

Exhibit 1

Comment Letters on the Final EIS

Agency Letters


ROBERT H. PITTMAN, COUNTY COUNSEL

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November 27, 2024

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VIA U.S. MAIL and EMAIL

Amy.dutschke@bia.gov

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

**Re: FEIS Comments, Shiloh Resort and Casino Project
and Request for Comment Period Extension**

Dear Ms. Dutschke and Mr. Broussard:

I write on behalf of the County of Sonoma to request a 45-day extension to the comment period on the Final Environmental Impact Statement (FEIS) for the Koi Nation of Northern California's (Tribe's) Proposed Shiloh Resort and Casino Project in Sonoma County, California. The 30-day comment period proposed by the Bureau of Indian Affairs (Bureau) is unreasonable and must be extended because the FEIS contains significant changes and new information and analysis, and the County has been in the process of responding to a flood emergency. The proposed massive resort and casino project will have significant impacts on the County and these circumstances inhibit critical public review and comment on the Bureau's compliance with the National Environmental Policy Act (NEPA) and public participation in the decision-making process.

The Tribe submitted a fee-to-trust application to the Bureau requesting that approximately 68.6 acres of fee land be placed in trust by the federal government as restored lands pursuant to 25

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Re: FEIS Comments, Shiloh Resort and Casino Project; Comment Period Extension Request

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CFR part 292 for gaming purposes. The subject property is in rural Sonoma County and is zoned for and currently in agricultural use. It is outside the Town of Windsor's Urban Growth Boundary and within the County's Community Separator, a general plan designation enacted by the voters to contain urban sprawl and protect invaluable farmland. Contrary to the voter initiative and onsite and surrounding land uses, the Tribe proposes to develop a casino-resort facility with a three-story casino of approximately 538,137 square feet, a 400-room hotel with spa and pool area of approximately 268,930 square feet, a four-story parking garage of 5,119 spaces, plus ballroom/meeting space, an event center, and associated infrastructure. The County appreciates the purpose of the federal fee to trust process and the desire of the Tribe to take land into trust to support self-sufficiency and exercise sovereignty. However, the nature and scale of development at the proposed location is entirely inappropriate and the County has been forced to repeatedly convey its concerns over the potential environmental and societal impacts of such development and the legally inadequate fact-finding and analysis of the fee-to-trust and NEPA processes that require the Bureau to study such impacts.

Flooding emergencies in the County require an extension to the comment period. The County received the Notice of Availability of the FEIS on November 22. At the same time, the County was being hit hard by a category 4 atmospheric river storm which commenced November 20, 2024. This caused widespread flooding, closed roads, downed trees, landslides, debris flows, loss of power, and other devastations that the County and citizens are still working to assess and repair. On November 27, 2024, the County of Sonoma issued a *Proclamation of a Local Emergency*, which is included with this letter. During these types of events, a wide range of County staff are called to assist in the emergency response and most other non-life-threatening work is put on hold. It is simply not possible, not to mention unadvisable, for the County to prioritize environmental review over emergency response. Any refusal by your agency to extend the comment period under these circumstances forecloses public comment and participation that is vital to the NEPA process.

The environmental review process for this enormous development has been fraught from the beginning with procedural and substantive inadequacies. The Bureau initially attempted to prepare an Environmental Assessment (EA) for the project concluding that there would be no significant impacts. After substantial comment, the Bureau conceded there would be significant impacts and prepared a Draft EIS. However, the Draft EIS remained woefully deficient, technically and legally, and merely repackaged many of the prior failures of the EA. The Bureau has now released a 10,000-page FEIS that includes new and revised technical studies and analysis. Whether these revisions cure the deficiencies of the DEIS (and at first glance they do not), is simply not something that can be reasonably and meaningfully analyzed and commented on in 30 days, and especially not during a declared local emergency and continuing impacts caused by the extreme storm event.

Comment periods have repeatedly been insufficient for a project of this scale. In response to requests that the DEIS comment period be extended, the Bureau stated that opportunities for comment on the deficient EA justified maintaining the minimum comment period. Of course, when an agency has attempted to conduct a lower level of environmental review than is required by NEPA by gathering insufficient facts and twisting significance conclusions, the opposite is true. To move forward at this time with the FEIS without a meaningful comment period is to concede that public comment is immaterial, and that the outcome is predetermined, in clear violation of NEPA.

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Re: FEIS Comments, Shiloh Resort and Casino Project; Comment Period Extension Request

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The County of Sonoma respectfully requests a 45-day extension to the comment period on the FEIS in order to provide essential review and comment on the environmental analysis of this significant project.

Sincerely yours,



Jennifer C. Klein

Chief Deputy County Counsel

Attachment

Cc: Sonoma County Board of Supervisors



1 PROCLAMATION OF A LOCAL EMERGENCY
2 FOR THE COUNTY OF SONOMA, STATE OF CALIFORNIA
3

4 **WHEREAS**, the County of Sonoma Code of Ordinances, Chapter 10, Article 1, Section 10-
5 5(b) empowers the Director of Emergency Services to proclaim the existence of a Local Emergency when
6 the Sonoma County Board of Supervisors is not in session, and

7 **WHEREAS**, the Director of Emergency Services finds:

8 (1) That at the time of this proclamation the Sonoma County Board of Supervisors is not
9 in session;

10 (2) That conditions of extreme peril to the safety of persons and property have arisen
11 within the County starting on November 20, 2024, caused by an extreme category 4 atmospheric river storm
12 which has resulted in downed trees, disrupted utility services, and blocked and damaged roadways in parts
13 of Sonoma County (“November 2024 Atmospheric River Storm Event”);

14 (3) That conditions of extreme peril caused by this extreme storm condition over the past
15 seven days have caused severe ground saturation, unstable hillsides, debris flows, landslides, downed trees,
16 flooding, road blockages and road washouts/slip-outs, and power outages which have significantly impacted
17 County and community operations and resources, and require the provision of additional public safety,
18 health and emergency services;

19 (4) That these conditions of extreme peril to the safety of persons and property are
20 continuing due to impacts to from over 13 inches of rain in the span of 6 days, as recorded at the Charles
21 M. Schulz–Sonoma County Airport. Several creeks and streams are still above the action/monitor stage,
22 requiring emergency protective measures to stabilize these areas to safeguard life, health, and property, and
23 before additional precipitation exacerbates the damage, and the situation is of such severity and magnitude
24 that effective response is beyond the capabilities of the affected local governments; and

25 (5) That the aforementioned conditions of extreme peril and warrant and necessitate the
26 proclamation of a Local Emergency; now, therefore,
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1 **IT IS HEREBY PROCLAIMED** that a Local Emergency exists throughout Sonoma
2 County, commencing on or about the 20th day of November 2024; and

3 **IT IS FURTHER PROCLAIMED AND ORDERED** that during the existence of said
4 Local Emergency, the powers, functions and duties of the Director of Emergency Services shall be those
5 prescribed by state law and the ordinances, resolutions, and approved plan of the County of Sonoma in
6 order to mitigate the effects of said Local Emergency; and

7 **IT IS FURTHER PROCLAIMED AND ORDERED** that said Local Emergency shall be
8 deemed to continue to exist for the next seven (7) days, and hereafter by ratification of the Sonoma County
9 Board of Supervisors, until its termination is proclaimed by the Sonoma County Board of Supervisors; and

10 **IT IS REQUESTED** that the Governor of the State of California proclaim a State of
11 Emergency; waive any regulations that may hinder response and recovery efforts; make available California
12 Disaster Assistance Act Assistance; and seek all available forms of disaster assistance and relief programs.

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14 Dated: 11/26/2024



15 _____
16 Director of Emergency Services
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Congress of the United States

House of Representatives

Washington, DC 20515-0506

A2

December 7, 2024

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

Dear Secretary Haaland:

We write regarding the Department of Interior's Final Environmental Impact Statement (FEIS) for the Koi Nation's application to acquire 68 acres of land into trust for casino development in Sonoma County, California. We remain concerned with the Department's unilaterally streamlined review process that has lacked meaningful consultation with local impacted tribes. We request the Department extend the FEIS comment period to a minimum of 60 days and delay any further action until it meets its obligation to conduct meaningful consultation with local impacted tribes.

Despite repeated requests from us, our colleagues, and tribal leaders, senior Department leadership has not conducted meaningful, in-person consultation with Sonoma County tribal nations and citizens regarding the Koi Nation's fee to trust application. Consultation is not a courtesy; it is a requirement. The Department has repeatedly ignored concerns raised by the California State Historic Preservation Officer that the Department has not met its consultation obligations under Section 106 of the National Historic Preservation Act and proceeded with the NEPA review despite this deficiency.

The Department's actions in evaluating the Koi Nation's application to develop off reservation gaming has been a dramatic departure from established procedure for such fee to trust gaming development applications. In addition to the process being short-circuited without proper tribal consultation, the FEIS features glaring omissions for necessary mitigation strategies. The FEIS does not adequately address our communities' concerns about the impact that additional traffic would have on the current evacuation routes during an emergency. The FEIS also transfers National Environmental Policy Act (NEPA) mitigation responsibilities away from the Koi tribe to the Bureau of Indian Affairs directly. This is unprecedented and counter to established practices.

Given that the EIS, along with the appendices, are thousands of pages, that this FEIS was released on the Friday before the Thanksgiving holiday, as well as the fact that it includes unprecedented policies and procedures, it is critically important that the comment period be immediately extended to at least 60 days to give the community and stakeholders sufficient time to adequately review and respond. It is also important that the Department postpone any decisions or actions until it meets its obligations under the National Historic Preservation Act to make a reasonable and good faith effort to identify and evaluate this project's impacts to cultural resources.

Thank you for your full, fair, and serious consideration of our request. We look forward to your prompt response.

Sincerely,


JARED HUFFMAN
Member of Congress


MIKE THOMPSON
Member of Congress



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

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Rosa Reynoza

Vice Mayor, District 4
Tanya Potter

Councilmember District 1
Mike Wall

Councilmember District 2
Sam Salmon

Councilmember District 3
JB Leep

Town Manager
Jon Davis

PACIFIC REGIONAL OFFICE
2024 DEC 10 AM 10:14

December 5, 2024

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

Chad Broussard (via email)
Environment Protection Specialist
Bureau of Indian Affairs, Pacific Region
chad.broussard@bia.gov

SUBJECT: Notice of Availability of a Final Environmental Impact Statement and Final Conformity Determination for the Koi Nation of Northern California's Proposed Shiloh Resort and Casino Project, Sonoma County, California

Dear Ms. Dutschke and Mr. Broussard:

The Town of Windsor respectfully requests an additional 45 days to review the Final Environmental Impact Statement (FEIS) for the Koi Nation Shiloh Resort and Casino Project, beyond the standard 30-day comment period. This would allow the BIA to receive comments on the FEIS up to February 6, 2025, after which date the BIA may issue its Record of Decision.

The Town appreciates the Bureau of Indian Affairs' commitment to ensuring that all potentially affected parties have the opportunity to provide meaningful input, and the Town believes this extension is necessary to facilitate a thorough and informed review of the FEIS.

The FEIS is a voluminous and highly technical document that includes extensive appendices and detailed responses to comments in Appendix P, which itself is thousands of pages in length. A thorough review is essential to ensure that all issues raised by the Town of Windsor in its comments on the Draft Environmental Impact Statement (DEIS) have been adequately addressed. This process requires sufficient time to analyze the technical material and evaluate the adequacy of proposed mitigation measures.

Reviewing the FEIS also requires coordination with local agencies, technical consultants, and subject matter experts. These experts are critical to providing the Town with insights on the Traffic Impact Study, water resource assessments, public safety provisions, and other key components of the FEIS. The additional time would allow the Town to fully engage with these associates and incorporate their input into its assessment, particularly during the holiday season when availability for consultation tends to be more constrained.

The Town's review must include a detailed cross-referencing of the responses in Appendix P with the comments submitted on the DEIS. Initial analysis suggests that many concerns raised in the Town's comment letter may not have been fully addressed. Additional time is necessary to ensure that all responses are properly evaluated and any remaining issues are identified and articulated.

Extending the review period would promote transparency and accountability in the environmental review process. This is particularly important given the significant public interest in this project and the need to ensure that all concerns have been thoroughly examined and addressed in the FEIS.

The Town of Windsor is committed to working collaboratively with the Bureau of Indian Affairs and other interested parties to ensure that the environmental review process is comprehensive and that all potential impacts are fully understood. The Town respectfully requests this additional time to conduct a detailed review and provide meaningful feedback.

Thank you for considering this request. If you have questions or require additional information, please contact me: Patrick Streeter, Community Development Director, at pstreeter@townofwindsor.com or at (707) 838-5313.

Sincerely,



Patrick N. Streeter, AICP
Community Development Director

cc: Jon Davis, Windsor Town Manager;
Windsor Town Council

From: Matthew Lee <Matthew.Lee@gov.ca.gov>

Sent: Monday, December 16, 2024 7:22 PM

To: Garriott, Wizipan <Wizi_Garriott@ios.doi.gov>

Cc: Dutschke, Amy <Amy.Dutschke@bia.gov>; Broussard, Chad N <Chad.Broussard@bia.gov>; Mogavero, Tobiah C <tobiah.mogavero@bia.gov>

Subject: [EXTERNAL] California letter re: off-reservation gaming projects (FEIS Comments, Shiloh Resort and Casino Project / Coquille Indian Tribe Fee-to-Trust and Casino Project)

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On behalf of California Governor Gavin Newsom, I attach correspondence about three proposed off-reservation gaming projects: the Shiloh Resort and Casino Project, the Scotts Valley Casino and Tribal Housing Project, and the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project.

Matthew Lee

Senior Advisor for Tribal Negotiations &

Deputy Legal Affairs Secretary

Office of Governor Gavin Newsom

916-324-4665 | matthew.lee@gov.ca.gov



OFFICE OF THE GOVERNOR

December 16, 2024

Via electronic mail

Wizipan Garriott
Principal Deputy Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Off-Reservation Tribal Gaming Projects

Dear Mr. Garriott:

On behalf of Governor Gavin Newsom, I write to express grave concern that the U.S. Department of the Interior continues to move forward with at least two off-reservation gaming projects (the Shiloh Resort and Casino Project and the Coquille Indian Tribe Fee-to-Trust and Gaming Facility Project), and perhaps also with a third such project (the Scotts Valley Casino and Tribal Housing Project), despite serious deficiencies in its decision-making process. I urge the Department to take the time necessary to engage in further consultation on these projects.

In the context of the Shiloh Resort and Casino Project, deficiencies in the Department's decision-making process have already given rise to litigation. As California's State Historic Preservation Officer (SHPO) warned on July 10, 2024, the Department's efforts to identify historic properties (including those of religious and cultural significance to local tribes) that could be affected by the project have been "insufficient, inadequate, and not reasonable." These shortcomings reflect, in large part, the Department's failure to consult sufficiently with local tribes: indeed, the SHPO noted that the Department had failed to respond to concerns raised by one local tribe, the Federated Indians of Graton Rancheria. The Department concedes that it has still failed to resolve the SHPO's concerns—and nevertheless proposes to plow forward with the project anyway. (Final Environmental Impact Statement at 3-65.) Given the Department's puzzling refusal to correct its deficient

consultation process, Graton Rancheria has now found it necessary to initiate litigation to ensure its voice is heard.

The Scotts Valley Casino and Tribal Housing Project raises similar concerns. We have heard consistent frustration from potentially affected tribes that the Department has failed to engage in meaningful consultation regarding that project. The Yocha Dehe Wintun Nation, in particular, has sent multiple letters to the Department requesting government-to-government consultation about the project—all of which appear to have been ignored or rebuffed. And we understand that, while the Department has now belatedly moved to begin Section 106 consultation under the National Historic Preservation Act, no such consultation has yet taken place. We have also heard concern that the Department has been reluctant to share key evidence on which a potential “restored lands” determination for the Scotts Valley project would be based. And for unclear reasons, the Department has failed, thus far, to prepare an Environmental Impact Statement for the project—further underscoring our tribal partners’ concerns about the Department’s lack of transparency.

Our tribal partners’ experiences, unfortunately, align with our own. On August 16, 2024, our office submitted a letter to Assistant Secretary Bryan Newland expressing serious concerns about the Department’s proposed use of the “restored lands” exception for the Shiloh Resort and Casino Project and the Scotts Valley Casino and Tribal Housing Project and urging the Department not to move forward with the projects outside a two-part determination. We never received a response from the Department, or any other outreach or follow-up regarding the projects. On the contrary, we first learned from local tribes—rather than from the Department—that the Department planned to move forward with these projects. Indeed, we have yet to be notified of the Department’s intentions regarding the Scotts Valley project.

Given this experience, we share tribal governments’ concern over deficiencies in the Department’s consultation process. We understand why Graton Rancheria has already found it necessary to litigate over those deficiencies in the context of the Shiloh project. And we urge the Department to pause to correct its deficient consultation process—to take the time to listen to tribal voices, the State, and other concerned parties—before further litigation becomes necessary.

We are likewise concerned about deficiencies in the Department’s process regarding the Coquille project. In a January 2023 letter, we urged the Department to consult with tribes (including California tribes) within 100 miles of the project, so

that tribes could “be given an opportunity to describe the potential impacts of the project on their gaming revenues and governmental functions and services.” Frankly, we did not think this suggestion would be controversial: we assumed the Department would show nearby tribal governments this basic courtesy. Thus, we were disappointed to receive a response (more than two months later) disputing whether such consultation was legally required—as if the federal government’s relationships with its tribal partners should be guided by the bare minimum the law requires, rather than by basic respect. And we have likewise been disappointed to hear our fellow governments confirm that they have been frustrated in their pursuit of meaningful government-to-government consultation over the Coquille project.

In our August 2024 letter to the Department regarding the Shiloh and Scotts Valley projects, we noted the importance of striking a careful balance between the potential benefits of expanded tribal gaming and its potential impacts on surrounding communities. Striking this balance requires thorough and careful consultation—a willingness to hear, understand, and respond to the concerns of affected communities, including local tribes.

In its haste to rush forward with these projects, the Department has not yet done this important work. We urge the Department to reconsider its rush to judgment, and to take the time to listen to the tribal voices it has marginalized, before making any final decisions on these 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
Tobiah Mogavero, NEPA Coordinator, Northwest Region, Bureau of Indian Affairs
Chad Broussard, Environmental Protection Specialist, Pacific Region, Bureau of Indian Affairs

From: Gordon, Laney (she/her/hers) <Gordon.Laney@epa.gov>
Sent: Friday, December 20, 2024 9:31 AM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Subject: [EXTERNAL] EPA comments FEIS 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.

Good morning Chad,

I hope all is well!

Please see the letter attached for EPA's comments on the Final EIS for the Shiloh Resort and Casino. It was a pleasure reviewing this project and appreciate being a cooperating agency.

Please feel free to reach back out if you have any questions and Happy Holidays!

Best,
Laney

Laney Gordon (she/her)

U.S. Environmental Protection Agency, Region 9
National Environmental Policy Act Reviewer
Environmental Review Section (CED-2-1)
San Francisco, CA 94105
(415) 972-3562 | gordon.laney@epa.gov

<https://www.epa.gov/nepa/epa-review-process-under-section-309-clean-air-act>



REGION 9

SAN FRANCISCO, CA 94105

December 20, 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 Final Environmental Impact Statement for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California (EIS No. 20240221)

Dear Chad Broussard:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act 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 EPA participated as a cooperating agency on this project and provided feedback through multiple early engagement opportunities. We submitted comments on the Administrative Draft Environmental Analysis (EA) on May 15, 2023, and comments on the Draft EA on November 7, 2023. Our recommendations primarily sought improvements in the analysis of impacts and actions for maintaining pre-project hydrology. EPA submitted comments on the Draft EIS on August 23, 2024, and identified groundwater and floodplain concerns, because there is a mobile home community identified downstream of the project site that lies in the 100-year floodplain and already experiences regular flooding. We advised against development in a floodplain and recommended 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.¹ We also commented that if the project was 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. EPA appreciates the updates

¹ <https://ca.water.usgs.gov/pubs/2011/climate-change-atmospheric-rivers-floods-california-dettinger.pdf>

made to Table 1.5.1 of the Final EIS that identify additional potential permits and approvals required under the Clean Water Act (CWA), such as identifying approval of 401 Water Quality Certification, NPDES discharge permit to Pruitt Creek and approval of coverage under the NPDES General Permit for Stormwater Discharges from Construction Activities (p. 1-8). We also acknowledge Section 2.1.5 of the Final EIS, which discusses the Sonoma County Water Agency Flood Management Design Manual (FMDM) used for the design of the stormwater drainage system, including standards that would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour storm event.

Section 4, Water Resource Mitigation Measure A of the Final EIS identifies our concerns regarding the proposal to mitigate potential impacts to drinking water supply of nearby residents. It is clear now that although the well interference mitigation is complex, it has been successfully implemented before in the Graton Casino Project. However, we still have concerns regarding the verification required to determine if the Project directly caused any diminished well capacity or increased well maintenance costs. Thus, we continue to advise coordination with the Town of Windsor to identify the significant impacts that would occur cumulatively with increased pumping from the Town of Windsor. In the Record of Decision (ROD) please identify who will be contracted as the third-party that oversees the well implementation program.

We also acknowledge the additions to Section 3.4.3 of the Final, which clarify that under each alternative the Tribe will be required by Clean Air Act to consult with EPA to determine whether New Source Review (NSR) permits may be needed based on regulatory procedures for hypothetical usage and associated emissions. EPA also appreciates BIA's coordination with US Fish and Wildlife (USFWS) on this project; we specifically note the documentation of the "No Effect" determination for the California red-legged frog added to Appendix G-7 of the Final EIS. We also understand that consultation with NMFS is ongoing and that mitigation, including a water quality monitoring protocol and schedule, would be implemented to ensure water quality parameters such as temperature are not exceeded (p. 3-165).

Lastly, EPA would like to thank the BIA for considering project designs that are constructed to a minimum standard of Leadership in Energy and Environmental Design (LEED) Silver such as the use of low-emissivity (Low-E) glass and other energy efficient measures/heat reduction measures. The BIA's response to our DEIS comments on October 30, 2024 stated that additional measures, such as photovoltaics, will be considered by the Tribe for incorporation in the final project design. If possible, please highlight in the ROD these opportunities to incorporate solar energy throughout the Shiloh Casino and Resort.

We are extremely appreciative of the opportunity to review this Final EIS and be a cooperating agency for the Koi Nation Shiloh Resort and Casino Project. Please send us a copy of the Record of Decision when it is available. Should you have any questions regarding this letter, please contact

me at (415) 972-3629, or contact Laney Gordon, the lead reviewer for this project, at (415) 972-3562 or gordon.laney@epa.gov.

Sincerely,

Francisco Dóñez
Manager
Environmental Review Section 2

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



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

Mayor
Rosa Reynoza

Vice Mayor, District 4
Tanya Potter

Councilmember District 1
Mike Wall

Councilmember District 2
Sam Salmon

Councilmember District 3
JB Leep

Town Manager
Jon Davis

Sent via Email
December 20, 2024

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

Chad Broussard (via email)
Environmental Protection Specialist
Bureau of Indian Affairs, Pacific Region
chad.broussard@bia.gov

Dear Ms. Dutschke:

The Town of Windsor, which includes the Windsor Water District, hereby submits comments on the Final Environmental Impact Statement (FEIS) for the Koi Nation Shiloh Resort and Casino Project. Upon careful review, the Town concludes that the FEIS fails to adequately respond to the concerns and issues raised in the Town's comments on the Draft Environmental Impact Statement (DEIS). The FEIS does not provide additional project details or propose new or improved mitigation measures that would reduce the Project's significant environmental impacts below thresholds of significance.

Consequently, the Town strongly urges the Bureau of Indian Affairs (BIA) to reconsider the Project and endorse the "no project" alternative. The following is an outline of key areas where the FEIS remains deficient. While this letter is meant to be comprehensive, it is not exhaustive. The BIA is requested to consider this letter's contents in addition to comments and concerns raised by other agencies, affected community members, local tribes, and interested members of the public.

1. Water Resources

The Town of Windsor's comments regarding water resources reflect significant concerns about the FEIS's failure to adequately address potential impacts to groundwater, surface water, wastewater systems, and related resources. These comments include contributions from Windsor Water District staff, who bring extensive knowledge and expertise regarding the Town's and region's water and sewer supply, infrastructure, and long-range planning.

Groundwater Resources

The Town appreciates the additional groundwater analysis completed for the FEIS and the use of recycled water to the extent feasible. The Town also appreciates the use of green infrastructure to maximize the storm water infiltration considering

the substantial amount of impervious surface that would be created by the Project. However, in Appendix D-4 of the Revised Supplemental Groundwater Resources Impact Assessment (GRIA), under Section 5, it is indicated that the Project completed an operation simulation to determine potential drawdown of nearby wells, including the Towns' replaced Esposti potable well. It incorrectly assumed that the Town would only operate the replaced potable Esposti well during dry years. It is considered an alternative water source to the Town's river well system but in fact, the Town has a history of operating the Esposti well year-round. The potable Esposti well, is more likely to be run during dryer years, but could also be run during normal years. The Windsor 2020 Urban Water Management Plan indicates an approximate 350 acre-feet per year, so that should be the assumption used in the simulation. Town use should be added into the model as part of the baseline conditions and the Project evaluated from that baseline.

Considering the above, the FEIS does not sufficiently analyze or mitigate the risks of groundwater depletion and interference with the Esposti Supply Well, which serves as a critical resource for the Town of Windsor. While the FEIS acknowledges the potential for the Project to impact groundwater levels, it fails to provide substantive commitments to avoid or minimize such impacts.

The FEIS does not analyze long-term groundwater drawdown scenarios, particularly under drought conditions or in conjunction with increased regional water demand.

In Section 4-3, Mitigation Measures of the FEIS, page 3-181, it is indicated that the proposed mitigation for cumulative groundwater drawdown exceedances of 5 feet or more, is to implement a monitoring and mitigation program to prove that the Project wells interfered with Town wells. It indicates the Tribe may request reimbursement from the Town of Windsor for a fair share in proportion to the degree of the Project's contribution to the drawdown that caused the diminished yield or increased maintenance cost. Again, the Town has operated an Esposti well in the past, and the well-treatment system the Town is designing will be to replace the previous use of the well and should not be construed as a new project. The BIA must determine the change in use, with the previous Town water use as part of the baseline, then determine the causal effect. Also, any mitigations that include the Town in the FEIS should be discussed with the Town prior to it being proposed in a public document. No such discussion has occurred with the Town; therefore, the Town cannot concur with these statements or endorse these mitigations at this time.

Cumulative impacts from adjacent developments, as required by a thorough environmental analysis, are not adequately considered. The reliance on assumptions rather than empirical data about aquifer recharge rates and capacity further undermines the FEIS's conclusions. The FEIS must incorporate detailed

hydrogeological modeling to predict and mitigate impacts to local groundwater resources, including the Esposti Supply Well.

Surface Water Resources

The FEIS fails to adequately address concerns about effluent discharge into Pruitt Creek. As an ephemeral watercourse, Pruitt Creek's capacity to support year-round discharges is limited. Because of this difference in watercourse type, the assumption that discharge volumes will primarily be regulated by streamflow at the Russian River rather than the point of discharge is flawed. Additional discharge alternatives, such as on-site reuse or storage during low-flow periods, must be explored to avoid impacts to Pruitt Creek and downstream ecosystems.

The potential for surface water contamination from runoff, particularly following wildfire events, is insufficiently analyzed. This oversight is significant given the potential for post-fire pollutants, including heavy metals and other toxins, to affect aquatic habitats. The FEIS must provide a robust analysis of surface water impacts, including detailed mitigation measures to ensure that effluent discharges do not adversely affect water quality or habitat integrity.

Floodplain Management and Stormwater

The FEIS does not incorporate updated FEMA Flood Insurance Rate Maps (FIRM) or address the implications of floodplain management for the Project site. This omission is critical given the potential for increased flood risks due to climate change and alterations to stormwater runoff patterns. The Project's stormwater management plan lacks specificity regarding retention basins, infiltration systems, and measures to prevent downstream flooding.

The treated wastewater discharge point, the USGS gauge at Mark West Creek identified in Appendix D-1 is too far downstream to estimate flows in Pruitt Creek. As Pruitt Creek and Pool Creek commonly rise close to flood stages, the Town recommends a gauge on Pruitt Creek for more accurate information.

The surface water discharge point, Pruitt Creek, identified in Appendix D-1:
2.3.4.2: Surface Water Discharge is two tributaries upstream of Mark West Creek. The proposed 1% of flow in Mark West Creek and the proposed Mirabel Heights gauge (at Mark West Creek) are not relevant to Pruitt Creek flood and flow stages. Due to the tributary and size differentials, discharging at a rate of 1% of Mark West Creek flow may inundate the much smaller Pruitt Creek. For a point of reference, the Town of Windsor, which is much larger than the proposed development, has historically discharged at flowrates near 1% of Mark West Creek as measured at Mirabel Heights. The smaller scale of the development and Pruitt Creek would warrant a different discharge flow limitation.

The cumulative impacts of impervious surfaces and altered hydrology on local waterways, including Pruitt Creek and the Russian River, are not fully analyzed. As was noted in the response to the DEIS, the BIA must require a revised

floodplain and stormwater analysis that incorporates up-to-date data and identifies clear, enforceable mitigation measures.

Wastewater

A major concern highlighted in the Town's comments on the DEIS and not adequately addressed in the FEIS is that the proposed wastewater treatment facility is undersized relative to the Project's projected water usage. The FEIS estimates maximum potable water usage at 300 gallons per minute (gpm), equating to approximately 432,000 gallons per day (gpd). However, the wastewater treatment facility's proposed capacity of 0.25 million gallons per day (MGD) is insufficient to accommodate realistic wastewater volumes. A minimum treatment capacity of 0.5 MGD is necessary to ensure adequate handling of effluent under peak usage conditions.

Recycled water storage facilities, which are critical for irrigation and cooling tower use, are absent from the site plans for all Project alternatives (A, B, and C). The feasibility of achieving proposed recycled water use objectives is impossible without adequate infrastructure and operational commitments.

The FEIS must address these deficiencies by revising the wastewater treatment plan to reflect realistic usage scenarios and ensuring compliance with Title 22 standards for recycled water.

2. Air Quality

The FEIS has been revised to mandate the use of Tier 4 Final engines for all construction equipment, in accordance with the 2022 amendments to the California Air Resources Board (CARB) In-Use Off-Road Diesel-Fueled Fleets regulation. While this represents an improvement over the Draft EIS, significant concerns remain:

- **Enforceability of Best Management Practices (BMPs):** The reliance on BMPs, including idling time limitations for construction vehicles, lacks clarity on enforceability. Without detailed monitoring or penalties for non-compliance, these measures risk becoming ineffective.
- **Cumulative Construction Emissions:** The FEIS does not adequately analyze the cumulative impacts of construction emissions when combined with other ongoing or planned projects in the region. This omission undermines the ability to understand the true scale of air quality impacts during the construction phase.

Operational emissions are also a significant source of concern due to the Project's anticipated vehicle traffic. The Town's DEIS comments highlighted the potential underestimation of traffic volumes and associated emissions. The FEIS responds by reiterating its reliance on the traffic generation estimates from the TIS (Draft EIS Appendix I), asserting that the modeled air quality impacts are accurate.

However, as discussed in the Transportation and Circulation section, the TIS underestimates trip generation by up to 25%, leading to corresponding underestimations in air quality impacts. The FEIS does not provide any adjustments to address this. Additionally, while the FEIS states that there are no significant industrial or stationary sources near the Project site, it inadequately evaluates the cumulative air quality impacts of mobile and on-site emissions combined with regional sources including a proposed asphalt plant approximately 0.75 miles west of the Project site, currently undergoing environmental review.

The Town of Windsor finds the FEIS's response to air quality concerns inadequate. While the inclusion of Tier 4 Final engines for construction equipment is a step forward, the reliance on insufficient traffic assumptions, unenforceable BMPs, and vague operational mitigations renders the air quality analysis incomplete. The FEIS must be revised to include air quality modeling based on updated traffic generation estimates, enforceable mitigation measures, including robust monitoring and penalties for non-compliance, and specific commitments to align the Project with regional climate goals and reduce impacts on sensitive receptors. These revisions are critical to ensuring that the Project's air quality impacts are accurately assessed and effectively mitigated.

3. Biological Resources

The following comments are based on review of the FEIS 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 Town of Windsor's concerns regarding biological resources remain inadequately addressed in the FEIS. While some revisions were made in response to the Town's DEIS comments, significant issues persist, particularly regarding the Project's impacts on sensitive species, wetlands, riparian areas, and overall ecosystem health.

Impacts to Sensitive Species

The FEIS acknowledges the presence of sensitive species such as the California red-legged frog, western pond turtle, and migratory birds but fails to provide robust, enforceable mitigation measures. Proposed measures, such as pre-construction surveys and buffer zones, lack sufficient detail and do not account for long-term habitat protection. At a minimum, the Project must include:

- Development of comprehensive species-specific management plans that include habitat restoration and monitoring.
- Expanded mitigation efforts for species displacement and mortality risks during construction and operations.

Wetlands and Riparian Areas

The FEIS identifies potential impacts on wetlands and riparian zones but does not include a comprehensive mitigation plan. Specifically, the loss of wetland habitat

and disruption of riparian corridors due to construction activities remain inadequately addressed. The FEIS also fails to account for indirect impacts on adjacent wetland systems, such as changes in water availability, quality, and hydrology. Mitigation banking is mentioned but not sufficiently detailed to demonstrate feasibility or effectiveness. Even a cursory review of development projects in Sonoma County in recent years would demonstrate that mitigation banking has become increasingly difficult to secure and prohibitively expensive. The FEIS offers no assurances or enforceable accountability for mitigating these impacts.

Wildlife Corridors and Habitat Connectivity

The FEIS lacks a thorough analysis of how the Project will affect wildlife corridors, particularly those critical for species migration and ecosystem connectivity. Increased traffic and infrastructure development will exacerbate habitat fragmentation, yet the FEIS offers no mitigation measures to address these impacts.

Cumulative Impacts

The cumulative impacts analysis in the FEIS is insufficient. It fails to consider the combined effects of this Project and other regional developments on habitat fragmentation, species migration patterns and long-term biodiversity loss.

Consultation with Regulatory Agencies

The FEIS provides no evidence of meaningful consultation with federal and state agencies, such as the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife, to ensure compliance with the Endangered Species Act and other applicable laws. The lack of agency coordination undermines the credibility of the biological resources analysis and mitigation measures.

Conflict with Habitat Conservation Plan

As of early 2024, the County of Sonoma - Permit Sonoma, in collaboration with other local governments and agencies including the Town of Windsor, has initiated the process of planning and developing a county-wide habitat conservation plan (HCP) under Section 10 of the Endangered Species Act and a Natural Community Conservation Plan (NCCP) under California Fish & Game Code Section 2835 (NCCP Act). This program to develop the Sonoma County HCP/NCCP is called "Conservation Sonoma". Once developed and implemented, Conservation Sonoma will streamline regulatory permitting under state and federal endangered species laws while implementing an on-the-ground conservation strategy for some of the County's most sensitive and unique plant and animal species and habitats. Because it was never considered in County of Sonoma or Town of Windsor planning and regulatory documents, the Project as proposed on the Project Site would interfere with Conservation Sonoma policy-making and could have deleterious impacts to its implementation and conservation goals.

4. Cultural Resources

The Town of Windsor continues to express significant concerns regarding the treatment of cultural resources in the FEIS. Despite revisions to address some issues raised in the DEIS comments, the FEIS falls short in adequately addressing the potential impacts on cultural resources, including tribal cultural properties and historical artifacts. Without meaningful tribal consultation, comprehensive monitoring, and enforceable mitigation measures, the Project risks causing irreversible harm to cultural and historical resources.

Inadequate Tribal Consultation

At the BIA's July 30, 2024, hearing, representatives of several Sonoma County tribes raised concerns about the lack of meaningful consultation during the preparation of the DEIS. This issue persists in the FEIS, which does not demonstrate that adequate steps have been taken to involve tribes in identifying, evaluating, and mitigating impacts to tribal cultural resources.

Expanded Archaeological Monitoring

The FEIS proposes archaeological monitoring limited to buffers around Pruitt Creek. This approach is insufficient given the high likelihood of encountering culturally significant materials throughout the Project site. Any development other than the "no project" alternative must:

- Implement comprehensive archaeological monitoring across the entire Project site during all ground-disturbing activities; and
- Ensure that qualified tribal monitors are included in all archaeological monitoring activities.

Inadequate Mitigation for Inadvertent Discoveries

The FEIS does not propose specific or enforceable mitigation measures for inadvertent discoveries of tribal cultural or paleontological resources. The absence of clear procedures leaves significant gaps in the protection of these resources.

The Project must:

- Develop detailed and enforceable protocols for the handling of inadvertent discoveries, including immediate notification of tribal representatives and halting construction activities until proper evaluation and mitigation measures are implemented.
- Establish clear responsibilities and timelines for decision-making and mitigation actions in the event of discoveries.

Cumulative Impacts to Cultural Resources

The cumulative impacts analysis in the FEIS does not adequately address the potential for regional cultural resource loss resulting from the Project and other developments.

5. Socioeconomic Conditions and Environmental Justice

The Town of Windsor remains concerned about the FEIS's insufficient analysis and mitigation of socioeconomic and environmental justice impacts. The Project's scale and scope introduce significant risks to housing availability, economic stability, and access to essential public services. Below, we address specific areas of concern.

Housing Impacts

The FEIS response to the Town's comments inadequately addresses the Project's potential impacts on local housing demand. While the FEIS assumes that most workers will be local residents, this assumption is flawed for the following reasons:

- **High Cost of Living:** Sonoma County businesses are already struggling to hire service workers due to the region's high cost of housing and living. Assuming that unemployed or underemployed residents will fill the majority of the Project's jobs ignores this critical challenge.
- **Competition with Other Developments:** The nearby Graton Resort and Casino is undergoing a significant expansion, which will increase demand for the limited pool of local hospitality and service workers. This competition will likely exacerbate regional labor shortages and drive up housing demand.
- **In-Migration Underestimated:** The FEIS's analysis, which estimates that only 409 workers will relocate to Sonoma County, is based on a survey conducted at a casino in Massachusetts and fails to account for the unique housing challenges in Sonoma County. The assumption that only 2% of available housing units will be needed is overly optimistic given the current housing crisis.

To prevent significant adverse impacts, a more detailed and region-specific housing impact analysis must be prepared, along with mitigation measures such as contributions to affordable housing development or the inclusion of workforce housing in the Project plan. The FEIS acknowledges that the Project will generate substantial employment but fails to address the corresponding demand for local housing. This omission is critical in a region already experiencing a significant housing shortage. Without adequate analysis or mitigation, the Project risks exacerbating housing affordability challenges and displacement pressures for low- and moderate-income households.

Economic Displacement

The FEIS acknowledges that the Project could contribute to economic displacement through increased property values and rental prices but dismisses these impacts as less than significant. This conclusion is inadequate because the FEIS does not propose any measures to mitigate displacement risks for lower-income residents or small businesses that may face rising costs due to the Project.

The claim that increased job opportunities will offset displacement effects ignores the fact that many lower-income residents may not directly benefit from these jobs, particularly if they cannot afford to live near their place of employment. Mitigation measures such as rent stabilization programs, property tax assistance for small businesses, and funding for economic displacement studies must be identified and implemented to ensure vulnerable populations are not disproportionately affected.

Impacts on Public Services

The FEIS identifies increased demands on law enforcement, fire protection, and emergency medical services but provides limited detail on how these impacts will be mitigated. The Town finds the following issues:

- **Lack of Specific Mitigation:** The FEIS references mitigation measures but does not provide detailed, enforceable plans to expand public service capacities.
- **Funding Uncertainty:** The FEIS does not include commitments to fund additional staffing, equipment, or facilities needed to address increased service demands.
- **Coordination Gaps:** There is insufficient discussion of coordination with mutual aid networks and local service providers to ensure adequate emergency response coverage. Development of enforceable agreements with local service providers is needed to fund necessary service expansions and ensure public safety is not compromised.

These issues are discussed in greater detail in the Public Services and Utilities section of this letter.

Environmental Justice

The FEIS fails to adequately assess the Project's environmental justice impacts, particularly on vulnerable populations. Specific concerns include:

- **Lack of Community-Specific Analysis:** The analysis does not consider how increased traffic, noise, and air pollution will disproportionately affect low-income and minority communities near the Project site.
- **Inadequate Mitigation:** No targeted measures are proposed to address environmental and socioeconomic impacts on these communities.

The BIA must revise the environmental justice analysis to include community-specific assessments and targeted mitigation measures that align with federal guidelines.

6. Transportation and Circulation

The Town of Windsor's concerns regarding transportation and circulation remain inadequately addressed in the FEIS. The Project's Traffic Impact Study (TIS) underestimates the traffic generation, fails to account for critical safety concerns, and improperly dismisses the need for substantial infrastructure improvements.

The responses provided in the FEIS are insufficient and, in some cases, factually incorrect, as detailed below.

Peak Traffic Volumes and Trip Generation Estimates

The Town reiterates that the TIS underestimates traffic impacts, particularly on weekends. While the FEIS defends its reliance on Saturday as the peak traffic period, this conclusion is based on outdated data from 2015 and casinos located outside the Bay Area. Local experience at the Graton Rancheria Hotel Resort in Rohnert Park shows Sunday traffic volumes can exceed Saturday levels. The FEIS fails to analyze Sunday peak-hour conditions, dismissing the Town's comment without justification.

Further, the Town's consulting traffic engineer, W-Trans, a demonstrated expert in this subject, provided "big data" analysis based on the Graton Resort and Casino facility, demonstrating that traffic generation rates assumed in the TIS are too low. Using data from the Rohnert Park casino:

- Saturday Daily Trip Generation: The TIS estimates 15,799 trips, but W-Trans analysis shows this number should be closer to 20,863 trips—a 24% underestimation.
- Weekday Daily Trip Generation: The TIS estimates 11,213 trips, whereas W-Trans data suggests the actual number should be 13,927 trips.

The FEIS's dismissal of these concerns as "non-substantive" is inadequate and fails to address the potential for significantly greater impacts on the transportation network than currently analyzed.

Queuing and Safety Hazards

The FEIS response regarding queuing analyses at critical intersections is demonstrably incorrect. The response claims that "Simtraffic" software was used to evaluate queuing, which would account for downstream conditions; however, the TIS calculations clearly show that "Synchro" software was used. Synchro does not effectively model downstream lane configurations, such as the single eastbound through lane at the Shiloh Road/Hembree Lane intersection, which significantly impacts queue lengths and safety.

The TIS itself indicates that during the p.m. peak hour under both 2028 and 2040 conditions, queuing on the Shiloh Road northbound off-ramp at Highway 101 will exceed capacity. This creates a serious safety risk of queues backing onto the mainline freeway, increasing the likelihood of accidents. Despite this, the FEIS fails to identify or propose mitigation for this issue. Proper analysis must be conducted using software capable of accounting for downstream conditions, and mitigations—such as widening Shiloh Road east of Highway 101—must be implemented.

Shiloh Road/Old Redwood Highway Intersection and Fair Share Contributions

The Town's comments identified the inadequacy of fair share contributions for the Shiloh Road/Old Redwood Highway intersection. The FEIS response incorrectly claims that the improvements identified in the TIS are consistent with the Town's Capital Improvement Program (CIP). This is untrue. The Town's CIP envisions 15 total vehicle lanes at this intersection, while the mitigation proposed in the TIS requires 23 lanes—a significantly larger scope of improvements. The FEIS's refusal to acknowledge this discrepancy is misleading, and the Project must be responsible for funding the full cost of improvements beyond those contemplated in the Town's CIP.

Roadway Segment Capacity

The FEIS response defending increases in Shiloh Road capacity by 36% due to minor intersection improvements is both illogical and unsupported. No through lanes are being added, yet the TIS presumes an unrealistic increase in roadway capacity. In reviewing the TIS, W-Trans notes that these assumptions are inconsistent with standard traffic engineering principles and do not reflect the Town's vision for Shiloh Road as a lower-speed, multimodal corridor.

Additionally, the FEIS improperly dismisses Saturday peak-hour conditions by focusing solely on weekdays. Even the TIS forecasts show Saturday traffic volumes slightly exceeding weekday volumes, yet the analysis fails to account for these impacts. The Town continues to insist that the Project be responsible for widening Shiloh Road to mitigate these significant capacity issues prior to Project opening.

Impacts on Multimodal Infrastructure

The FEIS response fails to address the Town's concerns regarding impacts to pedestrian and bicycle facilities. The response narrowly focuses on the lack of walking and biking trips generated by the Project but ignores the substantial increases in vehicle traffic that will negatively affect existing pedestrians and cyclists. Recreational cyclists and pedestrians already use Old Redwood Highway and Shiloh Road, often on unimproved sections, and the Project's traffic impacts will exacerbate safety risks for these users.

The FEIS improperly relies on the Town's future plans to improve multimodal facilities, dismissing the Project's responsibility to address near-term impacts. Given the scale of the Project's traffic impacts, immediate improvements to pedestrian and bicycle infrastructure must be implemented as part of the Project's mitigation plan.

Inappropriate Reliance on Town Traffic Impact Fees

The FEIS repeatedly relies on the Town's traffic impact fee (TIF) program to fund improvements, despite the Project's location outside of the Town limits. The

Town's TIF program was not designed to accommodate the scale of traffic generated by the casino-resort, and the Project will not contribute to this funding mechanism. As such, it is inappropriate to rely on Town-funded improvements to mitigate Project impacts. The Project proponents must assume full responsibility for and commit to implementing and funding the necessary improvements.

7. Public Services and Utilities

The Town of Windsor maintains that the FEIS inadequately addresses the impacts of the proposed Project on public services and utilities, including fire protection, emergency medical services, law enforcement, parks, and utility infrastructure. Below is an evaluation of how the FEIS addresses these concerns and the ways in which it remains deficient.

Fire Protection, Law Enforcement, and Emergency Medical Services

The FEIS acknowledges increased demands on fire protection, law enforcement, and emergency medical services resulting from the Project but fails to provide enforceable mitigation measures or sufficient commitments to address these impacts. Specifically:

- **Capacity Limitations:** Existing fire and emergency medical services in the region are already operating at or near capacity. The FEIS does not include plans to expand facilities, staffing, or resources to accommodate the additional demands created by the Project.
- **Wildfire Risks:** While the FEIS discusses the risk of wildfires, it does not propose robust measures to mitigate increased response times or ensure adequate resources during wildfire events.
- **Coordination with Mutual Aid Networks:** The FEIS lacks a detailed plan for coordination with mutual aid networks to ensure sufficient emergency response coverage for both the Project site and surrounding communities. The cited payment of taxes and "economic benefits to the region" are never quantified to demonstrate their adequacy in reducing strain on existing emergency service providers.

While the FEIS notes that a "good faith effort" will be made to develop service agreements with local emergency service agencies like Sonoma County Fire District and the Sonoma County Sheriff's Office, there is no way to ensure an agreement will be reached and the alternative of establishing these services in-house is infeasible and unenforceable. The BIA must require the development of enforceable agreements with local emergency service providers to fund the necessary expansion of resources and ensure community safety.

Parks and Recreation

The FEIS fails to adequately assess or mitigate the Project's impacts on local parks, particularly Esposti Park. Increased visitation by Project patrons and employees will strain park resources, including:

- **Parking and Facilities:** The increased use of park facilities, such as restrooms and waste receptacles, will necessitate more frequent maintenance and could limit availability for local residents.
- **Maintenance Schedules:** Additional demand will disrupt existing maintenance schedules and place a financial burden on local parks departments.

The FEIS response that visitors do not have the same impact on park facilities as residents, while true, does not address the fact that a regional amenity like a casino will have an overflow impact on public facilities like Esposti Park. Enforceable commitments to fund park maintenance and improvements must be made.

Utility Infrastructure

The FEIS discusses utility demands but does not sufficiently address the Project's impacts on local infrastructure, including water, wastewater, and electricity. Key deficiencies include:

- **Capacity Analysis:** The FEIS does not provide a detailed analysis of whether existing utility infrastructure can support the Project's demands without upgrades.
- **Biosolids Management:** The Project's biosolids management plan remains vague, with no clear identification of disposal facilities or mitigation for transportation-related impacts.
- **Energy Demand:** The FEIS does not address the heat island effect created by the Project's large footprint and its implications for energy demand and grid reliability.

While these concerns were raised in the Town's comments on the DEIS, the FEIS discounts them with vague references to "living roofs" and the Tribe's consideration of photovoltaic canopies.

8. Noise

The Town of Windsor raised concerns about noise impacts in its DEIS comment letter, particularly regarding the potential for increased noise levels to affect local residents and sensitive receptors such as Esposti Park. While the FEIS acknowledges noise impacts and proposes some mitigation measures, these measures remain insufficient to fully address the Town's concerns.

Inadequate Noise Mitigation Measures

The FEIS proposes mitigation measures such as the use of quiet pavement and offering double-pane windows to nearby residents upon request. However, these measures fail to provide comprehensive solutions:

- **Quiet Pavement:** While the use of quiet pavement may reduce some roadway noise, it does not address noise generated by other sources, such as large events, construction activities, and operational equipment. In addition, the noise-reducing quality of quiet pavement degrades over time

and requires regular maintenance, however no plan for maintenance of the pavement is proposed in the FEIS.

- Double-Pane Windows: This measure only mitigates indoor noise impacts and does nothing to address outdoor noise levels or impacts to residents who do not make requests.
- Cumulative Noise Impacts: The FEIS does not adequately analyze cumulative noise impacts, particularly in combination with traffic and operational activities from nearby developments.

Impacts on Sensitive Receptors

The FEIS does not adequately address noise impacts on sensitive receptors, including:

- Esposti Park: Increased noise levels from traffic and Project activities may disrupt recreational use and reduce the park's value to the community.
- Residential Areas: Local neighborhoods near the Project site will experience increased noise levels, particularly during peak traffic periods and large events.

Lack of Enforceable Commitments

The proposed noise mitigation measures lack enforceable commitments and monitoring plans to ensure their effectiveness. For example, there are no detailed protocols for verifying compliance with noise standards or addressing complaints from affected residents.

The Town of Windsor finds that the FEIS's noise analysis and mitigation measures are inadequate to address the significant impacts identified in the DEIS. To fully mitigate noise impacts, the Project must include comprehensive mitigation measures, such as noise barriers, operational restrictions during nighttime hours, and enhanced landscaping buffers as well as development of enforceable noise standards and a monitoring program to ensure compliance and address community concerns.

9. Hazardous Materials and Hazards

The Town of Windsor remains deeply concerned about the inadequate analysis and mitigation of wildfire risks and hazardous materials impacts in the FEIS. These concerns, raised in the DEIS comments, remain largely unaddressed, despite the detailed analysis presented in Draft EIS Appendix N and the discussions in FEIS Master Response 10.

Wildfire Evacuation Planning and Analysis

The FEIS provides an analysis of wildfire evacuation scenarios, including both "No Notice" and "With Notice" scenarios modeled after the Tubbs Fire (2017) and Kincade Fire (2019). While the inclusion of these scenarios is a positive step, the conclusions presented in the FEIS fail to address critical evacuation risks:

- **Timing and Assumptions:** The FEIS assumes that evacuation for Alternative A would occur approximately one hour before neighboring zones. This assumption is overly optimistic and does not account for the complexities of real-world wildfire scenarios, where delayed notification or unforeseen circumstances can significantly alter evacuation timelines.
- **Cumulative Impacts:** The analysis does not adequately consider the cumulative effects of simultaneous evacuations from nearby developments and regional traffic growth, particularly in 2040 scenarios. The reliance on a uniform 1.4% per year traffic growth assumption oversimplifies potential future conditions.
- **Effectiveness of Mitigation Measures:** The FEIS references the Evacuation Mitigation Plan and options such as creating Trigger Evacuation Zones or Pre-Determined Evacuation Zones. However, these measures lack enforceable commitments and specific coordination protocols with local authorities, including Sonoma County and the Town of Windsor.

Mitigation Measures and Gaps

The proposed mitigation measures, including the installation of wildfire detection cameras and variable message signs, are insufficient to fully mitigate the Project's contribution to wildfire evacuation risks. Specific gaps include limitations on the tactical advantage of detection systems beside early detection as well as lack of clarity or enforceability of the Tribe's integration of its evacuation protocols with existing systems like the county of Sonoma's and Town of Windsor's Emergency Operation Plans.

Hazardous Materials

The FEIS fails to adequately analyze or mitigate risks associated with hazardous materials storage, transport, and potential release during wildfire events. Reliance on typical stormwater pollution protection best management practices like bioswales is insufficient for dealing with non-storm events.

Recommendations

For the Project to mitigate for the concerns outlined above, it must include:

- Specific coordination agreements with local and regional emergency management agencies.
- Detailed traffic management strategies to address potential bottlenecks and prioritize vulnerable populations.
- Funding and training for local emergency response staff to ensure readiness and effectiveness during wildfire evacuations.
- Periodic drills and simulations to ensure preparedness for both "No Notice" and "With Notice" wildfire scenarios.
- Expansion of key roadway segments to increase capacity.
- Installation of additional egress routes from the Project site to reduce bottlenecks.
- Design and construction of dedicated evacuation lanes where feasible.

- Expansion of wildfire detection systems, including additional cameras to improve coverage and response times.
- Variable message signs and real-time traffic management tools to guide evacuees efficiently.
- Additional funding for local emergency services to enhance capacity and readiness.
- Detailed response plans for spills and releases during wildfire events.
- Specific measures to prevent post-wildfire contamination of waterways, including runoff control and water quality monitoring.

10. Visual Resources and Land Use

The Town of Windsor finds that the FEIS's analysis of visual impacts and land use fails to address key concerns raised in the DEIS comments. The proposed Project's location within the Windsor-Larkfield-Santa Rosa Community Separator and its proximity to designated scenic corridors amplify the significance of its visual impacts. Additionally, the County's and the Town of Windsor's General Plans identify the land use designation of the site as agricultural. While the FEIS includes updates and revisions, significant deficiencies remain. Significant investment has been made to designate and preserve agricultural and recreational open space along this corridor; development of the Project would have a negative impact on these efforts. The FEIS's statement that local land use policies do not apply to lands taken into federal trust does nothing to address the significant adverse environmental impacts that these local land use policies are in place to avoid.

While the commitment to align some Project design features with the recommended visual impact mitigations in the Sonoma County visual assessment guidelines is a positive change, the Project must also:

- Establish setbacks to maintain and maximize open space buffers.
- Develop enforceable commitments to maintain landscaping, murals, paint coatings, and other visual mitigation features to ensure their effectiveness over time.
- Revise the Project's design and layout to align, to the maximum extent possible, with the objectives of the Windsor-Larkfield-Santa Rosa Community Separator.
- Incorporate local and regional land use policies as a basis for evaluating Project impacts under NEPA.
- Develop and implement enforceable measures to mitigate impacts on the Community Separator and scenic corridors.
- Revise the design and layout of the Project to align, to the maximum extent possible with the open space and rural character objectives of local land use plans.

11. Growth-Inducing Effects

The Town raised the concern that the Project is likely to induce additional commercial and residential development in the surrounding area, contrary to the Town's growth management policies. The FEIS acknowledges that these impacts would be proportionally greater locally and not "diffused across the State" as discussed in the DEIS. The FEIS also states that such growth would be "would be subject to regulation by the Town and the compliance with applicable Town planning documents and codes." The Project should include a commitment for technical assistance or dedication of funding for the Town to update its planning documents and codes to account for the impacts of the Project on growth and development in and around the Town of Windsor.

12. Cumulative Effects

The Town of Windsor remains concerned that the FEIS fails to adequately address the cumulative impacts of the proposed Project in combination with other reasonably foreseeable developments. While the FEIS provides some additional discussion, it does not sufficiently mitigate significant cumulative impacts identified by the Town.

Groundwater Resources

The FEIS incorporates a forecast scenario simulating groundwater pumping from the Esposti Park and North Windsor wells, consistent with the Town of Windsor's 2020 Urban Water Management Plan (UWMP). The FEIS concludes that the Project would contribute to potentially significant cumulative impacts, including:

- **Interference Drawdown in Shallow Wells:** The FEIS confirms that cumulative pumping during dry years would exacerbate drawdown impacts on shallow domestic wells.
- **Degradation of Groundwater Dependent Ecosystems (GDEs):** Combined effects of municipal and Project-related groundwater pumping during drought conditions would negatively impact GDEs. However, the proposed mitigation measures are insufficient to offset these cumulative effects.

Stronger commitments to mitigation measures are needed, such as limiting Project groundwater use during dry years, enhancing recharge programs, and increasing monitoring efforts to protect both domestic wells and GDEs. There must be mechanisms for accountability and enforceability of these mitigation strategies.

Traffic and Transportation

The FEIS acknowledges cumulative traffic impacts but relies on mitigation measures embedded within the Town's Traffic Impact Fee (TIF) program and Capital Improvement Program (CIP). While these programs outline improvement projects, the FEIS does not provide assurances that the Project's fair share contributions will fully offset its impacts or that improvements will be

implemented in a timely manner to address the Project's operational and cumulative traffic effects. On opening day, the Project's impacts will be immediate, whereas mitigations implemented through the TIF program and CIP happen at the pace of development.

Cumulative Development Impacts

The cumulative analysis includes developments such as Windsor Gardens, Shiloh Crossing, and Old Redwood Highway Villages, however the FEIS still does not adequately evaluate the combined effects of these developments on regional resources, such as housing, public services, and infrastructure. Additionally, there is no discussion in the FEIS on additional measures to address increased demand for housing and services generated by cumulative development.

Greenhouse Gas Emissions

While the FEIS references California's Advanced Clean Cars II regulations and planned installation of electric vehicle (EV) charging infrastructure, these measures are insufficient to fully mitigate cumulative GHG emissions. The Project's parking allocation for EVs does not align with the state's ambitious Zero Emission Vehicle adoption goals, and cumulative GHG impacts remain inadequately addressed.

13. Conclusion

In summary, The Town of Windsor maintains that the FEIS does not adequately respond to the significant concerns raised in the Town's comments on the DEIS. The document fails to offer additional details or propose sufficient mitigation measures to reduce environmental impacts to less-than-significant levels. Many of the Project's impacts remain unmitigated, and critical issues such as traffic, water resources, public services, and wildfire risks are not addressed with the level of detail and rigor required under NEPA.

The Town emphasizes that any approval of the Project must include meaningful accountability and enforcement mechanisms for mitigation measures, as well as firm commitments to policies, programs, and funding necessary to ensure that proposed mitigations are effective and enforceable.

Given the inadequacies of the FEIS and the substantial, unmitigated impacts that remain, the Town of Windsor continues to support the "no project" alternative as the only viable option to protect the community and environment from significant harm.

Additionally, written correspondence related to the FEIS that has been received by the Town during the public comment period is attached to this letter.

Thank you for the opportunity to comment. Please contact me directly, Patrick Streeter, Community Development Director, at pstreeter@townofwindsor.com or at (707) 838-5313, if you have any questions or require additional information.
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 Final Environmental Impact Statement for the Koi Nation Shiloh Resort and Casino Project

November 30, 2024

Mayor Rosa Reynoza

Town of Windsor

P.O. Box 100

Windsor, CA 95492-0100

Subject: FEIS Comments, Koi Nation Shiloh Resort and Casino

Dear Mayor Reynoza:

I am a Windsor resident, and I strongly oppose the Koi Nation's proposed fee-to-trust transfer of unincorporated land adjacent to our town for a hotel and casino gaming project.

The Department of the Interior (DOI) earlier this week released their [Final Environmental Impact Statement \(FEIS\)](#) on this project, kicking off a 30-day comment period during the holidays! Unfortunately, much like the earlier draft environmental impact statement (DEIS), it contains overly complex and technical information, but nonetheless continues to fail to adequately address the significant and far-reaching impacts this project will have on the surrounding community and Sonoma County as a whole.

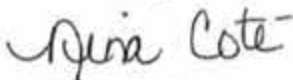
The Bureau of Indian Affairs (BIA) is not listening to the concerns of the community. Massive opposition exists at every level—from the state down to individual neighborhoods. [Sonoma County](#) and the [Town of Windsor](#) Manager Jon Davis have raised critical concerns regarding water supply, wastewater management, traffic congestion, wildfire risk, and evacuation routes, law enforcement and public safety, housing, and broader economic impacts. Local indigenous tribes have also highlighted the profound and harmful effects this project will have on their cultural resources.

Despite these serious concerns, the BIA has failed to address them adequately, and many mitigation measures outlined in the FEIS are vague, framed merely as "best management practices" without any enforceable guarantees.

DOI and BIA promised to consider public comments, but it is evident in the FEIS that they have not. The current process feels rushed and dismissive of the voices of those who will be directly affected. The 30-day comment period is particularly outrageous, given that it falls during the busy holiday season, effectively limiting meaningful public participation.

We urge you, the Town Council, and the Town Manager, to once again express your opposition and demand an extension from Interior and BIA of this comment period to allow the community sufficient time to respond thoroughly.

Sincerely,



Nina Coté

President, Our Community Matters (Windsor)

██████████, Windsor CA 95492

From: Jennifer Klein <Jennifer.Klein@sonoma-county.org>
Sent: Monday, December 23, 2024 12:24 PM
To: Broussard, Chad N <Chad.Broussard@bia.gov>
Cc: Dutschke, Amy <Amy.Dutschke@bia.gov>
Subject: [EXTERNAL] FEIS Comments, Shiloh Resort and Casino Project

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

Re: FEIS Comments, Shiloh Resort and Casino Project

Dear Regional Director Dutschke and Mr. Broussard,

On behalf of the County of Sonoma, I submit the attached comment letter on the FEIS prepared for the Koi Nation's Shiloh Resort and Casino Project to the Bureau of Indian Affairs.

Thank you,
Jennifer C. Klein
Chief Deputy County Counsel
County of Sonoma

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ALEXANDRA APODACA
DAVID LUSBY

December 23, 2024

VIA EMAIL: chad.broussard@bia.gov
& US MAIL

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: FEIS Comments, Shiloh Resort and Casino Project

Dear Ms. Dutschke and Mr. Broussard:

The County of Sonoma submits these comments to the Bureau of Indian Affairs (Bureau) on the Final Environmental Impact Statement (FEIS) prepared for the Koi Nation's (Tribe's) proposed fee-to-trust application for its Shiloh Resort and Casino Project.

As an initial matter, the County requested but was denied a 45-day extension of time to submit comments on the FEIS. In an effort to provide timely substantive comments, the County submits this letter but reiterates its request for a 45-day extension of time to supplement these comments. This project is an extremely large casino on a sensitive location. The location does not have the infrastructure that the project requires. The application has been hurriedly pushed through with minimal attention to the mitigation that is required. Additional time to comment and a delay in issuing a final Record of Decision is appropriate here. The County, which will be both fiscally impacted and impacted by the environmental and safety failures that are foreseeable, needs time to compare changes between the Draft Environmental Impact

Statement (DEIS) and FEIS, and to provide meaningful comments on any new information or analysis. The Bureau then needs time to digest and respond to comments and make changes to the FEIS that are required for the document to be legally adequate. Without compliance with the National Environmental Policy Act (NEPA), any federal decision made in reliance on it, is similarly inadequate and counter-productive for all stakeholders. We urge the Bureau to slow the process down and take the care that NEPA requires, and more importantly, take the care that is required to protect our communities.

The FEIS crafts faulty solutions in response to complex and valid criticism raised by the commenters on the EIS. The County understands the Tribe is eager to pursue the multiple sequential steps simultaneously to expedite its desired project. That the Bureau has also adopted this approach is disappointing and at best impairs its meaningful consideration of public comments (including comments from other tribes) at each step of the process. At worst it leads to a legally, procedurally, and substantively deficient outcome. The County incorporates its past EIS comments into this letter. The County again respectfully requests that the Bureau change course, and release a legally adequate environmental review document, or simply adopt the no project alternative.

1. Lack of completeness of the summarized record.

The County objects to the lack of completeness of the FEIS with respect to the communications that have occurred and the information that the Bureau has about the adequacy of the environmental review for this project. By way of one example, Appendix G-7 does not reflect all of the communications that have occurred with the National Marine Fisheries Service about this project, and Appendix G-7 is affirmatively misleading in suggesting that the National Marine Fisheries Service has simply not responded. The reality is that the information in the FEIS and Biological Assessment are inadequate for the required formal consultation regarding adverse impacts to critical habitat and endangered species, and the Bureau is aware of this.

2. Lack of enforceability.

For enforceability, the FEIS relies on Appendix Q, which amounts to relying on a plain Indian Gaming Regulatory Act violation to support enforceability of a narrow subset of the FEIS' inadequate mitigation, and in turn creates another NEPA violation. The National Indian Gaming Commission's (NIGC's) decision approving the Koi Nation's gaming ordinance relied on NEPA measures that even now have not been determined. The reliance on the "approved" gaming ordinance to achieve mitigation and enforcement of the Bureau's FEIS mitigation measures is creative, but dramatically fails.

The Bureau pre-committed itself to the Koi project by relying on that pre-EIS NIGC approval for the Tribe's gaming ordinance for NEPA compliance for the Fee to Trust application, which in turn relied upon, ambiguously, either the abandoned EA/FONSI¹ or the mitigation measures identified in the Bureau's EIS that had not yet been adopted. The NIGC had a mandatory duty to disapprove the ordinance, as it relied on a legal process that NIGC was not participating in, which even now has not been completed.

The approval of the ordinance thus violated 25 USC section 2710(b)(2)(E), (d)(1)(A)(ii). The ordinance relies on a definition of Applicable Mitigations that internally conflicts with Chapter 14 itself, insofar as the definition references the unadopted EIS and Section 14.01(B) references the abandoned EA/FONSI in addition to the EIS. Thus, the touted enforcement provisions are both internally inconsistent and legally flawed. The required determination has not been made that the tribal ordinance "adequately protects the environment and the public health and safety," and could not have been made because the only environmental terms in the ordinance rely on NEPA compliance that had not been completed (and even in draft form, did not make an adequacy determination).² The NIGC did not make an adequacy finding, and it had no basis to do so. Effectively, the NIGC did not know what it was approving. The Bureau, in turn, is relying on a legally defective gaming ordinance.

The process leading to NIGC approval of the Koi Nation's tribal gaming ordinance was the opposite of what was required. Rather than providing for the protection of the environment and health and safety, the ordinance attempts to limit the circumstances through which NIGC can enforce against the tribe to Applicable Mitigations, even as the unapproved NEPA document it relied upon failed to treat many of the measures it relied upon as mitigations. The ordinance attempts to put a waiting period on NIGC enforcement, limiting any waiver of sovereign immunity where the tribe has not been provided 45 days to respond, and providing the tribe with an argument that parties that seek enforcement do not have "an interest" in the mitigation. Tribes cannot bind the federal government's authority through tribal ordinances. To the extent the NIGC consented to and adopted this change to federal authority at the request of and for the sole benefit of the Koi Nation, it did so without authority and without complying with the Administrative Procedure Act (APA).

¹ The ordinance references the "Management FONSI."

² *Jamul Action Comm. v. Chaudhuri*, 837 F.3d 958 (9th Cir. 2016) does not save the NIGC and Bureau here, because Jamul did not discuss an ordinance that relied upon NEPA for a finding that the ordinance is adequate. *Jamul* did not discuss the environmental requirements for the ordinance under IGRA at all.

As a factual and practical matter, the ordinance requires referrals for enforcement of environmental requirements to an agency (the NIGC) that has no history over enforcing environmental requirements, and no expertise in doing so. Indeed, recent changes to federal regulations were designed to codify the *Chicken Ranch* decision to strip out environmental protection measures from tribal-state compacts. The Bureau's approach is actively avoiding filling the gap.

The FEIS's reliance on the gaming ordinance fundamentally means that the Bureau will be insulated from accountability for the environmental harms created by its approval of the Tribe's application to accept land into trust for gaming purposes. It similarly insulates the Tribe from committing, in any enforceable way, to address the environmental impacts of the project. The ordinance contains no basic health and safety terms, and to the extent that the NIGC would even bother to argue otherwise, the NIGC clearly did not even consider the numerous health and safety problems with this project. Instead, the NIGC committed an IGRA violation, and the Bureau incorporated that IGRA violation into its NEPA review. Further, this entire approach appears to be a bit of a ruse, since it appears that NIGC has never undertaken a single environmental enforcement matter of any sort.³

3. Tribal sovereignty does not excuse the Bureau's NEPA non-compliance.

The County understands the significance of tribal sovereignty and the important role it plays for tribes. This does not, however, relieve the Bureau from complying with federal laws like NEPA when making decisions when the applicant requesting the decision is a federal recognized tribe. If Congress wanted to accept the land into trust for the Koi Nation with no environmental review or compliance with federal regulations, or with different environmental requirements, it could have accepted the land into trust by legislative act. It has not done that. Pointing to tribal sovereignty as justification for the Bureau not taking ultimate responsibility for mitigating environmental impacts associated with its federal decision is an ingenuine and legally inadequate justification for the abandonment of statutory duty. The Tribe, in exercising its sovereignty, was in control and put forward its desired project and application to the Bureau. The Bureau is the decisionmaker and in control of the scope of the decision, including any conditions placed on it to address environmental impacts and the Bureau's NEPA obligation in a legally enforceable way. Again, the NEPA obligations fall on the Bureau, not the Tribe. Indeed, as noted in previous comments, the Bureau had a statutory duty to ensure that the Tribe's development interests did not interfere the reliability of the analysis. 42 U.S.C. § 4332(2)(D)-(F).

³ <https://www.nigc.gov/commission/enforcement-actions>; It also appears that NIGC lacks any environmental or engineering staff.

The strategic disingenuousness is illustrated by the following sentence 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 scenarios in which the project would be developed in a different manner than proposed. Later changes to or elimination of the assumed BMPs *could* [emphasis added] constitute a substantive change to the project that could trigger the need for supplemental NEPA review.” The choice of the ambiguous word “could” in this case appears to be simple obfuscation. When would such supplemental NEPA review be required? Outside of the limited subset of mitigations that the Bureau is willing to characterize as “mitigation measures,” which do not even include the referenced environmental and safety “BMPs,” the Bureau cites to no restrictions that **any part of the project** will be built as proposed once the land is taken into trust. The issue is not the red herring of infinite variations, but the Bureau’s failure to place restrictions on **this project** that tie the NEPA analysis of **this project** to the construction of **this project**. It is not as though changes are unforeseeable. The Tribe has submitted a wide variety of variations already. With additional changes, future NEPA obligation would fall on the federal government, not the Tribe, and only if those changes required a federal action. A much larger or smaller casino could be built. Indeed, under the Bureau’s current approach, the Bureau provides no explanation as to why the Tribe cannot construct a much more impactful *non-gaming* development once the land is taken into trust, thus avoiding the NIGC’s jurisdiction entirely.

4. Verified, enforceable conformance with Building Code standards is essential.

Unfortunately, compliance issues in the building code context are routine, not speculative. As the County has previously noted, a single ember in a single mis-placed vent can spell disaster for this facility and those that live around it. It is well understood that gaps in code compliance lead to horrific disasters.⁴ The need for conformance with safety standards, and the consequences of non-conformance, are not “speculative.”

The EIS concedes in numerous contexts that code compliance is required to avoid environmental impacts, but in the name of economic development, compliance requirements and verification requirements are strategically avoided. The Bureau is attempting to rely upon an NIGC ordinance for enforceability, while relying on a mere resolution in Appendix R for building code compliance, meaning that compliance is simply assumed and not required.

Any disinterested person will realize that making state or model code requirements enforceable to address the environmental impacts associated with the casino project just makes sense. Yet, to avoid dealing with enforceability, the Bureau

⁴⁴ <https://crsreports.congress.gov/product/pdf/R/R47665>

continues to rely on its distinction between Best Management Practices (BMPs) and mitigation measures. The distinction that the Final EIS draws is not found in NEPA and represents an extremely aggressive interpretation of the 2012 BIA NEPA guidebook (59 IAM 3-H). If this is the meaning of the guidebook, the guidebook violates NEPA. The standards and verification procedures that a project must meet to be safe are not the “design elements” for a project that are discussed in 59 IAM 3-H. The FEIS suggests that building codes apply to this project as a matter of general background principles. To the contrary, when the environmental review for this project began, and when the Bureau began relying on Best Management Practices, the Tribe lacked any tribal building codes. Although not included in the FEIS, the FEIS now announces that the Tribe apparently adopted building codes on November 6, 2023.⁵ But upon review, the Tribe has exempted itself from its own building codes, legislating that “the Nation need not comply,” making the code fundamentally ambiguous.

Moreover, under the Bureau’s approach, nothing prevents the Tribe from rescinding its code entirely at any time. The Tribe did not have any building code when this project was proposed, and it may not follow the code through the project’s completion. The tribal building code requirements have been structured to ensure that they can be avoided; the Bureau only relies on a resolution in Appendix R with respect to the tribal building codes that references a code that the Bureau apparently refuses to even circulate for comment. Requiring code compliance *or importing equivalent requirements as enforceable conditions of approval of the Tribe’s project (such as through an enforceable agreement with the Tribe for compliance)* would be an *obvious* solution. The approach would not be an impairment of tribal sovereignty because the Tribe can choose whether to accept the agreement and conditions designed to mitigate impacts, and if it does not wish to accept them, it is in control of whether it chooses to propose an alternative project in size, scope, or location sufficient to gain approval or more desirable requirements/conditions. It appears that the Bureau would rather compromise its own legal compliance than negotiate with the Tribe to ensure an outcome that will lessen environmental impacts through conformance with broadly recognized safety standards, allow the Bureau to comply with NEPA, respect sovereignty, and further tribal economic development and self-determination.

The Bureau’s approach to this situation is both legally defective and impractical. For a facility of this size and scale to comply with building code requirements, state law (and the model codes they are based on) would require hundreds upon hundreds of inspections by disinterested inspectors. There is no indication that the NIGC has ever

⁵ Although not included in the FEIS, the County is assuming that the referenced ordinance is the one the County has found posted on the Tribe’s website.
<https://www.koinationsonoma.com/wp-content/uploads/2024/10/Koi-Nation-of-Northern-California-Building-and-Safety-Code-of-2023.pdf>

undertaken a single inspection of this sort, nor has the Tribe. If the Tribe is committed to ensuring safety and compliance with professionally vetted and widely accepted standards, then its agreement to accept and follow those standards to aid the Bureau in meeting its NEPA obligation, should not be remotely controversial, and is not something the Tribe, in exercise of its sovereignty, would be reasonably expected to object to. If the Tribe is objecting to an enforceable commitment to those safety measures, we ask that the Bureau explore why that is the case.

Conclusion

The FEIS is not in compliance with NEPA and cannot support a decision on the Tribe's Part 151 fee to trust application for gaming purposes. Nor can it support a companion decision on the Tribe's pending restored lands determination, which is a condition precedent to following the Part 151 procedures in the first place. Nor can it support the NIGC's approval of the inadequate ordinance that was already approved in violation of IGRA. Based on the existing environmental review, the Bureau's only legal option remains 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,
COUNTY OF SONOMA



By: Jennifer C. Klein
Chief Deputy County Counsel