's the Twin Pines  
3 Casino in Middletown, River Rock Casino  
4 Geyserville, the Cache Creek Casino in Brooks.  
5 All of those communities are smaller in  
6 population. The size of the Rancherias that you  
7 have approved are bigger in acreages and the  
8 facilities -- the gaming facilities that fit on  
9 them are smaller than what is being proposed  
10 here in Shiloh. Shiloh is a smaller Rancheria.  
11 The size of the facility is bigger than any of  
12 those other three. And it is in an urban area  
13 that's the population of Lake -- Lake --  
14 Larkfield and Wikiup and Windsor is like 33,000  
15 people. All of these other smaller communities  
16 where these other casinos are a lot smaller. So  
17 the negative impact here in Shiloh is going to  
18 be greater because there is simply a larger  
19 number of people that are going to be living  
20 there. And when you look at Graton Casino, it  
21 goes the other way. Yes, it is in an urban  
22 area, but it was -- it was -- the Rancheria that  
23 was put into tribal trust is on a larger acreage  
24 and put into a business district. And none of  
25 the preexisting land usages down there in the

1 business district are 24/7. You have businesses  
2 that are Monday through Friday, 8:00 to 5:00.  
3 And the retail facilities, maybe they're open on  
4 the week nights and weekends. But none of them  
5 are 24/7. And also, in Graton, they were able  
6 to hook up to a preexisting NPDES permit in  
7 order to discharge wastewater. Up here in  
8 Shiloh, you're talking about a facility that  
9 they're going to have to build their own  
10 wastewater drinking plant, a drinking plant. So  
11 I'm going to be down the street from a hotel  
12 that operates 24/7, a casino that operates 24/7,  
13 and a drinking water plant that operates 24/7,  
14 and a wastewater plant that operates 24/7. Who  
15 do I complain to? For Acorn Environmental, I  
16 don't see enough discussion about where we can  
17 lodge a complaint. Typically, federal law --  
18 laws are weaker than the California laws  
19 environmentally. And so if you have a release  
20 of a hazardous waste let's say that is covered  
21 federally that isn't covered by -- is covered by  
22 the State of California, like waste oil or waste  
23 antifreeze, what happens? Who is responsible  
24 for enforcing that? Are you going to have  
25 federal inspectors at the EPA, who are not

1 familiar nor do they have the authority to  
2 enforce California law, be responsible for  
3 enforcing California laws? There's no  
4 discussion about that. And I really --

5 CHAD BROUSSARD: Your time is -- your  
6 time is up. I ask that you wrap up your  
7 comments, please.

8 RICH OWENS: Okay. Okay. And the  
9 other thing is there needs to be more discussion  
10 about how specifically the Tribe goes about  
11 enforcing BMPs. There's no specific. Are  
12 they doing it themselves? Are they going to  
13 hire consultants? How is that going to happen?  
14 So thank you for your time. I appreciate it.

15 CHAD BROUSSARD: Thank you.

16 Our next speaker will be Jesus Mendoza.  
17 Jesus Mendoza.

18 JESUS MENDOZA: Hello. Can you hear  
19 me?

20 CHAD BROUSSARD: Yes, I can.

21 JESUS MENDOZA: Good evening. My name  
22 is Jesus Mendoza. I am proud to say that I am a  
23 Sonoma County resident and a field rep for the  
24 Nor Cal Carpenters Union. As a California  
25 native, I can understand the concerns for the

1 casino. However, if you look at the neighboring  
2 counties, you will see there is a lot of  
3 investment in fire prevention resources due to  
4 the constant development in the east counties.  
5 I believe if this project is built, it will  
6 create opportunities and, most importantly,  
7 economic growth. So I urge the BIA's approval  
8 of the EIS. Thank you for your time.

9 CHAD BROUSSARD: Thank you.

10 Our next speaker will be Jose Martinez.  
11 Jose Martinez.

12 JOSE MARTINEZ: Can you hear me?  
13 Hello. Good evening.

14 CHAD BROUSSARD: Yes, I can.

15 JOSE MARTINEZ: Hello. My name is Jose  
16 Martinez. I urge the BIA to approve the EIS.  
17 Thank you.

18 CHAD BROUSSARD: Thank you.

19 Our next speaker will be  
20 Vianna Nessinger.

21 VIANNA NESSINGER: Good evening. Can  
22 you hear me?

23 CHAD BROUSSARD: Yes, I can.

24 VIANNA NESSINGER: Hi. I live on East  
25 Shiloh Road. And I'm adamantly opposed to this

1 project. The proposed casino and resort is not  
2 compatible with the adjacent residential  
3 neighborhoods, as well as Shiloh and Esposti  
4 Regional Parks. It does not belong in this area  
5 and if it is built, it will forever change the  
6 surrounding area. This harm will be permanent.  
7 Additionally fires are inevitably here. The  
8 casino cannot mitigate for wildfires that come  
9 from the north/south or east of the facility.  
10 My family was evacuated twice. First during the  
11 Tubbs Fire and then the Kincade Fire. We lost  
12 homes in both fires and know well the terror of  
13 not being able to get out during a wildfire.  
14 The added impact to the local roads would ensure  
15 that we would not be able to evacuate safely.  
16 Sonoma already has labor, material, and housing  
17 shortages. The project may provide some jobs to  
18 local workers, but it would also necessitate  
19 additional workers to our areas negatively  
20 impact scarce housing availability. Sonoma  
21 County is not lacking in jobs, but it does lack  
22 affordable housing. This project will only make  
23 the existing scarcity worse. Financial gains  
24 should not be paramount. And temporary job  
25 creation will not offset the negative impact to



1 the environment and to our way of life. The Koi  
2 aren't from Sonoma County. This is not their  
3 tribal land. Local residents overwhelmingly  
4 oppose this project. The casino offers little  
5 benefit to our community. And the negative  
6 impacts will be born by existing residents. It  
7 should not be allowed to impact Sonoma County  
8 permanently and negatively all for financial  
9 gain for a few. Thank you for letting me  
10 express my thoughts.

11 CHAD BROUSSARD: Thank you.

12 Our next speaker will be Arella LaRose.  
13 Arella LaRose.

14 ARELLA LaROSE: Hello. Can you hear  
15 me?

16 CHAD BROUSSARD: Yes, I can.

17 ARELLA LaROSE: My name is Arella  
18 LaRose. I'm a member of the Kashia Band of Pomo  
19 Indians. It is crucial to hear from local  
20 Natives, especially Dry Creek, whose aboriginal  
21 territory will be defiled by the casino. Thank  
22 you. I really just want Native voices to be  
23 amplified as this is our land. And I want the  
24 land to be protected. And I'm against the  
25 casino. Thank you.

1 CHAD BROUSSARD: Thank you.

2 Our next speaker will be Jessica Cruz.

3 Jessica Cruz.

4 JESSICA CRUZ: Hi. Thank you. So  
5 according to the BIA website, it states that the  
6 BIA is responsible for protecting lives,  
7 resources, property at the heart of the BIA's  
8 law enforcement. It also states that you guys  
9 invest in America by strengthening Indian  
10 country through historic investments,  
11 collaboration, and honoring tribal sovereignty.  
12 By the BIA approving this project, this would be  
13 a great miscarriage of its purpose of tribal  
14 protections by sovereign Indian country and  
15 sovereignty. Approval of this project will open  
16 Pandora's box by allowing Tribes to take over  
17 other territories. I ask the BIA what is  
18 stopping other Tribes from all over the country  
19 from building here or any other area for that  
20 matter? The BIA is not simply upholding their  
21 purpose by sovereignty by establishing the local  
22 tribal territories. Why are you not protecting  
23 the local established Tribes by allowing this  
24 project to get so far? Why are you not  
25 protecting the ones that you guys are in place

1 to protect? Thank you.

2 CHAD BROUSSARD: Thank you.

3 Our next speaker will be Jeff Meldahl.

4 Jeff Meldahl.

5 JEFF MELDAHL: Unmute. There I am.

6 Yeah. I don't have a script like so many of the  
7 Carpenters Union were obviously provided by for  
8 the lawyers of Chickasaw Tribe, I suppose. It  
9 was a little -- as one of the congress -- one of  
10 the local representatives of Windsor was saying,  
11 it is a little disquieting that all of the  
12 concerns that we had time for the local people  
13 to express their concerns to the BIA about this  
14 project and the inadequacy of the EIS that was  
15 taken up by members of a union that were reading  
16 from a script that we had to hear scores and  
17 scores of time wasting all of our time.

18 With that said, without a script, I  
19 will tell you that I do live in Windsor. I have  
20 lived here for over 30 years. My wife and I  
21 have to drive down Hembree Lane and get onto  
22 Shiloh whenever we are going anywhere in the  
23 county towards Santa Rosa or the other  
24 businesses or to the hospital. And even now,  
25 those roads are jammed up and packed, as someone

1 had mentioned at 2:00 in the afternoon on a  
2 weekday. The audacity to claim that this  
3 project will not negatively impact congestion  
4 through the, quote, mitigated measures that has  
5 been proposed is really quite ridiculous. And I  
6 certainly urge the Bureau -- the BIA to take the  
7 negative impact to this community, to the people  
8 of this community, including their access to  
9 health care at the local hospital, access to the  
10 schools, and access to their stores and what  
11 have you that they have to do the very -- the  
12 congestion associated with this will be too  
13 great and will not be mitigated by the  
14 information provided in the EIS. So I would say  
15 you've got my vote. I know this wasn't supposed  
16 to be a vote I'm for, you're against it. But  
17 since the Carpenters Union decided to waste four  
18 hours of my time putting their votes in, I  
19 decided to spend my time waiting until I had my  
20 chance. Thank you.

21 CHAD BROUSSARD: Thank you.

22 Our next speaker will be Jason  
23 Galisatus. Jason Galisatus.

24 JASON GALISATUS: Hi. Can you hear me?

25 CHAD BROUSSARD: Yes, I can.

1           JASON GALISATUS: Okay. So I'm calling  
2 to urge the BIA's approval of the EIS. And  
3 ultimately that's what the hearing is about and  
4 whether it meets the criteria outlined there.  
5 And it specifically addresses three areas that  
6 I've heard a lot of concern with today. And  
7 that's fire, evacuation plans, and groundwater.  
8 With regards to fire, the mitigation efforts for  
9 fire protection services from the County,  
10 they're sufficiently staffed and there's enough  
11 staff on-site from the fire department to  
12 adequately ensure fire safety on evacuation  
13 plans. They're going to train their employees  
14 and make sure to coordinate with local costs to  
15 continue to mitigate evacuation -- evacuation  
16 times and wildfire risks. And on groundwater,  
17 the plan includes protecting water consumption,  
18 includes as-needed monitoring in coordination  
19 with local governments. And it will implement  
20 Best Management Practices that is going to help  
21 mitigate against groundwater depletion. So I do  
22 urge the BIA to please approve the EIS. Thank  
23 you.

24           CHAD BROUSSARD: Thank you.

25           Our next speaker will be Alva Johnson.

1           LANA RIVERA: Hello. This is Lana  
2 Rivera utilizing Alva Johnson's Zoom feed.

3           CHAD BROUSSARD: Okay.

4           LANA RIVERA: Again, this is Lana  
5 Rivera. Thank you. I am a citizen of the  
6 Muscogee Creek Nation and president of Graton  
7 Resort & Casino. It is my honor to speak out to  
8 the BIA hearing on behalf of Graton Resort &  
9 Casino and team members. And to call the  
10 attention to the benefits that provide the  
11 surrounded communities in the state that would  
12 be affected by the Koi Nation project. I  
13 support the Koi Nation's right to build a casino  
14 within its ancestral land in Lake County. I  
15 oppose Koi Nation's effort to build a casino in  
16 Windsor however because it is outside of its  
17 ancestors' land and inside its ancestral lands  
18 of another Tribe. I would not support my own  
19 nation's -- my own nation encroaching into  
20 territories of Tribes around it. Let me be  
21 clear. This is not about having competition. I  
22 have cut my teeth in a competitive market in  
23 Oklahoma. I have no fear of competition. This  
24 is about a level playing field where Tribes --  
25 this is about a level playing field for all

1 Tribes not permitted unfair competition that is  
2 promised on accessing markets that have been  
3 opened and established by other Tribes investing  
4 time and over a billion dollars. Based on my  
5 many years in the gaming industry, I can tell  
6 you that the Koi Nation's EA is not credible.  
7 They assume it will grow the market 60 percent  
8 of their -- 60 percent of their revenue will be  
9 coming from growth in the market. However, we  
10 are in a mature market. They will make -- they  
11 are making an outrageous claim. They are trying  
12 to make it seem like they will not depend from  
13 taking business from other casinos. However,  
14 their unrealistic approach they admit that  
15 40 percent of their revenue will come from  
16 cannibalization -- or cannibalizing the markets  
17 that other Tribes have worked so hard in  
18 building, including those Tribes with historical  
19 lands that the Koi Nations are encroaching on.  
20 Graton Resort & Casino supports the Tribe of the  
21 Federated Graton Rancheria to be  
22 self-sufficient. Without help from the federal  
23 agreement to achieve success, the Tribe has gone  
24 from being unrecognized to providing health,  
25 education, and security of its citizens. By



1 allowing this, the Koi Nation will now seek to  
2 cannibalize their revenue. Thank you.

3 CHAD BROUSSARD: Thank you.

4 Our next speaker will be Sam Munoz. Sam  
5 Munoz.

6 SAM MUNOZ: Good evening. My name is  
7 Sam Munoz. And I'm a 20-year carpenter. Thank  
8 you for the opportunity to speak tonight. I'm  
9 speaking in support of the BIA's approval of the  
10 EIS. And I respectfully ask for your approval.  
11 Have a good night. Thank you.

12 CHAD BROUSSARD: Thank you.

13 Our next speaker will be Juan Espinoza.  
14 Juan Espinoza.

15 JUAN ESPINOZA: Good evening. My name  
16 is Juan Espinoza. Thank you for the opportunity  
17 to speak. For the same reasons that my brothers  
18 and sisters from the Nor Cal Carpenters Union  
19 have already expressed, I urge the BIA's  
20 approval of the EIS. Thank you for your time.  
21 And good evening.

22 CHAD BROUSSARD: Thank you.

23 Our next speaker will be German  
24 Guerrero. German Guerrero.

25 GERMAN GUERRERO: Yes. Can you hear

1 me?

2 CHAD BROUSSARD: Yes, I can.

3 GERMAN GUERRERO: Good evening. Thank  
4 you for the opportunity to speak tonight. My  
5 name is German Guerrero, a proud member of the  
6 Carpenters Union and a proud resident of Sonoma  
7 County. I was born and raised here. I live in  
8 Cloverdale. I'm not going to repeat what my  
9 fellow brothers and sisters said. But I do  
10 stand by them a hundred percent. I lived -- I  
11 lived through the fires. Actually, when  
12 residents were evacuating, me and my fellow  
13 carpenters were driving into work, as I worked  
14 at Kaiser of Santa Rosa. We helped evacuate the  
15 hospital and helped the fire department put out  
16 small fires that were on-site. Carpenters were  
17 boots on the ground the day of and weeks after.  
18 After the fires were all -- all done, Sonoma  
19 County was all about Sonoma County strong. We  
20 will rebuild. We will rebuild bigger and  
21 better. I believe this project is part of doing  
22 just that. I am in favor of it and urge the BIA  
23 to approve the EIS. Thank you.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be someone

1 calling in by phone with the last four digits of  
2 the phone number 0485. 0485.

3 Are you there? It looks like you have  
4 unmuted, but we can't hear you. Go ahead.

5 I'm sorry, but we can't hear you. If  
6 you're having technical difficulties -- oh, I  
7 think I can hear you now.

8 BUFFY McQUILLEN: Can you hear me now,  
9 Chad?

10 CHAD BROUSSARD: Yes, I can.

11 BUFFY McQUILLEN: Okay. Hi, Chad.

12 This is Buffy McQuillen, the Tribal Heritage  
13 Preservation Officer for the Federated Indians  
14 of Graton Rancheria. My office is opposed to  
15 project occurring in Sonoma County because it  
16 will significantly impact the Tribe's religious  
17 and cultural values and cannot be mitigated. We  
18 know this project will have significant effects  
19 on the cultural resources, but we still cannot  
20 say how significant of the BIA's utter failure  
21 in conducting consultation required under  
22 Section 106 of the National Historic  
23 Preservation Act. The Section 106 process  
24 requires the BIA to consider the effects of this  
25 project on historic projects, including cultural

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1 resources, and to consult with Tribes that are  
2 culturally affiliated with the area. It is  
3 required in consultation with those Tribes to  
4 determine the area of potential effect, seek out  
5 and gather information, and make a reasonable  
6 and good-faith effort to identify those historic  
7 properties. The Section 106 process is meant to  
8 inform BIA's environmental review process under  
9 NEPA. But BIA did not notify the Tribes of this  
10 project until August 2022. By the time the BIA  
11 confirmed the Tribe was a consulting party, the  
12 BIA had already established the area of  
13 potential effect, conducted four culture  
14 resource surveys. The BIA has repeatedly  
15 conducted surveys without notice to the Tribe  
16 and has not allowed the Tribe to do its own  
17 surveys, despite its requests. Several months  
18 after the Tribe asked for copies of the culture  
19 resource reports, the BIA finally provided four  
20 reports. Yet, the BIA still has not provided  
21 the Tribe with all culture resource reports for  
22 the project. In this context, it is not  
23 surprising that the historic preservation  
24 officers asked the BIA to reinitiate Section  
25 106, consultation with Tribes. What is

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cont.

1 surprising is that the BIA would even consider  
2 moving this Draft EIS forward knowing that it  
3 failed to conduct 106 consultation without the  
4 SHPOs concurrent. The Tribe has told the BIA  
5 over and over that religious and culturally  
6 significant tribal resources are present. The  
7 BIA refuses to recognize the significant impacts  
8 this project will cause to the Tribe's cultural  
9 resources. The Tribe's concerns are heightened  
10 because it stands to lose control over its  
11 cultural resources on the property. Recent  
12 changes made by the Department of Interior to  
13 the Native American Graves Protection and  
14 Repatriation Act will potentially change how the  
15 Tribe's ancestral remains and other cultural  
16 items are treated and protected by the rightful  
17 culturally affiliated Tribes. Any discoveries  
18 on this property should allow Graton Rancheria  
19 and neighboring Pomo Tribes in Sonoma County to  
20 have priority for protection and reburial. But  
21 if this land is taken in the trust for the Koi  
22 Nation, then the Koi Nation will become the  
23 owner and it will be a loss to Sonoma County  
24 Tribes that are culturally and ancestrally  
25 connected. The project's significant and dire

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cont.

1 impacts on the Tribe's cultural resource cannot  
2 be fully understood without BIA reinitiating  
3 Section 106 with Graton Rancheria and other  
4 Sonoma County Pomo Tribes in making a genuine  
5 effort to identify, evaluate, and acknowledge  
6 the presence and significance of tribal cultural  
7 properties and places. Thank you.

8 CHAD BROUSSARD: Thank you.

9 Our next speaker will be Paul Willard.  
10 Paul Willard.

11 PAUL WILLARD: My name is Paul Willard.  
12 I'm Cherokee. And I live a few miles from this  
13 site. The Cherokee heard similar complaints  
14 before our casinos. And I understand them.  
15 We're all afraid of change, especially when we  
16 have it as good as we all do here. To support  
17 change that might help your neighbor, but maybe  
18 you can't see how it's going to help you, well,  
19 that's a scary thing. I think that most of the  
20 comments tonight have been born out of this fear  
21 rather than requirements to procedures for this  
22 development. But the Koi were here in  
23 California long before me, long before everyone  
24 who spoke at this hearing. And no one had a  
25 hearing for the Koi long ago when their land was

1 taken and handed over to folks who profited from  
2 that land. With respect and empathy for many of  
3 the speakers on this hearing who probably have  
4 no idea what the Native cost of their own home  
5 was. I don't think we have the right to tell  
6 the Koi what to do on these lands. That  
7 includes representatives in our local, state,  
8 and federal government, who don't have the right  
9 to negotiate with sovereign indigenous Nations.  
10 Again, with all respect to our representatives  
11 who have called in and whose work I so greatly  
12 appreciate. People have complained about the  
13 involvement of another nation. And as a citizen  
14 of another nation, I just don't understand why  
15 it is so hard for folks to understand why one  
16 nation might want to help another. For example,  
17 I have no economic benefit for making this  
18 statement. And for those that say they should  
19 do this somewhere else, all due respect, but  
20 talk is cheap. Give them the land with the same  
21 opportunities here. Concerns about the  
22 approximate location of this casino,  
23 evacuations, and so on can all be addressed, at  
24 a much lower cost than giving all of the  
25 ancestral land back to the Koi. With respect to



1   legality, I think it's clear the Koi have the  
2   right to do this project. Environmental impact  
3   requirements have been met. But beyond that,  
4   I'm glad that the Koi are building this casino  
5   and hopeful for the prosperity that it will  
6   bring this great indigenous nation, as well as  
7   everyone else who lives nearby, even those who  
8   are not fully behind it today. I believe this  
9   project will bring prosperity for many more than  
10  the Koi. Wado, or thank you in Cherokee. I  
11  hope this project moves forward for the benefit  
12  of everyone. And I urge the BIA to approve it.

13           CHAD BROUSSARD: Thank you.

14           Our next speaker will be Alan Titus.  
15  Alan Titus.

16           ALAN TITUS: Hi. Can you hear me?

17           CHAD BROUSSARD: Yes, I can.

18           ALAN TITUS: Good evening. I'm Alan  
19  Titus, attorney. And I would like to raise a  
20  legal issue. So the legal issue has not been  
21  raised, has not been addressed in the EIS.  
22  Namely, who has governmental jurisdiction over  
23  the land? The EIS recites the statutory  
24  authority for the federal government to acquire  
25  this land in trust for the Tribe, but it does

1 not address jurisdictional issues. The land is  
2 currently governed by a state law. State law  
3 which prohibits casinos and controlling zoning.  
4 That jurisdiction will not change just because  
5 the Koi take title to the land. Nor will it  
6 change if the federal government takes title in  
7 trust for the Koi. The federal government  
8 conferred legislative jurisdiction to the state  
9 when it admitted California to the union. The  
10 federal government has no power to take that  
11 away now. Only the State can give up its  
12 jurisdiction. And only with the consent of the  
13 state legislature. The state legislature would  
14 need to cede the State's jurisdiction back to  
15 the federal government, and that has not been  
16 done. So this is not a question of what Tribe  
17 was on the site. The question is who has  
18 jurisdiction, the state or the federal  
19 government? And it is really the state  
20 government. Thank you.

21 CHAD BROUSSARD: Thank you.

22 Our next speaker will be William Hitt.  
23 William Hitt.

24 Please remember to unmute your  
25 microphone. And if you're having technical

1 difficulties, please call our phone line.

2 We're going to move to the next  
3 speaker, William McCormick. William McCormick.

4 WILLIAM McCORMICK: I'm here. I assume  
5 you can hear me.

6 CHAD BROUSSARD: Yes, I can hear you.

7 WILLIAM McCORMICK: Well, I'm not a  
8 carpenter, but I'm a licensed geologist with EIR  
9 experience. And I have prepared my own  
10 statements tonight. While I know it is the  
11 BIA's purpose to assist Tribe, I'm not sure why  
12 this Tribe of 90 people is being considered for  
13 privileged treatment. This would be the first  
14 casino in a residential neighborhood and one  
15 more than 15 miles away from their native  
16 homeland. Unlimited reservation shopping has  
17 got to stop. The environmental document is  
18 completely lacking. I'm familiar with EIR  
19 documents. I've been part of them. I've read  
20 them all my life. This is probably the worst  
21 example and misguided example I've ever seen.  
22 Acorn should consider themselves under scrutiny  
23 from professional standpoint for all of the lack  
24 of facts and data that they didn't present and  
25 the ones that they oversaw. All things can be

1 mitigated. How -- how convenient. Mitigated to  
2 what standard? Certainly not the standard of  
3 those that already live here. There is no real  
4 definition of less than significant. It is  
5 subjective. And to be brief, I'll only talk on  
6 three quick guidance.

7 Traffic. It has been mentioned before.  
8 And this is supposedly done by experts. They  
9 missed the second closest major intersection.  
10 Shiloh and Faught Road. I live on that corner.  
11 I know what goes on on that corner with no  
12 casino. People going through poles and taking  
13 out power lines. This is ridiculous. How can  
14 you even consider this an acceptable document if  
15 you don't study all of the intersections? You  
16 can't mitigate 1700 cars in a residential  
17 neighborhood. There will be a four-story  
18 parking structure I can see from my backyard  
19 with lighting. That is not mitigatable.

20 Groundwater. I exist on a well.  
21 Taking water from my well is not acceptable. It  
22 is not less than significant. So, you know,  
23 this -- you know, what we should do is make the  
24 Tribe actually live on this property with the  
25 casino to see how less than significant all of

1 these impacts will be. Let's stop this casino  
2 insanity. A message to the Koi. I'm an  
3 American citizen. I owe you nothing. You owe  
4 me nothing. But you don't have the right to  
5 disparage my life and my lifestyle. And based  
6 on where this thing is and all of the things  
7 that we have experienced with environmental  
8 conditions, if you build it, it will burn.  
9 Thank you.

10 CHAD BROUSSARD: Thank you.

11 Next speaker will be William Hitt.

12 William Hitt. Remember to unmute your  
13 microphone. If you're having trouble, call our  
14 help line.

15 We will move to our next speaker in the  
16 interest of time. Gary Hodges. Gary Hodges.

17 GARY HODGES: Yes. Can you hear me?

18 CHAD BROUSSARD: Yes, I can.

19 GARY HODGES: I'm a member of the  
20 Federated Indians of the Graton Rancheria. I  
21 implore the BIA to prioritize respecting the  
22 sovereignty rights of all local Tribes involved.  
23 Sovereignty is crucial for tribal  
24 self-governance and land control. Transparent  
25 consultations with affected Tribes are

1 essential. We can only hope the BIA takes this  
2 into serious consideration. Thank you.

3 CHAD BROUSSARD: Thank you.

4 Our next speaker will be Robyn LaRose.  
5 Robyn LaRose.

6 Robyn LaRose, are you there? It looks  
7 like you have unmuted your microphone, but we're  
8 not hearing you. If you're having technical  
9 difficulties, please contact our help line.

10 But we're going to move on to the next  
11 speaker in the interest of time, which will be  
12 Tristan Stidham. Tristan Stidham.

13 TRISTAN STIDHAM: Yeah. Can you hear  
14 me, Chad?

15 CHAD BROUSSARD: Yes, I can.

16 TRISTAN STIDHAM: Great. One second.  
17 My name is Tristan. I'm a member of the Big  
18 Pine Paiute Tribe and I serve as counsel for the  
19 Lytton Rancheria of California. I just want to  
20 say I thought it was unfortunate that the  
21 comments early in the hearing on were inflated  
22 and dominated by the Carpenters Union, who  
23 likely, even though they receive some temporary  
24 work, will not have to worry about the safety of  
25 their family during the wildfire. Their

1 comments drowned out local residents, who had to  
2 wait hours to make themselves heard. And many  
3 were likely discouraged and unable to stay on  
4 long enough to do so. Now, actual Sonoma County  
5 residents know how disastrous wildfire can be.  
6 And with this project, a disaster worse than we  
7 just saw in Hawaii is becoming more of a  
8 certainty. The actual Tribes from Sonoma County  
9 have been good partners and taken efforts to  
10 form agreements with the county government.  
11 That hasn't happened with Koi Nation. And it is  
12 unfair that this project is being forced  
13 forwards anyways. It is also extremely  
14 unfortunate that the momentum for this project  
15 seems to be coming from outside of Sonoma County  
16 with non-California Tribes and organizations  
17 that seem set to profit the most. These groups  
18 don't actually care about Sonoma County or  
19 California's Tribes. I hope that we will see an  
20 extension of the public comment period for this  
21 EIS. The BIA should also hold meaningful  
22 consultations with the local Tribes local to  
23 Sonoma County. The Department of Interior  
24 should respond to emails and concerns of the  
25 local Tribes in order to demonstrate their



1 cultural ties to the area. Tribes like Lytton  
2 have seen none of this. Ultimately I hope the  
3 EIS and application for the project will be  
4 rejected. It defies common sense that this  
5 project is moving forward. And at the end of  
6 the day, it is not right. Thank you.

7 CHAD BROUSSARD: Thank you.

8 Our next speaker will be Adina Flores.  
9 Adina Flores.

10 ADINA FLORES: Actually, I already  
11 spoke. So I yield my time. Thank you.

12 CHAD BROUSSARD: Okay. Thank you.

13 Our next speaker will be Terry Barboza.  
14 Terry Barboza. Please remember to unmute your  
15 microphone.

16 TERRY BARBOZA: Yeah. Hi. Can you  
17 hear me now?

18 CHAD BROUSSARD: Yes, I can.

19 TERRY BARBOZA: Yeah. I'm Terry. I'm  
20 a Sonoma County Indian and a citizen of the  
21 Federated Indians of the Graton Rancheria. The  
22 Koi Tribe is from Lake County. We have talked  
23 about that. Which is their tribal homeland.  
24 The BIA needs to work with them to find an  
25 alternative site for the restored lands within

1 their own cultural and traditional territories.  
2 Please consider the devastating impact on tribal  
3 elders and children of Sonoma County Tribes.  
4 Since time began, we have protected our cultural  
5 lands. I am now concerned that the BIA is not  
6 protecting the sovereign rights of the Tribal --  
7 of the Tribes of the Sonoma County. The Koi  
8 Tribe is not from here and should focus on their  
9 own land and the opportunities in Lake County.  
10 Ignoring our rights would set a bad example,  
11 allowing any Tribe to take another Tribe's land  
12 because of so-called historic connections. This  
13 is offensive to my Tribe and especially our  
14 elders. Please don't let the Koi Nation abuse  
15 the cultural and sacred lands of Sonoma County  
16 tribe. Thank you for your time.

17 CHAD BROUSSARD: Thank you.

18 Our next speaker will be Nina Cote.  
19 Nina Cote.

20 NINA COTE: Hi. My name is Nina Cote.  
21 And I'm a proud member of the community of  
22 Windsor. I support the Koi Tribe in their  
23 endeavors to ensure their Tribe is financially  
24 solvent, but not by building a mega casino  
25 resort in an inappropriate area. Cal Fire, the

1 2024 California wildlife -- wildfire season  
2 states year to date the number of wildfires and  
3 the number of acres burned are higher than the  
4 five-year average. Wildfires are not going away  
5 and, if anything, are increasing. The proposed  
6 site is in adjacent fire risk Zones 3 and 4,  
7 high and very high. Less than a week ago, we  
8 saw a wildfire alert for the Flora Fire on Chalk  
9 Hill Road come through for a fire less than  
10 three and a half miles from the Proposed Casino  
11 Site and our homes. Close enough that friends  
12 were reaching out with offers of opening their  
13 homes to us. The Proposed Site's fire trigger  
14 zone would be directly across the street from  
15 residential neighborhoods on multiple sides and  
16 there is a high probability of 5,000 gamblers or  
17 more competing with residents and their families  
18 during evacuation. One of our only exits out of  
19 our subdivision is directly across from proposed  
20 entry to the casino. The proposed protective  
21 measures and Best Management Practices in the  
22 EIS will not eliminate the issues, especially  
23 due to the sheer volume of people during  
24 evacuation. Here are examples from the EIS.  
25 Red flag, fire cameras, alerts and evacuation

1 zone maps, staff designated for fire  
2 coordination, evacuation information posted in  
3 handouts to visitors, public address system,  
4 offer off-site transportation for those that  
5 can't drive. Following out, showing evacuation  
6 routes. Traffic attendants, directing traffic.  
7 None of these are mitigations that are going to  
8 take care of this problem. Building any large  
9 business in this proposed area which is  
10 currently zoned agriculture, scenic route,  
11 floodplain, and floodway is inappropriate.  
12 There are many approved town projects in this  
13 area for much needed housing, which will already  
14 increase the number of people and traffic here.  
15 The only option I support is Alternative D, no  
16 action. Thank you for your time.

17 CHAD BROUSSARD: Thank you.

18 Our next speaker will be Debbie Green.  
19 Debbie Green.

20 ERIC GREEN: Hello. Can you hear me?

21 CHAD BROUSSARD: Yes. Yes, I can.

22 ERIC GREEN: Hi. This is Eric Green.

23 I appreciate you taking the time. I wanted to  
24 say just a couple of words. With respect to the  
25 carpenter jobs that are created or not created

1 by this project, I suggest we build something  
2 suitable for the area and the community. There  
3 are other ways to create jobs rather than by --  
4 such as, for example, building homes which we  
5 need in the area that are less dense and much  
6 more appropriate for the area. Number two, a  
7 casino will diminish the income and jobs of the  
8 other casinos that are located in the area. So  
9 when people talk about the jobs and income and  
10 taxes created, it will be losses in other  
11 casinos that are legitimately created by Tribes  
12 that are local to the area. And they will have  
13 losses that offset the income of the casino in  
14 this area. And finally, I would like to say  
15 that I think that the fire hazards which, you  
16 know, we have experienced here firsthand are  
17 very problematic and are -- would be exacerbated  
18 [technical difficulties] by a proposal and  
19 really think that they're serious because, for  
20 example, when we're at Sonoma State and going on  
21 July 4th, listening to various different  
22 musicians play, just to get out of that little  
23 area takes you an hour. And that has less  
24 people and less cars than this casino would  
25 have. So with all due respect, I believe that

1 we should have this area devoted to other types  
2 of projects that could be just as successful,  
3 but not bring the negative impact to the  
4 community that this project would. Thank you  
5 very much for the time.

6 CHAD BROUSSARD: Thank you.

7 Our next speaker is someone calling in  
8 with a phone last four digits 7870. So that's  
9 7870.

10 RICHARD KLUCK: Hello?

11 CHAD BROUSSARD: Hello.

12 RICHARD KLUCK: Can you hear me?

13 CHAD BROUSSARD: Yes, I can.

14 RICHARD KLUCK: My name is Richard  
15 Kluck. I live at 149 East Shiloh, right across  
16 the street from the project. My front porch is  
17 30 feet from the edge of the road. I have a  
18 shallow well. If the water tables go down by  
19 30 feet, I'm without water. Due to the fact  
20 that it was put in when it was grandfathered, I  
21 can't drill another well on my property. I  
22 can't accommodate the setbacks. And Windsor  
23 won't let me hook up to their water. I have  
24 tried that through the years. So this project  
25 would, you know, destroy my life here. And my

1 retirement is my home sitting here. And without  
2 water it really isn't worth much, is it? The  
3 other thing is the creek. I have Pruitt Creek  
4 on two sides of my property, down the one side  
5 and then across the back. And I'm right at the  
6 bridge. And that creek is dry most of the year.  
7 It is dry better than half of the year. It is  
8 stone dry right now. And they're going to put  
9 wastewater down it? I don't see how that's  
10 going to work downstream for that trailer park.  
11 The nice lady that was talking about her  
12 flooding. And, you know, that's just not -- it  
13 makes no sense at all. The other thing is the  
14 fire. We've heard all about the fires. But  
15 real quickly, my experience, I had two  
16 experiences with the fires here. We were  
17 evacuated three times. But when the Tubbs Fire  
18 came through, my guests left after dinner. And  
19 they hit the freeway down off of Shiloh Road,  
20 the other side of 101, and they said Windsor is  
21 on fire. The whole field was on fire from just  
22 cinders that had blown all the way over from the  
23 Tubbs Fire in Santa Rosa. When we went out on  
24 our front porch, Wikiup was burning up. One  
25 propane tank after another going up that we

1 could see across this project site. And no fire  
2 mitigation at all. I mean, it was running so  
3 fast, they didn't -- they didn't stop anybody.  
4 I had a physician who police broke their door  
5 down and yelled at them to run. Nobody could do  
6 anything that fast. The winds come through here  
7 too much. The speed of a fire coming through  
8 here is incredible. I saw it that night. And  
9 there is not going to be -- we had no warning.  
10 The only reason that I had a warning is my  
11 guests called me from the corner and said there  
12 are fires all over because the cinders have been  
13 blowing across 101. They think that we're going  
14 to have hours worth of warning. We may not  
15 because we didn't then. On one of the other  
16 evacuations, I heard that they were evacuating  
17 my house. I came running from work. My wife is  
18 housebound in a wheelchair. And the police  
19 wouldn't let me down my road because they said  
20 it was closed off. I had to park my car and run  
21 down to the house to get her. That's -- if  
22 that's the mitigation for traffic control, what  
23 they have an idea of, you know, our normal ways  
24 don't work. And we don't have anywhere near the  
25 number of people that would be down this road.



1 So I'm --

2 CHAD BROUSSARD: Your time is up.

3 Could I ask you do restate your name for the  
4 record? We didn't quite get that at the  
5 beginning.

6 RICHARD KLUCK: It is Richard Kluck. I  
7 have lived in this house for 45 years. If this  
8 water table goes down by 20, 30 feet, I have no  
9 water in my house and no way to get any in that  
10 I can see at this point. And the evacuations  
11 are fast when they happen.

12 CHAD BROUSSARD: You need to wrap your  
13 comments up, please. Your time is up.

14 RICHARD KLUCK: Okay. I want to thank  
15 my neighbors. I have no -- I had no idea that I  
16 had such intelligent neighbors until I got to  
17 listen to this for four and a half hours. Thank  
18 you so much for listening to me.

19 CHAD BROUSSARD: Thank you.

20 Our next speaker will be a call-in.

21 Someone calling in. Last four digits 7870.

22 Scratch that. That's who we just heard from.

23 Our next speaker will be Gloria Hubbell. Gloria  
24 Hubbell.

25 GLORIA HUBBELL: Can you hear me?

1 CHAD BROUSSARD: Yes, I can.

2 GLORIA HUBBELL: Okay. Great. Thank  
3 you for the opportunity to finally get to speak.  
4 I just like to preface this to let you all know  
5 that I'm not a carpenter. I'm not a drywaller.  
6 I'm not a chief. I'm not a politician. I'm  
7 just an old lady that lives in Windsor. I've  
8 lived here for 30 years because of the peace and  
9 the easy-going community. And it's like fire  
10 and ice here. I think this country is going  
11 crazy. To think that we would want a casino in  
12 place of the sheep that used to live there. I  
13 just -- I can't -- I can't handle it. But -- so  
14 I just want to say that I do oppose this  
15 project, but no more than I oppose the format of  
16 this venue. May we schedule another community  
17 Zoom meeting for actual members of community and  
18 the people that are truly affected in the  
19 environmental study. Not the carpenters. They  
20 are definitely affected for work, but the  
21 environment can do without them having to have a  
22 job here. Sorry, guys. That's all I wanted to  
23 say. It is getting late. I'm an old lady. I'm  
24 cranky. And thank you all.

25 CHAD BROUSSARD: Thank you. Our next

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1 speaker will be Regina Demelo. Regina Demelo.

2 REGINA DEMELO: Hi there. Thank you  
3 for the opportunity to speak. I just wanted to  
4 say I'm a longtime Windsor resident. I live  
5 about two miles from the Proposed Project site.  
6 And I just want to underscore the comments we  
7 have heard earlier this evening in regards to  
8 Windsor being a family town that is -- is very  
9 unique in its own right. And the real  
10 inappropriateness of having a casino in that  
11 location. It is literally across the street  
12 from where children play Little League every  
13 single weekend. And -- and then also across the  
14 street from a local church where we heard  
15 earlier tonight that people are going for  
16 meetings related to gambling addiction. And so  
17 Windsor is, again, a unique town in a unique  
18 environment. And I hope that some consideration  
19 can be paid to the fact that -- that this is  
20 such a residential community that the casino  
21 just doesn't belong here. Thank you very much  
22 for the opportunity.

23 CHAD BROUSSARD: Thank you.

24 Our next speaker will be Robyn Larose.  
25 Robyn Larose.

1 ROBYN LAROSE: Hello.

2 CHAD BROUSSARD: Hi.

3 ROBYN LAROSE: Oh, finally. Third time  
4 is a charm. My name is Robyn Larose. I'm a  
5 member of the Kashia Band of Pomo Indians and I  
6 serve on tribal council as member at large. I'm  
7 against this project. This project is not  
8 neighborly. This is not Koi's aboriginal land.  
9 And it is not being done in a good way. I hope  
10 that the BIA will listen to the voices of tribal  
11 members and neighbors opposed to this project.  
12 And to all of the carpenters that are in favor  
13 of this project, I just want to remind them that  
14 it is not just about money. This is people's  
15 neighborhood. This is -- it is bigger than just  
16 a job and money. It is about safety. It is  
17 about the impact that this is going to have on  
18 the community, natives and non-natives. It is  
19 about the land and animals that are going to be  
20 affected. And life is greater than money. And  
21 I just want to remind them of that, to not get  
22 lost in a job. It is just a job. It is going  
23 to come and it is going to go. So yeah. Thank  
24 you all. And thank you everyone who has had --  
25 everyone has had wonderful things to say. And I

1 appreciate finally getting the chance to speak.

2 So thank you again.

3 CHAD BROUSSARD: Thank you.

4 Our next speaker is William Hitt.

5 William Hitt.

6 Don't forget to unmute your microphone.

7 William Hitt, if you're there. Well, if you're  
8 there and you weren't able to get through,  
9 please send a comment. Send a written comment  
10 in, and it will receive the same weight as any  
11 spoken comments that you would have made here  
12 tonight.

13 That is the end of the list of the  
14 people that have signed up. If anyone else  
15 would like to speak, please raise your hand now.

16 I have a couple people it looks like.

17 Next speaker will be Patricia Kempton.

18 PATRICIA KEMPTON: Hi. Good evening.

19 And thank you for taking my call. I want to  
20 preface it by saying I'm disappointed that I  
21 have written letters and I have left messages,  
22 and I have not gotten any response. I live on  
23 Shiloh Road. I live immediately across from the  
24 site. I'm looking out my living room window now  
25 to beautiful darkness, to stars, to the moon.

1 There's owls out there. All of that would go  
2 away. So when they talk about this  
3 environmental impact is all mitigatable, the  
4 light pollution can't be mitigated. It will be  
5 there. I live on a well. When the water is  
6 gone and there are no water pipes, I will have  
7 no water in my house at all. I won't be able to  
8 sustain my family, and I won't be able to  
9 sustain my land. I've been very careful with  
10 water here, as we all have been on this street.  
11 If there were a fire or even if there was any  
12 kind of just event, like they were talking about  
13 events, if you have an event on this road on  
14 Shiloh Road and I need to go anywhere, to work  
15 or the grocery store, go to the doctor's office,  
16 I will not be able to pull out of my driveway  
17 because there will be such a steady stream. If  
18 you're talking about 20,000 people coming here  
19 on a daily basis, I will be trapped in my house  
20 that way. I also believe that the vineyard and  
21 the area across with the wetlands and everything  
22 has been a great fire break. If you put a great  
23 big building up there, it will become a towering  
24 inferno on the first fire that comes across.  
25 When the Tubbs Fire came, we saw cinders the

1 size of manhole covers flying across our grounds  
2 and going across the way and lighting things up.  
3 We stood in our front yard, and we saw them  
4 flying over our head. There is no way any early  
5 warning system from the fire brigade at a casino  
6 is going to be able to deal with that. I'm  
7 going to tell you, if you train 1500 people at  
8 the casino to be -- help people get out in the  
9 fire, they will be the first ones out because  
10 they know that if they're not the first ones  
11 out, they may stay behind and burn with the rest  
12 of us. I'm extremely disappointed about the  
13 water, the traffic, the fact that the sewer  
14 pollution is going to come down our creek which  
15 comes down the back of my property. I don't  
16 mean to be rude to you in any way, but I have to  
17 ask you this. After all the times that the  
18 Sonoma County Native-American groups have said  
19 to you please don't do this, please don't do  
20 this, and the BIA keeps bringing it back and  
21 bringing it back, I have to wonder if the BIA or  
22 some element of the federal government is  
23 saying, hey, you know, a hundred years ago, we  
24 were able to screw around with the Indians.  
25 Let's do it again. And I think this is an

1 effort to form dissention in the Native-American  
2 communities. And I'm not a Native-American, but  
3 I'm looking at this and I'm going, are we  
4 repeating ourselves? Is this a political thing  
5 that is coming around? Why are we doing this?  
6 The city doesn't want it. Windsor doesn't want  
7 it. The county doesn't want it. The local  
8 Rancherias don't want it. But the BIA wants to  
9 bring it back. These 90 people want to bring  
10 this back. We want to maybe open the door to  
11 reservation shopping. We want to make sure that  
12 maybe what these people have had all these years  
13 they can no longer have. Thank you for your  
14 time.

15 CHAD BROUSSARD: Thank you.

16 Next speaker is J'Anthony.

17 I'm going to move to Lorelle Ross.

18 LORELLE ROSS: Hi. Can you hear me all  
19 right, Mr. Broussard?

20 CHAD BROUSSARD: Yes.

21 LORELLE ROSS: Okay. I was going to  
22 start off by saying good evening, but I will end  
23 with a good night. My name is Lorelle Ross.  
24 I'm a resident of Sonoma County. I am a direct  
25 descendant of people and elders and ancestors



1 from the Cloverdale Tribe, from Dry Creek Tribe,  
2 from the Mishewal-Wappo Tribe and the Graton  
3 Rancheria. I am an enrolled citizen there. And  
4 today, this evening, we have heard from Sonoma  
5 County Tribal leaders, tribal people,  
6 residents, and job seekers motivated by a single  
7 industry. However, we haven't heard much from  
8 the Koi people about their connections to Sonoma  
9 County beyond their monetary gains. Koi Nation,  
10 with respect to the cultural tribal knowledge  
11 passed down from our ancestors to the  
12 present-day elders, we have always known what  
13 Tribes are from what area. Koi Nation, your 100  
14 citizens are not more important than the  
15 thousands of citizens of Sonoma Tribes. Your  
16 attempt to colonize Sonoma County is wrong and  
17 not in line with our Native ways. Please do not  
18 let the Koi Nations project proceed in the  
19 Sonoma County. Lateral oppression against  
20 Sonoma County tribes. BIA, please do not stand  
21 on the wrong side of history for California  
22 Indians of Sonoma County. The rearranging of  
23 documented anthropological ethnographic records,  
24 and traditional tribal knowledge of six  
25 legitimate Sonoma County Tribes should not be

1 part of the BIA's policy and administrative  
2 processes. The Homeless Land Indian Act  
3 provided funds to establish Rancherias when  
4 needed, which is why the Koi were given the  
5 Rancheria in Lake County. The Tribes of Sonoma  
6 County -- Graton, Cloverdale, Kashia, Dry Creek,  
7 Lytton -- are all federally recognized sovereign  
8 nations with trust land in Sonoma County. I  
9 also note the Wappo who have not gotten justice,  
10 but are from Sonoma County. The historical  
11 record stands. And you cannot rewrite or  
12 gaslight the Native and non-Native Tribe  
13 communities. The Koi Tribe is from Lake County.  
14 Their home and cultural connections are there.  
15 And they should pursue opportunities within  
16 their own territory. The BIA needs to support  
17 them and find an alternative site. Section 106  
18 mandates meaningful consultation with Tribes to  
19 identify and protect cultural resources. The  
20 BIA's current approach disregards those  
21 requirements, putting our sacred sites and  
22 culture at grounds at risk. You can't mitigate  
23 for that. In conclusion, I request that the BIA  
24 reinstate Section 106 consultation with an  
25 expanded project area that properly identifies

1 and protects cultural properties. I urge the  
2 BIA and the Department of Interior to consider  
3 the overwhelming public opposition and the  
4 significant negative impacts highlighted during  
5 the public hearing. The BIA must protect the  
6 rights of all Tribes, not at the expense of the  
7 Sonoma County tribe, nor the Sonoma County  
8 residents. I thank you and I appreciate the  
9 time. Have a good night.

10 CHAD BROUSSARD: Thank you.

11 Our next speaker will be Peg Champion.  
12 Peg Champion.

13 PEG CHAMPION: Good evening. And thank  
14 you for the opportunity to speak. My name is  
15 Peg Champion. I'm a Windsor resident. I'm not  
16 a carpenter. The only acceptable action is the  
17 BIA denial of the proposed site. We, the  
18 Windsor -- the citizens of Windsor have serious  
19 concerns about this site regarding its negative  
20 environmental impact, road congestion, and  
21 traffic, extremely negative impact regarding  
22 wildfire evacuation, excessive water usage, and  
23 wastewater discharge, increased light, noise,  
24 and crime in our residential neighborhood as a  
25 result of a casino operation. The community of

1 Windsor does not want the largest casino in  
2 California here in the center of our little town  
3 where we live and work, where our children go to  
4 school and play. Our small town's  
5 infrastructure can't realistically support it.  
6 What happens when we have another wildfire like  
7 the Kincade Fire? And believe me, it is coming.  
8 Windsor residents will be trying to evacuate  
9 along with 23,000 people from this massive  
10 casino. In addition, Windsor already has become  
11 the designated homeland of another so-named  
12 Tribe, the Lytton band. Exactly how many Tribes  
13 are going to be able to call Windsor their  
14 homeland? The Koi Nation is, in fact, from Lake  
15 County. Not Sonoma County. The Sonoma County  
16 board of supervisors are opposed to the casino  
17 development for this very reason. Keep in mind  
18 that once land goes into trust, it is no longer  
19 subject to city, state, and federal law. As a  
20 tribal lawyer once told me, when this land goes  
21 into trust, we can do anything we want. There  
22 will be no enforcement of our California  
23 environmental laws. While this build may  
24 benefit the carpenters, the residents will  
25 suffer. Regarding the Carpenters Union's

1 statement that the project will bring in  
2 additional taxes, it will not. In fact, any  
3 time that land goes into trust, the local tax  
4 base decreases. A 1.2-million-square-foot  
5 \$600,000,000 24-hour casino development calling  
6 for 2,500 slot machines, a 200-room hotel, six  
7 restaurants and food service areas, a meeting  
8 center, and a spa, employing 1,100 employees is  
9 not what we want. The impacts of this project  
10 cannot be successfully mitigated. This is the  
11 wrong location for this project. I urge the BIA  
12 to reject this casino gaming proposal. Thank  
13 you.

14 CHAD BROUSSARD: Thank you.

15 Our next speaker will be Steve Harris.  
16 Steve Harris.

17 Remember to unmute your microphone.

18 STEVE HARRIS: Can you hear me?

19 CHAD BROUSSARD: Yes, I can.

20 STEVE HARRIS: Okay. My name is Steve  
21 Harris. I'm a field representative for  
22 Carpenters Union, Local 751. I've been a proud  
23 member for 38 years, born and raised in Sonoma  
24 County, in a little town known as Graton. I  
25 approve the BIA's approval for the EIS because

1 this will be a great thing for Sonoma County,  
2 creating local jobs, which would boost the local  
3 economy in the area. And with the partnership  
4 with the Nor Cal Carpenters Union would be  
5 creating construction jobs for young men and  
6 women who seek a career in the union  
7 construction industry. On that matter, I stand  
8 in solidarity with my brothers and sisters and  
9 strongly support the BIA approval of the EIS.  
10 And thank you and have a good night.

11 CHAD BROUSSARD: Thank you.

12 The next speaker will be Vickey Macias.  
13 Vickey.

14 VICKEY MACIAS: Hello. My name is  
15 Vickey Macias. I'm a member of the Cloverdale  
16 Rancheria. And I'm also on council as the  
17 Tribal treasurer. I've listened for the past  
18 five hours to all of the speakers. And, you  
19 know, we can say Koi Nation is from Lake County.  
20 We can say it over and over. We hope you hear  
21 us. But I think the main thing I want to relay  
22 is, everything you're hearing is the EIS is  
23 inadequate. It needs to be an -- an extension  
24 needs to be done. And we need to have time to  
25 go through every piece of that document to give

1 you exact issues that we have. But I think  
2 what's more important to me is the local Sonoma  
3 County Tribe should not be a part of a public  
4 hearing. The BIA should be meeting with the  
5 Sonoma County Tribes so we can voice our  
6 opinions and not have to voice them in a public  
7 hearing. You should be hearing from us as your  
8 trust responsibility to hear what we have to say  
9 in a forum with just the Sonoma County Tribes.  
10 And so I wish that you relay that message to the  
11 Pacific Region office so that we can get a  
12 dialogue going. Even if you wanted to meet with  
13 the Sonoma County Tribes, I don't think the  
14 Tribes would be opposed to bringing Koi Nation  
15 in at that time. And we could voice our  
16 opinions to them as well. But I think you need  
17 to give the Sonoma County Tribes that  
18 opportunity. We all feel that we're being  
19 ignored and not being given the respect as a  
20 sovereign nation to have those communications  
21 with us. I'm going to end with that. And I  
22 thank you. And I thank you for all the time  
23 that you guys have put here today.

24 CHAD BROUSSARD: Thank you.

25 Our next speaker will be Claudia Abend.

1 Claudia Abend.

2 Remember to unmute your microphone.

3 Okay. We're going to move on to the  
4 next speaker. Jessica Cruz.

5 TONY CRUZ: Hello? Oh, yeah. So I'm a  
6 local carpenter. And I just want to say that  
7 I'm opposed to this project. I think it is a  
8 shame that our carpenters, our local carpenters  
9 out there, are kind of selling out our county  
10 and this place of Windsor just for one project  
11 that will probably last about a year or so. And  
12 a lot of the stuff that they're saying will  
13 probably not come true. So I just -- I'm a  
14 local carpenter, and I don't agree with what  
15 everybody is saying about this project and all  
16 the other carpenters calling out and saying this  
17 is a go-ahead project. The BIA needs to do more  
18 work. And just like the lady said before me,  
19 they need to talk to the local Tribes and  
20 actually get their word and hear them out.  
21 Because really that's where it stands out. So  
22 that's all I want to say. Thank you.

23 CHAD BROUSSARD: Sir, can you restate  
24 your name for the record?

25 TONY CRUZ: Tony Cruz.



1 CHAD BROUSSARD: Okay. Thank you.

2 Okay. I think that's everyone that's  
3 signed up to speak.

4 Okay. We're going to go back to  
5 Claudia Abend.

6 CLAUDIA ABEND: Hi. Did you -- okay.  
7 You didn't give me enough time before. I was  
8 trying to unmute, and I was hitting the wrong  
9 button. Yeah. I'm Claudia Abend. And my  
10 husband and I have lived and raised our family  
11 here, 5925 Old Redwood Highway, for 37 years,  
12 right across the street from this Proposed  
13 Project. Many of our residents on our road have  
14 been here even longer. We depend on our well  
15 water. Very opposed to this across the street  
16 horrible project. This should stay agriculture  
17 vineyard. The most important missing element of  
18 this very biased EA is the negative impact it  
19 will have on our residential school, church,  
20 rec, wildlife, parks, biking, kids, sports, and  
21 agriculture area. Our community neighborhood  
22 cannot tolerate a big influence population in  
23 and out of 12- to 15,000 or more people  
24 population. This will bring bottleneck traffic,  
25 noise to already impacted roads. With this

1 casino hotel, in parenthesis, Las Vegas mini  
2 city, that is being proposed, the crowd there --  
3 there will be increased crime, drugs, DUIs.  
4 Our area can't tolerate this. The EA is still  
5 not accurately addressing flooding, polluting  
6 creeks, and depleted area wells. And this  
7 supposed self-recycling water solution is a  
8 joke. This is not a solution for a project of  
9 this size. It doesn't belong. That's the  
10 reality. The water sources for vineyard use.  
11 We have been here during the fires of 2017 and  
12 2019. It's been a reality that brings that  
13 things can happen very fast. Especially with  
14 the wildfire. Any added population to our roads  
15 will inhibit safe exit for all. A recent  
16 mapping in the EA is inaccurate with its label  
17 of mixed use, industrial, commercial in a lot of  
18 areas that are actually residential. Example is  
19 that we just had a big structure of apartments  
20 on Shiloh Road and another being built. That's  
21 a big population addition to come to the main in  
22 and out area of our area. In fact, the reality  
23 is the traffic backup or blockage on 101  
24 overflows to Old Redwood Highway from the exits  
25 from Santa Rosa and Windsor and beyond. It is

1 obvious when I even start to exit my residence  
2 that there's a problem. And that's just on a  
3 regular day. Seems that there's a lot of  
4 support for this project from people and groups  
5 that don't live here and some from out of state  
6 that are relating it to improved economy and --  
7 and a part of big money themselves. Woozy  
8 economy are they really talking about?  
9 Certainly not ours. After construction, union  
10 builders leave projects on -- and on to  
11 something else. And Sonoma County has a lot of  
12 other projects happening that they could be  
13 into. We do not want to be left with this  
14 negative project. This negative outweighs our  
15 benefits of our community neighborhood. This  
16 needs to stop now. You need to stop this  
17 project now. And find another appropriate spot  
18 for this project and this -- and this group to  
19 build. This is just crazy. I guess that's all  
20 I have to say is what I brought up and read  
21 anyway. Thank you for listening.

22 CHAD BROUSSARD: Thank you.

23 So that concludes the list of  
24 individuals that have signed up to speak.

25 Is there anyone else that would like to

1 speak? If so, please raise your hand now.

2 We have a couple people who have signed  
3 up. Deborah Downer.

4 DEBORAH DOWNER: Hi. Hello. Yeah.  
5 Can you hear me?

6 CHAD BROUSSARD: Yes, I can.

7 DEBORAH DOWNER: Yeah. I've been  
8 listening to this meeting all evening, and I  
9 have not heard yet anyone bring up the issue of  
10 the fact that there is Sonoma County Regional  
11 Park over on Faught Road. Shiloh Ridge Regional  
12 Park. And thousands of people use that park.  
13 Sonoma County. It is open to the public. And  
14 there is very few places in Sonoma County in the  
15 Windsor area where you can go and walk on a path  
16 that has been there for thousands of years and  
17 look across that valley, Windsor Valley, and see  
18 those hills on the other side of the Russian  
19 River. You know, without any blotch of big-box  
20 store blotching the way. And there is no way a  
21 construction that is five stories tall is not  
22 going to blotch that skyline. So people cannot  
23 see it. I looked out there the day, and I  
24 thought, well, you know -- I thought that was  
25 going to be a big issue. We had so many people

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1 talking tonight. But just one more is the  
2 aesthetics on top of these other urgent matters.  
3 But the thing is what are you going to lose in  
4 you throw up a five-story-high building, you're  
5 going to lose the view that you might have had  
6 of the hills out there in your community. We  
7 don't have a view of the western sunset.  
8 Something to be grateful for. And I hope you  
9 will take it into consideration when you are  
10 making your decisions. And I'll respect  
11 everyone who is here. Thank you.

12 CHAD BROUSSARD: Thank you.

13 Is there anyone else that would like to  
14 speak? If so, please raise your hand now.

15 Seeing no other hands raised, that  
16 concludes -- are you seeing a hand? Yeah. So  
17 we have one more. Angela Adams.

18 ANGELA ADAMS: Hello?

19 CHAD BROUSSARD: Hello?

20 ANGELA ADAMS: Hello? Can you hear me?

21 CHAD BROUSSARD: Yes, I can.

22 ANGELA ADAMS: Okay. I won't be long.

23 It's late. My hand was raised, but I didn't  
24 understand why. What was going on? Okay.

25 Thank you for allowing me to voice my opinion

1 tonight. My name is Angela Adams. And I'm a  
2 proud member of Nor Cal Carpenters Union of 17  
3 years. I'm sorry to hear all of those who  
4 oppose the BIA's Shiloh Nation Resort Casino in  
5 Windsor. But I believe this project will create  
6 many construction jobs and a lot of permanent  
7 ones too once it is going. And it will enhance  
8 the regional economy and support local families.  
9 The EIS addresses community concerns, such as  
10 fire and groundwater management. And I believe  
11 this project will offer significant economic  
12 benefits while addressing key issues. And I  
13 strongly support this approval. Thank you.

14 CHAD BROUSSARD: Thank you.

15 Our next speaker will be Lisa Mott.

16 LISA MOTT: Hi. Can you hear me?

17 CHAD BROUSSARD: Yes, I can.

18 LISA MOTT: Hi. Hi, everyone. My name  
19 is Lisa Mott. I'm really confused on why the  
20 Koi Nation have land in Clear Lake, but want to  
21 build a casino here in Sonoma County. I'm  
22 against this project. I have lived in Windsor  
23 for almost 30 years. Many -- many of those  
24 years I lived just a couple blocks north of the  
25 proposed site. I currently live on the west

1 side of Windsor. Still not far from this  
2 Proposed Project. I use Shiloh Road daily  
3 during Windsor's school district schedule and  
4 turn left onto Old Redwood Highway at the exact  
5 intersection to take my special needs daughter  
6 to school. The current traffic congestion daily  
7 is horrible. As a special needs mom, I know  
8 this community does not have infrastructure to  
9 allow this casino in a safe way. Many local  
10 districts transport their special needs children  
11 to the Town of Windsor, which utilize this  
12 route. The BIA really needs to look at the  
13 safety for our current special needs children  
14 traveling in Windsor, Santa Rosa, and beyond.  
15 Who will be held accountable when we can't  
16 safely access our children at their school if  
17 there is a wildfire emergency because of the  
18 influx of the traffic if this casino is  
19 approved? Thank you for your time.

20 CHAD BROUSSARD: Thank you.

21 Our next speaker will be Sandra George.  
22 Sandra George.

23 You need to unmute your microphone.  
24 We're not hearing anything. If you're having  
25 technical difficulties, you know, please send in

1 a comment letter, and it will be considered in  
2 the same way as any spoken comments here  
3 tonight.

4 Is there anyone else who would like to  
5 speak tonight? If so, please raise your hand  
6 now.

7 Okay. Seeing none, that concludes the  
8 list of individuals that have signed up to share  
9 their comments. And I want to thank everyone  
10 for their comments tonight.

11 Sandra George is raising her hand. So  
12 let's go back to Sandra George and see if we can  
13 get that working. Sandra, make sure to unmute  
14 your microphone. Are you there?

15 So it looks like you have unmuted your  
16 microphone but we're not able to hear you. Once  
17 again, if you send in a comment letter via email  
18 or a letter in the mail, it will be considered  
19 in the same way as if you were to speak tonight.  
20 So we encourage you to send a comment letter in.

21 It looks like we have one other person  
22 who signed up. Anushka Coverdale.

23 CHRIS LAMELA: Actually, this is --  
24 this is -- Chris Lamela is speaking. We have  
25 communicated in the past there, my friend. You

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cont.

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1 might remember my name. The thing I wanted -- I  
2 wanted to talk about two things. First of all  
3 is they're talking about 10,000 cubic yards of  
4 soil being brought in. Each truck holds about  
5 ten cubic yards. That means 1,000 trucks will  
6 be coming right by our front door. We live in a  
7 neighborhood right next to it. The main casino  
8 building is less than two football fields from  
9 our home. So just imagine -- just imagine  
10 having a thousand trucks going with dirt past  
11 your front door. This -- the second thing is  
12 that people keep talking about wildfires,  
13 wildfires, wildfires. All I have to tell you is  
14 until you have been in an evacuation of a  
15 wildfire, you cannot imagine the terror that  
16 there is. You cannot possibly imagine seeing a  
17 fire coming down the hill or seeing smoke and  
18 ash falling on your house and realizing you have  
19 to leave now. We had -- a one-hour warning is  
20 nonsense. We had the sheriff knock on our door  
21 and say get your asses out. You have five  
22 minutes. So everybody talking about wildfires.  
23 Please, please, please don't diminish it.  
24 Because it is truly a reality here. The fire of  
25 2017, the Tubbs Fire, that fire went from

1 30 miles over two ranges in less than an hour.  
2 Less than an hour. And burned down 5 percent of  
3 the houses of the city of Santa Rosa, which is a  
4 pretty good size city. Please do not diminish  
5 the idea of people complaining about wildfires  
6 because, trust me, it is honest to God true.  
7 Anyway, that's all I want to say here. I just  
8 thought I would be the last person speaking. I  
9 don't know if I am or not, but thank you so  
10 much.

11 CHAD BROUSSARD: Thank you. And then  
12 Lorelle Ross. Did you raise your hand?

13 Is there anyone else that would like to  
14 speak? Please raise your hand now.

15 Seeing none, that concludes the list of  
16 individuals that signed up to share their  
17 comments. I want to thank everyone for their  
18 participation.

19 This concludes the BIA's public hearing  
20 for the Koi Nation Casino and Fee-to-Trust  
21 Project. Thank you for your participation  
22 again. And good night.

23 (Meeting adjourned at 11:35 p.m.)  
24  
25

COURT REPORTER'S CERTIFICATE

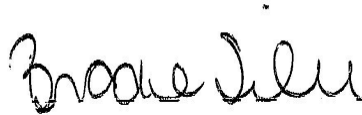
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I, BROOKE SILVAS, a certified shorthand reporter for the State of California, do hereby certify:

That the said public meeting was taken down by me remotely in stenotype at the time and place therein stated and thereafter reduced to typewriting under my direction, and that the deposition transcript is a true and correct record of the proceedings here held.

I further certify that I am not of counsel or attorney for any of the parties hereto or in any way interested in the event of this cause and that I am not related to any of the parties thereto.

Dated: August 11, 2024



\_\_\_\_\_  
BROOKE SILVAS  
CSR No. 10988

	<b>accept (3)</b> 3:13;85:24;117:11	<b>acres (10)</b> 6:22;10:15;54:24; 55:10,10;130:16; 164:9;173:24; 177:25;211:3	141:23;144:1; 153:25;169:23; 180:1	209:8,9,10
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