

# RESPONSE TO COMMENTS

## FINAL ENVIRONMENTAL IMPACT STATEMENT

### Koi Nation of Northern California Shiloh Resort and Casino Project

Sonoma County, California | November 2024

**Lead Agency:**

Bureau of Indian Affairs  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825  
916.978.6000



**Prepared By:**

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# Attachments

- Attachment 1 Log of Comments
- Attachment 2 Comment Letters
- Attachment 3 Alternatives Evaluation Shiloh Resort and Casino

# Section 1 | Introduction

The Bureau of Indian Affairs (BIA) prepared a Draft Environmental Impact Statement (EIS) for the proposed Koi Nation of Northern California (Tribe) Shiloh Resort and Casino Project pursuant to the requirements of the National Environmental Policy Act (NEPA; 42 United States Code [USC] §4321 et seq.), the Council on Environmental Quality (CEQ) NEPA Implementing Regulations (40 Code of Federal Regulations [CFR] Parts 1500-1508), and the BIA NEPA guidebook (59 Indian Affairs Manual 3-H) that assessed the environmental impacts that could result from the acquisition by the BIA of a 68.6-acre property (Project Site) into federal trust status for the benefit of the Tribe for gaming purposes (Proposed Action), and the subsequent development of a resort facility that includes a casino, hotel, ballroom/meeting space, event center, spa, and associated parking and infrastructure (Proposed Project). A Notice of Availability (NOA) for the Draft EIS was issued on July 8, 2024, advising the public that the BIA filed the Draft EIS with the U.S. Environmental Protection Agency (USEPA) in connection with the Proposed Action. Publication of a NOA by the USEPA in the Federal Register on July 12, 2024, officially initiated a 45-day comment period on the Draft EIS that concluded on August 26, 2024. The NOA was submitted to the State Clearinghouse (SCH# 202205059), published in the local paper (The Press Democrat), mailed to interested parties, and posted on the project website (<https://www.shilohresortenvironmental.com/>). A virtual public hearing was held on July 30, 2024, that included an overview of the NEPA process, description of Proposed Action and Alternatives, summary of the contents of the Draft EIS, and an opportunity for the public to submit verbal comments on the Draft EIS. Copies of the NOA and newspaper publications are provided in Final EIS Appendix A-1 Notices.

During the comment period for the Draft EIS, the BIA received approximately 836 comment letters (including written letters and e-mails). Approximately half of these comment letters were “form” letters that were identical comments submitted by multiple parties; there were at least four types of form letters with some commenters adding additional content. There were 154 speakers who submitted comments during the public hearing.

40 CFR Section 1503.4 states that during preparation of a Final EIS, the lead agency shall:

- Consider substantive comments timely submitted during the public comment period.
- Respond to individual comments or groups of comments.
- Append or otherwise publish all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous).

Consistent with these requirements, all comments on the Draft EIS have been assessed and considered both individually and collectively, and comments determined to be representative of the full scope of substantive issues raised during the review period have been included in **Section 2** and responded to in **Section 3**. Master Responses have been developed to address comments with similar subject matter that were submitted multiple times in separate comments. Specific responses are provided for all comments from agencies and tribal governments. Specific responses are also provided for substantive comments from individuals that are not addressed by Master Responses or other individual responses. A log of all of the comment letters received as well as speakers at the public hearing is provided in **Attachment 1**. A copy of all comments received on the Draft EIS, with the exception of form letters, is included within **Attachment 2**. The main version of each form letter is included, and 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 this Response to Comment document; however, all form letters are available upon request from the BIA. A transcript of comments provided at the public hearing is also provided in **Attachment 2**.

According to 40 CFR §1500.1(c), the NEPA process is “is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” Accordingly, comments received that further NEPA’s purposes are responded to within this response to comment document. Responses are not required for comments that do not raise a substantive environmental issue, such as comments merely expressing an opinion for or against the Proposed Action; however, such comments have been included within the administrative record and thus will be considered by the BIA in its decision on the Proposed Action. Any resulting updates, modifications, or revisions to the EIS that were warranted based on comments received are incorporated within the Final EIS.

# Section 2 | Representative Comments

This section includes comments determined to be representative of the full scope of substantive issues raised during the Draft EIS review period. Comments are organized into four categories: those submitted in writing by public agencies and other governmental entities (A); those submitted in writing by tribal governments (T); those submitted in writing by individual private citizens, organizations or private businesses (I); and those given orally during the virtual public hearing as recorded on the official public hearing transcript (PH). In addition to category, each comment letter (including written letters and e-mails) and public speaker is assigned a unique number (e.g. A1). Each comment was assessed and considered both individually and collectively. Of the 836 comment letters received by the BIA and 154 speakers who submitted comments at the public hearing, comments within 26 letters and from 28 speakers were determined to be representative of the full scope of substantive comments received. These letters include all comments received from public agencies and tribal governments, and selected representative comments from individuals. Comments within the representative letters have been bracketed with numbers (e.g., A1-1) for ease of reference. **Section 3.1** contains Master Responses to address comments with similar subject matter that were submitted multiple times in separate comments. **Section 3.2** contains responses to the individually bracketed representative comments.

**Table 1: List of Representative Comment Letters**

Letter/ Speaker Number	Commenter	Date
<b>Agency</b>		
A1	California Department of Conservation	7/31/24
A2	Congress of the United States	8/2/24
A3	Caltrans District 4	8/21/24
A4	Office of Governor Gavin Newsom	8/16/24
A5	Santa Rosa Plain Groundwater Sustainability Agency	8/21/24
A6	California Legislature	8/20/24
A7	EPA, Region 9	8/23/24
A8	Town of Windsor	8/25/24
A9	Sonoma County	8/26/24
<b>Tribal Government</b>		
T1	Lytton Rancheria of California	7/12/24
T2	Dry Creek Rancheria Band of Pomo Indians	7/26/24
T3	Dry Creek Rancheria Band of Pomo Indians	8/1/24
T4	Cloverdale Rancheria of Pomo Indians	7/30/24
T5	Lytton Rancheria of California	8/25/24
T6	Federated Indians of Graton Rancheria	8/26/24
T7	Dry Creek Rancheria Band of Pomo Indians	8/26/24
T8	Federated Indians of Graton Rancheria	8/26/24
<b>Individual</b>		
I8	Janice Kane	7/6/24

<b>Letter/ Speaker Number</b>	<b>Commenter</b>	<b>Date</b>
I20	Bruce Loring	7/13/24
I27	Stefan and Kathy Parnay	7/18/24
I253	Alan Titus	8/23/24
I292	Mark Hauser	8/25/24
<b>Form Letters</b>		
F1.1	Noah Sharp	8/6/24
F2.1	Joseph Long	8/6/24
F3.1	Lindsay Amick	8/13/24
F4.1	Aimee Graves	7/31/24
<b>Public Hearing Speakers</b>		
PH1	Dino Beltran	7/30/24
PH2	Greg Sarris	7/30/24
PH3	Andy Mejia	7/30/24
PH8	Cameron Barfield	7/30/24
PH10	William Verity	7/30/24
PH14	Chris Wright	7/30/24
PH16	Michael Derry	7/30/24
PH20	Catherine Dodd	7/30/24
PH24	Debora Fudge	7/30/24
PH36	Eric Chazankin	7/30/24
PH53	Peter Nelson	7/30/24
PH56	Patricia Miraz	7/30/24
PH58	Dino Franklin Jr.	7/30/24
PH59	Tanya Potter	7/30/24
PH60	Melissa Elgin	7/30/24
PH68	Maria Elliott	7/30/24
PH91	Anne Gray	7/30/24
PH92	Tiffany Erickson	7/30/24
PH99	Riley Ahern	7/30/24
PH101	James Gore	7/30/24
PH102	Dorothy Morgan	7/30/24
PH103	Pamela Pizzimenti and Craig Scott	7/30/24
PH104	Rosa Reynoza	7/30/24
PH119	Buffy McQuillen	7/30/24
PH129	Gloria Hubbell	7/30/24
PH139	Deborah Downer	7/30/24
PH142	Chris Lamela	7/30/24



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,

A1-1



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

A1-1  
cont.

A1-2

A1-3

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.

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.

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

A2-1

A2-2

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.

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.

A2-3  
cont.

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

---

**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  
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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.

A3-1

#### **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](#)).

A3-1  
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.

A3-2

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.

A3-3

### **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](#)).

A3-4

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" written in a larger, more prominent style than the last name "Yunsheng".

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.

A4-1  
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.

A4-1  
cont.

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.

A4-1  
cont.

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.

A4-3

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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 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).

A5-1  
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

A5-2

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.

A5-4  
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**

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Gold Ridge RCD

Lynda Hopkins  
Sonoma Water

Evan Jacobs  
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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.

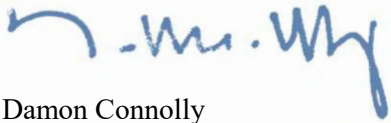
Several of our constituent tribes and those in neighboring areas that are indigenous to Sonoma County, including the Federated Indians of Graton Rancheria, Dry Creek Rancheria Band of Pomo Indians, Cloverdale Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Lytton Rancheria, 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



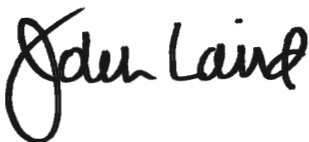
Lori D. Wilson  
Assemblymember, 11th District



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  
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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



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**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.

**Groundwater Resources**

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

A8-2

• **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

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.

A8-11

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A8-13

**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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A8-27

## 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.

A8-30  
cont.

- 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.

A8-32

- 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

A8-35



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.

A8-36

- 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.

A8-39

- 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.

A8-40

- 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

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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.

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### **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.

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- **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.

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- **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.

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### 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

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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.

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- 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.

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## 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.

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### 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.

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- **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.

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- **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.

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- **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.

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**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.

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- **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.

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#### **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.

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- **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.

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#### **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.

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- **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.

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### 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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### 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.

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### 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.

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- **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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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.

\*For the attachments to Comment Letter A8, please refer to Attachment 2 of the Koi Nation Shiloh Resort and Casino Response to Comments on the Draft EIS


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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.

**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  
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MAILE DUNLAP  
KRISTIN HORRELL  
IVAN JIMENEZ  
SHARMALEE RAJAKUMARAN  
NATHANIEL RAFF  
ETHAN PAWSON  
JOSEPH ZAPATA  
ALEXANDRA APODACA  
DAVID LUSBY

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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

A9-9

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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

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<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.

A9-13  
cont.

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  
cont.

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  
cont.

**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.

A9-19  
cont.

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  
575 Administration Drive  
Santa Rosa, CA 95403

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,

**Steve Snow, PE**  
**Engineer/Flood Plain Manager**  
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[Steve.Snow@sonoma-county.org](mailto:Steve.Snow@sonoma-county.org)

\*For the LID Manual attached to Comment Letter A9, please refer to Attachment 2 of the Koi Nation Shiloh Resort and Casino Response to Comments on the Draft EIS



## 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  
-41

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

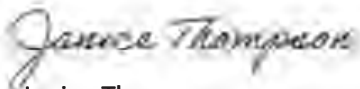
Assuming the DEIS and its supporting materials even adequately capture all significant Project impacts, the DEIS and the proposed mitigation measures fall short of providing complete, meaningful, and realistic analysis and mitigation assessment. Having identified many significant impacts the Project 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

---

**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.

A9-54

### 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.

A9-55

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.

A9-56



## Exhibit E





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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)**.

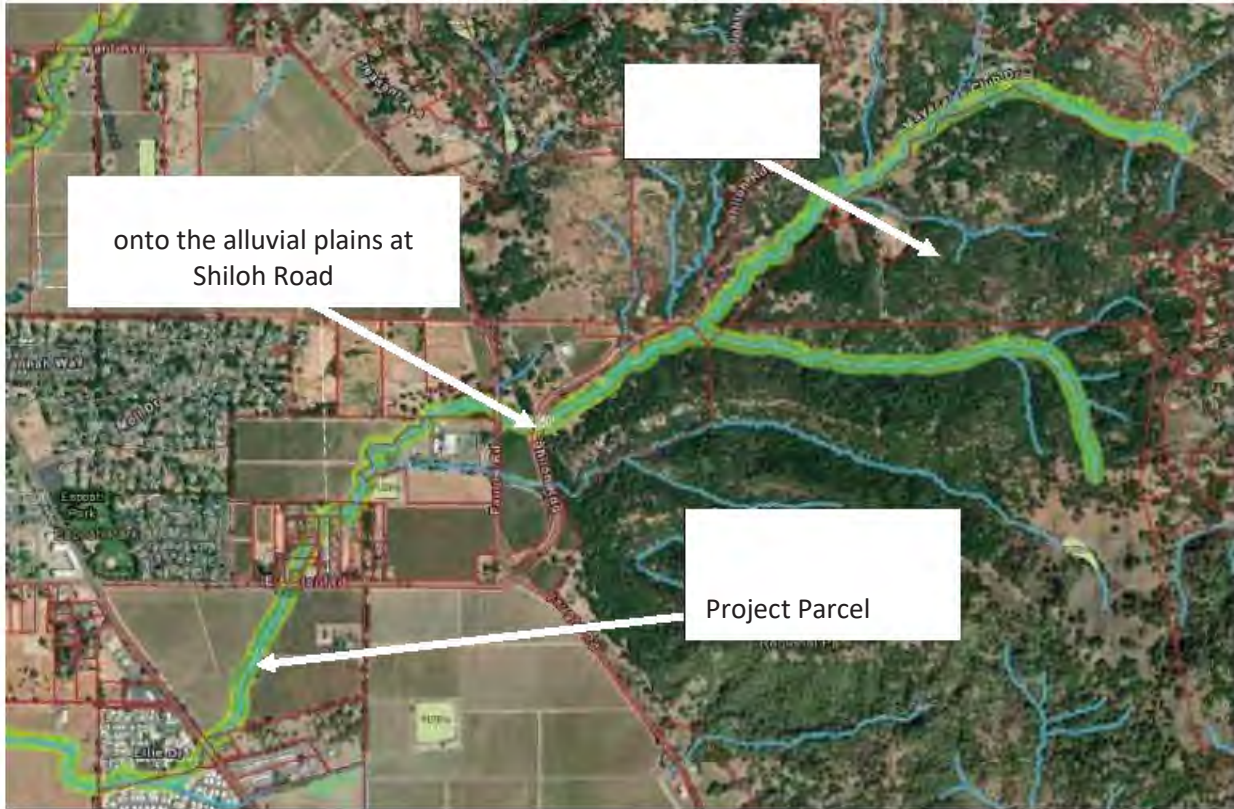
**Within the Project parcel the predominant land use is agriculture, with most of the Project parcel in active vineyard, except for a small residential/farm complex along the east property line. The Pruitt Creek riparian corridor is relatively intact through the Project parcel and is dominated by native 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,%20year%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

A9-59

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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cont.

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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cont.

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

A9-65

A9-66

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.

A9-69  
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A9-70

## Exhibit G



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August 22,2024

Project No.:782-60-23-02  
SENT VIA: EMAIL

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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://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)

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.

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.*

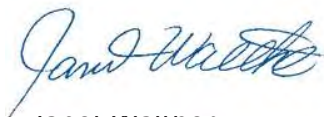
A9-91  
cont.

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>

A9-91  
cont.  
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.)

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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





# Sonoma Water

August 20, 2024

Erik Ekdaahl, Deputy Director of Water Rights  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

**RE: Petitions for Temporary Urgency Change—Permits 12947A, 12949, 12950, and 16596**

Dear Mr. Ekdaahl:

Enclosed are Petitions for Temporary Urgency Change to modify the minimum instream flow requirements for the Russian River as established by Decision 1610 for Permits 12947A, 12949, 12950 and 16596. Accompanying the petitions are the following:

- 1) Supplement to the August 2024 Temporary Urgency Change Petitions
- 2) Environmental Information for Petitions
- 3) Notice of Exemption
- 4) California Department of Fish and Wildlife Review Fee Payment
- 5) State Water Resources Control Board Petition Fee Payment

These petitions are being submitted due to changes in the Potter Valley Project imports that have resulted in a flawed hydrologic index that sets minimum instream flow requirements that may not align with current watershed conditions in the Russian River. Requested changes similar to these petitions were approved most recently by the State Water Resources Control Board (Board) in an order issued in December 2023. The request for an alternate hydrologic index based on Lake Mendocino storage levels originates during the drought of 2013-2015 and was used again during the drought of 2020-2022. In 2021, the Board approved a storage threshold index that saved approximately 13,000 acre-feet of water over a period from February into June. This preceded the storage in Lake Mendocino decreasing to its second-lowest historical levels in October 2021 when it declined to 12,864 acre-feet. The use of the alternate hydrologic index was one of several important measures that prevented Lake Mendocino from going dry.

**A9-91  
cont.**

I look forward to working with the Division of Water Rights staff on this important conservation effort.

Sincerely,

Grant Davis  
General Manager

- c J. Ling, K. Emanuel – State Water Resources Control Board
- R. Coey, J. Fuller – National Marine Fisheries Service
- D. Hines – California Department of Fish & Wildlife
- B. McFadin, V. Quinto – North Coast Regional Water Quality Control Board
- P. Jeane, D. Seymour, T. Schram, J. Marini-Lamb, D. Manning, K. Gylfe – Sonoma Water
- C. O'Donnell, A. Brand, V. Ball – Sonoma County Counsel
- R. Bezerra – Bartkiewicz, Kronick & Shanahan

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.

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 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:

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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 \$850 (Pub. Resources Code, § 10005)

**A9-91  
cont.**

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 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).

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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)

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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

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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 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.

**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).

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I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:  
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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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## 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

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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

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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.

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*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:

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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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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.

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### **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.

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**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  
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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  
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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/>.

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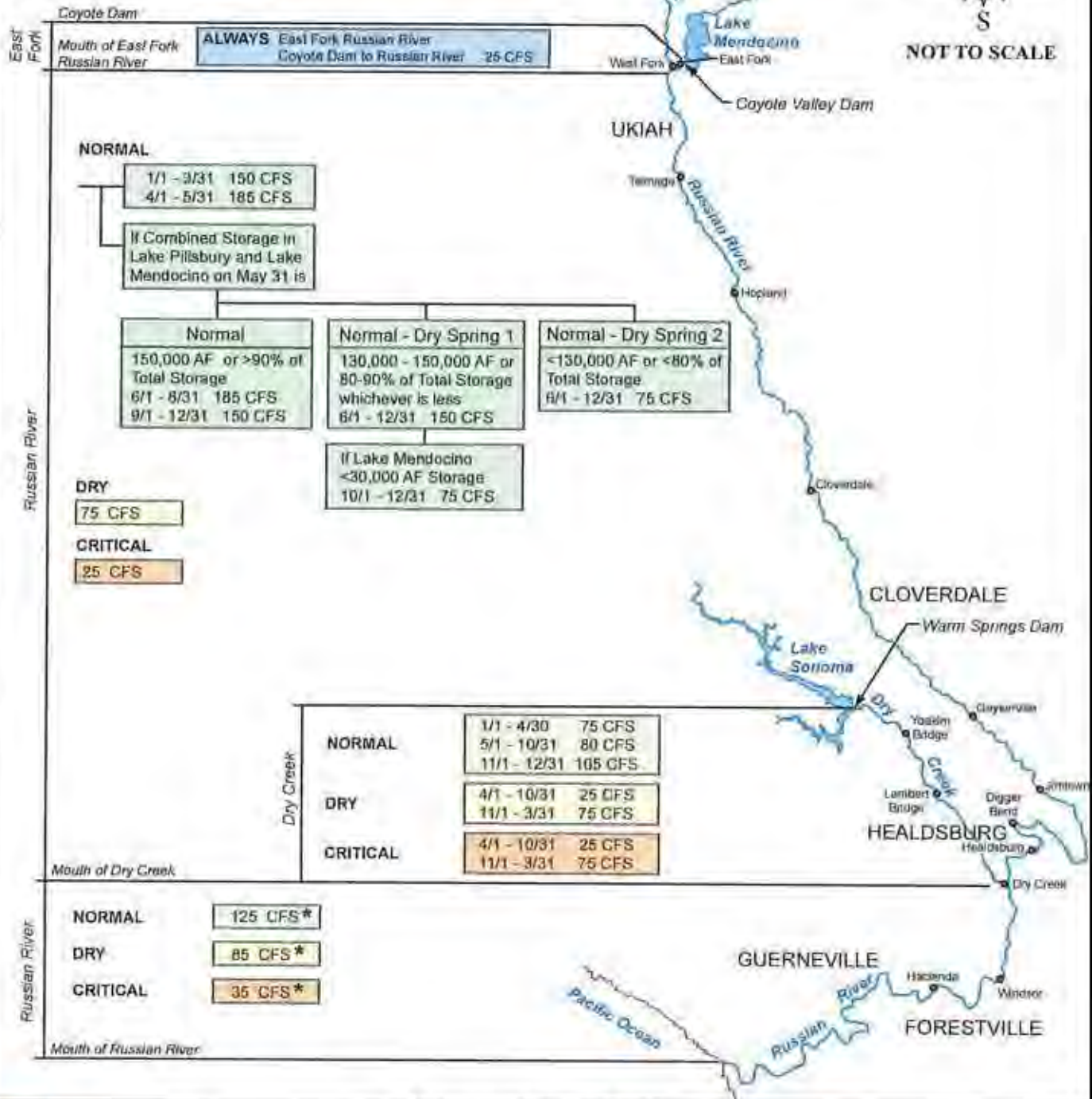
**FIGURES**



Cumulative inflow to Lake Pillsbury (acre-feet) from Oct 1 through							
	1/1	2/1	3/1	4/1	5/1	6/1	Water Supply Conditions Prevailing on 6/1 Apply Through 12/31
<b>NORMAL</b>	≥8,000	≥39,200	≥65,700	≥114,500	≥145,600	≥180,000	
<b>DRY</b>	<8,000	<39,200	<65,700	<114,500	<145,600	<180,000	
<b>CRITICAL</b>	<4,000	<20,000	<45,000	<80,000	<70,000	<75,000	

**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



A9-91 cont.

**Russian River Basin Streamflow Requirements**

Per State Water Resources Control Board Decision 1610, April 1986

Figure 1



# Lake Mendocino Storage

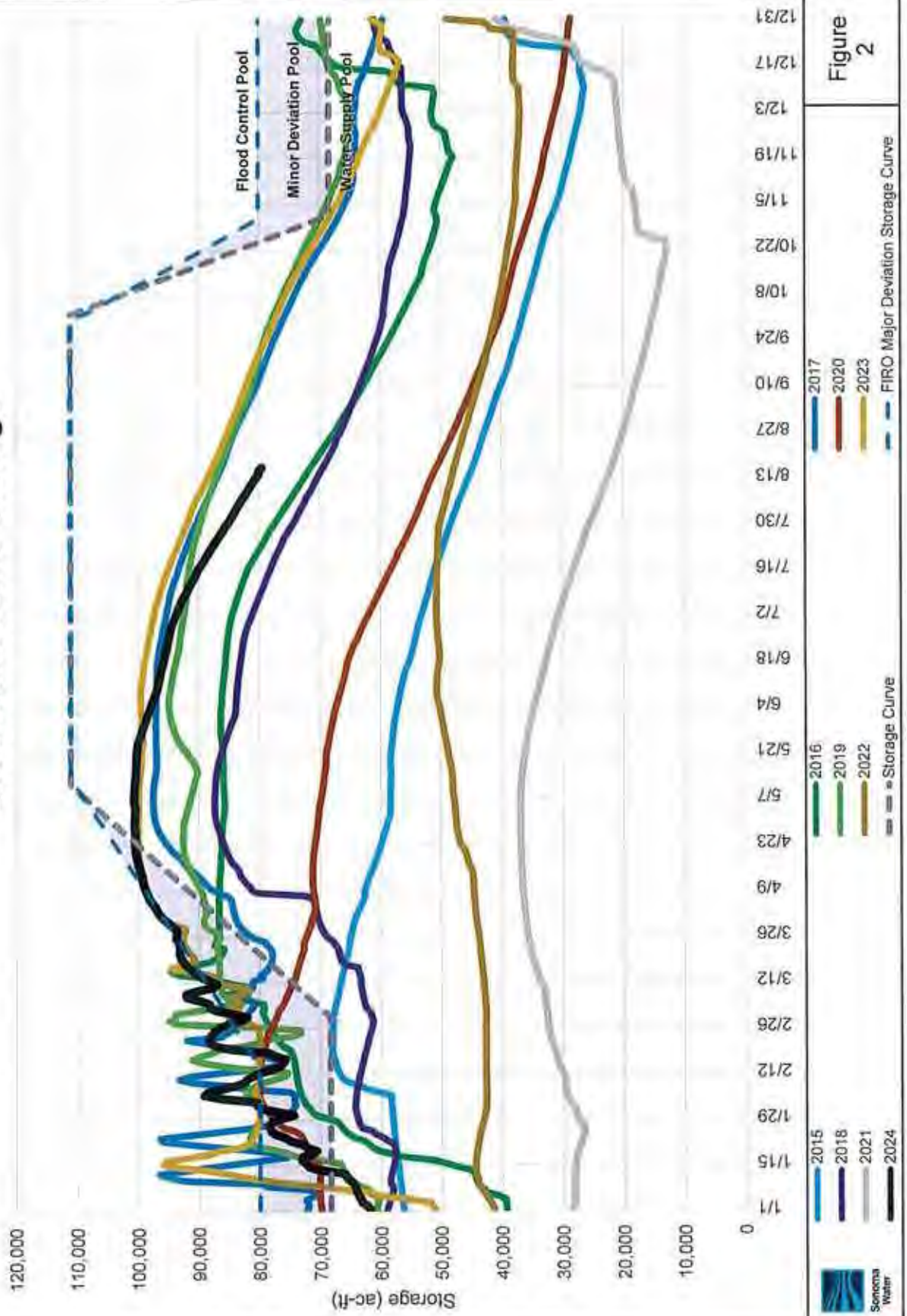


Figure 2

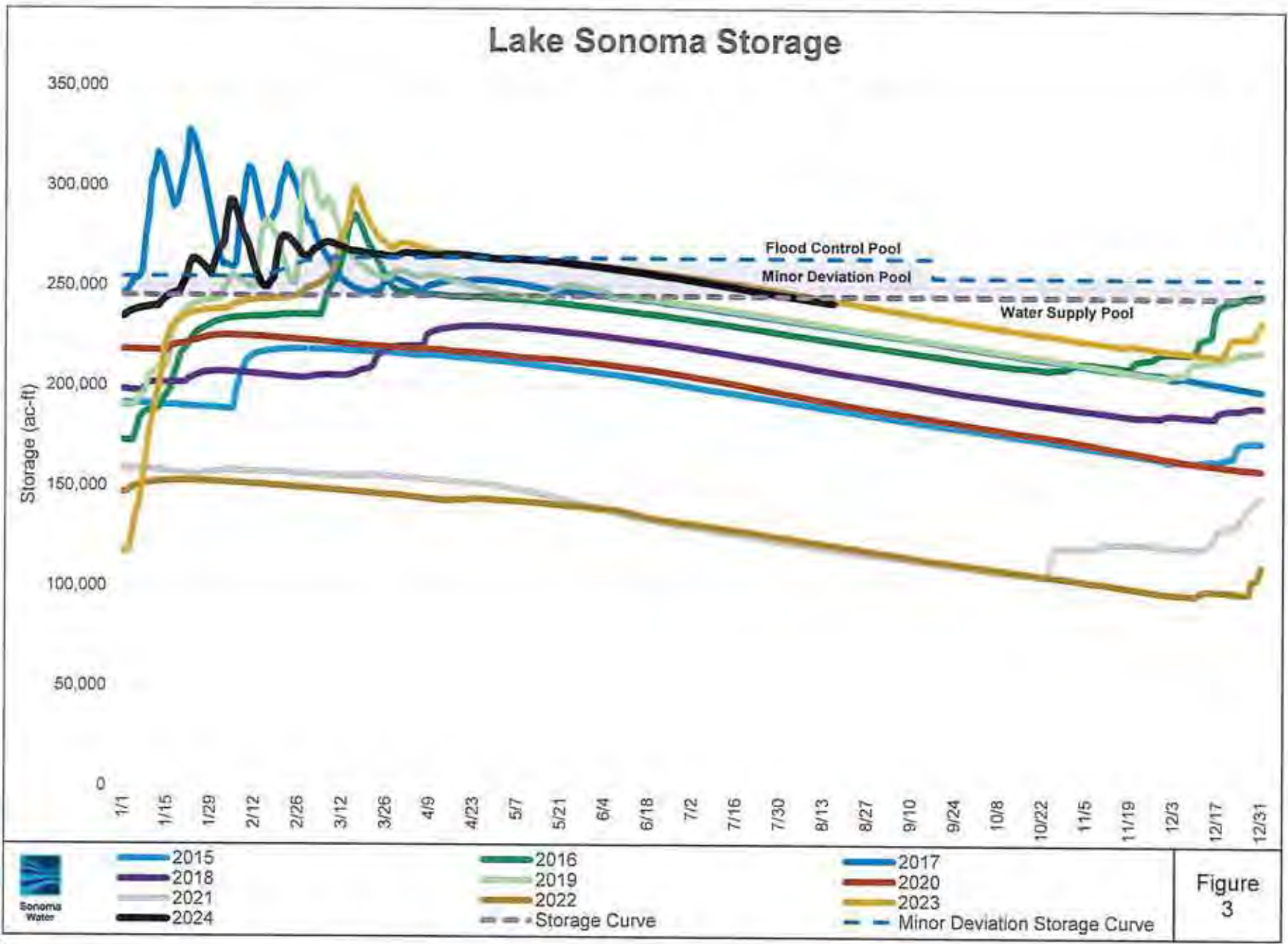


EXHIBIT H



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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.

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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.

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>.

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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

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EXHIBIT A





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November 9, 2023

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**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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cont.

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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cont.

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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cont.

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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cont.

### ***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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cont.

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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### ***Biosolids and Brine***

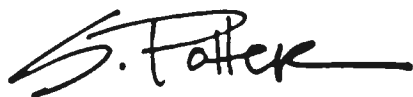
Proposed wastewater treatment would produce biosolids and brine that would require disposal. The EA indicates that biosolids produced by the WWTP would be dewatered on-site and periodically hauled to a Class III landfill. In the very near term, State landfill diversion targets (per SB 1383) will require 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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### **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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**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

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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.

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cont.

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.

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# 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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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.

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"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  
cont.**

Inside the fight to save Windsor from the Kincaide 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.'"

You can reach Staff Writer Mary Callahan at 707-521-5249 or mary.callahan@pressdemocrat.com. On Twitter @MaryCallahan8.

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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.

**A9-92  
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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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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>

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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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**A9-92  
cont.**



Next Up: Smitten Ice Cream In S.F. closes after store from...

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.

A9-92 cont.

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  
cont.



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,

A9-92  
cont.

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.

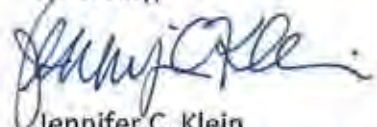
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As you will see, the County's comments provide the requested information pursuant to Part 151. They also highlight several procedural and substantive flaws with the application that warrant denial, including, importantly, that proceeding under Part 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**

A9-93  
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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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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#### **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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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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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

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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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## **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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**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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## 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]

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		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

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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>

A9-93  
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>

A9-93  
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 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>	
Taxability Full	000	Homeowner Exemption	\$0
Taxability Description	NORMAL OWNERSHIP	Other Exemption	\$0
Tax Rate Area	120009	Other Exemption Code	

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

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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.

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

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<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>

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.

T3-1

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

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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,

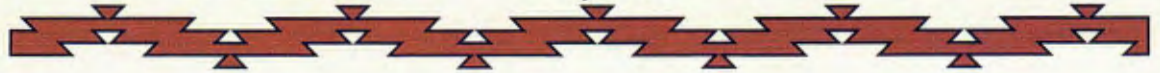
Patricia Hermosillo, Chairperson  
Cloverdale Rancheria of Pomo Indians

### 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 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.

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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

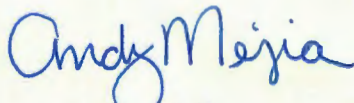
It is alarming that the cultural materials from this project are not available to us, a Tribe that actually calls Sonoma County our home. Additionally, any tribal monitors from this project should be from a Sonoma County Tribe, as our sacred sites and remains are the ones placed at risk by this project.

#### 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  
 2800 Cottage Way, Room W-2820  
 Sacramento, CA 95825

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

<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.

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cont.

## 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

T6-3

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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

T6-3  
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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>

T6-3  
cont.

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.

T6-4

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>

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*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>

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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

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<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

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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>

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*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

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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>

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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.

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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.

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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.

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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.

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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  
cont.

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  
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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.

T6-13  
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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.

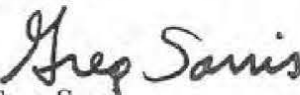
As you know, the proposal involves the development of a large Class III gaming facility—including a “casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure”—in an environmentally sensitive area demonstrably prone to wildfire. The proposed project is also outside 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.

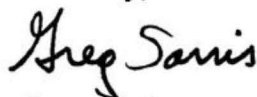
Regarding biological resources, due to the uncertain proximity of the project to Pruitt Creek, which is protected habitat under various federal laws, the BIA should consider Section 7 consultation under the Endangered Species Act. The BIA should also examine the potential presence of special status plant 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).

\*Attachments 3-31 for Comment Letter T6 are confidential and bound separately



**DRY CREEK RANCHERIA  
BAND OF POMO INDIANS**

August 26, 2024

Via Email: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

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**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

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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.

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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.

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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

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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  
cont.

#### **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.

T7-5

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.

T7-5  
cont.

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

T7-5  
cont.



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.

T7-5  
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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>

T7-6

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>

T7-6  
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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.

T7-6  
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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

T7-7

<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

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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.

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<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>

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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;

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T7-19

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.

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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.

T7-21

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, flowing style.

Chris Wright, Chairman  
DRY CREEK RANCHERIA BAND OF POMO INDIANS





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2800 Cottage Way, Room W-2820  
Sacramento, California 95825  
Email: chad.broussard@bia.gov

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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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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## **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.

T8-4  
cont.

T8-5

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.

T8-5  
cont.

### 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.

T8-6

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).

T8-6  
cont.

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

T8-7

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.

T8-7  
cont.

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.

T8-8

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.

T8-9

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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T8-14

### **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.

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### **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.

T8-26

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 reinitiate 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 reinitiate NHPA Section 106 consultation with FIGR and the SHPO. As of the date of this letter, BIA has not reinitiated 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.

T8-27

#### **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.

T8-28

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.

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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

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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).

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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

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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.

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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.

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*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).

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### 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).

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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”).

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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.

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#### **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.

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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.

T8-44  
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

T8-47

**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

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

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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

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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

### 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.

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- 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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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.

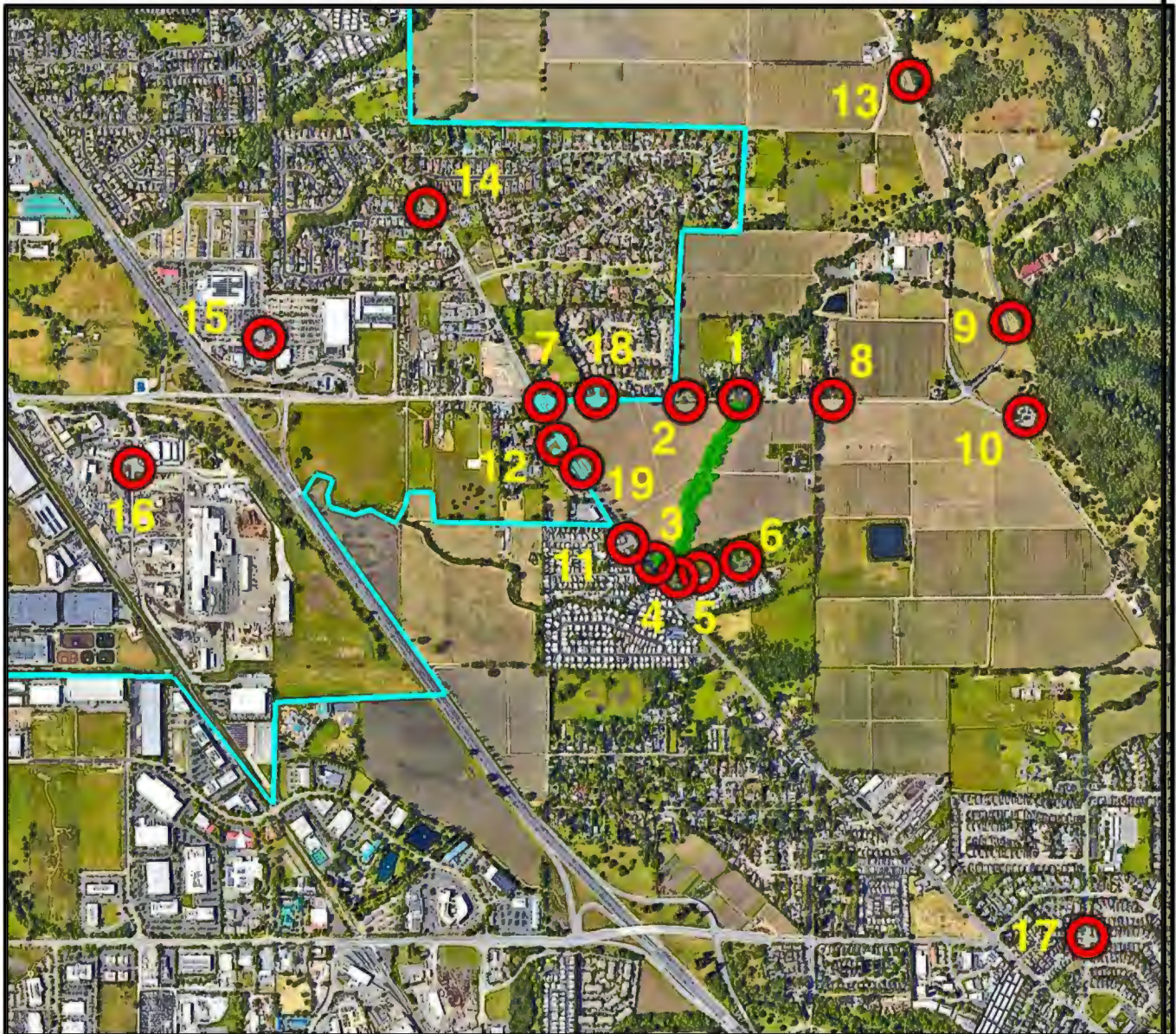
### Conduct of the Site Visit

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.*



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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

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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, or the Project just may not move forward.

*Figure 2. Location of the three Access/Egress points proposed for the Project*



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cont.

### General Conclusions

The combination of on-site vegetation types capable of producing dangerous wildfire behavior and potentially 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.

## 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

T8-85

of the Draft EIS. For these reasons which are further explained below, the EIS must be amended and reissued for public comment.

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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:

T8-87

*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.

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#### 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.

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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  
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*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

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 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.

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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.

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Please let us know if you have any questions. Thank you.

Sincerely,

**Linscott, Law & Greenspan, Engineers**

A handwritten signature in blue ink, appearing to read 'J. Boarman'.

John Boarman, P.E.  
Principal

A handwritten signature in black ink, appearing to read 'Renald G. Espiritu'.

Renald Espiritu  
Transportation Engineer III

cc: File

**ATTACHMENT**

*Attachment A:* Trip Generation Calculations

*Attachment B:* Cumulative Projects Locations

**ATTACHMENT A**

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**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.**



Google Earth

Image © 2023 Airbus

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# 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

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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.

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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.

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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.

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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.

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- *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.

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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

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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.

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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.

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### 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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*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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cont.

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).

T8-135

- 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.

T8-135  
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.

T8-136

**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).

T8-137

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.

T8-137  
cont.

### 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.

T8-138

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.

T8-139

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.

T8-139  
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T8-140

T8-141



## 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) Sequoia Ecological Consulting, Inc. 2024a.** Biological Assessment, Proposed Shiloh Resort and Casino Project, Sonoma County California. 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. November 2022, updated April 2024.
- (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.

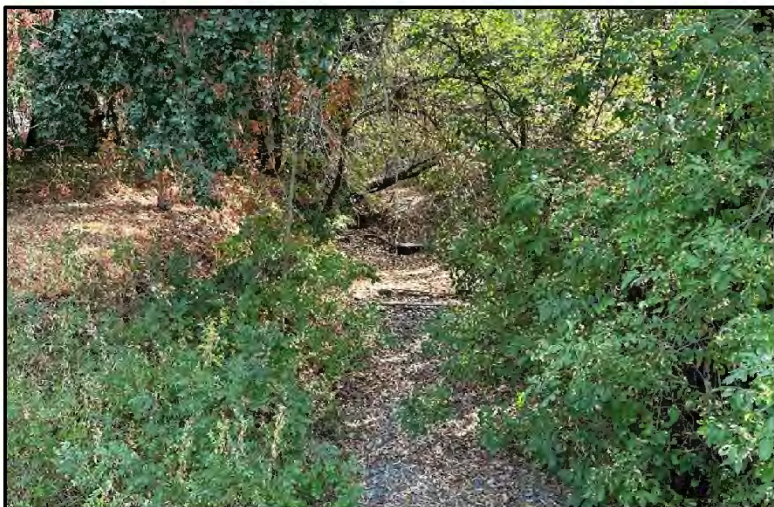
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Riparian woodland along Pruitt Creek within the Project site, facing west.



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.

**From:** Janice Lon <[janlonny@gmail.com](mailto:janlonny@gmail.com)>  
**Sent:** Tuesday, July 9, 2024 1:50 PM  
**To:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>  
**Subject:** [EXTERNAL] Deis, Shiloh report

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I8-1

Hello, I am responding to the report for building a casino on Shiloh Rd which is the gateway to the beautiful Alexander Valley.  
I totally reject this location. One reason is to the impact on the nesting of eagles near Leslie Rd off of AV Rd.  
Thank you,  
Janice Kane  
Santa Rosa CA 95401  
Former resident of Alexander Vslket

Sent from my iPhone

**From:** Bruce Loring <bkloring49@gmail.com>  
**Sent:** Saturday, July 13, 2024 1:45 PM  
**To:** Broussard, Chad N <Chad.Broussard@bia.gov>  
**Subject:** [EXTERNAL] DIES Comments, Shiloh Resort and Casino Project

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I'm writing to offer a solution to the conflict over the proposed casino development near Shiloh Park. Rather than compete with the other nations over a finite number of customers, I suggest that the Koi Nation be allowed to invest in one or more nearby casinos already built. This influx of capital from the Koi Nation could be used to upgrade, expand, maintain current facilities, or possibly pay down debt. It doesn't seem fair that some of the nations get to have a casino but others don't, and on the other hand, how many casinos do we actually need? The BIA is in the position to impartially arbitrate a buy-in plan whereby the Koi Nation pays to have a few seats on the board of directors of a casino and participate in a share of the profits in perpetuity. It's a win-win-win!

I20-1

Bruce Loring  
328 Kiva Place  
Santa Rosa, CA  
707-292-9259

**From:** Stefan and Kathy Parnay <skparnay@sonic.net>  
**Sent:** Wednesday, July 17, 2024 7:26 PM  
**To:** Broussard, Chad N <Chad.Broussard@bia.gov>  
**Subject:** [EXTERNAL] EIS Comments, Koi Nation Shiloh Resort and Casino

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Dr. Mr. Broussard and the Bureau of Indian Affairs (BIA) decision makers,

We have been residents of the Town of Windsor for over 25 years, residing within a ½ mile from Koi Nation’s proposed resort and casino project site.

**The community, neighbors, businesses, and government officials at the local, state, and federal level, have all opposed the Koi Nation’s resort and casino project on the Shiloh Road site because it is not in an appropriate location. There are no mitigations that can protect our small, quiet, peaceful, family orientated community from the intense transformation that would be required in order to accommodate the constant activity of a casino/events center/spa/hotel operating 24 hours a day-7 days a week that would bring in thousands of visitors daily.**

127-1

In addition, it is important to acknowledge that, in order to accommodate this massive project, **the residents living along the roadways that need to be widened (as outlined by the traffic mitigations listed in the EIS) will be displaced from their homes through eminent domain law. The act of forcing these families to relocate makes, what already feels like an incredibly invasive takeover, even more aggressive and personal.**

We are also concerned about the **huge discrepancy between the Koi Nation’s resources and the size of the project.** The Koi Nation is made up of only 90 members so they have partnered with the Chickasaw Nation from Oklahoma (made up of over 70,000 members) for their skills in building, managing and running the resort and casino. *We can’t help but wonder who is actually benefitting from this project and what will prevent the Chickasaw Nation from using their position to get a strong foothold into California where they have no historical ties.*

127-2

Regarding the EIS report - in the devastating event that the BIA would approve the Koi Nation’s resort and casino despite the strong opposition, we would like to highlight the following issues, hoping that, in the best interest of the local community, the BIA would require them to be resolved before any construction begins:

Traffic Concerns

- **The traffic study used in the EIS is incomplete.** The EIS did not take into account the new and increased traffic patterns that will be created once the building projects currently under construction on Shiloh Road are complete. This is a major concern as those projects (apartment buildings and businesses) will add hundreds of cars entering and exiting off of Shiloh Road and Old Redwood Highway every day. *The only way to understand the full extent of the traffic mitigations needed for the proposed projects would be to perform an updated traffic study once the current construction projects on Shiloh Road are complete and the buildings are occupied.*
- **The evacuation strategies outlined in the EIS are unrealistic and unsafe.** In the event of an emergency, the scale of thousands of visitors evacuating alongside the local residents and workers is unprecedented. Relying on procedures developed by lead agencies after the Tubbs fire and the outdated traffic study that did not include the current construction projects on Shiloh Road to develop an evacuation plan is an insufficient strategy to handle the magnitude of cars on the road trying to leave the area in the event of an emergency. In addition, the mitigation outlining the evacuation of the guests on site first, before an official notice is announced for the evacuation of local residents, would cause gridlock, panic and potential accidents as concerned residents try to get to their homes in order to prepare for their own evacuation or reunite with loved ones prior to the official evacuation notice. *It is essential that a new and realistic evacuation plan is developed that takes into consideration the thousands of visitors on the Koi Nation’s site and the local residents and workers evacuating at the same time so that appropriate road mitigations can be made prior to the site opening.*
- **The Fulton Road/Old Redwood Hwy intersection needs to be included in the traffic study.** This intersection was not discussed on the EIS and is heavily used as an alternative route to and from the Santa Rosa airport, Hwy 101 and Hwy 12, as well as quick access to the Northern parts of Santa Rosa. This intersection would also be an invaluable alternative during an emergency evacuation. Currently, during peak traffic hours, it can be difficult to take a left from Fulton Road onto Old Redwood Hwy towards Windsor. *Since the main access to the Koi Nation’s resort and casino parking is on Old Redwood Hwy, evaluating the need for a traffic light and road widening on the Fulton Road/Old Redwood Hwy intersection would be essential.*

127-3

127-4

127-5

- **The magnitude of the road construction needed to accommodate the traffic mitigations outlined in the EIS will create a huge disruption in the community’s transportation.** The EIS minimizes the extent that the roadwork would disrupt current traffic patterns, calling it “short term inconveniences and minor delays” (page 242). *When extensive roadwork is performed on major roads used daily by local residents, visitors and shoppers, it is **always** a significant disruption. Travel time will take longer, accidents will occur, businesses will lose revenue for as many months the project takes. A clear plan on how to mitigate the traffic congestion during the construction period is essential.*

Concerns about the Oversight of the Mitigation Requirements

**Some of the mitigations outlined in the EIS are vague, lacking clear guidelines, requirements, and oversight.** It is our experience that, out of necessity, large building projects find ways to cut corners in order to save time, money and/or resolve unforeseen issues. Without firm direction and restrictions, the door is left open for variations of noncompliance. *Can the BIA ensure that the mitigations will be adhered to with our community’s best interest in mind?* All mitigations required for the construction of the resort and casino need to be stated with clear requirements and oversight. Below are just a few examples of the lack of clarity described in the EIS:

- Page ES-6, 3.5 Biological Resources - Intermittent Drainage (Pruitt Creek) and its associated Riparian Corridor – “1) Mitigation Measure A: Alterations to riparian vegetation shall be avoided to the maximum extent possible.”  
*Who determines what “maximum extent possible” means and when it has been met?*
- Page ES-7, 3.5 Biological Resources, “Mitigation Measure C: Staging areas, access routes, and total area of activity shall be limited to the minimum area necessary to achieve Project goals.”  
*It is realistic that project goals can shift once construction starts. What is to prevent the “minimum area” from being too large and create other unforeseen issues?*
- Page ES-14, Section 3.7. Socioeconomic Conditions - Fiscal Impacts – “Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the Sonoma County Sheriff’s Office (SCSO)...”  
*“Good faith efforts” is vague and does not ensure results. Knowing that crime and traffic accidents will most certainly increase, it should be a requirement that a realistic plan is secured **prior** to operation so that the neighborhoods surrounding the site are protected.*

Please remember that Sonoma County already has two casinos (River Rock Casino and Graton Resort and Casino). When Graton Resort and Casino was built, [River Rock Casino’s \(the first casino in Sonoma County\) reported a 50% drop in revenues](#). In order to remain competitive and draw more patrons and profits, River Rock Casino is now proposing [an expansion](#) that will add 3,079 square feet to the gaming floor, 300 more slot machines, four additional gaming tables, 1,214 square feet of extra dining space and features a new 100-room hotel tower with a spa, pool and 7,000 square feet of dining. *How many more resorts and casinos does Sonoma County need before the market is saturated?*

We understand that the Builders Union are the only ones for this project because they are expecting the creation of new jobs. However, **there is no guarantee that the Koi Nations’ proposed projects will provide jobs for locals.** *Not only are those construction jobs short term, but it would make sense that the Chickasaw Nation would bring their own resources and workers from Oklahoma to fill those job vacancies.*

We are asking the BIA to please deny the Koi Nation the rights to build their resort and casino in Sonoma County.

Thank you.

Sincerely,  
Stefan and Kathy Parnay  
190 Barrio Way  
Windsor, CA 95492

# ROBB & ROSS

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STERLING L. ROSS, JR. \*  
\*RETIRED

†CERTIFIED SPECIALIST IN ESTATE  
PLANNING, PROBATE AND  
TRUST LAW, THE STATE BAR OF  
CALIFORNIA BOARD OF  
LEGAL SPECIALIZATION

August 23, 2024

Ms. Amy Dutschke  
Bureau of Indian Affairs  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825  
Email: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov)

Re: EIS Comments, Koi Nation Shiloh Resort and Casino

Dear Ms. Dutschke:

I write to submit comments on the draft Environmental Impact Statement ("EIS") for the project referenced above.

Section 1.1 of the EIS discusses the statutory authority for acquiring lands in trust but fails to address the corollary issue of legislative and governing jurisdiction over the site. This parcel lies within the borders of the State of California, and is currently under the legislative jurisdiction of the State. State law both prohibits casino gambling on the site and would control any development project of the site. I don't think anyone disputes that.

The EIS seems to assume that transference of title to the federal government in trust for the tribe somehow automatically displaces the state of California's legislative jurisdiction over the site and vests that jurisdiction with the Federal government, but that is not consistent with law.

Under the law, the only way for the Federal government to obtain the legislative jurisdiction over the site contemplated is with the consent of the state and the state's express cession of its jurisdiction. The Federal government has no rights under the Constitution to unilaterally dispossess the state of its rightful jurisdiction.

Thus, even if the Federal government were to agree both to act as a trustee and to accept title to the site in trust for the tribe, that would have no effect on the

governmental sovereignty and legislative jurisdiction over the site. The State would still have the same plenary legislative jurisdiction, and the Federal government would have the same limited jurisdiction that does not include any power to allow gambling on the land or to allow development of the site, matters not within the enumerated powers of the Federal government. This is no different than if the Federal government buys land within the state and does not seek cession of state jurisdiction.

Congress recognized this law when it passed IGRA. Section 2710 repeatedly states that it applies only to lands under Indian jurisdiction. (See 25 USC §§2710 (d)(1)(A)(i), (d)(3)(A), (d)(7)(B)(iv) and (d)(7)(B)(vii)(II).) Here, the subject land is not under Indian jurisdiction, and transference of title to the Federal government does not create Indian jurisdiction.

I253-1  
cont.

Given that by accepting the land in trust for the tribe, the federal government would gain no jurisdiction over the site and could not legally allow construction of the project or gaming, accepting the land into trust would not and could not "significantly affect the environment," and therefore does not trigger the need for environmental review.

Only if the State were to expressly cede its jurisdiction to the Federal government would the Federal government gain the type of sovereignty it is assuming to exercise in the EIS. However, no such request has been made to the State, or is being contemplated.

For these reasons, the assumptions made by the EIS are incorrect and until there is a transfer of jurisdiction by the State to the Federal government the whole project needs to be halted.

Sincerely,

  
Alan Titus



**From:** Mark Hauser <[mark.hauser@gmail.com](mailto:mark.hauser@gmail.com)>  
**Sent:** Sunday, August 25, 2024 4:07 PM  
**To:** Broussard, Chad N <[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)>  
**Subject:** [EXTERNAL] EIS Comments, Koi Nation Shiloh Resort and Casino

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Sirs,

Attached are my feedback on the EIS for the proposed casino.

There are two attachments:

1. a summary of my feedback
2. an annotated copy of the EIS, with my feedback clearly identified in yellow.

I sincerely offer my thanks if you review my feedback. It is a contentious project & I don't want to see it rammed in over considerable project issues and pushback from the community.

Mark Hauser  
[mark.hauser@gmail.com](mailto:mark.hauser@gmail.com)  
236 Lea St, Windsor, CA 95492

I292-1

Comments on EIS Comments, Koi Nation Shiloh Resort and Casino

Sirs;

I want to provide feedback on the proposed casino.

**I support Alternative D. I strongly object to Alternatives A & B.**

**Attached is** the EIS pdf, with my comments in yellow. I did not make it all the way through the 278 pages. You will see in the marked up EIS my comments as I read the document (in yellow). Overall I found it to be biased to proceeding & weak to assessment of impacts. Apologies for some of my sarcasm in my comments.

I292-1  
cont.

Here is a sort of summary of my feedback:

- The EIS assessment seems to be assembled by someone hired by the **Koi Nation** to make their project seem innocuous. This is a prime focus of Acorn Environmental, correct? **“Acorn Environmental staff specialize in supporting Tribal Government...”**
- The impact analysis language uses “...the use of BMPs would minimize...” over and over again. “minimize” does not mean eliminate. This language assumes the project is proceeding & we will do the best we can. It is not an **evaluation of the impact. The impact is hidden behind LS & PS. It is deceiving** in that it does not address the impact.

This approach is used over and over in the EIS. Again, I find it deceiving and trying to paint the impacts in the best light. I would like to see the water agencies in the county to assess if they think this no problem.

I292-2

**Then the mitigation when the problems (water, crime, emergencies)** is to meet with the responsible agencies. The facility is already built, let’s figure out how to deal with it. No, this EIS should be addressing whether it should be build, not to minimize with BMPs & agency meetings.

- I am deeply troubled by the conclusion there is basically no impact to pumping the needed water from groundwater, like it is free & unlimited. This is a known problem to human’s approach to groundwater in California & is being addressed in the Valley. It make no sense that this approach is without consequence in Sonoma County.
- An onsite wastewater treatment plant is assessed without significant impact. No smells, no storm runoff issues, no plant failure impacts. I find the assessment incomplete.
- Property value impacts will be significant in a range around the proposed casino. Clearly within a 3 mile range there is large impact. I suggest it is already have impact in nearby residences.
- I believe the EIS significantly **underestimates** Crime & Drunk driving. The proposed **mitigations** do no make the real impacts go away. A policy does not fix drunk driving.
- The **Existing Tribal Casino Gaming Market Substitution Effects is almost a joke. It “could” reduce revenues at existing tribal casinos.** Really? Could. No, the assessment should be how much, which is going to be major. This casino is not going to generate new business above & beyond the two casinos we already have.

I292-3

I292-4

I292-5

I292-6

I292-7

The worst part is it seems the only measure is whether it will cause closure (“...it is unlikely that **competition would cause the closure of any affected gaming facilities...**”). That is a ridiculous gauge of the impact.

I292-7  
cont.

24.24% **revenue reduction at River Rock**...due to *unverifiable allegations*... This is not the language of a independent assessment. And what about the Graton casino?

- The project **traffic impact** is brushed over. Widening **the intersection is hardly going to make the** problem go away. 5000 car parking is a lot of cars coming & going.
- Land Use **Compatibility** – “The project **alternatives could conflict with neighboring** land uses, **including residential uses and parks**”. Could! Could! Blatant whitewashing.

I292-8

I292-9

Mark Hauser  
236 Lea Street, Windsor CA 95492  
mark.hauser@gmail.com

Impact	Mitigation measures	Original Impact / Residual Impact with Mitigation				
		Alternative A	Alternative B	Alternative C	Alternative D	
<p><b>Groundwater</b> – The following characteristics of groundwater resources could be impacted by the project alternatives:</p>		<div style="border: 2px solid red; background-color: yellow; padding: 5px; display: inline-block;"> <p>How is there no impact?</p> </div>				
<p>1) <b>Groundwater Supply</b> – The project alternatives could result in the drawdown of groundwater aquifers</p>	<p>The use of BMPs would minimize impacts to groundwater supply. <b>No mitigation required.</b></p>	No	LS	LS	LS	NI
<p>2) <b>Groundwater Recharge</b> – The project alternatives could impact groundwater recharge through the development of impervious surfaces.</p>	<p>The use of BMPs would minimize impacts to groundwater recharge. <b>No mitigation required.</b></p>	No	LS	LS	LS	NI
<p>3) <b>Groundwater Quality</b> – Impacts to groundwater quality could occur as a result of polluted stormwater runoff, or irrigation with tertiary treated water.</p>	<p>The use of BMPs would minimize impacts to groundwater quality. <b>No mitigation required.</b></p>	No	LS	LS	LS	NI
<p><b>Wastewater Treatment and Disposal</b> – Wastewater generated by project alternatives would be treated at a proposed <b>onsite wastewater treatment plant (WWTP)</b> and either be reused onsite, discharged to Pruitt Creek under an NPDES permit, or beneficially reused for irrigation of offsite agricultural areas or landscaping.</p>	<p>Compliance with regulatory standards and permits would ensure this impact is <b>less than significant</b>. No mitigation required.</p>		LS	LS	LS	NI
<p><b>Section 3.4. Air Quality</b></p>						
<p><b>Construction Emissions</b> – Construction activities could adversely affect air quality through the emission of particulate matter less than 10 microns in diameter (PM<sub>10</sub>), nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), carbon monoxide (CO), volatile organic compounds (VOCs), reactive organic gases (ROG), greenhouse gases (GHGs), and hazardous air</p>	<p>The use of BMPs would minimize impacts to air quality caused by construction emissions. No mitigation required.</p>		LS	LS	LS	NI
<p>NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact</p>						

Impact	Mitigation measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
	responsible for recommending the appropriate disposition of the remains and any grave goods.				
<b>Paleontological Resources</b> – Paleontological resources could be uncovered and/or damaged by ground-disturbing activities	Implement <b>Mitigation Measures A</b> through <b>C</b> .	PS/LS	PS/LS	PS/LS	NI
<b>Section 3.7. Socioeconomic Conditions</b>					
<b>Economy and Employment</b> – 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.	No mitigation required	BI	BI	BI	NI
<b>Fiscal Impacts</b> – The project alternatives could adversely impact County and/or City tax revenues and operating budgets	<p>The following mitigation measures shall be implemented for Alternatives A through C to reduce impacts to police and fire services:</p> <p><b>Mitigation Measure A:</b> Prior to operation, the Tribe shall make <b>good faith efforts</b> to enter into a service agreement with the Sonoma County Sheriff's Office (SCSO) to compensate SCSO for quantifiable direct and indirect costs incurred in conjunction with providing law enforcement services to the Project Site. The agreement shall include a provision requiring the Tribe to meet with SCSO at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project.</p> <p><b>Mitigation Measure B:</b> Prior to operation, the Tribe shall make <b>good faith efforts</b> to enter into a service agreement with the Sonoma County Fire District (SCFD) to compensate SCFD for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and emergency medical services to the Project Site. The agreement shall address any required conditions and standards for emergency access and fire protection systems.</p> <p><b>Mitigation Measure C:</b> If the Tribe does not enter into a service agreement for law enforcement and/or fire protection services, the Tribe shall <b>establish, equip, and staff a public safety building on the Project Site</b>. The fire department shall follow the certification and</p>	PS/LS	PS/LS	PS/LS	NI
<p>NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact</p>					

appears to be up to Tribe. If they want their own police, then just "good faith" come to no agreement with SC Sheriff

I292-11

Impact	Mitigation measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
	standards of the BIA, and shall be staffed at all times with a minimum of 3 personnel, each trained as a firefighter and emergency medical technician. The building shall be located in the "treatment area" designated in the eastern portion of the Project Site.				
<b>Housing</b> – Employment-driven in-migration could cause or exacerbate housing supply issues	No mitigation required	LS	LS	LS	NI
<b>Property Values</b> – Development of the project alternatives could cause a reduction in regional property values	No mitigation required	LS	LS	LS	NI
<b>Social Effects</b> – The following social impacts could result from operation of the project alternatives:					
1) <b>Pathological and Problem Gambling</b> – Operation of the project alternatives could increase the prevalence of problem or pathological gaming	The use of BMPs would m and problem gambling. No	LS	LS	NI	NI
2) <b>Crime</b> – Operation of the project alternatives could increase the incidence of crime in the region	The use of BMPs and implementation of <b>Socioeconomic Conditions Mitigation Measure A</b> would minimize impacts related to increased crime.	PS/LS	PS/LS	NI	NI
3) <b>Drunk Driving</b> – Operation of the project alternatives could increase the incidence of drunk driving in the region	The use of BMPs and implementation of a "Responsible Alcoholic Beverage Policy" would reduce the likelihood of drunk driving. No mitigation required.	LS	LS	LS	NI
<b>Substitution Effects</b>					
1) <b>Existing Tribal Casino Gaming Market Substitution Effects</b> – Operation of the project alternatives could reduce revenues at existing tribal casinos. While review of similar case studies and market data suggests that it is unlikely that competition would cause the closure of any affected gaming facilities,	No mitigation feasible.	PS	PS	NI	NI

Nearby property values will decrease. for at least 1 mile, up to 3 mile radius? It is not less than significant, unless you dilute the impact with a 30 mile(?) range. Alternatives A & B have much more impact than C.

A strong PS to S impact.

A "policy" is not going to reduce the impact to LS. PS is more like it.

Is "closure" the criteria? There will be a significant impact. The overall gaming volume is not going to increase to the volume of this new facility. Of course it will significantly impact the business of the two casinos we already have. So are they going to go aggressive marketing to get more people to gamble?

NI = No Impact LS = Less

BI = Beneficial Impact

I292-12

I292-13

I292-14

I292-15

ES-15

Impact	Mitigation Measures	Original Impact / Residual Impact with Mitigation				
		Alternative A	Alternative B	Alternative C	Alternative D	
due to unverifiable allegations that there is a potential for closure, the estimated substitution effect on River Rock Casino (24.24%) is considered a potentially significant impact.						I292-16
<p style="background-color: yellow; border: 2px solid red; padding: 5px; color: red; text-align: center;">You have an estimate down to two decimals of accuracy. Really? and if it is 40%? 50%. There is strong risk of Significant impact.</p>						
2) <b>Non-Gaming Substitution Effects</b> – Operation of the project alternatives could reduce revenues at existing hotels, restaurants, and retail facilities	No mitigation required.	LS	LS	LS	NI	
<b>Environmental Justice: Minority and Low-Income Communities</b> – There are some identified minority and low-income populations in the vicinity of the Project Site that could be affected	Through mitigation and BMPs all environmental impacts of the project alternatives are minimized.	PS/LS	PS/LS	PS/LS	NI	I292-17
<b>Effects to the Tribe</b> – The project alternatives would allow the Tribe to generate revenues to fund tribal services	No mitigation required.			BI	NI	
<p style="background-color: yellow; border: 2px solid red; padding: 5px; color: red; text-align: center;">"Minimized" does not tell us what the size of the impact is. "minimized" is what you do when you have made a decision. It is not the measure when you are making a decision.</p>						
<p style="background-color: yellow; border: 2px solid red; padding: 5px; color: red; text-align: center;">"temporary" is how long. Of course it will significantly increase traffic. The building of the apartment across the street added traffic &amp; parking congestion. This is much, much bigger.</p>						
<b>Section 3.8. Transportation/ Circulation</b>						I292-18
<b>Construction Traffic</b> – Vehicle trips associated with project construction would be temporary and not significantly increase traffic on roadways.			LS	LS	NI	
<b>Project Traffic</b> – Vehicle trips associated with the operation of the project alternatives could significantly increase traffic volume and exceed the designed capacity of regional roadways and intersections	Implementation of the mitigation measures below shall minimize potential impacts related to project traffic. The following mitigation measures shall be implemented for Alternative A: Opening Year 2028: <b>Mitigation Measure A:</b> For Intersection 1) Shiloh Rd. & Old Redwood Hwy. (100% fair share contribution) – <ul style="list-style-type: none"> <li>▪ Convert split phasing in Eastbound (EB)/Westbound (WB) direction to protected phasing.</li> </ul>	S/LS	S/LS	S/LS	NI	I292-19
<p style="background-color: yellow; border: 2px solid red; padding: 5px; color: red; text-align: center;">No amount of road widening at the intersection is going to eliminate the 5000 car parking lot. The impact is Significant</p>						

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact

Impact	Mitigation measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
	<ul style="list-style-type: none"> <li>Convert existing WB-through lane to an exclusive left-turn lane (storage length of 200 feet and taper length of 75 feet) and shared through/right turn.</li> <li>Add one Northbound left-turn lane.</li> <li>Restripe Eastbound right (EBR) to give 150 ft. storage length.</li> <li>Restripe Southbound left (SBL) to 190 ft. storage length.</li> <li>Restripe SBR to 105 ft. storage length.</li> <li>Construct Traffic Impact Fee (TIF) project to add second Northbound left (NBL) turn lane and second WB receiving lane.</li> </ul> <p><b>Mitigation Measure B:</b> For Intersection 2) Shiloh Rd. &amp; Hembree Ln. (100% fair share contribution) - Optimize splits and cycle length.</p> <p><b>Mitigation Measure C:</b> For Intersection 7) Shiloh Rd. &amp; Casino Entrance 1 (100% fair share contribution) – Signalize intersection.</p> <p><b>Mitigation Measure D:</b> For Intersection 8) Old Redwood Hwy. &amp; Casino Entrance 1 (100% fair share contribution) – Signalize intersection.</p> <p>Mitigation Measures for Alternative B and C are less than those listed above for Alternative A and are provided in <b>Section 4</b>.</p>				
<b>Transit, Bicycle, and Pedestrian Facilities</b> – Traffic generated by the project alternatives could adversely impact other transportation facilities	No mitigation required	LS	LS	LS	NI
<b>Section 3.9. Land Use</b>					
<b>Land Use Plans</b> – The project alternatives could conflict with County land use plans and ordinances	No mitigation required	LS	LS	LS	NI
<b>Land Use Compatibility</b> – The project alternatives could conflict with neighboring land uses, including residential uses and parks	The use of BMPs and implementation of mitigation measures for noise, air quality, traffic, and aesthetic resources would <b>minimize</b> impacts related to land use compatibility.	PS/LS	PS/LS	PS/LS	NI
<b>Agriculture</b> – The project alternatives could conflict with state and federal farmland designations	No mitigation required.	LS	LS	LS	NI

Again the "minimize" word. The size of the impact is large.

I292-20

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact



Impact	Mitigation Measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
<b>Section 3.10. Public Services</b>					
<b>Water Supply</b> – The project alternatives would not connect to a municipal water supply and therefore could not exceed the capacity of the municipal water supply or require significant improvements to the existing municipal water distribution infrastructure	No mitigation required	NI	NI	NI	NI
<b>Wastewater Service</b> – Operation of the project alternatives would not connect to a municipal wastewater treatment facility and therefore could not exceed the capacity of the existing municipal wastewater treatment and disposal infrastructure	No mitigation required	NI	NI	NI	NI
<b>Solid Waste Service</b>					
1) <b>Construction</b> – Construction of the project alternatives could generate quantities or types of waste that cannot be accommodated by regional waste disposal facilities	No mitigation required.	LS	LS	LS	NI
2) <b>Operation</b> – Operation of the project alternatives could generate quantities or types of waste that cannot be accommodated by regional waste disposal facilities	The use of BMPs would minimize impacts to solid waste services from project operation. No mitigation required.	LS	LS	LS	NI
<b>Electricity and Natural Gas</b>					
<b>Construction</b> – Construction activities could damage underground utilities	The use of BMPs would minimize impacts to electricity and natural gas from project construction. No mitigation required.	LS	LS	LS	NI
<b>Operation</b> – Operation of the project alternatives could necessitate improvements to electrical and natural gas infrastructure that generate adverse environmental effects	No mitigation required.	LS	LS	LS	NI

So where is the water coming from? Groundwater, right? & you said no impact to groundwater. Of course there is a huge impact to the water supply. This is so misleading & deceitful...and harmful, depleting

and their own water treatment plant has no impact? Odors, overflow risk, creek impact.

again, the "minimize" word. It is going to generate waste in significant quantities. You are whitewashing.

I292-21  
I292-22  
I292-23

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact

Impact	Mitigation Measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
	<p>procedures and best management practices outlined in <b>Section 4</b>. Unless a pre-determined evacuation zone specific to the casino-resort is created and/or unless specifically directed otherwise by the lead authority for evacuations, the casino-resort shall initiate a mandatory evacuation of the Project Site as soon as specified evacuation zones within the Trigger Evacuation Zone are issued a voluntary evacuation warning or order.</p> <p><b>Mitigation Measure C:</b> Management and staff at the casino-resort shall be trained on evacuation procedures for guests and visitors as part of their new hire orientation and receive updated evacuation procedures training annually.</p> <p><b>Mitigation Measure D:</b> The Tribe shall coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. These measures could include, but would not be limited to the measures listed in <b>Section 4</b>.</p>				
<b>Section 3.13. Visual Resources</b>					
	<p><b>Operational Impacts</b> – Development of the project alternatives could generate significant adverse aesthetic impacts, including those impacts addressed separately below</p>				
	<p>1) <b>Effects on Viewsheds Surrounding the Project</b></p> <p>The incorporation of design features would minimize impacts to viewsheds during operation. No mitigation required.</p>	LS	LS	LS	NI
	<p>2) <b>Shadow, Light, and Glare</b></p> <p>The incorporation of design features and BMPs would minimize impacts caused by shadow, light, and glare. No mitigation required.</p>	LS	LS	LS	NI
<b>Section 3.14. Cumulative Effects</b>					
	<p><b>Land Resources</b> – Future development in combination with the project alternatives may cumulatively impact land resources, including topographic changes, soil loss, and seismic risk.</p> <p>The incorporation of BMPs would minimize impacts to land resources. No mitigation required.</p>	LS	LS	LS	NI

5000 parking spots. I'd say that is a rather large issue for evacuation.

I292-24

Again, "minimize". The view impacts compared to today will be if not huge, large...parking lot, casino, hotel.

I292-25

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact

Impact	Mitigation measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
<b>Surface Water Resources</b> – Construction activities from the project alternatives and cumulative development could affect surface water and flooding while, but wastewater discharge would have a less than significant impacts to water quality.	The incorporation of BMPs would minimize impacts to surface water resources and flooding. No mitigation required.	PS/LS	PS/LS	PS/LS	NI
<b>Groundwater Resources</b> Groundwater pumping in combination with potential operation of new municipal wells in the Town of Windsor during multiple dry years could cause drawdown impacts to domestic wells in the shallow aquifer. The majority of impacts would result from the potential new Town of Windsor stand-by wells, but Alternative A would contribute to the overall drawdown.	The following measures shall be implemented to address cumulative groundwater impacts under a scenario in which the Town of Windsor is operating two new municipal wells under multiple dry year conditions: <b>Mitigation Measure A:</b> Should the Town of Windsor determine pursuant to mitigation measure HYD-3 Section 2 in the Town’s PEIR for adoption of the 2009 Draft WMP Water Master Plan (Horizon, 2011), or an equivalent mitigation measure adopted in a subsequent CEQA document for these wells, that aquifer connectivity in the vicinity of the Esposti Park and/or Bluebird wells causes their operation to induce a substantial decrease in water levels in the shallow aquifer or in surrounding wells, alterations to surface streamflow, or impact natural recharge, then 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. The Tribe’s obligation to contribute proportionate fair share funding shall be limited to measures to address impacts to existing domestic water supply wells from groundwater pumping; the Tribe shall have no obligation to participate in or fund other water supply initiatives or infrastructure improvements. <b>Mitigation Measure B:</b> The Tribe shall implement an onsite groundwater level monitoring program, including the installation and monitoring of three shallow groundwater monitoring wells and monitoring of at least one of the existing supply wells, which shall be repurposed for monitoring purposes to assess groundwater levels in the pumped aquifer and at the water table beneath the Project site. Monitoring shall begin at least one year prior to initiation of Project pumping and shall continue for a period of least 5 years after pumping	PS/LS	PS/LS	PS/LS	NI

We are short of water. This project is going to pump groundwater to support a hotel & casino operations. To judge it to only PS is to whitewash the problem. At the least it should be PS/S.

I292-26

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact

Impact	Mitigation Measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
	<ul style="list-style-type: none"> <li>Baseline data shall be analyzed for a period of at least six representative hydrologic years by using the satellite data to calculate a vegetation index such as NDVI or Leaf Area Index (LAI);</li> <li>Annual data shall be analyzed and compared to the baseline data to assess whether there is quantifiable remote sensing evidence of plant stress or reduced vigor.</li> <li>The biological and satellite data shall be evaluated, in consideration of groundwater levels in the shallow aquifer, Windsor pumping records and precipitation records in a representative meteorological station to assess whether vegetation vigor has occurred that may result in habitat loss and that is attributable to groundwater level changes caused by groundwater pumping.</li> <li>An annual monitoring report shall be submitted to the BIA by April 1 of the following year. If the program verifies that loss of plant vigor that may lead to habitat degradation is occurring, a meeting shall be convened between BIA, Sonoma County and the Town of Windsor to discuss and agree to appropriate changes in the monitoring procedures, parties responsible for program implementation and cost sharing.</li> </ul> <p>See Hazardous Materials and Hazards – Wildfire Hazards mitigation below regarding water quality measures related to the riparian corridor wildfire management plan.</p>				
<b>Air Quality</b> – CO emissions from operational emissions were deemed to be less significant with cumulative development as were hazardous air pollutants and GHG emissions from project operations.	The use of BMPs will minimize air quality and climate change impacts from operations. No mitigation required.	LS	LS	LS	NI
<b>Biological Resources</b> – Project alternatives could impact protected aquatic habitats, wetlands, federally-listed species, and migratory birds.	Implement <b>Biological Resources Mitigation Measures A through V.</b>	PS/LS	PS/LS	PS/LS	NI

So, once the problem is documented, let's meet & figure out what to do. We are already pumping out the water, so in reality no recourse.

This is a ridiculous approach...imho.

I292-27

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Impact	Mitigation measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
<b>Cultural Resources</b> – Cumulative effects to cultural resources arise from disturbance during development, potentially causing loss of historical connections; while no resources were found, subsurface ones might exist.	Implement <b>Cultural Resources Mitigation Measures A</b> through <b>C</b>	PS/LS	PS/LS	PS/LS	NI
<b>Socioeconomic Conditions</b> – Cumulative effects associated with economic output, job creation, and fiscal effects would be generally beneficial. While review of similar case studies and market data suggests that it is unlikely that competition would cause the closure of any affected gaming facilities, given the absence of verifiable data, the effects of Alternative A in combination with the expansion of the Graton Resort and Casino to the River Rock Casino, operated by the Dry Creek Band, are considered potentially significant.	No mitigation feasible.	<div style="border: 2px solid red; padding: 5px; background-color: yellow;"> <p style="color: red; font-weight: bold;">I doubt the two nearby casinos would say the impact is only PS. It is Significant no matter how you look at it. Their problem, not ours, appears to be the assessment.</p> <p style="color: red; font-weight: bold;">I don't gamble, but it is beyond comprehension that a third gaming facility is needed in this area, or is desirable.</p> </div>			
<b>Transportation/Circulation</b> – The Traffic Impact Study evaluated cumulative impacts on roadway operations for project alternatives, identifying intersections and roadway segments that may operate at unacceptable levels of service.	Implement the following <b>Transportation and Circulation Mitigation Measures</b> Alternative A for the Cumulative Year 2040: <b>Mitigation Measure E:</b> For Intersection 1) Shiloh Rd. & Old Redwood Hwy. (39.4% fair share contribution) <ul style="list-style-type: none"> <li>▪ Convert split phasing in EB/WB direction to protected phasing.</li> <li>▪ Restripe NB approach to include two exclusive left turn lanes, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe SB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe EB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe WB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe EBL to give 385 ft. storage length.</li> <li>▪ Restripe SBL to 145 ft. storage length.</li> <li>▪ Restripe SBR to 105 ft. storage length.</li> </ul>	S/LS	S/LS	S/LS	NI

I292-28

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Impact	Mitigation Measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
<p><b>Land Use</b> – The Project Site would not be subject to local jurisdiction if taken into trust and although the land uses under operation would be inconsistent with existing zoning, cumulatively significant impacts would not occur</p>	<p>The use of BMPs and implementation of mitigation measures for noise, air quality, traffic, and aesthetic resources would minimize impacts related to land use compatibility.</p>	PS/LS	PS/LS	PS/LS	NI
<p><b>Public Services</b> – The project alternatives wouldn't adversely affect water, wastewater, or public services, but in combination with cumulative development, there might be a requirement for additional police and fire facilities, equipment, and personnel.</p>	<p>The use of BMPs and implementation of <b>Socioeconomic Conditions Mitigation Measures A, B and C</b> would minimize impacts related to increased calls for service to law enforcement and fire protection agencies.</p>	PS/LS	PS/LS	PS/LS	NI
<p><b>Noise</b> – Cumulative increases in roadway traffic volumes could result in significant increases in ambient noise levels at locations along Shiloh Road and Old Redwood Highway.</p>	<p>The following measures shall be implemented to reduce impacts from off-site traffic noise during the cumulative year:  <b>Mitigation Measure A:</b> The Tribe shall pay a fair share to the following road segments with noise-reducing pavement: 1) Old Redwood Highway, between Hembree Lane and Gridley Drive, 2) Old Redwood Highway, between Shiloh Road and the Project Entrance.  <b>Mitigation Measure B:</b> If repaving is not necessitated by traffic improvements prior to 2040, the Tribe will compensate homeowners adjacent to the identified roadway segments for dual pane exterior windows or other noise reducing measures, such installing window assemblies with higher than 27 STC, that can achieve noise reduction in the interior of the sensitive receptors that meet federal, state, and local standards, at the request of the homeowner.</p>	PS/LS	PS/LS	PS/LS	NI
<p><b>Hazardous Materials</b> – Development of the project alternatives, in combination with other foreseeable projects, could disturb existing hazardous materials or introduce new hazardous materials to the physical environment. The project alternatives in combination with community growth would</p>	<p>The use of BMPs will minimize impacts from inadvertent hazard material releases and implementation of <b>Hazardous Materials Mitigation Measures A, B and C</b> would minimize impacts related to wildfire evacuation.</p>	PS/LS	PS/LS	PS/LS	NI

I take it that it is zoned for agriculture. The trust thing trumps local. Isn't that nice. No actually.

Traffic, noise are all going up. Buying some windows looks like a bandaid. Back yards, sidewalks, parks, the road congestion...they apparently don't count.

I292-29

I292-30

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact

Impact	Mitigation Measures	Original Impact / Residual Impact with Mitigation			
		Alternative A	Alternative B	Alternative C	Alternative D
contribute to increased community wide evacuation timelines.					
<b>Aesthetics</b> – The project alternatives, in combination with other foreseeable alternatives, could be visually incompatible with existing land uses or otherwise adversely impact aesthetic resources, or cumulative increase lighting levels.	The incorporation of design features would minimize cumulative impacts to aesthetics and lighting.	LS	LS	LS	NI
<b>Section 3.15. Indirect and Growth Inducing Effects</b>					
<b>Section 3.15.1. Indirect Effects of Off-Site Traffic Mitigation and Off-site Irrigation</b> – Compliance with applicable federal, State, and local regulations during construction of off-site traffic mitigation and irrigation infrastructure would ensure that indirect impacts would not occur.	No mitigation required	LS	LS	LS	NI
<b>Section 3.15.2. Indirect Effects of On-Site Riparian Corridor Wildfire Management Plan Mitigation</b> - The Riparian Corridor Wildfire Management Plan includes measures that would minimize the potential for impacts to Pruitt Creek. Implementation of the Riparian Corridor Wildfire Management Plan may result in short-term increases to local ambient noise levels from chainsaws and other landscaping equipment; however, with implementation of the BMPs significant adverse effects to the ambient noise environment would not occur. No adverse impacts would occur in relation to other environmental issue areas.	The use of BMPs would minimize indirect impacts associated with noise.	LS	LS	LS	NI
<b>Section 3.15.3. Growth-Inducing Effects</b> – Development of the project alternatives would not promote population growth and/or the	No mitigation required	LS	LS	LS	NI

How is light noise addressed? Right now there is quiet vineyards, a line of trees & a creek. Parking lots, hotels, traffic in & out all bring noise, congestion, & the ongoing presence of an entertainment complex.

Use of "minimize" does not make these largely significant impacts go away, or diminish them. It just says...well, what does it say? No neon signs, no searchlights? It is just a whitewash.

I292-31

NI = No Impact    LS = Less than Significant    PS = Potentially Significant    S = Significant    BI = Beneficial Impact

## 1.1.2 Scoping

### Preparation of an Environmental Assessment

In accordance with 40 CFR § 1501.5, the BIA prepared an Environmental Assessment (EA) to analyze the potential environmental consequences associated with the Proposed Action and the subsequent development of the project alternatives to assist the BIA in determining whether a Finding of No Significant Impact (FONSI) should be prepared or whether additional environmental analysis will be conducted in the form of an EIS.

I292-32

BIA prepares the EA by hiring Acom, who is in the business of helping tribal governments to do assessments. This is not an independent assessment.

Although not required by NEPA for the preparation of an EA, the BIA as Lead Agency elected to conduct a 30-day scoping comment period to solicit input from the public and agencies regarding the scope of the EA. A Notice of Preparation (NOP) describing the Proposed Project and announcing a 30-day scoping period was prepared and circulated for public and agency review on May 27, 2022. The NOP was published in The Press Democrat newspaper, posted on the project website at <https://www.shilohresortenvironmental.com/>, filed with the State Clearinghouse for distribution to State agencies, and sent to various federal and local agencies through direct mailings, including but not limited to Sonoma County and the Town of Windsor. The issues that were raised during this initial scoping period were summarized the September 2022 NEPA Scoping Report, which is incorporated by reference and available online at the project website. The EA addressed the relevant issues and concerns as summarized in the scoping report. A copy of the NOP and newspaper publication are provided in **Appendix A-1**.

A Notice of Availability (NOA; **Appendix A-1**) for the EA was submitted to the State Clearinghouse (SCH# 202205059), published in the local paper (The Press Democrat), mailed to interested parties, and posted on the project website. The EA was originally made available for public comment for a 45-day period, from September 12, 2023 to October 27, 2023. However, the BIA extended the public comment period for an additional 15-day period that concluded on November 13, 2023, resulting in a total comment period of 60 days. A virtual public hearing was held on September 27, 2023, that included an overview of the NEPA process, description of Proposed Action and Alternatives, summary of the contents of the EA, and an opportunity for the public to submit verbal comments on the EA. Upon consideration of the public and agency comments received, the BIA decided to prepare an EIS to further analyze the environmental effects which may result from the Proposed Action. Comments received during the EA public comment period are now considered scoping comments for the EIS and are included in **Appendix A-2**, Supplemental Scoping Report.

### Notice of Intent

Although a formal public scoping process had been conducted and an EA circulated for the Proposed Action, the BIA published a Notice of Intent (NOI) in the Federal Register (FR) on March 8, 2024, describing the Proposed Action and announcing intent to prepare an EIS. The 30-day public comment period began on March 8, 2024, and ended on April 8, 2024. Comments received in response to the NOI are included in **Appendix A-2**, Supplemental Scoping Report. To the extent required by NEPA, this EIS addresses the issues and concerns raised during the scoping and public review for the EA, as well as scoping comments received in response to the NOI.



### 1.1.3 EIS Process

This Draft EIS will be distributed to federal, Tribal, State, and local agencies, as well as other interested parties for a review and comment period. The review and comment period begins after the Notice of Filing with the USEPA in the Federal Register. The Notice of Availability (NOA) published by the BIA provides information regarding the public comment period and virtual public hearing on this Draft EIS. The BIA will consider the comments received, and revisions may be made in the Final EIS to reflect the content of these comments. The Final EIS will be filed with the USEPA, and the USEPA will then publish an NOA for the Final EIS in the Federal Register. This marks the beginning of a 30-day period after which the BIA may proceed with a decision. At the time of the decision, the BIA will prepare a public Record of Decision (ROD) pursuant to 40 CFR § 1505.2. As required by the CEQ Regulations for Implementing NEPA, the ROD will state what the decision is, identify alternatives considered in reaching the decision, and discuss preferences among alternatives based on relevant factors including economic and technical considerations as well as the statutory mission of the BIA. The ROD will also discuss whether all practicable mitigation measures have been adopted to mitigate environmental harm. If all practicable measures are not adopted, the BIA must state why such measures were not adopted. The BIA will prepare a monitoring and compliance plan for mitigation consistent with 40 CFR § 1505.3(c), which will be attached to the ROD.

## 1.2 PURPOSE AND NEED FOR THE PROPOSED ACTION

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior’s (Department) land acquisition policy as articulated in the Department’s trust land regulations at 25 CFR Part 151, and the principal goal of IGRA as articulated in 25 USC § 2701. The need for the Department to act on the Tribe’s application is established by the Department’s regulations at 25 CFR § 151.10(h) and 151.12.

I292-33

what is the population size of the Tribe?

When did they acquire the Shiloh parcel?

## 1.3 BACKGROUND

The Koi Nation is a federally recognized tribe governed by its Constitution and a **three-member** Council headquartered in Santa Rosa, California. The Tribe operates programs under the Tribal Self-Governance Act of 1994, programs funded by the Indian Health Service, and the American Rescue Plan of 2021, among others, for its enrolled tribal members; approximately 52% of whom live in Sonoma County and an additional 25% of whom live in Lake County, the remaining 23% live outside of Sonoma and Lake Counties. The Tribe currently has no reservation or land in trust for its benefit but owns approximately 68.6 acres of land in unincorporated Sonoma County known as the “Shiloh parcel.” The Tribe has requested that the BIA accept land into trust for gaming purposes to establish an economic land base in order to strengthen its governmental capacity and institutional framework, promote the general welfare of the Koi Nation and its members, raise governmental revenues, and create jobs for its members.

For most of its history the Koi people traveled throughout the Russian River Valley, primarily living at Clear Lake in what is now Lake County, California. By the middle of the 1800s, the Koi people were displaced as a result of federal policies intended to allow for Euro-American settlement and industrial development of the Clear Lake area. Although treaties between the federal government and the Koi people were negotiated in 1851, they were not ratified by Congress. In 1916, the BIA purchased a 141-acre tract of land (herein referred to as the Lower Lake Rancheria) between the towns of Lower Lake and Clearlake Highlands (now incorporated into the City of Clearlake) in Lake County, California, for use by the Tribe; however, due to the uninhabitable condition of the Lower Lake Rancheria, the Koi tribal leadership and

Resource Area	Proposed Mitigation	Alternative
	<ul style="list-style-type: none"> <li>▪ Staff shall post critical emergency evacuation information (e.g., Red Flag Warnings and Fire Weather Watches) and handouts shall be made available to all visitors, guests, and staff. Staff shall incorporate the latest technology available, such as QR codes that contain links to webs sites for mobile devices, or better technology as it evolves.</li> <li>▪ Using the emergency evacuation information provided, guests shall be encouraged to make themselves familiar with available routes, stay informed and connected to all available emergency alert tools, and follow directions provided by staff, law enforcement, fire agencies, news media, and other credible sources.</li> <li>▪ Staff and guests shall be provided with information on the local AM and FM radio stations to monitor for disaster information and all emergency alert tools like Emergency Alert System (EAS), SoCoAlert, and Nixle.</li> <li>▪ Guests, through the emergency evacuation information, shall also be advised to not rely just on navigation apps that may inadvertently lead them toward an approaching wildfire, flooding, hazardous materials, or other hazards.</li> <li>▪ Staff shall be trained on how to connect to the available emergency alert notification tools such as EAS, SoCoAlert, and Nixle. Staff shall monitor those services while at the facility.</li> <li>▪ Designated staff shall be provided with Community Emergency Response Training. This training provides information on how to be prepared for disasters and emergencies and reorganize life-threatening conditions and apply life-saving techniques.</li> <li>▪ A public address system shall be installed inside all occupied buildings so that emergency notifications can be provided by staff to visitors and guests. Additionally, designated staff shall be issued handheld portable radios for communication during an emergency.</li> <li>▪ The hotel shall send registered guests emergency notification connection instructions to their mobile device at time of registration. This shall be done through the resort’s registration process using guest registration information.</li> <li>▪ Guests without cars or those who are uncomfortable driving themselves in an emergency shall be offered off-site transportation by staff in a resort vehicle, ride share, public transportation, and/or on-site shuttles. These options shall be directed to pre-established County Emergency Management approved community shelters.</li> </ul>	

I292-34

this is all whitewashing.

Resource Area	Proposed Mitigation	Alternative
	<ul style="list-style-type: none"> <li>▪ All intersections on the Project Site shall include signage that clearly indicates the exit route from the property to major evacuation routes such as Old Redwood Highway and Shiloh Road to Highway 101.</li> <li>▪ There shall be at least six trained traffic attendants to direct the vehicles exiting the garage and surface parking areas. In addition, at least two attendants shall be posted at each of the three project site access points. A total of 12 persons would be needed during evacuation. These traffic attendants should be specially trained employees of the project.</li> <li>▪ Trained on-site personnel shall direct roughly half of the vehicles from the garage and surface parking areas on the eastern portion of the Project Site to either the east Shiloh Road access point or the signalized Old Redwood Highway access point.</li> </ul> <p>C. Management and staff at the casino-resort shall be trained on evacuation procedures for guests and visitors as part of their new hire orientation and receive updated evacuation procedures training annually.</p> <p>D. The Tribe shall coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. These measures <b>could include</b>, but would not be limited to:</p> <ul style="list-style-type: none"> <li>▪ Installation of a wildfire detection camera within the Project Site and/or at another location in the vicinity of the Town of Windsor that would expand the coverage of the wildfire camera system. The wildfire camera(s) would be connected to the existing early detection system and be <b>accessible</b> to emergency officials.</li> <li>▪ Installation of variable message signs for the outbound lanes at the three project egress points that connect to Shiloh Road and Old Redwood Highway. The variable message signs shall be connected to on-site staff and the County Emergency Operations Center (EOC) so that evacuation-related messages can be controlled by fire personnel managing the evacuation. At the time of an evacuation order, evacuating project traffic shall be directed to alternate routes to US 101 and/or other areas of safety. Unless precluded by wildfire or otherwise directed by emergency officials, evacuation project traffic shall be directed to US 101, Old Redwood Highway, Fulton Road, and/or eastbound Shiloh Road towards Faught Road and Old Redwood Highway.</li> </ul>	

I292-35

you are going to put up a camera & some signage at the intersection. And that takes care of 5000 cars in a panic evacuation?!

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

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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 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.

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.

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

PH3-2  
cont.

PH3-3

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 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 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 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 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 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

PH36-1

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 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

PH53-1

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 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.

PH58-1

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

PH60-1

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 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

PH68-1

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 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.

PH91-1  
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

PH92-1

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 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.

PH99-1

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

PH101-1

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

PH101-1  
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

PH101-1  
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 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

PH119-1  
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

PH119-1  
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 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 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 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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PH142-1  
cont.

PH142-2

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



# Section 3 | Response to Comments

This section contains responses to the representative comments that were received during the public comment period on the Draft EIS, included in **Section 2**. Comments may be addressed with a general Master Response in **Section 3.1**, individually in **Section 3.2**, or by reference to another specific individual response. This format reduces redundancy where multiple comments have been submitted on the same issue. Revisions have been made in the Final EIS based on the comments received, to improve language, enhance data, and provide clarification. The location where changes were made to the Final EIS are identified in the applicable responses.

## 3.1 MASTER RESPONSE TO COMMENTS

Master Responses in this section address comments with similar subject matter that were submitted multiple times in separate comments. Responses to individual comments in **Section 3.2** may refer to these Master Responses in whole or in part to avoid repetition. Master Responses considered repeated comments received from agencies, tribes, organizations, and individuals.

### 3.1.1 Master Response 1: Extension of the Comment Period

#### Summary of Comments

The BIA received multiple requests for an extension of the comment period on the Draft EIS.

#### Response

CEQ's NEPA Implementing Regulations (40 CFR Parts 1500–1508) and the Department of the Interior (DOI) NEPA procedures (43 CFR Part 46) encourage agencies to facilitate public involvement in the NEPA process (40 CFR §1500.2(d)). Agencies shall allow at least 45 days for comment on a Draft EIS (40 CFR §1506.10(d)). Consistent with this requirement, a NOA for the Draft EIS was issued on July 8, 2024, advising the public that the BIA filed the Draft EIS with the USEPA in connection with the Proposed Action. Publication of a NOA by the USEPA in the Federal Register on July 12, 2024, officially initiated a 45-day comment period on the Draft EIS that concluded on August 26, 2024. The NOA was submitted to the State Clearinghouse (SCH# 202205059), published in the local paper (The Press Democrat), mailed to interested parties, and posted on the project website (<https://www.shilohresortenvironmental.com/>). A virtual public hearing was held on July 30, 2024, that included an overview of the NEPA process, description of Proposed Action and Alternatives, summary of the contents of the Draft EIS, and an opportunity for the public to submit verbal comments on the Draft EIS.

The BIA determined that a 45-day comment period for the Draft EIS was consistent with NEPA and sufficient for providing meaningful comments on the Proposed Action. This determination was made with consideration to the previous opportunities for public involvement in the NEPA process for the Proposed Action, including:

- The 30-day public scoping comment period on the previous Environmental Assessment (EA) from May 27, 2022, to June 27, 2022.
- The 45-day public comment period on the EA from September 12, 2023, to October 27, 2023, and 15-day comment extension to November 13, 2023.
- A virtual public hearing for the EA on September 27, 2023.
- The 30-day public comment period on the Notice of Intent to Prepare an EIS from March 8, 2024, to April 8, 2024.

### 3.1.2 Master Response 2: Completeness of the Draft EIS and the Hard Look Standard

#### Summary of Comments

Some comments received were expressions of opinion that the Draft EIS was incomplete or inaccurate without citation of factual evidence or comments on substantive environmental issues. Other comments stated that the Draft EIS omitted or overlooked important facts, and that analysis of certain issues was not rigorous enough to meet the NEPA “hard look” standard. Some comments stated that more detail or design-level detail of the project alternatives or related infrastructure improvements was necessary to meet the NEPA “hard look” standard. Specifically, some comments requested that proposed water and wastewater facilities within the proposed “treatment area” be shown to ensure that adequate space is available. Some comments stated that the EIS relied heavily on cursory references to mitigation measures to conclude impacts would be less than significant without sufficient explanation. Some comments state that a supplemental EIS should be prepared or the Draft EIS should be recirculated. Some comments stated that the EIS process timeline was “rushed” and therefore lacked sufficient detail.

#### Response

##### *NEPA Hard Look Standard and Completeness of Draft EIS*

The NEPA “hard look” doctrine is a principle of administrative law relied upon to give meaning to the “arbitrary and capricious” standard established by the Administrative Procedure Act; in summary, it requires that agencies take a hard look at the environmental consequences of proposed federal actions, based on consideration of all relevant evidence, and that decisions are supported by adequate facts. As stated in Draft EIS Section 1.1, the Draft EIS was “completed in accordance with and to satisfy the requirements set out in the National Environmental Policy Act (NEPA) (42 USC §4321 et seq.); the CEQ Guidelines for Implementing NEPA (40 CFR Parts 1500-1508); and the BIA NEPA guidebook (59 Indian Affairs Manual 3-H).” It provides a detailed description of the Proposed Action and analysis of the potential environmental consequences associated with the Proposed Action and the subsequent development of the Proposed Project. The scope of issues addressed within the Draft EIS was informed by a thorough scoping process that involved multiple opportunities for public and agency input (refer to **Master Response 1** for a description of the public/agency engagement opportunities in the NEPA process). While the text of the Draft EIS was limited to less than 150 pages in compliance with NEPA requirements (40 CFR §1502.7), consistent with the NEPA “hard look” standard, the determinations and mitigation recommendations described therein were informed by extensive research and studies prepared by qualified experts either cited as appropriate or provided within the technical appendices of the Draft EIS. Supporting technical appendices consisted of more than 2,000 pages including but not limited to: biological resource studies prepared by qualified biologists and wetland specialists; cultural resource studies prepared by registered professional archaeologists that meet Secretary of Interior standards;

wildfire risk and evacuation analysis prepared by former Sonoma County fire and law enforcement officials and transportation engineers; noise and vibration analysis prepared by acoustical engineering specialists; economic impact analysis prepared by gaming economic specialists; a transportation impact study prepared by a traffic engineering firm; a water supply and wastewater feasibility study and a grading and stormwater plan prepared by a civil engineering firm; air quality modeling completed using the California Air Resources Board approved model; a groundwater resource impact assessment prepared by professional geologists and certified hydrogeologists; and a lighting analysis prepared by a lighting certified professional engineer.

Some comments on the Draft EIS made constructive suggestions regarding instances in which the text or the analysis could be clarified or changed to include additional details. Consistent with the NEPA “hard look” doctrine, the BIA has considered all relevant information submitted by the public and agencies during the Draft EIS review period, and the text in the Final EIS and associated technical studies has been modified to incorporate such information as appropriate and explained in more detail throughout this section.

### *Requirement to Recirculate the EIS*

40 CFR §1502.9 provides guidance on circumstances under which a lead agency should prepare and publish a Supplemental Draft EIS. These regulations provide that the agency should prepare a supplement to the Draft EIS if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis, or the draft is so inadequate as to preclude meaningful analysis. The agency may also prepare supplements when the agency determines that the purposes of NEPA will be furthered by doing so.

Substantial changes relevant to environmental concerns in the Proposed Action have not been made, nor has a new alternative been introduced as the Proposed Action. Similarly, there are no significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Action or its impacts. In response to comments received on the Draft EIS, text and analyses contained in the EIS have been supplemented, modified, updated, improved, and/or corrected. While new information has been presented, the information has not resulted in substantial changes in the EIS’s conclusions regarding the environmental impacts of the Proposed Action or the identification of any new significant impacts. The level of analysis presented in the EIS constitutes the “hard look” required by NEPA. For these reasons, a supplemental EIS is not warranted.

### *Level of Design Detail Required for NEPA Analysis*

The CEQ NEPA Implementing Regulations (40 CFR §1502.5) provide the following guidelines with respect to the timing of preparation of an EIS:

“The statement shall be prepared early enough so that it can serve as an important practical contribution to the decision-making process and will not be used to rationalize or justify decisions already made ...

- (a) *For projects directly undertaken by Federal agencies, the agency shall prepare the environmental impact statement at the feasibility analysis or equivalent stage evaluating whether to proceed with the project and may supplement it at a later stage, if necessary.*
- (b) *For applications to the agency requiring an environmental impact statement, the agency shall commence the statement as soon as practicable after receiving the complete application.”*

Given the extensive timelines and costs associated with preparation of construction level detail design plans, NEPA's requirement for analysis and consideration of reasonable alternatives, and CEQ regulations that encourage NEPA analysis as a *practical contribution to the decision-making process* and at the *feasibility analysis or equivalent stage*, it is not appropriate to develop design level detail construction documents as part of the EIS process. Instead, the EIS relies upon concept level plans and drawings prepared by licensed architects and engineers as the basis for the analysis of reasonably foreseeable environmental impacts during the decision-making process. Should substantial changes that are relevant to environmental concerns be made to the project at a later stage as the result of the full design process, which would adhere to applicable building codes and recommendations of geotechnical investigations, CEQ regulations would require the preparation of a supplemental environmental impact statement (40 CFR 1502.9).

In response to comments, additional detail has been developed to illustrate the potential layout of the proposed water and wastewater facilities within the "treatment area" as shown on the site plan. These drawings have been prepared to scale to illustrate the feasibility of citing the necessary size facilities within the Project Site, and are included in Final EIS Appendix D-2.

### *NEPA Process was "Rushed"*

The NEPA process was initiated with the circulation of the Notice of Preparation of an Environmental Assessment on May 27, 2022, more than 2 year prior to the release of the Draft EIS. Throughout the NEPA process, the BIA has provided multiple opportunities for public review and comment, as described in **Master Response 1**. When taken together, these opportunities are far in excess of the minimum requirements set forth in the CEQ NEPA regulations and BIA Handbook. Further, as outlined above, the EIS provides a thorough analysis of the potential for environmental consequences resulting from the Proposed Action. 40 CFR 1501.10 and 40 CFR 1506.10 set forth the timelines for preparation of an EIS. 40 CFR 1501.10 (a) states:

"To ensure that agencies conduct sound NEPA reviews as efficiently and expeditiously as practicable, Federal agencies shall set deadlines and schedules appropriate to individual actions or types of actions consistent with this section and the time intervals required by § 1506.10 of this subchapter...."

The BIA has prepared the EIS consistent with these regulations.

## 3.1.3 Master Response 3: Expressions of Opinion and Non-Substantive Comments

### Summary of Comments

Some of the comments received were expressions of opinion either for or against the Proposed Action or Proposed Project. Other comments summarized the alternatives and/or findings of the Draft EIS. Additional comments did not raise any substantive environmental issues. Comments generally stated opinions regarding the Draft EIS analysis and conclusions (e.g., greater effects from increased crime, traffic, noise) without supporting information.

## Response

This response to comments document has been prepared consistent with CEQ NEPA Implementing Regulations. As set forth in 40 CFR §1503.4(a), the lead agency “shall consider *substantive comments* [emphasis added] timely submitted during the public comment period. The agency shall respond to individual comments or groups of comments.” Comments are generally considered “substantive” if they: 1) relate to inadequacies or inaccuracies in the analysis or methodologies used; 2) identify new impacts or recommend reasonable new alternatives or mitigation measures; 3) involve substantive disagreements on interpretations of significance and scientific or technical conclusions. According to 40 CFR §1503.4(a)(5), the lead agency may respond to certain comments received during the public review period for a Draft EIS by “[e]xplaining why the comments do not warrant further agency response, recognizing that agencies are not required to respond to each comment.” Consistent with this requirement, this Master Response explains that responses are not required for comments that do not raise a substantive environmental issue or general statements and expressions of opinion that are not explained with supporting data, sources, or methodologies. Additionally, responses are not provided to comments that do not further the purpose of the NEPA process “to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” (40 CFR §1500.1(c)). However, all comments submitted to the BIA during the NEPA process, including expressions of opinion, have been included within the administrative record and thus will be considered by the BIA in its decision on the project.

### 3.1.4 Master Response 4: Compliance with Gaming Regulations and Legislation (Matters Beyond the Scope of NEPA)

#### Summary of Comments

A number of comments raised concerns regarding the legality of gaming on the Project Site, and whether the circumstances of the Tribe warrant a “restored lands” exception as set forth in 25 CFR §292.12 and Indian Gaming Regulatory Act (IGRA; 25 USC §2719 (b)(1)(B)(iii)). Other comments question the Tribe’s historical or ancestral connection to the Project Site, and how such a connection or lack thereof would affect the Tribe’s standing under IGRA. Other comments stated that the EIS should disclose the degree to which the Proposed Action would adversely affect the rights of other tribes under the IGRA.

#### Response

The statutory basis for the operation of gaming by Native American tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments is included within the federal IGRA (25 USC §2719). As stated therein, gaming is permitted on lands that are taken into trust as part of “the restoration of lands for an Indian tribe that is restored to Federal recognition” (25 USC §2719(b)(1)(B)(iii)). The procedural process undertaken by the DOI to determine whether a site meets the restored lands criteria under IGRA is codified at 25 CFR Part 292. As defined in 25 CFR Part 292.2, “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.” During the 25 CFR Part 292 rule making process, the Department of the Interior clarified that “Newly acquired lands with significant historical and cultural connections may or may not include those that are close to aboriginal homelands,” (see Federal Register, Volume 73, page 29361 (May 20, 2008)). The Department of the

Interior will review the Tribe's request in compliance with applicable federal laws, regulations, procedures and definitions. However, the procedural process under 25 CFR 292 is independent from the NEPA process. Rather, the NEPA process is intended "to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment" (40 CFR §1500.1(c)). In order to fully analyze the potential physical environmental effects of the Proposed Action, the EIS must assume that under the alternatives involving gaming activities (Alternative A and Alternative B), that the Project Site can be utilized for gaming in accordance with federal law.

**Master Response 3** (above) explains that NEPA does not require detailed responses to comments that fail to raise substantive environmental issues. Comments addressing gaming eligibility and the application of the restored lands exception under IGRA do not raise substantive environmental issues; therefore, no response is required.

Regarding statements that the approval of the Proposed Action would lead to other tribes seeking to develop off-reservation gaming facilities closer to favorable market environments, NEPA requires the analysis of reasonably foreseeable effects. It does not require the consideration of remote, speculative, or worst-case effects. The BIA's consideration of the Proposed Action will be governed by federal statutes and regulations, and concerns raised about policy implications or legal precedent created by that decision are speculative.

Regarding comments stating that the EIS should disclose the degree to which the Proposed Action would adversely affect the rights of other tribes under the IGRA, it should be noted that IGRA does not guarantee any tribe the right to a gaming market that is free from competition from other tribes. Conversely, the provisions of IGRA apply to all eligible tribes and tribal lands, and do not provide for market protection between eligible tribes. Further, economic competitive effects are not considered environmental effects under NEPA when they do not translate into physical effects to the environment.

### 3.1.5 Master Response 5: Alternatives

#### Summary of Comments

Several comments were received concerning the range of alternatives analyzed in the EIS. Some of these comments suggested that development of the Proposed Project on an alternative site should have been included in the EIS, for example on an alternative site in Lake County or on a site designated for commercial uses. Some commenters stated that the Alternatives Evaluation Report, referenced in the Scoping Report, should be made available for public review.

#### Response

##### *Reasonable Range of Alternatives*

Pursuant to 42 USC §4332 an EIS shall include a reasonable range of alternatives. The CEQ NEPA Implementing Regulations (40 CFR §1502.14(a)) state that agencies shall:

“Rigorously explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making.”

Reasonable alternatives are further defined as those “that are technically and economically feasible, and meet the purpose and need for the proposed action” (40 CFR §1508.1(hh)). An EIS must also evaluate a “no action” alternative (40 CFR §1502.14(c)). These factors were considered within an alternatives screening analysis which ultimately identified four alternatives for full evaluation within the Draft EIS. As described in Draft EIS Section 2, fully evaluated alternatives include: Alternative A – Proposed Project, Alternative B – Reduced Intensity Alternative, Alternative C – Non-Gaming Alternative, and Alternative D – No Action Alternative.

Draft EIS Section 2.5 included a brief discussion of alternatives considered but eliminated from further analysis. This discussion referenced the September 2022 Scoping Report (available online at: <https://www.shilohresortenvironmental.com/>) and the April 2024 Supplemental Scoping Report (Draft EIS Appendix A-2), which provide a more detailed discussion on alternatives identified during the NEPA process and the reasons for their elimination.

The Scoping Report and Supplemental Scoping Report discuss the alternatives to the Proposed Action which were suggested in scoping comments, including:

#### On-Site Alternatives

- A reduced intensity alternative
- A non-gaming alternative – winery, restaurant, hotel, and showroom
- An on-site alternative that utilizes public water and/or wastewater
- An alternative that would develop housing
- Alternative configurations of the Proposed Project
- A no-action alternative or continued use of the Project Site as a vineyard
- An alternative with on-site housing for employees

#### Off-Site Alternatives

- An alternative in an industrial or commercial area
- An alternative outside of Sonoma County
- An alternative on a site immediately off U.S. Highway 101 (US 101) on Shiloh Road on a parcel that has had a development sign for years
- An alternative near the light rail line
- An alternative closer to the Santa Rosa airport
- An alternative located within the Tribe’s former rancheria and/or areas in Lake County
- An alternative site north of Shiloh Road and west of US 101 for either the Proposed Project or a convention center in coordination with the Sonoma County Tourism Bureau

A thorough alternatives screening analysis was conducted to determine which alternatives should be carried forward in the EIS. Development alternatives were screened based on five criteria: 1) extent to which they meet the purpose and need for the Proposed Action; 2) feasibility from a technical and

economic standpoint; 3) feasibility 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 CFR §292.12); 4) ability to avoid or minimize environmental impacts; and 5) ability to contribute to a reasonable range of alternatives. As referenced in the scoping report, a more detailed explanation of the alternatives screening process was provided in the September 2022 Alternatives Evaluation Report, which has been included as **Attachment 3** to this Response to Comments document. Based on this screening analysis, a reduced intensity alternative, a non-gaming alternative, and a no action alternative were carried forward into the EIS. Alternative configurations or modifications to the Proposed Project have been considered throughout the NEPA process and have resulted in the addition of options for increased on-site effluent storage, installation of utility lines on bridges over Pruitt Creek rather than under the creek via directional drilling, constructing the surface parking lot to be permeable rather than paved, and addition of and clarifications to Best Management Practices. No new alternatives were raised beyond those raised during scoping or on the 2023 EA.

### *Alternative Sites*

Alternatives sites, including sites in Lake County, were reviewed based on the alternatives screening criteria described above and in more detail within the Alternatives Evaluation Report. Other factors considered in eliminating off-site alternatives included that the Tribe does not own, nor does it have an option to own, an off-site property that would be suitable for the proposed development. The Tribe has submitted substantial evidence to the BIA regarding its lengthy and thorough evaluation of alternative sites that ended with the purchase of the Project Site. No other available sites have been identified that would a) meet the regulatory requirements for “restored lands” (i.e., sites that are within 25 miles of the Tribe’s headquarters as well as where a significant number of residents reside), b) be of suitable size for development (i.e., more than 50 acres), and c) foreseeably reduce one or more of the environmental effects of the project and not be unencumbered by either designated critical habitat or Williamson Act constraints.

A discussion of the following alternative sites specifically raised in comments is provided below:

- **Alternative Site Outside of Sonoma County, including Lake County.** As described above, one of the screening criteria is the site’s “ability to meet the requirements for establishing connections to newly acquired lands for the purposes of the “restored lands” exception set forth in 25 CFR §292.12, which includes, but is not limited to, requiring that the land be within a 25-mile radius of the Tribe’s headquarters in Santa Rosa, California (25 CFR Section 292.12(2)) or where a significant number of tribal members reside (25 CFR Section 292.12(3)).” The tribal headquarters for the Koi Nation has been located in Santa Rosa for over 20 years. As shown in Figure 7 of the Alternatives Evaluation Report (**Attachment 3** to this document), the 25-mile radius from the tribal headquarters consists primarily of land in Sonoma County, with a small area in southern Lake County, Napa County, and Marin County included as well. Of these counties, the highest concentration of tribal members is in Sonoma County with approximately 52% of the Tribe’s total membership (27% of tribal members residing within 2.5 miles of the Project Site). Approximately 25% of tribal members live in Lake County (but outside of the 25-mile radius) and none live within Napa County and Marin County. The 25-mile radius area that overlaps Lake County consists of rural mountainous terrain, with the exception of the Town of Middletown, the location of the Middletown Rancheria’s Twin Pine Casino and Hotel. As noted above, Koi Nation tribal members do not reside in this area of Lake County. Therefore, sites outside of Sonoma County are not likely to meet the requirements for the “restored lands” exception set forth in 25 CFR §292.12



Further, consideration of a highly speculative circumstance under which the Tribe would be able to purchase an alternative site that could support long-term economic development opportunities sufficient to fund the Tribal government would not aid in expanding the range of alternatives in a manner that promotes informed decision-making. Consideration of such an alternative would speculate that the Tribe would be able to purchase said site, and that the financial benefits of developing such a site would accomplish the purpose and need for the Proposed Action.

- **Alternative Site Within the Tribe’s Former Rancheria in Lake County.** On January 25, 1916, the BIA purchased a 141-acre tract of land in Lake County, California (“Lower Lake Rancheria”), for use by the Tribe; however, many tribal members found the Lower Lake Rancheria to be uninhabitable and refused to relocate there, instead settling in Sonoma County between Sebastopol and Santa Rosa. The former Lower Lake Rancheria was located between the towns of Lower Lake and Clearlake Highlands (now incorporated into the City of Clearlake). The former Lower Lake Rancheria is not within 25 miles of the Tribe’s headquarters in the City of Santa Rosa and is outside of Sonoma County, where approximately 52% of the Tribe’s total membership reside; therefore, this site may not meet the requirements for the “restored lands” exception set forth in 25 CFR §292.12. Further, in 1956 Congress passed legislation to sell the majority of Lower Lake Rancheria to Lake County. The County developed the property and opened Pearce Airport in 1957. For various reasons, Lake County closed the airport in 1992 and sold part of the land in 1995 to the Clearlake Redevelopment Corporation. Therefore, it is speculative whether the Tribe could acquire any of the former Lower Lake Rancheria.

All specific sites suggested by comments throughout the NEPA process have been considered and subjected to the alternatives screening criteria described above (see Scoping Report and Supplemental Scoping Report).

Therefore, consideration of an alternative site was rejected from full analysis as it would not meet the definition of a reasonable alternative that is feasible from an economic and technical standpoint and would not accomplish the purpose and need for the Proposed Action.

### 3.1.6 Master Response 6: Best Management Practices

#### Summary of Comments

Comments were received questioning how best management practices (BMPs) would be enforced and monitored. Comments were received questioning how BMPs are different than mitigation. Comments stated that the EIS conclusions of less-than-significant effects rely too heavily on BMPs which are described as “voluntary” and thus cannot be guaranteed to be implemented. Comments requested a discussion of BMP effectiveness. Comments stated generally that BMPs are vague and lack detail.

#### Response

Regarding the connection between mitigation measures and BMPs, it should be noted that these are related yet separate concepts. This distinction is explained in Section 6.4.6 of the of the 2012 BIA NEPA guidebook (59 IAM 3-H):

“Measures or practices will only be termed mitigation measures if they have not been incorporated into the proposed action or alternatives. If mitigation measures are incorporated into the proposed action or alternatives, they are design elements, not mitigation measures. Design elements are those specific means, measures or practices that make up the proposed action and alternatives. Standard operating procedures, stipulations, and best management practices are usually considered design elements (43 CFR §46.130(b)).”

Thus, unlike mitigation measures, BMPs are integral elements of project design and therefore serve as an underlying assumption within environmental analysis of the EIS. The Tribal Council has committed to enforcing the implementation of the BMPs identified in the Final EIS through the adoption of Tribal Resolution 24.09.30, which is provided as Appendix S to the Final EIS. While some measures are “voluntary”, others are tied to regulatory requirements or assist in ensuring that the Proposed Project would be developed in compliance with federal law. For example, erosion control measures are required during construction activities disturbing over one acre, pursuant to the requirements of the National Pollutant Discharge Elimination System permit and Section 402 of the Clean Water Act. Another example includes Worker Education Awareness Program for construction workers which would assist in avoiding “take” of protected species under the Endangered Species Act. In these instances, federal law would continue to apply to the Project Site and would be enforced via federal agencies with the authority to issue fines for non-compliance. In many cases, BMPs represent industry standard practice for commercial construction, such as dust suppression during construction activities, or compliance with tribal building code requirements. As stated in Draft EIS Section 2.1.10, where applicable, these measures would be incorporated into any design or construction contracts. Comments that BMPs would not be completed are speculative. The BIA has analyzed the project as proposed by the Tribe and is not required to assess an infinite number of scenarios in which the project would be developed in a different manner than proposed. Later changes to or elimination of the assumed BMPs could constitute a substantive change to the project that could trigger the need for supplemental NEPA review.

Statements that the BMPs in general are inadequate or vague are not considered substantive comments (see **Master Response 3**); however, substantive comments on specific BMPs are discussed in **Section 3.2**, Response to Representative Comments, below.

### 3.1.7 Master Response 7: Enforcement of Mitigation

#### Summary of Comments

Comments were received questioning the enforceability of mitigation measures. Several comments state that the Draft EIS mitigation measures are inadequate or deficient.

#### Response

Mitigation measures for the project alternatives are listed in EIS Section 4. Mitigation recommendations were informed by extensive research and studies prepared by qualified experts including, but not limited to, biologists and wetland specialists, former Sonoma County fire and law enforcement officials, transportation engineers; acoustical consultants, civil engineers, professional geologists and certified hydrogeologists. Statements that the mitigation measures in general are vague or inadequate are not considered substantive comments (see **Master Response 3**); however, substantive comments on specific mitigation measures are discussed in **Section 3.2, Response to Representative Comments**, below.

The EIS is not the document that commits the agency to mitigation; rather it is the Record of Decision (ROD) that does so. As stated in 40 CFR §1505.2(c):

“[m]itigation shall be enforceable when the record of decision incorporates mitigation and the analysis of the reasonably foreseeable effects of the proposed action is based on implementation of that mitigation. The agency shall identify the authority for enforceable mitigation, such as through permit conditions, agreements, or other measures, and prepare a monitoring and compliance plan consistent with §1505.3(c).”

Consistent with these requirements, a mitigation monitoring and compliance plan will be prepared and incorporated into the BIA’s ROD.

The BIA recognizes, consistent with federal law and policy, that supporting Tribal sovereignty and self-determination includes respecting a Tribe’s commitment to ensure compliance with mitigation measures under Tribal law, similar to a State’s commitment to enforce mitigation under State law. In this case, any mitigation required by the ROD will be enforceable as a matter of Tribal law under Chapter 14 of the Tribe’s Gaming Ordinance (Final EIS Appendix Q).

### **3.1.8 Master Response 8: Land Use Compatibility**

#### **Summary of Comments**

Comments stated that the Proposed Project conflicts with the Sonoma County and Town of Windsor General Plans and/or Zoning, which designate the Project Site for agricultural use. Other comments stated the Proposed Project is inconsistent with the Windsor/Larkfield/Santa Rosa Community Separator. Comments asserted that Proposed Project is not compatible with neighboring uses such as residences, schools, Shiloh Neighborhood Church, and Esposti Park as it would increase traffic, noise, and/or crime.

#### **Response**

As stated in Draft EIS Section 3.9.2, the Project Site is currently zoned and designated as Land Intensive Agriculture (LIA) under the Sonoma County Zoning Code and the County’s General Plan, is located within the Windsor-Larkfield-Santa Rosa Community Separator, and is within multiple combining districts as defined by the County’s zoning ordinance, including but not limited to the Scenic Resources Combining District. Draft EIS Section 3.9.3 acknowledged that the project alternatives would result in the conversion of agricultural land and the development of land uses that are not consistent with the County’s underlying land use and zoning designations for the Project Site. However, local land use policies do not apply to lands taken into federal trust and, therefore, the project would not be subject to state or local land use regulations. The BIA and the Tribe would have jurisdictional authority over land use matters on the Project Site should it be acquired into federal trust on the Tribe’s behalf as proposed under Alternatives A, B, and C. The environmental consequences of the development of land uses that are ultimately inconsistent with the existing local land use regulations were assessed throughout Draft EIS Section 3, and impacts associated with land use conflicts, land use plans, and agricultural resources were described in Section 3.9 Land Use. As stated in Draft EIS Section 3.9.3.2, the increase in intensity of development within the site as a result of the project alternatives could result in impacts to nearby sensitive land uses, including the adjacent residential areas and church; potential conflicts may include air quality and noise impacts from construction activities (Draft EIS Sections 3.4 and 3.11, respectively), an increase in traffic (Draft EIS Section 3.8), visual effects and an increase in lighting (Draft EIS Section 3.13). Implementation of

protective measures and BMPs identified in Draft EIS Table 2.1-3 for air quality, noise, traffic, and visual resources, as well as mitigation measures identified in Section 4, would reduce potential adverse impacts to less-than-significant levels.

Final EIS Section 3.9 has been revised to provide additional discussion of potential impacts associated with the project’s inconsistency with the Windsor/Larkfield/Santa Rosa Community Separator designation. As described therein, the stated purpose of the Community Separator designation within the County General Plan Open Space & Resource Conservation Element is to “separate cities and other communities, prevent sprawl, protect natural resources, and provide city and community identity by providing visual relief from continuous urbanization”<sup>1</sup>. The Windsor/Larkfield/Santa Rosa Community Separator consists of approximately 3,332.5 acres, of which the 68.6-acre Project Site comprises 2%. The Project Site forms a portion of the western boundary of the Community Separator that is adjacent to urban development in the Town of Windsor along Shiloh Road to the north, and developed areas in unincorporated Sonoma County along Old Redwood Highway to the west. The Proposed Project would not be consistent with the purpose of the Community Separator designation, and would diminish the overall size and scale of the visual separation between urban areas within the County. However, the Proposed Project would not physically disrupt or divide the continuity of the Community Separator, and designated Community Separator areas to the south would continue to serve as a visual relief from continuous urbanization between the Town of Windsor and the Larkfield area. The Proposed Project has been designed to preserve and maintain the existing vineyards and trees around the perimeter of the site to serve as a buffer from adjacent land uses and to be more visually cohesive with the character of the surrounding community. Adjacent land uses to the south and east would continue to be subject to Sonoma County land use regulations, including the Community Separator designation, which would prevent urban sprawl and further conversion of agricultural lands. Further, both the California Civil Code Section 3482.5, also known as the Right to Farm Act, as well as the Sonoma County Right to Farm Ordinance would protect existing agricultural operations adjacent to and in the vicinity of the Project Site by ensuring that agricultural operations are not considered nuisances. Therefore, the Proposed Project would not inhibit the implementation of County and Town land use plans for surrounding properties, including the designated Windsor/Larkfield/Santa Rosa Community Separator.

### 3.1.9 Master Response 9: Visual Impacts

#### Summary of Comments

Comments stated that the Proposed Project would alter the visual landscape, affecting the natural and rural character of the area. Comments stated that the Draft EIS does not adequately analyze the Proposed Project’s impacts on scenic corridors designated by the Town of Windsor General Plan, specifically Highway 101 and Faught Road. Comments stated that using the County’s visual assessment guidelines the Proposed Project’s visual impacts would be considered significant and require mitigation. Comments also pointed out that the site is within a Scenic Resource Combining District.

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<sup>1</sup> Sonoma County, 2016. Sonoma County General Plan 2020 Open Space and Resource Conservation Element. Available online at: <https://permitsonoma.org/regulationsandinitiatives/communityseparators>. Accessed October 2024.

Comments requested that the EIS analyze the visual impacts of proposed seasonal storage ponds and tanks, including views from Shiloh Road.

**Response**

Draft EIS Section 3.13 Visual Resources acknowledged that the project would substantially alter the visual character of the Project Site, and provided a thorough visual impact analysis, including an analysis of viewsheds and key observation points (identified as viewpoints), identification of sensitive receptors, a description of the landscape character and scenic resources, and the presentation of before and after visual simulations of the proposed development from selected viewpoints. Draft EIS Section 3.9 Land Use and Appendix E Expanded Regulatory Setting each described that the Project Site is within the Windsor-Larkfield-Santa Rosa Community Separator, a designated scenic resource in the County’s General Plan Open Space and Resource Conservation Element, and within multiple combining districts as defined by Sonoma County’s zoning ordinance, including but not limited to the Scenic Resources Combining District. Final EIS Section 3.13 Visual Resources has been updated to describe these designations, as well as the Town of Windsor’s designation of Highway 101 and Faught Road as scenic corridors. Final EIS Section 3.13.3 has also been revised to include additional discussion on the potential visual impacts of the reclaimed water storage tanks and reservoir, including visual simulations of these potential features from key viewpoints. As described therein and within Final EIS Section 2, the placement of the tanks has been adjusted to minimize potential visual impacts; specifically, the northernmost tank, previously proposed to be located on the surface parking area, would now be positioned south of and adjacent to the parking garage and wrapped with the same exterior material as the garage, and all storage tanks would be painted with nature-themed murals to blend with the surrounding landscape and enhance their visual appeal.

The EIS addresses visual impacts consistent with NEPA and BIA requirements; while local policies and designations have been considered, they do not form the basis for significance thresholds under NEPA. Although the Sonoma County Visual Assessment Guidelines do not apply to the federal environmental review process, the Draft EIS employed an analysis methodology generally consistent with the County’s guidelines, as outlined in Sections 3.13.2 and 3.13.3. This includes characterizing the environmental setting, selecting key viewpoints, and preparing visual simulations based on photographs taken from these viewpoints. It is noted that under the Sonoma County Visual Assessment Guidelines, the visual sensitivity of the Project Site would be considered “High” given its location in the Windsor-Larkfield-Santa Rosa Community Separator, and that the proposed development features would be considered Co-Dominant to Dominant, and as such the project would be deemed to result in a significant visual impact under the County’s guidelines. It should be noted that project design features are consistent with the recommended mitigation measures for significant visual impacts in the County’s Visual Assessment Guidelines as follows:

Recommend Visual Impact Mitigation in Sonoma County Visual Assessment Guidelines	Relevant Project Design Features from Draft EIS Section 2 and Table 2.1-3
<ul style="list-style-type: none"> <li>▪ Limit the extent of grading, tree removal, amount of cuts and fills, length of roadways, height of retaining walls and areas for building envelopes. Conservation easements may be appropriate to protect viewsheds and sensitive visual resources.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The extent of grading, tree removal and building envelopes would be limited by the preservation of the Pruitt Creek riparian corridor vegetation and trees, and existing vineyards and trees around the site perimeter, providing a natural buffer and helping to blend the proposed development with the rural character of the area</li> </ul>

<ul style="list-style-type: none"> <li>▪ Building envelopes may need to be adjusted or moved back to avoid the most visible locations and/or reduced in size to protect vegetation that may screen the structures. Structures could be limited in their size or height to reduce bulk and contrast.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Under Alternative A, the placement of buildings with the Project Site would protect existing vegetation and trees along the Pruitt Creek corridor and site perimeter, which would serve to partially screen the facilities.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Color and texture of building materials should be consistent with the surrounding environment. Non-reflective surfaces and darker colors should be utilized to avoid glare and contrast.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Existing chain-link fences would be replaced with a low rock wall, and the facility's architecture would incorporate natural materials and colors to blend with the landscape. Green roofs on the casino and parking garage would soften their appearance from long-range views, and a decorative metal screen would shield the garage from residences along Shiloh Road</li> </ul>
<ul style="list-style-type: none"> <li>▪ Require screening vegetation and landscape plans subject to Design Review.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Under Alternative A, the placement of buildings within the Project Site would protect existing vegetation and trees along the Pruitt Creek corridor and site perimeter, which would serve to partially screen the facilities.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Require exterior lighting plans subject to Design Review. Exterior lighting shall be low mounted, downward casting and fully shielded to prevent glare. Lighting shall not wash out structures or any portions of the site. Light fixtures shall not be located at the periphery of the property and shall not spill over onto adjacent properties or into the sky. Flood lights are not permitted. Parking lot fixtures should be limited in height (20 feet). All parking lot and/or street light fixtures shall use full cut-off fixtures. Lighting shall shut off automatically after closing and security lighting shall be motion-sensor activated.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exterior lighting would be downward casting and fully shielded to prevent glare. Lighting would not wash out structures or any portions of the site. Lighting equipment at the project entrances would aim downward and backward toward the site to create only indirect illumination that would be visible to adjacent sensitive receptors. Flood lights are not proposed. Parking lot fixtures shall be limited in height (16 feet). All parking lot light fixtures shall include cut-off lenses and downcast illumination. Automated controls would reduce light levels when occupants are not detected.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Lighting plans should be designed to meet the appropriate Lighting Zone standards from Title 24 effective October 2005 (LZ1 for dark areas, LZ2 for rural, LZ3 for urban).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Exterior lighting would be designed in accordance with the International Dark-Sky Association's Model Lighting Ordinance so as not to cast light or glare off site.</li> </ul>

The Draft EIS concluded that with the incorporation of the design features described above, which would be considered "mitigation" under the County's definitions, the resulting residual impact would be considered less than significant.

### 3.1.10 Master Response 10: Wildfire Evacuation

#### Summary of Comments

Comments were received which stated that wildfire evacuation is a concern in Sonoma County. Comments describe heavy traffic congestion during previous wildfire evacuations, including the Kincade, Tubbs, and Glass fires. Comments were concerned that the Proposed Project would make traffic congestion worse during a wildfire evacuation. Comments stated that the increase in evacuation time from the Proposed Project is unacceptable. Comments expressed concern about future No Notice Scenarios like the Tubbs Fire in 2017.

#### Response

The Draft EIS discussed the existing wildfire setting and the potential impact of the Proposed Project on wildfire evacuation in Section 3.12 Hazardous Materials and Hazards. The Proposed Project's contribution to cumulative wildfire hazards and evacuation plans was discussed in Section 3.14.11.

Technical details for the wildfire evacuation analysis were provided in Draft EIS Appendix N, which included a Fire and Emergency Response Memorandum (Draft EIS Appendix N-1), an Evacuation Travel Time Assessment (ETTA) (Draft EIS Appendix N-2), an Evacuation Recommendations Memorandum (Draft EIS Appendix N-3), and an Evacuation Mitigation Plan (Draft EIS Appendix N-4).

For the purposes of evaluating the potential effect of the Proposed Project on evacuation timing, an ETTA (Draft EIS Appendix N-2) was conducted based on circumstances similar to what occurred during the Tubbs Fire in 2017, referred to as the "No Notice Scenario", and the Kincade Fire in 2019, referred to as the "With Notice Scenario", under both 2028 No Project and 2028 Plus Project conditions. In addition, the ETTA modeled a No Notice Scenario and With Notice Scenario under both 2040 No Project and 2040 Plus Project conditions. The year 2040 background traffic demand was developed based on applying a 1.4% per year straight-line growth factor to base traffic volumes based on the Sonoma County Transportation Authority travel demand model.

The ETTA also estimated the evacuation time for just Alternative A while maintaining the rest of the With Notice Scenario assumptions, such as the level of background traffic and the evacuation destinations. The results of Project-only evacuation travel time analysis shows that Alternative A would need a maximum of 52 minutes in 2028 and 54 minutes in 2040 to evacuate 5,367 vehicles from the study area (shown on Figure 3.12-5 of the Draft EIS). Thus, if the Project Site began evacuating about one hour ahead of other zones, the vehicle demand generated by Alternative A would have exited the study area before neighboring evacuation zones are ordered to evacuate.

Mitigation was included in Draft EIS Section 4, which includes implementation of the Evacuation Mitigation Plan included in Draft EIS Appendix N-4, as well as recommendations from evacuation experts included in Draft EIS Appendix N-1, and Draft EIS Appendix N-3. The Evacuation Mitigation Plan presents two options to relieve evacuation traffic: Option 1) Creation of a Trigger Evacuation Zone; and Option 2) Creation of a Pre-Determined Evacuation Zone. Additionally, the Tribe would coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity (i.e., installation of wildfire detection cameras and variable message signs). With mitigation, the Project Site would be evacuated early and before community

wide evacuation, to minimize the potential for increase evacuation timelines. Therefore, the Draft EIS concluded that, with implementation of mitigation measures designed to address evacuation impacts due to wildfire, the Proposed Project would result in a less-than-significant impact in both the project opening year (2028) and the cumulative year (2040).

As discussed in Draft EIS Section 3.12.3.2, the potential for the occurrence of a No Notice Scenario has decreased since 2017 due to the concerted efforts of the County to augment systems and methodologies for alerting and evacuating by developing and publicizing more refined evacuation zones and increasing the means for delivery of evacuation notification. These advancements include community fire preparedness education efforts, establishment of advanced Alert and Warning Systems, establishment of Pre-determined Evacuation Zones, and the installation of early detection devices such as wildfire cameras to reduce the risk of “no notice” events and enhance life-safety through orderly evacuations (see discussion titled “County Wildfire Hazard Mitigation Strategies” under Draft EIS Section 3.12.2 for more details). The wildfire camera system consists of a network of cameras that can detect a wildfire from a distance, locate and mark the wildfire, and the direction of travel. The system immediately notifies dispatchers and emergency officials and provides situational awareness of where the fire is located. Further, since the 2017 Tubbs Fire, Sonoma County has defined pre-determined evacuation zones to enable a methodical approach to move people out of areas in case of an emergency. Since the 2017 Tubbs Fire, Sonoma County has employed a philosophy of early and wide evacuations to protect life and safety and enable firefighters to have the ability to fight the fire with people out of the area. Additionally, more aggressive firefighting tactics are being applied at the onset of a fire. For example, strike teams and firefighting aircraft are routinely dispatched to small fires to prevent the fire from spreading. These philosophies have been applied several times in the County since the Tubbs Fire, which has resulted in no deaths and less property damage. Mitigation in Draft EIS Section 4 includes requirements for the Tribe to coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events which could include, but would not be limited to, installing a wildfire detection camera within the Project Site and/or at another location in the vicinity of the Town of Windsor that would expand the coverage of the wildfire camera system. The wildfire camera(s) would be connected to the existing early detection system and be accessible to emergency officials. These measures would improve the ability of the County to rapidly identify and respond to wildfire events and further reduce the likelihood of a “no notice” event.

As discussed in Draft EIS Appendix N-2, wildfire evacuation analysis is a new area of study under NEPA and few studies of this type have been completed for NEPA purposes. There are no local, State, or federal criteria or thresholds that have been adopted which would determine what level of increased evacuation time would be considered a significant impact. Any future development project in the region has the potential to increase evacuation times in comparison to existing conditions. The Draft EIS disclosed the potential impact on evacuation time from the Proposed Project based on an analysis prepared by a qualified traffic engineering firm. Further, former Sonoma County fire and law enforcement officials prepared professional recommendations specific to the Proposed Project for wildfire and evacuation planning to reduce the threat of fire and loss of life and property. These recommendations were incorporated into Draft EIS mitigation. For the purposes of NEPA, wildfire evacuation impacts have been disclosed and all feasible measures have been incorporated as mitigation.



### 3.1.11 Master Response 11: Wildfire Evacuation Analysis Assumptions and Methodology

#### Summary of Comments

Comments asserted that there were flaws in the assumptions and methodology used to analyze wildfire evacuation impacts. Primary concerns included that:

- Specific projects were not considered in the evacuation modeling including: future development in the project site/Windsor area, the Lytton Rancheria housing development in Windsor, new residential development at or near the intersection of Shiloh Road/ORH (e.g., Shiloh Terrace).
- The analysis did not consider traffic coming from the mountainous areas to the east (e.g., Shiloh Estates, Mayacamas area), which would add to traffic congestion along Shiloh Road.
- The analysis did not consider the effect of erratic driving behavior (i.e., panic) on evacuation times.
- The analysis did not consider historical data on evacuation times for other wildfire incidents in the region.

#### Response

Draft EIS Section 3.12.3 described the wildfire evacuation analysis or ETТА that was conducted for the Proposed Project and included as Draft EIS Appendix N-2. The wildfire evacuation model included within its assumptions the development of the Lytton Housing Project in Windsor, Shiloh Terrace, Shiloh Crossing, Clearwater, and other development projects. The model also included Shiloh Estates and other developments in the Mayacamas Mountains both in the opening year (2028) and the cumulative year (2040) scenarios. Additionally, the cumulative year analysis used inputs from the Sonoma County Transportation Authority model which is consistent with the Sonoma County and Town of Windsor 2040 General Plan buildout estimates.

The ETТА was based on two historical fires, the Tubbs Fire and Kincade Fire, and the schedule for which the evacuation warning(s) and order(s) were issued. The estimated evacuation times in the ETТА are representative of the time required to leave one's home or workplace and travel to an identified safe area. To reflect worst-case conditions, the ETТА assumed that the evacuation would occur at the same time as the peak hour of afternoon commute travel on the Friday before Labor Day (when wineries are in the harvest period, and the Friday before a major holiday weekend).

The ETТА assumed a 15% reduction in roadway capacity to account for inefficiencies during emergency events such as, the presence of debris, lowered visibility due to smoke, erratic/panicked driving, and other hazards.

Therefore, the assumptions and methodology used to analyze wildfire evacuation impacts are sufficient.

### 3.1.12 Master Response 12: Noise Impacts and Mitigation Measures

#### Summary of Comments

A number of comments generally stated that noise impacts were underestimated or not adequately assessed, including potential impacts to existing residences. Comments questioned the extent of analysis for temporary sources of noise, such as car horns, emergency vehicles, and on- and offsite traffic. In addition, comments stated that mitigation is insufficient or would not reduce residual impacts to a less-than-significant level.

#### Response

The Proposed Project incorporates noise reducing measures through BMPs for construction noise and shielding of HVAC and other noise-generating equipment. Limiting construction noise hours and use of noise mufflers for construction equipment are standard industry practices. Draft EIS Section 3.11 Noise examined potential construction and operation noise impacts resulting from the development of the alternatives. This analysis was supported by a comprehensive noise study by Bollard Acoustical Consultants, Inc. (BAC), included as Draft EIS Appendix L. No significant noise impacts were identified during construction or for the projected opening year of 2028. For example, as described in Draft EIS Section 3.11.3, operational noise generated from onsite activities, such as onsite vehicular traffic, would not cause neighboring areas to exceed acceptable noise levels. As shown in Draft EIS Figure 3.11-2, the noise levels projected for nearby sensitive receptors under Alternative A would range from 50-55 A-weighted decibels (dBA) Leq, with the loudest increases due primarily to onsite roadways and parking facilities. This would not cause ambient noise levels to exceed the 65 dBA Lmax daytime and 60 dBA Lmax nighttime standards set by the Sonoma County Noise Ordinance or the Town of Windsor's General Plan Policy PHS-8.2, which limits residential noise to 55 dBA Lmax daytime and 50 dBA Lmax nighttime. Therefore, no significant impact was identified for onsite operational noise, and no mitigation measures are required.

Offsite operational traffic noise would be significant if Project-generated traffic would cause traffic noise levels to exceed the Federal Highway Administration (FHWA) noise abatement criteria (e.g., 67 dBA for exterior residential uses) where the criteria is not currently being exceeded, Project-related traffic noise level increases would exceed 5 dB at residences located within the Town of Windsor (Windsor General Plan Policy PHS-8.1), or Project-related traffic noise level increases would exceed 3 dB at residences located within Sonoma County (3 dB is a just-perceivable difference (see DEIS Appendix E) and a threshold commonly applied in Sonoma County. As described in Draft EIS Section 3.11.3, under opening year (2028) conditions off-site traffic noise would not exceed these criteria and would be less than significant. For cumulative year (2040) conditions discussed in Draft EIS Section 3.14.10, significant impacts were identified for Old Redwood Highway from Shiloh Road to the Project Entrance and on Shiloh Road from Gridley Drive to Hembree Lane.

Mitigation measures to address cumulative noise impacts are outlined in Draft EIS Section 4, with the effectiveness of these measures discussed in Draft EIS Section 3.14.10 and Appendix L. Noise reducing pavement, such as rubberized asphalt, as recommended in Appendix L, has been shown to reduce traffic noise levels by approximately 4 dBA compared to conventional asphalt, with continued effectiveness even

several years after installation and full compaction.<sup>2</sup> This level of noise reduction would provide about four times the attenuation needed to mitigate the identified traffic noise impacts, which exceeded the FHWA noise abatement criteria thresholds by 0.4 dBA, 0.8 dBA, and 1.2 dBA. Additionally, since the Proposed Project's traffic consists primarily of automobiles, which benefit the most from noise reducing pavement, this mitigation will be particularly effective. It has been confirmed that the pavement can maintain effectiveness for at least six years.<sup>3</sup> Furthermore, clarifications has been made to Final EIS Noise Mitigation Measure A and C to specify that fair share contributions for road repaving and maintenance will be placed in an escrow account, or another agreed-upon account, for use by the relevant government entity to design, permit, and carry out the repaving work at their discretion, demonstrating the Tribe's commitment to the mitigation measure. If noise-reducing pavement is not implemented by 2040, the contingency mitigation of installing double-pane windows in place of single-panel windows could reduce noise by at least 5 dBA, with Noise Mitigation Measure B also offering alternatives to double-panels should they not prove effective. The noise-reducing pavement or the contingency mitigation would reduce cumulative impacts to less-than-significant levels for affected residences, bringing noise levels to acceptable thresholds.

Other incidents of noise from offsite traffic, such as car horns, sirens, engines, backfires, or bass from loud music, would be infrequent, rather than a constant feature in the environment. Therefore, these sources would not permanently increase ambient noise levels but cause only temporary increases that would subside quickly. Noise generated by emergency vehicle responses, due to increased calls for service under the alternatives, is exempt from the County Noise Ordinance under Section 9.56.070 of the Municipal Code. Furthermore, lights and sirens are allowed and regulated by the California Vehicle Code and local jurisdiction policies, and the use of sirens is based on specific types of priority calls as required by the vehicle code. Operators, including law enforcement, fire, and EMS, have some discretion in their use, particularly during late/early hours, in residential neighborhoods, and depending on the amount of traffic present. Therefore, sirens would not necessarily be used for every call for service. For these reasons and the exemption in the County Noise Ordinance, the increase in emergency responses is not considered a significant noise impact. Consequently, with no significant impacts identified, no mitigation was recommended for these noise sources.

General statements that noise impacts were underestimated or the mitigation measures are inadequate without further supporting information are not considered substantive comments (see **Master Response 3**); however, substantive comments on noise are discussed in this Master Response as well as **Section 3.2, Response to Representative Comments**, below.

### 3.1.13 Master Response 13: Traffic Violations and Accidents

#### Summary of Comments

Multiple comments voiced concerns that gaming alternatives would increase traffic accidents and incidences of drunk driving, which is a public safety concern.

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<sup>2</sup> Sacramento County and Bollard & Brennan, Inc., 1999. Report on the Status of Rubberized Asphalt Traffic Noise Reduction in Sacramento County. Available online at: [https://www.rubberpavements.org/Library\\_Information/4\\_6\\_Sac\\_County\\_Noise\\_Study.pdf](https://www.rubberpavements.org/Library_Information/4_6_Sac_County_Noise_Study.pdf). Accessed October 2024.

<sup>3</sup> Sacramento County and Bollard & Brennan, Inc, 1999.

## Response

The Draft EIS provided a comprehensive analysis of the potential traffic impacts associated with the proposed alternatives. A detailed analysis of the projected traffic increases due to the alternatives was outlined in Draft EIS Section 3.8. Based on the significant adverse impacts identified on traffic conditions, mitigation measures were incorporated into Draft EIS Section 4. Once implemented, these measures would not only enhance traffic operation conditions but also concurrently reduce unsafe driving conditions. An analysis of potential drunk driving impacts is detailed in Draft EIS Section 3.7 and Appendix B-1. BMPs in Draft EIS Table 2.1-3 include that the Tribe would serve alcohol in compliance with applicable State licensing requirements and adopt a “Responsible Alcoholic Beverage Policy”. The Final EIS Table 2.1-3 was amended to add that alcohol would be served in compliance with State licensing requirements and/or a Department of Interior approved liquor ordinance. Further, alcohol is already widely available throughout the region. For these reasons, the Proposed Project is not expected to significantly increase drunk driving rates. Draft EIS Section 4 incorporated mitigation for the Tribe to engage in negotiations for a service contract with the Sonoma County Sheriff’s Office to compensate for the increased demands on law enforcement services. With the BMPs and mitigation measures mentioned above, the increase in traffic accidents would not be disproportionate for a commercial development of a similar size serving alcohol.

### 3.1.14 Master Response 14: Crime and Law Enforcement

#### Summary of Comments

Comments expressed concerns regarding the potential for increased crime from gaming alternatives, for example increases in theft, violence, prostitution, mail theft, and identify theft. Comments were concerned with the potential for crime to affect the surrounding neighborhood, including schools. Some comments stated that mitigation or “good faith efforts” to negotiate service agreements with law enforcement agencies was inadequate to reduce potential impacts.

#### Response

The Draft EIS recognized that an increase in crime is expected with the development of the Project Site. The implementation of gaming Alternatives A and B is anticipated to bring in a higher number of patrons and employees daily, leading to a likely rise in criminal incidents in both the vicinity of the Project Site and on the site itself—consistent with the expectations for any large commercial development. As outlined in Draft EIS Section 3.7.3 and Appendix B-1, gaming itself does not inherently result in unusually high crime levels. Criminal incidents at casinos and similar gaming venues are comparable to those observed in other commercial venues of a similar size. For additional details on the anticipated increase in crime and types of crimes, refer to Draft EIS Section 3.7 and Appendix B-1, including the projected rise in service calls to local law enforcement. In response to potential adverse impacts, a mitigation measure was included in Draft EIS Section 4, involving good faith negotiations with the Sonoma County Sheriff’s Office to address the increase in crime and offset the financial impact on the Sheriff’s Office. These negotiations are intended to ensure that local law enforcement has sufficient resources to manage any potential increase in off-site criminal activity, including mail theft, identity theft, or other crimes that may occur as a result of increased traffic and visitors to the area. Furthermore, Draft EIS Table 2.1-3 included BMPs to decrease the probability of crime onsite, including maintaining security lighting in parking areas, posting “No Loitering” signs, employing security guards, and installing security cameras for surveillance. BMPs and mitigation measures would reduce the adverse impacts related to crime to a less-than-significant level.

The specific mitigation wording “good faith efforts to enter in a services agreement” means that the Tribe would make every effort possible to enter into a service agreement with the Sonoma County Sheriff’s Office. Furthermore, “good faith” also means to negotiate and deal with each other honestly and fairly in that both parties can benefit from the negotiated contract. With this wording in place, mitigation outlines the Tribe’s commitment to exert every effort to establish a service agreement to address the increase demands on public safety resources. Final EIS Section 4 mitigation has been revised to include the establishment of a public safety building and tribal police force in the event that an agreement cannot be reached with the Sonoma County Sheriff’s Office.

Overall, the Draft EIS acknowledged the potential for increased crime. With onsite security measures and the Tribe’s commitment to make good faith efforts to establish a service agreement with the Sonoma County Sheriff’s Office, these impacts are expected to be less than significant.

General statements that gaming alternatives would increase crime or that mitigation measures are inadequate without further supporting information are not considered substantive comments (see **Master Response 3**); however, substantive comments on crime and law enforcement are discussed in this Master Response as well as **Section 3.2, Response to Representative Comments**, below.

### 3.1.15 Master Response 15: Compliance with the National Historic Preservation Act

#### Summary of Comments

Comments were received regarding compliance with Section 106 of the National Historic Preservation Act (NHPA) including allegations of inadequate definition of the area of potential effects (APE), inadequate tribal consultation, and insufficient efforts to identify potential historic properties.

#### Response

##### *Definition of Area of Potential Effects*

As defined in 36 CFR Part 800.16(d), the APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. In this case, the entire 68.6-acre Project Site was determined by the BIA to be the APE for the federal action and subsequent development. This is considered to be conservative given that the proposed development area is smaller than the property itself. Final EIS Section 3.6.3.2 has been revised to clarify the more limited extent of the APE and now includes Figure 3.6-1 which shows the 68.6-acre APE boundary (i.e., Project Site), development area within the APE, and estimated excavation depths within the development area, which range from 0 to 14 feet below ground surface. Additionally, as described in Draft EIS Section 2.1.3, up to two water supply wells would be established onsite, each of which would be drilled to a depth of approximately 700 feet below ground surface.

##### *Tribal Consultation*

As described in Draft EIS Section 3.6.2, the BIA contacted the following federally recognized tribes that may have an interest in the Proposed Action to inquire if they desire to be consulting parties in the Section 106 process in accordance with 36 CFR Part 800.2 (a)(4): Cloverdale Rancheria of Pomo Indians, Dry Creek

Rancheria Band of Pomo Indians, Federated Indians of Graton Rancheria (FIGR), Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Lytton Rancheria of California. In response to these letters, three tribes, FIGR, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Dry Creek Rancheria Band of Pomo Indians, affirmed their interest. Consultation under Section 106 has included correspondence with the tribes via letter and email, transmittal of cultural studies prepared for the APE, in-person and virtual meetings, and invitations to be present during some of the archaeological testing discussed below. A meeting on the Proposed Project was hosted by Lytton Rancheria on September 20, 2024, and attended by the Lytton Rancheria, Cloverdale Rancheria, Dry Creek Rancheria, Paula Hart (Director of the Indian Affairs Office of Indian Gaming), Amy Dutschke (Regional Director, BIA Pacific Region), and Chad Broussard (Environmental Protection Specialist, BIA Pacific Region); invitations were also extended to FIGR and Stewarts Point Rancheria. Per the request of FIGR, a forensic canine survey was conducted on the Project Site by Institute for Canine Forensics (ICF) on January 23 and 24, 2024. To confirm the findings of the forensic canine survey, archaeological testing was conducted on April 2, 2024, dates at sites where an “alert” was identified. Interested parties were invited to participate in the testing and representatives from FIGR and Dry Creek Band of Pomo were present. As required by 36 CFR Part 800.4 (b), the information gathered in consultation with these Tribes was considered in the identification of historic properties within the APE. The summary of Native American consultation in Final EIS Section 3.6.2 has been expanded to clarify the extent of consultation.

Some comments stated that Section 106 consultation should have been initiated earlier in the environmental review process. In general, it has been the BIA’s practice to cause the preparation of and review initial background research, sample field investigations, and field surveys of a project’s APE prior to initiating consultation with potentially interested tribes so that the BIA can participate in informed and meaningful consultation with interested tribes regarding the potential presence and effects to historic properties and so that, if requested, this information can be provided to interested tribes for their review and consideration. Given that Section 106 consultation with tribes was initiated in November 2022, almost a year before the EA for the Proposed Action was issued and a year and a half before the Draft EIS was issued, the BIA has provided interested tribes “reasonable opportunity” to identify its concerns about historic properties pursuant to 36 CFR Part 800.2 (c)(2)(ii)(A) and has considered these concerns in the identification of historic properties within the APE pursuant to 36 CFR Part 800.4 (b).

### *Identification of Historic Properties*

As defined in 36 CFR Part 800.16(l)(i), “historic property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior. The eligibility of a resource for listing in the NRHP is determined by evaluating the resource using criteria defined in 36 CFR § 60.4 as follows:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, association, and:

- a) That are associated with events that have made a significant contribution to the broad patterns of our history;
- b) That are associated with the lives of persons significant in our past;
- c) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

d) That have yielded, or may be likely to yield, information important to prehistory or history.

As part of its identification efforts pursuant to 36 CFR Part 800.4, the BIA reviewed the following technical studies which were included in Draft EIS Appendix H and summarized in Draft EIS Section 3.6.3.2:

- Historic Property Survey Report of the Project Site (March 2022, Appendix H-1).
- Cultural Resources Study of the Project Site (May 2022, Appendix H-2).
- Archaeological Monitoring of Soil Test Trenches (September 2022, Appendix H-3).
- Obsidian Hydration Results (September 2022, Appendix H-4).
- Canine Field Survey (January 2024, Appendix H-5)
- Archaeological Testing of Forensic Dog Locations (April 2024, Appendix H-6)

These technical studies included literature reviews, records searches, outreach to tribes, sample field investigations, and field surveys conducted within the APE. Additionally, the BIA considered information provided by interested tribes in the identification of historic properties within the APE pursuant to 36 CFR Part 800.4 (b).

The result of the BIA's identification efforts indicates the presence of one historic homestead site and widely dispersed isolated prehistoric cultural material within the APE. The historic homestead was demolished sometime between 2003 and 2004. The foundation remains have been pushed aside and all that exists is a scatter of glass, ceramics, brick, and metal. The BIA determined that the integrity of the historic homestead site is totally absent. There was no information to suggest the historic homestead site was connected with an important event or person in history (National Register Criteria A and B). Additionally, the BIA determined that there is no evidence of intact architectural remains, so the historic homestead site cannot be evaluated under National Register Criterion C. The BIA determined that 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). Therefore, the BIA determined that the historic homestead site is therefore not eligible for inclusion to the NRHP. A widely dispersed scatter of prehistoric artifacts across the APE was noted in both the Historic Property Survey Report of the Project Site (Draft EIS Appendix H-1) and Cultural Resources Study of the Project Site (Draft EIS Appendix H-2). 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 (Draft EIS Appendix H-4) corroborated field findings and analysis indicating that most of the obsidian fragments found within the APE represent naturally occurring geologic conditions and have not been modified by human activity. Results of the Canine Field Survey (Draft EIS Appendix H-5) and Archaeological Testing of Forensic Dog Locations (Draft EIS Appendix H-6) produced negative results with respect to identifiable human remains. Based on this information, the BIA determined that a finding of No Historic Properties Affected is appropriate for the Proposed Action.

It should be noted that a finding of No Historic Properties Affected under Section 106 does not mean that potential impacts to cultural resources were not identified in the Draft EIS, only that no prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP would be affected. As discussed in more detail in **Master Response 16**, the Draft EIS acknowledged the potential for unknown subsurface cultural resources to be present and be potentially impacted by ground disturbance, based in part on information received during tribal consultation, and recommends mitigation to reduce the potential for significant impacts.

### *Compliance with Section 106*

Section 106 of the NHPA, as amended, and its implementing regulations found in 36 CFR Part 800 requires federal agencies to take into account the effects of their undertakings on “historic properties” and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Section 2.5 of BIA NEPA Guidebook (59 IAM 3-H) states that, to the extent possible, Section 106 consultation should be completed by the end of the NEPA process (i.e., prior to the issuance of a ROD).

As described in Draft EIS Section 3.6 and above, the BIA carried out efforts pursuant to 36 CFR Part 800.4 to identify whether historic properties are present within the APE for the Proposed Project. Consistent with 36 CFR Part 800.4(a) these efforts included: 1) determining the area of potential effect; 2) reviewing existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified; 3) seeking information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and 4) gathering information from Indian Tribes to assist in identifying properties which may be of religious and cultural significance to them and may be eligible for the National Register.

Using the information gathered during these efforts, the BIA determined that a finding of No Historic Properties Affected is appropriate for the Proposed Action (see discussion of identification of historic properties below). Pursuant to 36 CFR Part 800.4(d)(1), the BIA submitted its initial request for concurrence to the State Historic Preservation Office (SHPO) dated July 18, 2023. In a response dated August 10, 2023, the SHPO requested that the BIA continue consulting with the tribes who were contacted in BIA's Section 106 efforts. After conducting additional tribal consultation and overseeing additional surveys and studies requested through the tribal consultation (Canine Field Survey [Draft EIS Appendix H-5] and Archaeological Testing of Forensic Dog Locations [Draft EIS Appendix H-6]), the BIA resubmitted a request for SHPO concurrence for a finding of No Historic Properties Affected in a letter dated May 6, 2024. As no objection was received from SHPO within 30 days of the BIA's request for concurrence, the BIA's responsibilities under Section 106 should be considered to be fulfilled pursuant to 36 CFR Part 800.4 (d)(i). However, on July 10, 2024, SHPO responded advising the BIA to continue tribal consultation and objecting to the finding of No Historic Properties Affected due to insufficient, inadequate, and unreasonable efforts to identify historic properties. In accordance with 36 CFR Part 800.4 (d)(ii), the BIA met with the SHPO to resolve the disagreement; however, no resolution was achieved. Therefore, the BIA has elected to forward the finding and supporting documentation to the ACHP and request that the Council review the finding in accordance with 36 CFR Part 800.9(a), ACHP review of Section 106 compliance, assessment of agency official compliance for individual undertakings.

Final EIS Section 3.6.3.2 has been updated with the current status of Section 106 compliance.

## **3.1.16 Master Response 16: Potential Impacts to Cultural Resources**

### **Summary of Comments**

Comments expressed concern regarding potential impacts to tribal cultural resources. Comments questioned the adequacy of mitigation measures to reduce the potential for impacts to cultural resources including participation by tribal monitors and protocols if unknown resources or human remains are discovered during ground disturbance. Comments raised concerns about the potential effects on tribal sovereignty over cultural resources that may be found on the Project Site.



## Response

As described in **Master Response 15**, the literature reviews, records searches, subsurface testing, and pedestrian surveys conducted within the APE did not identify any resources that met the criteria for inclusion on the NRHP. As discussed in Draft EIS Section 3.6.3.3, the presence of Pruitt Creek within the Project Site, presence of scattered obsidian, and results of the Canine Field Survey and Native American consultation indicate there is a potential for subsurface cultural resources to be buried beneath the Project Site with no surface manifestation. Therefore, as with any project, there is a possibility that unknown subsurface prehistoric or historic archaeological resources, including human remains, could be encountered and impacted during project related construction and excavation activities. Consequently, mitigation measures for the protection and treatment of unanticipated discoveries of archaeological resources and/or human remains were included in Draft EIS Section 4.

In response to questions and comments on the cultural resources mitigation measures included in Draft EIS Section 4, the following clarifications have been made:

- Cultural Resources Mitigation Measure A has been clarified to define “Interested Sonoma County Tribes” as the tribes who requested to be consulted with under Section 106 (i.e. FIGR, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Dry Creek Rancheria Band of Pomo Indians), as well as any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction.
- Cultural Resources Mitigation Measure A has been clarified to require a Native American Tribal Monitor or archaeologist selected by the Interested Sonoma County Tribes be invited to participate in the monitoring of any 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” in addition to a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) and a Native American Tribal Monitor from Koi Nation.
- Cultural Resources Mitigation Measure B regarding inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities has been clarified to more specifically reference Section 106 of the NHPA; specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b). This mitigation now specifically requires the BIA to notify and consult with any Indian tribe that might attach religious and cultural significance to the affected property (i.e., the Interested Sonoma County Tribes) regarding National Register eligibility of the inadvertent find and proposed actions to resolve any adverse effects. This clarification was made, in part, to address potential effects on tribal sovereignty over cultural resources that may be found on the Project Site.
- Cultural Resources Mitigation Measure C regarding inadvertent discovery of human remains during ground disturbing activities has been clarified to specifically cite the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands.
- A new Cultural Resource Mitigation Measure D has been added requiring that a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) shall provide construction worker awareness training to machine operators and construction supervisors at regular intervals as needed to inform new construction contractor employees.

## 3.2 RESPONSE TO REPRESENTATIVE COMMENTS

Responses to representative comments are included below. These include comments received from agencies, tribes, organizations, and individuals.

### 3.2.1 Agency Letters

#### Response to Comment Letter A1 – California Department of Conservation

##### *Response to Comment A1-1*

The introductory comments explaining the Department of Conservation’s mission and summarizing the Proposed Project are noted.

##### *Response to Comment A1-2*

The Draft EIS was prepared in accordance with applicable requirements, including those set out in NEPA, the CEQ Regulations for Implementing NEPA, and the BIA’s NEPA guidebook. Although the California Department of Conservation’s policies related to environmental review are not directly applicable under NEPA, the Draft EIS generally included a discussion of the topics recommended in this comment. More specifically:

- *Type, amount, and location of farmland conversion resulting directly and indirectly from implementation of the Proposed Project.* Consistent with the Farmland Protection Policy Act (FPPA), the applicable federal regulation pertaining to the conversion of farmland, the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), was consulted to assess the value of the agricultural land that would be converted under the Proposed Action, including the type and acreage to be converted (please refer to the Draft EIS Section 3.9.3.2 and Appendix K).
- *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.* As stated in Draft EIS Section 3.9, agricultural operations in the vicinity include an operating vineyard on the Project Site, as well as agricultural operations to the north, east, and south of the site. Alternative A has been designed to preserve and maintain the existing vineyards and trees around the perimeter of the site to maintain a degree of consistency with existing vineyard operations and surrounding agricultural uses, and agricultural support infrastructure would continue to be utilized on the Project Site to maintain the vineyards. Please refer to **Master Response 8** regarding land use conflicts and impacts to adjacent agricultural operations. As explained therein, County land use policies and land use designations are not applicable to the Proposed Project. Further, agricultural operations in the vicinity of the Project Site would be protected under both the California Civil Code Section 3482.5, also known as the Right to Farm Act, as well as the Sonoma County Right to Farm Ordinance.
- *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.* Please refer to **Response to Comment A1-3** below regarding the impacts of the Proposed Project on agricultural land. Further, the project alternatives will not interfere with agricultural operations on adjacent parcels. Cumulative impacts to land uses and agricultural operations were assessed in Draft EIS Section 3.14.8, with future planned developments in the

vicinity outlined in Table 3.14-1. Planned developments will be subject to Town or County regulations and will not result in a cumulatively significant impact.

- *Implementation of any City or County Agricultural Mitigation Plans, Programs, or Policies.* Local land use regulations applicable to the project alternatives are summarized in Table 3.9-1 of the Draft EIS, with additional information provided in Appendix E. For further details on the applicability of local land use designations, please refer to **Master Response 8**.
- *Proposed mitigation measures for impacted agricultural lands within the Proposed Project area.* Please refer to **Response to Comment A1-3** below.

As such, impacts regarding the loss or conversion of agricultural land have been thoroughly evaluated and discussed in line with these guidelines.

### *Response to Comment A1-3*

A Farmland Conversion Impact Rating (FCIR) form was submitted to the USDA to assess agricultural land conversion under Alternative A, in compliance with the FPPA and the completed form was included in Draft EIS Appendix K. Under Alternative A, the site received an FCIR score of 144. According to FPPA guidelines, a score below 160 indicates that the conversion is not considered significant, and no further protection or evaluation of additional sites is required. The site also received a score below 160 under Alternatives B and C. Furthermore, while the comment suggests that agricultural land conversion may have regional significance, Draft EIS Section 3.9.3.2 states that the project impacts less than 0.01% of the available farmland in the county. This minimal impact supports the conclusion that the conversion of agricultural land is not significant, and no mitigation is necessary.

Although the Draft EIS does not include specific mitigation for farmland conversion, the site plan incorporates vineyards along the northern and western boundaries of the Project Site. These vineyards help preserve agricultural land consistent with the comment's suggestion.

## **Response to Comment Letter A2 – Representatives Jared Huffman and Mike Thompson, Congress of the United States**

### *Response to Comment A2-1*

Regarding whether the circumstances of the Tribe warrant a “restored lands” exception, please refer to **Master Response 4**.

### *Response to Comment A2-2*

Please refer to the following Master Responses and EIS sections regarding the issues raised in the comment:

- Compatibility with surrounding land uses (including parks, schools, and religious centers) – **Master Response 8**
- Noise impacts from construction and traffic – EIS Section 3.11
- Air quality and climate change impacts – EIS Sections 3.4.3 and 3.14.3
- Wildfire evacuation impacts – **Master Response 10**
- Impacts on the Russian River from increased water use, runoff and groundwater impacts from increased impervious surfaces – EIS Section 3.3.3

*Response to Comment A2-3*

Please refer to **Master Response 1: Extension of the Comment Period**.

**Response to Comment Letter A3 – California Department of Transportation (Caltrans)***Response to Comment A3-1*

The introductory comments explaining Caltrans’s commitments, outlining assessment criteria, and summarizing the Proposed Project are noted.

*Response to Comment A3-2*

The comment is noted confirming that the Proposed Project vehicle miles traveled (VMT) analysis and significance determination were undertaken in a manner consistent with the Technical Advisory on Evaluating Transportation Impacts in CEQA published by the Governor’s Office of Planning & Research (OPR) in December 2018.

*Response to Comment A3-3*

Caltrans’ support for pedestrian and bicycle infrastructure improvements included in the Draft EIS is noted. These improvements are summarized in Draft EIS Table 2.1-3, Protective Measures and Best Management Practices.

*Response to Comment A3-4*

The Proposed Project would comply with all required permits related to transportation on State facilities, including for any construction vehicles that qualify as oversized or overweight. Construction traffic impacts associated with the Proposed Project were described in Draft EIS Section 3.8.2. The Draft EIS stated that construction traffic impacts on nearby roadways would be relatively small, dispersed throughout the day, would primarily occur outside of peak traffic times, and be temporary in nature. The Draft EIS concluded that the impact from construction traffic on nearby roadways would be less than significant and would, therefore, would not require any mitigation.

*Response to Comment A3-5*

Please refer to **Master Response 7: Enforcement of Mitigation**. A mitigation monitoring and compliance plan will be prepared and incorporated into the BIA’s ROD consistent with 40 CFR §1505.3 and will identify the parties responsible for monitoring and implementing the mitigation and the anticipated timeframe for implementing and completing mitigation.

The project’s fair share contribution to proposed traffic mitigation is included in Draft EIS Section 4. As discussed therein, estimated fair share contributions could be adjusted based on an agreement with the governmental entity with jurisdiction over the road to be improved. Funds for opening year 2028 and cumulative 2040 mitigation measures shall be placed in an escrow account, or other account as agreed to by the Tribe and relevant government agency, for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design, obtain approvals/permits for, and construct the recommended road improvement.

***Response to Comment A3-6***

Shiloh Road and Old Redwood Highway are located adjacent to the Project Site. Neither of these facilities are under Caltrans' jurisdiction and, therefore, would not be subject to any specific equitable access standards required by Caltrans. However, as stated in Draft EIS Table 2.1-3, Protective Measures and Best Management Practices, "[t]he Tribe will construct pedestrian facilities (e.g., sidewalks or trails) on the Project Site to facilitate pedestrian traffic between the casino resort facility and the intersection of Shiloh Road and Old Redwood Highway."

Any new pedestrian facilities constructed as part of the Proposed Project would be subject to all applicable local, State, and federal laws related to American Disabilities Act (ADA) standards. Compliance with any such standards would be confirmed as part of the building permitting process.

With respect to bicycle and pedestrian access during project construction activities, bicycle and pedestrian activity adjacent to the Project Site is limited due to the lack of sidewalks and designated bicycle facilities. While not expected, if temporary lane closures or other encroachments into the public right of way are necessary during project construction activities, local (i.e., Town of Windsor or Sonoma County) roadway encroachment permits would be required and would include provisions for maintaining access during any such closures.

**Response to Comment Letter A4 – Office of Governor Gavin Newsom*****Response to Comment A4-1***

Regarding whether the circumstances of the Tribe warrant a "restored lands" exception and the potential for other tribes to develop off-reservation gaming facilities closer to favorable market environments, please refer to **Master Response 4**. It should be noted that the comments regarding the applicability of the "restored lands" exception to the Scotts Valley Casino and Tribal Housing Project are outside of the scope of the EIS and NEPA.

***Response to Comment A4-2***

Regarding the evaluation of alternative sites, please refer to **Master Response 5**.

***Response to Comment A4-3***

Regarding whether the circumstances of the Tribe warrant a "restored lands" exception and the potential for other tribes to develop off-reservation gaming facilities closer to favorable market environments, please refer to **Master Response 4**.

**Response to Comment Letter A5 – Santa Rosa Plain Groundwater Sustainability Agency (SRPGSA)*****Response to Comment A5-1***

The GSA's recognition that the Supplemental Groundwater Resources Impact Assessment (GRIA) (Draft EIS Appendix D-4) provides information needed to evaluate the Proposed Project's compatibility with the Santa Rosa Plain Groundwater Sustainability Plan (GSP) is noted.

Information regarding the modeling approach, assumptions and data used in evaluating potential Proposed Project impacts to interconnected surface water (ISW) and groundwater-dependent

ecosystems (GDEs) are discussed in **Responses to Comments A5-2** through **A5-9** below. Based on the responses it has been determined that groundwater related impacts are not underestimated. As with any impact modeling evaluation, there are uncertainties regarding local conditions that can affect the range of potential future outcomes, and these were addressed by evaluating a range of reasonable to conservative outcomes. In addition, mitigation measures (EIS Section 4) address potential uncertainty and prevent or lessen potential adverse effects on ISW and GDEs.

### *Response to Comment A5-2*

The SRPHM 1.0+ (2018) version of the U.S. Geological Survey (USGS) Santa Rosa Plain Hydrologic Model (SRPHM 2014) was not selected as the base of the Proposed Project simulation because (1) the model documentation is considered to be in "draft" form;<sup>4</sup> (2) the peer reviewed USGS model (SRPHM 2014) has been vetted and is available for public use; and (3) as discussed further below, SRPHM 1.0+ (2018) is a poor predictor of groundwater levels in the vicinity of the Project Site.

With respect to Item 4 above, the changes incorporated into SRPHM 1.0+ include updating historical hydrologic data from 2010 through 2018, refining various water budget inputs as cited in the comment, and incorporating certain demand growth and climate change assumptions in the forecast model. These changes were made throughout the model domain; model revisions based on localized data, such as near the Town of Windsor, were not made.

A comparison between groundwater levels predicted by SRPHM 1.0+ for Representative Monitoring Well SRP0375 and SRP0376 (Wells 12 and 13 in the GRIA) and actual groundwater levels reported in the Sustainable Groundwater Management Act (SGMA) Data Viewer website for the Spring 2021 through Spring 2024 time period is presented in Figures 1 and 2, attached. This comparison indicates that whereas the model predicted groundwater levels in these wells would decline by approximately 10 feet, no such decline actually occurred. In fact, though groundwater levels were seasonally variable, average groundwater levels actually increased by approximately 5 feet. At SRP0724 (Bluebird well), SRPHM 1.0+ predicted a 10-foot water level decline, but the data shows water levels staying steady (Final EIS Appendix D-4 Attachment 3). Based on the available data, as configured, SRPHM 1.0+ was less suitable for predicting future water levels in the area of the Proposed Project in comparison to the model used for the GRIA.

During the 2021 to 2024 time period (and thereafter) SRPHM 1.0+ simulates a relatively rapid increase in groundwater demand. By comparison, groundwater demand during the time period from 2012 through 2020 was stable or decreasing. From 2021 to 2023, the groundwater demand simulated in SRPHM 1.0+ ranged from approximately 12,000 to 14,500 acre-feet/year, whereas the actual groundwater demand reported in annual reports submitted by SRPGSA ranged from 5,119 to 6,700 acre-feet/year. We note that our review of aerial imagery for the GRIA indicates that most of the arable land near the Project Site was already developed as vineyards 10 years ago, very little land use change occurred in the area near the Project Site in the last 10 years, and very little agricultural land remains near the site that could be converted to irrigated use. This is consistent with our review of the Sonoma County and Town of Windsor General Plan documents and the Program Environmental Impact Report prepared for the Town of Windsor Water Master Plan, none of which forecast any agricultural demand increase in this area.

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<sup>4</sup> Santa Rosa Plain Groundwater, 2022. Appendix 3-C: Santa Rosa Plain Hydrologic Model (SRPHM) Updates. Available online 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). Accessed October 2024.

Calibration statistics are not shown for SRPHM 1.0+ near the Project area in the GSP appendix, so no assessment can be made of the local performance of the updated model near the area of interest and whether the model changes improve simulation observed groundwater levels. Based on the available data, it is concluded that SRPHM 1.0+ and SRPHM 2014 are subject to the similar uncertainties in pumping assumptions and water budget inputs, and either model may be used to serve as a reasonable starting point for development of a local model to evaluate potential impacts from the Proposed Project. Neither model provides a compelling advantage for this purpose.

Calibration statistics are not well documented for the SRPHM 1.0+ to assess the goodness of fit near the Project Site and evaluate potential spatial bias in simulated groundwater levels. The modeled residuals (the difference between modeled and observed groundwater levels) shown on figure 25 of Appendix 3-C (SRPGSA 2022) are greater in the northern portion of the Windsor Subarea of the Santa Rosa Plain Groundwater Subbasin (where the Project is located) than in the central portion and are similar to residuals reported for SRPHM 2014<sup>5</sup>. The local performance of the updated model near the area of interest does not appear to improve simulation of observed groundwater levels (compared to Wolfenden and Nishikawa 2014, Figure 34)<sup>6</sup>.

Based on the available data, we conclude that SRPHM 1.0+ and SRPHM 2014 are subject to the similar uncertainties in pumping assumptions and water budget inputs, and either model may be used to serve as a reasonable starting point for development of a local model to evaluate potential Proposed Project impacts. Neither model provides a compelling advantage for this purpose. SRPHM 2014 was therefore selected for local refinement to support the GRIA because it has been vetted and was fully available at the time of the analysis. Changes in municipal groundwater demand in the Windsor area and at the Project Site were incorporated into the refined GRIA child model as described in GRIA Section 5.1 and 5.5. Hydrostratigraphic refinements implemented for the child model are discussed in GRIA Section 5.4.

Importantly, the water budget incorporated into the SRPHM 1.0+ forecast scenarios produced a significant error in groundwater level predictions and is not consistent with the actual or anticipated water budget changes in this part of the Santa Rosa Plain Groundwater Subbasin. For these reasons, it was not considered appropriate to use the forecast water budget changes included in the SRPHM 1.0+ forecast scenarios in Proposed Project or cumulative impact analysis models for the GRIA. Given the lack of data to support an increase in future agricultural groundwater demand near the Town of Windsor, the only reasonably foreseeable pumping that requires simulation as part of the cumulative impact analysis is the pumping by the Proposed Project and future pumping proposed in the Town of Windsor Water Master Plan and Urban Water Management Plan. The remaining pumping simulated in SRPHM 2014 is sufficient to support Project and cumulative impact analysis when using a superposition approach.

### *Response to Comment A5-3*

The selection of boundary conditions is an important consideration when adapting an existing model for a new use and is described in GRIA Section 5.3 (Draft EIS Appendix D-4). The GRIA parent model area was extracted, and boundary conditions were selected to allow groundwater exchange with the SRPHM 2014 parent model and the child model refined around the Project Site at a sufficient distance from the area of

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<sup>5</sup> Santa Rosa Plain Groundwater, 2022.

<sup>6</sup> Wolfenden and Nishikawa, 2014. Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052. USGS Publications Warehouse. Available online at: <https://doi.org/10.3133/sir20145052>. Accessed October 2024.

Proposed Project effects to minimize the possibility of boundary artifacts within the area of interest for impact analysis. Time-variable constant head boundary conditions were specified because groundwater levels in this portion of the Santa Rosa Plain Groundwater Basin are relatively stable (as indicated in the GSP and discussed in GRIA Section 4.4.1) and gradients across the parent model boundaries are unlikely to be changed significantly by Proposed Project pumping. When these conditions are met, time variable constant head boundaries are a valid and commonly implemented approach to superposition-based impact modeling. The extracted parent model area includes the north and west portions of the domain of the original SRPHM 2014 model to the maximum extent of the original model boundaries (i.e., the boundaries were not truncated) and encompasses the reasonable maximum estimate of the area of Proposed Project effects. To the east and south the GRIA parent model boundaries were selected based on iteratively testing the interaction between Proposed Project pumping and the boundary until the distance was demonstrated to not induce boundary effects via added pumping stress. Constant head boundaries were selected to ensure the integrity of the superposition approach, whereby new stresses are simulated on an existing calibrated model to understand system response relative to an initial baseline condition (GRIA Section 5.1.1 and Hubbell et al. 1997). Constant head boundaries for the superposition approach were varied temporally in accordance with the original SRPHM 2014 defined outputs.

Based on this information, the refined GRIA child model is adequate and appropriate to support the evaluation of potential Proposed Project pumping effects and is sufficient to evaluate cumulative impacts from reasonably foreseeable changes in pumping. Further modeling evaluation is not warranted

#### *Response to Comment A5-4*

A child model area within the extracted parent portion of SRPHM 2014 was refined with finer discretization and local hydrostratigraphic data as discussed in GRIA Sections 4.4.3, 5.2 and 5.4 (Draft EIS Appendix D-4). As referenced in these sections, Wolfenden and Nishikawa<sup>7</sup> interpreted the presence of a laterally-continuous aquitard layer throughout this part of their model based on interpretation of available well logs. A second, thinner aquitard layer was inferred to exist near the Project area based on investigations and aquifer testing conducted by the Town of Windsor<sup>8</sup> and available boring logs. Based on the available data, this additional aquitard unit was represented by Layer 3a in the GRIA child groundwater model.

Five boring logs extending beyond 350 feet below ground surface (bgs) were available for the study area and the aquitard layer is evident in all of the available boring logs. These boring logs include on-site Well #1 and Well #3 and off-site Well #13 in addition to the Esposti Park and Bluebird wells referenced in GRIA Section 5.4 as a basis for the aquitard. Table 1 of the GRIA summarizes the completion details for these wells, including their distance from the Project Site, and Figure 9 of the GRIA shows the well locations on and relative to the Project Site. The boring logs for these wells have been added as an attachment to the GRIA (Final EIS Appendix D-4). As shown in the boring logs (see annotations), the aquitard is comprised of packages of interbedded sandy clay, silt, silt with clay, and clay, with continuous clay and slit layers up to 25 to 30 feet thick at Well #3 and Well #13, respectively.

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<sup>7</sup> Wolfenden and Nishikawa, 2014. Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052. USGS Publications Warehouse. Available online at: <https://doi.org/10.3133/sir20145052>. Accessed October 2024.

<sup>8</sup> RMC, 2010. Windsor Groundwater Well Installation and Testing Project Summary Report. Prepared for the Town of Windsor in association with E-Pur.



As described in GRIA Section 4.4.4, RMC interpreted the presence of an aquitard which separates the intermediate and deep groundwater zones based on stratigraphic data and the results of the Esposti Park well pumping test. Finally, a relatively continuous aquitard is interpreted by USGS in this area of the SRPHM 2014 model based on their analysis of borehole data and is represented as Model Layer 2 (Woolfenden and Nishikawa, 2014). The interpretation of a deeper, thinner aquitard with significant lateral continuity is therefore consistent with the depositional setting interpreted by USGS.

Notwithstanding the above evidence, in GRIA Section 4.4.4 we noted that the conclusion made by RMC that the intermediate and deep zone are likely isolated from the shallow zone by an aquitard remains uncertain because it was based on the results of limited duration (32 hour) pumping test. Therefore, the additional aquitard layer was simulated in the GRIA child model as a leaky aquitard with significantly greater vertical conductance than the aquitard simulated by USGS as Layer 2 (GRIA Section 5.4). The modeling results presented in the GRIA predict the aquitard would have a muting effect on drawdown communicated upwards from the intermediate and deep zone to the shallow aquifer system, but would not isolate it. Testing during model development (not reported in the draft GRIA) indicated this muting effect decreases predicted drawdown from Proposed Project pumping at the water table by less than 20%, and 11% for cumulative pumping. A discussion regarding this finding has been added to GRIA Section 5.7.

Simulation of the additional aquitard honors the available data and as such represents the best available science for analysis of probable Proposed Project effects; however, as stated in GRIA Section 4.4.4 "... while several clay layers appear to exist that can be correlated across several wells in the area, their effectiveness to isolate the shallow zone from underlying pumping cannot be confirmed at this time."

#### *Response to Comment A5-5*

The recharge, evapotranspiration (ET), and pumping inputs used to refine the GRIA (Draft EIS Appendix D-4) child model were directly extracted from the net recharge output of SRPHM 2014. The simulated 50-year forecast incorporated the assumption that dry periods would increase in frequency and duration throughout the 50-year simulation period and further extrapolated the 30-year forecast period of the USGS model with a similar result to the climate change scenario described in Appendix 3E to the GSP (GRIA Section 5.5). The approach to development of a 50-year climate change scenario by extrapolating the rate of increased dry year frequency beyond the USGS 30-year climate change scenario has been further described in revisions to GRIA Section 5.5.

A superposition modeling approach was used for assessment of Proposed Project effects. "Superposition" or "impact modeling" is a robust modeling approach that focuses on evaluating drawdown and flow changes induced by a project rather than actual predicted groundwater levels and flows.<sup>9</sup> All models of natural systems are limited by inherent inaccuracies, and by subtracting a no-Project baseline model from model cases that simulate Proposed Project pumping, the potential effects of model inaccuracies on evaluation of Proposed Project effects can, to some extent, be subtracted out. The use of superposition modeling in hydrogeologic literature is well established, and this approach has been widely used to evaluate the impacts of water supply pumping under NEPA.

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<sup>9</sup> Reilly, T.E., O.L. Franke, and G.D. Bennett, 1987. The principles of superposition and its application in ground-water hydraulics: U.G. Geological Survey Techniques of Water-Resources Investigations 03-B6. Available online at: <https://doi.org/10.3133/ofr84459>. Accessed October 2024.

As discussed in **Response to Comment A5-2**, the only reasonably foreseeable changes in pumping applicable near the Project Site are the Proposed Project pumping and proposed pumping in the Town of Windsor's Water Master Plan and Urban Water Management Plan. Further modeling evaluation is not warranted.

#### *Response to Comment A5-6*

The projected effects of the Proposed Project on groundwater recharge are discussed in Draft EIS Section 3.3.3 and GRIA Section 3 (Draft EIS Appendix D-4) and were determined to be less than significant. This is based on several factors including soil characteristics on the Project Site, proposed stormwater retention/detention facilities, and a proposed reduction in consumptive use by existing vineyards. The analysis is sufficient to conclude that Proposed Project impacts to recharge would be less than significant and additional modeling is not necessary.

#### *Response to Comment A5-7*

Draft EIS Section 3.3.3 and GRIA Sections 4.2 and 4.3 (Draft EIS Appendix D-4) presented information regarding an evaluation of the potential for ISW and GDEs to exist near the Project Site that could be affected by Proposed Project pumping. As part of this evaluation, the following information was reviewed: information available from The Nature Conservancy (TNC)<sup>10</sup>, the National Wetlands Inventory<sup>11</sup>, the USGS National Hydrography Dataset<sup>12</sup>, the aquatic resources delineation report for the Project Site (Draft EIS Appendix G-4), mapping of Public Trust Resource Protection Areas conducted for the County<sup>13</sup>, data from nearby shallow groundwater monitoring wells<sup>14</sup>, the GSP and information provided by Sonoma Water in its comments on the 2023 EA for the Proposed Project. We also reviewed the depth to groundwater in shallow monitoring wells located near Mark West Creek and Pool Creek, and determined the depth to groundwater in these wells was approximately 20 to 30 feet below ground level. GSP Section 3.2.6.2 and related maps were reviewed; however, this information was determined to be less definitive than the information cited in the GRIA and therefore not reported. This reference, as well as an expanded discussion of groundwater levels reported in on-site wells and monitoring wells near Mark West Creek and Pool Creek has been added to revised GRIA Sections 4.3 (Final EIS Appendix D-4).

Considering all the available data, with the exception of the perennial reach of Pruitt Creek upstream from Faight Road, it is unlikely that there are ISWs near the site that could be depleted by pumping for the Proposed Project. In addition, with the exception of riparian vegetation along Pruitt Creek, it is unlikely that there are other GDEs in the vicinity of the Project Site that could be affected by pumping for the Proposed Project.

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<sup>10</sup> The Nature Conservancy (TNC), 2018. Groundwater Dependent Ecosystems under the Sustainable Groundwater Management Act, Guidance for Preparing Groundwater Sustainability Plans: Groundwater Resource Hub, GDE Tools. Available online at: <https://groundwaterresourcehub.org/>. Accessed October 2024.

<sup>11</sup> United States Fish & Wildlife Service (USFWS). 2024. National Wetlands Inventory. Available online at: <https://www.fws.gov/program/national-wetlands-inventory>. Accessed January 2024.

<sup>12</sup> United States Geological Survey (USGS), 2024. National Hydrography Dataset. Available online at: <https://www.usgs.gov/national-hydrography/national-hydrography-dataset>. Accessed January 2024.

<sup>13</sup> O'Conner Environmental, 2023. Sonoma County Well Ordinance Public Trust Review Area Delineation. Prepared for Permit Sonoma.

<sup>14</sup> California State Water Resources Control Board (SWRCB), 2024. GeoTracker Portal. Available online at: <https://geotracker.waterboards.ca.gov/map/>. Accessed January 2024.

Additional discussion is included in **Response to Comment A9-82**.

*Response to Comment A5-8*

As noted in **Response to Comment A5-7** modeling and information from the vineyard operator indicate the only likely ISW near the Project Site is the perennial reach of Pruitt Creek upstream from Faught Road and the only likely GDEs near the Project Site are riparian vegetation along Pruitt Creek and the aquatic habitat associated with the perennial pools upstream of Faught Road. As noted in **Response to Comment A5-7**, additional discussion regarding potential ISWs near the Project Site has been added to GRIA Section 4.3 (Final EIS Appendix D-4), including a discussion of groundwater levels in on site wells and monitoring wells near Pool and Mark West Creeks.

The potential for adverse impacts related to depletion of ISW and drawdown below the rootzone of groundwater-dependent vegetation is discussed in GRIA Section 6.2.4. The analysis for depletion of ISW was based on an analysis of potential drawdown beneath the perennial pools along Pruitt Creek near Faught Road, where perennial and likely groundwater connected reaches of the Creek are known to exist. As discussed in GRIA Section 4.3, the remaining downstream reaches of Pruitt Creek are unlikely to be groundwater connected based on the available data. Since Pruitt Creek is ungaged, development of an integrated surface-groundwater model would have to rely on approximated discharge assumptions that are uncertain and speculative; therefore, the analysis considered that since the pools at the terminal end of the perennial reach of Pruitt Creek at the foot of the Mayacamas Mountains likely have a high rate of infiltration, an additional drawdown of 1 foot in this area is not likely to significantly increase the infiltration rates and result in depletion of the pools.

The analysis presented in the Draft EIS and GRIA also indicates that while it is unlikely that adverse impacts to ISW or GDEs would result from Proposed Project pumping, they may occur when cumulative pumping by the Town of Windsor during dry years is considered together with Proposed Project pumping. It was further noted that uncertainty remains regarding the extent of surface water interconnection with shallow groundwater, the potential rates of depletion, and the extent of vegetation tolerance to cumulative drawdown that may occur during dry years. The monitoring and mitigation program outlined in EIS Section 4 is intended to address these contingencies, which has been expanded with additional detail. Specifically, in addition to the shallow monitoring wells proposed to be constructed near Pruitt Creek on the Project Site, an additional monitoring well is proposed be installed along the Creek near Faught Road. To assess discharge rates in the Creek, discharge monitoring stations are proposed to be installed on-site and near Faught Road. Groundwater level and discharge data will be assessed by computer modeling to determine the rate and timing of potential ISW depletion. If a potential for significant depletion is determined to exist, a requirement will be triggered to implement mitigation that supplements flow along Pruitt Creek through the addition of recycled water from the Proposed Project. Additional modeling of surface-groundwater interaction without collecting additional data will leave substantial uncertainties that must be addressed through monitoring and mitigation, so further modeling evaluation of these impacts is not recommended at this time.

Potential significant flow depletion impacts to Pool Creek and Mark West Creek are less likely than impacts to Pruitt Creek. This is because these creeks are located at a greater distance from the site, and because available monitoring wells indicate groundwater levels along the potentially affected reaches of these streams are well below the streambeds of these streams (10 to 25 feet below ground level at the well clusters discussed in GRIA Section 4.3, and 20 to 30 feet below ground level at wells SRP0707 and SRP 0165 shown in Appendix 3B of the SRPGSP). However, the same monitoring and mitigation measures

adopted for Pruitt Creek will apply regarding potential impacts to these creeks. The GRIA has been updated to incorporate these clarifications.

The commenter is referred to additional discussion in **Response to Comment A9-82**.

#### *Response to Comment A5-9*

The noted corrections have been made to the GRIA figures in Final EIS Appendix D-4.

#### *Response to Comment A5-10*

The Proposed Project has been designed to maximize the onsite use of recycled water. The comments that the Tribe should consider supporting recharge enhancement projects and encouraging the Tribe to share relevant monitoring data are noted.

#### *Response to Comment A5-11*

The GSA's comments on the prior 2023 EA are noted. The comment letter was written prior to the completion of the GRIA (Draft EIS Appendix D-4) which addressed the primary concerns regarding groundwater impacts from the Proposed Project. The GRIA addressed consistency of the Proposed Project with the GSP, impacts on GDEs, well interference, and cumulative impacts from increased pumping of Esposti Park wells.

### **Response to Comment Letter A6 – California State Legislators of Districts 4, 11, 12, 13, 15, 17, 23, 26, and 28**

#### *Response to Comment A6-1*

Regarding whether the circumstances of the Tribe warrant a “restored lands” exception, please refer to **Master Response 4**.

### **Response to Comment Letter A7 – U.S. Environmental Protection Agency (USEPA)**

#### *Response to Comment A7-1*

The introductory comments summarizing USEPA's review are noted. Responses to specific comments are provided in **Response to Comment A7-2** through **A7-10** below.

#### *Response to Comment A7-2*

While the mitigation is complex, similar mitigation was implemented through a groundwater monitoring program for the Graton Casino Project.<sup>15</sup> Because significant impacts would only occur cumulatively with increased pumping from the Town of Windsor, these activities must be coordinated with the Town of Windsor and are not fully within the control of the BIA and/or Tribe to implement.

Figure 16 of the GRIA (Draft EIS Appendix D-4) identifies the anticipated area where well users would be eligible to participate in the compensation program. Final eligibility maps and program implementation procedures would be developed as part of the Interference Drawdown Monitoring and Mitigation Plan

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<sup>15</sup> Federated Indians of Graton Rancheria (FIGR), 2024. FIGR Voluntary Well Monitoring Program. Available online at: <https://www.gratongroundwater.com/>. Accessed October 2024.

(EIS Section 4, Water Resources Mitigation Measure A). The comment's agreement with the recommendation to designate a third party to oversee program implementation is noted.

### *Response to Comment A7-3*

As discussed in Draft EIS Section 3.3.3 and illustrated in Figure 3.3-3, all building footprints would be constructed outside of the regulatory floodway and FEMA-designated 100-year and 500-year floodplains. Furthermore, all building foundations would be elevated at a minimum of 1-foot above mapped floodplain elevations. Proposed Project facilities within the 100-year floodplain include a service yard, two bioswales (one on either side of Pruitt Creek), and a discharge pipeline/outfall structure. Stormwater impacts from site improvements would be mitigated through construction of a stormwater detention basin that is located outside and above the 100-year and 500-year floodplain limits.

As discussed in Draft EIS Section 2.1.5, the Sonoma County Water Agency Flood Management Design Manual (FMDM) was used for the design of the stormwater drainage system. Per FMDM standards, the stormwater drainage system under the Proposed Project would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. In the absence of other regional flood management design tools, the methods and criteria provided by the FMDM were determined to be appropriate.

Changes to precipitation due to climate change are uncertain and no alternative design standard is offered by the comment. Should a design standard relevant to climate change become available, there is area on the Project Site for additional or expanded stormwater features such as rain gardens.

The Site Grading and Hydrology Study provided as Draft EIS Appendix D-3 has been updated in the Final EIS to provide additional LID facilities consistent with the Storm Water LID Technical Design Manual, approved and required by the North Coast Regional Water Quality Control Board (NCRWQCB) through the multi-jurisdictional MS4 permit. The LID calculations have been added to Appendix D-3 as "Appendix K" of that document.

The Draft page 3-137 referenced in this comment was a discussion of the visual effects of the project. However, the Draft EIS discussion of climate change effects in Section 3.14.3 (page 3-155) acknowledged that an increase in flooding is a potentially foreseeable consequence of climate change. An additional discussion of the Proposed Project's vulnerability to flooding effects under climate change has been added to the Final EIS Section 3.14.3.

### *Response to Comment A7-4*

As shown in Draft EIS Tables 1.5-1 and 2.1-3, the Tribe intends to continue consultation with the USEPA's Water Division to confirm the Proposed Project discharge options and related limitations in order to comply with the Basin Plan. The Tribe also intends to consult with USEPA on any other requirement related to federal water quality standards and monitoring and reporting requirements, including approval of coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from construction activities as required by the Clean Water Act; approval of a NPDES discharge permit for seasonal discharge of tertiary treated effluent to Pruitt Creek a tributary to the Russian River; and approval of 401 Water Quality Certification prior to discharge of dredged or fill material into Waters of the U.S.

It should be noted that since the USEPA's review of the 2023 EA, the Draft EIS was expanded to include an analysis of the "maximum scenario for recycled water use" under which no effluent is discharged to the Creek, and thus an NPDES permit would not be required. The additional storage facilities required under this scenario were described within Draft EIS Appendix D-2.

***Response to Comment A7-5***

The Final EIS has been updated to remove directional drilling as an option for utility line crossing of Pruitt Creek. Utility lines would be attached to either the proposed pedestrian or vehicle bridge to avoid impacts to Pruitt Creek. The potential need for a Clean Water Act (CWA) Section 404 permit was noted in Draft EIS Table 1.5-1 and Section 3.5.3. If the Proposed Project requires the discharge of dredged or fill material into waters of the U.S., a 404 permit and 401 Certification under the Clean Water Act shall be obtained from the USACE and USEPA; this is included in Biological Resources Mitigation Measure E in Draft EIS Section 4. The need for pre-construction notification will be determined during the permitting application process, which has not begun. It is noted that use of a Nationwide Permit would require compliance with all the terms, general conditions, and regional conditions of the NWP.

***Response to Comment A7-6***

See **Response to Comment A7-2** above regarding the well impact compensation program. It should be noted that following the publication of the 2023 EA, a GRIA was completed and included in the Draft EIS as Appendix D-4 which supports that significant impacts would only occur cumulatively with increased pumping from the Town of Windsor.

***Response to Comment A7-7***

It is understood that the Tribe should consult with USEPA during the design process for the public drinking water system, and that baseline monitoring will be required to verify treatment requirements. Final EIS Table 1.5-1 and Section 2.1.3 have been updated to reflect this regulatory process.

***Response to Comment A7-8***

It is the intent that the project be designed and constructed to a minimum standard of Leadership in Energy and Environmental Design (LEED) Silver. Energy efficient measures/heat reduction measures may include use of low-emissivity (Low E) glass. Additional measures discussed in the comment, such as photovoltaics, will be considered by the Tribe for incorporation into the final design.

***Response to Comment A7-9***

Draft EIS Section 3.4.3 identified under each development alternative that Tribe will be required by the Clean Air Act to consult with the USEPA to determine whether New Source Review (NSR) permits may be needed based on regulatory procedures for hypothetical usage and associated emissions.

***Response to Comment A7-10***

Since completion of the Draft EIS, a No Effect determination was made by the BIA in coordination with U.S. Fish and Wildlife Service (USFWS) for California red-legged frog. On May 22, 2024, the USFWS acknowledged the no effect determination and verified that no further consultation actions are necessary. An email documenting this USFWS acknowledgement has been added to Appendix G-7 of the Final EIS.

A Biological Assessment has been submitted to National Oceanic and Atmosphere Administration, National Marine Fisheries Service (NMFS) along with a letter requesting initiation of Section 7

consultation. Consultation with NMFS is ongoing, and the consultation initiation letter has been added to Final EIS Appendix G-7. All relevant input from the Section 7 Endangered Species Act consultation process has been incorporated into the Final EIS or will be incorporated into the Agency decision document.

## **Response to Comment Letter A8 – Town of Windsor California**

### *Response to Comment A8-1*

The introductory comments from the Town are noted. Please refer to **Response to Comments A8-1** through **A8-80** below regarding specific issues raised in the letter. The Town's comments on the September 2023 EA do not raise any new substantive environmental issues beyond those provided in the Town's specific comments on the Draft EIS. Please refer to **Master Response 2** regarding the completeness of the Draft EIS.

### *Response to Comment A8-2*

The Draft EIS addressed the potential for well interference on existing wells including the Esposti Well in Section 3.3.3 and within the GRIA (Draft EIS Appendix D-4). Predicted drawdowns induced by the Proposed Project at nearby municipal supply wells are 3.38 feet at the Town of Windsor Esposti Park Well (bottom of screen interval 655 feet bgs). It was determined that this level of drawdown would not result in significant interference. The potential impacts of the Proposed Project drawdown on water quality are discussed in GRIA Section 6.2.3. Based on the small amount of predicted Project drawdown, gradient changes that would adversely affect water quality are considered unlikely and impacts to water quality are concluded to be less than significant.

The comment mistakenly references mitigation from the 2023 EA which included a well compensation program within five years of Proposed Project operation of on-site wells. Following the publication of the EA, a GRIA was completed which included a comprehensive groundwater interference study. The GRIA determined that the Proposed Project would have a less than significant impact on drawdown to nearby wells; however, the Proposed Project would contribute to cumulatively significant impacts with increased pumping from the Town. Mitigation was revised accordingly and includes robust mitigation for the cumulative scenario.

### *Response to Comment A8-3*

Water Resources Mitigation Measure C regarding GDEs Monitoring and Mitigation requires that if an annual monitoring report prepared pursuant to this mitigation verifies a loss of plant vigor that may lead to habitat degradation, the BIA must meet with Sonoma County and the Town of Windsor to discuss and agree to appropriate changes in groundwater pumping and management procedures, parties responsible for implementation and cost sharing. Therefore, the County and Town will be kept apprised of any emerging issues and no changes to the mitigation measure are warranted.

### *Response to Comment A8-4*

Only federal and tribal land use regulations would apply to the Project Site if the land is taken into trust; therefore, the California SGMA (Water Code § 10720 et seq.) would not apply to the project alternatives and the Tribe would not be required to pay the Groundwater Sustainability Agency for use of groundwater. Potential impacts to groundwater that would occur from implementation of the project alternatives was discussed in Draft EIS Section 3.3.3. A discussion of Alternative A's consistency is included therein, which concludes that Alternative A would not interfere with the implementation of the local GSP

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 water, including potential flow in Pruitt Creek or impacts to GDEs; and/or land subsidence. Cumulative effects to groundwater were discussed in Draft EIS Section 3.14.2 and associated mitigation is included in Draft EIS Section 4.

#### ***Response to Comment A8-5***

Once the Project Site is taken into federal trust, State and local regulations will not apply. Regardless, in California, recycled water is approved for commercial dual-plumbed use where fixtures dedicated to toilet and urinal flushing are separate in accordance with State Water Resource Control Board (SWRCB) requirements which includes regular cross-connection testing to confirm the separation of potable and recycled water plumbing. The limitation for indoor use is restricted for food and beverage processing and production facilities and specifically excludes facilities such as cafeterias and snack bars. As noted in a footnote within Draft EIS Section 2.1.4, Section 60313(c) states: "No recycled water agency shall deliver recycled water for internal use except for fire suppression systems, to any facility that produces or processes food products or beverages. *For purposes of this Subsection, cafeterias or snack bars in a facility whose primary function does not involve the production or processing of foods or beverages are not considered facilities that produce or process foods or beverages.*" (emphasis added)

As described in Draft EIS Section 2.1.4, recycled water generated by the on-site wastewater treatment plant could be used for both on and off-site irrigation, as well as disposed off-site consistent with existing Title 22 regulations for groundwater replenishment and surface water augmentation, and pending Title 22 regulations for potable reuse. While the Draft EIS does not specifically assume the use of the Town's recycled water infrastructure as part of the project alternatives, the Town and Tribe are not precluded from entering into an agreement for such services, subject to applicable laws. The Draft EIS included an analysis of the "maximum scenario for recycled water use" under which no effluent is discharged to Pruitt Creek, and use of the Town's recycled water infrastructure would be consistent with this scenario.

#### ***Response to Comment A8-6***

The project would be subject to the monitoring and reporting requirements set forth by the USEPA upon approval and issuance of an NPDES discharge permit for any proposed surface water discharge. The NPDES permit would be consistent with the requirements adopted in the Basin Plan. As discussed in Draft EIS Appendix D-1, an initial assessment of potential surface water discharge considers historical average and dry year stream flows measured at the Mark West gauging station and assumes the lowest monthly flow of the two (average or dry year) for establishing 1% of streamflow. Further, the potential discharge is estimated as less than 0.15% of those stream flows. Data from the Mark West gauging station was utilized for the analysis of the Proposed Project because it is the gauging station closest to the Project Site and directly downstream of the proposed discharge location near Mirabel Heights, CA. Historical flow data for this gauging station is shown in Draft EIS Table 2-10. The data from this gauging station was used as it is the most practical site to determine flows, since data has been collected for over five years, and real-time data is available. Any flow monitoring and discharge controls set forth in the NPDES discharge permit, if granted, would be required to be installed and operational prior to any discharge in Pruitt Creek. Further, as the requirements of the NPDES discharge permit, including discharge limits, are currently unknown, the Draft EIS conservatively evaluated a range of scenarios for the storage and disposal of treated recycled water that would be generated at the proposed wastewater treatment plant (WWTP). One end of the spectrum assumes that all recycled water is discharged to the Creek or reused within the Project Site for 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 (no offsite application); while the other end of the spectrum assumes that no effluent is discharged to the Creek and all recycled water is used within the Project Site or is used for off-site irrigation. Under the maximum scenario for recycled water use, where no effluent is discharged to the creek, up to 44.8 acres of turf, or 406 acres of vineyards could be irrigated with recycled water produced as a result of Alternative A. This range in scenarios ensures that the analysis in the Draft EIS discloses the potential effects of the project regardless of whether any discharge to Pruitt Creek is ultimately permitted.

#### *Response to Comment A8-7*

It is appropriate and conservative for Draft EIS Table 3.3-2 to identify the beneficial uses of the hydrologic area to which Pruitt Creek is tributary, in this case Mark West Creek and the Russian River, as the basin plan states: "The beneficial uses of any specifically identified water body generally apply to all its tributaries".<sup>16</sup> Pruitt Creek, as well as Pool Creek and Windsor Creek, are all tributary to the Mark West Hydrologic Subarea 114.23 and the Lower Russian River Hydrologic Area 114.10.

#### *Response to Comment A8-8*

The Draft EIS was prepared and issued prior to the FEMA update of July 31, 2024. Review of the current FEMA flood tiles for the project location does not change floodplain limits or elevations used from the previous map. No additional re-evaluation is required.

#### *Response to Comment A8-9*

Visual impacts associated with the storage tanks were described in Draft EIS Section 3.13.3.2 Alternative A – Proposed Project. This analysis has been expanded and clarified as described further in **Master Response 9: Visual Impacts**.

Storage ponds identified for the alternatives have been sized for 100-year return period rainfall conditions. This is an appropriately conservative and common practice for sizing open storage basins and an accepted method by the RWQCB as the basis for planning facilities. The Proposed Project would be developed consistent with applicable requirements of the Tribe's Building and Safety Code of 2023, which are consistent with the California Building Code (CBC), including above-ground storage tank design requirements. At this stage in the NEPA process, which includes an analysis of alternatives and potential environmental impacts, a structural analysis of storage tanks is not warranted. Adequate structural integrity would be incorporated into the final approved design of those facilities when the environmental review process is complete, an alternative development plan is selected. As shown in the Draft EIS Table 2.1-3 and discussed in Draft EIS Section 3.2.3.2, a project specific geotechnical report would be prepared prior to construction with standards no less stringent than the CBC along with the compliance with BMPs and mitigation measures. Use of these standards would allow ground shaking-related hazards, and other land resources constraints to be managed from a geologic, geotechnical, and structural standpoint such that risks to the health or safety of workers or members of the public would be minimized. Please refer to **Master Response 2** for additional discussion about the level of design detail required during the NEPA process.

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<sup>16</sup> North Coast Regional Water Quality Control Board, 2018. Basin Plan June 2018 Edition.

***Response to Comment A8-10***

As discussed in Draft EIS Section 2.1.5, a detention basin has been designed downstream of all bioswales to manage peak runoff volumes per the Sonoma County Water Agency FMDM. Additionally, as shown in Draft EIS Figure 2.1-3, runoff from Sub Area WWTP, including potential sewer overflows, would be captured and conveyed to the WWTP for treatment and disposal as discussed in Section 2.1.4. Bioswales are intended only for stormwater management under LID principles. Additionally, the Grading and Drainage Report has been updated in the Final EIS to identify additional bioswales along on-site roadways to meet LID treatment requirements; please refer to the Final EIS Figure 2.1-3 and Appendix D-3 Revised Grading and Hydrology Study. LID calculations have been added as Appendix K to the revised Appendix D-3 of the Final EIS.

There is an extremely low risk for reclaimed water to sheet flow across roads during heavy storm events. Reclaimed water storage facilities have been sized for 100-year return period rainfall conditions. This is an appropriately conservative and common practice for sizing open storage basins and an accepted method by the RWQCB as the basis for planning facilities. Reclaimed water would be disinfected and would not pose any infection risk, in the unlikely event of accidental contact.

***Response to Comment A8-11***

The Final EIS has been updated to remove directional drilling as an option for utility line crossing of Pruitt Creek. Utility lines would be attached to either the proposed pedestrian or vehicle bridge to avoid impacts to Pruitt Creek.

***Response to Comment A8-12***

Biosolids will be monitored, reported, and handled in accordance with 40 CFR Section 503 - Standards for the Use or Disposal of Sewage Sludge. The NPDES Permit for the proposed WWTP will contain special conditions specific to biosolids management similar to those identified in the Town of Windsor's NPDES permit which states: "The Permittee has indicated that all screenings, sludges, and solids removed from the liquid waste stream are currently disposed of off-site through beneficial land application or at a municipal solid waste landfill in accordance with all applicable regulations." Draft EIS Section 3.12.3.2 identifies the Central Disposal Site as the nearest permitted facility capable of accepting biosolids from the proposed WWTP and is located approximately 15.3 miles south of the Project Site. For additional information on biosolid disposal and the Central Disposal Site, refer to Draft EIS Section 3.10. For all solid waste produced on the site, manufacturer's guidelines would be followed for the storage, handling, and off-site disposal in addition to adhering to applicable federal and State regulations.

Emissions from truck trips during operation were accounted for within the analysis of air quality impacts in Draft EIS Section 3.4.3. All roadway facilities likely to be used to transport biosolid materials are designed to accommodate heavy vehicles and the introduction of any such vehicles generated by the Proposed Project would be minimal and infrequent and would contribute proportionally to normal wear-and-tear. As part of standard City and County roadway maintenance programs, pavement conditions are regularly monitored to determine when repaving or other roadway pavement repairs are necessary. Local and regional road maintenance is funded primarily through the accrual of excise tax on gasoline and bonds approved by State voters. Trucks hauling biosolids and other vehicles traveling to and from the Project Site would contribute to roadway maintenance funds when purchasing gasoline. Operation of the Proposed Project would not generate a large volume of truck traffic that would significantly increase the rate of roadway deterioration. However, Noise Mitigation Measure A has been updated in Final EIS Section 4 to include fair share contributions for road repaving and maintenance along portions of Shiloh Road and

Old Redwood Highway, which would carry the majority of Proposed Project traffic, which would further reduce impacts.

***Response to Comment A8-13***

The use of recycled water for Alternative C was described in the Draft EIS Section 2.3 and Appendix D-1, and water supply effects were discussed in Draft EIS Section 3.3.3.4. The estimated average daily water usage for Alternative C would be approximately 19,000 gallons per day (gpd) of potable water and 29,000 gpd of recycled water (Draft EIS Section 2.3). Recycled water use under Alternative C has been identified for Title 22 approved uses such as for irrigation of landscaping and vineyards, dual plumbing, and for cooling purposes to maximize the use of recycled water and minimize the use of potable water. Recycled water from a wastewater treatment plant can be used for irrigation of vineyards but is not approved for making wine.

***Response to Comment A8-14***

The Final EIS has been revised to mandate the use of Tier 4 Final engines for all construction equipment, in line with the 2022 amendments to the In-Use Off-Road Diesel-Fueled Fleets regulation by the California Air Resources Board (CARB). Although the Proposed Project is located within Bay Area Air Quality Management District (BAAQMD), the District defers to CARB regulations, which represent the latest standards for emissions control technologies. These amendments further restrict the types of engines that can be added to fleets. Since the construction fleet for the Proposed Project qualifies as a "large fleet," with a combined horsepower exceeding 5,000, the addition of Tier 3, Tier 4 Interim (Tier 4i), and model year 2006 and older on-road vehicles to large and medium fleets will be prohibited starting January 1, 2024. Consequently, only Tier 4 Final or cleaner engines may be added to these fleets from that date onward.<sup>17</sup> See **Master Response 6** for a discussion on the enforceability of BMPs regarding limiting idling times for construction vehicles.

***Response to Comment A8-15***

Operational vehicle air quality impacts for all project alternatives were modeled using trip generation estimates provided in the Traffic Study by TJKM (Draft EIS Appendix I). The assumptions used in the air quality model are outlined in Draft EIS Section 3.4.3.2 and in Appendix F-1. Draft EIS Section 3.8 Transportation and Circulation acknowledged that the project would have a significant impact on transportation and circulation. However, with the implementation of the BMPs in Table 2.1-3 and mitigation measures in Draft EIS Section 4, all project-related impacts to transportation and circulation would be reduced to less-than-significant levels consistent with standards set by the Town of Windsor and Sonoma County. Therefore, the modeled operational vehicle air quality impacts provide an accurate estimation of traffic-related air quality impacts for all project alternatives. Regarding the concern that Proposed Project traffic is underestimated see **Response to Comment A8-29**.

Hazardous air pollutants (HAPs) for all project alternatives are addressed in Draft EIS Section 3.4.3. As described therein, construction and operational diesel particulate matter emissions associated with the project alternatives would not result in significant increases in cancer risk, chronic hazards, or PM<sub>10</sub> concentrations. Cumulative effects are additionally discussed throughout these sections and in Section

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<sup>17</sup> CARB, 2023. Amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulation. Available online at: <https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements>. Accessed September 2024.

3.14.3. There are no significant industrial or stationary sources near the Project Site that could combine with on-site and mobile emissions. Therefore, cumulative HAP emission impacts would be less than significant.

***Response to Comment A8-16***

Concerning the Windsor/Larkfield/Santa Rosa Community Separator, this separator was not designated for the benefit of biological resources. Per the City's General Plan, the Windsor/Larkfield/Santa Rosa Community Separator is described as follows: "Significant views are available to the west across fields and vineyards to the Mendocino Highlands and to the east over the Mark West Springs Hills to Mt. St. Helena. Most of this land lies within the Santa Rosa Valley groundwater basin and contains important farmlands." Refer to **Response to Comment A8-75** for a discussion on the Windsor/Larkfield/Santa Rosa Community Separator as it relates to land use plans and policies.

Impacts to wetlands and riparian habitat were discussed in Draft EIS Section 3.5.3. The full extent of wetlands within the Project Site was shown on Figure 3.3-2 of the Draft EIS and documented within the aquatic resources delineation completed for the Project Site and included as Draft EIS Appendix G-4. A jurisdictional determination status update was further provided as Appendix G-6 of the Draft EIS that provided refined mapping and an updated jurisdictional determination to conform with updated regulations and a site visit completed by USACE. Draft EIS Appendix G-4 provides the delineation data sheets and discusses the extent of the wetlands as well as information on the soils, vegetation, and hydrological topography of on-site wetlands. A total of nine seasonal wetlands were observed, totaling less than one tenth of one acre (see Draft EIS Table 3.5-2). Four of these seasonal wetlands are within a roadside drainage ditch, one is an artificially irrigated feature associated with agricultural activities, and four are small instream features within Pruitt Creek. Subsequent to preparation of the Draft EIS, USACE issued an Approved Jurisdictional Determination (AJD) which confirmed the anticipated jurisdictional status disclosed in the Draft EIS (Table 3.5-2). The AJD has been added as Final EIS Appendix G-8 and Section 3.5 has been updated to clarify the status of the delineation.

Three seasonal wetlands occur near the proposed access drive. These features total 0.017 acres, are within a roadside drainage ditch, and are not waters of the U.S. per the AJD (Final EIS Appendix G-8). As discussed in Draft EIS Section 3.5.2, the roadside drainage ditch is a manmade feature dug from uplands. No special-status species were determined to have the potential to occur within these wetlands as discussed in Draft EIS Section 3.5.3.3), and the roadside drainage ditch is not a tributary to jurisdictional waters (Draft EIS Appendix G-4).

If wetlands associated with Pruitt Creek cannot be avoided, Biological Mitigation Measure H identifies the need for a 404 permit and 401 Certification under the Clean Water Act. Mitigation measures may include creation or restoration of wetland habitats either on site or at an appropriate off-site location, or the purchase of approved credits in a wetland mitigation bank approved by the USACE.

***Response to Comment A8-17***

The comment does not provide reasoning behind the claim that the riparian buffer may not be sufficient. As discussed in Draft EIS Section 4 under Biological Resources Mitigation Measures, construction setbacks would capture the totality of the riparian zone outside of the impact area. These buffers would be fenced throughout construction. Land beyond the riparian corridor is currently vineyard. Therefore, expanding the buffer would not capture additional natural habitat. Construction activities would be monitored regularly in compliance with the site-specific SWPPP and would prevent habitat degradation (described in

the Draft EIS Table 2.1-3 and in Draft EIS Sections 3.3.3.2 and 3.5.3.3). Construction BMPs would be implemented under the SWPPP prior to construction, and SWPPP monitoring would identify BMP maintenance needs and whether additional protections are necessary. Long term management and monitoring of these areas is not necessary as these areas are outside of the construction footprint, and ongoing activities within the riparian buffer area would not occur. In consultation with NMFS, mitigation has been added to the Final EIS for on-site restoration of disturbed riparian habitat at a 1:1 ratio. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction.

Impacts related to stormwater runoff, sedimentation, and pollution are addressed in Draft EIS Section 3.3.3.2. As discussed therein, construction-phase impacts to surface waters would be managed through a site-specific SWPPP, and stormwater runoff would be managed through an on-site stormwater drainage system. Runoff flowing into Pruitt Creek would be treated prior to discharge.

#### *Response to Comment A8-18*

The potential for the Project Site to serve as a wildlife corridor was evaluated in Draft EIS Section 3.5. Based upon both a desktop review and several biological surveys, it was determined that Pruitt Creek and its riparian corridor serve as the only potential wildlife movement corridors within the Project Site (Draft EIS Section 3.5.2, under the “Riparian Corridor” header). As stated in Draft EIS Section 3.5.3.3, wildlife movement would not be restricted, as the riparian corridor would remain unimpeded under the bridges and around the outfalls. As visible on aerial imagery, these types of crossings over Pruitt Creek are common both upstream and downstream of the Project Site.

#### *Response to Comment A8-19*

Impacts to special-status species are assessed in Draft EIS Section 3.5.3.3. This section provides a species-specific analysis for both California red-legged frog and northwestern pond turtle. These species are provided additional species-specific analysis within the Biological Assessment included as Draft EIS Appendix G-1. All species identified on the USFWS list were provided with a species-specific analysis in Appendix G-1. Migratory birds were discussed separately in Draft EIS Section 3.5.3.3 under the “Migratory Birds and Other Birds of Prey” header.

Where mitigation measures can be applicable to multiple species, species-specific mitigation plans are not warranted. Mitigation was developed in consultation with wildlife experts and regulatory agencies, including third-party environmental consultants, USFWS, and NMFS. As detailed in **Response to Comment A7-10**, USFWS has acknowledged the BIA’s no effect determination and verified that no further consultation actions are necessary.

#### *Response to Comment A8-20*

The introductory text of Draft EIS Section 3.14 states that the cumulative setting includes growth and development envisioned in the Sonoma County General Plan and Town of Windsor 2040 General Plan. Specific projects were identified in Draft EIS Table 3.14-1.

The Final EIS Section 3.14.4 has been revised to provide additional detail on cumulative impacts related to biological resources. These additions expand upon the impacts related to cumulatively considered projects. The level of impact remains unchanged.

*Response to Comment A8-21*

Biological resources mitigation measures are included in Draft EIS Section 4. Biological Resources Mitigation Measures are primarily limited to design, planning, preconstruction, and construction phase measures. As these measures are actionable only within the pre-construction and construction phases, they do not have long-term adaptive management or monitoring actions.

Long-term biological resources mitigation would include compensatory mitigation for loss of riparian habitat and jurisdictional aquatic resources, should such loss occur and be offset through habitat restoration or creation. A restoration plan for impacts to riparian habitat that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction. Any necessary compensatory mitigation for loss of waters of the U.S. would be subject to permitting requirements developed in consultation with USACE. This consultation would occur as part of the permitting process for the Proposed Project, which has not yet commenced.

*Response to Comment A8-22*

Please refer to **Master Response 15** regarding tribal consultation under Section 106 and **Master Response 16** regarding the potential for impacts to cultural resources and associated mitigation.

*Response to Comment A8-23*

In addition to requiring monitoring during any ground-disturbing activities that occur within 150 feet of Pruitt Creek, Cultural Mitigation Measure A also requires monitoring within 50 feet of areas identified by the Canine Field survey as having an “alert”. As discussed in Draft EIS Section 3.6.3.2, Historic Human Remains Detection dogs have unique and specialized training in locating historic and prehistoric human remains and are specifically trained to give an “alert” when they detect the scent of human remains. The alert is at the strongest source of the scent they have located. Each alert is given an interpretation number, 1-3, which is described in Draft EIS Table 3.6-2. The Institute for Canine Forensics identified five areas within the development area for the Proposed Project where there was interpretation number 3 alert; therefore, these five areas have the highest potential for human remains to be discovered within the development area, although no historic or prehistoric cultural materials, features, or human remains were encountered in the test trenches at these locations. Monitoring of ground-disturbance in the remaining areas of the Project Site by an archaeologist and tribal monitors is not warranted.

Cultural Resources Mitigation Measures B and C consist of specific mitigation measures for the inadvertent discovery of historic archaeological resources and human remains during construction-related earth-moving activities throughout the Project Site. Please refer to **Master Response 16** regarding the clarifications made to these mitigation measures in response to comments.

*Response to Comment A8-24*

As discussed in Draft EIS Section 3.6.2, indicators of paleontological resources within the Project Site are absent; however, resources have been identified within similar geologic formations in Sonoma County. Therefore, the potential for such resources to be uncovered is considered to be moderate and, consequently, monitoring of ground-disturbance on the Project Site by a paleontologist is not warranted. Cultural Resources Mitigation Measure B includes mitigation associated with the inadvertent discovery of prehistoric resources.

*Response to Comment A8-25*

Please refer to the Final EIS Appendix B-5 for a detailed response to this comment. As described in Draft EIS Section 3.7.3.2 and Draft EIS Appendix B-1, Alternative A would directly employ an estimated 1,571 workers in Sonoma County. Because of the presence of several other casinos in the market area, as well as other hospitality developments, the population already includes people who are seeking casino and/or hospitality-based employment. In addition, approximately 6,400 workers were unemployed in the County as of 2022 (Draft EIS Table 3.7-2). Alternative A would attract those workers who are currently unemployed and under-employed. Therefore, it is assumed that employment for Alternative A would be filled primarily by the local populace and would not generate significant housing demand. An exception could occur from the hiring of senior manager personnel who may not currently reside in the region and thus would move to the region. Global Market Advisors (GMA), the consultant that prepared Draft EIS Appendix B-1, estimated that the resulting in-migration for senior management personnel would total less than 10 families. Final EIS Appendix B-5 provides a conservative case analysis that models a scenario in which some in-migration of non-senior management workers would occur. This conservative case scenario is based on a survey conducted at another tribal gaming facility in Massachusetts. There were an estimated 17,292 vacant housing units in Sonoma County as of 2023. Even under the very conservative case scenario, GMA estimates that up to 26% of the Proposed Project's direct employees (409 workers) would relocate to Sonoma County (see Final EIS Appendix B-5). This would equate to approximately 2% of the available housing units in Sonoma County. For this reason, impacts to housing availability would be less than significant.

*Response to Comment A8-26*

The commenter is correct that Alternative A does have the potential for economic displacement as a result of increased property values and rental prices from the generation of employment opportunities. However, as described in **Response to Comment A8-25**, incremental new demand for housing would be small because the vast majority of Alternative A employees are anticipated to currently reside in Sonoma County. In addition, although Alternative A would stimulate a small and less than significant increase in housing demand, the resulting jobs would also cause economic benefits to people employed by Alternative A. These factors would tend to offset each other, although it is likely that the resulting jobs and economic activity would be a net benefit to medium and low-income residents. For this reason, impacts would be less than significant.

*Response to Comment A8-27*

Please refer to Draft EIS Section 3.10 for a detailed analysis of the project alternatives' impacts on public services, including law enforcement, fire protection, and emergency medical services. The analysis in this section identified the increased demand for these services and outlines proposed mitigation measures to address these impacts. Please refer to **Master Response 7** for additional information and clarification on the enforceability of the mitigation measures included in the EIS.

*Response to Comment A8-28*

The comment introduces the Town's comments on the Traffic Impact Study (TIS) (Draft EIS Appendix I). With respect to the peak weekend day selected for analysis in the Draft EIS, Saturdays typically have higher background traffic volumes than Sundays, and the studies referenced on p. 30 of the TIS (Wilton Rancheria Casino Project, Thunder Valley Casino, and Cache Creek Casino) found that casino/hotel trip generation was highest on Saturday. Therefore, the Saturday traffic analysis presented in the Draft EIS represents a more conservative (i.e., worst-case) analysis than if Sunday conditions had been analyzed.

*Response to Comment A8-29*

As discussed on p. 30 of the TIS (Draft EIS Appendix I), the trip generation estimates developed for the Proposed Project developed based on other Tribal casino and hotel facilities in California with similar proposed land uses. Therefore, the trip generation rates used in the Draft EIS are appropriate for the land uses proposed as part of the Project and are supported by empirical data. The commenter does not explain or provide supporting information as to why they believe the trip generation estimates may be 15 to 25% too low. Please refer to **Master Response 3** regarding non-substantive comments.

*Response to Comment A8-30*

The 2023 EA and TIS in the 2023 EA appendices inaccurately characterized the 2028 Opening Year intersection impact at US 101 & Shiloh Road Off-Ramp. The impact was identified as significant in the text while the results shown in Table 23 (Alternative A) and Table 25 (Alternative B) of the TIS indicated a less-than-significant impact. With respect to queuing at this intersection, the 2023 EA and TIS accurately characterized the 2028 Opening Year impact as less-than-significant. While the queue was found to exceed the available turn-pocket length for northbound traffic turning right onto Shiloh Road from US 101 during the p.m. peak hour, the TIS determined that the full length of the off-ramp would be adequate to accommodate the queue without affecting mainline traffic on US 101.

The TIS (Draft EIS Appendix I) accurately represents LOS and queuing impacts at this intersection (less than significant). However, Draft EIS Section 3.8 inaccurately represents the LOS impact as significant and, therefore, is revised in the Final EIS as follows (changes showing in underline/strikeout):

- p. 3-82, top of page:
  - 1) Shiloh Rd. & Old Redwood Hwy. (Weekday PM and Saturday midday peak hours)
  - 2) Shiloh Rd. & Hembree Ln. (Weekday PM and Saturday midday peak hours)
  - ~~3) Shiloh Rd. & US 101 NB Off ramp (Saturday midday peak hour)~~
  - 7) Shiloh Rd. & Casino Entrance 1 (Weekday PM and Saturday midday peak hours)
  - 8) Old Redwood Hwy. & Casino Entrance 1 (Weekday PM peak hour)

Mitigation measures are detailed in Section 4 and include conversion of split phasing and restriping at Intersection #1, optimizing splits and cycle length at Intersection #2, ~~restriping at Intersection #3~~, and signalization of Intersections #7 and #8. With mitigation, the impacted intersections would operate at an acceptable LOS. Thus, mitigation would reduce impacts to a less-than-significant level.

- p. 3-83, under the Study Intersections heading:
  - 1) Shiloh Rd. & Old Redwood Hwy. (Weekday PM and Saturday midday peak hours)
  - 2) Shiloh Rd. & Hembree Ln. (Weekday PM and Saturday midday peak hours)
  - ~~3) Shiloh Rd. & US 101 NB Off ramp (Saturday midday peak hour)~~
  - 7) Shiloh Rd. & Casino Entrance 1 (Weekday PM and Saturday midday peak hours)

Mitigation measures are detailed in Section 4 and include conversion of split phasing and restriping at Intersection #1, optimizing splits and cycle length at Intersection #2, ~~restriping at Intersection #3~~, and signalization of Intersection #7. With mitigation, the impacted intersections would operate at an acceptable LOS. Thus, mitigation would reduce impacts to a less-than-significant level.



*Response to Comment A8-31*

SimTraffic was used to model traffic behavior and queue lengths at the US 101 Northbound Off-Ramp intersection at Shiloh Road (study intersection #3). For the 95th percentile queue calculations, the approximate distance of 1,100 feet between the stop bar and gore point was used. Under Existing plus Project conditions, the 95th percentile projected queue length is 214 feet. Under Opening Year plus Project conditions, the 95th percentile projected queue length is 363 feet. The queue lengths identified above are not expected to extend onto the US 101 mainline and, therefore, would not impede mainline operations.

The 95th percentile queue under Cumulative 2040 plus Project conditions is approximately 411 feet. Under Cumulative 2040 conditions, the Draft EIS assumes that Shiloh Road would be expanded from a 2-lane cross section to a 4-lane cross section. With this configuration, the off-ramp traffic volume would be sufficiently accommodated and would not result in queuing that would affect US 101 mainline operations.

*Response to Comment A8-32*

Fair-share contribution towards the widening of Shiloh Road between Caletti Avenue and Gridley Drive from two to four lanes in each direction is included as mitigation to address the Proposed Project's contribution to Cumulative Year 2040 LOS and queuing impacts in the Shiloh Road corridor. Based on projected traffic volumes in Opening Year 2028, this level of mitigation was not deemed necessary to mitigate LOS and queuing impacts. As discussed in TIS Section 8 (Draft EIS Appendix I), intersection channelization modifications at the Shiloh Road & Old Redwood Highway intersection, in combination with traffic control modifications at Shiloh Road & Hembree Lane and Shiloh Road & Casino Entrance/Gridley Drive, are adequate to mitigate LOS and queuing impacts in the Shiloh Road corridor.

While the commenter believes that Shiloh Road should be widened by the Proposed Project prior to Opening Year 2028, they do not provide any critique of the accuracy or appropriateness of the methodology used to conduct the analysis nor do they suggest an alternative methodology be used. Please refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments**.

*Response to Comment A8-33*

Right-of-way acquisition does not make the mitigation infeasible. Landscaped areas and undeveloped areas are located adjacent to both sides of the north leg of the intersection which could be converted to right-of-way. As the impacts are cumulative in nature and located within the jurisdiction of the Town, the design and implementation of mitigation for the Shiloh Road/Hembree Lane intersection is not within the control of the Tribe or BIA. The Town may also decide to adopt other improvements in the future which would reduce the need for this improvement; however, this is not relied on for the EIS.

*Response to Comment A8-34*

Major road widening and intersection improvements included in the proposed Draft EIS mitigation measures, including widening of Shiloh Road, the Shiloh Road/US 101 interchange project, and improvements to the intersection of Shiloh Road and Old Redwood Highway are identified in the Town of Windsor Traffic Impact Fee (TIF) Program.<sup>18</sup> Please refer to TIF Program project numbers 2, 8 and 15, which

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<sup>18</sup> Town of Windsor, 2020. Town of Windsor Traffic Impact Fee Study. Available online at: <https://www.townofwindsor.ca.gov/DocumentCenter/View/5280/Traffic-Impact-Fee-Update-2020>. Accessed October 2024.

provides additional details on the planned improvements. As described in the Town’s TIF, “[t]he list of projects for the TIF program was based on the existing TIF, the General Plan, and the Capital Improvement Program.” Additionally, the Town’s current Capital Improvement Program (CIP)<sup>19</sup> includes projects at Shiloh Road & Caletti Avenue (study intersection #5), at Shiloh Road & Old Redwood Highway (study intersection #1), and widening of the Shiloh Road US 101 overpass from 2 to 4 lanes. As stated in the Town’s CIP, “[o]n June 13, 2023, the Planning Commission reviewed the CIP and made a finding that the proposed fiscal years 2023-2028 CIP is consistent with the Windsor 2040 General Plan in accordance with Government Code Section 65401 [and]...on June 21, 2023, the Town Council adopted of the fiscal years 2023-2028 CIP.” All of these improvements documented by the Town in both the TIF and CIP were considered in the development of the Proposed Project mitigation measures. It is a reasonable assumption that the Town vetted the feasibility of and considered the availability of right-of-way for projects that the Town is already collecting fees for as part of the TIF Program or programming funding for as part of the CIP and that the Planning Commission determined these to be consistent with the cumulative mitigation needs identified in the Town’s General Plan.

### *Response to Comment A8-35*

Fair share contributions are appropriate for impacts attributable to both the Proposed Project and cumulative growth, particularly when widening of Shiloh Road is already foreseeable in the Town’s TIF program. Please refer to **Response to Comment A8-34** regarding the feasibility of TIF and CIP projects. The claims that long-term widening or improvements needed with the Proposed Project are more extensive than those envisioned by the Town are unsubstantiated. It is unclear how Table 33 of the TIS suggests that the Proposed Project would not contribute to 2040 improvements needed at the Old Redwood Highway/Shiloh Road Intersection, as the table identifies a fair share percentage and the TIS identifies the need for additional cumulative mitigation at this intersection.

### *Response to Comment A8-36*

Neither the Town nor the County provide guidance as to what technical resource(s) ought to be used to determine roadway capacities. As discussed in TIS Section 15.1 (Draft EIS Appendix I), roadway capacities for the roadway segment analysis were calculated based on the formulae provided in Table 15 (Signalized Highway Generalized Service Volume Table) in the Simplified Highway Capacity Calculation Method for the Highway Performance Monitoring System.<sup>20</sup> The capacity calculation is based on the following inputs: green time, cycle length and number of lanes. NEPA environmental review typically relies upon federal guidance, which is why the FHWA guidance identified above was used to calculate roadway capacities in the roadway segment analysis conducted for the Draft EIS.

As stated in TIS Section 3.0 (Draft EIS Appendix I), average daily traffic (ADT) counts were collected for the study segments on July 28, 2022. The County’s Guidelines for Traffic Impact Studies<sup>21</sup> states that, “Depending on the proposed location and use, weekday daily, AM and PM Peak hour, and/or weekend

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<sup>19</sup> Town of Windsor, 2023. Capital Improvement Program FY 2023-2028: Adopted Budget. Available online at: <https://www.townofwindsor.ca.gov/DocumentCenter/View/28313/Capital-Improvement-Projects-FY-2023-2028>. Accessed October 2024.

<sup>20</sup> [https://www.fhwa.dot.gov/policyinformation/pubs/pl18003/hpms\\_cap.pdf](https://www.fhwa.dot.gov/policyinformation/pubs/pl18003/hpms_cap.pdf).

<sup>21</sup>

[https://sonomacounty.ca.gov/Main%20County%20Site/Development%20Services/TPW/Documents/Roads/Service%20Road%20Data%20and%20Information/Subservices/Construction%20Standards/\\_Documents/Traffic%20Study%20Guidelines%202016-05-24.pdf](https://sonomacounty.ca.gov/Main%20County%20Site/Development%20Services/TPW/Documents/Roads/Service%20Road%20Data%20and%20Information/Subservices/Construction%20Standards/_Documents/Traffic%20Study%20Guidelines%202016-05-24.pdf)

daily and peak hour counts may be required”. Based on the weekday and Saturday intersection turning movement counts collected for the Proposed Project, and the Project Site’s location close to US 101 (i.e., a major weekday commuter corridor), the TIS concluded that weekday volumes are higher when compared with weekend volumes. Therefore, the ADT counts used to evaluate study roadway segments are representative of existing conditions.

***Response to Comment A8-37***

Please refer to **Response to Comment A8-36**. As stated in TIS Section 15.1 (Draft EIS Appendix I), proposed mitigation measures along Shiloh Road would involve changes to signal timing at study intersections, thereby extending green time for through traffic. While the commenter disagrees with the assumed percentage increase in capacity along Shiloh Road with the implementation of mitigation, they do not suggest an alternative methodology be used to calculate this increase in roadway capacity. Please also refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments**.

***Response to Comment A8-38***

Please refer to **Response to Comment A8-32**.

***Response to Comment A8-39***

Existing and planned bicycle, pedestrian, and transit facilities are discussed in TIS Section 15.2 (Draft EIS Appendix I). The TIS generally found that existing facilities are lacking, but that the Town currently has plans for improving multi-modal access on Shiloh Road and Old Redwood Highway. Due to the regional nature of the land uses proposed by the Project, and the semi-rural character of the surrounding area, the Proposed Project is not expected to contribute a substantial number of pedestrians, bicyclists, or transit riders to the area. While no impact would occur to these facilities, the Draft EIS Table 2.1-3 (Protective Measures and Best Management Practices) included the commitment that the Tribe would construct pedestrian facilities (e.g., sidewalks or trails) on the Project Site to facilitate pedestrian traffic between the casino resort facility and the intersection of Shiloh Road and Old Redwood Highway.

To clarify the Proposed Project’s contribution of bicycles, pedestrians, and transit riders, to study area roadways and intersections, the following modification has been made to Final EIS Section 3.8.2.3 Alternative A – Proposed Project under the Bicycle, Pedestrian, and Transit Networks heading:

Due to the regional nature of the land uses proposed by the Project, and the semi-rural character of the surrounding area, the Proposed Project is not expected to contribute a substantial number of pedestrians, bicyclists, or transit riders to the area. Any increase in transit ridership that may be experienced as a result of Alternative A. ~~Potential impacts associated with transit capacity~~ would be offset by a proportional increase in fare revenue. Alternative A would not adversely impact existing local bicycle and pedestrian facilities, which are generally lacking adjacent to the Project Site. BMPs identified in Table 2.1-3 include the development of on-site pedestrian facilities connecting to the two proposed signalized entrances to the Project Site. Therefore, impacts to transit, bicycle, and pedestrian facilities would be less than significant.

***Response to Comment A8-40***

While a roundabout at this location may be under consideration by the Town, it was not a defined project that was identified in any approved short- or long-term planning document at the time the technical analysis was conducted for the Proposed Project (2022), nor is it included in the City’s Traffic Impact Fee

Program.<sup>22</sup> Furthermore, the Town's current CIP for FY 2023-2028,<sup>23</sup> which was adopted in June 2023, does not specify a roundabout at this location; instead, it states that the intersection could be improved with either a roundabout option or an improved signalized option. For these reasons, a roundabout was not considered as part of the baseline condition in the Opening Year or Future Year traffic analysis for the Proposed Project, nor does it need to be due to the speculative nature of the improvements envisioned in the CIP.

As discussed in Draft EIS Section 4, the Proposed Project would be responsible for mitigating the project's impact at the Shiloh Road/Old Redwood Highway intersection by constructing several physical improvements. With mitigation, the Proposed Project's impact would be less than significant.

*Response to Comment A8-41*

Please refer to **Response to Comment A8-40**.

*Response to Comment A8-42*

Please refer to **Response to Comment A8-40**.

*Response to Comment A8-43*

Please refer to **Response to Comment A8-40**.

*Response to Comment A8-44*

The following study intersections that included US 101 were evaluated in Draft EIS Appendix I, the results of which are summarized in Draft EIS Sections 3.8.2 and 3.14.7:

- 3) Shiloh Road & US 101 Northbound Off-ramp (Signal)
- 4) Shiloh Road & US 101 Southbound Off-ramp (Signal)
- 10) Old Redwood Highway & US 101 Northbound Off-ramp/Lakewood Drive (Signal)
- 11) Old Redwood Highway & US 101 Northbound On-ramp (Free)
- 12) Old Redwood Highway & US 101 Southbound Ramps (Signal)

Of these, potential cumulative impacts were identified at the following intersections (no impacts to US 101 on/off-ramps were identified in the opening year):

- 3) Shiloh Rd. & US 101 NB Off-ramp (Weekday AM and PM, and Saturday midday peak hours)
- 12) Old Redwood Hwy. & US 101 SB Ramps (Weekday AM and Saturday midday peak hours)

Implementation of mitigation measures in Draft EIS Section 4 would reduce cumulative impacts to a less-than-significant level. Caltrans was notified of and participated in the NEPA process and its comment letter on the Draft EIS (Comment Letter A3) did not raise any concerns regarding the analysis of the Shiloh Road/US 101 interchange or Old Redwood Highway/US 101 interchange or associated mitigation.

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<sup>22</sup> Town of Windsor, 2020. Town of Windsor Traffic Impact Fee Study. Available online at: <https://www.townofwindsor.ca.gov/DocumentCenter/View/5280/Traffic-Impact-Fee-Update-2020>. Accessed October 2024.

<sup>23</sup> Town of Windsor, 2023.

As described in the mitigation in Draft EIS Section 4, the Tribe shall make in-lieu fair share contributions to the cumulative 2040 traffic mitigation measures prior to the need for the improvements. The actual cost of the improvements shall be calculated by a California-licensed transportation engineer according to industry accepted practices, and in consultation with the governmental agency with jurisdiction over the roadway to be improved (i.e., Caltrans, as appropriate). These estimated fair share contributions could be adjusted based on an agreement with the governmental entity with jurisdiction over the road to be improved (i.e., Caltrans, as appropriate). Funds for opening year 2028 and cumulative 2040 mitigation measures shall be placed in an escrow account, or other account as agreed to by the Tribe and relevant government agency (i.e. Caltrans, as appropriate), for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design, obtain approvals/permits for, and construct the recommended road improvement.

*Response to Comment A8-45*

Please refer to Draft EIS Section 3.10 for a comprehensive analysis of the project alternatives' impacts on law enforcement, fire protection, emergency medical services, and utilities in the Town of Windsor and surrounding areas. Please see **Response to Comment A8-46** for information regarding the heat island effect of the project alternatives.

*Response to Comment A8-46*

As identified in Draft EIS Section 2.1.2, the casino-resort and parking structures would include living rooftops landscaped with fire-resistant plants. This would reduce the exposed impervious surfaces and associated heat island effect. Extensive areas of vineyard and riparian vegetation would be retained on the Project Site. This would also assist in reducing the heat island effect of the proposed development. As addressed in **Response to Comment A7-8**, the Tribe will consider incorporating photovoltaic canopies in the surface parking area, which would assist in reducing the heat island effect.

*Response to Comment A8-47*

Please refer to **Master Response 13** for details on the heightened risk of accidents and drunk driving in the vicinity of the Project Site.

*Response to Comment A8-48*

Highway 101 is a major artery used to access key tourist destinations throughout Sonoma County. While the project alternatives may contribute to some traffic incidents on Highway 101 and regional roads, they would not be inconsistent with similarly sized commercial developments in the area. For concerns related to DUI incidents and traffic safety, including measures to mitigate the risk of accidents and DUI incidents, please refer to **Master Response 13**. The potential impacts of the project alternatives on traffic were evaluated in Draft EIS Section 3.8, including increased traffic volumes on Highway 101 and surrounding roads. The analysis identified potential traffic safety concerns and outlined mitigation measures that would reduce impacts on traffic flow and safety.

As described in Draft EIS Section 3.7.3.2, operation of Alternative A is expected to generate approximately \$10.7 million in State taxes annually. Therefore, potential effects to the California Highway Patrol (CHP) would be offset by increased State tax revenues resulting from operation of the project alternatives. Additionally, the existing California Mutual Aid System would help CHP coordinate with the Sonoma County Sheriff's Office to respond effectively to traffic violations, drunk driving incidents, and other emergencies.

*Response to Comment A8-49*

Please refer to **Master Response 14** for information regarding specific crimes, such as mail theft, in the vicinity of the Project Site.

*Response to Comment A8-50*

Draft EIS Section 3.10 thoroughly evaluates the potential impacts of the project alternatives on public services, including fire protection and EMS. The Draft EIS acknowledges that the project alternatives may result in increased demands on public services, such as fire and EMS services, due to the higher number of visitors and potential emergencies. To address these impacts, the mitigation measures include the establishment of public service agreements, such as with the Sonoma County Fire District (SCFD) and other relevant agencies. The agreement negotiated with the SCFD would include the resources necessary to effectively manage the increase in service calls without placing an undue financial burden on local fire and EMS. This agreement would thus mitigate the risk of over-reliance on neighboring communities for emergency services. Additionally, the agreement would include provisions for yearly review and adjustments, ensuring that the SCFD's capacity to meet the emergency service needs of the project would be regularly assessed and managed. This would allow neighboring fire districts to respond effectively to emergencies within their own jurisdictions without being unduly strained by mutual aid requests. If the Tribe does not enter into a service agreement with a fire district/department, the Tribe would establish, equip, and staff a public safety building on the Project Site that would include a fire station, within the "treatment area" designated in the eastern portion of the Project Site. The establishment of its own fire station would also allow neighboring fire districts to respond effectively to emergencies within their own jurisdictions.

Additionally, Draft EIS Section 3.7.3 discussed the economic benefits the project alternatives are expected to generate, including increased tax revenue for the County and State. This revenue could contribute to overall economic growth and be used to support public services, such as fire protection and EMS.

Given these mitigation measures, the Draft EIS concluded that the impact to fire and emergency services would be less than significant, and therefore no additional mitigation measures are required.

*Response to Comment A8-51*

Draft EIS Section 3.10 evaluated the potential impacts of Alternative A on Esposti Park and concluded that the project alternatives would not result in a significant increase in visitation to the park. Alternative A, which has the largest anticipated impact, includes a casino-resort facility with on-site amenities, such as recreational spaces, restaurants, and entertainment options, designed to meet the needs of patrons and employees. As a visitor-serving project without a residential component, the majority of guests would be short-term visitors whose activities would primarily remain on-site. Unlike permanent residents, short-term visitors are less likely to use nearby public parks like Esposti Park, which reduces the potential strain on park resources such as parking, restrooms, and waste management services.

Furthermore, Draft EIS Section 3.7.3 highlighted the economic benefits the project alternatives are expected to generate for the County, including increased tax revenue and indirect and induced economic output in the regional economy. These economic benefits could indirectly support public services, such as parks, providing additional resources for the County to maintain and enhance public spaces like Esposti Park.

Given these factors, the analysis concludes that the project alternatives would not significantly increase visitation or strain park resources. Therefore, no additional mitigation measures or contributions are deemed necessary to maintain Esposti Park's capacity to serve the community.

*Response to Comment A8-52*

Comment noted. Please refer to **Master Response 13** for details on the heightened risk of accidents and drunk driving in the vicinity of the Project Site. Please refer to **Master Response 14** for details on increased crime in the vicinity of the Project Site. Sonoma County indicated in its response to the Notice of Gaming Land Acquisition Application that 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. Final EIS Section 3.10.3.2 and Public Services and Utilities Mitigation Measure A in Final EIS Section 4 has been updated with this information.

*Response to Comment A8-53*

Draft EIS Section 3.10 thoroughly evaluated the potential impacts of the project alternatives on fire protection and EMS and included mitigation to address any increased demand. As required by the mitigation, the Tribe would make good faith efforts to enter into a service agreement with the SCFD to ensure the necessary resources would be available to support the project alternatives. This agreement would ensure that SCFD would be equipped to handle the projected increase in service calls, helping to maintain timely and effective emergency responses. The exact commitments for the service agreement would be determined through the negotiation process between the Tribe and SCFD. Attempting to predict these specific commitments at this stage would be premature, as they would be tailored based on the evolving needs of the selected alternative and the input from the fire district during negotiations. The agreement shall include a provision requiring the Tribe to meet with SCFD at least once a year, if requested, to discuss ways to improve the provision of fire and emergency medical services for the project. Therefore, the service agreement would be designed to ensure that the SCFD is adequately resourced to meet the selected alternative's emergency service needs.

Given this mitigation measure and information, the project alternatives would not result in a significant impact on fire protection and EMS, and specific commitments are not required to be included in the Final EIS.

*Response to Comment A8-54*

In response to concerns about construction noise and alignment with the Town of Windsor's municipal code, Final EIS Table 2.1-3 has been updated to prohibit construction activities involving noise generating equipment on Sundays. This revision ensures that noise impacts on nearby residential areas will be minimized and consistent with the Town's municipal code.

*Response to Comment A8-55*

As detailed in Draft EIS Section 3.11 Noise, operational noise from increased traffic and casino operations was thoroughly assessed. Long-term noise impacts were further addressed in the cumulative analysis in Draft EIS Section 3.14.10, which concluded that, with mitigation, noise impacts would be less than significant. Consequently, based on these conclusions, restrictions on nighttime operations were not deemed necessary because the projected noise levels would remain within acceptable thresholds for nighttime hours. For additional information on noise impacts and the long-term noise impacts, please refer to **Master Response 12** and Draft EIS Section 3.14.10.

*Response to Comment A8-56*

Draft EIS Section 3.11 evaluated the noise impacts of the proposed casino and resort, including general operations and anticipated traffic. While event-specific noise was not analyzed separately, all events hosted at the casino would be held indoors, which would significantly reduce the amount of noise perceptible to the surrounding area. Large events with amplified music, such as concerts, are routinely held in various venues—including auditoriums, performing arts centers, arenas, casinos, and worship spaces—without causing adverse noise impacts to nearby sensitive land uses. These venues effectively contain sound within the building, typically making it significantly less inaudible outside. Similarly, the building envelope of the event center at the Project Site would be designed to prevent sound from escaping into the neighboring community. The building would comply with the Tribe’s Building and Safety Code of 2023, which are consistent with the CBC and California Public Safety Code. This would include designing the building to be consistent with the noise reductions measures in California Building Code, Title 24, Part 2, which this clarification has been added to Final EIS Section 2.1.9. These measures, along with the venue's sound containment design, would ensure no adverse noise impacts on nearby sensitive receptors, and no restrictions on event timing would be required.

For more detailed information on noise mitigation measures, please refer to **Master Response 12**.

*Response to Comment A8-57*

Please refer to **Master Response 12** for detailed information on the effectiveness of noise-reducing pavement, including how it addresses various sources of vehicle noise such as tire noise, and the limitations for other sources like engine noise and braking.

The long-term maintenance of roadways, including repaving activities, falls under the exclusive jurisdiction of local agencies, and funding for such activities typically comes from transportation and gas taxes. The Tribe does not have the authority to dictate when or how road repaving or maintenance occurs. However, it is anticipated that when repaving does take place, local agencies would follow best practices and use the most effective technology available at the time for roadway surfaces. At a minimum, it is expected that repaving would restore the pavement to the current standards, especially for heavily used roadways, such as Shiloh Road. Noise Mitigation Measure A has been updated in Final EIS Section 4 to include fair share contributions for maintenance along portions of Shiloh Road and Old Redwood Highway, which would carry the majority of Proposed Project traffic, which would further reduce impacts.

*Response to Comment A8-58*

Please refer to **Master Response 12** for details on the findings and mitigation strategies for noise increases, including consistency with local regulations and guidelines. As discussed therein, the Draft EIS concluded that non-traffic operational noise from the project alternatives would not exceed the exterior noise standards set by the Town of Windsor or Sonoma County. According to the analysis in Appendix L, non-traffic noise sources are expected to remain within the thresholds set by Policy PHS-8.1 in the Windsor General Plan, which limits noise increases to no more than 5 dBA over existing ambient levels. Traffic noise only under the cumulative scenario on Shiloh Road, between Old Redwood Highway and Hwy 101 Gridley Drive, is projected to increase by 5.4 dBA for Alternative A (the loudest alternative), slightly exceeding the policy’s threshold. To mitigate this, noise-reducing pavement, which is expected to reduce traffic noise by 3-4 dBA, would be used to bring the overall noise levels in this area back within acceptable limits. Should the noise-reduction pavement not be in place before the anticipated impact year of 2040, then the double-panel windows or a similar effective measure would be offered to those that requested them. To address the commenter’s concern about residents being unaware of the availability of noise-



reducing measures for their homes, Noise Mitigation Measures B and D in Final EIS Section 4 have been revised to ensure that residents on roadway segments anticipated to experience significant impacts in the 2040 cumulative traffic conditions are notified of the availability of these noise-reducing options. With this modification to mitigation in place, the noise impacts would remain less than significant.

*Response to Comment A8-59*

Please see Draft EIS Section 3.14 for a detailed assessment of cumulative noise impacts, including construction noise, operational noise, and traffic noise. The analysis concluded that, with the proposed mitigation measures in place, the cumulative noise impacts would be expected to be less than significant. Please refer to **Master Response 12** for further details on noise mitigation and specific noise impacts.

*Response to Comment A8-60*

Please refer to **Master Response 10** regarding wildfire evacuation, as well as the specific responses below related to hazardous materials and evacuation impacts related to wildfire hazards.

*Response to Comment A8-61*

Please refer to **Master Response 10** regarding the wildfire evacuation analysis and potential for the occurrence of a No Notice Scenario.

*Response to Comment A8-62*

The ETTA (Draft EIS Appendix N-2) addressed the potential bottlenecks on US 101 and Old Redwood Highway, as well as other locations. In addition, one of the proposed wildfire hazards mitigation measures identified in Draft EIS Section 4 is to install adaptive signal control (ASC) systems with remote access and override at key intersections along potential evacuation routes, which allows adjustments to intersection signal timings and can significantly extend maximum green times (e.g., queue flush phases for congested movements). This would provide additional capacity for key evacuation traffic routes. In addition, as part of the cumulative traffic mitigation in Draft EIS Section 4 Shiloh Road from two to four lanes, which would also increase roadway capacity for evacuation for evacuation purposes.

*Response to Comment A8-63*

Please refer to **Response to Comment A8-62**. Please also refer to **Master Response 10** regarding the proposed mitigation measures.

*Response to Comment A8-64*

Please refer to **Response to Comment A8-67** regarding fire resiliency features of the project alternatives.

In regard to contamination of on-site water ways from off-site wildfires, the specific effects of post-wildfire pollutants, such as ash and debris concentrations, on local waterways are not quantifiable due to the unpredictability of wildfires. However, as discussed in Draft EIS Section 2.1.5 and Appendix D-3 Grading and Hydrology Study, the proposed on-site stormwater system would include bioswales designed to treat pollutants from stormwater runoff prior to offsite discharge. This would include general stormwater runoff as well as potential runoff from on-site fire suppression activities. The Project Site has been designed to capture all stormwater flows and route drainage to these facilities to mitigate impacts to receiving waters.

In the event that post-wildfire contaminated soil is encountered a professional hazardous materials specialist or other qualified individual would be retained to assess the extent of contamination. If contamination is determined to be hazardous, the Tribe would consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan, if necessary. Contaminated soils that are determined to be hazardous would be disposed of in accordance with the Resource Conservation and Recovery Act (RCRA). RCRA established a program, which is administered by the USEPA, to regulate the generation, transport, treatment, storage, and disposal of hazardous waste. Under RCRA regulations, hazardous wastes must be tracked from the time of generation to the point of disposal. The RCRA program also establishes standards for hazardous waste treatment, storage, and disposal units, which are intended to have hazardous wastes managed in a manner that minimizes present and future threats to the environment and human health.

#### *Response to Comment A8-65*

The management and handling of construction and operational hazardous materials is described in Draft EIS Table 2.1-3: Protective Measures and Best Management Practices and discussed in Section 3.12.3.2. Federal laws also govern the transportation, use, and storage of hazardous materials and would be applicable to the Project Site. The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) regulations, require documentation of potential risks associated with the handling, use, and storage of flammable and toxic substances under the Hazard Communication Standard, codified in 29 CFR Part 1910. The U.S. Department of Transportation (DOT) Hazardous Materials Regulations (Code of Federal Regulations 49 CFR Parts 100–185) cover all aspects of hazardous materials packaging, handling, and transportation. This citation has been added to the expanded regulatory setting in Final EIS Appendix E.

As shown in Draft EIS Table 2.1-3 and discussed in Section 3.12.3.2, the Tribe would apply for coverage under the NPDES General Construction Permit from the USEPA to mitigate site runoff during the construction phase in compliance with the CWA. A SWPPP would be prepared, implemented, and maintained throughout the construction phase of the development, consistent with the NPDES General Construction Permit requirements. Other Protective Measures and Best Management Practices to reduce construction related hazards include, but are not limited to, the installation of silt fences, fiber rolls, vegetated swales, and sediment traps. Other hazards, such as solvents and petroleum products would be stored, handled, used, and disposed of properly in accordance with provisions of the CWA (33 USC §1251 to 1387) and would be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater. Construction personnel would be required to implement BMPs designed to reduce the potential for incidents/spills involving hazardous materials while filling and servicing construction equipment and vehicles. In the event that contaminated soil and/or groundwater is encountered during construction-related earthmoving activities, all work would be halted until a professional hazardous materials specialist or other qualified individual assesses the extent of contamination. If contamination is determined to be hazardous, the Tribe would consult with the USEPA to determine the appropriate course of action, including development of a Sampling and Remediation Plan, if necessary. Contaminated soils that are determined to be hazardous would be disposed of in accordance with federal regulations. These Protective Measures and Best Management Practices would adequately mitigate construction related hazardous materials impacts to soil, groundwater, and surface water bodies.

*Response to Comment A8-66*

The management and handling of hazardous materials during operations is discussed in Draft EIS Section 3.12.3.2. Please refer to **Response to Comment A8-65** for the federal laws that govern the transportation, use, and storage of hazardous materials. Any required inspections, emergency response protocols, and management of accidental releases would also be handled according to applicable laws and regulations. The proposed 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 transported and stored within a secure storage facility consistent with the regulations identified in Draft EIS Section 3.12.3.2. The maintenance of on-site landscaping, the casino and hotel, and other project facilities would require the transportation, storage, and use of common pesticides, fertilizers, motor oil, hydraulic fluid, solvents, cleaners, lubricants, paint, and paint thinner. However, as discussed above, these products would be handled according to applicable laws and regulations identified in Draft EIS Section 3.12.3.2.

*Response to Comment A8-67*

As discussed in Draft EIS Section 2.1.9, construction of the Proposed Project 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 standards. The elements of the Tribe's Building and Safety Code that are consistent with the CBC wildfire measures include CBC Chapter 7A regarding building materials, systems, and/or assemblies used in the exterior design and construction of new buildings located within a Wildland-Urban Interface Fire Area; as well as CBC Section 703A.7 that incorporates State Fire Marshal standards for exterior wildfire exposure protection. As discussed in Draft EIS Section 2.1, the Proposed Project would also incorporate living rooftops landscaped with fire-resistant plants. The portions of the Project Site outside of the riparian area and building footprint would also be landscaped with fire resistant plants, with existing vineyard areas maintained around the perimeter of the site. A five-foot non-combustible zone would be maintained around each structure that would remain void of vegetation and landscaping.

Draft EIS Table 2.1-3 also includes Protective Measures and Best Management Practices to reduce wildfire risk during construction including requirements for equipment to contain spark arrestors, as provided by the manufacturer. Staging areas, welding areas, or areas slated for development using spark-producing equipment would be cleared of dried vegetation or other materials that could serve as fire fuel. No smoking, open flames, or welding would be allowed in refueling or service areas. Service trucks would be provided with fire extinguishers. Diesel fuel storage tanks for on-site emergency generators would comply with the National Fire Protection Association standards for aboveground storage tanks and have secondary containments systems. Materials used for the emergency generators would be handled, stored, and disposed of according to federal and manufacturer's guidelines.

BMPs to be implemented during operation to address fire hazards include annual maintenance to ensure fire resistive materials and construction details are maintained at their highest level to reduce ember impacts. Fire protection devices including, but not limited to, fire sprinkler systems, alarm systems, commercial kitchens, and fire hydrants would be maintained, inspected, and tested per National Fire Protection Association standards. The exterior landscape of ignition resistant plants and existing vineyard areas would be maintained, including a five-foot non-combustible zone around each structure that would remain void of vegetation and landscaping.

Wildfire Hazard Mitigation measures related to vegetation management are described in Draft EIS Section 4 and include the preparation of a riparian corridor management plan to address weed abatement and fuel load reduction outside the creek channel, removal of dead or dying vegetation and trees, pruning, removal of live flammable groundcover, firebreaks, and other measures to address wildfire hazards.

Thus, the project alternatives through either design, BMPs, or mitigation have incorporated a number of fire resiliency measures intended to reduce the potential for fire to spread on the Project Site as recommended in Draft EIS Appendix N-1.

#### *Response to Comment A8-68*

Regarding the level of design detail for on-site infrastructure, please refer to **Master Response 2**. The level of detail of the Project description and associated site planning included within the EIS is sufficient to determine the extent of environmental impacts as required by NEPA. For example, water supply for fire flow was included in water supply assumptions for the Proposed Project (see Draft EIS Section 2.1.3 and Appendix D-1 Water and Wastewater Feasibility Study). The Proposed Project would be developed consistent with applicable requirements of the Tribe's Building and Safety Code of 2023, which are consistent with the California Building Code, including the California Fire Code.

Regarding a mechanism for funding, mitigation in Draft EIS Section 4 included that the Tribe shall make a good faith effort to enter into a service agreement with the SCFD and that the agreement shall address any required conditions and standards for emergency access and fire protection systems. It is anticipated that the service agreement would provide the mechanism for any funding. As evidence of this good faith effort, the Tribe and SCFD have signed a Letter of Intent (included as Draft EIS Appendix O) that specifies the intention of the Tribe and SCFD to enter into a Memorandum of Understanding for the provision of fire response and emergency medical services to the Project Site.

#### *Response to Comment A8-69*

Prior to construction, a project-specific geotechnical report would be prepared with standards no less stringent than the California Building Code as stated within Draft EIS Table 2.1-3. The building components of the Proposed Project would be intentionally situated outside of the floodplain, and earthwork would be balanced to prevent any floodplain impacts. As addressed in Draft EIS Section 2.1.8, emergency on-site generators would be installed to provide power to the project in the case of planned or unplanned power loss. Please refer to **Master Response 10** for further details on wildfire concerns.

#### *Response to Comment A8-70*

Wildfire Hazard Mitigation Measures are provided in Draft EIS Section 4 and include the implementation of the Evacuation Mitigation Plan, a draft of which is provided in Appendix N-4. Furthermore, the proposed mitigation measure states that prior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan. While this plan would be developed specifically for wildfires, it could be applicable to other natural disasters, such as earthquakes. Additionally, the Tribe would coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, evacuation times for the Project Site and vicinity, and this may include identification of emergency shelter locations. These measures would improve the ability of the County to rapidly identify and respond to wildfire events or other emergencies.

*Response to Comment A8-71*

Please refer to **Response to Comment A7-3** for a discussion of project related 100-year and 500-year flood risk. Please refer to **Response to Comment A8-8** for a discussion of updated FEMA Flood Maps.

*Response to Comment A8-72*

Draft EIS Section 2.1.8 described the inclusion of emergency generators to supply backup power to the project alternatives during power outages, including Public Safety Power Shutoff (PSPS) events. These generators would ensure that critical systems, such as emergency lighting, fire suppression, and wastewater management, would remain operational during extended power loss, safeguarding both the Project Site and the surrounding community. Since the project alternatives already include an emergency generator system designed to handle extended power outages, there is no need to explore additional measures as requested by the commenter. The existing system adequately addressed the risks posed by potential power disruptions.

*Response to Comment A8-73*

Please refer to **Master Response 9: Visual Resources**. The scenic corridor designations assigned by the Town to Highway 101 and Faught Road are a local land use designation. The Draft EIS address visual impacts consistent with NEPA and BIA requirements; while local policies and designation have been considered, they do not form the basis for significance thresholds under NEPA. The Final EIS Section 3.13 Visual Resources has been updated to acknowledge the Town's designated scenic corridors along Highway 101 and Faught Road, which are located approximately 0.5 miles and 0.3 miles from the Project Site, respectively. The visual impact analysis in the Draft EIS included before and after visual representations of the Project Site viewshed as experienced from Highway 101 and Faught Road. As shown in the Draft Figures 3.13-5 and 3.13-6, the project features under Alternative A are not visually dominant from these roadways, and the overall viewshed and visual character of the surroundings experienced in these locations would not be substantially altered as a result of the project alternatives. Therefore, mitigation is not required.

BMPs outlined in Draft EIS Section 2.1.10 include measures such as a 16-foot maximum height for light poles and specific lighting regulations to minimize visual impacts on scenic resources and night-time lighting effects, consistent with the comment's suggestion.

*Response to Comment A8-74*

Please refer to **Master Response 8** regarding land use conflicts. As explained therein, local County and Town land use designations, including the Shiloh Road Vision Plan, would not apply to the Project Site if acquired into federal trust. As stated in Draft EIS Section 3.9.1, while the Project Site is not within the boundaries of the Shiloh Road Vision Plan, it is adjacent to it. The Vision Plan encompasses properties to the north and south of Shiloh Road that are west of Old Redwood Highway, excluding the Project Site. Proposed land use types that are nearest to the Project Site include high-density mixed-use development. The Proposed Project would not inhibit the implementation of the Vision Plan and would align with several key components. Consistent with the Vision Plan's emphasis on walking and bicycling, BMPs identified in Draft EIS Table 2.1-3 include the construction of pedestrian facilities on the Project Site, supporting the "pedestrian-oriented corridor" referenced by the comment. Further, the project alternatives would not significantly affect existing local bicycle and pedestrian facilities. Additionally, Alternative A incorporates elements consistent with the Shiloh Road Village Design Guidelines that reflect the agrarian and winery style envisioned for the community, including the green roof, decorative rock wall, vineyard buffers, and

the use of natural materials and colors for the buildings. These elements are further detailed in Draft EIS Sections 2 and 3.13. Please refer to **Response to Comment A1-3** regarding the conversion of agricultural land.

#### *Response to Comment A8-75*

Please refer to **Master Response 8** regarding inconsistency with the Community Separator designation.

#### *Response to Comment A8-76*

The commenter is correct that indirect and induced output would occur in both the region and the State. There would likely be a greater per capita effect in Sonoma County than in the remainder of California, because the project is located in Sonoma County. However, effects would occur in the greater State area as well. Final EIS Section 3.15.3 has been edited to clarify these effects. These changes notwithstanding, the indirect and induced effects would be diffused throughout a large geography, however one chooses to define this area. Such economic activity would likely stimulate additional growth. Property owners and businesses that seek to create such additional growth are individual private parties, and thus it is not possible to forecast exactly how such growth would manifest itself in individual projects. In addition, the potential for any indirect or induced growth within the Town would be subject to regulation by the Town and the compliance with applicable Town planning documents and codes. For this reason, the Draft EIS correctly concludes that significant regional commercial growth inducing impacts would not be anticipated to occur.

#### *Response to Comment A8-77*

As described in Draft EIS Section 3.14.2, the GRIA (Draft EIS Appendix D-4) completed a forecast scenario that added pumping two new municipal wells described in the Town of Windsor 2020 Urban Water Management Plan, the Esposti Park well and the North Windsor well. Consistent with the operating strategy for these proposed municipal wells presented in the UWMP, they were simulated to be operated only during dry years. The number and timing of dry years during which pumping occurred followed a climate change simulation scenario included in the USGS model. The results of the modeling are detailed in Draft EIS Appendix D-4 and are summarized in Draft EIS Section 3.14.2 and include an analysis of cumulative effects to domestic wells in shallow and intermediate zones, cumulative effects to domestic, municipal, and irrigation wells in deep zones, and cumulative effects to groundwater dependent ecosystems. Based on the GRIA, it was determined that Alternative A would contribute to potentially cumulatively significant impacts related to interference drawdown in shallow wells and degradation of GDEs during dry years in combination with potential pumping of the Esposti Park well and the North Windsor well by the Town of Windsor during multiple dry years. Mitigation measures are recommended in Draft EIS Section 4. Therefore, the Draft EIS did include an analysis of multi-year drought conditions and future cumulative buildout within the UWMP. Please refer to **Responses to Comments A5-7** and **A5-8** for a discussion on the assessment of potential impacts to interconnected surface waters.

#### *Response to Comment A8-78*

Please refer to **Response to Comment A8-34** regarding the consistency of mitigation measures for cumulative traffic impacts with improvements projects identified in the Town of Windsor TIF and CIP. Because the mitigation measures for cumulative traffic impacts are included within the Town of Windsor TIF and CIP, and the town is currently collecting fees as part of the TIF program and programming funding as part of the CIP, these improvements are considered reasonably foreseeable developments.

*Response to Comment A8-79*

As described in Draft EIS Section 3.14 the cumulative analysis in the Draft EIS included, but was not limited to, the following projects: Windsor Gardens, Old Redwood Highway Villages, Shiloh Crossing, Shiloh Terrace, and Shiloh Business Park; therefore, no adjustments to the cumulative analysis are warranted.

*Response to Comment A8-80*

CARB has adopted regulations to rapidly scale down emissions of light-duty passenger cars, pickup trucks and SUVs and require an increased number of zero-emission vehicles to meet air quality and climate change emissions goals<sup>24</sup>. Specifically, Advanced Clean Cars II regulations require that all new passenger cars, trucks, and SUVs sold in California will be zero-emission vehicles (ZEVs) by 2035 and California appears on track to achieve this goal. In 2023, Californians purchased nearly 450,000 new ZEVs, a 30% increase since 2022. ZEVs were 25% of new vehicle sales, up from 20% in 2022, and California exceeded its goal to sell 1.5 million sales two years ahead of schedule. With these sales levels, automakers continue to be over-complying with California's existing Zero-emission Vehicle Regulation and are already poised to meet the upcoming Advanced Clean Cars II requirement that 35% of new vehicle sales be zero-emission in 2026<sup>25</sup>. As described in Draft EIS Section 2.1.10, twenty percent of parking spaces would be constructed as electric vehicle (EV) capable spaces and twenty-five percent of the EV capable spaces would be provided with EV supply equipment (i.e., chargers). For the casino facility under Alternative A this equates to 812 EV capable spaces and at least 203 EV spaces with charging equipment on opening day out of the 4,056 total parking spaces for the casino facility. The installation of EV capable spaces is consistent with regional sustainability planning and air quality goals. As more ZEVs are purchased, there would consequently be less demand for gas stations. Furthermore, whether an employee or patron of the proposed project alternatives chooses to stop at a gas station in the Town of Windsor would depend on how urgently they need to stop for gas, convenience on their route of travel, cost of the fuel, brand loyalty, ease of access, and numerous other consumer preferences. Therefore, it would be speculative to conduct an analysis of what gas stations would be frequented by project employees and patrons, how many would visit a particular gas station, when they would visit, and whether this would result in longer wait times, increased congestion, or higher gas prices.

*Response to Comment A8-81*

The summary of the comment letter noted. Please see **Response to Comments A8-2** through **A8-80** for specific concerns.

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<sup>24</sup> CARB, 2024a. Advanced Clean Cars Program. Available online at: <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program>. Accessed October 2024.

<sup>25</sup> CARB, 2024b. Cars and Light-Trucks are Going Zero – Frequently Asked Questions. Available online at: <https://ww2.arb.ca.gov/resources/documents/cars-and-light-trucks-are-going-zero-frequently-asked-questions>. Accessed October 2024.

## Response to Comment Letter A9 – County of Sonoma

### *Response to Comment A9-1*

The County's introductory comments are noted. Regarding the "hard look" standard see **Master Response 2**. Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period and other opportunities to review and comment on the Proposed Project. Contrary to the comment's assertion that the process is rushed, CEQ regulations for implementing NEPA have time limits "to ensure timely decision making"; see **Master Response 2** for additional discussion.

### *Response to Comment A9-2*

Both the 2023 EA and Draft EIS disclose the potential for significant impacts and mitigation to address these impacts. Regarding general statements that the Draft EIS is deficient, see **Master Response 3**; these statements are provided without specific examples or references to the Draft EIS. Regarding the Project Site's compatibility with local land use regulations see **Master Response 8**. The potential environmental impacts of on-site infrastructure are addressed throughout the Draft EIS and the impacts of off-site infrastructure are addressed in Draft EIS Section 3.15.1. The projects considered within the cumulative analysis are described in Draft EIS Section 3.14. Regarding the assertion that the process is rushed, see **Response to Comment A9-1** and **Master Response 2**. Please refer to **Master Response 5** regarding the consideration of a reasonable range of alternatives.

### *Response to Comment A9-3*

The County's comments on the September 2023 EA do not raise any new substantive environmental issues beyond those provided in the County's specific comments on the Draft EIS. Both the 2023 EA and Draft EIS disclose the potential for significant impacts and mitigation to address these impacts. Please refer to **Master Response 2** regarding the completeness of the Draft EIS. The Proposed Project does include restaurants; the reference to cafeterias in an EIS footnote is taken out of context by the comment. The footnote is emphasizing that recycled water use for fire suppression systems is allowed for food production facilities. California Code of Regulations (CCR) Title 19 establishes the minimum standards for the prevention of fire and the protection of life and property against fire, explosion, and panic and is commonly referred to as the California Public Safety Code.

### *Response to Comment A9-4*

The Draft EIS disclosed the potential environmental effects from the Proposed Project and BMPs and mitigation measures are designed to address any significant environmental effects. Regarding the enforcement of BMPs and mitigation measures see **Master Responses 6** and **7**, respectively. to **Master Response 8** regarding the evaluation of land use consistency. See **Response to Comment A9-6**.

### *Response to Comment A9-5*

The California laws discussed are relevant to the Proposed Project in multiple ways. They are applicable to off-site traffic and irrigation mitigation and give context for the standards that would apply to cumulative projects. State laws such as the Surface Mining and Reclamation Act and California Endangered Species Act identify State protected resources and the Draft EIS addresses potential impacts to State protected resources. Mitigation is discussed throughout the Draft EIS and specific mitigation measures to reduce the impacts of the project alternatives are listed in Draft EIS Section 4.



*Response to Comment A9-6*

See **Response to Comment A9-5** regarding the discussion of State laws. The Tribe's Building and Safety Code of 2023 is referenced in Draft EIS Section 2.1 and is available at the following website: <https://www.koinationsonoma.com/documents/>. See **Response to Comment A9-3** regarding the California Public Safety Code (Title 19 CCR). The ability of a tribe to adopt and change its own codes and ordinances is a matter of tribal sovereignty. As discussed in **Master Response 6**, the BIA has analyzed the Project as proposed by the Tribe and is not required to assess an infinite number of speculative scenarios in which the Project would be developed in a different manner than proposed. Later changes to the Project could constitute a substantive change that would trigger the need for supplemental NEPA review.

*Response to Comment A9-7*

Regarding the enforcement of BMPs and mitigation measures see **Master Responses 6** and **7**, respectively. The EIS analysis does not rely on a Tribal-State compact for mitigation or mitigation enforcement and thus the comments regarding the *Chicken Ranch Rancheria of Me-Wuk Indians v. State of California* decision are outside of the scope of the EIS.

*Response to Comment A9-8*

The distinction between BMPs and mitigation as well as enforcement of BMPs is discussed in **Master Response 6**.

*Response to Comment A9-9*

The BIA has analyzed the Project as proposed by the Tribe and is not required to assess an infinite number of speculative scenarios in which the Project would be developed in a different manner than proposed. Later changes to the Project could constitute a substantive change that would trigger the need for supplemental NEPA review. It should also be noted that federal environmental laws are applicable to activities on tribal trust lands and provide broad environmental protection.

*Response to Comment A9-10*

The distinction between BMPs and mitigation as well as enforcement of BMPs is discussed in **Master Response 6**. Final EIS Section 4.14.3 has been revised to update the quantification of emissions and to clarify how the significance of GHG emissions was determined. It should be noted that BAAQMD guidance was used to identify local efforts to address GHG emissions and was not used to determine the significance of the project's GHG emissions. The Final EIS provides a thorough analysis of the potential GHG emissions including the quantification of emissions as well as the identification of measures (Final EIS Table 2.1-3) to lower those emissions. Regarding the "hard look" standard see **Master Response 2**.

*Response to Comment A9-11*

As discussed in **Response to Comment A9-10**, the BAAQMD guidance was used to identify local efforts to address GHG emissions and was not used to directly determine the significance of the project's GHG emissions. Likewise, the VMT analysis is addressed under the GHG impact analysis to provide context for the evaluation of GHG impacts and is not offered as a definitive metric for assessing the significance of GHG emissions. Final EIS Section 4.14.3 has been revised to clarify how the significance of GHG emissions was determined. With regard to the County's Community Separator and Urban Growth Boundary see **Master Response 8**. With regard to the trip lengths used in the VMT analysis see **Response to Comment T8-93** and **Response to Comment A3-2**.

*Response to Comment A9-12*

Final EIS Section 4.14.3 references the Scoping Plan to identify State efforts to address GHG emissions and is not used to directly determine the significance of the project's GHG emissions. However, similar efforts to reduce emissions are incorporated into the project. Final EIS Table 2.1-3 identifies protective measures and BMPs to reduce GHG emissions, these include installation of EV charging stations to support decarbonization of passenger vehicles, preferential parking for vanpools and carpools to reduce project-related trips, use of a green roof to reduce energy use, use of electric boilers and appliances (versus natural gas) to decarbonize energy use, and as addressed in **Response to Comment A7-8**, the Tribe will consider incorporating photovoltaic canopies in the surface parking area to decarbonize energy production. Additionally, as noted in Draft EIS Section 2.1.9, the facilities would be constructed in compliance with the Tribe's Building and Safety Code of 2023, which is consistent with the California Building Code, including energy standards, and the facilities would be developed to a minimum standard of LEED Silver.

*Response to Comment A9-13*

Final EIS Table 2.1-3 identifies protective measures and BMPs to reduce GHG emissions. These measures include the commitment that the Tribe will use electric water and space heaters and appliances in lieu of natural gas or propane units to the extent that electric boilers and appliances are commercially available. This measure reflects nascent federal, State, and local initiatives to reduce GHG emissions. This approach is consistent with CEQ Guidance, which directs agencies to quantify direct and indirect emissions of project alternatives and to consider GHG reduction measures that are reasonable and consistent with achieving the purpose and need for the proposed action. Electric alternatives for space and water heating (including heat pumps and solar water heaters) are common and commercially available. Electric alternatives for food preparation equipment are also commercially available. Accordingly, it is expected that the space and water heating units, and most if not all food preparation equipment will not be gas fueled.

It should be noted that when jurisdictions ban natural gas use in new buildings, they typically don't prescribe specific technology to replace gas equipment. The point is not to determine the specific type of equipment, but to shift away from natural gas/propane use as part of the effort to decarbonize energy production and use. The same approach has been used here.

As identified in the Draft EIS Section 2.1.9, the facilities would be constructed in compliance with the Tribe's Building and Safety Code of 2023, which is consistent with the California Building Code, including energy standards, and as identified in the Draft EIS Table 2.1-3, it is the intent that the project be designed and constructed to a minimum standard of LEED Silver. Additional energy saving measures are identified in Table 2.1-3, including the use of energy efficient lighting and appliances, and use of low-flow appliances and drought resistant landscaping. Living rooftops on both the casino-resort and parking structures would reduce energy use. The incorporation of these measures supports the conclusion that the project would not result in inefficient energy use. Additionally, as addressed in **Response to Comment A7-8**, the Tribe will consider incorporating photovoltaic canopies in the surface parking area.

*Response to Comment A9-14*

Regarding specific comments on greenhouse gases, see **Responses to Comments A9-10** through **A9-13** above. The distinction between BMPs and mitigation as well as enforcement of BMPs is discussed in **Master Response 6**.

***Response to Comment A9-15***

This comment is general in nature and simply introduces the County's concerns with the accuracy and adequacy of Draft EIS Section 3.8 Transportation and Circulation, and the Wildfire Evacuation analysis, contained within Draft EIS Section 3.12 Hazardous Materials and Hazards. More specific comments from the County's Deputy Director of Engineering and Maintenance are addressed in the subsequent comments below.

***Response to Comment A9-16***

As discussed in Draft EIS Section 2.1.4 and Appendix D-1, treated wastewater effluent would be adequately disposed of through a combination of on-site re-use (toilet/urinal flushing, landscape irrigation and vineyard irrigation applied at agronomic rates, and cooling tower make-up), discharge to Pruitt Creek, and/or off-site irrigation. Storage ponds or tanks would be used to seasonally store treated effluent until it can be reused or discharged to Pruitt Creek. Draft EIS Appendix D-1 provides detailed calculations for different wastewater effluent scenarios using industry standard methodology that has been used for other similar projects. Appendix D-1 Section 2.3.4.2 provides an analysis of Surface Water Discharge to Pruitt Creek, which utilizes existing USGS flow gauging station data from the Mark West Creek (USGS #11466800), which is the station closest to the Project Site and directly downstream of the proposed discharge location near Mirabel Heights, CA. As effluent would meet Title 22 standards, no significant reduction in the quality of surface or groundwater is anticipated. The Tribe would be required to obtain an NPDES permit to discharge to Pruitt Creek, and through flow limitation, water quality testing, and other measures, this would ensure that effluent disposal does not cause additional impairment of downstream waterbodies and that the beneficial uses of downstream waterbodies are maintained.

As stated in the Draft EIS Section 4, Biological Mitigation Measure I "Consultation with the National Oceanic and Atmospheric Administration Fisheries for impacts to fish and essential fish habitat shall be conducted in accordance with Section 7 of the federal Endangered Species Act (FESA) and Magnuson-Stevens Act and any requirements resulting from that consultation shall be adhered to." Since the issuance of the Draft EIS, the BIA has formally initiated consultation with the NMFS through the submittal of the Biological Assessment (NMFS BA) included as Draft EIS Appendix G-2. The NMFS BA includes the following mitigation measure, which has since been added as a new mitigation measure within Final EIS Section 4: "Subject to the terms of an NPDES wastewater discharge permit and associated Section 7 consultation, wastewater discharged to Pruitt Creek shall flow through a gauge station. The gauge shall be located at the point of project-related discharge on Pruitt Creek. No more than 1% of Pruitt Creek flow shall be discharged, consistent with NCRWQCB Basin Plan standards for receiving waters. A water quality monitoring protocol and schedule shall be established to ensure that parameters are being met during discharge activities in Pruitt Creek."

Therefore, discharge to Pruitt Creek will be limited to no more than 1% of the flow in this waterbody consistent with NCRWQCB Basin Plan standards for receiving waters. Because there is no baseline stream flow data available for Pruitt Creek, it is not possible to estimate with any level of precision the amount of treated wastewater that may be discharged under the requirements of a future NPDES permit, and therefore the Draft EIS analyzed a scenario under which no discharge would occur, referred to as the "maximum scenario for recycled water use" or the "no surface water discharge condition" (refer to the Draft EIS Section 2.1.4 and the Appendix D-2). While the seasonal storage requirements for recycled water under this scenario would be substantially greater than under a scenario where all treated wastewater would be utilized on-site or discharged to the creek, the environmental benefits from the reuse of recycled water would be maximized. As stated in Draft EIS Section 2.1.4 "Under the maximum scenario for recycled

water use, where no effluent is discharged to the creek, up to 44.8 acres of turf, or 406 acres of vineyards could be irrigated with recycled water produced as a result of Alternative A.” This would result in beneficial water supply effects. The indirect effects of off-site recycled water use under this scenario were described in Draft EIS Section 3.15.1. Therefore, the EIS does provide the appropriate level of environmental review considering the range of potential scenarios that may be allowed under a future NPDES permit that would limit discharge to 1% of the flows in Pruitt Creek, pending future baseline monitoring of the stream flows.

#### *Response to Comment A9-17*

As shown in the Draft EIS Table 2.1-3 and discussed in Draft EIS Section 3.2.3.2, a project specific geotechnical report would be prepared prior to construction of the Proposed Project and would be designed with standards no less stringent than the California Building Code (CBC). Use of these standards would allow ground shaking-related hazards, and other land resources constraints to be managed from a geologic, geotechnical, and structural standpoint such that risks to the health or safety of workers or members of the public would be reduced. Aesthetics and visual impacts associated with the storage tanks were described in the Draft EIS Section 3.13.3.2 and are discussed further in **Master Response 9**.

#### *Response to Comment A9-18*

The Final EIS Section 2.1.4 and Appendix D-2 have been revised with updated information related to the proposed dimensions of the seasonal storage pond. The new description now clarifies that the “maximum storage pond size, described under Options 5 and 7 in Appendix D-2, would include a 4.1 acre reservoir with a 5.5-foot-tall berm capable of storing up to 19.1 MG. This assumes a water depth of 15 ft, 2:1 side wall slope and a berm height 1/3 above grade.” In summary, the proposed height of the berm around the seasonal storage reservoir has been reduced from 15 feet to 5.5 feet. California Water Code Section 6004(e)(2) identifies criteria for which regulating basins are considered dams. As defined in Section 6004(f)(3) “Regulating basin” means a reservoir constructed to impound and manage the inflow and delivery of water for agricultural uses or for the purpose of groundwater recharge or other actions undertaken to implement the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6). The proposed storage pond does not fall within this definition. Furthermore, California Water Code § 6004(e)(2) would not be applicable to the Proposed Project because state or local land use regulations and policies do not apply to lands taken into federal trust. The Tribe and BIA have jurisdictional authority over land use matters on the federal trust lands held on the Tribe’s behalf. As shown in the Draft EIS Table 2.1-3 and discussed in Draft EIS Section 3.2.3.2, a project specific geotechnical report would be prepared prior to construction with standards no less stringent than the CBC. Use of these standards would allow ground shaking-related hazards, and other land resources constraints to be managed from a geologic, geotechnical, and structural standpoint such that risks to the health or safety of workers or members of the public would be minimized.

#### *Response to Comment A9-19*

Please refer to **Response to Comment A9-62** regarding environmental conditions considered in the determination of impacts to critical habitat. This discussion is included in Draft EIS Section 3.5.3 and in the NMFS Biological Assessment included as Draft EIS Appendix G-2.

The Draft EIS does acknowledge a connection between ground and surface waters. In fact, the Draft EIS acknowledges that groundwater pumping in the cumulative context with consideration of pumping by the Town of Windsor, may result in significant impacts to groundwater dependent ecosystems, including Pruitt Creek. Depending on the location and number of wells installed by the City of Windsor, Water Resources Mitigation Measure A would require a GDE Verification Monitoring Workplan to quantify the

level of impact resulting from actual multi-year pumping and well data. The plan would be collaborative between the Tribe, BIA, and the Town to identify groundwater pumping and management procedures to offset the impacts to GDEs.

A NMFS Biological Assessment was included in Draft EIS Appendix G-2 and did not identify the potential for take. It is under the jurisdiction of NMFS to determine the appropriate level of consultation necessary under Section 7 of the Federal Endangered Species Act. Consultation would be completed prior to the issuance of a Record of Decision.

As discussed in Section 2.1.4, any discharge of treated wastewater would be through an approved USEPA NPDES Discharge Permit; therefore, unpermitted discharge of wastewater would not occur.

Regarding stormwater, there is not one singular way to design a stormwater collection system. As discussed in Draft EIS Section 2.1.5, although not required for tribal trust lands, the Sonoma County Water Agency FMDM was used to design the stormwater facilities to accommodate flood conditions. Per FMDM standards, the stormwater drainage system under the Proposed Project would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. A detention basin is proposed downstream of all bioswales to manage peak runoff volumes per FMDM. The proposed bioswales are intended only for stormwater management under Sonoma County Low Impact Development (LID) principles, as stated in the Draft EIS and this comment. The Site Grading and Hydrology Study provided as Draft EIS Appendix D-3 has been updated in the Final EIS to provide additional LID facilities consistent with the Storm Water LID Technical Design Manual, approved and required by the NCRWQCB through the multi-jurisdictional MS4 permit. Figure 2.1-3, Alternative A Stormwater Drainage Plan, of the Final EIS has been revised with additional bioswales to meet LID treatment requirements in the Technical Design Manual. These additional features are proposed along the internal facility roadways, medians, and parking areas and would result in a negligible change to the project footprint. LID calculations have been added as Appendix K to Draft EIS Appendix D-3. Please refer to **Master Response 6** regarding the implementation of project design features.

#### *Response to Comment A9-20*

Regarding groundwater and surface water comments in the referenced exhibits, please see **Response to Comments A9-59** through **A9-60** for Exhibit E, **A9-69** through **A9-70** for Exhibit F, and **A9-71** through **A9-90** for Exhibit G.

#### *Response to Comment A9-21*

Please refer to **Master Response 5** regarding the range of alternatives considered in the Draft EIS.

#### *Response to Comment A9-22*

Please refer to **Master Response 5** regarding the range of alternatives considered in the Draft EIS. It should be noted that the Draft EIS assesses a reduced size gaming project and a reduced size non-gaming project in comparison to the Proposed Action.

#### *Response to Comment A9-23*

Please refer to **Master Response 5** regarding the range of alternatives considered in the Draft EIS, including off-site alternatives.

*Response to Comment A9-24*

Please refer to **Master Response 5** regarding the range of alternatives considered in the Draft EIS. It should be noted that the Draft EIS assesses a reduced size gaming project.

*Response to Comment A9-25*

Cumulative and growth-inducing impacts are addressed in Draft EIS Sections 3.14 and 3.15.3, respectively. Regarding the Project Site's compatibility with local land use regulations see **Master Response 8**.

*Response to Comment A9-26*

Please refer to **Master Response 5** regarding the range of alternatives considered in the Draft EIS. Many off-site alternatives have been considered as part of the NEPA process.

*Response to Comment A9-27*

The BIA has analyzed the project as proposed by the Tribe and is not required to assess an infinite number of scenarios in which the project would be developed in a different manner than proposed. Later changes to or elimination of the assumed BMPs could constitute a substantive change to the project that could trigger the need for supplemental NEPA review. Regarding Exhibit B to the County letter see **Responses to Comments A9-29 through A9-33**. Regarding Exhibit G to the County letter see **Responses to Comments A9-71 through A9-90**.

*Response to Comment A9-28*

The scoping comment letter is noted and does not raise any new issues beyond those provided in other portions of the County's comment letter.

*Response to Comment A9-29*

As discussed in Draft EIS Section 2.1.5, although not required for tribal trust lands, the Sonoma County Water Agency FMDM was used for the design of the stormwater drainage system. As suggested by this comment, the hydrologic and hydraulic analysis methods and criteria for designing the proposed stormwater facilities to accommodate flood conditions were conducted consistent with the FMDM. Per FMDM standards, the stormwater drainage system under the Proposed Project would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. The Site Grading and Hydrology Study provided as Appendix D-3 of the Draft EIS has been updated in the Final EIS to provide additional LID facilities consistent with the Storm Water LID Technical Design Manual, approved and required by the NCRWQCB through the multi-jurisdictional MS4 permit. Figure 2.1-3, Alternative A Stormwater Drainage Plan, of the Final EIS has been revised with additional bioswales to meet LID treatment requirements in the Technical Design Manual. LID calculations have been added as Appendix K to the included as Appendix D-3 of the Draft EIS. As designed, stormwater would be adequately treated and would not result in increased flooding off-site.

*Response to Comment A9-30*

Please see **Response to Comment A9-29** for a discussion of changes made to the Proposed Project to provide additional LID treatment measures. Please refer to **Master Response 6** for a discussion of reliance on project design features and BMPs to support the significance conclusions in the EIS. As discussed in Draft EIS Section 2.1.5, the proposed on-site stormwater system would include LID facilities, including a detention basin and bioswales to treat pollutants from stormwater runoff such as total suspended solids,

hydrocarbons, nutrients, metals, and other common pollutants prior to discharge. In addition, the stormwater drainage system under the Proposed Project would be designed to limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event.

*Response to Comment A9-31*

None of the project alternatives propose a combined wastewater and stormwater system throughout the Project Site; however, stormwater run-off within the 3.5-acre WWTP area in the eastern portion of the site would be collected for treatment at the WWTP. The proposed sizing of the WWTP does factor in the runoff rates within the treatment area. With respect to the analysis of off-site wastewater discharge, please refer to **Response to Comment A9-16**. The Draft EIS Appendix D-1 and D-2 provide a comprehensive analysis of the Proposed Project's wastewater disposal requirements, including facilities that would be required to treat the required amount of wastewater, wastewater disposal strategies including storage requirements in the absence of discharge to Pruitt Creek, and identification of the applicable wastewater permitting requirements for the Proposed Project. Draft EIS Section 3.5.3.3 includes a discussion of potential effects to terrestrial habitats and aquatic features, including discussion of impacts to salmonids, as a result of the implementation of the Proposed Project.

*Response to Comment A9-32*

The Proposed Project detention basin has been designed downstream of all bioswales to manage peak runoff volumes per the FMDM. The FMDM standards do not require a multi-100-year storm analysis. In the absence of other regional flood management design tools, the methods and criteria provided by the FMDM were used to develop project stormwater facilities.

*Response to Comment A9-33*

Please refer to **Response to Comment A7-3** for a discussion of project related 100-year and 500-year flood risk. Proposed site improvements within special flood hazard areas would include no additional fill and would maintain the flood carrying capacity of Pruitt Creek. No additional peak runoff volume would be generated per the FMDM.

*Response to Comment A9-34*

Please refer to **Master Response 7** regarding mitigation enforcement. See **Responses to Comments A9-35** through **A9-48** for specific concerns raised in Exhibit C of the County's letter.

*Response to Comment A9-35*

The distinction between BMPs and mitigation as well as enforcement of BMPs is discussed in **Master Response 6**. Regarding the enforcement of mitigation measures, see **Master Response 7**. Regarding general comments that measures are inadequate or design details are needed, see **Master Response 3**.

Regarding the level of design detail used in preparation of the Draft EIS, see **Master Response 2**. The Draft EIS evaluated the potential for seismic and other geological hazards. No issues were identified such as landslide potential or an active fault located within the Project Site which would warrant special consideration and thus impacts to land resources would be less than significant. A design-level geotechnical report would inform site specific considerations consistent with the requirements for off-site commercial development.

As discussed in Draft EIS Section 3.5, California red-legged frog and northwestern pond turtle are unlikely to be on the Project Site in general or at the time of construction. The provisions to contact USFWS in the unlikely event that these species are found is additional assurance that activities would be conducted consistent with the federal Endangered Species Act. The USFWS has reviewed the Proposed Project including BMPs and mitigation measures and has acknowledged no additional consultation is needed (Final EIS Appendix G-7).

Biological Resources Mitigation Measure O, which states "Removal of vegetation and trimming or removal of trees shall occur outside the bird nesting season (February 1 to August 30) to the extent feasible", is taken out of context by the comment as the following mitigation measures (Biological Resources Mitigation P to R) provide additional provisions if work cannot be completed outside of the bird nesting season.

The Tribe's Building and Safety Code of 2023 has been made available at the following website: <https://www.koinationsonoma.com/documents/>. CCR Title 19 is commonly referred to as the California Public Safety Code and establishes the minimum standards for the prevention of fire and the protection of life and property against fire, explosion, and panic.

#### *Response to Comment A9-36*

In contrast to the comment's assertion that no contingency exists for law enforcement, the Draft EIS included an alternative mitigation measure should negotiations with the Sonoma County Sheriff's Office not result in an agreement. This mitigation measure, included in Draft EIS Section 4, specified that the Tribe would establish, equip, and staff a public safety building on the Project Site, providing both fire protection and law enforcement services through trained personnel. This measure ensures that law enforcement services would be provided even in the absence of a formal service agreement, effectively addressing the identified impacts. Therefore, the impacts to law enforcement would not remain significant if a service agreement cannot be reached, as this mitigation measure ensures that public safety needs if the project alternatives are met.

Please refer to Draft EIS Section 3.7 for the fiscal impact analysis and Draft EIS Section 3.10 for the analysis of public services. Please refer to **Master Response 14** for an explanation of the term "good faith efforts".

#### *Response to Comment A9-37*

The TIS (Draft EIS Appendix I) has been revised to further explain why trip generation rates used in the analysis were based on non-ITE rates.

Trip generation rates provided in the ITE's Trip Generation Manual for casinos (ITE Land Use 473) are representative of sites commonly found in Las Vegas and Reno (i.e., large, urban). In other words, the characteristics of the sites used to establish the ITE trip generates are not similar to the characteristics of the Proposed Project (i.e., comparatively small, rural). For this reason, it was determined that the ITE trip generation rates, if applied to the Proposed Project, would not accurately represent the trip generation and would yield inaccurate analysis results. To more accurately reflect trip generation for the Proposed Project, trip generation data obtained from other tribal casino and hotel facilities in California were considered. An explanation of how the trip generation rates for the Proposed Project were calculated is included in TIS Section 4.2 (Draft EIS Appendix I).



*Response to Comment A9-38*

The off-site traffic mitigation measures are within the jurisdiction of the Town, County, and/or Caltrans. Because the Tribe does not have jurisdiction over any of the proposed off-site traffic mitigation, it cannot directly implement the traffic improvements. Rather, implementation of traffic mitigation would be under the purview of the applicable jurisdictional agency. As described in Draft EIS Section 4, while the timing for the off-site roadway improvements is not within the jurisdiction or ability of the Tribe to control, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day. Please refer to **Master Response 7** regarding the enforceability of mitigation recommended in the EIS.

*Response to Comment A9-39*

Regarding the enforceability of mitigation see **Master Response 7**. Off-site traffic improvements are not within the jurisdiction or ability of the Tribe or BIA to control. Mitigation includes that the Tribe shall provide fair share contributions and make good faith efforts to assist with implementation of the improvements. Ultimately the design and construction of improvements would be the responsibility of the Town, County, and/or Caltrans depending on the location of the improvement. Regarding the overall feasibility of traffic improvements, several of the road widening and intersection improvements included in the proposed mitigation measures described in the Draft EIS are consistent with improvement projects identified in the Town's TIF and/or CIP and thus it is reasonable to assume that they would be implemented.

*Response to Comment A9-40*

As discussed in Draft EIS Section 4, 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 would fund 100% of the cost for improvements needed for the opening year (2028). While the timing for the off-site roadway improvements is not within the jurisdiction or ability of the Tribe to control, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day. If approved by the relevant government agency, the Tribe would implement these measures. Please refer to **Response to Comment A8-34** regarding the TIF and CIP projects that were considered in the development of the mitigation measures for the project alternatives. Although some of these improvements are not included in the current 5-year CIP, they are not needed to mitigate potential cumulative impacts until 2040. As the Town is already collecting fees for as part of the TIF Program and programming funding for as part of the CIP, it is reasonable to assume that these improvements would be completed to accommodate future transportation needs, especially with the additional fair-share payments that would be paid by the Tribe as part of the recommended mitigation. Please refer to **Master Response 7** regarding the enforceability of mitigation recommended in the EIS.

*Response to Comment A9-41*

Fair share payments are standard mitigation for cumulative impacts not caused by a single project. The Final EIS has been updated to acknowledge that the timing and implementation of off-site noise mitigation for cumulative impacts is not fully within the control of the Tribe or BIA. In the case of noise-reducing pavement, it is assumed that the Town and County would routinely maintain roadways. The Town's adopted 2040 General Plan states:

**PHS-8.9 Truck Route Noise Impacts.** The Town shall maintain its designated truck routes to limit the potential noise impacts to sensitive land uses.

Additionally, roadway improvements are already identified for Shiloh Road within the Town's TIF and CIP where noise-reducing pavement could be integrated into these planned improvements. Thus, it is reasonable to assume that local jurisdictions have a mechanism for implementing noise reducing pavement. Noise Mitigation Measure A has been updated in Final EIS Section 4 to include fair share contributions for maintenance along portions of Shiloh Road and Old Redwood Highway, which would carry the majority of Proposed Project traffic.

#### *Response to Comment A9-42*

It is assumed that any additional right-of-way needs for the widening of Shiloh Road, between Old Redwood Highway and Gridley Drive, would be provided by the Tribe on the northern portion of the Project Site, which has been clarified in Final EIS Section 4. Mitigation in the Final EIS has been updated to state that widening of Shiloh Road between Old Redwood Highway and Gridley Drive would be 100% funded by the Tribe for Alternatives A and B. No change was made for Alternative C as mitigation for Alternative C does not require widening of Shiloh Road east of Old Redwood Highway.

#### *Response to Comment A9-43*

As discussed within the comment, the need for additional right-of-way is recognized by the TIF. Please refer to **Response to Comment A8-34** regarding the feasibility of the proposed traffic mitigation measures. It is assumed that any additional right-of-way needs within this segment would be provided by the Tribe on the northern portion of the Project Site, which has been clarified in Final EIS Section 4.

#### *Response to Comment A9-44*

Inconsistencies identified in the comment in the Traffic Impact Study (Draft EIS Appendix I) text and tables have been resolved and have been updated in the Final EIS. In addition, the following revisions to Alternative A mitigation measures have been made in the Final EIS Section 4 for consistency with the Traffic Impact Study:

#### Opening Year 2028:

- For Intersection 1) Shiloh Rd. & Old Redwood Hwy. (100% fair share contribution)
  - Convert split phasing in Eastbound (EB)/Westbound (WB) direction to protected phasing.
  - Convert existing WB-through lane to an exclusive left-turn lane (storage length of 200 feet and taper length of 75 feet) and a shared through/right turn lane.
  - ~~Add one Northbound left turn lane~~Restripe Northbound left (NBL) to give 215 ft. storage length.
  - Restripe Eastbound right (EBR) to give ~~150~~175 ft. storage length.
  - Restripe Southbound left (SBL) to ~~190~~5 ft. storage length.
  - Restripe SBR to ~~105~~30 ft. storage length.
  - Construct Traffic Impact Fee (TIF) project to add second ~~Northbound left (NBL)~~ turn lane and second WB receiving lane.
- For Intersection 2) Shiloh Rd. & Hembree Ln. (100% fair share contribution) - Optimize splits and cycle length.
- For Intersection 7) Shiloh Rd. & Casino Entrance 1 (100% fair share contribution) – Add exclusive EB right-turn lane (storage length of 150 feet and taper length of 75 feet) and signalize intersection.
- For Intersection 8) Old Redwood Hwy. & Casino Entrance 1 (100% fair share contribution)
  - Signalize intersection.

- Provide exclusive Northbound right (NBR) turn lane (storage length of 100 feet and taper length of 75 feet).
- Provide exclusive SBL turn lane (storage length of 50 feet and taper length of 25 feet).
- For Intersection 9) Shiloh Rd. & Casino Entrance 3 (100% fair share contribution) - Provide exclusive EBR turn lane (storage length of 200 feet and taper length of 75 feet)

Cumulative Year 2040:

- For Intersection 1) Shiloh Rd. & Old Redwood Hwy. (39.4% fair share contribution)
  - Convert split phasing in EB/WB direction to protected phasing.
  - Restripe NB approach to include two exclusive left turn lanes, two through lanes, and one exclusive right turn lane.
  - Restripe Southbound (SB) approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.
  - Restripe EB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.
  - Restripe WB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.
  - Restripe Eastbound left (EBL) to give 385-425 ft. storage length.
  - Restripe Eastbound right (EBR) to give 200 ft. storage length.
  - Restripe SBL to 145-190 ft. storage length.
  - Restripe Southbound right (SBR) to 105-160 ft. storage length.
  - Construct TIF project to add second NBL turn lane and WB receiving lane.
  - Widen Shiloh Rd. between Hembree Ln. and Gridley Dr. from two lanes to four lanes.
- For Intersection 2) Shiloh Rd. & Hembree Ln. (36.4% fair share contribution)
  - Convert split phasing in NB/SB direction to protected phasing.
  - Restripe NB approach to include one exclusive left turn lane and one shared through-right turn lane.
  - Restripe SB approach to include one exclusive left turn lane with 350 ft. storage length, one through lane, and two exclusive right turn lanes.
  - Restripe EB approach to include two exclusive left turn lanes, one through lane, and one shared through-right turn lane.
  - Restripe WB approach to include one exclusive left turn lane, one through lane, and one shared through-right turn lane.
- For Intersection 5) Shiloh Rd. & Caletti Ave. (5.9% fair share contribution)
  - Restripe WB approach to include one exclusive left turn lane and two through lanes.
- For Intersections 2, 3, and 5 (27.4% fair share) – Contribute fair share payment to TIF Project #2 Shiloh Road Interchange; and restripe Northbound right (NBR) at Intersection 3 to 340 ft. storage length.
- For Intersection 6) Shiloh Rd. & Conde Ln. (6.3% fair share contribution)
  - Optimize signal timing parameters.
  - Restripe SBR to give 65 ft. storage length.
- For Intersection 12) Old Redwood Hwy. & US 101 SB Ramp (5.2% fair share contribution) - Optimize signal timing parameters.

Please note that related changes to the mitigation table in Section 4 were made for Alternatives B and C in the Final EIS.

Regarding study intersections #7 and #9, the recommendations for lane channelization provided in the Traffic Impact Study (Draft EIS Appendix I) for the northbound approaches are not mitigation measures. Instead, the analysis provided in Traffic Impact Study provides the traffic justification for driveway design at these locations. On-site improvements included as part of the Proposed Project are not mitigation measures.

Regarding mitigation to address pedestrian and transit impacts, please refer to **Response to Comment A8-39**. Regarding the northbound approach at Shiloh Road & Hembree Lane (study intersection #2), please refer to **Response to Comment A9-45**.

#### *Response to Comment A9-45*

As detailed below, there is no discrepancy in the Draft EIS with regard to Cumulative Year 2040 mitigation measures identified to address impacts at the intersections of Shiloh Road & Hembree Lane (study intersection #2) or Shiloh Road & Conde Lane (study intersection #6).

*Shiloh Road & Hembree Lane* – the northbound approach at the intersection of Shiloh Road and Hembree lane was included in baseline conditions as part of the approved Shiloh Terrace Project. The assumed intersection lane geometry at the intersection is based on the TIS prepared for this approved development (submitted to the Town on August 19, 2021). TIS Section 7 (Draft EIS Appendix I) discusses this assumed infrastructure improvement beginning with the Opening Year 2028 traffic scenarios and carrying through to the Cumulative Year 2040 traffic scenarios. The mitigation measure identified for this intersection is accurately represented in both Draft EIS Section 4 and TIS Section 12 (Draft EIS Appendix I).

*Shiloh Road & Conde Lane* – As discussed in TIS Section 12.2 (Draft EIS Appendix I), restriping of the southbound right-turn lane to provide 65 feet storage length is part of the mitigation at this intersection required to address insufficient queueing capacity that could result due to signal retiming proposed at this same intersection to address an LOS impact. The mitigation measure identified for this intersection is accurately represented in both Draft EIS Section 4 and TIS Section 12.

#### *Response to Comment A9-46*

As described in Draft EIS Section 3.12.3.2, a No Notice Scenario was conservatively included in the analysis due to concerns raised by the public during scoping; however, 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. Please refer to **Master Response 10** for additional discussion on the enhanced safety measures and procedures currently being implemented by the County. Additionally, with implementation of the mitigation measures included in Draft EIS Section 4, the Tribe would coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. These measures would improve the ability of the County to rapidly identify and respond to wildfire events, even further reducing the potential for a “No Notice” scenario. These measures could include, but would not be limited to, installation of a wildfire detection camera within the Project Site and/or at another location in the vicinity of the Town of Windsor that would expand the coverage of the wildfire camera system and installation of variable message signs for the outbound lanes at the three project egress points that connect to Shiloh Road and Old Redwood Highway. As discussed in Draft EIS Section 3.12.3.2, the nature and timing of evacuation orders for a particular event are based on a number of considerations including, but not limited to, the nature and severity of impact, area affected and likely to be affected, expected duration of the incident,

number of people to be evacuated, time available for evacuation, and impediments to and capacity of evacuation routes. Evacuation orders are determined on a case-by-case basis by the jurisdiction identified as the lead authority for evacuations. The project-specific evacuation plan that would be required to be developed per mitigation included in Draft EIS Section 4 would be applicable for any type of wildfire that occurs in the future. As stated therein, unless a pre-determined evacuation zone specific to the casino-resort is created and/or unless specifically directed otherwise by the lead authority for evacuations, the casino-resort shall initiate a mandatory evacuation of the Project Site as soon as the evacuation zones within the Trigger Evacuation Zone are issued an evacuation warning or order. The Trigger Evacuation Zone was determined by experts in the field of evacuation planning (see Draft EIS Appendix N-3) by analyzing the ETTA, including the 2028 Project-only evacuation time travel analysis; reviewing past fire behavior and the timing of evacuations by zones; and understanding how today's emergency managers would likely proceed with evacuations with the current pre-determined evacuation zone system. The tactical procedures included in the mitigation would minimize the potential for project-related evacuation traffic to coincide with community-wide evacuation orders, thereby minimizing the potential for project alternatives to contribute to traffic congestion and increased community-wide evacuation timelines.

#### *Response to Comment A9-47*

As described in Draft EIS Sections 3.12.2 and 3.13.3.2, since the 2017 Tubbs Fire, Sonoma County has defined pre-determined evacuation zones to enable a methodical approach to move people out of areas in case of an emergency. Since the 2017 Tubbs Fire, Sonoma County has employed a philosophy of early and wide evacuations to protect life and safety and enable firefighters to have the ability to fight the fire with people out of the area. The nature and timing of evacuation orders for a particular event are based on a number of considerations including, but not limited to, the nature and severity of impact, area affected and likely to be affected, expected duration of the incident, number of people to be evacuated, time available for evacuation, and impediments to and capacity of evacuation routes. Evacuation orders are determined on a case-by-case basis by the jurisdiction identified as the lead authority for evacuations. The project-specific evacuation plan that would be required to be developed per mitigation included in Draft EIS Section 4 would be applicable for any type of wildfire that occurs in the future. As stated therein, unless a pre-determined evacuation zone specific to the casino-resort is created and/or unless specifically directed otherwise by the lead authority for evacuations, the casino-resort shall initiate a mandatory evacuation of the Project Site as soon as the evacuation zones within the Trigger Evacuation Zone are issued an evacuation warning or order. The Trigger Evacuation Zone was determined by experts in the field of evacuation planning (see Draft EIS Appendix N-3) by analyzing the ETTA, including the 2028 Project-only evacuation time travel analysis; reviewing past fire behavior and the timing of evacuations by zones; and understanding how today's emergency managers would likely proceed with evacuations with the current pre-determined evacuation zone system. The tactical procedures included in the mitigation would minimize the potential for project-related evacuation traffic to coincide with community-wide evacuation orders, thereby minimizing the potential for project alternatives to contribute to traffic congestion and increased community-wide evacuation timelines.

#### *Response to Comment A9-48*

Please refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology.

#### *Response to Comment A9-49*

The comment is a general summary of above comments. Please see **Response to Comments A9-35** through **A9-48** for specific concerns.

*Response to Comment A9-50*

Please see **Response to Comment A8-25** regarding housing. It is not anticipated that the Proposed Action would directly increase affordable housing needs. There is an existing shortage of affordable housing in the County, however the project would not result in a significant or considerable contribution to this shortage.

*Response to Comment A9-51*

Please refer to **Master Response 8** regarding inconsistency with County land use policies and zoning designations and impacts to adjacent agricultural resources. As explained therein, County land use policies and land use designations are not applicable to the Proposed Project. The comment suggests that the analysis of agricultural land conversion should consider the regional context. In addition to receiving a Farmland Conversion Impact Rating (FCIR) score below 160, which indicates the conversion is not significant under the federal FPPA, DEIS Section 3.9.3.2 notes that the Proposed Project affects less than 0.01% of the available farmland in the County.

*Response to Comment A9-52*

Please refer to **Master Response 8** regarding impacts associated with the Community Separator designation.

*Response to Comment A9-53*

Please refer to **Master Response 8** regarding the applicability of local land use designations. The region is already accommodating a mix of land uses, and the project would not be introducing an entirely foreign or incompatible use.

Furthermore, the Proposed Project is designed to incorporate necessary infrastructure, such as water and wastewater treatment facilities, to prevent strain on local systems. Draft EIS Sections 2.1.3 and 2.1.4 specify that Alternative A would use an on-site well system and an on-site WWTP, eliminating the need for changes to public water or wastewater infrastructure. PG&E would supply electricity and natural gas, with planned upgrades to boost capacity near the Project Site before its anticipated 2028 opening. Impacts on transportation infrastructure and public services and utilities were addressed in Draft EIS Sections 3.8 and 3.10, respectively.

*Response to Comment A9-54*

Please refer to **Master Response 8** for a discussion of the project alternatives compatibility with current land use regulations, such as the Sonoma County General Plan. Furthermore, Draft EIS Section 3.10 provided analysis of the project alternatives impacts on public services, utilities, and infrastructure. As discussed therein, water supply and wastewater treatment for the project alternatives would be provided via on-site facilities; therefore, no additions or modifications to the public water supply or wastewater collection or treatment infrastructure would be required. Indirect effects of off-site traffic and irrigation infrastructure are discussed in Draft EIS Section 3.15.1.

*Response to Comment A9-55*

Please refer to **Master Response 9: Visual Impacts**.

*Response to Comment A9-56*

Please refer to **Master Response 9: Visual Impacts**.

*Response to Comment A9-57*

The introductory comments summarizing the Proposed Project are noted. Please see **Response to Comments A9-58** through **A9-68** for specific concerns.

*Response to Comment A9-58*

As outlined in Draft EIS Section 3.2.3.2 and Table 2.1-3, prior to construction, a registered design professional would prepare a project-specific, design-level geotechnical report with standards no less stringent than the California Building Code which includes rules to make buildings more earthquake resistant and requirements regarding seismic safety. The building codes would address the potential for damage from seismic ground shaking.

*Response to Comment A9-59*

Please refer to **Response to Comment A7-4** for a discussion of the CWA and NPDES permitting related to the Proposed Project. Please refer to **Response to Comment A9-29** for a discussion of changes made to the Proposed Project to provide additional LID treatment measures. Baseline surface water quality data and standards in vicinity of the Proposed Project is also discussed in Draft EIS Section 3.3.2.

*Response to Comment A9-60*

Please refer to **Response to Comment A8-6** and **A9-16** regarding the consideration of various scenarios for treated wastewater discharge and reuse. The analysis does take into account the seasonal variation of rainfall consistent with historical data, does not assume irrigation when there is rainfall, and assumes irrigation at agronomic rates. Various options for off-site recycled water use are being considered and evaluated (see EIS Section 2.1.4). The intent of the supplemental technical memorandum provided in Draft EIS Appendix D-2 is to consider and evaluate the storage and irrigation requirements in the absence of a seasonal discharge to Pruitt Creek. As indicated in Draft EIS Table 1.5-1 and Table 2.1-3, should a surface water discharge option be pursued, the Proposed Project would be subject to the monitoring and reporting requirements set forth by the USEPA upon approval and issuance of an NPDES discharge permit. The NPDES permit would be consistent with the requirements adopted in the Basin Plan.

*Response to Comment A9-61*

The Draft EIS considers the riparian corridor a sensitive habitat (Draft EIS Section 3.5.3.3). Where development would occur in proximity to the riparian corridor, this development would be within areas that have already been impacted for human use, specifically cultivation for vineyard production. Construction would involve earthwork up to the driplines of trees, but would not impact driplines beyond the direct impacts to the riparian corridor associated with the vehicle bridge and outfalls. In order to protect the unimpacted portion of the riparian corridor, including the driplines of trees, mitigation in Draft EIS Section 4 includes fencing the limits of construction throughout the construction phase to ensure that the driplines of trees are not impacted.

Loss of riparian habitat associated with the vehicle bridge and outfall structures is addressed in the Draft EIS. This analysis is included in Draft EIS Section 3.5.3.3 under the “Intermittent Drainage (Pruitt Creek) and Riparian Corridor” header. This section identifies both project BMPs and mitigation measures related to impacts to the riparian corridor in Draft EIS Table 2.1-3 and Section 4, respectively. In consultation with NMFS, mitigation has been added to the Final EIS for on-site restoration of disturbed riparian habitat at a 1:1 ratio. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction.

Additionally, the riparian corridor would be subject to ongoing vegetation management as specified in Draft EIS Section 4, under the Hazardous Materials and Hazards – Wildfire Hazards row. This mitigation measure has been revised in Final EIS Section 4 to include native plantings as a component of vegetation management activities. This is already included as a component of Biological Resources Mitigation Measure A, but this revision would include these plantings as an ongoing component of long-term management already required as part of the riparian corridor wildfire management plan.

Impacts on hydrology are assessed within Draft EIS Section 3.3.3, 3.5.3, and Appendix G-2. Several BMPs and mitigation measures protective of Pruitt Creek’s hydrology are included in Draft EIS Table 2.1-3 and Section 4, respectively. Additionally, with respect to flows within Pruitt Creek, the stormwater system has been designed not to exceed pre-development runoff rates, and the outfalls would operate such that discharge would not exceed one percent of flows within Pruitt Creek (Draft EIS Section 3.3.3.2 and Appendix G-2).

#### *Response to Comment A9-62*

The quality of habitat for salmonids is based upon the NMFS Biological Assessment included as Appendix G-2 of the Draft EIS. These determinations were made based upon the condition of habitat as observed in the field and background research from the California Department of Fish and Wildlife (CDFW), NMFS, and USFWS. Field data collected related to Pruitt Creek included soil data, vegetation data, and a visual reconnaissance of the creek itself, including habitat characteristics such as available refugia and shading. The creek was observed during the field survey for approximate flow, width, depth, presence of pools, and temperature. Comparative long-term data from nearby Mark West Creek from the years 2012-2022 was also reviewed to establish long-term trends likely experienced within Pruitt Creek. Suitability of habitat considered disease and predation within the Russian River watershed, surrounding agricultural and residential land uses, and hydrology of Pruitt Creek. Even though suitability of habitat was generally found to be marginal for salmonids, the NMFS Biological Assessment and the Draft EIS assume potential presence of these species and provide an impact analysis based upon the assumption of presence. The NMFS Biological Assessment has been sent to NMFS along with a request for informal Section 7 consultation.

See **Response to Comment A9-61**, hydrological impacts are discussed within the Draft EIS. Several BMPs and mitigation measures protective of Pruitt Creek’s hydrology are included in Draft EIS Table 2.1-3 and Section 4, respectively. Additionally, the stormwater system has been designed not to exceed pre-development runoff rates, and the outfalls would operate such that discharge would not exceed one percent of flows within Pruitt Creek (Draft EIS Section 3.3.3.2 and Appendix G-2).



*Response to Comment A9-63*

Off-site infrastructure improvements, including transportation infrastructure, are often needed to accommodate project-specific development as is being proposed in the Draft EIS. The need for such improvements does not, on its own, make the Project Site incompatible with the land uses proposed as part of the Project. Please refer to Draft EIS Section 3.9 Land Use, for a discussion of the potential for project alternatives to result in land use conflicts and **Master Response 8** regarding land use compatibility.

*Response to Comment A9-64*

Please refer to **Master Response 8** regarding inconsistency with County land use policies and zoning designations, land use conflicts and impacts to adjacent agricultural resources. As outlined in the Draft EIS Section 3.9.3.2, the site contains unique farmland, farmland of statewide importance, and prime farmland as designated by the California DOC. Approximately 13-acres of the 68.6-acre site (19 percent) are designated prime farmland, which is considered the highest quality for long-term agricultural productivity. However, refer to **Response to Comment A1-3** regarding the impacts of the Proposed Project on agricultural land. Furthermore, the development of a commercial gaming facility on the Project Site would not inhibit agricultural operations on adjacent properties.

As shown on Figure 2.1-1 of Draft EIS, the Pruitt Creek riparian corridor and associated 500-year floodplain would be largely avoided by development under the project alternatives consistent with County combining districts protections to maintain the ecological functions and values of the stream corridor. In consultation with NMFS, mitigation has been added to the Final EIS for on-site restoration of disturbed riparian habitat at a 1:1 ratio. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction.

Impacts on transportation infrastructure and public services and utilities were addressed in the Draft EIS Sections 3.8 and 3.10, respectively. The Draft EIS includes thorough analysis and mitigation measures for all significant impacts, ensuring that the project's overall impact on land use and other resources is managed effectively.

*Response to Comment A9-65*

Please refer to **Response to Comment A8-67** for a discussion of building code compliance, protective measures and best management practices, and mitigation measures to reduce wildfire risk, which would include ember events, including preventative measures, during construction and operation of the Proposed Project.

*Response to Comment A9-66*

Please refer to **Master Response 10** and **Response to Comments A9-46** and **A9-47** regarding wildfire evacuation and associated mitigation.

*Response to Comment A9-67*

Please refer to **Master Response 9: Visual Resources**.

*Response to Comment A9-68*

As addressed in **Response to Comment A7-8**, the Tribe will consider incorporating photovoltaic canopies in the surface parking area. The proposed casino and parking garage would have living rooftops landscaped with fire-resistant plants. Final EIS Table 2.1-3 identifies other protective measures and BMPs to reduce GHG emissions.

*Response to Comment A9-69*

It is correct that the Draft EIS cited a technical memorandum entitled “Documentation of observations of steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek, Windsor California”. Steelhead presence in the intermittent portion of Pruitt Creek is conceptually a factor of rainfall and ability of individuals to move between perennial waters upstream (in Pruitt Creek) and downstream (in Mark West Creek). Extreme drought conditions were considered as a hypothetical, if they were to occur to the extent of reducing or precluding hydroperiod and/or diminishing water quality thresholds below the point of habitat suitability for steelhead. However, for the purposes of this EIS, the upstream presence of steelhead is acknowledged as well as seasonal usage within the project reach when suitable habitat conditions occur. It is noted that the Draft EIS considered presence of steelhead a baseline condition within Pruitt Creek regardless of whether climatic conditions would affect the likelihood of occurrence on any given year. The assessment of frequency of occurrence of this species was not used to exclude it from analysis.

Regarding steelhead spawning and rearing, a site assessment was conducted on February 23, 2022, to assess habitat within the reach of Pruitt Creek on the Project Site. The survey involved assessing habitat within Pruitt Creek on the Project Site and visual survey for Federally-listed fish species. The habitat assessment was guided by the habitat requirements defined by Essential Fish Habitat (EFH) and the habitat features known to be used by the listed Pacific salmonids expected to occur on the Project Site. Habitat was 85 percent flat water with less than 15 percent pool habitat, and pool depth and size were not sufficient holding habitat for adult salmonids. Creek depth was described in Appendix G-2 of the Draft EIS and was defined at a maximum 16 inches, with an average depth of 8 inches. As discussed further therein, steelheads require a minimum of 7 inches of water just for movement. Similarly, water depths of less than 7.1 inches of water limit Coho salmon movement, with juveniles requiring a pool depth of 9 to 48 inches (Appendix G-2 of the Draft EIS). Therefore, pools were considered suitable habitat only during period of high flow when pools reach their maximum depth.

While acknowledging that the habitat assessment was a snapshot, flat water was less than 6 inches deep in most areas and was not conducive to salmonid movement or migration. Abundant shallow (depth less than 4 inches), slower-moving areas of refugia were present, which could potentially accommodate juvenile salmonids. However, as discussed above, salmonids generally require water depth of greater than seven inches for movement. Further, as discussed in Appendix G-2 of the Draft EIS, Pruitt Creek is perennial, with even the deeper pools expected to dry by the end of the summer months. Therefore, the Draft EIS considered Pruitt Creek to intermittently support salmonid movement during periods of high flow when depth is at its greatest and portions of the creek deep enough to allow for passage.

No gauge data on Pruitt Creek is available, but Pruitt Creek is expected to have the highest potential for connectivity between perennial waters between November and April based on review of hydrographic conditions in the overall watershed. The substrate size classes present within Pruitt Creek were as follows: organics, silt or fine sediment, sand, gravel (0.8 to 2.5 inches), and cobble (2.5 to 10 inches). Silts and organics dominated the bottom cover of Pruitt Creek. Although some gravel and cobbles were present, it was almost entirely covered with silt and organics, especially when fully submerged in the creek. Where

there are exposed or distinct creek banks, the sides of the creek channel are lined with sand. Cobbles were more common than gravel throughout. This indicates that rearing habitat is limited on Pruitt Creek. Although some refugia existed in the creek in February, it is unlikely that this ideal rearing habitat exists during the late spring and summer when juvenile salmonids emerge. Characteristic spawning habitat preferred by steelhead was lacking. Riffles and more gravel-sized substrate as well as lower levels of sedimentation would make the habitat more ideal for spawning, though it is correct that no spawning surveys were conducted. In-water work is not proposed when steelhead could be seasonally present due to project mitigation measures; therefore, no direct impacts associated with construction are anticipated regardless of how steelhead are using the portion of Pruitt Creek. Additional mitigation was identified in the Draft EIS protective of Pruitt Creek (Biological Resources Mitigation Measures A through I and Hazardous Materials and Hazards Mitigation Measure A in Draft EIS Section 4), and BMPs protective of Pruitt Creek were identified in Draft EIS Section 2.1.10. Discharge of treated wastewater at the thresholds described in the Draft EIS would not require additional mitigation as discussed in Draft EIS Section 3.5.3.

As part of the Draft EIS, a NMFS Biological Assessment was prepared and submitted to NMFS (Appendix G-2 of the Draft EIS). As specified in Biological Resources Mitigation Measure I in Draft EIS Section 4, consultation with NMFS under Section 7 of the FESA will be completed prior to any ground disturbance. Any further requirements set forth by the resource agency protective of special-status fish species, including steelhead and its designated critical habitat, would be adhered to.

#### *Response to Comment A9-70*

Regarding the potential for ISW impacts see **Responses to Comments A5-2** through **A5-9**. The analysis presented in the GRIA (Draft EIS Appendix D-4) indicates it is unlikely that adverse impacts to ISW or GDEs would result from Project pumping, but may occur when cumulative pumping by the Town of Windsor during dry years is considered together with Project pumping. Some uncertainty remains regarding the extent of surface water interconnection with shallow groundwater that may occur during dry years. Mitigation outlined in EIS Section 4 is intended to address these contingencies, and has been updated in the Final EIS to provide additional detail.

#### *Response to Comment A9-71*

The introductory comments summarizing the West-Yost review process are noted. Please see **Response to Comments A9-72** through **A9-89**.

#### *Response to Comment A9-72*

Please refer to **Response to Comment A8-6** and **A9-16** regarding the consideration of various scenarios for treated wastewater discharge and reuse. Please refer to **Response to Comment A9-18** regarding the design of the seasonal storage ponds, berm heights and associated risks. Visual impacts associated with the storage tanks were described in Draft EIS Section 3.13.3.2 Alternative A – Proposed Project. This analysis has been expanded and clarified as described further in **Master Response 9**.

#### *Response to Comment A9-73*

While options for off-site recycled water use are being considered and evaluated, specific plans would be incorporated into the final approved design when the environmental review process is complete. The indirect effects of off-site recycled water irrigation were addressed in Draft EIS Section 3.15.1. It is understood that offsite use of recycled water would be subject to State requirements, and this is acknowledged in Draft EIS Table 1.5-1. If it is determined that off-site recycled water use would be

required, state and local discretionary review, permitting, and project approval, including compliance with the California Environmental Quality Act, may be required.

***Response to Comment A9-74***

To the extent that information is available, the Draft EIS assessed the potential for environmental effects from off-site recycled water infrastructure in Draft EIS Section 3.15.1.

***Response to Comment A9-75***

Please refer to **Response to Comment A9-29** for discussion of FMDM methodology and updated LID calculations added to Appendix D-3.

***Response to Comment A9-76***

Please refer to **Response to Comment A7-3** for a discussion of project related 100-year and 500-year flood risk. As discussed in Draft EIS Section 2.1.5, although not required for tribal trust lands, the Sonoma County Water Agency FMDM was used for the design of the stormwater drainage system. Per FMDM standards, the stormwater drainage system under the Proposed Project would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. The FMDM standards do not require a 500-year storm analysis. In the absence of other regional flood management design tools, the methods and criteria provided by the FMDM were determined to be appropriate. Changes to precipitation due to climate change are uncertain and no alternative design standard is offered by the comment. Should a design standard relevant to climate change become available, there is area on the Project Site for additional or expanded stormwater features.

***Response to Comment A9-77***

As discussed in Draft EIS Section 3.3.3.2, impacts from the Proposed Project on groundwater recharge due to land use changes are expected to be less than significant. The soils on the Project Site are classified as Hydrologic Group C, which has a slow infiltration rate and moderate to moderately high rate of runoff. Based on these characteristics, the Project Site is not likely a significant source of groundwater recharge. The development of bioswales and a detention basin for capturing stormwater runoff onsite have been designed to maintain the stormwater discharge from impervious surfaces at rates that are no greater than current levels. This would result in stormwater percolation similar to historic rates. Additionally, the GRIA provided in Draft EIS Appendix D-4 determined that most of the vineyard water demand on the Project Site is met by soil water storage derived from precipitation; therefore, 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.

***Response to Comment A9-78***

GRIA Section 3 (Draft EIS Appendix D-4) presents a detailed discussion of the Project water balance that includes the statement cited by the commenter as well as the supporting basis. As discussed in this section, as part of Project design, post-construction runoff rates are required to be maintained at levels that are no more than pre-construction conditions. This would be accomplished by implementing a variety of LID techniques to retain and infiltrate stormwater, as is commonly done to offset the effects of hardscape construction on runoff and recharge. Because the evapotranspiration demand of vineyard and landscaped areas would decrease after Project development, the water budget analysis indicates that more water must necessarily be infiltrated in order to meet the Project design requirements, and the

amount of recharge at the Project Site is not expected to decrease, and in fact would likely increase somewhat after Project development.

*Response to Comment A9-79*

The commenter is referred to detailed discussion regarding the appropriateness and adequacy of the modeling approach in **Response to Comment A5-2**.

*Response to Comment A9-80*

The commenter is referred to **Response to Comment A5-4** which discusses the basis for interpreting aquitards in the aquifer system that underlies the Project Site vicinity. The most substantial aquitard was modeled based on the information derived from well completion reports by USGS and incorporated into the SRPHM 2014 model<sup>26,27</sup>. A thinner, second aquitard was added to the model based on information from investigations performed for the Town of Windsor<sup>28</sup> and well completion reports and boring logs, copies of which have been added as an attachment to Appendix D-4. The boring logs are annotated to illustrate the correlation of lower permeability strata between borings.

As discussed in **Response to Comment A5-4**, the simulation of an additional aquitard honors the existing data and is consistent with the best available science. Simulation of this aquitard with substantially greater conductance than the aquitard interpreted by USGS is appropriately conservative; nevertheless, we acknowledge that inherent uncertainty in any assumptions regarding aquitards in this setting needs to be considered. The amount of additional drawdown impedance associated with modeling of this aquitard is less than 20% for Project-induced drawdown and approximately 11% for cumulative drawdown, which does not affect the assessment of potential drawdown-related impacts associated with the Proposed Project. An 11% increase in drawdown associated with cumulative pumping by the Proposed Project and Town of Windsor during dry years would incrementally increase the possibility of adverse interference drawdown and impacts to ISW and GDEs. The adequacy of the GRIA (Draft EIS Appendix D-4) modeling approach to assess the potential depletion of ISW is further discussed in **Response to Comment A5-7, A5-8, and A9-82**. The possibility of significant ISW depletion is addressed through proposed mitigation in EIS Section 4, which has been amended to provide additional details as discussed in **Response to Comment A9-83**.

Based on the available information, the second aquitard was added to honor the available data. Uncertainty in its competence and conductance is unlikely to change the impact conclusions of the GRIA and the potential for significant cumulative impacts is addressed through proposed mitigation. Further modeling is not warranted.

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<sup>26</sup> Nishikawa, 2013. Hydrologic and Geochemical Characterization of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2013-5118. USGS Publications Warehouse. Available online at: <https://doi.org/10.3133/sir20135118>. Accessed October 2024.

<sup>27</sup> Wolfenden and Nishikawa, 2014. Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052. USGS Publications Warehouse. Available online at: <https://doi.org/10.3133/sir20145052>. Accessed October 2024.

<sup>28</sup> RMC, 2010. Windsor Groundwater Well Installation and Testing Project Summary Report. Prepared for the Town of Windsor in association with E-Pur.

*Response to Comment A9-81*

Refer to **Response to Comment A5-5** regarding climate scenarios for the approach used to develop a 50-year climate change scenario by extrapolating the rate of increased dry year frequency beyond the USGS 30-year climate change scenario.

Refer to **Response to Comment A5-2** for information regarding reasonably foreseeable changes in regional and local pumping and their consideration during simulation of cumulative effects. Based on the available information, use of the refined model used to support the GRIA (Draft EIS Appendix D-4) impact analysis is sufficient to evaluate cumulative impacts from reasonably foreseeable changes in pumping. Further modeling evaluation is not warranted.

Refer to **Response to Comment A5-6** for information regarding the potential effects of the Proposed Project on recharge, which are discussed in GRIA Section 3. Based on the Project water budget analysis presented in GRIA Section 3, the Proposed Project would not decrease, and in fact may slightly increase, groundwater recharge. Modelling alternative recharge scenarios is not warranted.

*Response to Comment A9-82*

The commenter is referred to **Responses to Comments A5-7** and **A5-8** for information regarding the assessment of potential impacts to ISW and GDEs. As noted in **Response to Comment A5-7** and **A5-8**, the conclusion that ISW that could be affected by the Project are limited to the perennial reach of Pruitt Creek upstream from Faught Road is based on several lines of evidence, including review of the Aquatic Resources Delineation Report for the Project, public GDE and wetland databases, County references, the GSP, data from nearby sites with shallow monitoring wells, groundwater levels in on-site wells and monitoring wells near Pool and Mark West Creeks, and modeling and information from the vineyard operator.

Consideration of standing water levels in the on-site wells also indicates that shallow groundwater levels at the site are at a significant depth below the channel of Pruitt Creek. Specifically, stabilized groundwater levels from well completion reports indicate the depth to groundwater exceeds 70 feet in these wells. The on-site wells are completed in the intermediate and deep groundwater zones, and groundwater levels will be shallower in the shallow zone; however, modeling indicates that the corresponding depth to groundwater in the shallow zone would be expected to be about 20 feet below ground level. Finally, we note that the depth of the Pruitt Creek channel at the site was observed to be approximately 5 to 6 feet.

The analysis presented in the GRIA (Draft EIS Appendix D-4) indicates it is unlikely that adverse impacts to ISW or GDEs would result from Project pumping, but may occur when cumulative pumping by the Town of Windsor during dry years is considered together with Project pumping. It is further noted that uncertainty remains regarding the extent of surface water interconnection with shallow groundwater and the extent of vegetation tolerance to cumulative drawdown that may occur during dry years. Mitigation outlined in EIS Section 4 is intended to address these contingencies, and has been updated in the Final EIS to provide additional detail.

*Response to Comment A9-83*

The quote in the comment taken from DWR's recent guidance document that "*perennial and intermittent surface water bodies are most likely to be interconnected surface waters*" is offered completely without context, and may therefore be misleading. The same guidance document indicates that "*When groundwater elevations are low enough below the bottom of the surface water body, there is no longer a continuous saturated zone hydraulically connecting the surface water body with groundwater. Instead, an unsaturated zone beneath the surface water body separates the surface water from groundwater.*" This

quote reveals that whether or not a stream is connected to groundwater is primarily related to the underlying groundwater level elevation, and not whether the water body is perennial, intermittent or ephemeral.

GRIA Section 6.2.4 (Draft EIS Appendix D-4) includes the following statement “... *the extent of perennial water in this reach of Pruitt Creek would be expected to be controlled, in order of importance, by (1) the rate of water outflow from the Mayacamas Mountains; (2) the vertical impedance of the streambed; and (3) the gradient driving infiltration.*” This is not a hypothesis as the commenter supposes, it is a statement of fact, because the extent of perennial flow along Pruitt Creek depends on the balance between the rate of inflow and rate of percolation, which in turn is controlled by streambed conductance and the underlying hydraulic gradient that drives the rate of infiltration. See *USGS Circular 1376, Streamflow Depletion by Wells—Understanding and Managing the Effects of Groundwater Pumping on Streamflow*. It is unclear what point the commenter is trying to make when stating this finding is not supported by any data, and perhaps the commenter intends to make the point that data is needed to apply this concept to an evaluation of potential impacts. It is noted that Pruitt Creek is ungaged and historical discharge data is not available for the creek. Therefore, with respect to the potential for depletion of ISW, it is acknowledged that our analysis is based on a semi-quantitative approach that recognizes that the existing rate of infiltration at the perennial pools along Pruitt Creek at its emergence from the Mayacamas Mountains is likely relatively high, and an increase in the gradient induced by a 1 foot drawdown in this setting is unlikely to significantly alter the infiltration rate or substantially deplete the pools. Nevertheless, the monitoring and mitigation measures described in EIS Section 4 and discussed in **Response to Comments A5-7, A5-8, and A9-82** are intended to quantitatively evaluate and mitigate potential adverse impacts.

The commenter states that modeled Project drawdowns of 1.6 feet and cumulative drawdowns of close to 6 feet along the Pruitt Creek riparian vegetation corridor may be a concern. With respect to the predicted Project-induced drawdown of approximately 1.6 feet, GRIA Section 6.2.4 includes the following findings:

*“The GDE is reported to include riparian hardwoods including Eucalyptus, Valley oak, Oregon ash, Buckeye, California bay-laurel and Coast live oak, with native and non-native shrubs, grasses and herbs in the understory (TNC 2024; Sequoia 2022). In a riparian setting, these species typically derive their water supply from a combination of precipitation, streamflow and, when present, shallow groundwater.”*

*“Based on the available information, the additional drawdown induced by the Project is well within the range of historical hydrologic variability under which these potential GDEs developed and thrived. The GDEs should be capable of readily adapting to the predicted modest change in groundwater levels.*

Conversely, with respect to the close to 6 feet of predicted cumulative drawdown, GRIA Section 6.3 includes the following findings:

*“In the absence of groundwater level data at the Site, it may be expected that relatively rapid groundwater level fluctuations of this magnitude could exceed the ability of the trees’ roots to adapt and could result in plant stress and habitat decline. Cumulative drawdown impacts at this GDE in dry years would therefore be considered potentially cumulatively significant; however, we note that adverse effects that could occur would result from the additional intermittent drawdown resulting from pumping of the Town of Windsor wells.”*

The commenter incorrectly connects the prediction of 1.6 to 6 feet of drawdown along the riparian vegetation corridor and its potential impact on groundwater dependent vegetation with the 1 foot of predicted drawdown at the perennial pools along Pruitt Creek east of Faught Road and its potential to induce streamflow depletion. The analysis of potential impacts associated with the latter is included in Section 6.2.4, which states the following:

*“While this amount of drawdown may increase vertical gradients somewhat, the extent of perennial water in this reach of Pruitt Creek would be expected to be controlled, in order of importance, by (1) the rate of water outflow from the Mayacamas Mountains; (2) the vertical impedance of the streambed; and (3) the gradient driving infiltration. Based on the available information, it is unlikely that the drawdown induced by the Project would significantly decrease the extent of aquatic resources or adversely affect aquatic species through stranding or habitat loss or degradation.”*

*“Additional monitoring would be required to confirm whether surface water in Pruitt Creek at this location is groundwater connected ...”*

In order to further address potential uncertainties associated with groundwater levels adjacent to Pruitt Creek and the potential for surface water depletion, and to prevent or lessen the potential for adverse impacts to aquatic habitat, EIS Section 4 describes a GDE monitoring and mitigation program. As discussed in **Response to Comments A5-7, A5-8 and A9-82**, additional details regarding this program are included in an updated version of the GRIA (Final EIS Appendix D-4).

Our response to this comment is divided into information regarding impacts to the GDEs described in GRIA Section 4.4, which are interpreted to consist of groundwater-dependent vegetation, and depletion of the ISWs described in GRIA Section 4.3.

GRIA Section 6.2.4 discusses impacts on GDEs and cites a total of 10 references presenting pertinent research to support evaluation of potential impacts to GDEs. The available studies support the principle that perennial phreatophyte groundwater dependent vegetation tends to acclimate to existing seasonal and inter-annual groundwater level fluctuations. This principle is widely recognized by plant ecophysiologists and numerous peer reviewed studies. The reference to the study conducted in New South Wales is provided for perspective and has been cited by other studies regarding GDEs, and includes information regarding a variety of GDE vegetation communities, ranging from perennial phreatophytes and wet meadows. In addition to this study, the evaluation provides a more site specific and in depth basis for impact assessment based on the actual mechanisms of plant groundwater use and dependence. By contrast, the criteria presented in the GSP provide management criteria appropriate for more regional groundwater management, and are not suitable for the assessment of impacts to groundwater-dependent vegetation at the site-specific level, as discussed further below.

It is unclear how the Santa Rosa Plain GSP criteria for impacts to ISWs would be applied to GDEs that consist of groundwater-dependent vegetation at this site. The GSP uses groundwater levels as a proxy for the depletion of ISW sustainability indicator, and to the extent these GDEs are groundwater dependent, they do not rely on ISW but directly deep roots that extend to the perennial or seasonal high-water table. Application of these criteria to the management of this kind of groundwater dependent vegetation would be inappropriate since the closest representative monitoring point is located too far from Pruitt Creek to monitor local drawdown effects and impacts. Appropriate site-specific monitoring and management criteria for the potential GDEs at the site are discussed in EIS Section 4.



Section 6.2.4 also presents an analysis of potential impacts related to depletion of ISW. Direct application of the Sustainable Management Criteria in the GSP is not feasible or appropriate for the reason stated above regarding GDEs. Subbasin-wide, groundwater levels are monitored at seven monitoring wells near streams that are designated as RMPs for ISW in the subbasin. None of the locations are close enough to the Project or Pruitt Creek to provide information relevant to local Project pumping effects.

We agree that for management of ISW depletion, groundwater level measurements from shallow monitoring wells completed near Pruitt Creek are needed, and these are proposed to be installed as part of the proposed mitigation. As discussed in the **Response to Comment A5-8**, mitigation has been expanded with additional detail that includes monitoring of shallow groundwater levels and creek discharge rates near the perennial pools on Pruitt Creek located upstream of Faught Road near the creek's emergence from the Mayacamas Mountains.

In the absence of monitoring data at the Project Site or nearby locations along Pruitt Creek, a reasoned, semi-quantitative approach was taken to impact assessment which recognized that where stream baseflow emerges from bedrock mountain terrains and flows onto alluvial deposits (such as where Pruitt Creek emerges from the Mayacamas Mountains east of Faught Road), sediments tend to be coarse grained and streambed conductance tends to be high. It is therefore assumed that the predicted additional drawdown of 1 foot at the perennial pools is unlikely to significantly increase the already high infiltration rates at this location. We note that 1 foot is within the range of MT-MO differences cited by the commenter. With the addition of pumping by the Town of Windsor, the predicted cumulative drawdown increases to approximately 2 feet, which is at the upper end of MT-MO differences and could result in potentially significant cumulative impacts. The discussion of potential impacts resulting from ISW depletion in the GRIA has been updated in Final EIS Appendix D-4 to include these additional details regarding the basis for the impact assessment.

As stated in the GSP, MO values at RMP locations represent the observed average dry-season surface water depletion from pumping that occurred during the years with available observations during 2004–2020. MTs were determined from modeling a pumping scenario associated with historical low groundwater levels and maximum depletion rates. In other words, the MTs and MOs were calculated specifically for streams experiencing streamflow depletion. Sonoma County mapped the area as low-risk for streamflow depletion, in part due to the magnitude of recharge relative to historical pumping<sup>29</sup>. As such, the MOs and MTs established in the GSP were not developed to manage potential depletions along Pruitt Creek.

We note that detailed modeling of surface-groundwater interaction along Pruitt Creek would entail significant uncertainty since groundwater level data next to the creek and discharge data within the creek are not available. As discussed in **Response to Comment A5-8**, mitigation was developed to address potentially significant cumulative impacts to GDEs and ISWs near the Project Site. Mitigation would provide the data, analysis and response actions needed for long-term management of these resources and mitigation of potentially significant impacts. As discussed in the **Response to Comment A5-8**, mitigation has been expanded with additional detail that includes monitoring of shallow groundwater levels and creek discharge rates near the perennial pools on Pruitt Creek located upstream of Faught Road near the creek's emergence from the Mayacamas Mountains, modeling analysis of the resulting data, and implementation of response actions to mitigate any potentially significant ISW depletions. With the

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<sup>29</sup> O'Conner Environmental, 2023. Sonoma County Well Ordinance Public Trust Review Area Delineation. Prepared for Permit Sonoma.

implementation of this mitigation, further analysis of potential ISW depletion by modeling is not necessary.

Wolfenden and Nishikawa (2014) presents output from the SRPHM 2014 model that estimates the current surface water depletion of Pruitt Creek as less than 1%. Depletion estimates in the SRPHM 2014 model and the SRPHM 1.0+ model are derived from the superposition of a GS Flow model that simulates stream discharge and applies it to an underlying MODFLOW model using the STR stream routing package<sup>30</sup>. The resulting output is relatively coarse and uncertain since actual groundwater levels near Pruitt Creek and streamflow discharge are not known. For this reason, a refined child model approach was used to develop drawdown estimates below the perennial portion of Pruitt Creek and used to assess whether significant ISW depletion was likely as discussed in **Response to Comment A9-82**, and mitigation was developed to address any potentially significant Project and cumulative impacts as described in **Response to Comment A5-8** and **A9-82**.

A modified version of the SRPHM was used in a superposition-based approach to understand groundwater level responses to new stresses, but the available data was considered insufficient to construct a numerical model that could be used to reliably assess surface water depletion along Pruitt Creek. Most importantly, Pruitt Creek is an ungaged stream with highly variable discharge, and shallow groundwater levels near the creek have not been investigated or characterized. In the regional-scale SRPHM 2014, streambed leakage from Pruitt Creek is simulated as a component of the RCH package and applied aerially rather than simulating actual streamflow. This simplification, which is reasonable when assessing groundwater level impacts using a superposition approach, does not accurately reflect the local conditions near Pruitt Creek. Furthermore, in addition to the model limitations discussed above, model calibration statistics indicate a groundwater level Normalized RMSE of 13% (Wolfenden and Nishikawa 2014, Table 13) within the Windsor storage unit, indicating that significant model refinement and calibration to local groundwater levels would be needed to construct a numerical model that would yield defensible local results. An analytical streamflow depletion model could be used to gain more perspective on the range of potential streamflow depletion effects; however, in the absence of more data regarding the rate of streamflow into the perennial pools, interpretation of such results would still be qualitative or at best semi-quantitative. Thus, predicted water table drawdown was used as a proxy in a reasoned analysis of the potential significance of Project effects on aquatic habitat in the perennial reach of Pruitt Creek. This is an acceptable approach for impact evaluation under NEPA, and residual uncertainties and potentially significant impacts are addressed through proposed mitigation to prevent or lessen potential impacts to acceptable levels, as discussed in **Response to Comments A5-8** and earlier portions of this response.

The commenter is directed to **Response to Comment A5-2** and **A9-82**. The analysis of drawdown effects incorporated appropriately conservative assumptions and the best available data to support an evaluation of drawdown effects. With respect to depletion of the perennial reach of Pruitt Creek, in the absence of stream discharge and groundwater level data, such assumptions would be speculative. A reasoned impact analysis based on the available data indicates significant streamflow depletion that would adversely affect beneficial uses, in this case aquatic habitat, is unlikely as a result of Project pumping but possible as a result of cumulative pumping. As noted by the commenter, this analysis is semi-quantitative; however, implementation of proposed mitigation would address potential uncertainties.

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<sup>30</sup> Wolfenden and Nishikawa, 2014. Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052. USGS Publications Warehouse. Available online at: <https://doi.org/10.3133/sir20145052>. Accessed October 2024.

Potentially significant flow depletion impacts to Pool Creek and Mark West Creek are less likely than impacts to Pruitt Creek. This is because these creeks are located at a greater distance from the site, and because available monitoring wells indicate groundwater levels along the potentially affected reaches of these streams are well below the streambeds of these streams (10 to 25 feet below ground level at the well clusters discussed in GRIA Section 4.3, and 20 to 30 feet below ground level at wells SRP0707 and SRP 0165 shown in Appendix 3B of the SRPGSP). However, the same mitigation adopted for Pruitt Creek will apply regarding potential impacts to these creeks.

#### *Response to Comment A9-84*

The proposed use of groundwater to supply the Proposed Project has been evaluated in accordance with the requirements of NEPA. As discussed in **Response to Comment A5-2**, the demand projections incorporated into the refined model developed for impact analysis in the GRIA (Draft EIS Appendix D-4) included the reasonably foreseeable demand growth in urban and agricultural groundwater use based on current trends, available planning documents, current land use patterns and assessment of model performance from 2021 to 2024. An evaluation of the Project's consistency with the SRPGSP is presented in GRIA Sections 6.2.1 to 6.2.5. As discussed in these sections, the effects of the Proposed Project, after implementation of mitigation, would be less than significant and therefore consistent with the SRPGSP and would not interfere with its implementation or with sustainable groundwater management.

#### *Response to Comment A9-85*

As discussed in GRIA Section 4.1 (Draft EIS Appendix D-4), the groundwater supply for the Town of Windsor is met by pumping several groundwater wells ("River Wells") by SCWA and is supplemented by using groundwater pumped from several wells operated by the City. Under the Town's Urban Water Management Plan<sup>31</sup>, the planned expansion of the Town's water supply will be through the operation of two new wells operated by the City during dry and critically dry years (the Esposti and Bluebird wells). A Groundwater Master Plan adopted by the Town in 2024 (Todd, GHD and Trussell, 2024) indicates that the Esposti well will be operated to meet demand during dry years, and the proposed Bluebird Well will be replaced with two aquifer storage and recovery (ASR) wells into which injection will occur during wet and normal years, and groundwater will be extracted during dry years. We note that the balancing of injection and extraction through the use of ASR wells will tend to decrease cumulative impacts to the north below those predicted in the GRIA. According to the EIR for the Town of Windsor 2040 General Plan, the town plans to increase its groundwater supply by 2030 and develop projects for recycled water (Windsor 2040 General Plan).

In May 2024, the Town of Windsor renewed its water supply agreement with Sonoma County Water Agency (SCWA) for a term of 10 years. The agreement and its subsequent renewal authorize Windsor to divert Russian River water and redivert previously stored water from Lake Mendocino or Lake Sonoma at Windsor's well field on the Russian River. SCWA and Town of Windsor staff have negotiated a renewal agreement with no change to the amount of water available for a 10-year term. Based on SCWA's 2020 Urban Water Management Plan, SCWA staff determined that the water supply is sufficient to continue to supply the Town of Windsor as specified in the agreement. The renewal agreement contains a right of renewal at the end of the ten years. The only change in the agreement is that SCWA will no longer require

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<sup>31</sup> Woodard & Curran, 2021. 2020 Urban Water Management Plan. Prepared for Town of Windsor, Windsor Water District.

the Town to seek its own water right permit for the diversion of Russian River water through its river wellfield.

While it is true that negotiations and proceedings regarding the decommissioning of the Potter Valley Project may result in changes to regional water supplies, supplies for the Town of Windsor appear to be secure and consistent with the plans evaluated in the GRIA. Similarly, groundwater pumping for agricultural purposes within and near the area of potential Project effects is unlikely to be affected by decommissioning of the Potter Valley Project. As such, consideration of Potter Valley Project decommissioning is not necessary to support cumulative impact analysis for the Project, and any assumptions regarding its effects would be speculative.

*Response to Comment A9-86*

The Town of Windsor's intent to operate the Esposti and Bluebird wells only during dry and critically dry years is included in the Town of Windsor 2020 UWMP Section 7, and was recently reiterated in the Groundwater Master Plan adopted by the Town in 2024 (Todd, GHD and Trussell, 2024). Making a different assumption regarding the use of these wells would be inconsistent with the available data and speculative.

*Response to Comment A9-87*

Mitigation has been revised in the Final EIS as discussed further in **Response to Comments A5-8 and A9-82**.

*Response to Comment A9-88*

The comment references mitigation for cumulative impacts to GDEs during dry years with increased pumping from the Town of Windsor, specifically monitoring for vegetation stress and habitat degradation related to increased groundwater use. The mitigation has been clarified to specify that the monitoring report will be submitted to BIA for distribution to other responsible agencies, Sonoma County and the Town of Windsor. Submittal to the County and Town would provide an opportunity for third-party review. Responsible agencies may include NMFS and/or USGS if determined to be appropriate by the BIA, County or Town. If the monitoring indicates that vegetation decline is occurring that is correlated with groundwater level declines, or streamflow is anticipated to be depleted by more than 5%, mitigation includes the development of a Mitigation Plan that shall be approved by BIA, NMFS, and other responsible agencies. Responsible agencies may include USGS if determined to be appropriate by the BIA or NMFS.

*Response to Comment A9-89*

Regarding the evaluation of an alternatives, including off-site alternatives, see **Master Response 5**. Water supply, wastewater treatment and disposal, grading and drainage, under Alternatives B and C would be similar to Alternative A but with a reduced demand for services due to the smaller development size. This is substantiated by the water and wastewater demands of each alternative (Draft EIS Appendix D-1), as well as the impervious surfaces under each alternative (Draft EIS Appendix D-3). It is reasonable to assume that water, wastewater, and drainage impacts for Alternatives B and C would be less as described through the Draft EIS. Further, no significant impacts were identified for the Proposed Project (Alternative A) in Draft EIS Section 3.3.3.

*Response to Comment A9-90*

The comment provides a summary of the letter included in Exhibit G. Please see **Responses to Comments A9-72 through A9-89** which address the specific comments in Exhibit G.

*Response to Comment A9-91*

The attachments to Exhibit G are referenced in Comment A9-85, please see **Response to Comment A9-85**.

*Response to Comment A9-92*

The County's comments on the September 2023 EA do not raise any additional substantive environmental issues beyond those already provided in the County's specific comments on the Draft EIS. Please refer to **Response to Comments A9-1** through **A9-89** for specific concerns and **Master Response 2** regarding the completeness of the Draft EIS.

*Response to Comment A9-93*

The County's comments on the Notice of Gaming Land Acquisition are noted. The comments do not raise any new substantive environmental issues beyond those provided in the County's specific comments on the Draft EIS.

### 3.2.2 Tribal Letters

#### **Response to Comment Letter T1 – Lytton Rancheria Band of Pomo Indians**

*Response to Comment T1-1*

Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period. Requests for extension of the comment period for the Scotts Valley Casino and Tribal Housing Project EA are outside of the scope of this EIS and will be reviewed separately by BIA.

*Response to Comment T1-2*

Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period. Regarding wildfire evacuation and the Lytton Rancheria housing development, see **Master Responses 10** and **11**. Regarding consultation with tribes, see **Master Response 15**.

*Response to Comment T1-3*

Comments regarding the Scotts Valley Casino and Tribal Housing Project EA are outside of the scope of this EIS and will be reviewed separately by BIA. Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period. Regarding consultation with tribes, see **Master Response 15**.

#### **Response to Comment Letter T2 – Dry Creek Rancheria Band of Pomo Indians**

*Response to Comment T2-1*

Please refer to **Master Response 1** regarding the extension of the comment period and **Master Response 15** regarding compliance with Section 106 of the NHPA.

## Response to Comment Letter T3 – Dry Creek Rancheria Band of Pomo Indians

### *Response to Comment T3-1*

Please refer to **Master Response 1** regarding the end date of the 45-day comment period.

The excerpt the comment refers to on page 3-53 of the Draft EIS is referring to the responses to the information request that was sent to Dry Creek Rancheria on July 22, 2022, to which Dry Creek Rancheria did not respond, not in regard to Section 106 consultation. The summary of Native American consultation under Draft EIS Section 3.6.2 has been clarified in the Final EIS to distinguish this and provide more information regarding Dry Creek Rancheria’s participation in the Section 106 consultation.

BIA records indicate that the Historic Property Survey Report of the Project Site (Draft EIS Appendix H-1), Cultural Resources Study of the Project Site (Draft EIS Appendix H-2), Archaeological Monitoring of Soil Test Trenches (Appendix H-3), and Obsidian Hydration Results (Appendix H-4) were transmitted to Dry Creek Rancheria on March 7, 2023 and Archaeological Testing of Forensic Dog Locations (Draft EIS Appendix H-6) was transmitted to Dry Creek Rancheria on May 7, 2024.

Please refer to **Master Response 15** regarding tribal consultation under Section 106 and **Master Response 16** regarding the potential for impacts to cultural resources and associated mitigation.

## Response to Comment Letter T4 – Cloverdale Rancheria

### *Response to Comment T4-1*

Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period. Regarding consultation with tribes see **Master Response 15**.

## Response to Comment Letter T5 – Lytton Rancheria Band of Pomo Indians

### *Response to Comment T5-1*

Regarding statements of opposition and general statements of concern, please refer to **Master Response 3**. Regarding whether the circumstances of the Tribe warrant a “restored lands” exception, please refer to **Master Response 4**. Regarding the adequacy of the EIS, please refer to **Master Response 2**.

### *Response to Comment T5-2*

Regarding the enforcement of BMPs and mitigation measures see **Master Responses 6** and **7**, respectively.

### *Response to Comment T5-3*

Regarding wildfire evacuation and the Lytton Rancheria housing development, see **Master Responses 10** and **11**.

Traffic count data sheets were included within Appendix A to the TIS (Draft EIS Appendix I) and were correctly noted on the data sheets as taking place in July of 2022. The date of the traffic counts was listed incorrectly as January 2022 within the body text of the TIS and in the Draft EIS. Final EIS Section 3.8.1 and the body text of Appendix I have been corrected to state that traffic counts were collected in July 2022. The effects of the COVID-19 pandemic on study area traffic volumes had substantially dissipated at the time the traffic counts were collected, as vaccines had become widely available the year prior (2021). The

July 2022 date of traffic counts is consistent with Caltrans guidance, which discouraged the use of traffic data collected between March 13, 2020 and January 31, 2022 due to the COVID-19 pandemic.<sup>32</sup>

*Response to Comment T5-4*

Regarding the adequacy of the EIS, please refer to **Master Response 2**.

*Response to Comment T5-5*

Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period.

*Response to Comment T5-6*

Please refer to **Master Response 7** regarding the enforceability of mitigation, **Master Response 6** regarding the implementation of best management practices included in the Draft EIS, and **Master Response 16** regarding clarifications made to Cultural Resources Mitigation Measure A regarding tribal monitoring.

*Response to Comment T5-7*

As discussed in **Master Response 11**, the Lytton Rancheria housing development was included in the wildfire evacuation analysis.

*Response to Comment T5-8*

Please refer to **Master Response 7** regarding the enforceability of mitigation. Regarding the referenced example Water Resources Mitigation Measure A, the mitigation is addressing a cumulative impact and provided without context. A potentially significant impact could occur under multiple dry year conditions with the Proposed Project pumping and the Town of Windsor operation of two new municipal wells. The mitigation does not rely on the Town's determination of significant effects as mitigation is provided which would be implemented by the Tribe in the event that the Town operates the identified new wells and does not implement its own previously identified mitigation plan. Mitigation includes appropriate methods and contingencies to mitigate the Proposed Project's contribution to the cumulative impact.

*Response to Comment T5-9*

Please refer to **Master Response 10** regarding wildfire evacuation and **Response to Comments A8-67** and **A8-70** for a discussion of building code compliance, protective measures and best management practices, mitigation measures to reduce wildfire risk, and coordination with local agencies on wildfire hazard management. Mitigation Measures provided in Draft EIS Section 4 related to fire protection services include efforts to enter into a service agreement with the SCFD to compensate SCFD for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and emergency medical services to the Project Site. In the event the Tribe does not enter into a service agreement for law enforcement and/or fire protection services, the Tribe shall establish, equip, and staff a public safety building for such services on the Project Site. The fire department shall follow the certification and standards of the BIA and shall be staffed at all times with a minimum of 3 personnel, each trained as a firefighter and

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<sup>32</sup> Caltrans, 2023. Traffic Count Baseline Guidance Due to the Coronavirus Disease 2019 (COVID-19) Pandemic. Traffic Operations Policy Directive 23-10. Issued January 30, 2023. Available online at: <https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/memos-letters/01302023-topd-23-01-traffic-count-baseline-guidance-covid-19-a11y.pdf>. Accessed October 2024.

emergency medical technician. The building shall be located in the “treatment area” designated in the eastern portion of the Project Site (Draft EIS Figure 2.1-1). Please refer to **Master Response 7** regarding the enforceability of mitigation measures.

#### *Response to Comment T5-10*

Please refer to **Master Response 7** regarding the enforceability of mitigation. Direct traffic impacts from the Proposed Project are discussed on the referenced pg. 3-82, while cumulative traffic impacts from the Proposed Project and cumulative projects (including anticipated Town and County growth through 2040) are discussed on the referenced pg. 3-157. The mitigation for direct impacts is not particularly substantial or time-consuming and involve restriping and signalization within the existing disturbed right-of-way. The major traffic mitigation measures proposed to mitigate cumulative impacts include fair-share payments for widening of Shiloh Road and improvements at the Shiloh Road/Old Redwood Highway intersection. These improvements are far from illusory as they are identified by Town of Windsor planning documents and the adopted TIF Program as discussed in **Response to Comment A8-34**.

#### *Response to Comment T5-11*

Based on the Proposed Project’s estimated trip generation (TIS Section 4.2 [Draft EIS Appendix I]), and trip distribution and assignment patterns (TIS Section 4.3), the Proposed Project would contribute a relatively small number of trips (up to 60 total) during each peak hour to and from the intersection of Shiloh Road & Faught Road. Most traffic through that intersection is local, meaning that most trips generated by the Proposed Project would not travel through the intersection due to the regional nature of the proposed land uses that would favor travel in the US 101 corridor. Based on no-project through volumes on Shiloh Road east of Old Redwood Highway, the intersection is well below the thresholds for signalization (<100 eastbound vehicles on Shiloh Road) and can be expected to operate within the County’s LOS standards both with and without the Proposed Project. See **Response to Comment T5-3** regarding timing of trip counts.

#### *Response to Comment T5-12*

Please refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology.

#### *Response to Comment T5-13*

Please refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology and **Master Response 10** regarding the No Notice Scenario, Proposed Project impacts on evacuation time, and mitigation associated with wildfire evacuation.

#### *Response to Comment T5-14*

Regarding the general enforceability of BMPs, see **Master Response 6**. Compliance with the NPDES permitting program and implementation of a SWPPP are not “hypothetical” as suggested by the comment; it is a requirement of the federal Clean Water Act for construction activities involving over one acre and is enforced on Tribal land by USEPA. Additional information regarding the Clean Water Act was summarized in Draft EIS Table 3.3-1, and in the expanded regulatory setting in Draft EIS Appendix E. It would be speculative to assume that federal law applicable to tribal trust land would not be followed, particularly when implementation of a SWPPP is a commonplace BMP for construction sites.



The discussion of the criteria that would constitute a significant impact to groundwater as quoted from the Draft EIS is noted and should not be conferred to mean that the Proposed Project would result in significant impacts. It is unclear what future action by third parties the comment is referring to but in reference to groundwater monitoring mitigation see **Response to Comment T5-8**.

The project description includes that the Proposed Project stormwater system would be designed to FMDM standards and earthwork would be balanced within the 100-year and 500-year floodplain (Draft EIS Section 2.1.5). Conceptual grading and drainage plans have been prepared by a registered civil engineer and are included in Appendix D-3. The BIA has analyzed the project as proposed by the Tribe and is not required to assess an infinite number of scenarios in which the project would be developed in a different manner than proposed. Later changes to the assumed design could constitute a substantive change to the project that could trigger the need for supplemental NEPA review.

#### *Response to Comment T5-15*

Please refer to **Response to Comments T8-9** and **A9-16** for a discussion of the Proposed Project wastewater treatment and disposal options.

#### *Response to Comment T5-16*

Regarding the general enforceability of BMPs and mitigation see **Master Response 6** and **Master Response 7**, respectively. An in-depth GRIA was prepared for the Proposed Project to assess potential effects on groundwater and was included as Appendix D-4 of the Draft EIS. Mitigation for cumulative impacts to nearby groundwater wells includes 1) participating in a long-term monitoring and mitigation program already identified by the Town of Windsor in their 2011 Water Master Plan or 2) establishment of a monitoring and mitigation program by the Tribe in the absence of a Town program. See **Response to Comment T5-14** regarding compliance with the NPDES permitting program.

#### *Response to Comment T5-17*

As discussed in Draft EIS Section 3.5, California red-legged frog and northwestern pond turtle are unlikely to be on the Project Site in general or at the time of construction. Similarly, no established nests for migratory birds were identified on the Project Site. The provisions to complete pre-construction clearance surveys and contact USFWS in the unlikely event that these species are found is common practice and additional assurance that activities would be conducted consistent with the federal Endangered Species Act and Migratory Bird Treaty Act. Based on the Biological Assessment for California red-legged frog and northwestern pond turtle and consultation with USFWS, the BIA determined that there would be No Effect to California red-legged frog and northwestern pond turtle. The USFWS reviewed the Proposed Project BA, including BMPs and mitigation measures, and acknowledged that no additional consultation is needed at this time (Final EIS Appendix G-7).

The term “qualified biologist” is a common industry term that embodies common-sense qualifications, such as the ability to identify a target species, habitat of a target species, and boundaries of vegetative communities. Where resource agencies have identified species of particular difficulty to assess, protocol standards often set forth specific qualifications of surveyors. For example, Biological Resources Mitigation Measure J in Draft EIS Section 4 states that the preconstruction survey for California red-legged frog shall follow the *Revised Guidance of Site Assessments and Field Surveys for the California Red-legged Frog*, which sets forth specific qualifications for surveyors.

Regarding consultation with USFWS in the event California red-legged frog or northwestern pond turtle are observed during preconstruction surveys, the Draft EIS does provide specific action requirements. Biological Resources Mitigation Measures L and N require the installation of silt fencing in the event that these species are observed during the preconstruction survey. Silt fencing would serve as an exclusionary boundary to prevent these species from entering a construction area. Contacting USFWS is included as an additional measure to ensure the resource agency has the opportunity to review survey results and provide feedback on the need for additional measures on top of the aforementioned exclusionary fencing. Further, Biological Resources Mitigation Measures O-V in Draft EIS Section 4 provide actionable items in the event that an active migratory bird nest is observed, including establishment of a disturbance-free buffer.

As documented in the Draft EIS Section 3.5.2 and Appendix G-1, suitable habitat for both California red-legged frog and northwestern pond turtle are limited to Pruitt Creek, making it unlikely that the Proposed Project would be required to halt all activities in upland habitat on the Project Site.

#### *Response to Comment T5-18*

The commenter is correct that some of the historical economic data in the Draft EIS is as of 2022. That is because some economic data is prepared by governmental agencies, and that data can lag real time data. Because data published by major governmental agencies always lag behind the present, any data presented in a financial analysis will also not be presented in real time, especially once delays for proofreading and editing are accounted for. It is not practical nor required by NEPA to continually update financial analyses for the passage of time that inevitably takes place during any project and public review. Doing so would result in delays and unnecessarily large quantities and versions of financial figures, which would be confusing to readers.

In addition, estimates made by GMA regarding substitution effects (included in Draft EIS Appendix B-1, dated May 2022) assume a recovery from the COVID pandemic. Specifically, as clearly stated in the Assumptions section (Draft EIS Appendix B-1, page 65):

“Consumer behaviors, income growth, and spending patterns will recover from impacts of the COVID-19 pandemic by the end of calendar year 2022.”

The commenter is correct that the Draft EIS substitution analysis does not include cumulative effects from the potential opening of the Scotts Valley Casino. The publication of the Draft EIS and the Scotts Valley EA both occurred on August 8, 2024. Final EIS Appendix B-5 includes a supplemental substitution effects cumulative analysis that assumes the opening of the Scotts Valley Casino and a summary of this analysis has been added to Final EIS Section 3.14.6. Although the resulting quantitative substitution effects (i.e., the amount of revenue decline anticipated to occur at existing casinos) are higher under the cumulative analysis, the results do not change the qualitative conclusions rendered in the Draft EIS regarding the likelihood of casino closures, physical environmental impacts or environmental justice effects. Please see Final EIS Section 3.14.5 for details.

#### *Response to Comment T5-19*

Please see **Response to Comment T5-18**.

*Response to Comment T5-20*

The commenter's statement that the residents of Lake County would accrue more benefits from the opening of a new casino as compared to Sonoma County residents is speculative. There were approximately 6,400 unemployed residents in Sonoma County as of 2022 (Draft EIS Table 3.7-2). During this same period, there were an estimated 2,859 unemployed residents in Lake County<sup>33</sup>. Although the unemployment rate is higher in Lake County, there are substantially fewer unemployed people in Lake County as compared to Sonoma County. This is because Lake County has a smaller population as compared to Sonoma County.

The commenter's statement that business will likely close because of the shortage of employees is likely incorrect. Operations of Alternative A would stimulate some level of economic growth, and this would benefit many local businesses. It is true that Alternative A would cause some businesses to experience competitive effects, and these would be most notable among existing casinos. It is also possible that some employees at competing casinos would seek employment at Alternative A. However, these employees would not be disadvantaged by such an outcome. Existing casino operators would likely implement measures to retain their existing employees, to incentivize them to not seek employment at other competing casinos. This is currently the case, as there are a number of casinos in the regional market. This dynamic could continue once Alternative A commences operations. This would be a typical outcome as competition amongst firms for employees exists in all industries where there are multiple firms in a geographic region.

*Response to Comment T5-21*

Please see **Response to Comments T5-9** and **T5-13** regarding wildfire risks.

*Response to Comment T5-22*

As noted on the slip sheet for Draft EIS Appendix H, the Cultural Resources Information has been bound separately to protect potentially sensitive information about the location and nature of cultural resources. The findings of these technical studies were summarized in Draft EIS Section 3.6.3.2. The technical studies included in Draft EIS Appendix H were provided to those tribes that affirmed their interest to be formerly consulted by the BIA under Section 106 of the NHPA (refer to **Master Response 15**). Please contact the BIA Pacific Region's Regional Archaeologist to request copies of these reports.

*Response to Comment T5-23*

Please refer to **Master Response 16** regarding the potential for impacts to cultural resources and associated mitigation.

*Response to Comment T5-24*

Please refer to **Response to Comment T5-22** regarding the availability of the technical studies in Draft EIS Appendix H.

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<sup>33</sup> U.S. Census Bureau, 2022. Lake County, California: Table DP03. Available online at: <https://data.census.gov/table?q=DP03&g=050XX00US06033&y=2022>. Accessed September 2024.

*Response to Comment T5-25*

The conclusion statements of the letter are noted. Please refer to **Master Response 10** regarding wildfire evacuation. Regarding the adequacy of the EIS, please refer to **Master Response 2**.

**Response to Comment Letter T6 – Federated Indians of Graton Rancheria (FIGR)***Response to Comment T6-1*

The introductory comments providing background for FIGR and summarizing the purpose of the letter are noted. Please refer to **Response to Comments T6-2** through **T6-12** for specific concerns.

*Response to Comment T6-2*

Regarding whether the circumstances of the Tribe warrant a “restored lands” exception, please refer to **Master Response 4**.

*Response to Comment T6-3*

Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106 of the NHPA.

*Response to Comment T6-4*

The commenter’s summary of FIGR’s consultation with the BIA is noted. Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106 of the NHPA. As described therein, the BIA considered the information provided by FIGR and other consulting tribes as part of its identification efforts conducted pursuant to 36 CFR Part 800.4. Additionally, pursuant to 36 CFR Part 800.4(b)(1), the BIA made a reasonable and good faith effort to carry out appropriate background research, sample field investigations, and field surveys. Nothing in the implementing regulations for NHPA found in 36 CFR Part 800 prohibits fieldwork from being conducted prior to or during tribal consultation efforts and a lack of notification to Tribes does not inherently mean that the surveys are deficient. As discussed in **Master Response 15**, using all the information gathered during these identification efforts, the BIA determined that a finding of No Historic Properties Affected is appropriate for the Proposed Action. A finding of No Historic Properties Affected under Section 106 does not mean that potential impacts to cultural resources were not identified in the Draft EIS, only that no prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP would be affected. In fact, as noted by the commenter, the Draft EIS acknowledged the potential for subsurface cultural resources to be present and be potentially impacted by ground disturbance, based in part on information received during tribal consultation with FIGR, and recommends mitigation to reduce the potential for significant impacts. Please refer to **Master Response 16** regarding the clarifications made to these mitigation measures in response to comments.

The request for information sent by the BIA’s consultant referred to by the commenter was not, nor was it intended to be, an initiation of Section 106 consultation since, as noted by the commenter, it was not sent by the BIA and, therefore, does not constitute government-to-government consultation. The summary of Native American consultation under Draft EIS Section 3.6.2 has been clarified to distinguish the information request from the Section 106 consultation.

Regarding the transmittal of the initial technical studies, Attachment 11 of the commentor's letter shows that the BIA transmitted four technical studies on March 7, 2023, and followed up on May 23, 2023, to confirm that the reports were received and request a response no later than June 5, 2023, three months after the reports had been transmitted for review and comment. Although this shows reasonable and good faith effort to carry out appropriate consultation, SHPO ultimately requested BIA continue consulting with FIGR after reviewing a letter FIGR sent directly to the SHPO. As requested, the BIA continued consultation with FIGR including additional correspondence and meetings, as well as directing that a forensic canine survey to be conducted of the Project Site per the request of FIGR. FIGR was invited to and attended the archaeological testing was conducted at the five areas where ICF had identified an interpretation number 3 alert, as well as three additional areas where there was a potential for project-related ground disturbance near the riparian corridor within the Project Site. The findings from that testing were discussed in Archaeological Testing of Forensic Dog Locations (Draft EIS Appendix H-6). In regard to the obsidian samples that were tested as part of the hydration analysis discussed in Draft EIS Section 3.6.3.2, the sample obsidian pieces were returned to the Project Site.

As described in Draft EIS Section 3.15, the CEQ Regulations define indirect effects as effects that are caused by the action and are later in time or further removed in distance but are still reasonably foreseeable (40 CFR § 1508.1(i)(2)); therefore, the off-site traffic mitigation improvements are appropriately discussed under indirect effects in Draft EIS Section 3.15.1.

#### *Response to Comment T6-5*

Please refer to **Master Response 15** regarding the APE for the Proposed Action. Although vertical extents of the APE were not specified in the initial cultural studies and consultation letters, surveys have been conducted to determine if any historic properties have the potential to occur below the ground surface including a canine survey and backhoe trenching at 11 locations within the APE below the soil level where human cultural materials would be expected to be encountered (i.e. within the Holocene aged [11,700 years ago to 5,850 years ago ] alluvial fan deposits in the top 3-4 feet). As discussed in **Master Response 15** and Draft EIS Section 3.6.3.3, no historic properties were encountered on the surface, or subsurface of the project APE. Although no historic properties were determined to be affected, the Draft EIS acknowledged the potential for subsurface cultural resources to be present and to be potentially impacted by ground disturbance, based in part on information received during tribal consultation with FIGR, and recommends mitigation to reduce the potential for significant impacts. Please refer to **Master Response 16** regarding the clarifications made to these mitigation measures in response to comments.

#### *Response to Comment T6-6*

Please refer to **Master Response 15** regarding tribal consultation and identification of historic properties under Section 106 of the NHPA. The BIA acknowledges that a tribal cultural property could be eligible for inclusion in the NRHP if it retains integrity of relationship and condition and if it meets one or more of the four basic National Register Criteria. As discussed in **Master Response 15**, the widely dispersed scatter of prehistoric artifacts across the APE were all deemed to be isolated occurrences due to their distribution with no discernible concentrations and, for this reason, are not subject to further review or evaluation for significance. Furthermore, results of the obsidian hydration analysis (Draft EIS Appendix H-4) 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. Using all the information gathered during its identification efforts, the BIA determined that a finding of No Historic Properties Affected is appropriate for the Proposed Action.

Nothing in the implementing regulations for NHPA found in 36 CFR Part 800 prohibits fieldwork from being conducted prior to or during tribal consultation efforts and a lack of notification to Tribes does not inherently mean that the surveys are deficient. In regard to the concerns raised by the commenter regarding the canine survey being completed during wet weather conditions, the March 2024 Canine Survey report specifically addressed this, stating on page 5 that “Given the standing water from the recent rains, we were concerned if the dogs would be able to access scent. Along the creek we had areas with scent and alerts. This let us know that some scent was still being released from the ground.” As further discussed in the report, multiple dogs independently alerted in similar locations within the APE, including along the edge of the creek, which proves that some scent was traceable despite the wet conditions in portions of the APE. Based on the level of alert and other research, ICF concluded that any remains may be severely fragmented, grave soil, and/or located in a different area than the accessible scent and that finding visible identifiable remains may not be possible. Regardless, archaeological testing was conducted (Parker, April 2024) as a precaution, in case buried cultural sites, features, or human remains were present. As noted above, the only potential cultural item discovered was a single piece of chipped obsidian, which does not meet the criteria to be considered a "significant" historic resource as defined in the criteria for the NRHP.

The Draft EIS acknowledged the potential for subsurface cultural resources to be present and to be potentially impacted by ground disturbance, based in part on information received during tribal consultation with FIGR, and recommended mitigation to reduce the potential for significant impacts. Please refer to **Master Response 16** regarding the clarifications made to these mitigation measures in response to comments.

The Native American Heritage Commission's (NAHC) "positive" response concerning the project area deals with the general vicinity. It is known that a major village site had been recorded approximately 0.5 miles outside the proposed APE. This site (P-49-823) was recorded in 1978 and revisited in 1999. If this previously recorded site encroached on or near the proposed APE, it would have been discussed in detail. The Historic Property Survey Report of the Project Site (Draft EIS Appendix H-1) lists 3 prehistoric sites that had been recorded within one mile of the proposed APE.

#### *Response to Comment T6-7*

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS.

#### *Response to Comment T6-8*

Please refer to **Response to Comment A8-23** regarding the areas where archaeological and tribal monitoring will be required during ground disturbing activities on the Project Site.

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS. As discussed therein, Cultural Resources Mitigation Measure A has been clarified to define “Interested Sonoma County Tribes” as the tribes who requested to be consulted with under Section 106 (i.e. FIGR, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Dry Creek Rancheria Band of Pomo Indians), as well as any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction. Additionally, Cultural Resources Mitigation Measure A has been clarified to require a Native American Tribal Monitor or archaeologist selected by the Interested Sonoma County Tribes to be invited participate in the monitoring of any 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” in addition to a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) and a Native American Tribal Monitor from Koi Nation.

*Response to Comment T6-9*

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS. As discussed therein, Cultural Resources Mitigation Measure B regarding inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities has been clarified to more specifically reference Section 106 of the NHPA; specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b). This mitigation now specifically requires the BIA to notify and consult with any Indian tribe that might attach religious and cultural significance to the affected property (i.e., the Interested Sonoma County Tribes) regarding National Register eligibility of the inadvertent find and proposed actions to resolve any adverse effects. This clarification was made, in part, to address potential effects on tribal sovereignty over cultural resources that may be found on the Project Site.

*Response to Comment T6-10*

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS. As discussed therein, Cultural Resources Mitigation Measure C regarding inadvertent discovery of human remains during ground disturbing activities has been clarified to specifically cite the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands. Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106 of the NHPA.

*Response to Comment T6-11*

Please refer to **Master Response 16** and **Response to Comment T6-9** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS regarding tribal sovereignty.

*Response to Comment T6-13*

The conclusion statements are noted. Please see **Response to Comments T6-2** through **T6-12** for specific concerns raised in the letter. Regarding concerns that the process has been rushed, see **Master Response 2**. Regarding consideration of an alternative site in Lake County see **Master Response 5**.

*Response to Comment T6-14*

The attachments to the letter are noted and will be considered as part of the Administrative Record.

**Response to Comment Letter T7 – Dry Creek Rancheria Band of Pomo Indians**

*Response to Comment T7-1*

Please refer to **Master Response 1** for a description of the public/agency engagement opportunities in the NEPA process, **Master Response 2** regarding the completeness of the EIS and the overall timeline of the NEPA process, and **Master Response 4** regarding compliance with IGRA, fee-to-trust and related regulations.

The BIA is not able to verify the financial effects described by the Dry Creek Rancheria Band of Pomo Indians (Dry Creek Rancheria) as it does not have access to the confidential and proprietary business information related to operation of the River Rock Casino, or the financial status of the Tribe in terms of its current debt and annual budget. The BIA has solicited input from interested parties, including the Dry Creek Band, regarding the environmental impacts of the project on numerous occasions. Specifically, the Dry Creek Band was invited to provide input through noticing of the scoping period for the EA, the EA review period, the EA hearing, the EIS scoping period, the Draft EIS review period, and the Draft EIS hearing, as well as during several in-person meetings conducted directly between the BIA and Dry Creek. No specific financial data was provided by the Dry Creek Band during these opportunities. Nevertheless, the BIA conducted a conservative assessment acknowledging that the Dry Creek Rancheria has experienced financial challenges due to historical occurrences that have affected its River Rock Casino. These include legal obstacles, the opening and subsequent operation of competing gaming venues (e.g., the Graton Casino and Resort) and the Great Recession. Further, the Draft EIS acknowledged that Alternative A has the potential to cause both direct and cumulative significant impacts to the Dry Creek Rancheria's River Rock Casino (see Draft EIS Section 3.7.3.2 and Final EIS Section 3.14.6), and that "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" (Draft EIS Section 3.7.3.2).

The commenter requests that the EIS analyze the intensity of the effects pursuant to 40 CFR 1501.3 (d)(2)(viii) and how financial impacts would translate into community impacts on the Dry Creek Rancheria. As described in the EIS and in this response, because the BIA does not have access to the confidential and proprietary business information related to operation of the River Rock Casino, or the financial status of the Tribe, it is not possible to make such an assessment with any level of precision. There are many factors, which are outside of the control of the BIA which influence the funding of government and social services for other tribes. These include, but are not limited to, the structure of the tribe's government and its business entities, the management decisions of tribal businesses, the level of contribution of revenues from tribal businesses to governmental and social services, economic factors (e.g., the Great Recession, COVID shutdown) and the use of federal, State, and/or local grants to fund governmental and social services. However, as acknowledged in the EIS, and as reflected in the clarified environmental justice analysis included in Final EIS Section 3.7.3, impacts to the Dry Creek Rancheria are potentially significant and impacts to other Tribes would be less than significant.

The commenter is correct that the gaming substitution analysis prepared by GMA in Draft EIS Appendix B-1 is a "but for" analysis that, with the exception of the opening and operation of Alternative A, holds other factors constant. It is possible to perform a substitution analysis in which other factors and assumptions are introduced. These other factors can include growth that may occur between the present and the opening of other competitors, introduction of more than one competitor into the marketplace, including "expansions" of existing competitors, and economic and market growth that would occur after the opening of new competitors. Introduction of these other factors would produce a model that would be characterized as a "cumulative" analysis. However, the additional assumptions may or may not be reasonably foreseeable, as defined under 40 CFR 1508.1. For example, it is often not reasonably foreseeable that a future opening of a competitive venue will actually occur. If based on unreliable or speculative assumptions, such a "cumulative" analysis may be unhelpful or misleading. Second, as described in Draft EIS Section 3.14.6, the cumulative effects of Alternative A in combination with the expansion of the Graton Resort and Casino, which is currently under construction, would be potentially significant to the Dry Creek Rancheria. Although factoring in the opening of a Scotts Valley Casino would increase the size of substitution effects to the Dry Creek Rancheria, it would not change the conclusion rendered in the Draft EIS. Effects would remain potentially significant.



These considerations notwithstanding, the cumulative effect of the opening of Alternative A, the expanded Graton Resort and Casino, and the Scotts Valley Casino have been calculated in Final EIS Appendix B-5. As described in Draft EIS Section 3.7.3.2, substitution effects of Alternative A on the River Rock Casino are estimated at -23% during calendar year 2033. Under a scenario where one assumes that the proposed Scotts Valley Casino is assumed to occur at the same time as the opening of Alternative A, the combined effect of these two facility openings would yield an estimated substitution effect of -39.10% if the River Rock Casino expansion would not occur. The impact would be less if the River Rock Casino expansion occurred. Please see Final EIS Section 3.14.6 for more information.

The commenter also states that the “combined cumulative impact of all three projects is 87%”. It appears that the third project referred to in the comment is the opening of the Graton Casino and Resort, which opened in 2013. Although it is acknowledged that the opening of the Graton Casino and Resort had an impact on the River Rock Casino, it would be atypical to include such a historical event in a cumulative analysis. Approximately 20 years would have elapsed between the Graton Casino and Resort opening and the commencement of Alternative A operations. In addition, substantial economic growth has occurred since 2013 and would likely continue to occur up through an Alternative A opening. For these reasons, the existing Graton Casino and Resort opening was not included in the cumulative analysis, however, the ongoing expansion of the Graton Casino and Resort was factored into the background conditions assumed in the analysis.

The commenter’s statement that the Draft EIS did not analyze impacts to tribes other than the Dry Creek Rancheria is not correct. The Draft EIS did analyze such impacts, as illustrated in the levels of estimated substitution effects. Whereas the River Rock Casino was estimated to experience an initial and peak substitution effect to gaming revenue of -24.24%, the next highest impact is estimated for the Sherwood Valley facility at -14.77%. The only other facility estimated to experience a substitution effect in excess of -10% is the Graton Casino and Resort, which, as described herein, is currently undergoing a significant expansion. As described in Draft EIS Section 3.7.3.2, and Final EIS Section 3.14.6, with the possible exception of the Dry Creek Rancheria, substitution effects are not anticipated to result in the closure of existing tribal casinos. It is anticipated that these facilities would continue to generate positive cash flows, which would be used to fund Tribal governmental services. Therefore environmental impacts to these Tribes would be less than significant. As stated in Draft EIS Section 3.7.3.2, potentially significant substitution effects are anticipated to occur only to the Dry Creek Rancheria.

Additionally, it should be noted that GMA prepared an additional impact scenario assuming that the River Rock Casino is expanded as proposed by the Dry Creek Rancheria, the results of which were summarized in the Draft EIS Appendix B-2. As stated therein, as a result of this analysis, it is anticipated if River Rock were to expand before the opening of Alternative A, it would experience a -17.6% impact to projected future local market gaming revenue in comparison to a 2033 scenario under which Alternative A does not open but the expansion occurs. This analysis has been further clarified in Final EIS Appendix B-5. In this analysis, GMA found that should River Rock undertake the proposed expansion and Alternative A is operational, the River Rock casino could expect a 40.42% increase in local market gaming revenue in comparison to a 2033 scenario in which Alternative A does not open and River Rock does not expand. Therefore, under this scenario, assuming that the Dry Creek Rancheria is able to secure financing and fund its proposed expansion, it would be expected that competitive effects resulting from Alternative A to the Dry Creek Rancheria would be less than significant.

Dry Creek Rancheria has been granted Treatment as a State (TAS) status under the Clean Water Act, giving the Tribe authority to regulate and enforce water quality standards within the boundaries of their reservation, including any waters flowing into or through their lands. The Project Site and Dry Creek Rancheria are both located within the Russian River watershed. However, the Project Site is downstream of Dry Creek Rancheria's reservation, meaning that impacts from the development of the project alternatives would not affect waters under the Tribe's jurisdiction. Because waters from the Project Site flow downstream, there would be no adverse effects on the Rancheria's upstream water resources. Therefore, given the downstream location of the Project Site, the project alternatives would not interfere with the Tribe's TAS authority or its ability to enforce water quality standards.

*Response to Comment T7-2*

The comment is incorrect that the EIS did not include an impact analysis on Dry Creek. The Draft EIS included a discussion of the potential economic impacts of the Proposed Project on Dry Creek Rancheria and determined that impacts would be potentially significant, as discussed further in **Response to Comment T7-1**.

The CEQ NEPA regulations provide that an agency may authorize a contractor to prepare an environmental document under the supervision of the agency (40 C.F.R. § 1506.5 (c)). Consistent with these regulations, the BIA entered into a Professional Services Three-Party Agreement with Acorn Environmental for the preparation of the documentation to assist the BIA in compliance with NEPA. The agreement states that "Acorn represents that it has no financial interest in the results of the environmental analysis or the BIA decision regarding the approvals for the project," (40 C.F.R. 1506.5 (c)(4)). The agreement further states that Acorn will act on behalf and at the technical direction of the BIA, and that the BIA as the lead agency, will independently evaluate the information submitted or the environmental document and will be responsible for its accuracy, scope, and contents (40 C.F.R. § 1506.5 (c)(2)).

The commenter misuses the term "conflict of interest" and fails to provide any evidence to support this claim. While Acorn Environmental is not a law firm, the comparative rule for attorneys is as follows: "... simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest..."<sup>34</sup> The provision of professional services to potentially competing economic enterprises does not in and of itself constitute a conflict of interest, especially in this case when the nature of the services is to provide an unbiased assessment of environmental impacts. Further, the assessment of economic competitive effects was completed by a third-party subcontractor, GMA.

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<sup>34</sup> American Bar Association, 2024. ABA Model Rules of Professional Conduct Rule 1.7 Conflict of Interest: Current Clients. Available online at: [https://americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_1\\_7\\_conflict\\_of\\_interest\\_current\\_clients/](https://americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients/). Accessed October 2024.

### *Response to Comment T7-3*

The commenter's opinions regarding *Scotts Valley Band of Pomo Indians v. United States Department of the Interior* are noted and is outside of the scope of the environmental analysis in the EIS. Please refer to **Master Response 2** regarding the scope of the EIS. The Draft EIS included a discussion of the potential economic impacts of the Proposed Project on Dry Creek Rancheria and other tribes, as discussed further in **Response to Comment T7-1**.

### *Response to Comment T7-4*

The purpose of the Scoping Report for the EA was to summarize the scoping process conducted and the significant issues identified during the scoping process, so it is unclear what the commenter means regarding the Scoping Report failing to provide Dry Creek Rancheria with the opportunity to assign cultural monitors to monitor site work on the Project Site.

Draft EIS Section 3.6.2, which summarizes the findings from the technical studies regarding cultural resources, acknowledges that present day Sonoma County contains the aboriginal territory of the Southern Pomo. Prior to conducting the field surveys for both the Historic Property Survey Report of the Project Site (Draft EIS Appendix H-1) and Cultural Resources Study of the Project Site (Draft EIS Appendix H-2), information gathering letters were sent to Dry Creek Rancheria by the respective archaeological consultants on February 27, 2022, and July 25, 2022, respectively. Dry Creek Rancheria did not respond to either of these requests for information. Separate from the archaeological studies being conducted, four geological exploratory trenches were excavated on the Project Site. An archaeologist monitored these excavations as a precaution in case buried cultural sites or features were present, the results of this monitoring are included in the Archaeological Monitoring of Soil Test Trenches (Draft EIS Appendix H-3). Tribal Monitors with the Koi Nation also were present during the excavation as the geological testing was being done for their Proposed Project. Dry Creek Rancheria was invited to and attended the archaeological testing conducted at the five areas where ICF had identified an interpretation number 3 alert, as well as three additional areas where there was a potential for project-related ground disturbance near the riparian corridor within the Project Site. The findings from that testing were discussed in the report Archaeological Testing of Forensic Dog Locations (Draft EIS Appendix H-6). Although the BIA decided to prepare an EIS to further analyze the environmental effects which may result from the Proposed Action, no other cultural resource studies beyond the Canine Field Survey (Draft EIS Appendix H-5) and Archaeological Testing of Forensic Dog Locations (Draft EIS Appendix H-6) were determined to be warranted.

Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106 of the NHPA. As described therein, the BIA considered the information provided by the Dry Creek Rancheria and other consulting tribes as part of its identification efforts conducted pursuant to 36 CFR Part 800.4. Additionally, pursuant to 36 CFR Part 800.4(b)(1), the BIA made a reasonable and good faith effort to carry out appropriate background research, sample field investigations, and field surveys. As discussed in **Master Response 15**, using all the information gathered during these identification efforts, the BIA determined that a finding of No Historic Properties Affected is appropriate for the Proposed Action. A finding of No Historic Properties Affected under Section 106 does not mean that potential impacts to cultural resources were not identified in the Draft EIS, only that no prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP would be affected. In fact, the Draft EIS acknowledged the potential for subsurface cultural resources to be present and be potentially impacted by ground disturbance, based in part on information received during tribal consultation with the Dry Creek Rancheria, and recommends mitigation to reduce the potential for

significant impacts. Please refer to **Master Response 16** regarding the clarifications made to these mitigation measures in response to comments.

*Response to Comment T7-5*

As described in **Section 1**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision. As to whether the circumstances of the Koi Nation of Northern California warrant a “restored lands” exception see **Master Response 4**. Regarding the consideration of alternative sites see **Master Response 5**. Regarding analysis of impacts to Dry Creek Rancheria and other tribes see **Response to Comment T7-1**.

*Response to Comment T7-6*

Regarding the consideration of alternative sites see **Master Response 5**. No other available sites have been identified that would a) meet the regulatory requirements for “restored lands” (i.e., sites that are within 25 miles of the Tribe’s headquarters as well as where a significant number of residents reside), b) be of suitable size for development (i.e., more than 50 acres), and c) foreseeably reduce one of more of the environmental effects of the project and not be encumbered by either designated critical habitat or Williamson Act constraints. As to whether the circumstances of the Koi Nation of Northern California warrant a “restored lands” exception see **Master Response 4**. Regarding analysis of impacts to Dry Creek Rancheria and other tribes see **Response to Comment T7-1**.

*Response to Comment T7-7*

As to whether the circumstances of the Koi Nation of Northern California warrant a “restored lands” exception or would set a precedent for off-reservation gaming facilities see **Master Response 4**. Comments regarding California propositions are outside of the scope of the environmental issues in the EIS. As described in **Section 1**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, these comments have been included in the administrative record and this will be considered by the BIA in its decision. Regarding the EIS analysis of impacts to other tribes see **Response to Comment T7-1**. The commenter’s statement that the addition of a Lake County project alternative would negate substitution effects and environmental justice effects is not correct. Although the commenter is correct that a Lake County project alternative would result in less substitution effects to the Dry Creek Rancheria and other tribes in the Sonoma County area, under a Lake County project alternative, existing Lake County casinos and tribes would experience higher substitution effects than under Alternative A. Also, because the population of Lake County is substantially smaller than Sonoma County, substitution effects to existing local casinos would likely be more pronounced than under Alternative A.

*Response to Comment T7-8*

Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period.

*Response to Comment T7-9*

The Proposed Project groundwater impact analysis is provided in Draft EIS Section 3.3.3 and is based on the analysis provided in the Water and Wastewater Feasibility Study (Draft EIS Appendix D-1) and the Supplemental GRIA (Draft EIS Appendix D-4).

*Response to Comment T7-10*

Final EIS Section 3.4.3 addresses the air emissions of the project alternatives. Section 3.14.3 addresses GHG emissions. A Health Risk Assessment was completed and added as Final EIS Appendix F-3, and the results of the study have been summarized in Final EIS Section 3.4.3 under Hazardous Air Pollutants. The Health Risk Assessment addresses cumulative health risks using criteria provided by the BAAQMD. As identified in Final EIS Section 3.4.3 the Proposed Project would result in a less-than-significant impact to human health associated with cumulative air emissions.

*Response to Comment T7-11*

The Draft EIS does acknowledge that an NPDES permit would be necessary for seasonal discharge of tertiary treated effluent to Pruitt Creek (Draft EIS Table 1.5-1). The impacts related to this discharge on water resources and biological resources are discussed in Draft EIS Sections 3.3.3 and 3.5.3, respectively. A NMFS Biological Assessment was included in Appendix G-2 that specifically addressed federally-listed salmonids, and the BIA has initiated consultation with NMFS under Section 7 of the Endangered Species Act. Regarding the application of BMPs, see **Master Response 6**.

*Response to Comment T7-12*

Draft EIS Section 3.6.2, which summarizes the findings from the technical studies regarding cultural resources, acknowledges that present day Sonoma County contains the aboriginal territory of the Southern Pomo. Please refer to **Master Response 4** regarding the Koi Nation's historical or ancestral connection to the Project Site.

Please refer to **Master Response 15** regarding tribal consultation under Section 106 and **Response to Comment T7-4** regarding pre-Section 106 outreach to Dry Creek Rancheria. As stated therein, the first outreach to Dry Creek Rancheria related to the Proposed Action was in February 2022, approximately 19 months before the publication of the EA and approximately 29 months before the publication of the Draft EIS. Additionally, given that Section 106 consultation with tribes was initiated in November 2022, almost a year before the EA for the Proposed Action was issued and a year and a half before the Draft EIS was issued, the BIA has provided interested tribes "reasonable opportunity" to identify its concerns about historic properties pursuant to 36 CFR Part 800.2 (c)(2)(ii)(A) and has considered these concerns in the identification of historic properties within the APE pursuant to 36 CFR Part 800.4 (b).

Please refer to **Master Response 15** and **Response to Comment T6-5** regarding the APE for the Proposed Action. As discussed in **Master Response 15**, the BIA did not implicitly adopt the findings of the archaeological studies in its findings under 106, as alleged by the commenter, but based its finding of No Historic Properties Affected on all of the literature reviews, records searches, outreach to tribes, sample field investigations, and field surveys conducted within the APE.

*Response to Comment T7-13*

The NAHC's "positive" response concerning the project area deals with the general vicinity. It is known that a major village site had been recorded approximately 0.5 miles outside the proposed APE. This site (P-49-823) was recorded in 1978 and revisited in 1999. If this previously recorded site encroached on or near the proposed APE, it would have been discussed in detail. The Historic Property Survey Report of the Project Site (Draft EIS Appendix H-1) lists 3 prehistoric sites that have been recorded within one mile of the proposed APE. Please refer to **Master Response 16** regarding the potential for impacts to cultural

resources and associated mitigation. During the course of tribal consultation under Section 106, the BIA has communicated and met with FIGR.

#### *Response to Comment T7-14*

Please refer to **Master Response 15** regarding the APE for the Proposed Action. As described in Draft EIS Section 3.15, the CEQ Regulations define indirect effects as effects that are caused by the action and are later in time or further removed in distance but are still reasonably foreseeable (40 CFR § 1508.1(i)(2)); therefore, the off-site traffic mitigation improvements are appropriately discussed under indirect effects in Draft EIS Section 3.15.1. As discussed therein, off-site improvements would primarily impact previously disturbed areas, agricultural land, ruderal areas, and/or roadside drainage channels. A cultural resources study was conducted for the Off-Site Traffic Mitigation Effect Area (shown in Draft EIS Figure 3.15-1) and is included in Draft EIS Appendix H-8. The surface inspection did not encounter any historic or prehistoric cultural materials or features and did not identify any resources that met the criteria for inclusion on the NRHP. Additionally, potential off-site improvement projects would be subject to the protection of cultural resources afforded by CEQA Guidelines § 15064.5 and related provisions of the Public Resources Code. The Lead agency for the off-site traffic mitigation would be the Town of Windsor, Sonoma County, and/or Caltrans depending on the improvement. Requests to monitor construction should be made to the appropriate lead agency.

#### *Response to Comment T7-15*

Please refer to **Master Response 15** regarding the identification of historical properties. Although technical studies may have had recommendations in regard to the eligibility of resources for listing on the NRHP, it is the BIA as federal Lead Agency that is responsible for identifying any historical properties within the APE and determining whether there would be an effect. The Criteria for Evaluation to determine eligibility for listing on the National Register was included in the Expanded Regulatory Setting in Draft EIS Appendix E. Please refer to **Master Response 16** regarding the potential for impacts to cultural resources and associated mitigation. As discussed therein, the Draft EIS did acknowledge the potential for buried archaeological sites and includes mitigation for tribal monitoring and inadvertent discovery.

#### *Response to Comment T7-16*

Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106 and **Response to Comment T7-4** regarding pre-Section 106 outreach to Dry Creek Rancheria. As noted on the slip sheet for Draft EIS Appendix H, the Cultural Resources Information has been bound separately to protect potentially sensitive information about the location and nature of cultural resources. The technical studies included in Draft EIS Appendix H were provided to those tribes that affirmed their interest to be formerly consulted by the BIA under Section 106 of the NHPA (refer to **Master Response 15**), the SHPO, and the ACHP as part of the mandated Section 106 consultation. While the Draft EIS disclosed that some artifacts were found and there is a possibility that unknown subsurface prehistoric or historic archaeological resources, including human remains, no locations of artifacts were disclosed to the public.

#### *Response to Comment T7-17*

Please refer to **Response to Comment A8-23** regarding the areas where archaeological and tribal monitoring would be required during ground disturbing activities on the Project Site.

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS. As discussed therein, Cultural Resources Mitigation Measure A has been clarified to define “Interested Sonoma County Tribes” as the tribes who requested to be consulted with under Section 106 (i.e. FIGR, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Dry Creek Rancheria Band of Pomo Indians), as well as any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction. Additionally, Cultural Resources Mitigation Measure A has been clarified to require a Native American Tribal Monitor or archaeologist selected by the Interested Sonoma County Tribes to be invited to participate in the monitoring of any 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” in addition to a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) and a Native American Tribal Monitor from Koi Nation.

*Response to Comment T7-18*

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS. As discussed therein, Cultural Resources Mitigation Measure B regarding inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities has been clarified to more specifically reference Section 106 of the NHPA; specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b). This mitigation now specifically requires the BIA to notify and consult with any Indian tribe that might attach religious and cultural significance to the affected property (i.e., the Interested Sonoma County Tribes) regarding National Register eligibility of the inadvertent find and proposed actions to resolve any adverse effects. This clarification was made, in part, to address potential effects on tribal sovereignty over cultural resources that may be found on the Project Site.

*Response to Comment T7-19*

Please refer to **Master Response 16** regarding the clarifications made to cultural resources mitigation measures in response to comments on the Draft EIS. As discussed therein, Cultural Resources Mitigation Measure C regarding inadvertent discovery of human remains during ground disturbing activities has been clarified to specifically cite the provisions of NAGPRA regarding the protection of human remains or cultural items on federal or tribal lands.

*Response to Comment T7-20*

Please refer to **Response to Comments T7-18** and **T7-19** regarding clarifications made to Cultural Resources Mitigation Measures B and C. Please refer to **Master Response 15** regarding tribal consultation under Section 106 and **Master Response 16** regarding the potential for impacts to cultural resources and associated mitigation. The comments regarding the adequacy of the BIA’s evaluation of cultural resources, the significance of the Proposed Project’s impacts on those resources, and the efficacy of the proposed mitigation measures are noted.

*Response to Comment T7-21*

The concluding comment has been included in the administrative record and will be considered by the BIA in its decision. A meeting on the Proposed Project was hosted by Lytton Rancheria on September 20, 2024, and attended by the Lytton Rancheria, Cloverdale Rancheria, Dry Creek Rancheria, Paula Hart (Director of the Indian Affairs Office of Indian Gaming), Amy Dutschke (Regional Director, BIA Pacific Region), and Chad Broussard (Environmental Protection Specialist, BIA Pacific Region); invitations were

also extended to FIGR and Stewarts Point Rancheria. Regarding public opportunities to participate in the NEPA process see **Master Response 1**.

## **Response to Comment Letter T8 – Shartsis Friese representing the Federated Indians of Graton Rancheria (FIGR)**

### *Response to Comment T8-1*

The introductory comments providing background for FIGR and summarizing the intentions and contents of the letter are noted. Regarding the letter submitted by Chairman Greg Sarris see **Responses to Comment Letter T-6**. Please refer to **Master Response 2** regarding general statements that the Draft EIS is deficient, that the Draft EIS needs to be recirculated, and that a “hard look” at environmental consequences is required by NEPA. Regarding the range of alternatives considered, consideration of an off-site alternative, and consideration of an alternative in Lake County, see **Master Response 5**. During the 25 CFR Part 292 rule making process, the Department of the Interior clarified that “Newly acquired lands with significant historical and cultural connections may or may not include those that are close to aboriginal homelands,” (see Federal Register, Volume 73, page 29361 (May 20, 2008)). Regarding whether the circumstances of the Tribe warrant a “restored lands” exception, please refer to **Master Response 4**. It should be noted that issuance of a restored lands determination is not a major federal action subject to NEPA; rather, the Proposed Action that is the subject of the EIS and under consideration by the BIA is whether to acquire the property in trust for gaming purposes under the IGRA exception of “the restoration of lands for an Indian tribe that is restored to Federal recognition” (25 USC § 2719 (b)(1)(B)(iii)). The comment includes a summary of the concerns raised within the letter and attachments on various issues. The summary does not raise any new substantive environmental issues beyond those presented later in the letter and attachments. Responses to these specific concerns are provided below.

### *Response to Comment T8-2*

As explained in Draft EIS Section 1.1, the Proposed Action that is the subject of the EIS and under consideration by the BIA is whether to acquire the property in trust for gaming purposes under the IGRA exception of “the restoration of lands for an Indian tribe that is restored to Federal recognition” (25 USC § 2719 (b)(1)(B)(iii)). The discussion of the statutory authority for acquiring lands in trust status for Indian tribes (25 CFR Part 151) and the IGRA “restored lands” exception (Section 20 of IGRA, 25 USC § 2719) is provided for context regarding the purpose and need for the Proposed Action and the Tribe’s ability to conduct gaming activities as proposed. The extent to which the project alternatives accomplish the purpose and need will be explained in detail in the ROD and/or Decision. The BIA has not made a decision on the Proposed Action.

### *Response to Comment T8-3*

As noted by the commenter, this comment provides a summary of issues raised within later portions of the comment letter. Responses to these specific concerns are provided below. Regarding general concerns about the design level of detail of project elements see **Master Response 2**.

### *Response to Comment T8-4*

Regarding the range of alternatives considered and off-site alternatives see **Master Response 5**.



*Response to Comment T8-5*

Please refer to **Master Response 2** regarding general statements that the Draft EIS is deficient. For specific concerns raised in Attachment 2, see **Response to Comments T8-85** through **T8-89**.

*Response to Comment T8-6*

The continuous nature of Proposed Project pumping was incorporated into the effects analysis presented in GRIA Section 5 (Draft EIS Appendix D-4) and the impact analysis presented in Section 6. In addition, while it is true that the seasonality of pumping can affect groundwater levels seasonally in areas where it occurs, sustainable yield would be affected by seasonal low groundwater levels rather than by groundwater level recovery. Based on this information, there are no special considerations regarding pumping and recovery cycles that are relevant to the Project impact analysis or that require disclosure.

The impacts of the Proposed Project alone were determined to be less than significant (Draft EIS Section 3.3.3 and GRIA Section 6); however, potentially significant cumulative impacts were identified with future increased pumping from the Town of Windsor to GDEs and shallow domestic wells ( Draft EIS Sections 3.14.2 and GRIA Section 6.3). For this reason, mitigation measures are proposed. As discussed in GRIA Sections 5.7.2 and 6.3, these impacts are primarily (and in the case of impacts to GDEs probably exclusively) related to proposed pumping by the Town of Windsor. For this reason, the implementation of any mitigation measures would be coordinated with the Town of Windsor; however, in the event that the Town does not implement mitigation when necessary, similar mitigation would be implemented by the Tribe.

Stormwater detention basins and bioswales are part of the Project description, not mitigation, and there is evidence that they are effective. Conclusions regarding recharge are thus not assumptions. The water budget analysis presented in GRIA Section 3 presents the basis for concluding that the Proposed Project would not have a significant impact on recharge and may in fact increase net recharge. The commenter is referred to **Response to Comment A5-6** for additional information.

The Project's water demands and supplies under pre- and post-development conditions are discussed in GRIA Section 3, Table 3-1. As summarized in this table, the current water demand under pre-development conditions is 34 acre-feet/year and is supplied by groundwater. The Project water demand is 315 acre-feet/year and would be supplied using groundwater (191 acre-feet/year) and recycled water (124 acre-feet/year).

It is noted that information regarding the groundwater demand and supply under the pre- and post-development conditions is not related to the overall site water balance from which the potential change in recharge may be derived. In the water budget analysis presented in GRIA Section 3, site recharge was assumed to be derived entirely from deep percolation of precipitation. Post-development runoff is required to remain equal to or less than pre-development runoff. As a result, on-site deep percolation and plant consumptive use (evapotranspiration) after development must necessarily be at least as great as under pre-development conditions. Because the amount of precipitation and runoff at the Project Site would remain relatively constant and the amount of consumptive use by vegetation would decrease once the vineyard is removed, there would be an increase in the amount of soil moisture available to move downward through the soil profile and recharge groundwater. As such, it is likely the Project would actually result in an increase in groundwater recharge.

As discussed in GRIA Section 6.3 and Section 7, the Town of Windsor would be required to adopt mitigation to identify and substantially lessen or prevent potentially significant impacts associated with its operation of the Esposti Park and North Windsor Wells if impacts are as great as predicted in the cumulative impact analysis presented in Section 6.3. Such measures would likely be adapted from Mitigation Measure HYD-3 of the PEIR for the Town of Windsor’s 2011 WMP. In the event that the Town of Windsor does not implement a mitigation associated with the operation of the two new municipal wells, the Tribe would implement its own program, as described in EIS Section 4. Additional information regarding the implementation of mitigation measures is discussed in **Response to Comments A5-8 and A9-82**.

Well mitigation programs with similar options for interconnection or compensation of affected parties for well rehabilitation or replacement have been adopted for similar projects under CEQA and NEPA. However interconnection to the Tribe’s water system may be hampered by jurisdictional issues and thus the option of connection to the casino’s water system has been removed from the Final EIS and Revised GRIA (Final EIS Appendix D-4). Mitigation need not meet all the water supply needs of an affected party, but only those impacts caused by the Project. The commenter is referred to GRIA Section 7.1 and **Response to Comments A5-8 and A9-82** for additional information regarding proposed groundwater mitigation.

#### *Response to Comment T8-7*

See **Response to Comment T8-6** regarding the mitigation plan and associated compensation for cumulative impacts previously identified by the Town of Windsor. Mitigation has been revised in the Final EIS to remove the option of connecting to the Tribe’s water supply as there could be jurisdictional issues. Mitigation language maintains the option for individual well users to be connected to another public water system, should this option be preferable and available.

#### *Response to Comment T8-8*

Groundwater quality could be adversely affected by any proposed construction activities that are similar in size to the Proposed Project without the implementation of common BMPs required by the Clean Water Act. Compliance with the NPDES General Construction Permit, which is required by the Clean Water Act for any construction project disturbing one acre or more, would reduce this risk by “by reducing detachment of soil particles from bare soil, reducing the risk of soil contamination from construction materials (e.g., fuel, fertilizer, paint), or by preventing movement of loose soil into waterways” as explained in Draft EIS Section 3.3.3. The proposed stormwater system would be designed to Sonoma County Water Agency FMDM standards, which is a recognized method of treating operational stormwater in the region. Regarding general concerns of implementation of BMPs, see **Master Response 6**.

#### *Response to Comment T8-9*

Please refer to **Response to Comment A9-16** regarding the consideration of various scenarios for treated wastewater discharge and reuse. Although it is correct that State regulations do not apply to federal lands, the BIA has consulted with the USEPA regarding the anticipated requirements of the NPDES permit, and USEPA has confirmed the following: “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... Additionally, the USEPA 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,” (refer to Comment Letter A7, Comment A7-4). Therefore, it is not speculative to make assumptions about what the NPDES permit conditions will require in terms of performance standards for impacts to water quality and beneficial uses.

Further, as a design parameter, the proposed WWTP would produce water that meets Title 22 requirements for the use of recycled water, regardless of if the recycled water is being applied on tribal lands and thus regulated by the USEPA, or if it is applied off-site and thus would be mandated to meet these requirements by the SWRCB. The production of recycled water that meets Title 22 standards is a component of the project, and thus it would be speculative to assume otherwise. The direct, indirect, and cumulative impact assessment for wastewater treatment and disposal of the Proposed Project is provided in Draft EIS Section 3.3.3, 3.14, and 3.15. The conclusions and findings related to wastewater treatment and disposal are supported by the analysis presented in the impact discussion which is based on the specific technical reports presented in Appendix D and Appendix G-2. Table 2.1-3 provides specific Best Management Practices related to wastewater treatment and disposal to be implemented during operation of the Proposed Project.

Any treatment implemented to produce recycled water will comply with federal requirements for the production and use of recycled water. Any recycled water developed for offsite use will also comply with Title 22 requirements for recycled water production, distribution, and use per the SWRCB. Title 22 regulations include specific criteria that recycled wastewater must meet including advanced treatment criteria, wastewater source control measures, pathogenic microorganism control measures, chemical and contaminant monitoring, preparation of an operations plan, and other specific monitoring, and reporting requirements. In some cases, permits from regulatory agencies cannot be issued until the environmental review process is complete.

With respect to the NPDES permitting for the Proposed Project, consultation with the USEPA has been ongoing throughout the development of the Proposed Project. The Proposed Project has been conceptually designed to include alternatives. Draft EIS Section 2.1.4 evaluates a range of wastewater disposal options including a maximum scenario for recycled water use, assuming that no effluent is discharged to the Creek. This could be accommodated via a combination of a reservoir and tanks within the site, as discussed for Options 5 through 8 in Draft EIS Appendix D-2.

It is standard practice to collect receiving water quality data as part of the development of an application for surface water discharge. Ambient water quality data provides the basis for some discharge limitations. This would be evaluated at the time a selected alternative is developed and if a NPDES discharge permit is pursued. If the Proposed Project includes a surface water discharge scenario, it would be subject to the monitoring and reporting requirements set forth by the USEPA upon approval and issuance of an NPDES discharge permit. The NPDES permit would be consistent with the requirements adopted in the Basin Plan and the permit designed to protect the beneficial uses of the surface water. Lastly, Proposed Project facilities will be designed to meet Title 22 criterion and the effluent quality requirements of the NPDES discharge permit issued by the USEPA, and this would ensure that impairment of the downstream waterways would be less than significant, and no additional mitigation measure would be required.

*Response to Comment T8-10*

Please refer to **Response to Comment A8-65** for a discussion of federal laws that govern the transportation, use, and storage of hazardous materials.

*Response to Comment T8-11*

While it is correct that consultation with NMFS is included as Biological Resources Mitigation Measure I within Draft EIS Section 4, this is not the only measure identified for protection of salmonids. As stated within the Draft EIS Section 3.5.3.3 under the “Special-Status Fish Species” header, mitigation measures and BMPs protective of Pruitt Creek and its riparian corridor would be protective of special-status fish. This includes BMPs listed under water resources, biological resources, public services and utilities, and visual resources (Draft EIS Section 2.1.10), as well as mitigation for biological resources and hazardous materials and hazards in Draft EIS Section 4.

Draft EIS Appendix G-2 addressed specific impacts, including, but not limited to:

- Impacts from vegetation trimming/removal in the riparian corridor, including reduced natural shading/cooling, increased predation, and reduction of bank stability
- Water quality degradation from construction, such as increased turbidity
- Water quality degradation from discharge of untreated stormwater during operation

Draft EIS Appendix G-2 provides an analysis of each identified specific impact considering project design and regulatory requirements, including, but not limited to:

- Mitigation limiting impacts to riparian habitat and providing setbacks for the riparian corridor. Note replanting of riparian areas has been included in the long-term management plan under the Hazardous Materials and Hazards mitigation included in Draft EIS Section 4 to include replanting as part of the ongoing monitoring and management efforts.
- Adherence to the required SWPPP throughout construction.
- Implementation of an on-site stormwater collection and treatment system to ensure untreated stormwater is not discharged to the creek.

In consultation with NMFS, mitigation has been added to the Final EIS for on-site restoration of disturbed riparian habitat at a 1:1 ratio. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction. Mitigation has also been added specifying that wastewater discharged to Pruitt Creek shall flow through a gauge station. The gauge shall be located at the point of project-related discharge on Pruitt Creek. No more than 1% of Pruitt Creek flow shall be discharged to receiving waters unless otherwise agreed to by USEPA and NOAA Fisheries. A water quality monitoring protocol and schedule shall be established to ensure that parameters are being met during discharge activities in Pruitt Creek.

*Response to Comment T8-12*

Appendix D-2 of the Draft EIS identified the location of the seasonal storage pond and tanks proposed under the maximum scenario for recycled water use (or no discharge to the creek condition). Appendix D-2 in the Final EIS has been updated to include preliminary site plan layouts of the proposed water supply well, water and wastewater treatment facilities, and storage and distribution systems. As shown therein, the proposed infrastructure can be accommodated within the site plan configuration and “treatment area” as shown in the Draft EIS Figure 2.1-1, with the exception of one of the recycled water storage tanks

and the seasonal storage pond under the maximum scenario for recycled water use (or no discharge to the creek condition), as originally illustrated in Appendix D-2 of the Draft EIS. Clearance requirements for groundwater wells are preliminarily addressed in Draft EIS Appendix D-1, Section 5.1 and would be subject to regulatory compliance as stated in section Draft EIS Appendix D-1, Section 4.1.1. As discussed in Draft EIS Section 2.1.4 and Appendix D-1, treated wastewater effluent would be adequately disposed of through a combination of on-site re-use (toilet/urinal flushing, landscape irrigation and vineyard irrigation applied at agronomic rates, and cooling tower make-up), discharge to Pruitt Creek, and/or off-site irrigation. The location of the proposed treated wastewater outfall to Pruitt Creek is now shown on Final EIS Figure 2.1-3. Treated wastewater would not be discharged in proximity to the proposed water supply well that would be located in the northern portion of the “treatment area” (refer to the proposed location of the well in the Final EIS Revised Appendix D-2 on Figures 1-3). Please see **Master Response 2** for a discussion of level of design detail required for NEPA analysis.

#### *Response to Comment T8-13*

Please refer to **Response to Comment T8-12** regarding the layout of the proposed water supply and wastewater treatment and storage systems. Please refer to **Master Response 9** for a discussion of aesthetics and visual resources impacts of the Proposed Project. An impact analysis of odors and noise was provided in Draft EIS Section 3.4.3.3 and 3.11.3.3.

#### *Response to Comment T8-14*

Regarding the “hard look” standard, see **Master Response 2**.

#### *Response to Comment T8-15*

With regards to the appropriateness of the trip generation rates used in the Draft EIS, please see **Response to Comment T8-91**. The air quality analyses in the Draft EIS and Final EIS are based on appropriate trip generation estimates. Likewise, the General Conformity Determination is also based on appropriate trip generation estimates.

#### *Response to Comment T8-16*

The comment refers to a peer review included as Attachment 5 of the letter and addressed in **Responses to Comments T8-139 through T8-151**. Regarding the comments on the project description specifically, see Response to Comments T8-139 and T8-140.

#### *Response to Comment T8-17*

Impacts to Pruitt Creek and its associated riparian corridor were included in Draft EIS Section 3.5.3. Regarding the level of detail of the Proposed Project, see **Master Response 2**. The level of detail is sufficient to determine the range of potential environmental effects required by the NEPA process. Regarding impacts to Pruitt Creek stream flows, construction would not impact Pruitt Creek stream flow, as all work within the creek shall be conducted during the dry season and in the event of substantial, unseasonably high flow within Pruitt Creek on or after April 15, work shall be altered or stopped until flow ceases in the creek (see Mitigation Measure Biological Resources E in Draft EIS Section 4). If treated wastewater is discharged to Pruitt Creek during operations, the NPDES discharge permit would require stream flow monitoring and discharges would be limited to 1% of the flow of Pruitt Creek as discussed in **Response to Comment A9-16**.

*Response to Comment T8-18*

The Final EIS has been updated to remove directional drilling as an option for utility line crossing of Pruitt Creek. Utility lines would be attached to either the proposed pedestrian or vehicle bridge to avoid impacts to Pruitt Creek. With the removal of this option, no other clarifications of the analysis are warranted. Please refer to **Response to Comment A9-61** regarding potential impacts from the installation of outfall structures.

*Response to Comment T8-19*

Please refer to **Response to Comment T8-9** and **A9-16** for a discussion of the Proposed Project wastewater treatment and disposal options. Please refer to **Response to Comment A8-65** for a discussion of federal laws that govern the transportation, use, and storage of hazardous materials.

*Response to Comment T8-20*

See **Response to Comment T8-11** and **T8-146** regarding impacts to special-status fish species and associated mitigation. As stated therein, numerous BMPs and mitigation measures were identified within the Draft EIS based upon an analysis of specific impacts identified for the Proposed Project.

*Response to Comment T8-21*

To clarify, Draft EIS Section 4 specifies that Biological Resources Mitigation Measures A through C are specifically for the protection of the riparian corridor. While these measures provide protection to Pruitt Creek, the Draft EIS identifies additional measures for Pruitt Creek. As discussed within Draft EIS Section 3.5.3.3, these measures would be effective as they “would minimize potential impacts to the riparian corridor through minimizing the project footprint in those areas, installation of high-visibility fence to prevent incursion in the riparian corridor, and replanting of native trees and shrubs in any temporarily disturbed riparian areas.” Additional information on the efficacy of these measures is not warranted as these are impact avoidance measures by design. In response to comments, the replanting of native vegetation has been added as a component of the riparian corridor wildfire management plan to ensure that re-plantings are monitored long-term for success and that ongoing management for native vegetation occurs. In consultation with NMFS, mitigation has been added to the Final EIS for on-site restoration of disturbed riparian habitat at a 1:1 ratio. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction.

Please refer to **Response to Comment T5-17** regarding the definition of a qualified biologist. It is assumed that the Tribe would retain a qualified biologist for the purpose of demarcating the Environmentally Sensitive Area. It is further noted that the extent of the riparian corridor has already been mapped.

In regard to the high-visibility fencing, the purpose of this fencing as described in Draft EIS Section 3.5.3 is to demarcate the Environmentally Sensitive Area. As the purpose of the fencing is to provide construction personnel with a visual representation of the limits of work, no further specifications on the design of the fence are warranted beyond the high-visibility requirement. A detailed discussion on the efficacy of fencing in preventing accidental incursion into setback areas is not necessary as the totality of the perimeter of the Environmentally Sensitive Area would be fenced and construction personnel are not expected to intentionally trespass or drive equipment through fences.

In response to this comment, Biological Resources Mitigation Measures A through C have been expanded to include the following information:

- A clarification on the boundary of the Environmentally Sensitive Area
- Addition of the timing requirements for the installation of the high-visibility fencing
- Periodic inspection requirements to ensure the integrity of the fencing

*Response to Comment T8-22*

Regarding the analysis of impacts to special-status plant species, see **Response to Comments T8-139** and **T8-140**.

*Response to Comment T8-23*

Refer to **Response to Comment T8-11** concerning additional mitigation measures for special-status fish in addition to the mitigation regarding consultation with NMFS. It is incorrect to state that the Draft EIS assumes salmonids are absent from the stretch of Pruitt Creek crossing the Project Site. As stated in the quote provided by the commentor, Pruitt Creek at the Project Site was determined to be poor-quality breeding habitat, but at no point does the Draft EIS state that salmonids could not occur within the portion of Pruitt Creek crossing the Project Site. In fact, Draft EIS Section 3.5.2, under the “Federally Listed Special Status Species” header, specifically states that Chinook salmon, Coho salmon, and steelhead have the potential to occur within the Project Site. The analysis presented in Draft EIS Section 3.5.3 is based upon the assumption that these species may occur within Pruitt Creek where it crosses the Project Site. Information included in Draft EIS Appendix G-2 provides the public context on the determination of the quality of habitat and likelihood of occurrence based on parameters such as temperature and downstream barriers to passage.

*Response to Comment T8-24*

Please refer to **Response to Comments A7-10** and **T8-144** regarding project impacts to California red-legged frog.

*Response to Comment T8-25*

Please refer to **Response to Comment T8-149** regarding the referenced peer review comments on cumulative impacts to biological resources.

*Response to Comment T8-26*

Please refer to **Master Response 15** regarding tribal consultation under Section 106, **Master Response 16** regarding the potential for impacts to cultural resources and associated mitigation, and **Master Response 5** regarding consideration of an alternative in Lake County. Please refer to **Response to Comment T6-4** regarding the consultation with FIGR and the transmittal of technical studies.

*Response to Comment T8-27*

The environmental justice analysis in the EIS was prepared in accordance with CEQ NEPA regulations and Executive Order (EO) 12898. The CEQ regulations define “environmental justice” to focus on protecting communities from disproportionate adverse health and environmental effects and ensuring equitable access to healthy environments (40 CFR Section 1508.1(m)). While the CEQ regulations include economic impacts within their definition of potential environmental justice effects, they maintain focus on environmental and health impacts rather than pure economic competition. The regulations further

reinforce this interpretation saying, “economic or social effects are not intended by themselves to require preparation of an environmental impact statement,” (40 CFR Section 1508.14). The environmental justice movement emerged from communities struggles against physical environmental harms. While economic impacts have been considered in environmental justice analysis, the effects are typically analyzed in terms of how environmental burdens may create economic disadvantages for communities, not how market competition would affect existing businesses.

The commenter is incorrect that the Draft EIS does not address the potential for disproportionate and adverse effects to occur to other tribes and their members. The text of Final EIS Section 3.7.3.2 has been edited to clarify where these analyses reside within the EIS. There are no tribal communities in proximity to the Project Site, and Alternative A would have no potential to cause environmental burdens that may create economic disadvantages for tribal communities. Economic effects to tribal governments would be limited to those from economic competition, and this analysis resides within the *Gaming Substitution Effects* of Draft EIS Section 3.7.3.2. Final EIS Section 3.7.3.2 has been clarified to specifically describe how economic substitution effects may potentially result in disproportionate and adverse effects to Sonoma County tribes, including the Graton Rancheria. As described in the EIS and in this response, because the BIA does not have access to the confidential and proprietary business information related to operation of the other gaming facilities within the market, or the specific budgets and spending decisions of the impacted Tribes, it is not possible to make an assessment with any level of precision as to how each Tribe may be individually affected. For example, some Tribes may allocate a portion of gaming revenues for per capita payments to tribal members or towards economic investments in property acquisitions and business, while others may dedicate 100% of gaming revenue funds towards tribal member services or management of tribal lands. There are many factors, which are outside of the control of the BIA and Koi Nation which influence the funding of government and social services for other tribes. These factors would vary from year to year, and may include, but are not limited to, the structure of the tribe’s government and its business entities, the management decisions of tribal businesses, the level of contribution of revenues from tribal businesses to governmental and social services, economic factors and the use of federal, State, and/or local grants to fund governmental and social services. Therefore, such as assessment would inherently be speculative in nature. Please refer to **Master Responses 15** and **16** regarding the potential for impacts to cultural resources.

Please refer to **Master Response 5** regarding the consideration of an alternative site in Lake County. The commenter’s statement that the addition of a Lake County project alternative would negate substitution effects and environmental justice effects is not correct. Although the commenter is correct that a Lake County project alternative would result in less substitution effects to the Graton Casino and Resort, that is because the Graton facility is located in Sonoma County. However, under a Lake County project alternative, existing Lake County casinos would experience higher substitution effects than under Alternative A. Also, because the population of Lake County is substantially smaller than Sonoma County, substitution effects to existing local casinos would be more pronounced than under Alternative A.

### ***Response to Comment T8-28***

Please refer to the Final EIS Appendix B-5 for a detailed response to this comment. Although the commenter is correct that Draft EIS Appendix B-1 estimated substitution effects to the Graton Casino and Resort at – 11.45% of gaming revenue, as described above in **Response to Comment T7-1**, this substitution analysis isolated the impacts of the opening of the Proposed Project, while holding most other factors constant. It is understood that the recent circa 2023 Graton Casino and Resort expansion increased the



gaming floor area of the resort by over 50%.<sup>35</sup> The Graton Casino and Resort gaming revenues that will occur from that facility's expansion were factored into the 2033 baseline revenue forecast, which formed the basis for the substitution analysis. Thus, the – 11.45% substitution analysis estimate for Graton is “net” of the incremental expansion related revenue. Had such expansion-related revenue been excluded from the baseline, substitution effects to the Graton Casino and Resort would have been lower, or even net positive. A cumulative substitution effect analysis has been performed and is listed in Final EIS Appendix B-5. As shown therein, the cumulative substitution effect on the Graton Casino and Resort is estimated at – 31.98% during calendar year 2033. Consistent with the non-cumulative substitution analysis included in Draft EIS Appendix B-1, incremental revenue associated with the expansion is included in the baseline. If the effects were measured against a baseline where the Graton Casino expansion does not occur, the resulting impact percentage would be much less.

As described in **Response to Comment T8-27**, the text of Final EIS Sections 3.7.3.2 and 3.14.2 have been edited to clarify why, with the potential exception of the Dry Creek Rancheria, the Proposed Project is not anticipated to result in disproportionate and adverse effects to other tribes or their members.

Please see **Response to Comments T8-122** through **T8-138** regarding the commenter's statements about the MEC report. GMA developed an independent model to estimate substitution effects on nearby gaming facilities that did not rely on other assumptions or data from MEC's report.

#### *Response to Comment T8-29*

Please see **Response to Comments T8-122** through **T8-138** regarding the commenter's statements about the MEC report. See **Response to Comment A8-25** regarding housing and related impacts. Please see **Response to Comment A8-26** regarding other potential socioeconomic effects.

#### *Response to Comment T8-30*

This comment summarizes FIGR's concerns with the accuracy and adequacy of Draft EIS Section 3.8 Transportation and Circulation, as documented in Attachment 3 of the comment letter. More specific comments from FIGR's independent peer reviewer Linscott, Law & Greenspan, Engineers, are addressed in **Responses to Comments T8-90** through **T8-120**, below.

#### *Response to Comment T8-31*

Please refer to **Master Response 8** for details on land use conflicts and inconsistencies with County and Town land use policies and zoning designations, including the community separator designation. The comment states that land use impacts are being disregarded in favor of federal law, however, the Draft EIS incorporates protective measures and BMPs in Draft EIS Table 2.1-3 for air quality, noise, traffic, and visual resources, as well as mitigation measures identified in Section 4, to address land use incompatibility, and help lessen the impact of development on the surrounding community. The Draft EIS acknowledged the potential adverse effects of traffic, noise, and crime in Sections 3.8, 3.11, and 3.7, respectively, and includes BMPs and mitigation measures for all significant impacts to ensure effective management of the project's overall impact on land use and the surrounding community.

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<sup>35</sup> Graton Resort and Casino, 2023a. Graton Resort & Casino Breaks Ground on \$1 Billion Expansion. Available online at: <https://www.gratonresortcasino.com/pressaccolades/graton-resort-casino-breaks-ground-on-1-billion-expansion/>. Accessed October 2024.

### *Response to Comment T8-32*

Draft EIS Section 3.10.3 provided a detailed and clear analysis of the anticipated solid waste generated by the project alternatives during both construction and operation phases. The analysis concluded that the project alternatives' impact on solid waste services would be less than significant based on available information about the capacity at regional facilities, such as Central Landfill and Healdsburg Transfer Stations. Service contracts for collection and disposal would be finalized during the development phase to ensure proper waste management is in place prior to the start of construction for construction related solid waste and prior to opening day for operation related solid waste.

Regarding the solid waste management in Draft EIS Table 2.1-3, this plan was designed to address recycling, solid waste reduction, and proper disposal during both construction and operation. The BMP specifies certain measures that would need to be included in the solid waste management plan including the installation of a trash compactor for cardboard and paper products, the installation of ample and visible trash and recycling bins to encourage proper disposal, and periodic waste stream audits. These measures are common for large-scale commercial developments. As the maximum estimated solid waste production of the project alternatives would not result in any impacts to regional facilities and no federal laws that restrict solid waste generation, there are no specific thresholds that need to be included in the solid waste management plan. As with any commercial development, the responsibility for managing solid waste disposal and recycling on-site lies with the project proponent, in this case, the Tribe. This is especially true as the Tribe would have jurisdiction over the land if it is taken into federal trust. Therefore, consultation with other parties on the development of a solid waste management plan is not warranted; particularly because the Draft EIS determined that, with the implementation of BMPs, no further mitigation is necessary because the available waste disposal facilities have sufficient capacity to accommodate the project's solid waste needs based on the analysis in Draft EIS Section 3.10.3. Please refer to **Master Response 6** regarding the enforcement of best management practices.

### *Response to Comment T8-33*

Draft EIS Section 2 outlined that PG&E would provide electrical services to the project alternatives with the potential for PG&E to supply natural gas if needed. Draft EIS Section 3.10.3 discussed the details of how PG&E would provide electrical services. As discussed therein, there are underground and overhead electrical lines on and adjacent to the Project Site. Contrary to the commenter's assertion that the Draft EIS conclusions are based on speculation or unsupported assumptions, the electrical capacity analysis was based on direct information from PG&E. In 2022, PG&E provided details about planned infrastructure upgrades, expected to be completed by 2024/2025, that would ensure adequate electrical capacity for the project alternatives. The feeder-related infrastructure is anticipated to be completed prior to the project's opening in 2028. This information is factual and based on PG&E's planned actions, not speculation. Furthermore, the Draft EIS takes the "hard look" required by NEPA by providing a thorough and detailed analysis of the current and future power supply situation. The facts cited in the Draft EIS—such as PG&E's infrastructure timeline and capacity assurances—demonstrated that the environmental review process is fully compliant with NEPA requirements. Please refer to **Master Response 2** regarding the NEPA hard look standard.

Finally, the Tribe has been in communication with PG&E, and negotiations with PG&E are ongoing as of the publication of the Final EIS to ensure that the power supply needs are met if the Proposed Action is approved. The Tribe will continue to monitor the progress of these infrastructure improvements to ensure that sufficient power supply is available before the selected alternative becomes operational.

As for the concern that the addition of electricity and natural gas lines could increase wildfire hazards, the exact extent of infrastructure development needed to serve the selected alternative will be determined at a later date, once infrastructure improvements needed are finalized between the Tribe and PG&E. As described in Draft EIS Section 3.12.3.2, PG&E has developed protection measures since the 2017 Tubbs Fire, such as: Public Safety Power Shutoffs (PSPS) and Enhanced Powerline Safety Settings (EPSS). PSPS' are when Pacific Gas and Electric intentionally shuts off the power in an area because of high-risk fire weather, such as red flag warnings, to prevent a downed line from starting a fire. These shut offs have become a tool to prevent wildfires. EPSS' are designed to prevent fires in the event of a fault in a power line. These enhanced settings shut down power in an area immediately upon a line integrity issue, such as a fallen tree bringing a power line down. These protection measures would continue to be available during construction and operation of the project alternatives.

As a result, no additional measures or revisions to the analysis of the Final EIS are warranted as the current mitigation and coordination efforts are sufficient to meet the energy needs of the project alternatives.

#### *Response to Comment T8-34*

Draft EIS Section 3.10 acknowledges that the project alternatives would result in increased demands for law enforcement, fire protection, and EMS, thus impacting these services. The service agreements with the Sonoma County Sheriff's Office (SCSO) and the SCFD as part of the mitigation in Draft EIS Section 4 would be tailored to meet the needs of the selected project alternative and would include provisions to support the increased service demand. By negotiating these agreements in good faith, the Tribe would ensure that the necessary resources are in place to serve the selected alternative, thus reducing the impact to law enforcement, fire protection, and EMS services. These agreements would be negotiated and executed before the selected alternative becomes operational. If, for whatever reason, the Tribe is unable to enter into a service agreement for law enforcement and/or fire protection and EMS the Draft EIS includes contingency mitigation measures that would require the Tribe to establish, equip, and staff a public safety building for such services on the Project Site. This contingency plan ensures that adequate resources would be available to address the public safety needs of the project before it is operational, even in the absence of external service agreements, further ensuring that impacts on public services remain less than significant.

#### *Response to Comment T8-35*

The direct, indirect, and cumulative effects of the Proposed Project on wildfire hazards, and their impact significance determinations, are discussed throughout the Draft EIS. The direct effects of the Proposed Project on Wildfire Hazards are discussed in Section 3.12.3. The Indirect Effects of the implementation of the on-Site Riparian Corridor Wildfire Management Plan Mitigation are discussed in Section 3.15.2. The Proposed Project Cumulative Effects on wildfire hazards are discussed in Section 3.14.11. Appendix N also includes wildfire evacuation memorandums including a Fire and Emergency Response Memorandum (N-1), ETTA (N-2), Evacuation Recommendations Memorandum (N-3), and Evacuation Mitigation Plan (N-4). Table 2.1-3 provides specific Wildfire Hazard Protective Measures and Best Management Practices to be implemented during construction and operation. Wildfire Hazard Mitigation Measures which would be implemented during construction and operation of the Proposed Project are provided in Draft EIS Section 4.

The current design of the Proposed Project was completed at a planning level and the specific location of fire hydrants and other fire suppression features is not known at this time. Please see **Master Response 2** for a discussion of level of design detail required for NEPA analysis. However, as discussed in Draft EIS Section 2.1.9, final design and construction of the Proposed Project 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 standards. As discussed in **Response to Comment A8-67**, the elements of the Tribe's Building and Safety Code that are consistent with the CBC wildfire measures include CBC Chapter 7A regarding building materials, systems, and/or assemblies used in the exterior design and construction of new buildings located within a Wildland-Urban Interface Fire Area; as well as CBC Section 703A.7 that incorporates State Fire Marshal standards for exterior wildfire exposure protection. More specific comments from FIGR's independent peer reviewer TSS consultants, are addressed in **Response to Comments T8-48** through **T8-84**, below.

#### *Response to Comment T8-36*

Please refer to **Master Responses 10** and **11** regarding the wildfire evacuation analysis and the associated assumptions and methodology. As described therein, an ETTA (Draft EIS Appendix N-2) was conducted based on circumstances similar to what occurred during the Tubbs Fire in 2017, referred to as the "No Notice Scenario", and the Kincade Fire in 2019, referred to as the "With Notice Scenario", under both 2028 No Project and 2028 Plus Project conditions. In addition, the ETTA modeled a No Notice Scenario and With Notice Scenario under both 2040 No Project and 2040 Plus Project conditions. Therefore, the Draft EIS took a hard look in consideration of the history of wildfires in the area. Please refer to **Master Response 2** regarding the hard-look standard. Please refer to **Response to Comment A9-47** regarding the effectiveness of mitigation measures associated with wildfire evacuation.

#### *Response to Comment T8-37*

Draft EIS Section 3.10.3.2 acknowledged the wildfire risks in Sonoma County and outlined specific fire response measures for both the construction and operational phases of the project alternatives. The Draft EIS included a detailed mitigation strategy, which involved entering into a service agreement with the SCFD to ensure the Project Site would be adequately supported by fire protection services. Additionally, the Letter of Intent between the Tribe and SCFD attached as Draft EIS Appendix O demonstrated a clear commitment from both parties to negotiate a formal agreement for fire protection services. This shows that negotiations are already underway, providing further assurance that the project alternatives would have the necessary fire protection resources in place and would not rely on speculative assumptions. However, if for whatever reason the service agreement with SCFD is not finalized, the Tribe would be required establish, equip, and staff an on-site fire department as part of the public safety building specified in Draft EIS Section 4. This ensures that fire protection needs would be fully met, regardless of SCFD's direct involvement, distinguishing this analysis from the speculative assumptions found insufficient in court cases cited in the comment, such as Environmental Defense Center v. BOEM and City of Los Angeles v. FAA. Unlike the cases where agencies relied on unsupported assumptions, the Draft EIS provided a clear, actionable plan through its mitigation measures. The analysis ensured that fire protection services would be available, either through the formal service agreement or through the on-site public safety building. This contingency would not be speculative but a concrete option that would be implemented if necessary, complying with NEPA's requirement to take a "hard look" at potential impacts. Please refer to **Master Response 2** regarding NEPA hard look standard. As the public safety building would be developed on the Project Site, within the development footprint of the project alternatives, the

physical environmental impacts of the public safety building are within the scope of the analysis contained throughout the EIS.

In summary, the Draft EIS fully meets NEPA's requirements by providing specific mitigation measures that ensure fire protection services are addressed, whether through SCFD or on-site resources. This comprehensive approach avoids the unsupported assumptions criticized in the referenced court cases and ensures that fire risks would be managed effectively.

### *Response to Comment T8-38*

A discussion regarding the assumptions regarding regional pumping incorporated in the model used for cumulative impact analysis in the GRIA (Draft EIS Appendix D-4) is presented in **Response to Comment A5-2**. As noted in this response, changes in municipal groundwater demand in the Windsor area were incorporated into the refined GRIA child model as described in GRIA Section 5.1 and 5.5. With respect to the agricultural demand forecast discussed in the GSP modeling appendix, the review indicated that such an increase is not reasonably foreseeable because: (1) recent agricultural groundwater demand trends in the Santa Rosa Plain are variable to decreasing; (2) vineyard development in the Project Site vicinity has remained relatively constant in the last 10 years and there appears to be little available land that could be converted to develop additional vineyards; (3) Sonoma County and Town of Windsor planning documents do not indicate a projected increase in agricultural demand in this area; and (4) the post-2022 decline in groundwater levels forecast to occur in nearby Representative Monitoring Points in the GSP has not occurred. Based on these observations, the refined model used for impact analysis in the GRIA is the best currently available tool for this purpose. Given the lack of data to support a clear trend in future agricultural groundwater demand near the Town of Windsor, the only reasonably foreseeable pumping that requires simulation as part of the cumulative impact analysis is the proposed pumping by the Project and future pumping proposed in the Town of Windsor Water Master Plan, Urban Water Management Plan and Groundwater Master Plan. The remaining pumping simulated in SRPHM 2014 that is incorporated into the refined GRIA model is sufficient to support Project and cumulative impact analysis when using a superposition approach.

The Town of Windsor's intent to operate the Esposti and Bluebird wells only during dry and critically dry years is included in the Town of Windsor 2020 UWMP Section 7 as described in GRIA Section 5.5 and was reiterated in the Town's Groundwater Master Plan adopted in 2024 (Todd, GHD and Trussell 2024). Making a different assumption regarding the use of these wells would be inconsistent with the available data and inappropriate and speculative.

The results of cumulative effects modeling are discussed in GRIA Section 5.7.2, and indicate that drawdown and recovery related to Town of Windsor pumping would happen relatively quickly. This is a result of the cumulative effects modeling analysis and is not an "assumption." Rapid recovery of drawdown is predicted to occur both by the refined model developed for the GRIA and the original SRPHM 2014 model developed by the USGS from which it was derived. There is no scientific or technical basis to assume this result is "unreasonable."

GRIA Section 6.1 details the significance criteria for interference drawdown. The 20-foot threshold is based on 10% of the available drawdown within a well<sup>36</sup>. The deep aquifer system is, on average, over 300 feet thick, therefore 20-feet of drawdown is within the acceptable range. Similar thresholds of significance are commonly used to assess well interference impacts under CEQA and NEPA, as summarized in JJ&A 2018.

The cumulative impact analysis included consideration of agricultural, rural domestic and municipal pumping as incorporated into the SRPHM 2014 model by USGS.<sup>37</sup> GRIA Section 6.3 states the following:

*“Maximum cumulative drawdowns at the hypothetical nearest possible domestic well location to the Site are predicted to be 5.91 feet for the shallowest reported well depth, 9.08 feet for the average reported well depth, and 16.6 feet at the deepest reported well depth. The predicted drawdowns for shallow and average wells exceed the thresholds discussed in Section 6.1 (5 feet for the shallowest reported well depth and 10% of the available drawdown for an intermediate depth well) and would be considered potentially cumulatively significant. The predicted drawdown for the deep domestic well would not be considered cumulatively significant because it is much less than 20 feet or 10% of the available drawdown for the well. It should be noted that the impacts resulting from Project pumping alone for wells of these depths is not predicted to be significant and accounts for approximately 30 percent of the total predicted cumulative drawdown. After the cessation of dry year pumping, drawdowns decrease quickly to the less than significant levels resulting from Project pumping alone.”*

The above discussion clearly states that cumulative impacts to shallow and average depth domestic wells would be considered potentially cumulatively significant. The remainder of the discussion provides perspective on the contribution of Project pumping to this finding and its duration, but it does not “assume away” the impact analysis. Draft EIS Section 4 provided mitigation to address these potentially significant impacts, and has been revised to provide additional details as discussed in **Response to Comments A5-8** and **A9-82**.

### *Response to Comment T8-39*

This first comment correctly captures the results of the cumulative impact analysis that concluded that cumulative impacts to GDEs would be potentially significant. However, it incorrectly states that the Draft EIS or GRIA “tries to minimize these impacts.” The discussion in GRIA Sections 5.7.2 and 6.3 (Draft EIS Appendix D-4) provides insight as the nature of these impacts, which is important since the Tribe will need to coordinate with the mitigation measures required to be adopted by the Town of Windsor under the PEIR for their Water Master Plan. The available data indicates that while the Project would make an incremental contribution to these impacts, the impacts of the Project alone would be less than significant.

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<sup>36</sup> Jacobson James & Associates, Inc. (JJ&A), 2018. Final Program Environmental Impact Report Discretionary Well Permitting and Management Program Stanislaus County, California. Prepared for Stanislaus County Department of Environmental Resources.

<sup>37</sup> Nishikawa, 2013.

*Response to Comment T8-40*

The requirement of other projects to comply with federal, State and local regulations is not unsupported. For example, it is assumed that any other project in the region discharging treated wastewater to waters of the U.S. would be doing so in compliance with an approved NPDES discharge permit. See **Response to Comment T8-38** for further information regarding groundwater. For the referenced comment in Appendix 5 to the letter on cumulative biological impacts see **Response to Comment T8-149**.

*Response to Comment T8-41*

With regards to the appropriateness of the trip generation rates used in the Draft EIS, please see **Response to Comment T8-91**. The cumulative air quality analyses in the Draft EIS and Final EIS are based on appropriate trip generation estimates.

*Response to Comment T8-42*

Please refer to **Response to Comment T8-149** regarding the referenced peer review comments on cumulative impacts to biological resources. See **Response to Comments T8-11** and **T8-146** regarding mitigation for impacts to special-status fish species.

*Response to Comment T8-43*

Specific concerns regarding the accuracy and adequacy of Draft EIS Section 3.8 Transportation and Circulation are addressed in **Response to Comments T8-90** through **T8-120**, below. As detailed in those responses, the methodology and assumptions used to evaluate Transportation and Circulation impacts in the Draft EIS are appropriate.

*Response to Comment T8-44*

The Draft EIS evacuation analysis was conducted for both opening year and cumulative year scenarios. Draft EIS Section 3.14.11 Hazardous Materials and Hazards discusses the Proposed Project's contribution to cumulative wildfire hazards and evacuation plans on pp. 3-161 and 3-162. Technical detail for this analysis is provided in Draft EIS Appendix N, which includes a Fire and Emergency Response Memorandum (Appendix N-1), an ETTA (Appendix N-2), an Evacuation Recommendations Memorandum (Appendix N-3), and an Evacuation Mitigation Plan (Appendix N-4). Please also refer to **Master Response 10: Wildfire Evacuation**.

*Response to Comment T8-45*

The distinction between BMPs and mitigation as well as enforcement of BMPs is discussed in **Master Response 6**. Regarding the enforcement of mitigation measures, see **Master Response 7**.

*Response to Comment T8-46*

Please refer to **Master Response 2** regarding the completeness of the EIS and the hard look standard. The regional wildfire risk and history of wildfires are discussed in Draft EIS Section 3.12.2 and Draft EIS Appendix N-1. As stated therein, the Project Site is primarily designated as 3 (high) wildfire risk according to the County Wildfire Risk Index and several fires have occurred in the area, including the Tubbs Fire and Kincade Fire. Please refer to **Master Responses 10** and **11** for a discussion of wildfire and evacuation impacts, including discussion of technical reports prepared for the Proposed Project and analysis methodology. Please also refer to **Response to Comment A8-67** regarding the fire resiliency measures included as design features, BMPs, or mitigation intended to reduce the potential for fire to spread on the

Project Site as recommended in Draft EIS Appendix N-1. Please also refer to **Response to Comment A9-47** regarding the effectiveness of mitigation measures associated with wildfire evacuation. As described therein, technical analysis was prepared by qualified individuals (see Draft EIS Appendix N) based on the regional wildfire risk and history of wildfires in the area and the potential for impacts associated with wildfire are analyzed. Thus, the wildfire risk in the area was considered in the analysis within the Draft EIS. The mitigation measures noted in by the commenter include numerous requirements of what would need to be included in the respective plans once they are prepared to ensure that the implementation of the plans would reduce potential impacts; therefore, there is no improper deferral as alleged by the commenter.

*Response to Comment T8-47*

Please refer to **Response to Comment T8-1**. The comment includes a summary of the concerns raised within the letter and does not raise any new substantive environmental issues beyond those presented earlier in the letter and attachments.

*Response to Comment T8-48*

Please refer to **Master Response 2** regarding the completeness of the EIS and the hard look standard. The regional wildfire risk and history of wildfires are discussed in Draft EIS Section 3.12.2 and Draft EIS Appendix N-1. As stated therein, the Project Site is primarily designated as 3 (high) wildfire risk according to the County Wildfire Risk Index and several fires have occurred in the area, including the Tubbs Fire and Kincade Fire. Although, “wind influences” was not specifically noted in the Draft EIS, the potential for wildfires to occur in the region are disclosed and the potential for impacts associated with wildfire are analyzed. While TSS assumes that vineyards present a wildfire risk, they are largely recognized in the region as serving as a fire break as noted in the Town of Windsor’s Comment Letter (see Town Comment A8-67) and other literature.<sup>38</sup> The fact that Pruitt Creek contains vegetation that could intensify a wildfire is acknowledged in Draft EIS Section 3.12.2 and mitigation is included in Draft EIS Section 4 regarding a riparian corridor wildfire management plan to reduce fire hazards on and adjacent to Pruitt Creek. The documents reviewed by TSS and the methodology and results of the site visit are noted.

*Response to Comment T8-49*

Evacuation analysis was conducted and addressed in Draft EIS Section 3.12 and in Appendix N-2, and traffic to/from the Project Site was included in the evacuation travel time modeling exercise. Please refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology. Please also refer to **Master Response 10** regarding wildfire-related emergency evacuation analysis and associated mitigation. Please also refer to **Response to Comment T8-58** for more detail regarding the ETTA.

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<sup>38</sup> “Grapevines are very resilient and do not burn easily. In many cases the vineyards act like fire breaks and are likely playing a beneficial role, due the fact that only a limited number of wineries have been destroyed or significantly damaged by past fires that have surrounded them.” UC Davis, 2020. Wildfire Impact on CA Grapes and Wine. Last Update December 8, 2020. Available online at: <https://wineserver.ucdavis.edu/industry-info/viticulture-resources/wildfire-impact-ca-grapes>. Accessed November 2024.



*Response to Comment T8-50*

Please refer to **Master Responses 10** and **11** for a discussion of wildfire and evacuation impacts, including discussion of technical reports prepared for the Proposed Project and analysis methodology. Please also refer to **Response to Comment A8-67** regarding the fire resiliency measures included as design features, BMPs, or mitigation intended to reduce the potential for fire to spread on the Project Site as recommended in Draft EIS Appendix N-1. Please also refer to **Response to Comment A9-47** regarding the effectiveness of mitigation measures associated with wildfire evacuation. As described therein, technical analysis was prepared by qualified individuals (see Draft EIS Appendix N) based on the regional wildfire risk and history of wildfires in the area and the potential for impacts associated with wildfire are analyzed.

*Response to Comment T8-51*

Please refer to **Response to Comment T8-35** for discussion of building code compliance related to fire protection. Planning and development of a fire suppression system would be conducted upon selection of a project alternative and design of those facilities. Please also see **Master Response 2** regarding the level of design detail required for NEPA Analysis.

*Response to Comment T8-52*

Evacuation analysis was conducted and addressed in Draft EIS Section 3.12 and in Appendix N, and traffic to/from the Project Site was included in the evacuation travel time modeling exercise. Please refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology. Please also refer to **Master Response 10** regarding wildfire-related emergency evacuation analysis and associated mitigation.

*Response to Comment T8-53*

Please refer to **Master Response 2** for a discussion of the adequacy of analysis within the Draft EIS. Please refer to **Master Responses 10** and **11** for a discussion of wildfire and evacuation impacts and the supporting analysis assumptions and methodology. Please refer to **Master Response 7** for a discussion of the development of mitigation measures by qualified experts. Responses to the specific comments on these issues are provided below.

*Response to Comment T8-54*

The comment is vague regarding what specific information in the Draft EIS wildfire analyses should be added or changed. A reasonable study area, the baseline conditions for the analyses, and the impacts of Proposed Project operations have all been disclosed in the Draft EIS. Empirical data related to wildfire-related emergency evacuation scenarios has been incorporated from both the Tubbs and Kincade fires in Sonoma County as well as data from actual traffic counts for the study area intersections. Data from recent traffic counts has been modeled to provide an assessment of future year scenarios which would reflect project opening (2028) and cumulative year (2040) conditions. The comment does not provide examples of alternative analyses or federal standards/requirements. In fact, with respect to wildfire evacuation, the ETTA analysis conducted represents the best available science prepared by former Sonoma County fire and law enforcement officials (experienced service providers) and transportation engineers with direct experience in Sonoma County. Further, the commenter provides no alternative criteria required by federal law or NEPA to conduct such analyses.

Regarding the level of design detail for on-site infrastructure, please refer to **Master Response 2**. The level of detail of the Project description and associated site planning included within the EIS is sufficient to determine the extent of environmental impacts as required by NEPA. For example, water supply for fire flow was included in water supply assumptions for the Proposed Project (see Draft EIS Section 2.1.3 and Appendix D-1 Water and Wastewater Feasibility Study). See **Response to Comment A8-68** for further discussion.

#### *Response to Comment T8-55*

Wildfire Hazard Mitigation measures related to vegetation management are provided in Section 4 of the Draft EIS and include the preparation of a riparian corridor management plan to address weed abatement and fuel load reduction outside the creek channel, removal of dead or dying vegetation and trees, pruning, removal of live flammable groundcover, firebreaks, and other measures to address wildfire hazards. While local land use policies do not apply to lands taken into federal trust, these measures are consistent with the California Fire Code, Sonoma County Municipal Code, and the Sonoma County Fire District Weed Abatement Measures, which all identify similar maintenance of defensible space around buildings and abatement hazardous vegetation and combustible materials. The adoption of standard policies and procedures widely used across the region adequately addresses the effectiveness of Wildfire mitigation measures and BMPs included in the Draft EIS. Should the need arise to implement brush management within Pruitt Creek, permits can be obtained from regulatory agencies to accommodate this activity. However, the current mitigation measures are deemed to be adequate. Please refer to **Master Response 8** for a discussion of potential land use conflicts with local jurisdictions.

#### *Response to Comment T8-56*

Regarding the level of design detail within the EIS see **Master Response 2**.

#### *Response to Comment T8-57*

Please refer to **Response to Comment T8-35** for a discussion of direct, indirect, and cumulative wildfire impacts. The baseline environmental setting related to wildfire hazards is provided in Section 3.12.2 of the Draft EIS.

#### *Response to Comment T8-58*

The methodology for the ETТА was detailed in Draft EIS Appendix N-2. As described therein, Evacuation demand was modeled using the EVAC+ tool developed by Fehr & Peers. The EVAC+ tool uses socioeconomic data from the U.S. Census and other data from the Sonoma County Transportation Authority (SCTA) travel demand model such as number of households, population, vehicle ownership, and employment to forecast the number of vehicles that would be generated during an evacuation event. The number of visitor evacuation trips was estimated according to a Sonoma County tourism report in 2023. The background traffic demand and EVAC+ evacuation demand was input into a dynamic traffic assignment (DTA) model, which uses the SCTA travel demand model network capacities to route the travel demand between origin points (Project site, residential areas, etc.) to evacuation gateways at the boundary of the study area (e.g., US 101 just north of Santa Rosa). The ETТА was conducted based on circumstances similar to what occurred during the Tubbs Fire in 2017, referred to as the “No Notice Scenario”, and the Kincade Fire in 2019, referred to as the “With Notice Scenario”, under both 2028 No Project and 2028 Plus Project conditions. In addition, the ETТА modeled a No Notice Scenario and With Notice Scenario under both 2040 No Project and 2040 Plus Project conditions. Therefore, the ETТА provides a detailed analysis of evacuation times for the study area based on actual wildfire and evacuation

history in the study area. The commenter does not explain how this detailed analysis is not sufficient. Please refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology, **Master Response 10** regarding wildfire-related emergency evacuation analysis and associated mitigation, and **Master Response 2** regarding the NEPA hard look standard.

*Response to Comment T8-59*

Please refer to **Response to Comment T8-46** regarding the alleged deferral of analysis and mitigation regarding wildfire risk and **Response to Comment T8-79** regarding the timing for the project-specific evacuation plan.

*Response to Comment T8-60*

Water supply for fire flow was included in water supply assumptions for the Proposed Project (see Draft EIS Section 2.1.3 and Appendix D-1 Water and Wastewater Feasibility Study) and thus groundwater demands encompass those needed for fire suppression, including wildfires. As discussed in Section 3.3.3, It is expected that groundwater is available within the Project Site and can reliably produce up to 400 gallons per minute (576,000 gpd) based on existing Project Site wells and the investigations conducted by the Town to develop a potable water source at Esposti Park. The Proposed Project is not anticipated to negatively impact recharge and in fact may result in increased recharge as discussed in **Response to Comments A9-77** and **A9-78**.

*Response to Comment T8-61*

Please refer to **Master Response 7** for a discussion of the development of mitigation measures by qualified experts. Please refer to **Response to Comment T8-48** regarding the regional wildfire risk and history of wildfires, including the wildfire risk of Pruitt Creek. Mitigation measures proposed for Wildfire Hazards within Draft EIS Section 4 would adequately mitigate wildfire impacts with respect to brush management within Pruitt Creek. The impacts of specific wildfire behavior on the operation of the Proposed Project would be addressed through compliance with relevant building codes. Please refer to **Response to Comment A8-67** and **Response to Comment T8-35** for discussion of building code compliance related to fire protection. Please refer to **Response to Comment T5-9** for a discussion of fire protection service availability for the project site.

*Response to Comment T8-62*

The referenced mitigation measure (Public Services and Utilities Mitigation Measure B) states that “Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the SCFD to compensate SCFD for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and emergency medical services to the Project Site. The agreement shall address any required conditions and standards for emergency access and fire protection systems.” However, if for whatever reason the service agreement with SCFD is not finalized, the Tribe would be required establish, equip, and staff an on-site fire department as part of the public safety building (Public Services and Utilities Mitigation Measure C). The applicable standards for construction of the fire suppression system are Tribe’s Building and Safety Code of 2023, which is consistent with the CBC and California Public Safety Code, including building, electrical, energy, mechanical, plumbing, fire protection, and safety standards. See **Response to Comment T8-35** for additional discussion of building code compliance related to fire protection. Planning and development of a fire suppression system would be conducted upon selection of a project alternative and design of those facilities.

Regarding the level of design detail for on-site fire infrastructure, please refer to **Master Response 2** and **Response to Comment A8-68**. The level of detail of the Project description and associated site planning included within the EIS is sufficient to determine the extent of environmental impacts as required by NEPA. Water supply for fire flow was included in water supply assumptions for the Proposed Project (see Draft EIS Section 2.1.3 and Appendix D-1 Water and Wastewater Feasibility Study). The comment does not provide an alternative standard or requirement specific to wildfires that would differ from the included fire flow assumptions and proposed consistency with the California Building Code (including the California Fire Code) standards.

#### *Response to Comment T8-63*

The commenter references the Off-Reservation Environmental Impact Analysis Checklist, which was not included with the Draft EIS; however, mitigation related to wildfire is included in Draft EIS Section 4. Please refer to **Master Response 2** for a discussion of the adequacy of analysis within the Draft EIS. Please refer to **Response to Comment T5-9** for a discussion of fire protection service availability for the project site. Please refer to **Response to Comment T8-55** for a discussion of wildfire hazard mitigation measures related to vegetation management.

#### *Response to Comment T8-64*

Please note that the referenced section, "Section XIII (Public Services), Item i) of the DEIS Appendix A: Off-Reservation Environmental Impact Analysis Checklist, Page 11," does not exist in the Draft EIS. Please refer to **Response to Comment T8-55** regarding the potential for jurisdictional conflicts to hamper the implementation of the riparian corridor wildfire management plan. Public services and utilities mitigation measure B states that the service agreement with the SCFD must include provisions to compensate SCFD for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and emergency medical services to the Project Site; address any required conditions and standards for emergency access and fire protection systems; and requiring the Tribe to meet with SCFD at least once a year, if requested, to discuss ways to improve the provision of fire and emergency medical services to the project. Therefore, while the specific details of the eventual service agreement between the Tribe and SCFD would be negotiated based on the unique needs of the alternative selected and SCFD specifications/input, the mitigation measure in Draft EIS Section 4 includes performance measures and timing to ensure that the measure would be affected. The Letter of Intent between the Tribe and SCFD included as Draft EIS Appendix O specifies the intention of the Tribe and SCFD to enter into a Memorandum of Understanding for the provision of fire response and emergency medical services to the Project Site, consistent with the mitigation. The commenter is correct that the Letter of Intent does not meet the requirements of the mitigation, but it was not intended to satisfy the mitigation. The service agreement is required prior to the start of operation. Additionally, if for whatever reason an agreement cannot be reached with SCFD, there is mitigation that would require the Tribe to establish, equip, and staff a public safety building for such services on the Project Site. This further ensures that fire protection services would be provided to the Project Site either through agreement or through a new facility operated by the Tribe. It is also important to note that NEPA case law, such as *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989), supports the principle that mitigation measures do not need to be fully developed in an EIS. The Supreme Court ruled that while mitigation measures must be discussed and reasonably identified, they do not need to be fully detailed before an EIS is finalized as long as there is a commitment to implementation.

*Response to Comment T8-65*

The biological mitigation measure has been revised in the Final EIS to specify that riparian vegetation would be avoided “to the maximum extent possible from construction activities”. The mitigation measure is not meant to preclude implementation of the riparian corridor wildfire management plan.

*Response to Comment T8-66*

Biological Resources Mitigation Measures A, B and C have been clarified Final EIS Section 4 to specify that these measures would be applicable during construction activities.

*Response to Comment T8-67*

Regarding general concerns about the design level of detail of project elements see **Master Response 2**.

*Response to Comment T8-68*

The commenter does not specify the “empirical data” that is absent to support the agreement for fire services. The DEIS provided a comprehensive evaluation of the project alternatives' emergency service needs, potential impacts, and subsequent mitigation measures to reduce the potential impacts that included data from numerous sources. Therefore, no clarifications to the Final EIS are warranted.

*Response to Comment T8-69*

As discussed in Draft EIS Section 3.12.3.2, a significant ignition risk requiring mitigation was not identified. Therefore, the wildfire risk abatement mitigation included in Draft EIS Section 4 is not required to be completed prior to construction. Hazardous Materials and Hazards – Wildfire Hazards Mitigation Measure A has been revised in Final EIS Section 4 to clarify the timing of completion and implementation of the riparian corridor wildfire management plan.

This comment suggests that hand tools would be insufficient to complete vegetation management activities within the riparian corridor; however, there is no reason supporting this opinion. The use of hand tools was selected to be minimally invasive to the riparian corridor to allow for wildfire management activities without causing unnecessary impacts from the use of heavy machinery.

*Response to Comment T8-70*

Draft EIS Section 3.3.3.2 does not include an analysis of wildfire, rather it is assumed that the commenter meant to reference Draft EIS Section 3.12.3. Please refer to **Response to Comment A8-67** regarding fire resiliency measures intended to reduce the potential for fire to spread on the Project Site as recommended in Draft EIS Appendix N-1. The safety of on-site occupants related to wildfire hazards would be addressed by complying with building codes related to fire and life safety, BMPs associated with fire resiliency, and implementation of mitigation in Draft EIS Section 4, including implementation of an emergency evacuation plan. The Proposed Project 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 standards. Please refer to **Master Response 2** for a discussion of the adequacy of EIS analysis. Please refer to **Response to Comment T8-55** for a discussion of wildfire hazard mitigation measures related to vegetation and fuels management.

*Response to Comment T8-71*

The description of the proposed water supply infrastructure is provided in Draft EIS Appendix D-1 and summarized in Draft EIS Section 2.1.3. As described therein, 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. Please refer to **Master Response 2** for additional discussion about the level of design detail required during the NEPA process.

*Response to Comment T8-72*

The commenter references the Off-Reservation Environmental Impact Analysis Checklist, which was not included as an appendix to the Draft EIS. However, the comment indirectly relates to the analysis presented in Draft EIS Section 3.8 Transportation and Circulation, and Draft EIS Section 3.12 Hazardous Materials and Hazards, and is therefore addressed herein.

The mitigation measures described in Draft EIS Section 3.8 Transportation and Circulation and in Draft EIS Section 3.14 Cumulative Effects do not include mitigation measures addressing wildfire evacuation conditions. Instead, mitigation measures addressing evacuation impacts due to wildfire are included in Draft EIS Section 3.12 Hazardous Materials and Hazards and in Draft EIS Section 3.14 Cumulative Effects. Unlike the impact analysis provided for transportation and circulation, which relies on a level of service performance metric for intersection operations, the impact analysis for wildfire evacuation is based on a travel time metric that considers delay incurred bottleneck locations such as intersections. This methodology is further detailed in the ETTA (Draft EIS Appendix N-2). The Draft EIS correctly states that the mitigation measures proposed to address transportation, and circulation impacts at study area intersections would reduce impacts to a less-than-significant level because intersections would operate at acceptable levels of service. The Draft EIS does not assert that study intersections would operate within acceptable level of service standards in the event of a wildfire evacuation either with or without the Proposed Project. Please refer to **Master Response 10** regarding wildfire-related emergency evacuation analysis and associated mitigation.

*Response to Comment T8-73*

The commenter references the Off-Reservation Environmental Impact Analysis Checklist, which was not included with the Draft EIS. However, the comment indirectly relates to the analysis presented in Draft EIS Section 3.8 Transportation and Circulation and is, therefore, addressed herein.

While the commenter disagrees with the results of the analysis of the effectiveness of proposed mitigation measures presented in Draft EIS Section 3.8 Transportation and Circulation for the Proposed Project and Draft EIS Section 3.14.7 Transportation and Circulation (cumulative effects), they do not provide any critique of the accuracy or appropriateness of the methodology used to conduct the analysis nor do they suggest an alternative methodology be used. The commenter incorrectly asserts that the intersection improvements included in the proposed mitigation measures would not reduce the impact of the Proposed Project or its contribution to cumulative impacts. The TIS (Draft EIS Appendix I) includes level of service analysis under baseline, with project, and with project and mitigation to prove that the mitigation measures would bring level of service back to acceptable levels (see Table 9 of the TIS as an example of this). The Draft EIS transportation and circulation analysis and the TIS were prepared following NEPA and local jurisdiction guidelines and protocols with respect to transportation analysis and support the significance conclusions. Please also refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments**.

*Response to Comment T8-74*

The transportation and circulation mitigation measures shown in Draft EIS Table ES-1 Summary of Impacts and Mitigation Measures do not include mitigation measures addressing wildfire evacuation conditions. Instead, mitigation measures addressing evacuation impacts due to wildfire are included under Draft EIS Section 3.12 Hazardous Materials and Hazards. Unlike the impact analysis provided for transportation and circulation, which relies on a level of service performance metric for intersection operations, the impact analysis for wildfire evacuation is based on a travel time metric that considers delay incurred bottleneck locations such as intersections. This methodology is further detailed in the ETTA (Draft EIS Appendix N-2). The Draft EIS correctly states that the mitigation measures proposed to address transportation and circulation impacts at study area intersections would reduce impacts to a less-than-significant level because intersections would operate at acceptable levels of service. The Draft EIS does not assert that study intersections would operate within acceptable level of service standards in the event of a wildfire evacuation either with or without the Proposed Project. Please refer to **Master Response 10** regarding wildfire-related emergency evacuation analysis and associated mitigation.

*Response to Comment T8-75*

The ETTA (Draft EIS Appendix N-2) addressed the potential bottlenecks on US 101 and Old Redwood Highway, as well as other locations. In addition, one of the proposed wildfire hazards mitigation measures identified in Draft EIS Section 4 is to install adaptive signal control (ASC) systems with remote access and override at key intersections along potential evacuation routes, which allows adjustments to intersection signal timings and can significantly extend maximum green times (e.g., queue flush phases for congested movements). This would provide additional capacity for key evacuation traffic routes. In addition, as part of the cumulative mitigation for traffic impacts, the Proposed Project is required to pay fair share towards the widening of Shiloh Road to two lanes per direction, which would also increase roadway capacity for evacuation for evacuation purposes in the cumulative year (2040) and beyond.

*Response to Comment T8-76*

Please see **Response to Comment T8-74** for distinction between performance measures and mitigation measures needed to address transportation and circulation impacts vs. those needed to address wildfire evacuation.

Draft EIS Section 3.14.11 Hazardous Materials and Hazards discusses the Proposed Project's contribution to cumulative wildfire hazards and evacuation plans. To represent cumulative 2040 conditions, a 1.4 percent per year growth factor was applied to the baseline traffic volumes, which was established using information from the SCTA travel demand model. Technical detail for this analysis is provided in Draft EIS Appendix N, which includes a Fire and Emergency Response Memorandum (Appendix N-1), an ETTA (Appendix N-2), an Evacuation Recommendations Memorandum (Appendix N-3), and an Evacuation Mitigation Plan (Appendix N-4). Please also refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology.

*Response to Comment T8-77*

Regarding the reasonableness of traffic mitigation, see **Master Response 7** and **Response to Comment A8-34**.

*Response to Comment T8-78*

Please see **Response to Comment T8-74** for distinction between performance measures and mitigation measures needed to address transportation and circulation impacts versus those needed to address wildfire evacuation.

Please also see **Response to Comment T8-75** regarding required mitigation measures that would increase capacity in key evacuation traffic routes.

*Response to Comment T8-79*

The development of a project-specific evacuation plan prior to occupancy is appropriate as evacuation of staff and patrons of the Proposed Project would not occur until after opening day. As described in Draft EIS Section 4, the procedures and best management practices that would be required to be included in the evacuation plan include components that would be installed during construction, including installation of a public address system and signage. The circulation within the Project Site and access driveways has been designed to accommodate the level of traffic anticipated for the Proposed Project and includes three access driveways onto two different roads. Please refer to **Master Response 2** regarding the level of design detail required for NEPA Analysis.

*Response to Comment T8-80*

In the context of Wildfire Hazards Mitigation Measure B in Draft EIS Section 4, the meaning of “complement” is that the project-specific evacuation plan will provide supplemental project-specific evacuation plans that will not conflict with or be inconsistent with the County's emergency evacuation and operation plans. No revisions are required to the Draft EIS.

*Response to Comment T8-81*

No Notice and With Notice scenarios were different wildfire scenarios with different evacuation pattern assumptions as stated in the ETTA (Draft EIS Appendix N-2). Please also refer to **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology. Please also refer to **Response to Comment T8-58** for more detail regarding the ETTA.

*Response to Comment T8-82*

Please refer to **Response to Comment T8-12** for a discussion of updated figures showing preliminary sizing of treatment, storage, and distribution systems for wastewater and stormwater facilities including preliminary stormwater discharge locations. Please see **Master Response 2** for a discussion of level of design detail required for NEPA analysis. No specific standard or requirement for shelter-in-place facilities is referenced by the commenter.

*Response to Comment T8-83*

The summary of the provided review is noted. Please see **Response to Comments T8-48** through **T8-82** regarding specific wildfire concerns.

*Response to Comment T8-84*

The provided supplemental material and documents reviewed are noted. Please see **Response to Comments T8-36** regarding evacuation concerns and **Response to Comments T8-48** through **T8-82** for other specific concerns.



*Response to Comment T8-85*

The introductory comments, including the summary and conclusions as well as a summary of the Proposed Project, are noted. Please see **Response to Comments T8-86** through **T8-89** for specific concerns regarding Water Resources.

*Response to Comment T8-86*

In response to comments, additional detail has been developed to illustrate the potential layout of the proposed water and wastewater facilities within the “treatment area” as shown on the site plan. These drawings have been prepared to scale to illustrate the feasibility of citing the necessary size facilities within the Project Site, and are included in Final EIS Appendix D-2. Regarding the visual impacts of wastewater treatment facilities see **Master Response 9**. Noise and odor impacts to sensitive receptors from wastewater treatment facilities are discussed in Draft EIS Sections 3.11.3 and 3.4.3, respectively.

*Response to Comment T8-87*

The Draft EIS Figure 2.1-3 identified the location of stormwater detention and bioswale facilities within the Project Site, and generally indicated the potential location of stormwater outfalls by showing the directional arrows for stormwater flow. This figure has been updated in the Final EIS to more specifically identify the location of the proposed stormwater outfalls, wastewater outfall and the updated configuration of roadside bioswales as the result of updated calculations related to the sizing of necessary LID facilities as described in **Response to Comment A9-29**. The Final EIS Figure 2.1-3 has also been updated to provide a typical cross section of the proposed outfalls. The Draft EIS Section 3.5.3.3 stated “... the pipelines and outfall structures for treated effluent discharge and stormwater drainage (see Sections 2.1.4 and 2.1.5) would be developed within *approximately 600 square feet* of the riparian corridor and bed, bank, and channel of Pruitt Creek.” Additionally, the Biological Assessment provided as **Appendix G-2** of the Draft EIS included a thorough discussion of impacts to riparian habitat as a result of the installation of both the stormwater and wastewater outfall structures, as well as the pedestrian and vehicle bridges. While the BMPs and mitigation measures described in the Draft EIS do not specifically mention the terms “outfall structures”, these measures would minimize the potential for adverse effects to riparian habitat from the installation and use of the outfalls, including but not limited to construction worker training and awareness, avoiding the removal of riparian vegetation to the maximum extent possible, conducting work within the dry season to minimize erosion potential, precautions to prevent accidental release of hazardous materials, and preconstruction surveys for special status species. Please see **Master Response 2** for a discussion of level of design detail required for NEPA analysis.

*Response to Comment T8-88*

The commenter is referred to the earlier **Response to Comment T8-6**. A more complete discussion of the predicted Project effects is presented in GRIA Section 5 (Draft EIS Appendix D-4) and a discussion regarding the compliance of the Project with sustainable management criteria contained in the SRPGSP is presented in GRIA Section 6.2.

"At the sole discretion" refers only to connecting a water user to an alternative water system, which is an alternative to well rehabilitation or replacement that is typically offered in well mitigation programs and is often preferable when such an option is feasible. Mitigation has been revised to remove the option of connecting to the Tribe's water supply as there could be jurisdictional issues. To address groundwater impacts the Project would implement mitigation in EIS Section 4 which has been edited to provide additional detail as discussed in **Responses to Comments A5-8** and **A9-82**. Additionally, the referenced

statement in the Draft EIS Executive Summary table that “no mitigation is required” for impacts to groundwater supply was related to the *direct* effects of the project as described in more detail in Draft EIS Section 3.3. The groundwater mitigation measures in Draft EIS Section 4 were instead required to address the *cumulative* impacts of the project, and as such were described under the heading of “Section 3.14 Cumulative Effects” of the Executive Summary table. Agreements regarding the implementation and coordination of monitoring and mitigation measures will be entered into after the Record of Decision. See **Master Response 7** regarding general mitigation enforceability.

#### *Response to Comment T8-89*

Please refer to **Response to Comment T8-12** for a discussion of updated figures showing preliminary sizing of treatment, storage, and distribution systems. Please to **Response to Comment A9-16** regarding the consideration of various scenarios for treated wastewater discharge and reuse, and the availability of streamflow data. Please refer to **Response to Comment T8-9** for a discussion of NPDES and Title 22 requirements relevant to the Proposed Project and why compliance would reduce impacts to receiving waters associated with the Proposed Project to less-than-significant. Please refer to **Response to Comment A8-65** for a discussion of federal laws that govern the transportation, use, and storage of hazardous materials and chemicals that may be used during construction and operation of the Proposed Project

#### *Response to Comment T8-90*

This comment summarizes the findings of the peer review of the TIS (Draft EIS Appendix I) conducted by FIGR’s independent peer reviewer Linscott, Law & Greenspan, Engineers. Specific comments are addressed in **Response to Comments T8-91** through **T8-120**, below. The tables in the TIS included as Draft EIS Appendix I accurately represented the analysis results. The related TIS appendices have been corrected and included in Final EIS Appendix I.

#### *Response to Comment T8-91*

Please refer to **Response to Comment A9-37** regarding trip generation rates.

#### *Response to Comment T8-92*

As discussed in TIS Section 7 (Draft EIS Appendix I), traffic forecasts for the Opening Year 2028 traffic scenarios were developed by applying an annual growth rate of 2.189 percent to existing traffic volumes to reflect growth through year 2028. This growth rate was based on corridor volumes on Shiloh Road and Old Redwood Highway extracted from the Sonoma County Transportation Authority’s travel demand model. It accounts for anticipated regional growth as well as specific nearby projects that lacked final project descriptions or traffic studies at the time of analysis. Additionally, vehicle trips generated by the three approved projects (Clearwater, Shiloh Crossing, and Shiloh Terrace) that would add trips to the Proposed Project study intersections were included in the analysis. The locations of the three approved projects for which vehicle trips were specifically added to the study intersections are provided in Draft EIS Table 3.14-1.

***Response to Comment T8-93***

As detailed in TIS Section 2.1 (Draft EIS Appendix I), while not required under NEPA, the VMT analysis was conducted using guidance provided in the Technical Advisory on Evaluating Transportation Impacts in CEQA published by the Governor's Office of Planning & Research (OPR) in December 2018. Please note that the VMT analysis is provided for informational purposes only, and was not used to determine the significance of a Transportation and Circulation impacts in the Draft EIS.

***Response to Comment T8-94***

See Response to Comment A8-36 regarding roadway capacity assumptions.

***Response to Comment T8-95***

Trip assignments were made based on the site plans for each alternative and vehicular access to the parking lots; site plans are shown in Draft EIS Figure 2.1-1 (Alternative A), Figure 2.2-1 (Alternative B), and Figure 2.3-1 (Alternative C). Under Alternative A and Alternative B conditions, Casino Entrance 2 (study intersection #9) leads to the main parking lot, while Casino Entrance 1 (study intersection #7) only provides access to temporary passenger loading/unloading. In addition, Casino Entrance 2 is the closest driveway for drivers entering or exiting the Project Site to/from the east, and so it is reasonable to assume that this driveway would capture nearly all trips assigned to/from Shiloh Road east of the Project Site. Under Alternative C Conditions, there is only one public access driveway on Shiloh Road (study intersection #7), and for this reason all vehicles using Shiloh Road to access the Project Site were assigned to that access driveway.

***Response to Comment T8-96***

As shown in Figure 9 of the TIS (Draft EIS Appendix I), vehicle trips generated by the Proposed Project (Alternative A) were assigned to Old Redwood Highway & Lakewood Drive (study intersection #10) and Old Redwood Highway & US 101 Ramps (study intersections #11 and #12). Due to the nature of the Proposed Project as a regional attraction, nearly all trips assigned to these intersections were assumed to be using US 101 for access to the Project Site. For this reason, vehicle trips accessing the Project Site from Lakewood Drive or Windsor River Road are expected to be minimal and would, therefore, not have a noticeable impact on traffic operations at the study intersections.

Further, the analysis provided in the Draft EIS provided a worst-case scenario in that project trips were added to the critical movements (i.e., highest delay) at the intersections noted above. Notably, had project trips been assigned to eastbound Windsor River Road (study intersection #12) instead of the southbound left-turn lane onto Old Redwood Highway, the calculated vehicle delay would have been lower. Similarly, at Lakewood Drive (study intersection #10), if project trips had been assigned to the southbound left-turn lane instead of eastbound Old Redwood Highway, the calculated vehicle delay would have been lower.

***Response to Comment T8-97***

Due to the nature of the Proposed Project as a regional attraction, nearly all trips assigned this far north of the Project Site (more than 1.5 miles away) were assumed to be using US 101 for access to the Project Site. For this reason, vehicle trips accessing the Project Site from Alden Lane and Hembree Lane are expected to be minimal and would, therefore, not have a noticeable impact on traffic operations at the study intersections. Project-generated vehicle trips traveling on Old Redwood Highway through these intersections would not be added to critical movements (i.e., turning on to or off of Old Redwood Highway). For these reasons, these two intersections were not included in the TIS (Draft EIS Appendix I).

*Response to Comment T8-98*

As noted in TIS Section 2.2 (Draft EIS Appendix I), the traffic analysis conducted for the Proposed Project used the Highway Capacity Manual (HCM) methodology to analyze signalized and unsignalized intersections. More specifically, the Draft EIS relied upon the guidance provided in the HCM 6th Edition, Chapter 20, page 20-6, Exhibit 20-2. Consistent with this methodology, intersection weighted average control delay was reported for all-way stop control intersections, and total control delay for the worst movement was reported for side-street stop control intersections.

*Response to Comment T8-99*

Please refer to **Response to Comment T8-93** regarding methodology for VMT analysis.

*Response to Comment T8-100*

The Sonoma County Transportation Authority travel demand model run that was used to determine the VMT significance threshold and to extract VMT statistics for the Proposed Project has been included in Appendix O of Final EIS Appendix I.

*Response to Comment T8-101*

As described in TIS Section 4.2 (Draft EIS Appendix I), trip rates for the event center were calculated using the same assumptions found in the Wilton Rancheria study, regarding physical capacity, hotel occupancy and vehicle occupancy by attendees, event size, and event start times. Following the methodology from that study, the peak trip generation for the convention facility was calculated for an 85th percentile event, which corresponds to an attendance of approximately 2,380 seats. The analysis assumed that 25% of attendees would stay at the on-site hotel and would walk to the convention facility, while the remaining attendees would drive to the venue. To determine the expected vehicle trip generation rates for the convention facility, auto occupancy rates and arrival patterns for various types of events were considered. Most of the trips generated by the event center are projected to occur outside the p.m. peak hour, as events are likely to start between 7:00 and 8:00 p.m. The trip generation calculations assume that 15% of attendees at a capacity event would arrive during the p.m. peak hour, with an anticipated vehicle occupancy rate of 2.2 persons per vehicle. Consequently, it was estimated that approximately 1,023 total vehicle trips would be generated by the convention facility during the weekday and Saturday p.m. peak hours.

Footnotes in Table 8 of the TIS have been updated and are included in the Final EIS.

*Response to Comment T8-102*

Please refer to **Response to Comment A8-30** regarding queueing at intersection #3 Shiloh Road and US 101 northbound off ramp.

*Response to Comment T8-103*

Please refer to **Response to Comment T8-96** regarding vehicle trip assignments and **Response to Comment A8-35** regarding cumulative mitigation and associated fair-share payments.

*Response to Comment T8-104*

The statement on p. 165 of the TIS regarding ADTs for study roadway segments has been revised in Final EIS Appendix I. Existing ADT data is provided in Figure 5 of the TIS.

*Response to Comment T8-105*

Mitigation measures recommended for the project alternatives are listed in Draft EIS Section 4. Additionally, the TIS has been updated in Final EIS Appendix I to include mitigation measure summaries at the beginning of the impact discussion for each project alternative.

*Response to Comment T8-106*

Please refer to **Response to Comment A8-34** regarding the TIF and CIP projects that were considered in the development of the mitigation measures for the project alternatives.

*Response to Comment T8-107*

Draft EIS Section 4 clearly describes all elements of the mitigation measures, when they would be required (i.e., Opening Year 2028 and/or Cumulative Year 2040), implementation responsibility, and the fair-share contribution for each project alternative. Please refer to **Response to Comment A9-38** regarding the jurisdiction of off-site traffic mitigation measures. Please note that several of the proposed mitigation measures described in the Draft EIS are consistent with improvement projects identified in the Town of Windsor TIF Program.<sup>39</sup> Please refer to **Response to Comment A8-34** regarding the TIF and CIP projects that were considered in the development of the mitigation measures for the project alternatives.

*Response to Comment T8-108*

Please refer to **Response to Comment T8-94**. Due to a typo error in the TIS (Draft EIS Appendix I), the capacity of Shiloh Road for cumulative mitigated conditions (Table 46) has been changed from 49,800 to 49,300 in the Final EIS.

*Response to Comment T8-109*

Existing and planned bicycle, pedestrian, and transit facilities are discussed in TIS Section 15.2 (Draft EIS Appendix I). The TIS generally found that existing facilities are lacking, but that the Town currently has plans for improving multi-modal access on Shiloh Road and Old Redwood Highway. Due to the regional nature of the land uses proposed by the project alternatives, and the semi-rural character of the surrounding area, the project alternatives are not expected to contribute a substantial number of pedestrians, bicyclists, or transit riders to the area. While impacts to these facilities would be less-than-significant, the Draft EIS Table 2.1-3 (Protective Measures and Best Management Practices) states that the Tribe would construct pedestrian facilities (e.g., sidewalks or trails) on the Project Site to facilitate pedestrian traffic between the casino resort facility and the intersection of Shiloh Road and Old Redwood Highway. Please refer to **Master Response 6** regarding enforceability of BMPs.

To clarify the Proposed Project's contribution of bicycles, pedestrians, and transit riders, to study area roadways and intersections, the following modification has been made to Draft EIS Section 3.8.2.3 Alternative A – Proposed Project under the Bicycle, Pedestrian, and Transit Networks heading in the Final EIS:

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<sup>39</sup> Town of Windsor, 2020. Town of Windsor Traffic Impact Fee Study. Available online at: <https://www.townofwindsor.ca.gov/DocumentCenter/View/5280/Traffic-Impact-Fee-Update-2020>. Accessed October 2024.

Due to the regional nature of the land uses proposed by the Project, and the semi-rural character of the surrounding area, the Proposed Project is not expected to contribute a substantial number of pedestrians, bicyclists, or transit riders to the area. Any increase in transit ridership that may be experienced as a result of Alternative A. ~~Potential impacts associated with transit capacity~~ would be offset by a proportional increase in fare revenue. Alternative A would not adversely impact existing local bicycle and pedestrian facilities, which are generally lacking adjacent to the Project Site. BMPs identified in Table 2.1-3 include the development of on-site pedestrian facilities connecting to the two proposed signalized entrances to the Project Site. Therefore, impacts to transit, bicycle, and pedestrian facilities would be less than significant.

*Response to Comment T8-110*

TIS Section 4.2 (Draft EIS Appendix I) clearly states that the trip generation estimates for the Proposed Project (Alternative A) include trips reflective of event center activities. Table 8 of the TIS further demonstrates this numerically, indicating trip generation estimates specifically for the event center during all evaluated peak hours.

*Response to Comments T8-111 through T8-119*

The discrepancies identified in these comments between tables, figures, and appendices presented in the TIS (Draft EIS Appendix I) have been corrected in Final EIS Appendix I, if warranted.

T8-111: Lane configuration for study intersections #7, #8, and #9 have been revised in Figure 16 and are now consistent with Synchro analysis worksheets. Intersection #7 volumes have been revised in the Synchro analysis worksheets and are now consistent with Figure 17.

T8-112: Synchro shows the lane configuration for the driveway, but zero volumes are provided. It is a no project condition in which intersections with Proposed Project driveways would not be affected as there are no trips assigned to them. They have been coded in Synchro as dummy links with zero volumes. No change required.

T8-113: Results in Table 23 were reported accurately in the TIS. The Synchro analysis worksheet has been revised and is now consistent with Table 23.

T8-114: Lane configurations for study intersections #7, #8, and #9 have been revised in the Synchro analysis worksheets and are now consistent with Figure 22. Figure 23 peak hour volumes at study intersection #2 have been updated and are now consistent with Synchro Analysis worksheets. Results in Table 25 were reported accurately in the TIS. The Synchro analysis worksheet has been revised and is now consistent with Table 25.

T8-115: Lane configuration for study intersections #7, #8, and #9 have been revised in Figure 24 and are now consistent with Synchro analysis worksheets. Figure 25 Volumes for study intersections #7 and #9 have been revised in the Synchro Analysis worksheets and are now consistent with Figure 25.

T8-116: Please refer to **Response to Comment T8-112**. Queue lengths for study intersection #10 have been updated in Table 30 and are now consistent with Synchro Analysis worksheets.

T8-117: Figure 29 peak hour volumes at study intersection #8 have been updated and are now consistent with Synchro Analysis worksheets. Queue lengths for study intersection #10 have been updated in Table 32 and are now consistent with Synchro Analysis worksheets.

T8-118: Figure 31 peak hour volumes at study intersections #2, #8, and #12 have been updated and are now consistent with Synchro Analysis worksheets. Delay results for study intersection #12 have been updated and are now consistent with Synchro Analysis worksheets. Queue lengths for study intersection #10 have been updated in Table 35 and are now consistent with Synchro Analysis worksheets.

T8-119: Lane configuration for study intersections #7, #8, and #9 have been revised in Figure 32 and are now consistent with Synchro analysis worksheets. Figure 33 peak hour volumes at study intersections #7 and #8 have been updated and are now consistent with Synchro Analysis worksheets. Queue lengths for study intersection #10 have been updated in Table 38 and are now consistent with Synchro Analysis worksheets.

*Response to Comment T8-120*

This comment relates to attachments to the LLG (independent traffic reviewer) portion of the FIGR comment letter. These attachments are referenced in comments T8-91 and T8-92 and do not require any additional response.

*Response to Comment T8-121*

The introductory comments regarding a summary of conclusions, work performed, caveats, and assessment are noted. Please refer to **Master Response 1** for further information on comment period extension. For specific concerns, please see **Response to Comments T8-122** through **T8-138**.

*Response to Comment T8-122*

Please refer to the Final EIS Appendix B-5 for a detailed response to this comment. The commenter is correct that GMA prepared Draft EIS Appendix B-1 based, in part, on financial forecasts made by other financial consultants hired by the Tribe. Meister Economic Consulting (MEC) is one such consultant. MEC is no longer working for the Tribe. GMA relied upon the financial projections prepared by MEC because it believes such projections are reasonably accurate. In its report, GMA did state that it believes the construction cost estimates prepared by MEC are conservative, because of construction cost inflation that occurred subsequent to the MEC estimates. Socioeconomic impacts from construction costs are analyzed in Draft EIS Section 3.7.3 and would occur primarily in the form of jobs, economic output and taxes and fees that would accrue to local, state and federal governments. These are all positive effects. Consequently, the use of conservative construction cost estimates has no bearing on negative impacts described in the Draft EIS.

Unlike the construction cost forecast, GMA did not make a similar statement regarding the MEC operational forecast. Rather, as described in **Response to Comment T5-18**, estimates made by GMA regarding substitution effects (included in Draft EIS Appendix B-1) assume a recovery from the COVID pandemic. Specifically, as clearly stated in the Assumptions section (Draft EIS Appendix B-1, page 65):

“Consumer behaviors, income growth, and spending patterns will recover from impacts of the COVID-19 pandemic by the end of calendar year 2022.”

*Response to Comment T8-123*

The commenter is correct that GMA may not have known all of the various assumptions made by MEC in the construction of its gravity model. That is because GMA did not rely upon the MEC gravity model. Rather, GMA utilized the prior operating forecast for the Proposed Project, and then created its own gravity model to estimate substitution effects to existing casinos. GMA clearly explains this methodology on page 45 of Draft EIS Appendix B-1, in the section entitled *Competitive Effects Overview*.

*Response to Comment T8-124*

Please refer to the Final EIS Appendix B-5 for a detailed response to this comment. The commenter is correct that it is possible GMA did not know all of the assumptions made by MEC in the construction of its gravity model. The statement referred to by the commenter in Draft EIS Appendix B-1 reads:

“GMA considered the following major assumptions in performing the Substitution Effects Analysis, which were consistent with assumptions utilized by other consultants hired by the Koi Nation....”

A more accurate GMA statement would be that its model is consistent with “*some of*” the assumptions utilized by the other consultants. See Final EIS Appendix B-5, for this clarification. Please refer to **Response to Comment T8-122** regarding the appropriateness of the gaming revenue projections.

*Response to Comment T8-125*

The proposed scope of Alternative A, which is the Tribe’s Proposed Project, was informed by the Koi Nation as the project applicant, and was not developed by the environmental contractors that prepared the EIS. Please refer to **Response to Comment T8-122** regarding construction cost estimates and the appropriateness of the gaming revenue projections. The commenter is correct that some of the elements of the Proposed Project described in the Draft EIS are not completely consistent with the project analyzed by MEC in its 2021 report. The commenter is also correct that these changes would cause the construction cost estimates listed in the Draft EIS to be slightly conservative. However, the vast majority of project components in the Draft EIS are consistent with those described in the MEC report, when weighed in terms of their respective construction costs. The main casino element, including the gaming floor, gaming machines, gaming tables and food and beverage components are consistent. While non-gaming revenue is conservatively estimated, any adjustments to the mix of such non-gaming amenities would not be expected to significantly impact the gaming revenue forecasts, which primarily drive the competitive effects. Sports betting is not currently legal and as such was not included in the revenue projections. In addition, as described above in **Response to Comment T8-122**, it is acknowledged that the construction cost estimates listed in the Draft EIS are conservative.

Please also see **Response to Comment T8-28** and **T8-122** through **T8-124** regarding how GMA estimated projected revenues and the extent to which GMA used MEC revenue estimates.

Please see **Response to Comment T8-28** regarding substitution effects to the Graton Casino and Resort, and refer to the Final EIS Appendix B-5 for a detailed response to this comment.

*Response to Comment T8-126*

Please see **Response to Comments T8-122** through **T8-125** regarding the assumptions and methodology utilized by GMA.



*Response to Comment T8-127*

Please see **Response to Comment T7-01** regarding potential impacts to existing tribal casinos and local tribes.

*Response to Comment T8-128*

Please refer to the Final EIS Appendix B-5 for a detailed response to this comment. Although it is the case that the Sonoma County gaming market is becoming more mature, there is no evidence that it is saturated or approaching saturation. As an example of the gaming market opportunity, the recent Graton Casino and Resort expansion is cited as an example. The Graton Casino and Resort opened in 2013. In 2023 the facility began construction of an expansion project that substantially increased the size of the facility including the addition of up to 3,000 new gaming machines and 20 card tables, plus a 6-story hotel tower of approximately 290,000 square feet<sup>40</sup>. The Graton project is similar in size to the Proposed Project (see Draft EIS Table 2.1-1 for a description of the Proposed Project).

GMA also disagrees with the commenter’s statement that it incorrectly excluded card rooms from its quantitative analysis of substitution effects included in Draft EIS Appendix B-1. As described in Final EIS Appendix B-5, GMA did include card rooms in its modelling of substitution effects, but concluded that substitution effects to local card rooms would be small. This is because tribal casinos are not the primary competitors to local card rooms, and because much of the potential substitution effects to local card rooms have already occurred with the opening of the Graton Cason & Resort and River Rock Casino.

The commenter is also incorrect in its statement that the approximately \$23.7 million of annual out of market revenue “appears out of nowhere.” As described in Draft EIS Appendix B-1, these revenues would be derived from patrons who live outside of the local market area. These patrons are comprised of overnight guests to the subject casino’s hotel or other nearby hotels, people whose primary residence is elsewhere but reside in a secondary home in the marketplace, and daytrip travelers who are passing through the region on major thoroughfares. This out-of-market area is geographically very large, which implies that any substitution effects would be spread among a large number of existing casinos. There are 19 existing casinos listed in the substitution effects quantitative analysis listed on page 69 of Draft EIS Appendix B-1. The lowest substitution effect for an individual facility is – 3.87% of gaming revenue. Because substitution effects decline with distance, effects for facilities outside of the market area would be lower than – 3.87%, and thus less than significant. For this reason, individual effects to these out-of-market facilities are not estimated, nor are they listed in the GMA report.

*Response to Comment T8-129*

The commenter is correct that the financial position of an existing tribal casino would be stronger in a situation in which a new competitor had not entered the market. This is true for any industry in which competition exists. The commenter is also correct that the statement in the Draft EIS that “substitution effects tend to dissipate over time in a growing economy” does not explain how inflation factors into substitution effects. Because the analyses in Draft EIS Appendix B-1 are expressed in nominal dollar terms (i.e., not adjusted for inflation) the Draft EIS assesses economic impacts based on this measure. Still, in the case where the economy continues to grow in “real” or inflation adjusted dollars, substitution effects would diminish over time, provided that there are a manageable or small number of new market entrants.

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<sup>40</sup> Graton Resort and Casino, 2023b. Graton Casino and Resort Final TEIR: Table 3-1. Available online at: <https://www.gratonteir.com/wp-content/uploads/2023/05/final-teir.pdf>. Accessed September 2024.

In fact, the economy as measured in real inflation adjusted dollars has been growing. For example, real U.S. Gross Domestic Product (GDP) grew by a total of 30.1% during the 10 years ended January 2024, or an annual average of 2.7%<sup>41</sup>. However, because the dissipation of substitution effects depends on the level of new competitive entrants, the text in Final EIS Section 3.7.3.2 has been edited to state “substitution effects tend to dissipate over time in a growing economy, if there are few or no new market entrants.”

Please refer to Final EIS Appendix B-5 regarding non-gaming substitution effects. As explained therein, within most regional casino resorts, gaming performance and hotel performance are interrelated. This is largely due to the fact that a substantial number of overnight guests are induced to stay at the property via loyalty programs and associated player reinvestment initiatives. Outside of these invited guests, a significant number of guests choose to stay overnight at casinos with gaming activities as the primary motivation for their visits. These combined segments represent a vast majority of hotel patrons at regional casino properties and most of the economic benefit from these patrons is derived from their gaming expenditures. As a result, according to Appendix B-5, the gaming impacts calculated within the substitution effects analysis capture a majority of the economic impact and substitution effects associated with the patrons of the proposed hotel.

### *Response to Comment T8-130*

Please refer to **Response to Comment T8-27**. The reference to the text on page 3-75 of the Draft EIS is a direct quote from the District Court. As listed in the Draft EIS:

“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 impact on” a tribe (*Citizens for a Better Way, et al. v. United States Department of the Interior*, E.D. Cal., 2015).”

However, the commenter is correct that environmental justice effects could or would occur, even in the absence of facility closure. These are addressed in the *Gaming Substitution Effects* section of the Draft EIS, and the Final EIS has been expanded to include an additional discussion under the heading of *Environmental Justice Effects to Other Tribes*. The text in the Final EIS has been clarified to describe that, with the potential exception of the Dry Creek Rancheria, no “significant” environmental justice effects would occur.

### *Response to Comment T8-131*

Please refer to the Final EIS Appendix B-5 for a detailed response to this comment. As described therein, GMA performed the appropriate degree of analysis, given the financial data available for existing casinos.

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<sup>41</sup> U.S. Federal Reserve, 2024. St. Louis Fed. Real Gross Domestic Product for the 10-year period ended January 2024. Percent Change from Preceding Period and Seasonally Adjusted. Data downloaded into Excel and used to calculate 10-year change and average annual change. Available online at: <https://fred.stlouisfed.org/series/A191RL1Q225SBEA>. Accessed September 2024.

*Response to Comment T8-132*

In response to the commenter's concerns:

Reactive investment can be effective. Simply because it is reactive and not proactive does not invalidate the rationale of such investments.

GMA does not state that opportunity costs are recovered. Rather, the emphasis on the GMA analysis is on the probability that existing casinos remain operating and open after the opening of a large competing facility.

GMA does not assess the financing sources of existing facilities affected by competition. Rather, the emphasis on the GMA analysis is on the probability that existing casinos remain operating and open after the opening of a large competing facility.

*Response to Comment T8-133*

GMA displays its quantitative estimates of substitution effects to existing casinos in percentage terms, rather than actual dollars. This is customary industry practice, and is appropriate because it provides readers with context to understand the size of the impacts relative to baseline. For example, the U.S. Federal Government frequently describes changes in Gross Domestic Product and inflation. In a recent press release, the U.S. Bureau of Labor Statistics (BLS) announced:

“The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.2 percent on a seasonally adjusted basis, the same increase as in July, the U.S. Bureau of Labor Statistics reported today. Over the last 12 months, the all items index increased 2.5 percent before seasonal adjustment.”<sup>42</sup>

In theory the BLS could instead issue a press release describing the raw data from which these percentages are derived, including the “Chained Consumer Price Index” data, of which there are at least two (urban consumers and urban wage earners). There are multiple pages of explanatory notes on the BLS website explaining how the chained data, seasonal adjustments and data revisions work. Yet the BLS instead expresses the inflation data in percentage terms, which is more meaningful. Similarly, the substitution effects quantitative analysis prepared by GMA expresses its result in percentages, which provide the appropriate level of detail and context. Further, this approach avoids the disclosure of potentially confidential and proprietary business data regarding revenues used to derive the estimates. Please refer to **Response to Comment T8-27** regarding impacts to tribal programs and services as a result of reduced gaming revenues from competitive effects resulting from Alternative A.

*Response to Comment T8-134*

The level of analysis included in the Draft EIS is appropriate for Alternative C. Contrary to the commenter's statements, the information included in Draft EIS Section 3.7.3.4 and Draft EIS Appendix B-2 is not a “market study.” A market study or feasibility study includes information for decision makers to evaluate the feasibility of a particular alternative. Such studies typically include proprietary information regarding financing sources, expense levels, etc. Market studies typically do not address potential environment

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<sup>42</sup> U.S. Bureau of Labor Statistics, 2024. Consumer Price Index Summary. Available online at: <https://www.bls.gov/news.release/cpi.nr0.htm>. Accessed September 2024.

impacts. That is why the GMA report included as Draft EIS Appendix B-2 is labeled as an “Economic Impact Study.”

The analysis included in Draft EIS Appendix B-2 is typical for an impact study of a commercial development. The report includes estimates for construction costs, economic output, job creation, wages and tax revenues that would accrue to governments.

The commenter is correct that Draft EIS Appendix B-2 does not include a quantitative analysis of Alternative C substitution effects. However, as described in Final EIS Appendix B-5, Alternative C would not be expected to have substantial substitution effects on the immediate market area as the Project Site is currently an operational vineyard and the hotel development would be unique in its market positioning as a tribally owned winery and hotel development. This would likely allow it to induce incremental visitation to the market area.

*Response to Comment T8-135*

GMA’s analysis of socioeconomic impacts was based on data made available to it, and disclosed the proper level of detail to aid readers in understanding the analysis. Because of concerns regarding confidential and proprietary information that is potentially damaging if disclosed publicly, GMA did not disclose all financial information that was provided to it. When adjusting the tax estimates, GMA accounted for the fact that Alternative A would be developed on tribal land, which involves different tax considerations. In reviewing the taxes, GMA noted that certain types of taxes, such as corporate profits tax, could vary. The analysis inputs factored in which taxes tribes are required to pay—or are exempt from paying—to federal and local governments. Please see Final EIS Appendix B-5 for further information.

*Response to Comment T8-136*

GMA’s analysis of socioeconomic impacts to economic growth, jobs, wages and similar socioeconomic characteristics is consistent with the type of analysis conducted in these cases. The analysis did not deduct potential substitution effects. See Final EIS Appendix B-5 for further information.

*Response to Comment T8-137*

Please see **Response to Comment A8-25** regarding employment and housing.

*Response to Comment T8-138*

Please see **Response to Comments T8-27** and **T8-130** regarding environmental justice.

*Response to Comment T8-139*

The introduction to the peer review by WRA, Inc. is noted. The proposed location of four stormwater outfalls and one outfall for tertiary treated effluent to Pruitt Creek have been added to Figure 2.1-3 of the Final EIS. A conceptual plan view of the outfalls has also been added to Figure 2.1-3. The Final EIS has been updated to remove directional drilling as an option for utility line crossing of Pruitt Creek. Utility lines would be attached to either the proposed pedestrian or vehicle bridge to avoid impacts to Pruitt Creek.

The BIA has initiated consultation with NMFS under Section 7 of the Endangered Species Act (Final EIS Appendix G-7) to address potential effects to federally-listed salmonids.

***Response to Comment T8-140***

As discussed in Draft EIS Section 2.1.8, there are existing electrical lines on and adjacent to the Project Site and the Proposed Project would use electric water and space heating units and appliances in lieu of natural gas or propane units to the greatest extent practicable. No off-site electrical or natural gas infrastructure is proposed as part of the Proposed Project or alternatives. As discussed in Draft EIS Section 3.10.3, there are existing electrical and natural gas infrastructure projects planned or underway that would provide additional capacity and services to the area. These are considered separate projects that would occur without the Proposed Project and fall within the assumptions of cumulative impacts.

***Response to Comment T8-141***

Draft EIS Table 1.5-1 included CWA Section 401 Water Quality Certification from USEPA. USEPA, and not the Regional Water Quality Control Board, is the applicable agency with jurisdiction on tribal trust land. Please refer to **Response to Comment A8-16** regarding the location and size of potentially impacted waters of the U.S.

***Response to Comment T8-142***

It is correct that a 3-mile radius search was performed within the California Natural Diversity Database (CNDDDB) to identify known occurrences of listed plants in preparation of the USFWS Biological Assessment (Draft EIS Appendix G-1) and the CESA Species Evaluation (Appendix G-3 of the Draft EIS). It should be noted that since completion of the Draft EIS, USFWS has reviewed the Biological Assessment and acknowledged that there would be no effect to federally-listed plant species (see Appendix G-7 of the Final EIS).

A 9-quad CNDDDB search is not a requirement for preparation of a Biological Assessment or EIS. The commenter states that “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.” A review of the footnote at the end of this sentence reveals only a CNDDDB FAQ page that describes what a 9-quad search is, but no mention is made that this is an industry standard, and no mention of use of CNDDDB data in the environmental review process is mentioned in this citation. It is further noted that the Draft EIS is not a CEQA document and that the majority of NEPA documents cannot rely on CNDDDB given that it would not provide data for NEPA projects outside of the State of California. Further, given that the majority of the Project Site is actively used as a vineyard or developed, the potential for special-status plants is low.

***Response to Comment T8-143***

The potential for special-status plants to occur within the Project Site was evaluated, as presented in Draft EIS Section 3.5.2. Plants raised by the commenter include four federally and state-listed species: Burke’s goldfields (*Lasthenia burkei*), Sebastopol meadowfoam (*Limnanthes vinculans*), Sonoma sunshine (*Blennosperma bakeri*), and many-flowered navarretia (*Navarretia leucocephala* ssp. *pliantha*). All four of these species were considered in Sequoia’s Biological Assessment (Appendix G-1 of the Draft EIS), but were determined to have no potential to occur within the project site due to the absence of suitable habitat (hardpan vernal pools), the disturbed nature of the site, and the extremely limited distribution and abundance of these species. The seasonal depression wetlands and roadside ditches would provide, at best, marginally suitable habitat for these species due to their small size, shallow topography, and highly ephemeral hydrology. Additionally, the Project Site is highly disturbed and degraded and has been operated as a vineyard for at least the past two decades based on a review of aerial imagery. Accordingly,

the continuation of any hypothetical populations and/or the establishment of new occurrences would be precluded by the prolonged and extensive disturbance on site. Additionally, understanding the greater context of the distribution and abundance of rare plant species Santa Rosa Plain is a key factor in assessing the potential for occurrence; Burke's goldfields, Sebastopol meadowfoam, and Sonoma sunshine are all restricted to a handful of native occurrences (i.e., occurrences that formed naturally) and reintroduced populations within the Santa Rosa Plain (per the Recovery Plan for Santa Rosa Plain). Many-flowered navarretia is limited to 8 populations within the Napa-Lake County vernal pool region and occurs only within vernal pools that form on substrates of volcanic origin (Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon). Furthermore, these populations are highly monitored, and additional occurrences or range expansions are largely the result of intentional reintroduction efforts and are rarely due to new discoveries. It is for these reasons that the Biological Assessment determined that Burke's goldfields, Sebastopol meadowfoam, Sonoma sunshine, and many-flowered navarretia do not have the potential to occur within the Project Site.

As noted above, a USFWS Biological Assessment was prepared and included as Appendix G-1 of the Draft EIS. Since completion of the Draft EIS, consultation with USFWS pursuant to Section 7 of the FESA has concluded. No federally-listed plants were identified with the potential to occur, and no impacts to FESA-listed plants were identified. It should also be noted that the commentor misunderstands the type of survey performed by Sequoia in support of the USFWS Biological Assessment and CESA Memo; Sequoia performed a reconnaissance survey and habitat assessment in February 2022 and does not claim to have performed botanical surveys. Please refer to **Response to Comment T8-142** regarding the quad searches.

The commentor also expressed the opinion that congested-headed hayfield tarplant has a moderate potential to occur on the Project Site. It is noted that CRPR List 1B.2 species would not be afforded specific protections on lands held in trust, and the Project Site would be taken into trust prior to ground-disturbance. There is only one current and extant population of this congested hayfield-tarplant in the immediate vicinity of the Project Site (CNDDDB Occurrence #44); the other 2 occurrences within the vicinity of the Project Site are extirpated or historical, as noted in Comment T8-143. The nearby extant occurrence is located within a property with extensive open grassland habitat, as seen on aerial imagery. Those habitat conditions are not reflected within the Project Site, which is comprised almost entirely of vineyard rows, associated infrastructure, and a residence, and again has been subject to intense and prolonged disturbance. For these reasons, the appropriate potential for occurrence of congested hayfield tarplant would be low potential, not moderate potential. Finally, the commentor mentions three other special-status plant species as being "ruled out despite seasonal wetland habitat": dwarf downingia (*Downingia pusilla*), Boggs Lake hedge-hyssop (*Gratiola heterosepala*), and Baker's navarretia (*Navarretia leucocephala* ssp. *bakeri*). These species were all determined to have low to no potential to occur onsite due to the poor quality of seasonal wetlands and the extent of disturbance (both physically and temporally) on site. Furthermore, there are no CNDDDB occurrences of Boggs Lake hedge-hyssop within 3 miles of the Project site and for both Baker's navarretia and dwarf downingia, there are only 2 occurrences of each species within 3 miles and the closest occurrence, and in both instances is extirpated (Occurrence #5 of Baker's navarretia, Occurrence 87 of dwarf downingia). Baker's navarretia and dwarf downingia are CRPR List 1B.1 and 2B.2, respectively, and therefore would not be afforded specific protections on the Project Site, once it is held in trust.

Regarding off-site traffic mitigation, a Biological Resource Assessment was conducted and is included in Appendix G-5. Off-site improvements would impact previously disturbed areas, agricultural land, ruderal vegetation, and/or roadside drainage channels which have a low potential to support special-status plant species. The Tribe would contribute fair share payments towards off-site roadway improvements, but it would be the responsibility of the implementing agency (e.g., Caltrans, Town of Windsor, or Sonoma County) to ensure that applicable federal, State, and local regulations protecting special-status plants are followed.

#### *Response to Comment T8-144*

Since completion of the Draft EIS, a No Effect determination was made by the BIA in coordination with USFWS for California red-legged frog. On May 22, 2024, the USFWS acknowledged the No Effect determination and verified that no further consultation actions are necessary (Appendix G-7). BMPs and mitigation measures were developed in consultation with USFWS. Although unlikely, if CRLF were to be detected during pre-construction surveys, USFWS would be contacted for further guidance. USFWS ultimately maintains the authority to determine the potential for take and the need for permitting under the federal Endangered Species Act.

#### *Response to Comment T8-145*

As discussed within Appendix G-1 of the Draft EIS, the potential for northwestern pond turtles to use the Project Site is low, and this species is not expected to occur on the Project Site. USFWS has reviewed this analysis, including the BMPs and mitigation measures recommended to avoid impacts in the unlikely event that northwestern pond turtle is discovered onsite. Mitigation measures are overly protective in providing a preconstruction survey effort for a species not anticipated to occur within the Project Site. Although unlikely, if northwestern pond turtle were to be detected during pre-construction surveys, USFWS would be contacted for further guidance on fencing. USFWS ultimately maintains the authority to determine the potential for take and the need for permitting under the federal Endangered Species Act.

#### *Response to Comment T8-146*

Please refer to **Response to Comment T9-69** regarding potential for steelhead to occur within the Project Site and **Response to Comment T8-11** regarding additional mitigation measures for special-status fish beyond NMFS consultation. Further, information on the results of the survey, described in Draft EIS Section 3.5.3 is summarized in **Response to Comment A9-69**. Regarding wastewater discharge, this assessment was based upon the quality of water to be discharged and the anticipated rate of discharge. The project would be subject to the monitoring and reporting requirements set forth by the USEPA upon approval and issuance of an NPDES discharge permit for any proposed surface water discharge as discussed further in **Response to Comments A8-6** and **A9-16**. Based on Sequoia's review of the habitat present and the parameters of the proposed discharge, significant impacts to critical habitat or special-status fish species were not identified. Consultation with NMFS is ongoing and will be completed prior to making a decision on the Proposed Action and the issuance of the ROD. Should NMFS identify further protective measures regarding treated wastewater discharge, these measures will be incorporated into mitigation.

*Response to Comment T8-147*

There are numerous reasons why the project proponent may need to re-evaluate the buffer of a nest. An example is provided in Draft EIS Section 4 within Mitigation Measure Q, which states “the biologist shall be consulted to determine if changes in the location or magnitude of construction activities (e.g., blasting) could affect the nest,” in which case consultation with CDFW and/or USFWS would be necessary per the mitigation. If a response from the agencies is not provided or a buffer variance is not granted, activities that would have required the buffer variance would be delayed until after the nesting season. In response to this comment, Biological Resources Mitigation Measure Q within Final EIS Section 4 has been revised to clarify the timing that a nest buffer can be removed. Additionally, the reference to removal or relocating of active nests has been removed.

*Response to Comment T8-148*

The Project Site and all of Sonoma County is outside of the breeding range for burrowing owl<sup>43</sup>; therefore, exclusion of burrows with chicks would not occur. State-protected species are generally not afforded specific protection within trust land, and lands would be taken into trust prior to ground disturbing activities. Although burrowing owls would not be afforded protection on trust land, and consultation with CDFW would not be required, the Draft EIS still provides protective measures for this species to avoid impacts to an active burrow (Biological Resources Mitigation Measures S through V in Draft EIS Section 4).

*Response to Comment T8-149*

The cumulative biological resources impact analysis in the Final EIS Section 3.14.4 has been revised to provide additional detail regarding the determination that the project alternatives would not contribute to significant adverse cumulative effects to biological resources.

*Response to Comment T8-150*

The Biological Resource Assessment for the off-site traffic improvement area did not identify trees with federal or State protection status. The Tribe would contribute fair share payments towards off-site roadway improvements, but it would be the responsibility of the implementing agency (e.g., Caltrans, Town of Windsor, or Sonoma County) to ensure that local regulations such as the Sonoma County Tree Protection Ordinance are followed.

*Response to Comment T8-151*

The commentor provides conclusory statements summarizing the specific comments in Attachment 5 of Comment Letter T8. Please refer to **Response to Comments T8-140** through **T8-150** for responses to specific comments.

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<sup>43</sup> CDFW, 2008. Species Accounts: Burrowing owl. Available online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=10405>. Accessed October 2024.



### 3.2.3 Individual Letters

#### Response to Comment Letter I8 – Janice Kane

##### *Response to Comment I8-1*

It is not clear what location the commentor is indicating. It is assumed AV road indicates Alexander Valley Road; however, this road is approximately 9.5 miles north of the Project Site and does not intersect a Leslie Road. The nearest Leslie Road in relation to the Project Site is 1.5 miles east of the Project Site. To be thorough, a 10-mile CNDDDB radius search was performed to identify eagle observances within a 10-mile radius of the Project Site. Based on the results from CNDDDB, there was a single bald eagle observance noted under a CNDDDB occurrence for northwestern pond turtle in the Russian River near the crossing of Alexander Valley Road (northwestern pond turtle occurrence 31). It is assumed this is the observance the commentor is referencing. This observance noted a bald eagle occurrence, but did not identify a nest. This location is approximately 9.4 miles from the Project Site and well outside of potential project impacts. Therefore, no changes to the Draft EIS are warranted.

#### Response to Comment Letter I20 – Bruce Loring

##### *Response to Comment I20-1*

The BIA does not have the authority to require tribes to participate in joint ventures with other tribes, or to require gaming revenue profit sharing between tribes. As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision.

#### Response to Comment Letter I27 – Stefan and Kathy Parnay

##### *Response to Comment I27-1*

Please refer to **Master Response 2** regarding the thoroughness of the analysis within the Draft EIS. Regarding the widening of Shiloh Road, see **Response to Comment A8-34**. The widening has already been identified by the Town as needed for cumulative growth, without the Proposed Project. As the impacts are cumulative in nature and located within the jurisdiction of the Town, the design and implementation of widening of Shiloh Road is not within the control of the Tribe or BIA, with the exception of widening east of Old Redwood Highway. East of Old Redwood Highway, widening of Shiloh Road would be accommodated on the Project Site and would not result in the displacement of an occupied home.

##### *Response to Comment I27-2*

As noted in Draft EIS Table 1.5-1, the proposed gaming management agreement between the Koi Nation and investment partner would be subject to review and approval by the NIGC to ensure the terms comply with the intent of IGRA. As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision.

*Response to Comment I27-3*

As detailed in Draft EIS Section 3.8 Transportation and Circulation, the Opening Year 2028 traffic scenario included traffic from approved projects that were in the development pipeline in the Town of Windsor and Sonoma County, as well as effects from planned roadway improvements that were assumed to be constructed by 2028. To reflect all foreseeable development, including the specific projects referenced by the commenter, a compounding annual growth rate of 2.189 percent was applied to existing traffic volumes. Similarly, the cumulative transportation and circulation analysis, discussed in Draft EIS Section 3.14 Cumulative Effects, applied the same annual growth rate of 2.189 percent and included planned roadway improvements that were assumed to be constructed by 2040. Therefore, the transportation and circulation impact analysis, which is supported by the TIS (Draft EIS Appendix I) prepared for the project alternatives, accurately reflects the effects of nearby reasonably foreseeable development in both the Opening Year 2028 and Cumulative 2040 traffic scenarios.

*Response to Comment I27-4*

Please refer to **Master Response 10** regarding the wildfire evacuation analysis and mitigation. As discussed in **Master Response 11: Wildfire Evacuation Analysis Assumptions and Methodology**, new developments along Shiloh Road were included in the ETTA (Draft EIS Appendix N-2).

*Response to Comment I27-5*

Most traffic through the Fulton Road & Old Redwood Highway intersection is local traffic. As shown in Figure 8 of the TIS (Draft EIS Appendix I), most vehicle trips generated by the Proposed Project are expected to use the two interchanges (US 101/Shiloh Road and US 101/Old Redwood highway) due to their proximity to the Project Site and the regional nature of the proposed land uses. Only a small percentage (10 percent) of vehicle trips generated by the Proposed Project is anticipated to use Old Redwood Highway south of Shiloh Road. This equates to less than 70 trips during each peak hour traveling through this intersection, and some of these vehicles would not be turning on to or off of Fulton Road. For this reason, the Fulton Road & Old Redwood Highway intersection was not included in the TIS (Draft EIS Appendix I).

*Response to Comment I27-6*

As discussed in Draft EIS Section 3.15 Indirect and Growth-Inducing Effects, construction activities associated with mitigation measures required to address significant transportation impacts could require temporary lane closures to accommodate construction equipment. In accordance with the jurisdictional agency requirements (i.e., Sonoma County and/or the Town of Windsor), traffic management plan(s) would be required to address temporary impacts in construction work zones to vehicle, pedestrian, and bicycle mobility; emergency vehicle access; and overall safety. While impacts to travel through construction work zones may still occur, the impacts would be temporary and would be minimized to the maximum extent possible through the enforceable measures identified in the traffic management plan(s). Therefore, the Draft EIS properly characterizes the indirect effects of off-site traffic mitigation on transportation and circulation as less than significant. Please also refer to **Response to Comment A8-34** regarding the TIF and CIP projects that were considered in the development of the mitigation measures for the project alternatives.

*Response to Comment I27-7*

Please refer to **Master Response 7: Enforcement of Mitigation**. As noted in the Draft EIS Public Services Mitigation Measure C, if the Tribe does not enter into a service agreement for law enforcement and/or fire protection services, the Tribe shall establish, equip, and staff a public safety building for such services on the Project Site. Mitigation related to public services has been revised in the Final EIS Section 4 to require additional performance standards for Public Services Mitigation Measures B (enter into agreement(s)) and C (establish tribal law enforcement and/or fire protection services).

*Response to Comment I27-8*

Please see **Response to Comment T8-128** regarding the maturity of the local gaming market.

*Response to Comment I27-9*

Because of the nature of construction, building trades and the sources of building materials, it is typical for most construction jobs to be performed by workers who reside locally or regionally. It would be unusual for a large portion of construction workers to reside outside of the local area or state. However, it is the case that a larger portion of people who perform construction management and other managerial duties may not reside locally.

**Response to Comment Letter I253 – Alan Titus***Response to Comment I253-1*

Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation** (Matters Beyond the Scope of NEPA). As stated in the Draft EIS Section 1.1, the statutory authority for acquiring lands in trust status for Indian tribes is provided in the Indian Reorganization Act of 1934 (25 United States Code [USC] § 5108) with regulations codified as 25 CFR Part 151.

**Response to Comment Letter I292 – Mark Hauser***Response to Comment I292-1*

Comment noted. As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision.

Please see **Response to Comments I292-2** through **I292-35** for specific concerns. The CEQ NEPA regulations provide that an agency may authorize a contractor to prepare an environmental document under the supervision of the agency (40 C.F.R. § 1506.5 (c)). Consistent with these regulations, the BIA entered into a Professional Services Three-Party Agreement with Acorn Environmental for the preparation of the documentation to assist the BIA in compliance with NEPA. The agreement states that “Acorn represents that it has no financial interest in the results of the environmental analysis or the BIA decision regarding the approvals for the project,” (40 C.F.R. 1506.5 (c)(4)). The agreement further states that Acorn will act on behalf and at the technical direction of the BIA, and that the BIA as the lead agency, will independently evaluate the information submitted or the environmental document and will be responsible for its accuracy, scope, and contents (40 C.F.R. § 1506.5 (c)(2)).

***Response to Comment I292-2***

Please refer to **Master Response 7: Enforcement of Mitigation**. As stated in the Draft EIS, mitigation, as defined in 40 CFR § 1508.1(y), may include “Minimizing the adverse effect by limiting the degree or magnitude of the action and its implementation.”

***Response to Comment I292-3***

The comment is incorrect that there would be no impact from pumping groundwater. Draft EIS Section 3.3.3 and Appendix D-4 contained a detailed assessment of impacts to groundwater from pumping, identified potentially significant impacts, and recommended extensive mitigation measures in the Draft EIS Section 4.

***Response to Comment I292-4***

The physical and operational impacts associated with the proposed wastewater treatment plant are addressed throughout the Draft EIS. Odors are addressed in Section 3.4.3.3. Stormwater run-off associated with the treatment plant are addressed in Section 2.1.5. Runoff within the treatment area would be captured and conveyed to the WWTP for treatment and disposal as discussed in Section 2.1.4.

***Response to Comment I292-5***

Potential impacts to property values were analyzed in Draft EIS Appendix B-1 and Section 3.7.3.2. As described in Appendix B-1, between 2000 and 2021, housing prices within a five-mile radius of select casinos in California evidenced minimal, if any, deviation from price changes in the broader market. The examples analyzed provide evidence that opening or operating a Tribal gaming facility has a minimal impact on nearby property values, including residential property values.

***Response to Comment I292-6***

Comment noted. Please refer to **Master Response 13** for details on the heightened risk of accidents and drunk driving in the vicinity of the Project Site.

***Response to Comment I292-7***

The reason that the Draft EIS Table ES-1 states that the project alternatives “could reduce revenues at existing tribal casinos” is because not all project alternatives include a gaming component. Table ES-1 is the Summary Matrix, and is not intended as a comprehensive evaluation of impacts. The full impact analysis is included in Draft EIS Section 3.7.3.2, which does not use the “could reduce” language because the effects of each alternative (both gaming and non-gaming) are evaluated separately.

Contrary to the commenter’s statement, Draft EIS Appendix B-1 and Draft EIS Section 3.7.3.2 do quantify substitution effects for each existing casino where the initial impact is estimated at greater than 10% of gaming revenue. For example, substitution effects to the Graton Resort and Casino were estimated at -11.45% of gaming revenue during 2033.

The reason that potential facility closure is used as a criterion in evaluating substitution effects is because this was the basis of a ruling by the United States District Court for the Eastern District of California in the case of *Citizens for a Better Way, et al. v. United States Department of the Interior*. At issue was the significance level of substitution effects.

*Response to Comment I292-8*

While the commenter disagrees with the results of the analysis presented in Draft EIS Section 3.8 Transportation and Circulation, he does not provide any critique of the accuracy or appropriateness of the methodology used to conduct the analysis nor does he suggest an alternative methodology be used. The Draft EIS transportation and circulation analysis and the TIS (Draft EIS Appendix I) were prepared following NEPA and local jurisdiction guidelines and protocols with respect to transportation analysis and support the significance conclusions. Please also refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments**.

*Response to Comment I292-9*

The term "could" is used to acknowledge the possibility of land use conflicts without assuming certainty. The project alternatives have been thoroughly evaluated with BMPs and mitigation measures to address and reduce land use conflicts. While some potential for conflict is acknowledged, the extent of this conflict is subjective and varies based on specific factors.

*Response to Comment I292-10*

The comment is incorrect that there would be no impact from pumping groundwater. Draft EIS Section 3.3.3 and Appendix D-4 contained a detailed assessment of impacts to groundwater from pumping, identified potentially significant impacts, and recommended extensive mitigation measures in Draft EIS Section 4.

*Response to Comment I292-11*

If, for whatever reason, the Tribe is unable to enter into a service agreement for law enforcement and/or fire protection and EMS, the Draft EIS includes contingency mitigation measures that would require the Tribe to establish, equip, and staff a public safety building for such services on the Project Site. This contingency plan ensures that adequate resources would be available to address the public safety needs of the project before it is operational, even in the absence of external service agreements, further ensuring that impacts on public services remain less than significant. For further details on this mandatory enforcement of mitigation measures, please refer to **Master Response 7**.

*Response to Comment I292-12*

Please see **Response to Comment I292-5**. As described therein, changes in housing prices within a five-mile radius of select casinos in California were analyzed. A 30-mile radius was not used.

*Response to Comment I292-13*

Please refer to **Master Response 14** for information regarding the increases in crime in the vicinity of the Project Site and the potential impacts.

*Response to Comment I292-14*

Please refer to **Master Response 13** for details on the heightened risk of accidents and drunk driving in the vicinity of the Project Site.

*Response to Comment I292-15*

Please see **Response to Comment I292-7** regarding why potential facility closure is used as criteria in evaluating substitution effects.

*Response to Comment I292-16*

The commenter is correct that the use of 2 decimal places is unnecessary when listing estimated substitution effects on each existing casino. Nevertheless, this is the manner in which the consultant GMA presented its estimated substitution effects in Draft EIS Appendix B-1. For this reason, estimated substitution effects are presented with 2 decimal places in Draft EIS Section 3.7.2.3.

*Response to Comment I292-17*

The word “minimized” is used in this context because that phrase describes the potentially significant substitution impacts that may affect the Dry Creek Rancheria. However, the text has been amended to replace “minimized” with “reduced”, which is more appropriate in this context. In addition, the impact level of this category has been changed, so that it is consistent with the Substitution Effects category.

*Response to Comment I292-18*

Construction traffic impacts associated with the Proposed Project are described in Draft EIS Section 3.8 Transportation and Circulation. The Draft EIS states that construction traffic impacts on nearby roadways would be relatively small, dispersed throughout the day, would primarily occur outside of peak traffic times, and be temporary in nature. The Draft EIS concludes that the impact from construction traffic on nearby roadways would be less than significant and would, therefore, not require any mitigation.

If temporary lane closures or other encroachments into the public right of way are necessary during project construction activities, local (i.e., Town of Windsor or Sonoma County) roadway encroachment permits would be required. As part of the permit process, traffic management plan(s) would be required to address temporary impacts in construction work zones to vehicle, pedestrian, and bicycle mobility; emergency vehicle access; and overall safety. These plans would include enforceable measures and would be developed by the Tribe in coordination with and approved by the jurisdictional agency prior to the commencement of construction activities. While impacts to travel through construction work zones may still occur, the impacts would be temporary and would be minimized to the maximum extent possible through the enforceable measures identified in the traffic management plan(s). Therefore, the Draft EIS properly characterizes construction traffic impacts as less than significant.

*Response to Comment I292-19*

While the commenter disagrees with the level of significance conclusion for Mitigation Measure A (Shiloh Road/Old Redwood Highway modifications) in Draft EIS Table ES-1 Summary of Impacts and Mitigation Measures, he does not provide any critique of the accuracy or appropriateness of the methodology used to conduct the analysis nor does he suggest an alternative methodology be used. As discussed on pp. 4-11 to 4-16 of Draft EIS Section 4, mitigation to address impacts at Shiloh Road/Old Redwood Highway for both the Opening Year 2028 and Cumulative 2040 traffic scenarios would reduce the LOS at to acceptable levels based on applicable jurisdictional LOS standards. The Draft EIS transportation and circulation analysis and the TIS (Draft EIS Appendix I) were prepared following NEPA and local jurisdiction guidelines and protocols with respect to transportation analysis and support the significance conclusions. Please also refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments**.

*Response to Comment I292-20*

The term "minimize" is used to indicate that while the goal is to reduce impacts as much as possible, it may not be feasible to eliminate them entirely. BMPs and mitigation measures relating to noise, air quality, traffic, and aesthetic resources are designed to lessen impacts to land use compatibility while acknowledging that some level of impact may remain.

*Response to Comment I292-21*

The comment is incorrect that the Draft EIS says there would be "no impact" from pumping groundwater. Please refer to **Response to Comment I292-3**.

*Response to Comment I292-22*

Please refer to **Response to Comment I292-4** for a general discussion of odors and overflow risk.

*Response to Comment I292-23*

Please refer to Draft EIS Section 3.10 for the analysis on solid waste impacts during construction and operation of the project alternatives.

*Response to Comment I292-24*

A conservative estimate of 5,367 vehicles was used for evacuation estimates and the development of the Evacuation Mitigation Plan outlined in EIS Section 3.12.3.2. Expected maximum occupancy is approximately 2,450 vehicles, less than half of the conservative evacuation estimates. Please refer to **Master Response 10** for further wildfire evacuation information.

*Response to Comment I292-25*

The term "minimize" has been changed to "reduce" in Final EIS Table ES-1.

*Response to Comment I292-26*

Draft EIS Section 3.14 and the GRIA (Draft EIS Appendix D-4) provide a discussion of cumulative impacts to groundwater and the applicable criteria for determining that the impact would be potentially significant and reduced to a less-than-significant level with mitigation.

*Response to Comment I292-27*

The commenter's opinion is noted.

*Response to Comment I292-28*

Please refer to **Response to Comment T7-1**. As described in Draft EIS Section 3.7.2.3, the 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, in the event that Alternative A commences operations. In addition, the potential commencement of Alternative A operations would occur a number of years in the future, which clouds the precise circumstances in which events may unfold. Given the lack of certainty regarding events will unfold, describing substitution effects as potentially significant is appropriate.

*Response to Comment I292-29*

Please refer to **Master Response 8** for a discussion on why local land use designations and zoning are not applicable to the Proposed Project.

*Response to Comment I292-30*

Comment noted. Draft EIS Section 3.11.3 considered both indoor and outdoor noise impacts and included a range of strategies beyond window installation, such as quiet pavement, to address potential increases in noise from traffic and other sources. Please refer to **Master Response 12** for detailed information regarding noise impacts, including mitigation measures

*Response to Comment I292-31*

Impacts from lighting, shadow, and glare are thoroughly evaluated in Draft EIS Section 3.13.3. Additionally, protective measures and BMPs outlined in Draft EIS Table 2.1-3 would be implemented to reduce light pollution and protect sensitive areas like Pruitt Creek. These measures include shielded, downward-facing lights, the creation of no-light zones, and adherence to Dark-Sky guidelines. The use of neon lighting is not proposed. With these BMPs in place, cumulative impacts relating to lighting would be reduced to a less-than-significant level.

*Response to Comment I292-32*

Please refer to **Response to Comment I292-1**.

*Response to Comment I292-33*

As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS.

*Response to Comment I292-34*

Please refer to **Master Responses 10** and **11** for details on wildfire evacuation, analysis, and methodology.

*Response to Comment I292-35*

Please refer to **Master Response 11** for details regarding wildfire evacuation analysis assumptions.

### 3.2.4 Form Letters

#### **Response to Comment Letter F1 – Tribal Citizens of the Federated Indians of Graton Rancheria**

*Response to Comment F1-1*

Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation**, and **Master Response 16: Potential Impacts to Cultural Resources**.

#### **Response to Comment Letter F2 – Tribal Citizens of the Federated Indians of Graton Rancheria**

*Response to Comment F2-1*

Please refer to **Master Responses 4** and **5** regarding consideration of an alternative site in Lake County.



## Response to Comment Letter F3 – Sonoma County Residents

### *Response to Comment F3-1*

Comment noted. Please refer to **Master Response 2** regarding the level of detail in the Draft EIS and the thoroughness of the NEPA process, and **Master Responses 6** and **7** for information regarding the enforcement of BMPs and mitigation measures. See **Response to Comments A8-1** through **A8-81** for specific concerns raised by the Town of Windsor and **Response to Comments A9-1** through **A9-89** for concerns raised by Sonoma County.

## Response to Comment Letter F4 – Citizen Support

### *Response to Comment F4-1*

Comment noted. Please refer to **Master Response 3** regarding expressions of support for the Proposed Project.

## 3.2.5 Response to Public Hearing Comments

A transcript of the comments provided during the virtual public hearing held on July 30, 2024, is provided in **Attachment 2**. Responses to representative comments received during the virtual public hearing are included below.

### Response to Public Hearing Comment PH1 – Dino Beltran

#### *Response to Comment PH1-1*

The comments from Koi Nation are noted.

### Response to Public Hearing Comment PH2 – Greg Sarris

#### *Response to Comment PH2-1*

Introductory comments regarding the history of FIGR are noted. Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation** and **Response to Comments T8-1** through **T8-151**.

### Response to Public Hearing Comment PH3 – Andy Mejia

#### *Response to Comment PH3-1*

Introductory comments regarding the history of the Lytton Rancheria Band of Pomo Indians are noted. Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation** and **Response to Comments T5-1** through **T5-25**.

#### *Response to Comment PH3-2*

Please refer to **Master Response 1** regarding requests for extension of the Draft EIS comment period and **Master Response 7** for details on mitigation enforcement.

*Response to Comment PH3-3*

Comments regarding Lytton Rancheria evacuations are noted. Please refer to **Master Response 11** regarding wildfire evacuation for the Lytton Rancheria housing development.

*Response to Comment PH3-4*

As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision. Please refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments**.

**Response to Public Hearing Comment PH8 – Cameron Barfield***Response to Comment PH8-1*

Please refer to **Master Responses 10** and **11** for details on wildfire evacuation, analysis, and methodology.

*Response to Comment PH8-2*

Comment noted. Please refer to **Master Response 11** regarding wildfire evacuation analysis assumptions and methodology.

**Response to Public Hearing Comment PH10 – William Verity***Response to Comment PH10-1*

Please refer to **Response to Comment T5-11** regarding the inclusion of Faught Road/Shiloh Intersection in the traffic analysis. Please also refer to **Response to Comment T8-109** regarding potential impacts to bicycle and pedestrian facilities.

*Response to Comment PH10-2*

See **Response to Comment T5-3** regarding the potential for the COVID-19 pandemic to affect traffic data.

*Response to Comment PH10-3*

Please refer to **Response to Comment T7-2** regarding the commenter's conflict of interest allegations.

*Response to Comment PH10-4*

As discussed in Section 7 of the TIS (Draft EIS Appendix I), traffic forecasts for the Opening Year 2028 traffic scenarios were developed by applying an annual growth rate of 2.189 percent to existing traffic volumes to reflect growth through year 2028. This growth rate was based on corridor volumes on Shiloh Road and Old Redwood Highway extracted from the Sonoma County Transportation Authority's travel demand model. It accounts for anticipated regional growth as well as specific nearby projects that lacked final project descriptions or traffic studies at the time of analysis. Additionally, vehicle trips generated by the three approved projects (Clearwater, Shiloh Crossing, and Shiloh Terrace) that would add trips to the Proposed Project study intersections were included in the analysis. The locations of the three approved projects for which vehicle trips were specifically added to the study intersections are provided in Draft EIS Table 3.14-1.

With respect to vehicle trips associated with activities at nearby recreational facilities, those would have been accounted for in the intersection turning movement counts that were collected at the study intersections on July 28 and July 30, 2022, and in the ADT counts that were collected on July 28, 2022. These traffic counts were used to establish baseline traffic conditions, upon which project trips were added to determine the Proposed Project's impacts.

*Response to Comment PH10-5*

Impacts to groundwater are discussed in Draft Section 3.3.3 and supported by the GRIA (Appendix D-4 of the Draft EIS). These impacts consider agricultural users (e.g., vineyards) as well as residential users with shallow wells within the vicinity of the Project Site.

*Response to Comment PH10-6*

Please refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments** .

**Response to Public Hearing Comment PH14 – Chris Wright**

*Response to Comment PH14-1*

Comment noted. Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation**.

*Response to Comment PH14-2*

Please refer to **Response to Comment T3-1** regarding the transmittal of cultural studies and consultation with Dry Creek Rancheria under Section 106.

*Response to Comment PH14-3*

Comment noted. Please refer to **Master Response 4** regarding ancestral land.

*Response to Comment PH14-4*

Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106.

*Response to Comment PH14-5*

Please refer to **Response to Comment T7-2** regarding the commenter's conflict of interest allegations.

*Response to Comment PH14-6*

Comment noted. Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation** and **Response to Comment T7-1**.

**Response to Public Hearing Comment PH16 – Michael Derry**

*Response to Comment PH16-1*

As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision. Please refer to **Master Response 3: Expressions of Opinion and Non-Substantive Comments** and **Master Response 4: Compliance with Gaming Regulations and Legislation**.

## Response to Public Hearing Comment PH20 – Catherine Dodd

### *Response to Comment PH20-1*

As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation**.

### *Response to Comment PH20-2*

With regard to the potential heat island effect of the project, please see **Response to Comment A8-46**. As identified in Appendix N-1 of the Draft EIS, development of the project is expected to reduce wildfire risk on the Project Site. This is due to the maintenance of vineyards, the development of non-combustible structures (e.g. parking structure), and paved areas (e.g. wastewater treatment area) that would be cleared of vegetation. As a result, wildfire risks are not expected to increase on the Project Site. The evaluation of greenhouse gas emissions presented in Final EIS Section 3.14.3 takes into account the loss of sequestration from the reduction in vineyards on the Project Site.

### *Response to Comment PH20-3*

Comment noted. Please refer to **Master Response 13** regarding details on drunk driving as a public safety concern.

### *Response to Comment PH20-4*

Please refer to **Master Response 12** regarding details on noise impacts.

### *Response to Comment PH20-5*

Please refer to **Master Response 10** regarding the proposed wildfire evacuation mitigation measures and **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology. The analysis considered the evacuation time for all evacuees in the study area both with and without the Proposed Project, not only for patrons of the Proposed Project. See **Response to Comment T5-3** regarding the potential for the COVID-19 pandemic to affect traffic data.

## Response to Public Hearing Comment PH24 – Debora Fudge

### *Response to Comment PH24-1*

Please refer to **Response to Comment A7-3** for a discussion of flooding and floodplain issues. With respect to water storage, Draft EIS Section 2.1.3 identifies that a welded steel cylindrical water storage tank would be constructed to store water produced by the water treatment plant to meet fire flow and peak domestic demand requirements (see Appendix D-1 Section 5.3). The tank would provide approximately 1 million gallons of storage, with an approximate diameter of 75 feet and height of 32 feet.

### *Response to Comment PH24-2*

Please refer to **Master Response 10** regarding the proposed wildfire evacuation mitigation measures and **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology.

### *Response to Comment PH24-3*

Please refer to **Master Response 8** for concerns regarding land use compatibility.

## Response to Public Hearing Comment PH36 – Eric Chazankin

### *Response to Comment PH36-1*

Please refer to **Master Response 10** regarding the proposed wildfire evacuation mitigation measures and **Master Response 11** regarding the wildfire evacuation analysis assumptions and methodology. While the specific characteristics of a future wildlife evacuation event are unknowable, the Wildlife Evacuation analysis presented in Draft EIS Section 3.12.3 and supported by the detailed evaluation provided in the Evacuation Travel Time Assessment (Draft EIS Appendix N-2) are designed to account for a worst-case scenario (i.e., No Notice Scenario). However, 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.

The analysis assumes that the total number of evacuating vehicles is equal to the total number of parking spaces available on the Project Site, including the overflow parking area, (5,110) plus an additional 5% to reach the conservative estimate of 5,367 vehicles that would need to evacuate from the Project Site. This is considered an extremely conservative analysis as a marketing assessment estimates that the expected maximum occupancy at the casino-resort would be approximately 2,450 vehicles.

### *Response to Comment PH36-2*

The comment is correct that Alternative A would have an average daily water usage of 170,000 gallons per day (gpd) of potable water and 108,000 gpd of recycled water (see Draft EIS Section 2.1.3). Alternative A is estimated to generate an 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 (see Draft EIS Section 2.1.4). The groundwater impact analysis for the Proposed Project was provided in Draft EIS Section 3.3.3 and was based on the analysis provided in the Water and Wastewater Feasibility Study (Draft EIS Appendix D-1) and the GRIA (Draft EIS Appendix D-4). Mitigation measures for water resources in Draft EIS Section 4 require monitoring of groundwater levels from use of project wells and mitigation should impacts to nearby wells occur.

### *Response to Comment PH36-3*

Please refer to **Master Response 6** regarding the efficacy and enforcement of BMPs.

## Response to Public Hearing Comment PH53 – Peter Nelson

### *Response to Comment PH53-1*

Comment noted. Please refer to **Master Response 4** regarding ancestral land.

## Response to Public Hearing Comment PH56 – Patricia Miraz

### *Response to Comment PH56-1*

Comment noted. Please refer to **Master Response 5: Alternatives** and **Master Response 4: Compliance with Gaming Regulations and Legislation**.

## Response to Public Hearing Comment PH58 – Dino Franklin Jr.

### *Response to Comment PH58-1*

Comment noted. As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision.

## Response to Public Hearing Comment PH59 – Tanya Potter

### *Response to Comment PH59-1*

TIS Section 4.2 (Draft EIS Appendix I) clearly states that the trip generation estimates for the Proposed Project (Alternative A) include trips reflective of event center activities. Table 8 further demonstrates this numerically, indicating trip generation estimates specifically for the event center during all evaluated peak hours. Therefore, the analysis of project impacts and the mitigation measures proposed to address any such impacts already account for activity associated with the proposed event center component of the Proposed Project.

### *Response to Comment PH59-2*

Please refer to **Response to Comment T8-109** regarding potential impacts to bicycle and pedestrian facilities and **Response to Comment A9-40** regarding implementation of mitigation measures associated with traffic improvements. See **Response to Comment A8-57** regarding the long-term maintenance of roadways.

### *Response to Comment PH59-3*

Please refer to **Master Response 10: Wildfire Evacuation**.

### *Response to Comment PH59-4*

Please refer to **Master Response 14: Crime and Law Enforcement**, and **Master Response 10: Wildfire Evacuation**.

## Response to Public Hearing Comment PH60 – Melissa Elgin

### *Response to Comment PH60-1*

As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. However, this comment has been included in the administrative record and this will be considered by the BIA in its decision. Response to Public Hearing Comment PH68.

### *Response to Comment PH68-1*

Regarding ancestral land, please refer to **Master Response 4**. Please refer to **Master Response 7** for details on the enforcement of mitigation measures.

### *Response to Comment PH68-2*

Please refer to **Master Response 10** regarding wildfire evacuation.

*Response to Comment PH68-3*

Please refer to **Master Response 4: Compliance with Gaming Regulations and Legislation** regarding ancestral land.

*Response to Comment PH68-4*

Comment noted. Please refer to **Master Response 1** regarding the extension of the comment period and **Master Response 3** regarding expression of opinions.

**Response to Public Hearing Comment PH91 – Anne Gray***Response to Comment PH91-1*

Regarding the commenter’s statement about which geographic area would benefit from Alternative A, California is a geographically large and economically diverse state. Members of the Koi Nation reside in the state and almost all project employees would also reside within the state. Consequently, the vast majority of parties that would benefit economically from the project would reside in the State of California.

Issues related to traffic, water resources (including groundwater) and land use are addressed throughout the Draft EIS and Final EIS and in the Responses to Comments included herein.

**Response to Public Hearing Comment PH92 – Tiffany Erickson***Response to Comment PH92-1*

As described in EIS Section 1.4, the Project Site is located within that portion of Sonoma County that is outside of the Town of Windsor and approximately 12 miles from the Koi Nation’s tribal headquarters in Santa Rosa, California. A portion of the northern border of the Project Site is contiguous to the Town of Windsor. As described in Draft EIS Sections 2.1.7 and 3.10.2, SCSO and SCFD currently have jurisdiction over the Project Site for the provision of law enforcement and fire/Emergency Medical Services (EMS), respectively. The Socioeconomic effects of Alternative A (including fiscal impacts) were thoroughly analyzed in Draft EIS Section 3.7.3.2, and also in Section 3.10.3. Mitigation described in EIS Section 4.0 would require the Tribe to compensate service providers, specifically the SCSO and SCFD, for quantifiable direct and indirect costs incurred in conjunction with providing public services to the Project Site. Consistent with similar tribal casino projects, the vast majority of law enforcement and fire/EMS services stimulated by the operation of Alternative A would occur on the Project Site, which is located in unincorporated Sonoma County. Consequently, the cost of providing such services would have a less than significant fiscal effect on the Town of Windsor.

**Response to Public Hearing Comment PH99 – Riley Ahern***Response to Comment PH99-1*

Please refer to **Master Response 1** regarding the extension of the comment period. For responses to the letter submitted by Congressman Huffman and Congressman Thompson, see **Response to Comment A2-1** through **A2-3**.

## Response to Public Hearing Comment PH101 – James Gore

### *Response to Comment PH101-1*

Comment noted. Please refer to **Master Response 2** regarding the thoroughness of the EIS process, and **Master Response 4** regarding compliance with IGRA and legislative matters beyond the scope of NEPA.

## Response to Public Hearing Comment PH102 – Dorothy Morgan

### *Response to Comment PH102-1*

Please refer to **Response to Comment A7-3** for a discussion of flooding and floodplain issues. Stormwater impacts from site improvements would be mitigated through construction of a stormwater detention basin that is located outside and above the 100-year and 500-year floodplain limits. The detention basin would be designed to mitigate overall volume and peak flow rates to pre-development conditions. Please refer to **Master Response 10** regarding wildfire evacuation.

### *Response to Comment PH102-2*

River otters are not federally- or state-listed species and are therefore not evaluated within the Draft EIS. While an analysis and mitigation are not warranted for this species, it is noted that measures protective of Pruitt Creek and special-status fish would be protective of other wildlife species that may be found in Pruitt Creek. Please refer to Draft EIS Section 3.5.3 for an assessment of impacts to Pruitt Creek and special-status species and to Draft EIS Section 4 for mitigation for impacts to these resources.

## Response to Public Hearing Comment PH103 – Pamela Pizzimenti and Craig Scott

### *Response to Comment PH103-1*

Please refer to **Master Response 2**. The Draft EIS analyzed the impacts of the Proposed Project on traffic (Section 3.9), water and wastewater (Section 3.3), and parks and recreation (3.10). Draft EIS Appendix I, the Transportation and Circulation Impact Assessment summarized in Draft EIS Section 3.8, analyzed over 12 intersection and five Roadway segments. The methodology for the selection of these intersections and roadway segments is described in more detail in Draft EIS Appendix I. Mitigation measures for identified Transportation and Circulation Impacts were included in Draft EIS Section 4. Please refer to **Response to Comment T5-11** regarding the consideration of traffic impacts on Faught Road.

### *Response to Comment PH103-2*

The Draft EIS addressed the potential for well interference on existing wells. Please refer to **Response to Comment A8-2** for concerns regarding impacts to existing wells.

### *Response to Comment PH103-3*

Please refer to the EIS Section 2.1.4 for a description of the proposed methods for wastewater treatment and disposal of treated effluent. Alternative A does not propose the discharge of raw sewage to the creek or other waterbody.



***Response to Comment PH103-4***

As discussed in Draft EIS Section 3.13.3.2, the Project has been designed to preserve and maintain the existing vineyards and trees for a look that is cohesive with the existing community. In addition, vineyards would be left as buffers ranging from 100-500 feet wide along the northern and western Project Site boundaries, nearest to the majority of nearby residential uses. Green Roofs Draft EIS Section 2.1.2 provides designs for architecture, signage, lighting, and landscaping that would be incorporated to ensure visually appealing structures with natural characteristics. Draft EIS Figure 1.13-7 shows photos of the existing view experienced from Shiloh Ranch Regional Park facing west toward the Project Site compared to a simulation of proposed conditions with implementation of Alternative A. Please refer to **Master Response 9** regarding visual impacts.

**Response to Public Hearing Comment PH104 – Rosa Reynoza*****Response to Comment PH104-1***

Please refer to **Response to Comment T8-109** regarding potential impacts to bicycle and pedestrian facilities.

The widening of Shiloh Road between Caletti Avenue and Gridley Drive from two to four lanes in each direction is included as mitigation to address the Proposed Project's contribution to Cumulative Year 2040 LOS and queuing impacts in the Shiloh Road corridor. As described in TIS Section 12 (Draft EIS Appendix I), even without the Proposed Project several study intersections in the Shiloh Road corridor are projected to operate at an LOS below the Town's or County's standards due to projected regional growth and nearby development projects that have recently been approved and/or constructed. This analysis suggests that, even without the project, the projected travel demand in the corridor cannot be accommodated with the current roadway configuration.

Furthermore, the proposed mitigation measures that include widening of Shiloh Road in the Draft EIS are consistent with improvement projects identified in the Town of Windsor TIF Program. Please refer to TIF Program project numbers 2, 8, and 15 which provides additional details on the planned improvements. Additionally, the Town's current CIP includes projects at Shiloh Road & Caletti Avenue (study intersection #5), at Shiloh Road & Old Redwood Highway (study intersection #1), and widening of the Shiloh Road US 101 overpass from 2 to 4 lanes. All of these improvements documented by the Town in both the TIF and CIP were considered in the development of the Proposed Project mitigation measures.

**Response to Public Hearing Comment PH119 – Buffy McQuillen*****Response to Comment PH119-1***

Please refer to **Master Response 15** regarding compliance with and tribal consultation under Section 106 and **Master Response 16** regarding potential impacts to cultural resources and associated mitigation. Please also refer to **Response to Comment T6-4** regarding the transmittal of technical studies.

## **Response to Public Hearing Comment PH129 – Gloria Hubbell**

### *Response to Comment PH129-1*

As described in **Section 1.0**, comments that do not raise substantive environmental issues are not required to be responded to in the Final EIS. The public hearing that took place on July 30, 2024, and continued until all people who requested to speak had spoken. A 45-day public comment period on the Draft EIS commenced on July 12, 2024 and concluded on August 26, 2024. In addition, the community was invited to provide scoping comments for the Proposed Project and comments for the EA through both a written comment period and a separate public hearing that took place on September 27, 2023. Please refer to **Master Response 1** for further details regarding an extension of the comment period.

## **Response to Public Hearing Comment PH139 – Deborah Downer**

### *Response to Comment PH139-1*

Figure 3.13-6 of the Draft EIS provides before and after visual representations of the Project Site viewshed as experienced from Shiloh Ranch Regional Park. As shown, and further detailed in Final EIS Section 3.13, project features under Alternative A would not visually dominate the view from the Regional Park. As such, the overall viewshed and visual character experienced from the Regional Park would remain largely unchanged as a result of the project alternatives.

## **Response to Public Hearing Comment PH142 – Chris Lamela**

### *Response to Comment PH142-1*

BMPs listed in Draft EIS Table 2.1-3 include limiting construction activities involving noise generating equipment to daytime hours between 7:00 a.m. and 6:00 p.m., with the exception of federal holidays and Sundays where no work would occur, and with no construction work occurring between the hours of 10:00 p.m. to 7:00 a.m. With the implementation of this BMP, construction noise generated by Alternative A would not exceed FHWA construction noise thresholds (see Table 6 of Draft EIS Appendix E) during the evening (6:00 p.m. to 10:00 p.m.) or nighttime (10:00 p.m. to 7:00 a.m.). Therefore, truck traffic would occur during the day. Additionally, all construction equipment with a horsepower rating of greater than 50 would be equipped with diesel particulate filters, which would reduce approximately 85% of DPM, and be equipped with CARB rated Tier 4 Final engines. Dust emissions during transport of fill material or soil would be minimized by wetting loads, ensuring adequate freeboard (space from the top of the material to the top of the truck bed) on trucks, cleaning the interior of cargo compartments on emptied haul trucks before leaving a site, and/or covering loads. The effect from trucking soil offsite has been minimized.

### *Response to Comment PH142-2*

Please refer to **Master Response 10** for concerns regarding wildfire evacuations.