



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

January 13, 2025

The Honorable Darin Beltran  
Chairman, Koi Nation of Northern California  
P.O. Box 3162  
Santa Rosa, California 95402

Dear Chairman Beltran:

On September 15, 2021, the Office of Indian Gaming received from the Koi Nation of Northern California (Koi Nation, or Tribe)<sup>1</sup> a request to the Department of the Interior (Department) for an Indian lands determination pursuant to Section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719.<sup>2</sup> The Tribe also submitted a fee-to-trust application for an approximately 68.60-acre parcel of land in Sonoma County, California, known as the Shiloh Parcel (Shiloh Site, or Site), which is currently owned in fee by the Tribe (Application).<sup>3</sup> The Tribe, as a restored tribe, seeks a determination that the Shiloh Site is eligible for gaming pursuant to the restored lands exception of Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii), and the Department's implementing regulations at 25 C.F.R. Part 292. The Shiloh Site lies on the northern outskirts of the City of Santa Rosa in Sonoma County, California.

The Tribe's request was submitted following a decision in *Koi Nation v. United States Dep't of the Interior* 361 F. Supp. 3d. 14, 51 (D.D.C. 2019) (*Koi Nation*),<sup>4</sup> which held that the Koi Nation is a restored tribe for the purpose of the IGRA's restored lands exception at 25 U.S.C. § 2719(b)(1)(B)(iii).

We have completed our review of the Tribe's application, the Regional Director's Finding of Fact, and the documents contained within the record. As discussed below, I have determined that the Shiloh Site will be acquired in trust for the benefit of the Tribe pursuant to Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. § 5108. Once acquired in trust, the Tribe may conduct gaming on the Shiloh Site as restored lands for a restored tribe pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii).

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<sup>1</sup> The Koi Nation of Northern California was previously known as the Lower Lake Rancheria. See Notice, Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022) (noting the Koi Nation of Northern California was previously listed as the Lower Lake Rancheria).

<sup>2</sup> Letter from Daniel Beltran, Chairman, Koi Nation of Northern California, to Paula Hart, Director, Office of Indian Gaming (Sept. 13, 2021) (Koi Request for ILO).

<sup>3</sup> Letter from Daniel Beltran, Chairman, Koi Nation of Northern California, to Paula Hart, Director, Office of Indian Gaming (Sept. 15, 2021) (Koi Fee-to-Trust Application).

<sup>4</sup> The United States Court of Appeals for the District of Columbia granted United States's unopposed motion for voluntary dismissal of its appeal of the district court decision. See, *Koi Nation of N. Cal. v. United States DOI*, No. 19-5069 (D.C. Cir. Oct. 3, 2019).

## Procedural Background

The Assistant Secretary – Indian Affairs affirmed the Tribe’s status as a federally recognized tribe in 2000, rectifying decades of the Department mistakenly treating the Tribe as a Congressionally terminated Tribe because in 1956, Congress authorized the Department to sell the Tribe’s trust land but did not terminate the Tribe. In 2014, the Tribe submitted a request to the Department for a determination that the Tribe qualifies as a restored tribe for purposes of IGRA and its implementing regulations at 25 C.F.R. Part 292.

The Department denied this request three years later (2017 Denial), stating:

... in applying the regulations to your factual submission, I’ve determined that the Tribe doesn’t satisfy the regulatory requirements to constitute a ‘restored tribe’ pursuant to 292.10 (b). While IGRA does not define ‘restored tribe’ and the courts have ruled that IGRA’s exceptions should be read broadly to ensure ‘that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones,’ the Department’s regulation on this particular point, as written, does not allow us to treat Koi similarly to tribes restored through, for example, a court approved settlement. 292.10(c). While the Tribe’s unique and unfortunate history demonstrates that they were for an extended period of time treated as terminated by the Department, similar to tribes restored through a court approved settlement, the regulations leave me no choice but to conclude that the Tribe’s reaffirmation by then-Assistant Secretary Kevin Gover in 2000 does not constitute ‘[r]ecognition through the administrative Federal Acknowledgment Process under § 83.8 of this chapter’ and, therefore, that the Tribe does not qualify as having been ‘restored to Federal recognition’ for purposes of Part 292 and IGRA.

The Tribe challenged the 2017 Denial, asserting that it violated the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*, the IGRA, 25 U.S.C. § 2701 *et seq.*, and the Indian Reorganization Act (IRA), 25 U.S.C. §§ 5101 *et seq.* The district court held that the Department erred in its finding that the Koi Nation is not a restored tribe for the purposes of IGRA’s restored lands exception and that the Department’s regulation at 25 C.F.R. § 292.10(b) was “invalid” as applied to the Koi Nation, because it narrows IGRA’s statutory language to exclude the Tribe from being considered restored to Federal recognition, contrary to the plain language of the statute.<sup>5</sup> The district court also held that the 2017 Denial finding the Koi Nation is not a tribe that was restored to Federal recognition according to IGRA’s criteria is arbitrary, capricious, and not in accordance with the law under the Administrative Procedure Act. The district court determined that “gaming activities on Indian lands under IGRA’s restored lands exception certainly are ‘privileges... available to the Indian Tribe’ by

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<sup>5</sup> *Koi Nation* at 42, 51. The district court found that the regulation at 25 C.F.R. § 292.10(b) was invalid. The court subsequently granted the request by the Department to issue an “indicative ruling” that clarified its prior holding. The court modified its holding to state that “...25 C.F.R. § 292.10(b), promulgated by the Department of the Interior, improperly excludes certain Indian tribes restored to Federal recognition by the Department of the Interior by administrative action outside of the process established in 25 C.F.R. Part 83 from being classified as Indian tribes ‘restored to Federal recognition,’ under 25 U.S.C. § 2719(b)(1)(B)(iii).” See Order Amending *Koi Nation of N. Cal. v. United States DOI*, 361 F. Supp. 3d. 14, (Jul. 15, 2019), issued by Chief Judge Beryl A. Howell on August 30, 2019. The U.S. Court of Appeals for the District of Columbia subsequently dismissed the Department’s appeal of the district court’s initial decision. See *Koi Nation of N. Cal. v. United States DOI*, No. 19-5069, 2019 U.S. App. LEXIS 31950 (D.C. Cir. Oct. 3, 2019).

virtue of a tribe's status as a recognized Tribe."<sup>6</sup> The district court held that the Koi Nation's de facto termination, and subsequent reinstatement of recognition through reaffirmation fits squarely within the plain meaning of a tribe restored to Federal recognition under IGRA and therefore is a restored tribe for the purposes of the IGRA's restored lands exception at 25 U.S.C. § 2719(b)(1)(B)(iii).<sup>7</sup> Consistent with the district court's decision, in 2021, the Tribe submitted to the Department a request for an opinion regarding its eligibility to conduct gaming on the Shiloh Site as a restoration of lands for a restored tribe if acquired in trust, along with an application to place the Shiloh Site into trust for gaming and other purposes.

In March 2023, the Tribe submitted a supplement to its application (Supplement).<sup>8</sup> The Tribe's Supplement presents additional arguments and that it meets the regulatory standard for restored lands, including a significant historical connection to the Shiloh Parcel. The Tribe's Supplement incorporates several expert reports, including a report by Dr. Stephen Dow Beckham, professor emeritus at Lewis and Clark College, *Koi Nation's Residency in the Russian River Valley and Leadership in California Indian Affairs* (April 2022). The Tribe's Supplement also includes reports by Gregory G. White, PhD, *Evidence for Koi Nation Trade and Trails in the Vicinity of the Shiloh Road Property* (June 2022) and *Evidence for the Historical Primacy of the Koi Nation and the Southeastern Pomo in Northwestern California* (2022). The Supplement also includes an additional expert report, *Southeastern Pomo (Koi Nation) Trade and Travel 5,000 Years Ago to Today*, by Dr. John Parker.<sup>9</sup>

On March 29, 2024, the Department waived the Part 83 Federal requirements of 25 C.F.R. §§ 292.10(b) and 292.11(b), permitting the Department to review the Tribe's application on equal footing as Tribes acknowledged pursuant to Part 83.<sup>10</sup> This was consistent with the court's finding in *Koi Nation* that the Department improperly excluded certain administratively restored Tribes from the benefits of IGRA. Therefore, as discussed further below, we review the Tribe's "restored lands" request under 25 C.F.R. Part 292 in the same manner as those Tribes that were recognized through Part 83 or that were administratively restored or reaffirmed before the Part 292 regulations were promulgated. The Tribe must satisfy the requirements of 25 C.F.R. § 292.11(b)(1), that the land qualifies under 25 C.F.R. § 292.12, and 25 C.F.R. § 292.11(b)(2), that the Tribe does not already have an initial reservation proclaimed after Oct. 17, 1988.

## Historical Background

The history of the Koi Nation, similar to many Tribes in California, is a story of a people who were killed, enslaved, and displaced by non-Indian settlers. Settlers stole tribal land with impunity and often violently displaced the Tribe and its members, both to take their land but also for the purpose of enslaving the people. The Tribe and its remaining members who were driven from their

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<sup>6</sup> *Koi Nation* at 52.

<sup>7</sup> *Koi Nation* at 46 and 48.

<sup>8</sup> Koi Nation of Northern California Supplement to September 15, 2021, Restored Land Request to the Department of the Interior, Office of Indian Gaming (March 2023) (Tribe's Supplement). We note that the Tribe's Supplement contains 273 pages, all numbered consecutively. Documents incorporated into the Tribe's Supplement include the various expert reports and contain a second set of page numbers at the bottom right. For consistency and ease of reference, we cite to the Tribe's Supplement page numbers at the bottom middle of each page.

<sup>9</sup> Tribe's Supplement at 7.

<sup>10</sup> Letter from Wizipan Garriott, Principal Deputy Assistant Secretary-Indian Affairs, to Darin Beltran, Chairman, Koi Nation, dated March 29, 2024.

homeland survived by entering the non-Indian farming and ranching economy, which drew them south and west to Sonoma County.

Ancestors to the Koi Nation established territorial boundaries in the Clear Lake basin as far back as 3,000 years ago.<sup>11</sup> From then through the 20th century, the Koi and their ancestors, including the Pomo Indians and the Cho-tan-o-man-as, engaged in advanced intertribal commerce.<sup>12</sup> Around 400 years ago, the Pomo shifted from a barter economy to a more elaborate clamshell disk and magnesite bead economy. This is significant because clamshell disk beads, made from large, thick-shelled marine clams, were sourced from Bodega Bay in the southwestern corner of Sonoma County, 50 miles south-southeast of traditional Koi Nation territory while magnesite, a mineral, was mined from quarries located almost exclusively in the Koi Nation ancestral territory.<sup>13</sup>



Figure 4: Traditional regional trail systems connecting the Pomo interior tribes to each other and to the coast (adapted from Peri et al. 1965:Map 9a). The trail system connecting traditional Koi Pomo territory (outlined in blue) to the key clamshell source at Bodega Bay is highlighted in orange (Trails 8 and 9). The proposed Koi Pomo Shiloh Road acquisition is situated in the immediate vicinity of this trail.

Years later, colonial powers, including Spain, Mexico, and eventually, the United States, moved into California, upending the Koi way of life. New diseases brought by non-Indians and violence against the indigenous populations greatly reduced the native population.<sup>14</sup>

<sup>11</sup> Included as part of the Koi Request for ILO is a historical report by Dr. Stephen Beckham. See Dr. Stephen Dow Beckham and Dr. Michelle Tiley, *The Koi Nation of Northern California: An Overview of Traditional Culture and History and Its Documented Historical Connection to Sebastopol and Santa Rosa, Sonoma County, California*, (August 2021) at 36 (hereafter Koi Historical Report or Historical Report).

<sup>12</sup> Gregory G. White, PhD, RPA, Evidence for Koi Nation Trade and Trails in the Vicinity of the Shiloh Road Property, at 137, as included in Koi Nation of Northern California Supplement to September 15, 2021, Restored Land Request to the Department of the Interior Office of Indian Gaming (March 2023).

<sup>13</sup> Tribe’s Supplement at 140 and 142.

<sup>14</sup> Historical Report at 69.



The Spanish rule was dominated by the establishment of the mission system. Twenty-one missions were established in what is now California, and the entire coast of California up through San Francisco was allocated to these missions.<sup>15</sup> The missions were established as temporary structures with the goal of civilizing the native population, Christianizing them, and making them Spanish citizens.<sup>16</sup> The missions were built by enslaved Indians near Indian population centers and were places where enslaved Indians provided labor and produced goods for the Spanish.<sup>17</sup> Large sections of land in California were held by the respective missions and were utilized for farming and grazing of cattle. These missions permanently altered the California environment and disrupted the traditional subsistence-based native economy.<sup>18</sup> While the mission period largely ended in 1822 with the end of the Spanish rule, the last and northernmost mission, Mission San Francisco Solano, was established on the north shore of San Pablo Bay in 1823 in what is now the City of Sonoma. Indian laborers and house servants living at the former mission became laborers, cowherds, and servants on the new estates that were carved out of mission holdings.

Under Mexican rule, the California Indians continued to face violence and enslavement.<sup>19</sup> From the 1820s to the 1840s, the Mexican government awarded land grants of over four hundred thousand acres in Sonoma County, most in the Russian River Valley.<sup>20</sup> During this period, Indian villages were subjected to raids to obtain labor for the missions and Ranchos for projects such as constructing buildings, fences, and corrals.<sup>21</sup> Indian labor was also required to work livestock and engage in farming. Pomo Indians, or Lower Lake Pomo, who were residing in the traditional villages at the southern end of the Clear Lake Basin in Lake County and at Sebastopol and Santa Rosa in Sonoma County, provided much of that labor.<sup>22</sup>

Starting in the 1830s, expanding with the discovery of gold in the 1840s, and with the subsequent gold rush in the 1850s, Euro-Americans overran Indian homelands and displaced the Koi Nation's ancestors and allowed for settlement and development of the Clear Lake area.<sup>23</sup> Settlers burned the Tribal members' homes and usurped their lands,<sup>24</sup> appropriated tribal hunting grounds, and closed

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<sup>15</sup> The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias, at 321.

<sup>16</sup> *Id.*

<sup>17</sup> The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias, at 321.

<sup>18</sup> Report by Albert L. Hurtado, Ph.D. dated January 29, 2016, at 5 and 8.

<sup>19</sup> "In the days of the early Mexican settlers it was not uncommon for a ranchero with his Mexican vaqueros to surround a Rancharia, kill any Indians who resisted, and then select from the remainder those most suited to his purpose. After the American occupation these excesses grew even worse and there were those who made a regular business of kidnapping children and selling them in the settlements about San Francisco Bay and southward." Samuel A. Barrett, "The Ethno-Geography of the Pomo and Neighboring Indians" (1908) 45, available at <https://archive.org/details/ethnogeographyp02barrgoog> (last visited July 1, 2016).

<sup>20</sup> Historical Report at 106.

<sup>21</sup> Report by Albert L. Hurtado, Ph.D. dated January 29, 2016, at 27.

<sup>22</sup> Historical Report at 107.

<sup>23</sup> *Id.* at 4 and 45. See also Executive Summary, Advisory Council on California Indian Policy Final Reports and Recommendations to the Congress of the United States Pursuant to Public Law 102-416 (Sept. 1997) (Advisory Council Report), published pursuant to "An Act to establish the Advisory Council on California Indian Policy, and for other purposes," Pub. L. No. 102-416 (Oct. 14, 1992), 106 Stat. 2131, available at <http://www.bia.gov/cs/groups/xraca/documents/text/idc1-022834.pdf>.

<sup>24</sup> Historical Report at 58, citing Halpern, Abraham, 1936 Fieldnotes on Southeastern Pomo Ethnography and language (1937) (7 notebooks in Ethnological Documents of the Department of Anthropology, Bancroft Library, University of California, Berkeley).

off access to tribal fisheries. The settlers fenced fields, where the Tribe traditionally harvested bulbs and seed, and released domestic hogs to consume the acorns that were a staple of the Tribe's traditional diet.<sup>25</sup> These activities drove the Tribe from their ancient villages at Lower Lake.

The United States Federal-Indian relationship in California formally began with the 1848 Treaty of Guadalupe Hidalgo between the United States and Mexico. The Treaty of Guadalupe Hidalgo resulted in a large cession of land to the United States of more than 70,000,000 acres to which the California Indians claimed aboriginal title.<sup>26</sup> The effort by the United States to investigate and resolve the Indians' claims were thwarted by the discovery of gold in California in 1848. The admission of California to statehood in 1850 increased resistance by the State's representatives to the Indians' land claims.<sup>27</sup> The State of California sanctioned and funded efforts to "exterminate" California Indians during this period. By 1900, it is estimated that the total California Indian population was about 17,000, a 90% decline in population from estimated 1848 figures.<sup>28</sup>

This history of the Indian-white relations in California also includes the *1850 Act for the Government and Protection of Indians*, which facilitated removing California Indians from their traditional lands, separating children and adults from their families and cultures, authorizing "apprenticing" or indenturing Indian children and adults to whites while punishing "vagrant" Indians by "hiring" them out to the highest bidder at a public auction if the Indian could not provide sufficient bond or bail, and authorizing "expeditions" to punish Indians for alleged depredations.<sup>29</sup>

Then, on August 20, 1851, the United States, through a treaty commissioner, Redick McKee, entered into a "treaty of peace and friendship made and concluded at Camp Lupiyuma" with eight Tribes of Pomo Indians located in and around Clear Lake.<sup>30</sup> In that treaty, the tribes surrounding Clear Lake agreed to cede their lands to the United States and, in exchange, the United States designated specific lands that were to be set aside for the treaty's tribal signatories.<sup>31</sup> The treaty did not describe the Pomo lands purportedly ceded, so the territory ceded to the United States had no clear definition.<sup>32</sup> The Clear Lake Tribes agreed to give up their rights to the ceded land and "never move again without the President's permission," with the exception that the "young men may hire out to work upon the different ranches."<sup>33</sup> When the treaty was drafted, it included boundaries of a reservation for the Tribes and was inclusive of the Cho-to-man-as, who the other tribes reported was absent, but was eligible to participate in the treaty "as if they were present and parties to this compact." Decades later, Samuel Barrett, an ethnographer working for years among the Pomo,

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<sup>25</sup> Historical Report at 59.

<sup>26</sup> Advisory Council Report, *citing* Bruce S. Flushman and Joe Barbieri, "Aboriginal Title: The Special Case of California." 17 Pacific Law Journal 391,403 (1986) and authorities cited therein.

<sup>27</sup> Advisory Council Report at 3.

<sup>28</sup> William Wood, *The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias*, 44 Tulsa L. Rev. 317, 333 (2013). Available at: <https://digitalcommons.law.utulsa.edu/tr/vol44/iss2/1>.

<sup>29</sup> Kimberly Johnston-Dodds, *Early California Laws and Policies Related to California Indians, Executive Summary*, California Research Bureau (Sept. 2002), available at <https://www.courts.ca.gov/documents/IB.pdf>.

<sup>30</sup> Treaty with Ca-La-Na-Po, Etc., August 20, 1851, in *Indian Affairs, Laws and Treaties, Vol. IV*, compiled and edited by Charles J. Kappler (1927) 1108, available at [http://digital.library.okstate.edu/kappler/Vol4/html\\_files/v4p1108.html](http://digital.library.okstate.edu/kappler/Vol4/html_files/v4p1108.html).

<sup>31</sup> Treaty with Ca-La-Na-Po, Etc., August 20, 1851, in *Indian Affairs, Laws and Treaties, Vol. IV*, compiled and edited by Charles J. Kappler (1927) 1108, available at [http://digital.library.okstate.edu/kappler/Vol4/html\\_files/v4p1108.html](http://digital.library.okstate.edu/kappler/Vol4/html_files/v4p1108.html).

<sup>32</sup> Historical Report at 51.

<sup>33</sup> Treaty with Ca-La-Na-Po, Etc., August 20, 1851, in *Indian Affairs, Laws and Treaties, Vol. IV*, compiled and edited by Charles J. Kappler (1927) 1108, available at [http://digital.library.okstate.edu/kappler/Vol4/html\\_files/v4p1108.html](http://digital.library.okstate.edu/kappler/Vol4/html_files/v4p1108.html)

identified the Cho-to-man-as in the treaties as synonymous with the Koi Nation.<sup>34</sup> Under pressure from the California congressional delegation, the United States Senate not only refused to ratify 18 treaties that had been negotiated with California Tribes, including the 1851 treaty concerning the Koi Nation, and took extraordinary steps to place the treaties under seal through an injunction of secrecy.<sup>35</sup> This left the Koi Nation without treaty-protected reservation lands.<sup>36</sup> Unable to purchase their own land due to lack of financial resources, Koi Nation members were driven from place to place and were often considered squatters on their own lands.<sup>37</sup>

At the time of the 1851 treaty with the Clear Lake Indians,<sup>38</sup> Indians remained the primary labor source for ranches and farms in the area. It was, therefore, important to the treaty Tribes to be able to continue to work in the ceded territory, which is why the treaty included express permission for the continuation of this practice.<sup>39</sup> The Koi Nation and other Clear Lake Pomo survived by working for Euro-Americans, which may have prevented them from being removed to the Mendocino Reservation, established in 1856, and to which Indians near Clear Lake were required to move.<sup>40</sup>

Trade, including the routes used for centuries, transformed for the Koi Nation after 1855. The traditional Koi trail system was increasingly hampered by private property ownership and fencing, but a regional road system developed during the period was then used by the Koi for access to the Sonoma County and the coast.<sup>41</sup> The post-1855 road path closely paralleled the traditional trail system and also arrived in the Santa Rosa basin on the Mark West Springs Road, immediately east of the Shiloh Site.<sup>42</sup> By the 1880s, the Koi Nation members had transitioned to working on ranches as vaqueros while others worked in agricultural planting and harvesting of hops, fruits, and grapes.<sup>43</sup>

Numerous censuses were conducted that evidence the presence of the Koi Nation and their ancestors in Lake and Sonoma Counties. An 1880 census identified forty-three Pomo Indians in Lower Lake.<sup>44</sup> A 1900 census identified “Indian Population” families from Sulphur Bank and Lower Lake groups, both ancestors of the Koi Nation. Tom Johnson, discussed in more detail below, was noted during this census as being “chief” or “captain” of the Tribe.<sup>45</sup> Five years later, another census

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<sup>34</sup> Historical Report at 3.

<sup>35</sup> The Trajectory of Indian Country in California: Rancherias, Villages, Pueblos, Missions, Ranchos, Reservations, Colonies, and Rancherias, at 3. The injunction of secrecy was removed in 1905, by order of the Senate, and for the first time the public was informed of the existence of the 18 California Treaties.

<sup>36</sup> Historical Report at 83.

<sup>37</sup> *Id.*

<sup>38</sup> The Clear Lake Indians included 8 tribes of Pomo Indians located in and around Clear Lake, the Ca-la-na po, Ha-bi-na-po, Da-no-ha-bo, Mo-al-kai, Che-com, How-ku-ma, Cha-nel-kai, and the Me-dam-a-dec tribes. *See* Treaty with Ca-La-Na-Po, Etc., August 20, 1851, in Indian Affairs, Laws and Treaties, Vol. IV, compiled and edited by Charles J. Kappler (1927) 1108, available at [http://digital.library.okstate.edu/kappler/Vol4/html\\_files/v4p1108.html](http://digital.library.okstate.edu/kappler/Vol4/html_files/v4p1108.html).

<sup>39</sup> Historical Report at 53.

<sup>40</sup> *Id.* (Henry Mauldin, compiler of notes and interviews with the residents of Lake County, learned from the Koi of Lower Lake that Salvador, a captain, went to Sacramento to plead their case and they were not removed (Mauldin 1960.:1149)).

<sup>41</sup> Tribe's Supplement at 153.

<sup>42</sup> *Id.*

<sup>43</sup> Historical Report at 107.

<sup>44</sup> Family names included in the 1880 Harris census includes families with the surname of Patch and John, and many families and individuals identified by a first name and “Indian” as a surname.

<sup>45</sup> Historical Report at 111-112.



By Act of Congress on May 18, 1928,<sup>52</sup> the Attorney General of California was authorized to file suit in the United States Court of Claims on behalf of California Indians to obtain compensation based on the 18 unratified treaties negotiated by the United States. The Act authorized the Secretary of the Interior (Secretary) to create two census rolls, one of California Indians residing in California on May 18, 1928 (Roll 1) and the other of non-California Indians residing in the State as of that date. The Indians enrolled on Roll 1 would share as beneficiaries in any judgment stemming from the litigation.<sup>53</sup> The Tribe explains that this resulted in the enrollment of over ten thousand individual California Indians.<sup>54</sup> Many individuals of Koi ancestry living in Sonoma County in 1928 submitted applications for enrollment including Captain Tom Johnson and many members of the extended Johnson family.<sup>55</sup>

### *History of the Tribe's Trust Land*

C.E. Kelsey, a Bureau of Indian Affairs (BIA) Agent who conducted a census of Indians in Northern California, began buying land for landless Indians in 1906. In 1915, he tried to buy land for Indians at Lower Lake from Robert E. Scranton, but the negotiations proved unsuccessful. A year later, the BIA purchased the "Purvis Tract," a 140.60-acre tract at the southern end of Lower Lake.<sup>56</sup> The Tribe reports that the Purvis Tract was considered uninhabitable and worthless.<sup>57</sup> The BIA Superintendent in 1935 noted that the land was "a rock pile without any water for domestic use; no Indian ever lived there or could."<sup>58</sup> Only one Koi family settled on the Purvis Tract, while key tribal members, including Captain Tom Johnson and his family, refused to move to the land and instead permanently relocated to the Analy District of Sebastopol, California to work in the orchards of the Russian River Valley.<sup>59</sup> The Purvis Tract ultimately, became a garbage dump for the city of Lower Lake.<sup>60</sup>

In 1956, Congress authorized the Secretary to sell the Purvis Tract to Lake County to be used as an airport, known as Pearce Field, once again leaving the Koi Nation landless.<sup>61</sup> The Department sold the Purvis Tract and, subsequently, mistakenly treated the Tribe as if the Congressional authorization to sell the Purvis Tract also terminated the Tribe's status as a federally recognized tribe. The Tribe worked to restore its government-to-government relationship with the United States from its offices in Healdsburg and Santa Rosa in the 1980s and 1990s, within the vicinity of the Shiloh Site.<sup>62</sup> Then, in 2000, the Assistant Secretary- Indian Affairs affirmed the Tribe's status as a federally recognized tribe. As noted above, the district court held that the Koi Nation's de facto termination, and subsequent reinstatement of recognition through reaffirmation fits squarely within the plain meaning

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<sup>52</sup> See An Act Authorizing the Attorney General of the State of California to Bring Suit in the Court of Claims on Behalf of the Indians of California, 45 Stat. 602 (May 18, 1928).

<sup>53</sup> Tribe's Supplement at 22.

<sup>54</sup> *Id.* at 22-23.

<sup>55</sup> *Id.* Koi Nation members who submitted applications included Captain Tom Johnson, Rosa Johnson, Ida Johnson, Tom Johnson, John Johnson, Manuela Johnson, Harry Johnson, Estelle Johnson, Louise Johnson, William Johnson (son of John Johnson), and William Johnson (son of Harry Johnson).

<sup>56</sup> Historical Report at 83.

<sup>57</sup> Tribe's Application at 21.

<sup>58</sup> Historical Report at iii.

<sup>59</sup> 84 Pub. Law 443, 70 Stat. 58, March 29, 1956. See also Historical Report at 84.

<sup>60</sup> Historical Report at x.

<sup>61</sup> Historical Report at ii.

<sup>62</sup> *Id.* at 4.

of a tribe restored to Federal recognition under IGRA and therefore is a restored tribe for the purposes of the IGRA's restored lands exception at 25 U.S.C. § 2719(b)(1)(B)(iii).<sup>63</sup>

## **Eligibility for Gaming Pursuant to the Indian Gaming Regulatory Act**

### *Introduction*

The Tribe has requested that the Department acquire land into trust in Sonoma County, California, near the northern outskirts of the City of Santa Rosa. The Tribe asserts that the land will qualify as "restored lands" pursuant to the IGRA. The district court mandated that the Department treat the Tribe as a "restored Tribe." We conclude that the Shiloh Site will qualify as "restored lands" pursuant to IGRA once it is acquired in trust pursuant to the IRA and the Department's implementing regulations at 25 C.F.R. 151. The Tribe may conduct gaming on the Site if the Tribe is not gaming on other trust lands.

### *Legal Framework*

The questions of whether the Tribe is a restored Tribe and whether the Shiloh Site qualifies as the Tribe's restored lands for gaming purpose are governed by IGRA and the Department's implementing regulations at 25 C.F.R. Part 292. We are also bound by the district court's decision in *Koi Nation* and, therefore, must treat the Tribe as a "restored tribe."

### *The Indian Gaming Regulatory Act*

The IGRA was enacted "to provide express statutory authority for the operation of such tribal gaming facilities as a means of promoting tribal economic development, and to provide regulatory protections for tribal interests in the conduct of such gaming."<sup>64</sup> Section 20 of IGRA generally prohibits gaming activities on newly acquired lands acquired in trust by the United States on behalf of a tribe after October 17, 1988.<sup>65</sup> However, Congress expressly provided in the "Restored Lands Exception" that lands taken in trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition" are not subject to IGRA's general prohibition.<sup>66</sup> The legislative history surrounding this provision shows the intent was to place restored tribes on an equal footing with tribes who had not suffered termination.<sup>67</sup> The courts have read this provision broadly within a framework of restitution for decades of improper treatment as a terminated tribe and as

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<sup>63</sup> *Koi Nation* at 46 and 48.

<sup>64</sup> *Grand Traverse Tribe of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Michigan*, 198 F. Supp. 2d 920, 933 (W.D. Mich. 2002). See also 25 U.S.C. § 2702(1) (stating that one purpose of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

<sup>65</sup> The Department's regulations define "newly acquired lands" to mean land that has been taken, or will be taken, in trust for the benefit of an Indian tribe by the United States after October 17, 1988. 25 C.F.R. § 292.2.

<sup>66</sup> 25 U.S.C. § 2719 (b)(1)(B)(iii).

<sup>67</sup> *City of Roseville v. Norton*, 348 F.3d 1020, 1030 (D.C. Cir. 2003) ("Indeed, the exceptions in IGRA § 20(b)(1)(B) serve purposes of their own, ensuring that tribes lacking reservations when IGRA was enacted are not disadvantaged relative to more established ones.").

compensation for not only what a tribe lost by the act of termination but also for opportunities lost in the interim.<sup>68</sup>

The Department's regulations at 25 C.F.R Part 292 implement Section 20 of IGRA. Under the criteria set forth in those regulations, a tribe qualifies for the "Restored Lands Exception" in Section 20 if it meets the "restored tribe" criteria of 25 C.F.R. § 292.7-10, and if lands acquired in trust meet the "restored lands" criteria of 25 C.F.R. § 292.11-12. The Department has repeatedly stated that a restored lands "analysis is, necessarily, fact-intensive, and will vary based on the unique history and circumstances of a particular tribe."<sup>69</sup> Further, given the district court's decision in *Koi Nation v. DOI*, and later in *Scotts Valley* the Department's application of IGRA must be consistent with Congress's restorative intent.<sup>70</sup>

### *The Department's Part 292 Regulations*

The restored lands exception, 25 C.F.R. § 292.7, allows for gaming on newly acquired lands if the following conditions are met:

- (a) The tribe at one time was federally recognized, as evidenced by its meetings the criteria in § 292.8;
- (b) The tribe at some later time lost its government-to-government relationship by one of the means specified in § 292.9;
- (c) At a time after the tribe lost its government-to-government relationship, the tribe was restored to Federal recognition by one of the means specified in § 292.10; and
- (d) The newly acquired lands meet the criteria of "restored lands" in § 292.11.

Thus, to qualify as having been restored to Federal recognition, the Tribe must show that (i) it was at one time federally recognized, as evidenced by its meeting the criteria in § 292.8; (ii) it at some time lost its government-to-government relationship by one of the means specified in § 292.9; and (iii) after it lost its government-to-government relationship, it was restored to Federal recognition by one

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<sup>68</sup> *Koi Nation of N. Cal. v. United States Dep't of the Interior*, 361 F. Supp. 3d. 14, (D.D.C. 2019) citing to *City of Roseville*, at 1029 (D.C. Cir. 2003). See also *The Confederated Tribes of the Grand Ronde Community of Oregon v. Jewell*, 75 F. Supp. 3d 378, 411 (D. D.C. 2014) affirmed by *Grand Ronde v. Jewell*, 830 F.3d 552 (D.C. Cir. 2016).

<sup>69</sup> Letter to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians, from Donald E. Laverdure, Acting Assistant Secretary- Indian Affairs (May 25, 2012) at 15, note 59 (on file with the Office of Indian Gaming). See *Scotts Valley Band of Pomo Indians v. United States DOI*, 633 F. Supp. 3d 132, 167 (the Court, citing *Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 865, 369 U.S. App. D.C. 85 (D.C. Cir. 2006), stated that there was "no question that 'Congress enacted IGRA, in large part to 'provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.'"); see also *Koi Nation*, 361 F. Supp. 3d. 14 at 68 (the Court, citing *City of Roseville*, 348 F.3d 1020, stated that "Congress intended for the restored lands exception 'to be read broadly' in service of IGRA's overall goal of 'promoting tribal economic development and self-sufficiency.'").

<sup>70</sup> See *Scotts Valley Band of Pomo Indians v. United States DOI*, 633 F. Supp. 3d 132, 167 (the Court, citing *Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 865, 369 U.S. App. D.C. 85 (D.C. Cir. 2006), stated that there was "no question that 'Congress enacted IGRA, in large part to 'provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.'"); see also *Koi Nation*, 361 F. Supp. 3d. 14 at 68 (the Court, citing *City of Roseville*, 348 F.3d 1020, stated that "Congress intended for the restored lands exception 'to be read broadly' in service of IGRA's overall goal of 'promoting tribal economic development and self-sufficiency.'").



of the means established in 25 C.F.R. § 292.10. To be eligible to conduct gaming on the Shiloh Site, the Tribe must show that the newly acquired lands meet the criteria in § 292.11.

In its request for an Indian lands opinion, the Tribe asks the Department to determine that the Tribe qualifies as a “restored Tribe” and that the Shiloh Site qualifies as “restored lands” pursuant to the IGRA at 25 U.S.C. § 2719(b)(1)(B)(iii) and the Department’s implementing regulations at 25 C.F.R. §§ 292.7 through 292.12. The Tribe’s application builds on the district court’s holding that the Tribe is a “restored Tribe” for the purposes of IGRA’s restored lands exception.

The Department is bound by the district court’s finding that, “the Koi Nation is a tribe ‘restored to Federal recognition’ within the meaning of IGRA’s *Section 20* restored lands exception, based on DOI’s *de facto* termination and subsequent reaffirmation of the tribe’s recognized status, even though that reaffirmation occurred without congressional action or through the Federal acknowledgement process set out in Part 83.”<sup>71</sup> Thus, the district court held, and the Department is bound to follow, that the Tribe can show that it was restored to Federal recognition for purposes of IGRA.<sup>72</sup>

The Tribe also requested the Department waive its regulations at 25 C.F.R. § 292.11(b) so that the Department could analyze if the Shiloh Property satisfies the requirements for “restored lands” contained in 25 C.F.R. §292.12. As discussed above, the Secretary may waive any regulation in Chapter 1 of Title 25 of the C.F.R. if a waiver is permitted by law and the Secretary determines that a waiver is in the best interest of the Indians.<sup>73</sup> On March, 29, 2024, the Department waived the Part 83 Federal acknowledgement requirements of 25 C.F.R. §§ 292.10(b) and 292.11(b), permitting the Department to review the Tribe’s application on equal footing as Tribes acknowledged pursuant to Part 83, consistent with the court’s finding in *Koi Nation* that the Department improperly excluded certain administratively restored Tribes from the benefits of IGRA. Accordingly, we will review the Tribe’s “restored lands” request under 25 C.F.R. Part 292 in the same manner as those Tribes that were recognized through Part 83 or that were administratively restored or reaffirmed before the Part 292 regulations were promulgated. The Tribe must satisfy the requirements of 25 C.F.R. § 292.11(b)(1), that the land qualifies under 25 C.F.R. § 292.12, and 25 C.F.R. § 292.11(b)(2), that the Tribe does not already have an initial reservation proclaimed after Oct. 17, 1988.

## **Restored Lands Criteria**

Gaming may occur on newly acquired trust lands under the restored lands exception if all the conditions are met in 25 C.F.R. § 292.7, including the requirement of 25 C.F.R. § 292.7(d), which requires that newly acquired lands are “restored lands” under Section 292.11.

25 C.F.R. § 292.11 provides that for newly acquired lands to qualify as “restored lands” for purposes of §292.7, the tribe acquiring the lands must meet the requirements of paragraph (a), (b), or (c) of

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<sup>71</sup> *Koi Nation* at 48.

<sup>72</sup> See *Koi Nation* at 59, where the Court ordered that “...the plaintiff, the Koi Nation of Northern California (‘Koi Nation’), is declared to be ‘an Indian tribe that is restored to Federal recognition,’ under 25 U.S.C. § 2719(b)(1)(B)(iii).”

<sup>73</sup> See 25 C.F.R. Section 1.2. The Secretary’s authority under 25 C.F.R. § 1.2 has been delegated to the Assistant Secretary – Indian Affairs pursuant to 209 DM 8.1. 25 C.F.R. Chapter 1 contains parts 1 through 299.

this section, which are tailored to the Tribe's method of restoration.<sup>74</sup> The relevant paragraphs in Section 292.11(b) state:

- (b) If the tribe is acknowledged under § 83.8 of this chapter, it must show that it:
  - (1) Meets the requirements of § 292.12; and
  - (2) Does not already have an initial reservation proclaimed after October 17, 1988.

25 C.F.R. § 292.11(b) relates to a tribe acknowledged under 25 C.F.R. Part 83. As noted above, we have waived the requirement in 25 C.F.R. § 292.11(b) that require a Tribe to have been federally recognized pursuant to 25 C.F.R. Part 83 for newly acquired lands to qualify as "restored lands."

During the original promulgation of the Part 292 regulation, a number of commenters sought to limit the *Initial Reservation* and *Restored Lands* exceptions, which have nearly identical criteria and require a *significant historical connection* and a *modern connection*.<sup>75</sup> In response, the Department explained its understanding of Congressional intent behind the *Initial Reservation* and *Restored Lands* exceptions in IGRA as demonstrated by the Department's responses to comments when promulgating the Part 292 regulations. More restrictive suggestions, such as "exclusive use and occupancy," "uninterrupted connection," a tribe's "ancestral homeland," as well as requirements to "acquire their former reservation land if it is available" and "analyze sites that are close to aboriginal homelands,"<sup>76</sup> were rejected by the Department because "newly acquired lands with significant historical connections may or may not include those that are close to aboriginal homelands" and "because they do not have a basis in IGRA."<sup>77</sup> These responses highlight the Department's understanding that the standard it was articulating in promulgating the Part 292 regulations was a baseline evidentiary threshold which, if an applicant tribe was able to satisfy, then the land in question would qualify as either that tribe's *Initial Reservation* or as *Restored Lands* for a *Restored Tribe*.

This understanding of the Part 292 regulations has been reinforced by the courts in considering the *Grand Ronde*, *Koi Nation*, and *Scotts Valley* decisions, among others. In *Grand Ronde*, the court noted that the Department's decisions applying the Part 292 regulations often rely on evidence that could and would meet a more stringent standard, for example, evidence of actual, exclusive, and continuous use, because that same evidence will undoubtedly satisfy the less stringent standard of *significant historical connection*. The *Koi Nation* decision cited two decisions from the D.C. Circuit Court of Appeals, which reasoned that the Indian canon of construction applies when interpreting IGRA's Section 20(b) exceptions to its prohibition against gaming on lands acquired in trust after 1988.<sup>78</sup> The district court noted that the *City of Roseville* and other similar decisions highlight the court's expectation that the Department interpret IGRA and its implementing regulations broadly and, whenever possible, in favor of an applicant tribe.<sup>79</sup> Further, the district court noted that IGRA's section 20(b)(1)(B) serves to ensure that tribes lacking reservations when IGRA was enacted are not

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Section 292.11(a) applies to Tribes restored through Congressional enactment of legislation; and section 292.11(c) applies to Tribes restored through a Federal court determination.

<sup>75</sup> 73 Fed. Reg. 29354.

<sup>76</sup> 73 Fed. Reg. 29360, at 61, 65-67.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 47.  
*Koi Nation* at 49.

<sup>79</sup>

disadvantaged relative to more established ones.<sup>80</sup> Further, *Koi Nation* quoted *City of Roseville*, which stated that the restored lands exception “compensates [a] Tribe not only for what it lost by the act of termination, but also for opportunities lost in the interim.”<sup>81</sup> In *Scotts Valley*, the Court found that Part 292 “was intended to codify and explain the Interior’s existing practice of requiring tribes to have a significant historical connection to a parcel to be considered ‘restored lands’” and that the Department “did not set out to make the provision more stringent.”<sup>82</sup> Thus, Congress intended for the restored lands exception ‘to be read broadly,’ in service of IGRA’s overall goal of ‘promoting tribal economic development and self-sufficiency’<sup>83</sup>

25 C.F.R. § 292.12 contains the criteria for the “in-state and modern connection,” “significant historical connection,” and “temporal connection.”

- (a) The newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe’s governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land:
  - (1) The land is within reasonable commuting distance of the tribe’s existing reservation;
  - (2) If the tribe has no reservation, the land is near where a significant number of tribal members reside;
  - (3) The land is within a 25-mile radius of the tribe’s headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or
  - (4) Other factors demonstrate the tribe’s current connection to the land.
- (b) The tribe must demonstrate a significant historical connection to the land.
- (c) The tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe’s restoration. To demonstrate this connection, the tribe must be able to show that either:
  - (1) The land is included in the tribe’s first request for newly acquired lands since the tribe was restored to Federal recognition; or
  - (2) The tribe submitted an application to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands.

### **Opposition and Support for Acquiring Shiloh Site in Trust as Restored Lands**

Prior to the restored lands analysis, we will address the letters of opposition and of support received regarding the Tribe’s application.

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<sup>80</sup> *Id.* at 50.

<sup>81</sup> *Koi Nation* at 47.

<sup>82</sup> *Scotts Valley v. United States DOI*, 633 F. Supp. at 152.

<sup>83</sup> 73 Fed. Reg. 29354.

<sup>83</sup> 73 Fed. Reg. 29360, at 61, 65-67.

<sup>83</sup> *Id.*

<sup>86</sup> *The Confederated Tribes of the Grand Ronde Cmty of Or. v. Jewell*, 75 F. Supp. 3d 378, 414 (D.D.C. 2014), affirmed by, *Confederated Tribes of the Grand Ronde Cmty. of Or. v. Jewell*, 830 F. 3d 552 (D.C. Cir. 2016).

Several Tribes, individuals, organizations, and members of Congress oppose the acquisition of the Shiloh Site in trust for the Tribe.<sup>84</sup> Critics raise issues regarding land use and environmental impacts,<sup>85</sup> discussed herein and further in the attached Record of Decision (ROD) and the Final Environmental Impact Statement (FEIS), while most of the opposition is based on criticism that the Tribe's aboriginal territory is in Lake County rather than Sonoma County.<sup>86</sup>

The late Senator Feinstein and Senator Padilla oppose the acquisition of land in Sonoma County for the Koi Nation, asserting:

Koi Nation's ancestral homelands are over 50 miles away in the Lower Lake area of Lake County, and this is their third attempt to build a casino in the Bay Area, all in different parts of the region. Absent this significant historical connection, the [T]ribe is intruding on other tribes' ancestral homelands and unreasonably disrupting the considered planning and zoning efforts of affected communities.<sup>87</sup>

The letter also states that the Tribe does not meet the clear standards for "significant historical connection in the Department's December 22, 2021, decision, *Indian Lands Determination for the Mashpee Wampanoag Tribe in Massachusetts*, because it must establish "the existence of its villages, burial sites, occupancy or subsistence use on the land in question, not just transitory use or the presence of Individual members of families."<sup>88</sup>

A group of local concerned citizens, Our Community Matters, writes in opposition to taking the land into trust for the Tribe and the land should not qualify as restored lands because it does not qualify as the Tribe's restored lands.<sup>89</sup> Our Community Matters also argues the Shiloh Site is an inappropriate location for a casino and resort because of its proximity to residences, parks, and elementary schools. Further, they argue that the Tribe's proposal to build a casino on the Shiloh Site would lack sufficient hospitality workers and could negatively impact evacuation routes and increase the danger of fire if the Tribe removes the vineyards, which have served as a fire break.

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<sup>84</sup> See Opposition Letters from Dry Creek Rancheria of Pomo (Sept. 23, 2021) (Koi Nation has no significant historical connection to Sonoma County); Cloverdale Rancheria (Oct. 13, 2021) (Koi Nation has no significant historical connection to Sonoma County, all of Sonoma County is indigenous to the Southern and Southwestern Pomo, but not the Koi Southeastern Pomo, Koi is reservation shopping); Lytton Rancheria Band of Pomo (Oct. 13, 2021) (same); Stand Up for California (Oct. 25, 2021) (raises questions regarding whether the Johnson brothers exercised tribal government authority over a group of people on and off orchard lands); Our Community Matters (Oct. 30, 2021) (Shiloh property is not located within the boundaries of the Koi's last reservation and the Shiloh Site is 55 miles away from Clear Lake); Daniel and Camilla Heidenreich (Oct. 15, 2021) (Koi Nation is from Lake County and has no historical connection to Shiloh Site); Sean Harrell (Nov. 11, 2021) (Koi Nation is infringing on the rights of Graton, Lytton, Dry Creek, Kashia, and Cloverdale).

<sup>85</sup> Issues of land use and impacts to the area surrounding the Shiloh Site will not be addressed in this decision but will instead be addressed as part of the Department's required compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, if the Department makes a determination to acquire the land into trust.

<sup>86</sup> Additional letters opposing the Tribe's acquisition of land into trust in Sonoma County include letters from Senators Feinstein and Padilla (Nov. 4, 2022) (Koi Nation's trust acquisition is broadly opposed by all five federally recognized tribes, the County of Sonoma, and Koi does not meet the standard for a significant historical connection).

<sup>87</sup> See Letter from Senator Diane Feinstein and Alex Padilla to Secretary Haaland (Nov. 4, 2022) (on file with the Office of Indian Gaming).

<sup>88</sup> See Letter from Senator Diane Feinstein and Alex Padilla to Secretary Haaland (Nov. 4, 2022) (on file with the Office of Indian Gaming).

<sup>89</sup> See Letter from Nina Cote, Steering Committee Chair, Our Community Matters to Paula Hart, Director, Office of Indian Gaming (Oct. 30, 2021) (on file with the Office of Indian Gaming).

Additionally, several Tribes submitted letters and tribal government resolutions opposing acquiring the Shiloh Site in trust stating that the site is not within the Koi Nation's traditional homeland, the Tribe has never been associated with Sonoma County, and the Tribe has no significant historical connection to Sonoma County.<sup>90</sup> One such opposing Tribe, the Dry Creek Rancheria, submitted several letters in opposition, asserting that Sonoma County is the indigenous territory of the Dry Creek Pomo. They argue that Koi Nation's proposed project threatens tribal exclusivity in the California gaming market, endangering the careful political balance that benefits of all California gaming tribes and requests "formal consultation on the Project."<sup>91</sup> Dry Creek also calls for the recusal of the Assistant Secretary – Indian Affairs.<sup>92</sup>

Adversely, letters of support for the Tribe's proposed casino on the Shiloh Site were submitted by other tribes, political and business leaders in the Santa Rosa area, and individuals.<sup>93</sup> The Confederated Tribes of Siletz Indians in Oregon offers strong support for Koi Nation's land acquisition in Sonoma County, California based on the need for Koi Nation to establish a home territory to further the Nation's self-determination, self-governance, economic development, and cultural preservation.<sup>94</sup> The Chickasaw Nation's wholly-owned business entity, Global Gaming Solutions, LLC (GGS), notes it has entered into a development agreement with the Koi Nation to develop a casino on the Shiloh Site and will develop a comprehensive plan to ensure the success of the proposed project, which is estimated to create more than 1,500 full-time jobs in the region and

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<sup>90</sup> See Resolution No. 101321 of the Tribal Council Lytton Rancheria of California, Opposition to the Koi Nation's Application to the United States Department of the Interior to Take Land into Trust for Gaming Purposes in Sonoma County, CA (Oct. 13, 2021) (on file with the Office of Indian Gaming); Letter from Patricia Hermosillo, Tribal Chairperson, Cloverdale Rancheria to Secretary Haaland and Assistant Secretary – Indian Affairs, Newland, with attached Cloverdale Rancheria Tribal Council Resolution No. 2021-09-0243 (Oct. 13, 2021) (on file with the Office of Indian Gaming). See also Letter from Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to Deb Haaland, Secretary, Department of the Interior, dated April 12, 2022. See also Greg Sarris, Chairman, Federated Indians of Graton Rancheria, to Paula Hart, Director, Department of the Interior, dated January 31, 2024.

<sup>91</sup> Letter from Chris Wright, Chairman Dry Creek Rancheria Band of Pomo Indians to Secretary Haaland (Apr. 20, 2022). Dry Creek also sent letters opposing the Shiloh Site acquisition on Sept. 21, 2021, and June 27, 2022.

<sup>92</sup> The Assistant Secretary – Indian Affairs, Bryan Newland, is recused from all matters involving the Koi Nation.

<sup>93</sup> Additional letters of support include Tsoai Gordley (Jan. 9, 2023) (casino will improve local business prospects); Angelo Aspillaga, Sales Consultant, Marin County Ford (Jan. 19, 2023); Mitch Patin, President, Patin Vinyard Management (Jan. 23, 2023); Karen Alves, Windsor Business Owner and Community Volunteer (Feb. 9, 2023); Heidi Burke; Ace Chon; Bing Mak; Gail Melendez; Julie Lin; Lawrence Kitagawa; Peter Coyote; Mike Ghilotti; Gino Ghilotti; Thomas Barr, Lance Bushnell; Scott Silvestri; Grady Kimball; JR Ramirez; Jay Barrington; Christopher Lin; Steve Ly; Connie Jouganatos; Miguel Erazo; Jason Poon; Angelica Beltran; Rodolfo Amolacion; Gino Ramos; Victoria; Pressy Carlos; Fredrica Green; Theresa Santiago; John Sugrue; Zack Liu; Julie Amolacion; Raymond Ng; Joel Vasquez; Roy Nicadao; Frank Wong; Elisa Marty; Pearl Mendiola; Maria Chavez; Archie Velasquez; Novella Ellis; John Rodriguez; Vincent Han; Leah Sautet; Ervan Martinez; Susan Eng; Rosemary Riviaccio; Kenneth Nelson; Susan Feliciano; Robert Young; Olivia Leong; Yvette Carrillo; Arlene Noriega; Hilmar Schubert; Serina Jackson; Evelyn Aejo; Alex Gonzalez; Paul Chan; Daniel Dickinson; Edmund Lai Cayetana Bujor; Lei Kequiang; Prince Tenoso; Tonecia Harvey, Appleton Chung; Axel Huang; Tejon Tribe; Rebecca Miranda; Raymond Trinidad; Elizabeth Nix, Donna Fong; Ada; Jamul Tribal Council; Cahto Tribe; Sharon Williams; Christina Luna; Don Green; Michelle Anderson; Thomas Nguyen; Brian Meadows; Robert Ransom; Beth Crist; Jesenia Licea; Lorena Licea; Rafael Licea Lisa Moody; Kathy; Marilyn Soldavini; Mari Sweeting.

<sup>94</sup> See Letter from Delores Pigsley, Tribal Chair, Confederated Tribes of Siletz Indians in Oregon to Bryan Newland, Assistant Secretary – Indian Affairs (May 17, 2022).

act as a major tourism asset that will benefit Koi Nation and its citizens, local residents, businesses, and institutions.<sup>95</sup>

Two Santa Rosa City Council members, John Sawyer and Tom Schwedhelm, each submitted letters of support. Council member Sawyer notes that the Shiloh Site is within 2 miles of Santa Rosa's city limits and that a meeting with Koi Nation's Tribal Council convinced him the Koi Nation is forthright, caring, and trustworthy. Additionally, knowing the Tribe's original trade trail runs through the project along Pruet Creek, along with their desire to enhance the environmental attributes of the creek and trail, substantiates his support for their plans.<sup>96</sup> Council member Schwedhelm notes the Koi Nation consists of local residents and that the Tribe's comprehensive plan for economic independence re-establishes federally recognized tribal lands for Koi Nation members whose homeland was taken from them generations ago. He states that "[a]s today's leaders, it is incumbent upon us to both right the wrongs of the past while creating opportunities for our most vulnerable to seek a brighter future" and that "the Koi Nation's fee-to-trust application will do both" and will create thousands of jobs that benefit Sonoma County.<sup>97</sup>

In response to the letters of opposition of acquiring the Shiloh Site in trust, we note that there is no requirement that restored land be within a tribe's aboriginal area or that the tribe show it exclusively used the lands. As discussed below and contrary to opposition arguments, we determine that the Tribe does demonstrate significant historical connection to the Shiloh Site.

### **Restored Lands Analysis**

Under 25 C.F.R. § 292.12, the Tribe must demonstrate (i) an in-state and modern connection to the Site, (ii) a significant historical connection to the Site, and (iii) a temporal connection to the Site. As discussed below, we find that the Tribe has demonstrated this.

#### *1. 25 C.F.R. § 292.12 (a): In-State and Modern Connections*

In order to establish in-state and modern connections, the Tribe must satisfy the requirements of 25 C.F.R. § 292.12(a). 25 C.F.R. § 292.12(a) states that the newly acquired lands must be located within the State or States where the tribe is now located, as evidenced by the tribe's governmental presence and tribal population, and the tribe must demonstrate one or more of the following modern connections to the land: (i) the land is within reasonable commuting distance of the tribe's existing reservation; (ii) if the tribe has no reservation, the land is near where a significant number of tribal members reside; (iii) the land is within a 25-mile radius of the tribe's headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust; or (iv) other factors demonstrate the tribe's current connection to the land.

The Tribe has demonstrated in-state and modern connections to the Shilo Site. As required by the regulations, the newly acquired land is located in the State of California, where the Tribe is currently situated. Additionally, the Tribe's headquarters, located at 705 College

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<sup>95</sup> See Letter from Bill G. Lance, Secretary of Commerce, the Chickasaw Nation, Chairman, Global Gaming Solutions, LLC, to Paula Hart, Director of Office of Indian Gaming (Jun. 3, 2022).

<sup>96</sup> See Letter from John Sawyer, Santa Rosa City Council Member, to Secretary Haaland (Jan. 1, 2023).

<sup>97</sup> See Letter from Council Member Tom Schwedhelm to Secretary Haaland (Jan. 17, 2023).

Avenue, Santa Rosa, California,<sup>98</sup> have been used by the Tribe at that location for more than two decades,<sup>99</sup> well past the regulatory requirement of two years. Thus, the Shiloh Site meets the criteria in 25 C.F.R. § 292.12 (a)(1) because it is within a 25-mile radius of the Tribe’s headquarters or other tribal governmental facilities that have existed at that location for at least 2 years at the time of the application for land-into-trust.

The Tribe has no reservation or trust land,<sup>100</sup> but 40% of tribal members live within 12 miles of the Tribe’s headquarters in Santa Rosa, California. This satisfies the requirements of 25 C.F.R. § 292.12(a)(2) because the land is located where a significant number of the Tribe’s members reside and have resided for more than a century.<sup>101</sup>

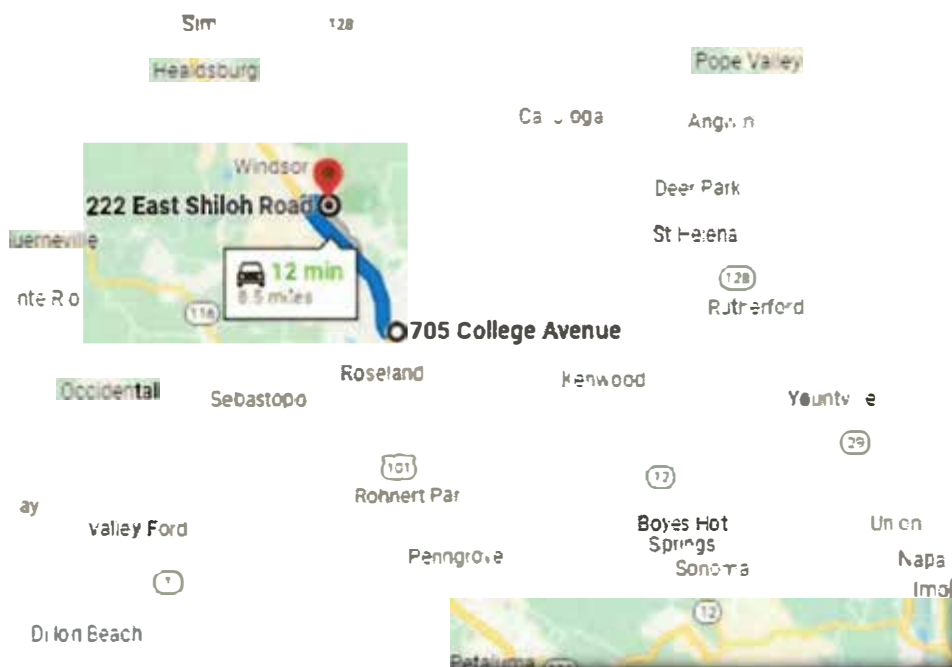


Figure 1 Distance from Tribe’s Headquarters to Shiloh Site

Therefore, the Tribe has demonstrated an “in-state and modern connection” to the Shiloh Site as required by 25 C.F.R. § 292.12(a).

*25 C.F.R. § 292.12 (b): Significant Historical Connection*

Section 292.12(b) requires that a tribe demonstrate a significant historical connection to the proposed land. The Department’s regulations define the term “significant historical connection” to mean either (i) the land is located within the boundaries of the tribe’s last reservation under a ratified or unratified treaty, or (ii) the tribe has demonstrated by historical documentation the existence of the tribe’s villages, burial grounds, occupancy, or subsistence use in the vicinity of the land. Here, because the Shiloh Site is not located within the Tribe’s last reservation under a ratified or unratified treaty, the Tribe must demonstrate by historical documentation the existence of its villages, burial

<sup>98</sup> Historical Report at 2 and 16.

<sup>99</sup> Historical Report at 2.

<sup>100</sup> Koi Request for ILO at 2.

<sup>101</sup> Historical Report at 23.



grounds, occupancy, or subsistence use in the vicinity of the land. Additionally, the Department has consistently found that a significant historical connection can be found through the existence of historic trade routes.<sup>102</sup>

As discussed here, we find that the Tribe has demonstrated a significant historical connection through burial grounds, occupancy, and subsistence use in the vicinity of the Shiloh Site. While a tribe must use its history to establish a significant historical connection to newly acquired land, it may also rely on the historical documentation of its tribal predecessors.<sup>103</sup> As discussed above, the Department determines that the Tribe's political and ancestral predecessors include the Cho-tan-o-man-as. After an appropriate nexus is established to a tribal predecessor, a tribe may rely on the historic use and occupancy of a predecessor tribe to establish a significant historical connection to newly acquired land.<sup>104</sup> The Tribe has a demonstrated significant historical connection to the Shiloh Site through historical documentation of burial grounds, occupancy, and use in the vicinity of the land.<sup>105</sup>

The Department's regulations at Part 292 used the word "vicinity" to permit a restoration of land on parcels where a tribe lacks any direct evidence of actual use or ownership of the parcel itself, but where the particular location and circumstances of available direct evidence on other lands cause a natural inference that the tribe historically used or occupied the subject parcel as well.<sup>106</sup> This analysis is, necessarily, fact-intensive, and will vary based on the unique history and circumstances of any particular tribe.<sup>107</sup> In this case, the Tribe's evidence must be viewed within the context of the violence and disregard for Indian life that were hallmarks of California from the 1820s to the early 1900s. Further, perceived gaps or inconsistencies within the historical documents must be considered against this backdrop and, where possible, resolved in favor of the applicant tribe. This is consistent with caselaw, the Indian canons of statutory interpretation, and Congress's intent that

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<sup>102</sup> See Letter to Merlene Sanchez, Chairperson, Guidiville Band of Pomo Indians from Larry Echo Hawk, Assistant Secretary – Indian Affairs at 14 (Sept. 1, 2011) (2011 Guidiville Decision or Guidiville) (The Department determined that trade routes alone were insufficient to establish a significant historical connection where in that matter, the Guidiville Band could not demonstrate individual Pomo Indians were from the Guidiville Band. This differs from the Koi application where the Koi can show that its members used the trade routes to Bodega Bay for subsistence and collection of marine resources.). See also U.S. Department of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition of, and Reservation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe at 130-133 (April 2013) (The Department relied, in-part, on the presence of extensive and intensive trade routes that were substantial enough to be more than a transient presence in the area to establish a significant historical connection to a parcel of land.). See also Letter to Brian Weeden, Chairman, Mashpee Wampanoag Tribe, from Bryan Newland, Assistant Secretary – Indian Affairs (December 22, 2021) (The Department also found tribal trade routes material and significant in determining that the Mashpee Tribe possessed a significant historical connection to the land at issue.).

<sup>103</sup> Letter from Gabriel Ray, Chairman, Scotts Valley Band of Pomo Indians, to Lawrence S. Roberts, Acting Assistant Secretary – Indian Affairs (Jan. 28, 2016) at 7.

<sup>104</sup> Letter from Donald E. Laverdure, Acting Assistant Secretary Indian Affairs, U.S. Department of the Interior, to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians (May 25, 2012) at 8.

<sup>105</sup> 25 C.F.R. § 292.2.

<sup>106</sup> Letter to Donald Arnold, Chairperson, Scotts Valley Band of Pomo Indians, from Donald E. Laverdure, Acting Assistant Secretary – Indian Affairs (May 25, 2012) at 15 (on file with the Office of Indian Gaming).

<sup>107</sup> U.S. Department of the Interior, Bureau of Indian Affairs, Record of Decision, Trust Acquisition of, and Reservation for the 151.87-acre Cowlitz Parcel in Clark County, Washington, for the Cowlitz Indian Tribe at 126 (April 2013) (the Department explained that a determination of whether a particular site with direct evidence of historic use or occupancy is within the vicinity of newly acquired land depends on the nature of a tribe's historic use and occupancy, and whether those circumstances lead to the natural inference that the tribe also made use of the parcel in question.).

the restored lands exception provide restored tribes equitable justice and restitution for decades of improper treatment as a terminated tribe.

The Shiloh Site is not located within the Tribe's last reservation under a ratified or unratified treaty. The Tribe has, however, submitted evidence demonstrating its use and occupancy of lands within the vicinity of the Shiloh Site.

The record discussed here establishes that the Tribe had extensive trade routes and trade networks throughout the California coastal region including the area of the Shiloh Site. The Tribe sourced, manufactured, and traded clamshell beads and magnesite that were geographically specific to the region of the Shiloh Site. Captain Tom Johnson, a tribal ancestor, occupied the area of the Shiloh Site with his family and established tribal political headquarters there. Further, multiple census reports indicate the presence of tribal ancestors near the Shiloh Site.

Even though traditional burial sites are difficult to locate because the Koi Nation historically cremated their dead instead of burying them, the Koi Nation has used the area around the Shiloh Site as burial grounds for over a century.<sup>108</sup> During the early 1900s, however, the Tribe documents that tribal members were buried in various places in and around Lower Lake and in the Russian River Valley, including burial sites for tribal members in Lake, Sonoma, and Napa Counties. The Tribe identifies cemeteries such as the traditional cemetery near Lower Lake,<sup>109</sup> Sonoma Coast/Goat Rock in Sonoma County<sup>110</sup>; Shiloh Cemetery in Windsor, Sonoma County; St. Mary's Cemetery, Lakeport, Lake County; Calvary Cemetery, Santa Rosa, Sonoma County; Rural Cemetery, Santa Rosa, Sonoma County; Pioneer Cemetery, Calistoga, Napa County. The existence of these historic burial sites evidences the Koi Nation's significant historical connection and presence near the Shiloh Site.

The Tribe's history reflects both forced labor and, later, voluntary labor and occupancy in what became Sonoma County. Within the area of the Shiloh Site, Captain Johnson's documented presence along with documented presence of other Tribal ancestors, many of whom acted as farm laborers, and the establishment of orchards establishes a pattern of occupancy and subsistence-like migratory and seasonal labor in and around the Shiloh Site. These labor patterns were necessary for the Tribe's survival both as an economic necessity and because of the relative safety the arrangements offered. These labor patterns establish a more than mere "transient presence in an area" and highlight the Tribe's continued use and occupancy of the area around the Shiloh Site. Additionally, in the 2010 Redding Determination, the Department looked positively on more recent historical connection to a site, finding that connection to the land since 1922, including burial sites and tribal residences, constituted significant historical connection.<sup>111</sup> Therefore, given the evidence discussed above, we find that the Tribe has demonstrated a significant historical connection to the Shiloh Site as required by 25 C.F.R. Section 292.12 (b).

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<sup>108</sup> Tribe's Supplement at 146.

<sup>109</sup> Historical Report at 72.

<sup>110</sup> Historical Report at 145.

<sup>111</sup> 2010 Redding Determination at 6-7.

### *25 C.F.R. § 292.12 (c): Temporal Connection*

25 C.F.R. § 292.12 (c) states that the tribe must demonstrate a temporal connection between the date of the acquisition of the land and the date of the tribe's restoration. A tribe can show this by two ways: (1) the land is included in the tribe's first request for newly acquired lands since the tribe was restored to Federal recognition, or (2) the tribe applied to take the land into trust within 25 years after the tribe was restored to Federal recognition and the tribe is not gaming on other lands. As explained above, the District Court in *Koi Nation* held the Tribe's reinstatement of recognition through reaffirmation on December 29, 2000 fits squarely within the plain meaning of a tribe restored to Federal recognition under IGRA.<sup>112</sup> The Tribe, and submitted its request for trust acquisition of the Shiloh Site on September 15, 2021, 20 years and 8 months after Federal recognition was reaffirmed.<sup>113</sup> The Tribe meets the criteria of subsection 25 C.F.R. § 292.12(c)(2) because the Tribe submitted a request for the Department to acquire the Site in trust within 25 years of the Tribe being restored to Federal recognition.

### *Conclusion: The Shiloh Site Qualifies as Restored Lands*

The Tribe satisfies the requirements of the Department's regulations at 25 C.F.R. Parts 292.7 and 292.12 and, thus, the Shiloh Site qualifies as "restored lands" for purposes of IGRA. The Tribe has shown continuous trade and subsistence use in the vicinity of the Shiloh Site. The Tribe and its members have maintained a well-established pattern of labor and occupation in the vicinity of the Shiloh Site from the 1900s through the present day. The nature and location of all these activities create a natural inference that the Tribe also historically used and occupied the Shiloh Site. The totality of the historical documentation shows that the Tribe demonstrates its in-state and modern connections, its significant historical connections, and its temporal connection to the Shiloh Site. The Department will acquire the Shiloh Site in trust for the Tribe, and the Tribe may conduct gaming on the Shiloh Site once it is acquired in trust, provided the Tribe is not gaming on other lands.<sup>114</sup>

### **Restored Lands Exception Conclusion**

As discussed above, the Tribe is a restored tribe, and the Department has determined that the Shiloh Site satisfies the criteria for restored lands. Upon its acquisition in trust, the Shiloh Site will be eligible for gaming pursuant to the Restored Lands Exception of IGRA, Section 2719(b)(1)(B)(iii) and our regulations at 25 C.F.R. Part 292.7-12.

With the gaming eligibility determination made, we move to the trust acquisition analysis to determine compliance with 25 C.F.R. Part 151.

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<sup>112</sup> *Koi Nation* at 46 and 48.

<sup>113</sup> Fee-to-Trust Application, *Koi Nation of Northern California* (Sept. 15, 2021) (on file with the Office of Indian Gaming).

<sup>114</sup> See 25 C.F.R. § 292.12 (c). The Tribe notes it is not gaming on other lands. See Historical Report at 15.

## TRUST ACQUISITION DETERMINATION PURSUANT TO 25 C.F.R. PART 151

### Trust Acquisition Determination Pursuant to 25 C.F.R. § 151

The Department's authority for acquiring the land in trust is found in Section 5 of the Indian Reorganization Act (IRA).<sup>115</sup> The Department's land acquisition regulations at 25 C.F.R. Part 151 sets forth the procedures for implementing Section 5 of the IRA. Pursuant to the Department's regulations and absent a request from the Tribe, this application has been processed under the regulations that were in effect prior to January 11, 2024.<sup>116</sup>

#### *25 C.F.R. § 151.3 - Land Acquisition Policy*

Section 151.3(a) sets forth the conditions under which land may be acquired in trust by the Secretary for an Indian Tribe:

- (1) When the property is located within the exterior boundaries of the Tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- (2) When the Tribe already owns an interest in the land; or
- (3) When the Secretary determines that the acquisition of the land is necessary to facilitate Tribal self-determination, economic development, or Indian housing.

Although only one factor in Section 151.3 need be met, the Tribe's application satisfies (a)(2) and (a)(3). The Tribe currently owns the Shiloh Parcel in fee simple.<sup>117</sup> Additionally, the Department's review of the Tribe's application found that the acquisition of the Shiloh Site in trust is necessary to facilitate Tribal self-determination and economic development. As discussed here, the Tribe needs an economic driver to generate funds to provide much-needed housing for its self-governance needs.<sup>118</sup> Therefore, the acquisition satisfies the conditions in 25 C.F.R. § 151.3(a)(2) and (3).

#### *25 C.F.R. § 151.11 - Off-reservation acquisitions*

The Tribe's application will be considered under the off-reservation criteria of Section 151.11. The off-reservation regulations add requirements to the on-reservation criteria. Section 151.11(a) requires the consideration of the criteria listed in Sections 151.10(a) through (c), and (e) through (h), as discussed below.

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<sup>115</sup> Act of June 18, 1934, Ch. 576, § 5, 48 Stat. 984 (IRA) (codified at 25 U.S.C. § 5108) ("The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.").

<sup>116</sup> 25 C.F.R. § 151.17(a). The revised Part 151 regulations allow Tribes who had applications submitted before their effective date to continue the process under the prior regulations unless they requested that the application be processed under the new revisions.

<sup>117</sup> Application, Letter from Darin Beltran, Chairman, Koi Nation of Northern California, to Paula Hart, Director, Office of Indian Gaming (Sept. 15, 2021). See also Grant Deed, from Randall C. Clifton and Cynthia A. Clifton to Sonoma Rose, LLC, dated Sept. 3, 2021.

<sup>118</sup> Application at 7.

*25 C.F.R. § 151.10(a) - The existence of statutory authority for the acquisition and any limitations contained in such authority*

Section 151.10(a) requires the Secretary to consider whether there is statutory authority for the trust acquisition, and if such authority exists, to consider any limitations contained in it including the effect, if any, of the decision in *Carcieri v. Salazar*. In *Carcieri*, the United States Supreme Court held that the Secretary's authority to take land into trust for an Indian tribe under the first definition of "Indian" in the IRA extends only to those tribes that were "under federal jurisdiction" on June 18, 1934, when the IRA was enacted.<sup>119</sup>

The Solicitor has concluded that a Tribe's election under Section 18 of the IRA whether to adopt or reject application of the IRA unambiguously and conclusively establishes that the United States understood that this particular tribe was under Federal jurisdiction in 1934.<sup>120</sup>

In 1934, the United States understood that the Tribe was under Federal jurisdiction and supervision of the United States and that the adult Tribal members met the IRA definition of "Indian." On June 5, 1935, Sacramento Indian Agency, through Superintendent O.H. Lipps Tribe "certified a list of twenty Rancheria residents eligible to vote in elections conducted pursuant to the Indian Reorganization Act."<sup>121</sup> On June 8, 1935, eighteen of twenty eligible tribal members cast their vote, with eleven in favor and seven against organizing under the IRA.<sup>122</sup> On June 20, 1935, the Office of Indian Affairs in Sacramento, California received the votes.<sup>123</sup> However, for unknown reasons, the Tribe was left off the Haas Report.<sup>124</sup>

This is conclusive evidence that the Tribe was "under Federal Jurisdiction" in 1934, and the Department is authorized to acquire land in trust under Section 5 of the IRA.

*25 C.F.R. § 151.10(b) - The need of the individual Indian or tribe for additional land.*

Section 151.10(b) provides that the Secretary will consider a tribe's need for additional land when reviewing a tribe's request to have land acquired in trust.

As discussed here, the Tribe is a landless tribe. The acquisition of the Shiloh Site will restore the Tribe to a land base and allow the Tribe to generate the long-term revenues needed to fund tribal services and support the needs of current and future Tribal citizens and restore the Tribe's ability to exercise its right of self-governance and independence.

Therefore, the Tribe's application meets the requirements of this section.

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<sup>119</sup> *Carcieri v. Salazar*, 555 U.S. 379 (2009).

<sup>120</sup> M-37029 at 20.

<sup>121</sup> Letter from Superintendent O.H. Lipps in a letter referencing the Lower Lake Rancheria, Jun 5, 1935 (on file with the Office of the Solicitor); Historical Report, Exhibit 1.

<sup>122</sup> Tabulation of Election Returns on the Indian Reorganization Act, from the Rancherias Under the Jurisdiction of the Sacramento Indian Agency, California, Listed in the Order in which such Returns were Received at the Sacramento Office, Office of Indian Affairs, Jun 20, 1935 (on file with the Office of the Solicitor).

<sup>123</sup> *Id.*

<sup>124</sup> Theodore H. Haas, *Ten Years of Tribal Government Under I.R.A.* (1947).

*25 C.F.R. § 151.10(c) - The purpose for which the land will be used.*

Section 151.10(c) requires consideration of the purposes for which the land will be used. The purpose of the Proposed Project is to facilitate tribal self-sufficiency, self-determination, and economic development. This satisfies the Department's land acquisition policy at 25 C.F.R. Part 151 and the principal goal of IGRA, 25 U.S.C. §2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 C.F.R. §§ 151.10(h) and 151.12.

The Proposed Project on the Shiloh Site would include a Class III gaming facility, including a three-story casino, five-story hotel with spa and pool area, ballroom/meeting space, event center, and associated parking and infrastructure.<sup>125</sup> The gaming area will be approximately 538,137 square feet with 2,750 gaming devices and 105 table games.<sup>126</sup> The hotel will be approximately 268,930 square feet with 400 rooms.<sup>127</sup> Parking will consist of 5,119 parking spaces on the ground floor of the casino and in a four-story parking garage and overflow surface parking lot.<sup>128</sup>

Therefore, the Tribe's application satisfies the requirements of this section.

*25 C.F.R. § 151.10(e) - If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of land from the tax rolls.*

This section requires the consideration of the impact on the state and its political subdivision resulting from the removal of land from the tax rolls. The Department's regulations at 25 C.F.R. 151.11(d) require a notice of application be sent to State and local governments having regulatory jurisdiction over the land which solicits comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments and provides a 30-day response period.

The total property taxes and special assessments due for Fiscal Year 2022 was \$99,089.92.<sup>129</sup> Sonoma County collected over \$1 billion in property taxes in 2021.<sup>130</sup> The Shiloh Site comprises less than 0.01% of the annual Sonoma County property tax revenues.<sup>131</sup> The acquisition of the Shiloh Site in trust would result in a decrease in property taxes, but the impact would be minimal and offset by operation of the Proposed Project. Further discussion of tax impacts can be found in the ROD<sup>132</sup> and the FEIS.<sup>133</sup>

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<sup>125</sup> EA§ 2.1.

<sup>126</sup> EA § 2.1, Table 2.1-1.

<sup>127</sup> EA§ 2.1, Table 2.1-1.

<sup>128</sup> EA§ 2.1, Table 2.1-1.

<sup>129</sup> Regional Director's Finding of Fact at 9.

<sup>130</sup> Regional Director's Finding of Fact at 10.

<sup>131</sup> Regional Director's Finding of Fact at 10.

<sup>132</sup> ROD at Section 5.1.6.

<sup>133</sup> FEIS at§ 3.7.2.

The Department, by correspondence dated March 18, 2024, provided the required notice to State and local governments, and as a courtesy, to certain interested parties:

- Senior Advisor for Tribal Negotiations, Office of the Governor
- T. Michelle Laird, Supervising Deputy Attorney General, State of California
- U.S. Senator Laphonza Butler
- U.S. Senator Alex Padilla
- Congressman Mike Thompson
- Sonoma County Assessor
- Sonoma County Board of Supervisors
- Shasta County Sheriff's Office
- Sonoma County Fire
- Sonoma County Planning Division
- Sonoma County Transportation and Public Works
- Sonoma County Auditor-Controller-Treasurer-Tax Collector
- Cloverdale Rancheria Band of Pomo Indians, California
- Dry Creek Rancheria of Pomo Indians, California
- Federated Indians of Graton Rancheria, California
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
- Lytton Rancheria of California
- Roseann Coil
- Regular Mail: Superintendent, Bureau of Indian Affairs, Central California Agency

The Department received comments from the State and local governments and other interested parties during the comment period. Additionally, the Department notes the record reflects numerous comments received, during the formal comment period and outside of the formal comment period. This application received letters of support from private citizens, third-party Tribes, and some State and local political officials. Similarly, this application has received letters of opposition from private citizens, third party Tribes, and some state and local political officials. Many of the opposition letters expressed concerns with the NEPA process, and many of the third-party Tribes, government official, and individual opposition letters expressed concerns with the Tribe's historical connection to the Shiloh Site. No comments were received from those State and local regulatory jurisdictions regarding impact to the tax rolls. The Regional Director found, and I concur, that the impact of removing the Shiloh Site from the tax rolls is minimal and will be offset by the benefits that will accrue to the region from the increased economic activity from the Proposed Project.<sup>134</sup>

*25 C.F.R. § 151.10(f) - Jurisdictional problems and potential conflicts of land use which may arise.*

Section 151.10(f) requires the Secretary to consider whether any jurisdictional problems and potential conflicts of land use may arise.

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<sup>134</sup> Regional Director's Finding of Fact at 9-19.



As discussed in Section 151.10(e) above, the Department requested comment regarding jurisdictional problems and potential conflicts of land use from state and local governments as well as other interested parties.

### Land Use

As noted above, the Shiloh Site lies on the northern outskirts of the City of Santa Rosa in Sonoma County, directly adjacent to the Town of Windsor to the North. The Town of Windsor and Sonoma County commented that the Tribe's Proposed Project is inconsistent with zoning of the surrounding properties. The Shiloh Site is zoned and designated as Land Intensive Agriculture (LIA) in the Sonoma County Zoning code and the County's General Plan, a designation that enhances and protects lands best suited for permanent agricultural use and capable of relatively high production per acre of land. Additionally, the Shiloh Site is within multiple combining districts as defined by the Sonoma County zoning ordinance, including the Floodway Combining District, Floodplain Combining District, Scenic Resources Combining District, Riparian Corridor Combining Zone, and Valley Oak Habitat Combining District. These combining district designations apply land use regulations to the Shiloh Site in addition to the land use regulations associated with its main zoning designation. The Proposed Project would result in the conversion of agricultural uses and the construction and operation of a casino-resort and associated facilities. The proposed land uses under the Proposed Project are not consistent with Sonoma County's underlying land use and zoning designations. Once the Shiloh Site is accepted into trust, however, the Shiloh Site would no longer be under the jurisdiction of Sonoma County and, thus, the above-referenced policies and land use regulations would no longer apply. Therefore, while the proposed uses on the Shiloh Site are not consistent with allowable uses under existing zoning regulations, this inconsistency with existing zoning would not result in significant adverse land use effects.<sup>135</sup>

### Jurisdiction

In 1953, Congress passed Public Law 83-280, a statute granting to five states, including California, jurisdiction over most crimes and some civil regulatory matters on Indian reservations in the states.<sup>136</sup> Public Law 83-280 left intact the inherent civil and criminal jurisdiction of Indian nations because it did not specifically extinguish Tribal jurisdiction. Placing the Shiloh Site in trust will not create jurisdictional problems under Public Law 83-280. Once the Site has been accepted into trust for the benefit of the Tribe, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian lands within the State. Additionally, the Tribe signed a letter of intent with the Sonoma County Fire Department demonstrating their intent to enter into a memorandum of understanding that will include an agreed upon rate that the Tribe will pay to the Fire District in exchange for fire protection services at the gaming facility.<sup>137</sup>

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<sup>135</sup> Nov. 2024 FEIS, Section 3.7.3.2 at 3-73.

<sup>136</sup> Act of Aug. 15, 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, and 28 U.S.C. § 1360; *see generally* Cohens Handbook of Federal Indian Law, Section 6.04[3][a], at 537 (Nell, Jessup, Newton ed., 2012).

<sup>137</sup> Letter from Darin Beltran, Chairman, Koi Nation of Northern California, to Arnie Tognozzi, President, Board of Directors, Sonoma County Fire District, dated June 27, 2023.

The Regional Director determined, and I concur, that the acquisition of the Shiloh Site in trust would not cause conflicts of land use or other jurisdictional problems.<sup>138</sup>

*25 C.F.R. § 151.10(g) - If land to be acquired is in fee status, whether BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.*

The Regional Director has found, and I concur, that accepting the Shiloh Site into trust will not impose any significant additional responsibilities or burdens on the BIA.<sup>139</sup>

*25 C.F.R. § 151.10(h) - The extent of information to allow the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.*

Section 151.10(h) requires the Secretary to consider the availability of information necessary for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*<sup>140</sup> The Department must also complete an Environmental Site Assessment (ESA) pursuant to Departmental Manual at 602 DM 2. The Department finalized a Phase 1 ESA and certified it on June 10, 2022, determining that there were no hazardous materials or contaminants on the Site.<sup>141</sup> An updated Phase 1 ESA was prepared on December 13, 2024, and certified by the BIA on December 20, 2024, this satisfies the requirements of 602 DM 2.

As described in more detail below, an Environmental Impact Statement (EIS) was prepared to evaluate the potential impacts of the Proposed Project. Based on the facts and available evidence, the EIS concluded that the Proposed Project would not result in significant impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic resources and environmental justice, transportation and circulation, land use, public services and utilities, visual resources, or noise.<sup>142</sup>

On May 27, 2022, the Department published a notice of intent to prepare an EA, pursuant to NEPA.<sup>143</sup> On September 24, 2023, the Department published a notice of availability of the environmental assessment and draft conformity determination in The Press Democrat, mailed to interested parties, and posted online.<sup>144</sup> The comment period was open for originally 45 days and was to close on October 27, 2023, however, the BIA granted an extension of time, moving the close

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<sup>138</sup> Regional Director's Finding of Fact at 19-20.

<sup>139</sup> Regional Director's Finding of Fact from Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs, to Paula Hart, Director, Office of Indian Gaming, dated November 8, 2024, at 20-21. (Regional Director's Finding of Fact).

<sup>140</sup> The BIA is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations at 40 CFR Parts 1500–1508, in addition to the Department of the Interior's procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook (59 Indian Affairs Manual 3-H) to meet the agency's obligations under NEPA, 42 U.S.C. §§ 4321 *et seq.*

<sup>141</sup> See Phase I Environmental Site Assessment (June 10, 2022).

<sup>142</sup> Regional Director's Finding of Fact at 21-34.

<sup>143</sup> The Press Democrat 129313, 1 ti., May 27, 2022.

<sup>144</sup> Barber, Phil, *Public Hearing Announced for Koi Nation's Proposed Casino Project Near Windsor*, The Press Democrat (Sept. 24, 2023).

of the comment period to November 13, 2023. A virtual public meeting was held online on September 27, 2023, during which oral comments on the draft EA were received. After review of the public comments, the Department determined the preparation of an Environmental Impact Statement (EIS) was warranted.

On March 8, 2024, the Department published a notice of intent to prepare an EIS, pursuant to NEPA.<sup>145</sup> A draft EIS was prepared building on and incorporating the prior public input on the EA and made available for public review on July 8, 2024.<sup>146</sup> A public hearing was held on July 30, 2024, during which verbal comments on the draft EIS were received. After a review of all of the public comments, an FEIS was prepared, which included the evaluation of the alternatives and contained responses to all substantive comments. On November 22, 2024, the Department published a notice of availability in the *Federal Register* for the FEIS.<sup>147</sup> The FEIS provided extensive information on the existing environment and environmental analysis of the alternatives.<sup>148</sup> Of the four alternatives, the Proposed Project, listed in the FEIS as Alternative A, was the Tribe's preferred option. The FEIS found that after evaluating the potential impacts and hazardous materials, the project design and implementation of best management practices would ensure impacts to these resources would be less than significant.

The Proposed Project consists of the following components: (1) transfer of the 68.6-acre Shiloh Site into Federal trust status for the benefit of the Tribe for gaming purposes (Proposed Action); and the subsequent development of the Tribe of a resort facility that includes a casino, hotel, ballroom/meeting space, event center, spa, and associated parking and infrastructure on the Shiloh Site. The three other alternatives include various measures of reduced intensities that include a smaller gaming facility, a winery and hotel with no gaming, and no action.<sup>149</sup> The FEIS contains more detailed information about the various alternatives. As detailed in the FEIS, however, the Tribe's Proposed Project is anticipated to have less-than-significant impacts. The enclosed Record of Decision concludes the Department's compliance with both the letter and the spirit of NEPA for the Tribe's application to transfer the Shiloh Site into trust for gaming and other purposes.

*25 C.F.R. § 151.11(b)- Location of Land Relative to State Boundaries and its distance from the Boundaries of the tribe's reservation.*

The Shiloh Site is located in Sonoma County, California, approximately 250 miles to the Nevada state border and approximately 315 miles to the Oregon state border. The Site is located approximately 12 miles from its Tribal headquarters in Santa Rosa, California.<sup>150</sup>

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<sup>145</sup> 89 Fed. Reg. 16782, March 8, 2024.

<sup>146</sup> 89 Fed. Reg. 55968, July 8, 2024.

<sup>147</sup> 89 Fed. Reg. 92713, November 22, 2024.

<sup>148</sup> See Nov. 2024 FEIS, Section 2.0.

<sup>149</sup> See Nov. 2024 FEIS, Section 2.2-2.4.

<sup>150</sup> Regional Director's Finding of Fact at 34.

*25 C.F.R. § 151.11(c)– Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.*

The Tribe engaged the services of Pro Forma Advisors to prepare the Tribe’s Economic Benefits Report<sup>151</sup> and Global Market Advisors (GMA) to prepare an Impact Study.<sup>152</sup> The Tribe’s submissions provide adequate support to demonstrate the economic benefits associated with the proposed use. I find the Tribe’s application meets the requirements of this section.

*25 C.F.R. §§ 151.10 and 151.11(d). Contact with state and local governments pursuant to sections 151.10(e) and (f).*

As more fully discussed in Sections 151.10(e)-(f) above, the Department sent a notice of application dated October 31, 2022, to State and Local governments having regulatory jurisdiction over the land which solicits comments on the potential impact of the proposed acquisition on regulatory jurisdiction, real property taxes, and special assessments.<sup>153</sup> The notice requirement of this section has been met.

### **Conclusion**

Having thoroughly considered the Koi Nation Court’s decision, the IRA, the IGRA, the Department’s regulations at 25 C.F.R. Part 151 and Part 292, and all of the documents in the record, I conclude that the Tribe’s application meets all of the regulatory requirements. Therefore, the Shiloh Site will be acquired in trust for the Tribe as a restoration of land for a restored tribe.

### **Decision to Approve the Tribe’s Fee-to-Trust Application and Part 292 Determination**

Pursuant to Section 5 of the IRA, 25 U.S.C. § 5108, the Department will acquire the Shiloh Site in trust for the Tribe. Furthermore, I have determined that the Tribe may conduct gaming on the Shiloh Site pursuant to Section 20 of IGRA, 25 U.S.C. § 2719(b)(1)(B)(iii). Consistent with applicable law and the Department’s requirements, the Regional Director shall immediately acquire the land in trust. This decision constitutes final agency action pursuant to 5 U.S.C. § 704.

Sincerely,



Tony Dearman  
Director, Bureau of Indian Education  
Exercising by delegation the authority of the  
Assistant Secretary – Indian Affairs

### **Enclosures:**

1. Legal Description of the Shiloh Site
2. Record of Decision

<sup>151</sup> Application, Attachment 10, Economic Benefits Report, Pro Forma Advisors LLC (Sept. 14, 2021).

<sup>152</sup> Application, Attachment 10, Appendix B-1.

<sup>153</sup> Regional Director’s Finding of Fact at 36.

## Enclosure 1

# Legal Description of the Shiloh Site

For APN/Parcel ID(s): 059-300-003-000

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THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE UNINCORPORATED AREA IN COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Being a tract of land in Section 20, Township 8 North, Range 8 West, M.D.B. and M. and beginning at a iron pin which marks the 1/4 section corner between Sections 19 and 20; thence East along the Northerly line of the Southwest 1/4 of said Section 20, a distance of 40.00 chains, more or less, to the center of Section 20; thence South, along the Easterly line of said Southwest 1/4, 17.01 chains, more or less, to the Northeast corner of a tract of land conveyed by Elisha C. Mayo to Charles T. Mathisen and Cynthia E. Mathisen, his wife, by Deed dated January 28, 1905 in Book 216 of Deeds at Page 298, Sonoma County Records; thence South  $76^{\circ} 15'$  West, along the Northerly boundary of said tract of land conveyed to said Mathison, 25.69 chains, more or less, to the center of the State Highway leading from Santa Rosa to Healdsburg; thence Northwesterly along the center of said State Highway, 26.85 chains, more or less, to the section line between Section 19 and 20; thence North along said section line, 1.62 chains, more or less, to the point of beginning.

Excepting therefrom that portion thereof conveyed to the County of Sonoma by deed recorded April 25, 1950 in Book 955 at Page 376, Sonoma County Records.

Also excepting therefrom that portion conveyed to the County of Sonoma by Deed recorded October 27, 2006 as Instrument No. 2006132956, of Official Records.

Enclosure 2  
Record of Decision



## **Record of Decision**

### **Trust Acquisition of 68.6 Acres in Sonoma County, California, for the Koi Nation of Northern California**

**U.S. Department of the Interior  
Bureau of Indian Affairs  
January 2025**

## U.S. Department of the Interior

**Agency:** Bureau of Indian Affairs

**Action:** Record of Decision (ROD) for the Trust Acquisition of approximately 68.6 acres in Sonoma County, California, for the Koi Nation of Northern California (Tribe).

**Summary:** On September 15, 2021, the Tribe submitted a fee-to-trust application to the Bureau of Indian Affairs (BIA), requesting that the Department of the Interior (Department) accept trust title to land totaling approximately 68.6 acres in Sonoma County, California (Shiloh Site, or Shiloh Parcel) for gaming purposes (Proposed Action). The Tribe proposes to develop the Shiloh Site with a casino-resort facility that includes a three-story casino, five-story hotel with spa and pool area, ballroom/meeting space, event center, and associated parking and infrastructure (Proposed Project). The Proposed Project was analyzed pursuant to the National Environmental Policy Act in an Environmental Assessment (EA) and subsequently an Environmental Impact Statement (EIS) prepared under the direction and supervision of the Bureau of Indian Affairs (BIA) Pacific Regional Office. The BIA issued the EA for public review and comment on September 12, 2023. Upon consideration of the comments received on the EA, the BIA decided to prepare an EIS to further analyze the environmental effects of the Proposed Action. The BIA issued the Draft EIS for public review and comment on July 8, 2024. After a comment period, public hearing, and consideration and incorporation of comments received on the Draft EIS, the BIA issued the Final EIS on November 22, 2024. The Draft EIS and Final EIS evaluated a reasonable range of alternatives that would meet the purpose and need for the Proposed Action, analyzed the potential effects of those alternatives, and identified feasible mitigation measures.

With this ROD, the Department announces that it will acquire the 68.6-acre Shiloh Site in trust for the Tribe for gaming purposes. The Department has selected Alternative A in the Final EIS as the Preferred Alternative as it has determined Alternative A will best meet the purpose and need for the Proposed Action of facilitating tribal self-sufficiency, self-determination, and economic development for the Tribe. The Preferred Alternative will provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the Tribal government. Under such conditions, the Tribal government would be stable and better prepared to provide essential programs and services to its membership.

The Department has considered potential effects to the environment, including potential impacts to local governments and other tribes, has adopted all practicable means to avoid or minimize environmental harm, and has

determined that potentially significant effects on the environment will be adequately addressed by mitigation measures, as described in this ROD.

The Department's decision to acquire the Shiloh Site into trust for the Tribe is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the EA; the Draft EIS; the Final EIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies, and potentially affected Indian tribes.

**For Further Information Contact:**

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## Record of Decision

### TRUST ACQUISITION OF 68.6 ACRES IN SONOMA COUNTY, CALIFORNIA, FOR THE KOI NATION OF NORTHERN CALIFORNIA

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**ATTACHMENTS**

- Attachment 1 Mitigation Monitoring and Compliance Plan
- Attachment 2 Final EIS Notices
- Attachment 3 Comments and Response to Comments on the Final EIS

## **1.0 INTRODUCTION**

### **1.1 SUMMARY**

On September of 2021, the Koi Nation of Northern California (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to acquire approximately 68.6 acres of land located in unincorporated Sonoma County, California (the Shiloh Site or Shiloh Parcel), requesting that the Department of the Interior (Department) accept trust title to the Shiloh Site for gaming purposes (Proposed Action).

The BIA analyzed the potential environmental impacts of the Proposed Action in an Environmental Assessment (EA) and Environmental Impact Statement (EIS). The EA was issued for public review on September 12, 2023. The Draft EIS was issued for public review on July 8, 2024, and the Final EIS was issued for public review on November 22, 2024. The EA and EIS considered various alternatives to meet the stated purpose and need, and analyzed in detail potential effects of a reasonable range of alternatives. With this Record of Decision (ROD), the Department has determined that Alternative A is the Preferred Alternative to be implemented, which consists of the Department's transfer of the Shiloh Site from fee to trust status on behalf of the Tribe for gaming purposes and subsequent construction and operation by the Tribe a casino-resort facility that includes a three-story casino, five-story hotel with spa and pool area, ballroom/meeting space, event center, and associated parking and infrastructure, and mitigation measures presented in **Section 6** of this ROD.

The Department has determined that the Preferred Alternative would best meet the purpose and need for the Proposed Action by promoting the long-term tribal self-sufficiency, self-determination, and economic development of the Tribe. The Department's decision to acquire the Shiloh Site into trust for the Tribe is based on thorough review and consideration of the Tribe's fee-to-trust application and materials submitted therewith; the applicable statutory and regulatory authorities governing acquisition of trust title to land and eligibility of land for gaming; the EA; the Draft EIS; the Final EIS; the administrative record; and comments received from the public, federal, state, and local governmental agencies, and potentially affected Indian tribes.

### **1.2 DESCRIPTION OF THE PROPOSED ACTION**

The Proposed Action is the trust acquisition of the Shiloh Site for the Tribe pursuant to the Secretary's authority under the Indian Reorganization Act, 25 U.S.C. § 5108. The Tribe subsequently proposes to develop a casino-resort facility that includes a three-story casino, five-story hotel with spa and pool area, ballroom/meeting space, event center, and associated parking and infrastructure. The Shiloh Site is located within unincorporated Sonoma County, California, adjacent to the southern boundary of the Town of Windsor.

### **1.3 PURPOSE AND NEED**

The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department's land acquisition policy as articulated in the Department's trust land regulations at 25 CFR Part 151, and the principal

goal of the Indian Gaming Regulatory Act (IGRA) as articulated in 25 U.S.C. § 2701. The need for the Department to act on the Tribe's application is established by the Department's regulations at 25 CFR § 151.10(h) and 151.12.

### **1.3.1 Background**

The Tribe has requested that the BIA accept land into trust for gaming purposes to establish an economic land base in order to strengthen its governmental capacity and institutional framework, promote the general welfare of the Koi Nation and its members, raise governmental revenues, and create jobs for its members. The Tribe has no reservation, which deprives the Tribe of the ability to build a sustainable economy. The revenue from the Proposed Action will restore the Tribe's ability to exercise its political rights, achieve self-governance, strengthen its institutions of governance, and establish a sustainable economy sufficient to provide governmental services and benefits not only to its citizenry today, but for future generations of Tribal citizens as well.

### **1.4 AUTHORITIES**

Section 5 of the Indian Reorganization Act (IRA) of 1934, 25 U.S.C. § 5108, provides the Secretary of the Interior with general authority to acquire land in trust status for Indian tribes in furtherance of the statute's broad goals of promoting Indian self-government and economic self-sufficiency. If a tribe is seeking to acquire lands in trust, it must apply to the BIA and comply with the regulations in 25 Code of Federal Regulations (CFR) Part 151, which implement the Secretary's trust acquisition authority in Section 5 of the IRA. This ROD records the decision by the Department to acquire in trust the Shiloh Site in Sonoma County, California, for the Koi Nation of Northern California.

IGRA was enacted in 1988 to regulate the conduct of Indian gaming and to promote tribal economic development, self-sufficiency, and strong tribal governments. IGRA generally prohibits gaming on lands acquired in trust after 1988, unless certain exceptions found in Section 20, 25 U.S.C. § 2719, are met. Here, the relevant exception is the "restored lands" exception in Section 20 (b)(1)(B)(iii), which allows gaming on after-acquired lands if the lands are taken in trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." The Section 20 exceptions are implemented through regulations found in 25 CFR Part 292. Therefore, Section 20 of IGRA does not provide the Secretary of the Interior with the authority to acquire land in trust; rather, it authorizes gaming on certain after-acquired lands once those lands are acquired into trust. Because the Tribe has requested that the Shiloh Site be taken in trust for gaming, the Tribe must satisfy one of the IGRA Section 20 exceptions before it may game on the parcel. This ROD and the attached Decision Letter records the Department's determination that the Shiloh Site is eligible for gaming under the "restored lands" exception in IGRA Section 20, 25 U.S.C. § 2719(b)(1)(B)(iii), such that the Tribe may game on the Shiloh Site once it is acquired in trust.

## 1.5 PROCEDURAL BACKGROUND

The requested federal Proposed Action requires compliance with the National Environmental Policy Act (NEPA).<sup>1</sup> The BIA as Lead Agency conducted a 30-day scoping comment period to solicit input from the public and agencies regarding the scope of the EA. A Notice of Preparation (NOP) describing the Proposed Project and announcing a 30-day scoping period was prepared and circulated for public and agency review on May 27, 2022. The NOP was published in The Press Democrat newspaper, posted on the project website (<https://www.shilohresortenvironmental.com/>), filed with the State Clearinghouse for distribution to State agencies, and sent to various federal, State, and local agencies through direct mailings. The issues that were raised during this initial scoping period were summarized in a NEPA Scoping Report dated September 2022, which was made available on the project website. In September of 2022, the BIA invited the U.S. Environmental Protection Agency (USEPA) and National Indian Gaming Commission to serve as Cooperating Agencies and both agencies accepted Cooperating Agency status.

An EA was prepared which addressed the relevant issues and concerns brought up in the scoping process. An administrative version of the EA was circulated to Cooperating Agencies for review and comment. Comments were taken into consideration and revisions were completed as appropriate prior to public release. A Notice of Availability (NOA) for the EA was submitted to the State Clearinghouse, published in The Press Democrat newspaper, mailed to interested parties, and posted on the project website. The EA was originally made available for public comment for a 45-day period, from September 12, 2023, to October 27, 2023; however, the BIA extended the public comment period for an additional 15-day period that concluded on November 13, 2023, resulting in a total comment period of 60 days. A virtual public hearing was held on September 27, 2023, that included an overview of the NEPA process, description of Proposed Action and Alternatives, summary of the contents of the EA, and an opportunity for the public to submit verbal comments on the EA. Upon consideration of the public and agency comments received, the BIA decided to prepare an EIS to further analyze the environmental effects which may result from the Proposed Action.

The BIA published a Notice of Intent (NOI) in the Federal Register on March 8, 2024 (Volume 89, page 16782) describing the Proposed Action, announcing the BIA's intent to prepare an EIS for the Proposed Action, and inviting public and agency comments for 30-day period which ended on April 8, 2024. Comments received during the EA and NOI public comment periods were considered scoping comments for the EIS and summarized in a Supplemental Scoping Report dated April 2024 (Appendix A-2 of the Draft and Final EIS).

An administrative version of the Draft EIS was circulated to Cooperating Agencies for review and comment. Comments were taken into consideration and revisions were completed as

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<sup>1</sup> The BIA is aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BIA has nonetheless elected to follow those regulations at 40 CFR Parts 1500–1508, in addition to the Department of the Interior's procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook (59 Indian Affairs Manual 3-H) to meet the agency's obligations under NEPA, 42 U.S.C. §§ 4321 et seq.



appropriate prior to public release. On July 8, 2024, the Draft EIS was made available on the project website and the BIA's NOA for the Draft EIS was published in the Federal Register (Volume 89, page 55968). The BIA NOA advised the public that the BIA had filed the Draft EIS with the USEPA in connection with the Proposed Action. The BIA NOA was submitted to the State Clearinghouse, published in The Press Democrat newspaper, mailed to interested parties, and posted on the project website. The BIA NOA provided information concerning the proposed project, the public comment period, and how to obtain information on the virtual public hearing to receive comments from the public concerning the Draft EIS. The USEPA's NOA for the Draft EIS was published in the Federal Register on July 12, 2024 (Volume 89, page 57151), initiating a 45-day public comment period that concluded on August 26, 2024. A virtual public hearing was held on July 30, 2024.

Public and agency comments on the Draft EIS received during the comment period, including those submitted or recorded at the virtual public hearing, were considered in the preparation of the Final EIS. Responses to the comments received were provided in the Final EIS Appendix P and relevant information was revised in the Final EIS as appropriate to address those comments. An administrative version of the Final EIS was circulated to Cooperating Agencies for review and comment. Comments were taken into consideration and revisions were completed as appropriate prior to public release. The BIA NOA for the Final EIS was published in the Federal Register on November 22, 2024 (Volume 89, page 92713). The BIA NOA was submitted to the State Clearinghouse, published in The Press Democrat newspaper, mailed to interested parties, and posted on the project website. The USEPA's NOA for the Draft EIS was published in the Federal Register on November 22, 2024 (Volume 89, page 92681), initiating the 30-day waiting period that concluded on December 23, 2024. Copies of the NOAs for the Final EIS are provided in **Attachment 2** of this ROD.

During the 30-day waiting period, the BIA received comment letters from agencies and interested parties. The BIA reviewed and considered all comment letters on the Final EIS during the decision-making process for the Proposed Action, and all comments are included within the administrative record for the project. Substantive comments received during this period that were not previously raised and responded to in the Final EIS process are summarized and responded to in **Attachment 3** of this ROD. All other comments were determined to either not raise substantive environmental issues, or were previously responded to in the Final EIS.

## **2.0 ANALYSIS OF ALTERNATIVES**

### **2.1 ALTERNATIVE SCREENING PROCESS**

The BIA fully evaluated a range of alternatives in the EIS to meet the purpose and need (see **Section 1.3**), including a reduced-intensity alternative and a non-gaming alternative. Alternatives, other than the required No Action Alternative, were screened based on five criteria: 1) extent to which they meet the purpose and need for the Proposed Action; 2) feasibility from a technical and economic standpoint; 3) feasibility from a regulatory standpoint (including ability to meet the requirements for establishing connections to newly acquired lands for the purposes of the "restored lands" exception set forth in 25 CFR §292.12); 4) ability to avoid or minimize environmental impacts; and 5) ability to contribute

to a reasonable range of alternatives. A more detailed explanation of the alternatives screening process, the alternatives eliminated from further consideration throughout the NEPA process, and the reasons for the elimination of these alternatives is provided in: the EA Scoping Report dated September 2022, Alternatives Evaluation Report dated September 2022 (Final EIS Appendix P Attachment 3), the Supplemental Scoping Report dated April 2024 (Final EIS Appendix A-2), and Master Response 5 of the Response to Comments on the Draft EIS (Final EIS Appendix P Section 3.1.5). In summary, alternatives considered but rejected from detailed analysis included the following:

#### On-Site Alternatives

- An on-site alternative that utilizes public water and/or wastewater
- An alternative that would develop housing
- Alternative configurations of the Proposed Project
- An alternative with on-site housing for employees

#### Off-Site Alternatives

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

Alternative configurations or modifications to the Proposed Project have been considered throughout the NEPA process and have resulted in the addition of a "maximum scenario for recycled water use" under which no effluent is discharged to Pruitt Creek, installation of utility lines on bridges over Pruitt Creek rather than under the creek via directional drilling, the option to construct the surface parking lot to be permeable rather than paved, and additions/clarifications to Best Management Practices and mitigation measures.

## **2.2 ALTERNATIVES CONSIDERED IN DETAIL**

The Draft EIS and Final EIS evaluated the following reasonable alternatives and the mandatory No Action Alternative in detail. The below alternatives are described in more detail in Final EIS Section 2.

### **2.2.1 Alternative A – Proposed Project**

Alternative A, the Proposed Action, consists of the following components: 1) transfer of the 68.6-acre Shiloh Site into federal trust status for the benefit of the Tribe for gaming purposes (Proposed Action); and 2) the subsequent development by the Tribe of a resort facility that

includes a casino, hotel, ballroom/meeting space, event center, spa, and associated parking and infrastructure on the Shiloh Site (Proposed Project). Components of Alternative A are summarized below.

**Proposed Facilities:** Alternative A would result in the development of a resort and casino facility within the western portion of the Shiloh Site that includes a three-story casino, a five-story hotel with spa and pool area, restaurants/bars, ballrooms/meeting space, and 2,800-seat event center. The casino would have 2,750 gaming devices and 105 table games. It is anticipated that the event center would host concerts and performances while the ballrooms/meeting space would host banquets, conferences, or other special events. Parking for the resort facility would be provided on the ground floor of the casino (800 spaces) and a four-story parking garage (3,692 spaces) on the eastern portion of the Shiloh Site; an overflow surface parking area (618 spaces) may be established on the eastern portion of the Shiloh Site. The proposed facilities would conform to applicable requirements of the Tribe's Building and Safety Code of 2023, which are consistent with the 2022 California Building Code and California Public Safety Code as set forth in Titles 19 and 24 of the California Code of Regulations.

**Water Supply:** Potable water would be provided to Alternative A via on-site wells, and recycled water (tertiary treated effluent) would be provided from the on-site wastewater treatment facilities. Recycled water would be used for toilet and urinal flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Additional investigation is needed to ensure the four existing wells would be suitable for use as potable water supply sources for Alternative A. The water supply system would consist of up to two water supply wells, a water treatment plant, a storage tank, and a pump station. The water treatment plant, storage tank, and pump station would be located within the "treatment area" on the eastern portion of the Shiloh Site.

**Wastewater Treatment and Disposal:** Wastewater from Alternative A facilities would flow through sewer lines by gravity to a lift station and wastewater treatment plant (WWTP). The gravity sewer line would be installed over Pruitt Creek by attaching it to either the pedestrian or vehicle bridge. The WWTP, located within the "treatment area" on the eastern portion of the Shiloh Site, would treat wastewater to a tertiary level and would consist of the following components: coarse screening facility, headworks, immersed membrane bioreactor system, ultraviolet disinfection, chlorine disinfection, effluent pump station, equalization tank, emergency storage tank, and associated operations and storage buildings. Treated wastewater effluent would be disposed through a combination of on-site re-use (toilet/urinal flushing, landscape irrigation and vineyard irrigation applied at agronomic rates, and cooling tower make-up), discharge to Pruitt Creek, and/or off-site irrigation. Seasonal discharge to Pruitt Creek would require a USEPA National Pollutant Discharge Elimination System (NPDES) discharge permit. Seasonal storage ponds or tanks would be used to seasonally store treated effluent until it can be 1) reused either on-site or offsite for irrigation of landscaping, turf, or vineyard areas, or 2) discharged to Pruitt Creek. The size of the storage facilities would vary depending on the extent of off-site recycled water usage/irrigation and discharge limitations to the Creek.

**Grading and Drainage:** Construction would involve grading and excavation for building pads and parking lots. The proposed grading concept accomplishes a near balanced site with less than 10,000 cubic yards of fill required to be imported. Finished floor elevations will be approximately 1-2 feet above the 500-year floodplain elevations associated with Pruitt Creek. Various sheds would collect runoff and convey flows to respective bioswales, from bioswales flows would be conveyed to a detention basin or Pruitt Creek. Storm drain outfalls to the creek would be designed with rock slope protection to prevent erosion of the natural creek banks and erosion downstream. Runoff in the area of the WWTP would be captured and conveyed to the WWTP for treatment and disposal. Alternative A would limit the post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. Additionally, stormwater treatment methods are proposed to be consistent with the Storm Water Low Impact Development (LID) Technical Design Manual, approved and required by the North Coast Regional Water Quality Control Board through the multi-jurisdictional MS4 permit for Sonoma County and the Town of Windsor.

**Public Services:** The Sonoma County Sheriff's Office (SCSO) would be the public agency responsible for providing law enforcement services to the Shiloh Site in accordance with Public Law 280. The Tribe proposes to enter into a contract with SCSO for law enforcement services from SCSO for the Proposed Project. The Tribe proposes to enter into a contract with Sonoma County Fire Department (SCFD) for the provision of fire protection and emergency medical services for the Shiloh Site. A Letter of Intent between the Tribe and SCFD specifies the intention of the Tribe and SCFD to enter into a Memorandum of Understanding for the provision of services (Final EIS Appendix O). The Final EIS describes an option for the construction and operation of an on-site public safety building in the absence of an agreement for services. If the Tribe does not enter into a service agreement for law enforcement and/or fire protection services, mitigation measures include that the Tribe will establish, equip, and staff a public safety building on the Shiloh Site.

**Energy:** PG&E would provide electrical services to Alternative A. Alternative A will use electric water and space heating units and appliances in lieu of natural gas or propane units to the greatest extent practicable. If natural gas is needed, PG&E would provide this service.

**Best Management Practices:** Construction and operation of Alternative A would incorporate a variety of industry standard best management practices (BMPs) designed to avoid or minimize potential adverse effects resulting from the development of Alternative A. These are listed in the Final EIS Table 2.1-3. The Tribe has committed to the implementation of these measures as a matter of Tribal Law; refer to the Tribal resolution provided in Final EIS AppendixR.

### **2.2.2 Alternative B – Reduced Intensity Alternative**

Alternative B would be located on the Shiloh Site and consists of the following components: 1) transfer of the 68.6-acre Shiloh Site into federal trust status for the benefit of the Tribe for gaming purposes as described in **Section 2.1.1**; and 2) the subsequent development by the Tribe of a resort facility that includes a three-story casino, a three-story hotel with spa and

pool area, ballroom/meeting space, and associated parking and infrastructure on the Shiloh Site. Alternative B is similar to Alternative A, except that the number of hotel rooms is reduced to 200 and the large ballroom, the event center, and the surface parking lot are eliminated. Alternative B would have a slightly reduced demand for services such as water supply, wastewater treatment, fire protection, law enforcement, and utilities compared to Alternative A due to the smaller development size.

### **2.2.3 Alternative C – Non-Gaming Alternative**

Alternative C differs from the other alternatives in that it does not include a casino or gaming element. Alternative C consists of the following components: 1) transfer of the 68.6-acre Shiloh Site into federal trust status for the benefit of the Tribe; and 2) the subsequent development by the Tribe of a winery and hotel that would include a visitor's center, a 200-room hotel with spa and pool area, a restaurant, and associated parking and infrastructure on the Shiloh Site. The winery would have a reduced demand for services such as water supply, wastewater treatment, fire protection, law enforcement, and utilities compared to Alternatives A and B due to the smaller development size. Alternative C would employ fewer people and attract fewer patrons than Alternatives A and B.

### **2.2.4 Alternative D – No Action Alternative**

Under Alternative D, none of the development alternatives (Alternatives A, B, and C) would be implemented. No land would be placed in federal trust for the benefit of the Tribe. Alternative D assumes that the existing agricultural use of the Shiloh Site as a vineyard would continue for the foreseeable future.

## **3.0 PREFERRED ALTERNATIVE**

For the reasons discussed herein and in the Final EIS, the Department has determined that Alternative A is the agency's Preferred Alternative because it best meets the purpose and need for the Proposed Action. The BIA's mission is to enhance the quality of life and to promote economic opportunity in balance with meeting the responsibility to protect and improve the trust resources of American Indians, Indian Tribes, and Alaska Natives. This mission is reflected in the policies underlying the statutory authorities governing this action, namely, the IRA, which was enacted to promote Indian self-government and economic self-sufficiency, and IGRA, which was enacted to govern Indian gaming as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. Of the alternatives evaluated within the EIS, Alternative A would best meet the purposes and needs of the BIA, consistent with its statutory mission and responsibilities to promote the long-term economic vitality, self-sufficiency, self-determination, and self-governance of the Tribe.

The casino-resort complex described under Alternative A would provide the Koi Nation of Northern California with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for the Tribal government. Under such conditions, the Tribal government would be stable and better prepared to provide essential programs and services to its membership. Alternative A would also allow the Tribe to implement the highest and best use of the property.

While Alternative A would have greater environmental impacts than the No Action Alternative (Alternative D), the No Action Alternative does not meet the purpose and need for the Proposed Action, and the environmental impacts of the Preferred Alternative are adequately addressed by the mitigation measures adopted in this ROD.

Alternatives B and C would have similar impacts to Alternative A, but such impacts would generally be less than those under Alternative A because of the decreased development scope of development. Additionally, economic returns would be less than with Alternative A.

In summary, Alternative A is the alternative that best meets the purposes and needs of the Tribe and the BIA while resulting in no significant impacts after mitigation. Therefore, Alternative A is the Department's Preferred Alternative.

#### **4.0 ENVIRONMENTALLY PREFERRED ALTERNATIVE(S)**

Among all of the alternatives, the No Action Alternative (Alternative D) would result in the fewest environmental impacts. Under the No Action Alternative, the BIA would not transfer the Shiloh Site into trust for the Tribe, and none of the development alternatives (Alternatives A, B, and C) would be implemented. It is assumed that the existing agricultural use of the Shiloh Site as a vineyard would continue for the foreseeable future. The No Action Alternative would not meet the purpose and need for the Proposed Action as it would not provide a long-term, sustainable revenue stream to support the Tribal government, which would limit the Tribe's self-sufficiency, self-determination, and economic development.

Among the development alternatives, Alternative C would result in reduced environmental impacts in comparison to Alternatives A and B. This is due to the reduced footprint of development and reduced demands for services such as water supply, wastewater treatment, fire protection, law enforcement, and utilities. Alternative C would have significantly reduced economic output for the Tribe in comparison to Alternatives A and B and would not be the most effective means of providing a long-term sustainable revenue stream for the Tribe.

### **5.0 ENVIRONMENTAL IMPACTS AND PUBLIC COMMENTS**

#### **5.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN FINAL EIS**

A number of specific issues were raised during the EA and EIS scoping process and public and agency comments on the EA and Draft EIS. Each of the alternatives considered in the Final EIS was evaluated relative to these and other issues. The categories of the most substantive issues raised include:

- Land Resources
- Water Resources
- Air Quality and Greenhouse Gases
- Biological Resources
- Cultural and Paleontological Resources

- Socioeconomics and Environmental Justice
- Transportation and Circulation
- Land Use
- Public Services and Utilities
- Noise
- Hazardous Materials and Hazards
- Visual Resources
- Indirect and Growth-Inducing Effects
- Cumulative Effects

The evaluation of project-related impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments for the Final EIS were accomplished using accepted industry standard practice, procedures and the most currently available data and models for each of the issues evaluated in the Final EIS. Alternative courses of action and mitigation measures were developed in response to environmental concerns and issues. Section 3 of the Final EIS described effects of Alternatives A through C (referred to as the “development alternatives” or “project alternative”) as follows:

#### **5.1.1 Land Resources**

Topography – The existing topography of the Shiloh Site is relatively flat, ranging in elevation from 135 feet to 160 feet above mean sea level and generally sloping toward Pruitt Creek, which runs through the site. The site does not contain any distinctive topographical features, and on-site grading would facilitate proper drainage.

Construction of Alternatives A through C would require grading a significant portion of the Shiloh Site. For Alternative A, the estimated overall earthwork volume is 115,000 cubic yards (CY), with a near balanced site and less than 10,000 CY of imported fill required. If a seasonal storage pond is used, the overall earthwork volume would increase by 55,000 CY with no import or export of fill needed. Fill would primarily be placed on the southwesterly portion of the Shiloh Site near the floodplain. Proposed facilities would be constructed one to two feet above grade to ensure building protection from the 100-year floodplain. On-site grading would be designed to convey stormwater toward the proposed drainage system. Alternatives B and C would involve less extensive grading due to reduced building and parking footprints, and smaller on-site wastewater treatment and reclaimed water storage facilities. Alternative C would require the least grading, maintaining existing vineyards and a smaller building footprint.

The changes in topography due to the grading activities would not result in a major or perceptible change to the existing topography. The grading activities proposed during construction would largely preserve the existing site topography, and impacts would be less than significant with no mitigation required.

Seismic Conditions – The Shiloh Site is not within the zone of an active fault as defined by the Alquist-Priolo Earthquake Fault Zoning Act. However, it is approximately 0.5 miles west

of the Rodgers Creek Fault and approximately six miles southwest of the Maacama Fault, both of which have been active during the past 11,700 years.

The project facilities would be constructed to standards of the Tribe's Building and Safety Code of 2023, which are consistent with the 2022 California Building Code and California Public Safety Code as set forth in Titles 19 and 24 of the California Code of Regulations, particularly those pertaining to earthquake design, to safeguard against major structural failures and loss of life. A project-specific geotechnical report would be prepared prior to construction to manage ground shaking-related hazards from a geologic, geotechnical, and structural standpoint. Therefore, impacts from potential seismic conditions and induced hazards, such as liquefaction, would be less than significant.

Soil Characteristics – The soils on the Shiloh Site include Huichica loam, Huichica loam ponded, Yolo silt loam, and Riverwash. These soils have varying saturated hydraulic conductivity (Ksat) rates, ranging from very low to very high, indicating that some areas have high infiltration rates while others are more prone to runoff.

Soil erosion is a potential concern due to stormwater runoff, wind, and human activities. Factors that influence erosion include physical properties of the soil, topography (slope), annual rainfall, and peak intensity. Although the Natural Resource Conservation Service (NRCS) classifies the soil types as moderately well drained to excessively drained, subsurface testing showed that the site is poorly drained with areas of shallow groundwater, which could increase the potential for erosion. However, the majority of the Shiloh Site is relatively flat, reducing erosion risks.

To mitigate soil erosion, the project would comply with the Clean Water Act (CWA) and obtain coverage under the NPDES Construction General Permit. A Stormwater Pollution Prevention Plan (SWPPP) would be prepared and implemented to control erosion, sedimentation, and other potential pollutants. With adherence to these regulatory requirements and BMPs, erosion impacts would be minimal and less than significant.

Mineral Resources – Given that there are no known or recorded mineral resources within the Shiloh Site, the project alternatives would have no impact on mineral resources.

### **5.1.2 Water Resources**

Construction Stormwater Impacts: Construction activities under Alternatives A through C would include ground-disturbing activities (e.g., grading and excavation) which could lead to erosion of topsoil, sediment discharge to surface waters during storm events, resulting in the degradation of downstream water quality. Construction activities would also include the routine use of potentially hazardous construction materials, such as concrete washings, oil, and grease that could spill onto the ground and dissolve into stormwater. Discharges of pollutants to surface waters from construction activities and accidents are a potentially significant impact. Erosion control measures will be employed in compliance with the NPDES Construction General Permit for construction activities. A SWPPP will be developed prior to any ground disturbance at the project site and will include BMPs to reduce potential



surface water contamination during storm events. Furthermore, BMPs would ensure protection of surface water quality. Accordingly, the implementation of Alternatives A through C would not result in significant adverse effects to construction phase stormwater runoff.

Operational Impacts: Alternative A through C would alter the existing drainage pattern of the sites and would increase stormwater runoff as a result of increased impervious surfaces. Alternatives A through C include various design features to improve stormwater quality and quantity and include development of a stormwater drainage system that would limit post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. Stormwater treatment and detention would be provided by bioswales, a detention basin, and the wastewater treatment plant. The incorporation of BMPs would prevent sediment and debris from entering the stormwater drainage system. Stormwater discharge to Pruitt Creek would first be routed through bioswales for treatment and sized per Sonoma County low impact development requirements for pollutant reduction. Storm drain outfalls to Pruitt Creek would be designed with rock slope protection to prevent erosion of the natural creek banks and erosion downstream. BMPs identified would ensure protection of surface water quality. Accordingly, the implementation of Alternatives A through C would not result in significant adverse effects to operational stormwater runoff.

Floodplain: The building components of Alternative A through C would be constructed outside of the regulatory floodway and FEMA-designated 100-year and 500-year floodplains. Facilities within the 100-year floodplain for Alternative A and B include a service yard, two bioswales (one on either side of Pruitt Creek), and a discharge pipeline/outfall structure. Alternative C includes the development of vineyards and a discharge pipeline/outfall structure within the floodplain. Earthwork within the floodplain for all development alternatives would be balanced to prevent changes to the delineated floodplain mapping and thus floodplain impacts would be less than significant.

Groundwater Recharge: The soils on the Shiloh Site have a slow infiltration rate and moderate to moderately high rate of runoff. Based on these characteristics, the Shiloh Site is not likely a significant source of groundwater recharge. The development of bioswales and a detention basin for capturing stormwater runoff onsite for Alternatives A through C have been designed to maintain the stormwater discharge from impervious surfaces at rates that are no greater than current levels. This will result in stormwater percolation similar to historic rates. Additionally, the reduction in vineyard areas on the Shiloh Site would result in some of the soil moisture that is currently being used by the vineyard percolating downwards and recharging the groundwater table. Therefore, impacts to groundwater recharge for Alternatives A through C would be less than significant.

Groundwater Drawdown: Potable water for Alternatives A through C would be provided by on-site groundwater wells. Use of recycled water for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup would reduce overall water demands. BMPs include the use of low-flow appliances and drought-tolerant landscaping to further reduce demands. Assuming the use of recycled water, Alternative A has an average

potable water demand of 170,000 gallons per day (gpd) and a peak potable water demand of 294,000 gpd. The estimated average daily water usage for Alternative B would be approximately 117,000 gpd. The estimated average daily water usage for Alternative C would be approximately 19,000 gpd. It is expected that groundwater is available within the Shiloh Site and can reliably produce up to 400 gallons per minute (576,000 gpd) based on existing Shiloh Site wells.

The Groundwater Resources Impact Assessment (GRIA) prepared for Alternative A was based on the Santa Rosa Plain Hydrologic Model (SRPHM) developed by the USGS and was used to estimate groundwater drawdown for the shallow, immediate, and deep aquifer. The assessment determined that the maximum predicted drawdown from Alternative A at the water table is approximately 1.6 feet within the immediate vicinity of the Shiloh Site which is less than the 5 feet of drawdown widely used to identify the potential for significant interference drawdown in shallow wells. The predicted drawdown to wells drilled in the deep aquifer for Alternative A was predicted to be less than the threshold of 20 feet of interference drawdown used to identify the potential for significant interference drawdown to deeper wells. Impacts for Alternative B and C would be similar to Alternative A but reduced in nature as these alternatives have a lower potable water demand. Therefore, interference drawdown impacts to nearby domestic wells in the shallow, intermediate, and deep aquifer from Alternative A through C were determined to be less than significant.

Consistency with the Groundwater Sustainability Plan – The GRIA concluded that Alternative A would not interfere with the implementation of the Groundwater Sustainability Plan for the Sonoma Valley Groundwater Subbasin by causing or contributing to: chronic lowering of groundwater levels; depletion of groundwater storage; water quality degradation due to induced contaminant migration or interference with cleanup efforts or water quality management plans; depletion of interconnected surface water, including potential flow in Pruitt Creek or impacts to groundwater-dependent ecosystems (GDEs); and/or land subsidence. Similarly, Alternatives B and C would be consistent with the Groundwater Sustainability Plan as they have reduced groundwater demands in comparison to Alternative A. While the conclusions of the Draft EIS and Final EIS were based on reasonable analysis, a Supplemental Evaluation of Potential Surface Water Depletion Impacts (included as Exhibit 2 to **Attachment 3** of this ROD) was prepared concurrently with the Final EIS to further support the conclusion that impacts from Alternative A to stream flow in Pruitt, Pool and Mark West Creeks would be less than significant. The Supplemental Evaluation supported the original conclusions with additional modeling and did not result in any changes to the significance findings. The Supplemental Evaluation confirmed that potential impacts to perennial reaches of these streams from groundwater extraction for the Project will be less than significant.

Groundwater Quality - Groundwater quality could be adversely affected if pollutants enter the environment during construction or operational activities. For Alternative A through C, the Tribe would comply with the NPDES Construction General Permit from the USEPA for construction site runoff during the construction phase in compliance with the Clean Water Act. This permit would include the preparation and implementation of a site-specific SWPPP and proper implementation of stormwater BMPs to reduce and/or prevent water quality

impacts during construction. Furthermore, implementation of BMPs would reduce the potential impacts to groundwater quality during construction to a less-than-significant level. During operation of Alternatives A through C, an on-site stormwater system would include a detention basin, bioswales, and WWTP treatment to treat pollutants from stormwater runoff such as total suspended solids, hydrocarbons, nutrients, metals, and other common pollutants. With the collection and treatment provided by the proposed stormwater system, impacts to groundwater quality would be less than significant during operation.

Wastewater Treatment and Disposal - Under all development alternatives, wastewater would be collected and transferred to an on-site WWTP which would treat wastewater to a tertiary level as defined by Title 22 of the California Code of Regulations. Treated wastewater effluent would be adequately disposed through a combination of on-site re-use (toilet/urinal flushing, landscape irrigation and vineyard irrigation applied at agronomic rates, and cooling tower make-up), discharge to Pruitt Creek, and/or off-site irrigation. Seasonal storage ponds or tanks would be used to seasonally store treated effluent until it can be reused or discharged to Pruitt Creek. Effluent discharged to Pruitt Creek would require an NPDES discharge permit. The Regional Water Quality Control Board prohibits effluent discharges from wastewater treatment facilities to the Russian River and its tributaries during the dry season (approximately May 15 through September 30) in their Basin Plan due to significant seasonal flow variations for the Russian River tributaries during the summer and winter months. Discharges during the wet season (approximately October 1 through May 14) when flows are higher are typically allowed to be a percentage of the measured streamflow near the point of discharge. The flow monitoring location would be located downstream of the proposed discharge location and specified by the NPDES permit. As required by the NPDES discharge permit, effluent water quality would be monitored and reported at least annually to the USEPA.

All on-site landscape and vineyard irrigation areas are at least 50 feet from known domestic water supply wells. Any offsite irrigation with recycled water would comply with the Statewide General Order for Recycled Water Use- Order WQ 2016-0068-DDW, which outlines extensive requirements for producers and users of recycled water to ensure the protection of public health and water quality. These include compliance with the Uniform Statewide Recycling Criteria outlined in Title 22 of the California Code of Regulations.

As effluent would meet Title 22 standards, no significant reduction in the quality of surface or groundwater is anticipated. The NPDES permit through flow limitation, water quality testing, and other measures, would ensure that effluent disposal does not cause additional impairment of downstream waterbodies and that the beneficial uses of downstream waterbodies are maintained. For these reasons, potential impacts to surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A through C would be less than significant.

### **5.1.3 Air Quality**

Construction Emissions – All development alternatives would generate air pollutants during construction. The Shiloh Site is designated a nonattainment area for ozone and a maintenance

area for carbon monoxide (CO). All other criteria air pollutants are in attainment. Emissions of individual criteria pollutants from the construction of the project alternatives would not exceed applicable *de minimis* levels; therefore, a conformity determination is not required for these pollutants during construction of the project alternatives. Section 2 of the FEIS includes BMPs that would further reduce project-related emissions of criteria pollutants and diesel particulate matter (DPM) during construction. The construction of Alternatives A through C would not result in significant adverse effects to regional air quality.

Operational Mobile and Area Emissions – Operation of the project alternatives would result in the generation of emissions from mobile sources, such as patron, employee, and delivery vehicles accessing the Shiloh Site, and stationary sources, including the proposed emergency diesel generators. Emissions of individual criteria pollutants, with the exception of CO, would not exceed applicable *de minimis* levels; therefore, a conformity determination is not required for these pollutants during operation of the project alternatives. Because CO emissions would exceed *de minimis* levels, a Final General Conformity Determination, provided as Appendix F-4 of the FEIS, was prepared. As described therein, dispersion modeling confirmed that the project alternatives would not cause or contribute to new violations of the National Ambient Air Quality Standards (NAAQS) for CO or conflict with applicable regulatory standards, including the State Implementation Plan (SIP) and CO Maintenance Plan under the Clean Air Act (CAA). Section 2 of the FEIS includes BMPs that would further reduce project-related operational emissions of criteria pollutants. Operation of Alternatives A through C would not result in significant adverse effects to regional air quality.

Hazardous Air Pollutants - A Health Risk Assessment (HRA), included as Appendix F-3 of the FEIS, was conducted to evaluate emissions of Hazardous Air Pollutants during construction and operation, and address potential health risks resulting from mobile and stationary sources. The HRA concluded that diesel particulate matter (DPM) emissions during construction would remain below Bay Area Air Quality Management District (BAAQMD) thresholds due to the temporary nature of construction and the highly dispersive properties of DPM. Further, it determined that project-related health risks resulting from operational emissions, including cancer risks for residents and workers, would remain below BAAQMD thresholds and not result in significant human health impacts.

Odors - Odors during construction would primarily result from sulfur dioxide emissions from heavy construction equipment; however, these odors would be localized and disperse quickly, resulting in a less-than-significant impact. While the on-site WWTP would generate odors during operation, the relatively low volume of wastewater to be treated on-site and the implementation of BMPs outlined in Section 2 of the FEIS—including odor-reducing components and strategic siting—would reduce the potential for odor impacts to less-than-significant levels.

#### 5.1.4 Biological Resources

Terrestrial Habitats – Alternatives A through C would impact vineyards and ornamental landscaping. This habitat is not considered sensitive and, therefore, would not constitute a significant impact, and no mitigation is required.

Aquatic Features – Under Alternatives A through C, a portion of Pruitt Creek and its associated riparian habitat would be impacted for construction of access/circulation and utility infrastructure. In-stream seasonal wetlands would also be potentially impacted. Pruitt Creek and associated riparian and wetland habitats are considered sensitive, and Pruitt Creek and associated in-stream wetlands are considered waters of the U.S. Impacts would be minimized by design and through the use of a clear-span bridge. However, impacts to Pruitt Creek and its associated riparian and wetland habitat would still occur and would be significant. This impact would be reduced to less-than-significant levels with implementation of the mitigation measures identified in **Section 6** of this ROD and Section 4 of the FEIS.

Alternatives A through C would also impact roadside drainage ditches and associated seasonal wetlands during the installation of access improvements. Based on the Approved Jurisdictional Determination (Appendix G-8 of the Final EIS), the roadside drainage ditch and seasonal wetlands affected by the proposed access driveway are not federally jurisdictional. Therefore, impacts to these features would not constitute a significant impact and no mitigation is required.

Construction of Alternatives A through C have the potential to indirectly affect aquatic features, including Pruitt Creek, roadside drainage ditches, and seasonal wetlands through erosion and sedimentation. The project alternatives would be required to adhere to the NPDES Construction General Permit, which would prevent significant indirect construction-phase impacts to aquatic features. This would be a less-than-significant impact, and no mitigation is required.

Federally Listed or Protected Special-Status Species – The potential for Alternatives A through C to impact federally listed or protected special-status species is limited to impacts to federally-listed fish species, California red-legged frog (CRLF), and northwestern pond turtle (NPT). These species could be impacted by impacts to Pruitt Creek and its riparian corridor. Impacts to federally-listed fish species would come from potential changes in habitat quality and associated changes in downstream habitat suitability. Potential impacts to CRLF and NPT would be limited to alterations to dispersal habitat (Pruitt Creek and riparian corridor), and impacts to individuals that may disperse through the Shiloh Site during construction. Alternatives A through C would adhere to the NPDES Construction General Permit during construction and NPDES discharge permit for seasonal discharge of tertiary treated effluent to Pruitt Creek during operation. The limitations in the NPDES discharge permits would be developed to be protective of the beneficial uses of Pruitt Creek and the Russian River in accordance with Basin Plan objectives, including requirements for water quality for a designated cold freshwater habitat and spawning, reproduction, and/or early development. These impacts would be avoided or reduced to less-than-significant levels with adherence to the conditions of applicable permits and implementation of BMPs in FEIS Section 2 and the mitigation measures identified in **Section 6** of this ROD and Section 4 of the FEIS.

Critical Habitat and Essential Fish Habitat – The Shiloh Site falls within Critical Habitat for Steelhead CCC DPS. Critical Habitat for coho salmon CCC ESU and Chinook salmon CC ESU is located near the Project Site within the Russian River Basin. Critical Habitat for coho salmon CCC ESU is approximately 0.85 miles northwest of the Shiloh Site. Critical Habitat for Chinook salmon CC ESU is approximately 4.35 miles west of the Shiloh Site. The Project Site falls within EFH for Pacific salmon, specifically for Chinook and coho salmon within the Russian River watershed. The potential for Alternatives A through C to impact Critical Habitat or Essential Fish Habitat is limited to impacts to Pruitt Creek and its riparian corridor. Impacts to Pruitt Creek and its riparian corridor are discussed above under Aquatic Resources. As discussed above, these impacts would be avoided or reduced to less-than-significant levels with implementation of the mitigation measures identified in **Section 6** of this ROD and Section 4 of the FEIS.

Migratory Birds and Other Birds of Prey – All development alternatives could adversely affect active migratory bird nests if vegetation removal or loud noise-producing activities associated with construction were to occur during the nesting season (February 1 through August 31). Potential adverse effects to migratory birds and other birds of prey would be reduced to less-than-significant levels with implementation of the mitigation measures identified in **Section 6** of this ROD and Section 4 of the FEIS, which include a preconstruction survey and avoidance buffers for active nests.

Nighttime lighting from the operation of the casino could affect both migrating and local bird populations. With the incorporation of design features in Section 2 of the FEIS, including the use of non-reflective glass and downcast lighting, potential adverse effects to migratory birds and other birds of prey would be less than significant.

State-Listed Special-Status Species – The FEIS did not identify state-listed species with the potential to occur on the Shiloh Site beyond those species already addressed under federally listed or protected special-status species above. As discussed above, impacts to federally listed or protected special-status species would be avoided or reduced to less-than-significant levels with implementation of the mitigation measures identified in **Section 6** of this ROD and Section 4 of the FEIS.

Section 7 of the Endangered Species Act– The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) share responsibility for administering the federal Endangered Species Act. BIA submitted a Biological Assessment to USFWS to initiate informal consultation with USFWS on February 26, 2024 (correspondence included in Appendix G-7 of the Final EIS). In consultation with USFWS staff, the BIA determined that there would be No Effect to federally-listed species under USFWS jurisdiction with the inclusion of proposed BMPs and mitigation measures. The BIA provided an updated Biological Assessment (Appendix G-1 of the Final EIS) and No Effect Letter to USFWS on May 6, 2024 (included within **Attachment 3** of this ROD). USFWS acknowledged the finding and confirmed that no further consultation actions are necessary (correspondence included in Appendix G-7 of the Final EIS).

BIA submitted a Biological Assessment/ Essential Fish Habitat (EFH) Assessment to NMFS on December 15, 2023, for preliminary review which addressed federally listed anadromous fish, Critical Habitat and EFH. NMFS provided comments on the document within an e-mail on February 9, 2024, and a virtual meeting on February 21, 2024. The Biological Assessment/EFH Assessment was revised (Appendix G-2 of the Final EIS) and resubmitted for review on May 22, 2024. In June of 2024 the BIA responded to clarifying questions from NMFS regarding the project description and no further revisions were recommended by NMFS at that time. On July 11, 2024, the Biological Assessment/EFH Assessment was submitted again to NMFS with a request to initiate informal consultation and request for concurrence of a finding of May Affect, but Not Likely to Adversely Affect federally listed fish species, Critical Habitat or EFH (correspondence included in Appendix G-7 of the Final EIS). Via e-mails in October and November of 2024, BIA responded to clarifying questions from NMFS and NMFS proposed additional mitigation measures to be added to the Proposed Project. In response to these discussions, on-site mitigation for impacts to disturbed riparian habitat was added to mitigation in Section 4 of the Final EIS (Biological Resources Mitigation D) and is included in **Section 6** of this ROD. As described in Biological Resources Mitigation Measure J (in **Section 6** of this ROD and Section 4 of the Final EIS), the BIA will continue consultation with NMFS, which must conclude prior to construction, and the project must adhere to all requirements as a result of this consultation.

#### **5.1.5 Cultural Resources**

Archaeological Resources - The following technical studies regarding archaeological resources were included in Final EIS Appendix H and summarized in Section 3.6 of the Final EIS: Historic Property Survey Report of the Shiloh Site (March 2022, Appendix H-1); Cultural Resources Study of the Shiloh Site (May 2022, Appendix H-2); Archaeological Monitoring of Soil Test Trenches (September 2022, Appendix H-3); Obsidian Hydration Results (September 2022, Appendix H-4); Canine Field Survey (January 2024, Appendix H-5); Archaeological Testing of Forensic Dog Locations (April 2024, Appendix H-6). The literature reviews, records searches, subsurface testing, and pedestrian surveys conducted within the Shiloh Site did not identify any resources that met the criteria for inclusion on the NRHP. Therefore, development of Alternatives A through C would not result in direct adverse effects to known historic properties.

The presence of Pruitt Creek within the Shiloh Site, presence of scattered obsidian, and results of the Canine Field Survey and Native American consultation conducted to date indicate there is a potential for subsurface cultural resources to be buried beneath the Shiloh Site with no surface manifestation. Therefore, mitigation measures for the protection and treatment of unanticipated discoveries of archaeological resources and/or human remain are presented in **Section 6** of this ROD and Section 4 of the FEIS. Implementation of these mitigation measures would ensure that the inadvertent discovery of historic archaeological resources during construction-related earth-moving activities associated with Alternatives A through C is handled in compliance with federal regulations and would reduce potential impacts to cultural resources to a less-than-significant level.

Section 106 of the National Historic Preservation Act – As described in Final EIS Section 3.6 and above, the BIA carried out efforts pursuant to 36 CFR Part 800.4 to identify whether historic properties are present within the APE for the Proposed Project. Consistent with 36 CFR Part 800.4(a) these efforts included: 1) determining the area of potential effect; 2) reviewing existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified; 3) seeking information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and 4) gathering information from Indian Tribes to assist in identifying properties which may be of religious and cultural significance to them and may be eligible for the National Register.

Using the information gathered during these efforts, the BIA determined that a finding of No Historic Properties Affected is appropriate for the Proposed Action. Pursuant to 36 CFR Part 800.4(d)(1), the BIA submitted its initial request for concurrence to the State Historic Preservation Office (SHPO) dated July 18, 2023. In a response dated August 10, 2023, the SHPO requested that the BIA continue consulting with the tribes who were contacted in BIA's Section 106 efforts. After conducting additional tribal consultation and overseeing additional surveys and studies requested through the tribal consultation (Canine Field Survey [Final EIS Appendix H-5] and Archaeological Testing of Forensic Dog Locations [Final EIS Appendix H-6]), the BIA resubmitted a request for SHPO concurrence for a finding of No Historic Properties Affected in a letter dated May 6, 2024. As no objection was received from SHPO within 30 days of the BIA's request for concurrence, the BIA's responsibilities under Section 106 should be considered to be fulfilled pursuant to 36 CFR Part 800.3(c)(4) and 800.4 (d)(i). However, on July 10, 2024, SHPO responded advising the BIA to continue tribal consultation and objecting to the finding of No Historic Properties Affected due to insufficient, inadequate, and unreasonable efforts to identify historic properties. In accordance with 36 CFR Part 800.4 (d)(ii), the BIA met with the SHPO to resolve the disagreement; however, no resolution was achieved. Therefore, on October 28, 2024 the BIA elected to forward the finding and supporting documentation to the Advisory Council on Historic Preservation (ACHP) and requested that the Council review the finding in accordance with 36 CFR Part 800.9(a), *ACHP review of Section 106 compliance, assessment of agency official compliance for individual undertakings*. Under 36 CFR Part 800.9(a), the ACHP may provide an advisory opinion to an agency if requested, but it is not mandated to do so. As of the date of this ROD (over 70 days from when the request was submitted) the ACHP has not provided the BIA with the requested advisory opinion. Therefore, the BIA's determination that a finding of No Historic Properties Affected is appropriate for the Proposed Action stands, pursuant to 36 CFR Parts 800.3(c)(4) and 800.4 (d)(i).

Paleontological Resources - Although indicators of paleontological resources within the Shiloh Site are absent, resources have been identified within similar geologic formations in Sonoma County; therefore, the potential for such resources to be uncovered is considered to be moderate. Mitigation measures are presented in **Section 6** of this ROD and Section 4 of the FEIS for the protection and preservation of discoveries of paleontological resources. Implementation of these mitigation measures would ensure that the inadvertent discovery of prehistoric resources during construction-related earth-moving activities associated with



Alternatives A through C is handled in compliance with federal regulations and would reduce impacts to paleontological resources to a less-than-significant level.

#### **5.1.6 Socioeconomic Conditions and Environmental Justice**

Socioeconomic Conditions – All construction of all development alternatives would result in potential economic benefits for the Town of Windsor, Sonoma County and the State of California. Potential economic benefits would include the creation of jobs and increased economic activity of local businesses. Similar to the construction of the development alternatives, operations would also generate increased revenues for a variety of businesses in the Town of Windsor and Sonoma County as a result of increased economic activities. Output received by County businesses would in turn increase their spending, and labor demand, thereby further stimulating the local economy. Alternative C would have beneficial economic effects, but to a lesser extent than either Alternative A or Alternative B due to the reduced size and scope.

The operation of the casino alternatives (Alternatives A and B) would have substitution or competitive effects on competing gaming venues, including tribal casinos and local cardrooms. The substitution effects would be greater for those gaming facilities that are closest to the Shiloh Site and most similar in terms of the types of customers that would visit the venues. Estimated substitution effects are anticipated to peak in the year 2033 and diminish thereafter. With one potential exception, the substitution effects resulting from the gaming alternatives to competing tribal gaming facility revenues are not anticipated to significantly impact these casinos, or to cause their closure, or to significantly impact the ability of the tribal governments that own the facilities to provide essential services to their respective memberships. The Dry Creek Rancheria Band of Pomo Indians (Dry Creek Band) has indicated that the level of impact to the River Rock Casino from operation of Alternative A in combination with historical declines in revenue from the opening of the Graton Resort and Casino in 2013 would likely cause its facility to close and would prevent its ability to move forward with its expansion plans. Although a review of similar case studies and market data suggests that it is unlikely that the River Rock Casino would no longer be economically viable, confidential and proprietary data has not been provided to facilitate further analysis. Therefore, in the absence of this data, the potential for competitive effects resulting from Alternatives A and B to cause the closure of the River Rock Casino is considered a potentially significant impact.

The operation of the development alternatives would also have non-gaming related substitution effects on local retail businesses and hotels from spending on categories such as food and beverage, retail, lodging, and entertainment. Casino hotels are developed primarily for marketing, player development programs, and to induce additional casino visitation. Therefore, it is estimated that there would be minimal substitution in the local hotel market from the casino alternatives. The substitution effects from the non-gaming Alternative C would not be of a magnitude that would cause a physical effect to the environment (such as urban blight). Therefore, the effect would not be significant.

Alternatives A through C would result in decreased property taxes from those land parcels taken into trust. Potential effects due to the loss of property tax revenues resulting from the operation as a sovereign nation on trust land would be offset by increased State, County, and local tax revenues resulting from operation of Alternatives A through C. Alternatives A through C would also result in increased costs to local agencies for the provision of governmental services, including police, fire, and emergency services. Mitigation measures are provided in **Section 6** of this ROD and Section 4 of the FEIS that would reduce impacts to governmental services to less-than-significant levels.

Because several other casino resorts and hospitality developments currently operate in the market area, the local population already includes people who are seeking casino and/or hospitality-based employment. Consequently, the project alternatives would not cause a large influx of residents to fill positions, and the new positions will have a small impact on the number of unemployed. The housing market would not experience a large demand for new homes and a significant impact to the housing market would not occur.

Case studies of similar casino projects in the State of California have shown minimal, if any, deviation from the market average in housing prices. Consequently, Alternatives A and B would likely not have a significant impact on nearby property values, including residential property values.

Social Effects – Prevention and treatment programs, including programs through the California Office of Problem Gambling, exist throughout the State. Alternatives A and B would not substantially increase the prevalence of problem gamblers as several existing gaming facilities are already established within relatively short driving distances from the Shiloh Site. Consequently, the potential impacts to problem gambling as a result of Alternatives A and B would be less than significant. BMPs regarding problem gambling to be implemented during the operation of the casino resort would further reduce the likelihood of problem gambling.

Alternatives A and B would result in an increased number of patrons and employees traveling/commuting into the area on a daily basis. As a result, criminal incidents would increase in the vicinity of the Shiloh Site similar to that which would be expected from a large-scale commercial development. These impacts would be reduced under Alternative C due to the reduced nature of the development. Through the implementation of mitigation measures described in FEIS Section 4, less than significant impacts to law enforcement services and crime would result.

BMPs, described in FEIS Section 2, including the implementation of a “Responsible Alcoholic Beverage Policy,” would be implemented during the operation of the casino resort to reduce the likelihood of drunk driving resulting from Alternatives A and B. Consequently, the potential impacts to drunk driving as a result of the gaming alternatives would be less than significant.

Environmental Justice – As described in FEIS Section 3, no disproportionate or adverse effects to non-tribal minority or low-income populations were found for the development

alternatives. Effects to the Tribe, a minority community, would be positive under the development alternatives, as new income would be generated to fund the operation of the tribal government.

Alternatives A and B would not cause physical environmental burdens that would create economic disadvantages for tribal communities other than the Dry Creek Band. Should the River Rock Casino operated by the Dry Creek Band cease operations as a result of the operations of Alternative A or B, this would lead to decreased availability and/or quality of governmental services for tribal members. Thus, a potentially significant disproportionate and adverse effect to the Dry Creek Band and its members may occur. There is no feasible mitigation for this potentially significant impact; however, these effects may be reduced to less than significant should the Dry Creek Band proceed with the proposed expansion of the River Rock Casino.

#### **5.1.7 Transportation/Circulation**

Construction Traffic – All development alternatives would result in temporary increases in daily traffic during construction. The increase in daily traffic would be less than 10% for both Shiloh Road and Old Redwood Highway. Given the increase would be relatively small, dispersed throughout the day, would primarily occur outside of peak traffic times, and be temporary in nature, the impact from construction traffic on local transportation/circulation would be less than significant and would not require any mitigation.

Project Traffic – Several study roadway segments along Shiloh Road would operate at unacceptable LOS at the buildout year with traffic from all development alternatives. However, with mitigation, operating conditions for all study roadway segments would improve compared to Opening Year 2028 No Project Conditions consistent with the Town of Windsor and Sonoma County standards and plans. As such, impacts to roadway segments would be less than significant with mitigation. Study intersections where impacts would occur during one or more of the evaluated peak hours (4 intersections under Alternative A and 3 intersections under Alternative B) would also operate at acceptable LOS with mitigation. Thus, mitigation would reduce impacts to a less-than-significant level. Mitigation measures in **Section 6** of this ROD and Section 4 of the FEIS include requirements to fund and/or construct key improvements to address traffic impacts related to all development alternatives. With mitigation, traffic impacts would be reduced to a less-than-significant level.

Transit, Bicycle, and Pedestrian Facilities – Due to the regional nature of the land uses proposed by the development alternatives, and the semi-rural character of the surrounding area, Alternatives A through C are not expected to contribute a substantial number of pedestrians, bicyclists, or transit riders to the area. Any increase in transit ridership that may be experienced as a result of the development alternatives would be offset by a proportional increase in fare revenue. Alternatives A through C would not adversely impact existing local bicycle and pedestrian facilities, which are generally lacking adjacent to the Shiloh Site. BMPs identified in Section 2 of the Final EIS include the development of on-site pedestrian facilities connecting to the two proposed signalized entrances to the Shiloh Site. Therefore, impacts to transit, bicycle, and pedestrian facilities would be less than significant.

### 5.1.8 Land Use

Land Use Plans - Land use effects of Alternatives A through C would be similar because each alternative would result in the Shiloh Site being transferred from fee to federal trust, thereby removing the site from County land use jurisdiction. The Shiloh Site is zoned by the County as Land Intensive Agriculture (LIA), falls within multiple combining districts, and is within the Windsor-Larkfield-Santa Rosa Community Separator. While the proposed commercial uses are inconsistent with existing zoning and the purpose of the Community Separator designation, they are compatible with large-scale commercial uses near Highway 101 and the Shiloh Road Interchange. Additionally, the Shiloh Site represents only 2% of the acreage dedicated to the Community Separator and would not disrupt its continuity. Further, development of the project alternatives would avoid the Pruitt Creek riparian corridor and the 500-year floodplain, preserving the ecological functions on-site and the resources prioritized by the combining districts. Thus, while the proposed uses on the Shiloh Site are not consistent with allowable uses under existing land use designations and zoning, this inconsistency would not result in significant adverse land use effects.

Land Use Compatibility – The areas immediately adjacent to the Shiloh Site are developed with residential, recreational, commercial, and agricultural uses. As a result, the development of Alternatives A through C has the potential to result in land use compatibility impacts. The increased intensity of development may lead to impacts on sensitive land uses, including potential conflicts related to air quality and noise from construction activities, increased traffic and lighting, and visual effects. However, the use of BMPs detailed in Section 2 of the FEIS, along with mitigation measures for noise, air quality, traffic, and aesthetics outlined in Section 4 of the FEIS and Section 6 of this ROD, would reduce these impacts to less-than-significant levels. Existing vineyards and perimeter trees would be preserved to serve as a buffer from adjacent land uses, and proposed water treatment facilities would be located in the eastern portion of the site, away from sensitive residential uses to the north and west. The project alternatives would not physically disrupt neighboring land uses or prohibit access to neighboring parcels, with continued agricultural operations on adjacent parcels protected under the Sonoma County Right to Farm Ordinance. The Shiloh Site is also located outside the Airport Safety Zone for the Charles M. Schulz Sonoma County Airport, avoiding potential land use conflicts with nearby airports.

Agriculture - The Shiloh Site contains unique farmland and farmland of statewide importance, as designated by the Farmland Mapping and Monitoring Program (FMMP). Alternatives A through C would convert up to 47 acres of agricultural land to non-agricultural uses. The site received a Farmland Conversion Impact Rating (FCIR) score of 144, below the 160-point threshold requiring evaluation of alternative sites. With continued vineyard operations and less than 0.1% of the County's farmland affected, the conversion of agricultural land under the alternatives would result in less-than-significant impacts to agricultural resources.

### 5.1.9 Public Services

Water and Wastewater For Alternatives A through C, water supply and wastewater services would be provided entirely by on-site systems. Water would be drawn from on-site wells, while wastewater would be treated through an on-site wastewater treatment plant (WWTP). These alternatives would not require connections to or modifications of existing public water or wastewater infrastructure, ensuring no impact to public systems.

Solid Waste - Construction activities for Alternatives A through C would generate typical construction debris, such as vegetation removal, packing materials, and building waste. This waste would be transported to permitted facilities, including the Central Landfill, which has sufficient capacity to handle the temporary increases. During operation, Alternatives A, B, and C would generate varying amounts of solid waste, with Alternative A producing the most due to its larger scale. Solid waste contributions to local facilities would remain negligible in comparison to the daily permitted capacity at the Central Landfill. BMPs, such as recycling and waste compaction, would further mitigate potential impacts, ensuring less-than-significant effects to waste management services for all alternatives.

Electricity, Natural Gas, and Telecommunications - Construction could damage underground utilities and lead to outages and/or serious injury, which would be a potentially significant impact. BMPs in Final EIS Section 2 would reduce these potential impacts to less than significant. Electrical services for Alternatives A through C would be provided by PG&E. Planned electrical infrastructure upgrades, expected to be completed by the 2028 project opening date, would provide adequate electrical capacity for the development alternatives. These extensions and services to the Project Site would be made in accordance with approved tariffs with the California Public Utilities Commission, and the Tribe would be responsible for paying the infrastructure improvements deemed required by PG&E. Backup generators on-site would mitigate any temporary service interruptions. For natural gas, planned upgrades would ensure sufficient capacity, or alternative systems such as propane or electric appliances would be used. Telecommunications services would involve minor construction impacts, which would be mitigated by reseeding disturbed areas. With planned upgrades and BMPs, impacts to electricity, natural gas, and telecommunications services would be less than significant for all alternatives.

Law Enforcement - Alternatives A through C would increase service calls to the Sonoma County Sheriff's Office, with the highest increase under Alternative A (approximately 1,433 calls annually). This increase would not require new or expanded facilities. The Tribe has committed to mitigating these impacts through a service agreement with Sonoma County Sheriff's Office or by establishing a public safety building on-site. With these mitigation measures, impacts to law enforcement services would be less than significant.

Fire Protection and Emergency Medical Services - Construction under Alternatives A through C presents typical fire risks, mitigated through BMPs such as fire prevention protocols. During operation, Alternative A would generate approximately 291 annual calls for fire and emergency medical services. The Tribe plans to address this increase through a service agreement with the Sonoma County Fire District or by establishing an on-site fire station through the public safety building. These mitigation measures would ensure impacts to fire

protection and emergency medical services are less than significant enforcement services would be less than significant.

Public Schools - Alternatives A through C would not induce significant population growth, as the development would not require a substantial influx of new residents to fill jobs created by the project. Any new school enrollments resulting from minor population increases would likely be distributed across grade levels and would not overwhelm local school districts. Additionally, increases in property tax revenue from potential new residents would offset any minor service demands by funding additional resources, such as new teachers, if needed. Therefore, impacts to public schools would remain less than significant for all alternatives.

Parks and Recreation - Alternatives A through C might result in minor increases in park visitation, particularly at Esposti Park and Shiloh Ranch Regional Park. However, these increases would not necessitate new facilities or expansions. Therefore, impacts to parks and recreational facilities would be less than significant.

#### 5.1.10 Noise

Construction Noise and Vibration - Construction activities, including stationary equipment and construction traffic, would result in intermittent and temporary noise and vibration impacts. Noise levels during construction would temporarily increase ambient noise in the vicinity of the Shiloh Site but remain within acceptable thresholds due to the implementation of BMPs outlined in Section 2 of the FEIS. Vibration impacts, while generally below perceptible levels at nearby sensitive receptors, could exceed thresholds during the use of specific equipment such as vibratory rollers. Mitigation measures presented in the BMPs, including restrictions on equipment use near sensitive receptors, would ensure that construction noise and vibration impacts are minimized.

Operational Noise - Operational noise associated with Alternatives A through C would result from increased traffic on local roadways, as well as on-site activities such as vehicle circulation, parking lot use, delivery trucks, swimming pool areas, and equipment operation. Traffic noise increases were analyzed based on predicted traffic volumes and baseline conditions for nearby roadways. Although certain roadways near the Shiloh Site already experience noise levels above federal thresholds for residential areas, project-generated traffic noise would not cause a perceptible increase in these areas. Specifically, the predicted changes in traffic noise would remain below the 3 dB level typically considered noticeable to the human ear, ensuring that the project would not result in significant impacts related to traffic noise.

On-site operational noise, including HVAC systems and other equipment, would be mitigated through shielding, enclosures, and strategic placement to minimize emissions. Noise levels from all on-site activities would remain below applicable daytime and nighttime thresholds established by local jurisdictions. Additionally, ambient noise surveys confirm that on-site noise sources would not substantially increase baseline noise levels at sensitive receptors.

Overall, the combined effects of traffic-related and on-site operational noise for Alternatives A through C would be within acceptable limits, ensuring no significant impacts at nearby sensitive receptors.

#### **5.1.11 Hazardous Materials**

Construction - Hazardous materials used during construction of Alternatives A through C may include gasoline, diesel fuel, motor oil, hydraulic fluid, solvents, cleaners, sealants, welding flux, various lubricants, paint, paint thinner, and other products. As with any liquid and solid, during handling and transfer from one container to another or general usage, the potential for an accidental release exists. Depending on the relative hazard of the material, if a spill were to occur of significant quantity, the accidental release could pose both a hazard to construction employees as well as to the environment. Construction BMPs required within the NPDES Construction General Permit and those identified in **Section 6** of this ROD and Section 2 of the FEIS would limit and often eliminate the impact of such accidental releases. With the implementation of these BMPs and compliance with federal laws relating to the handling of hazardous materials, no adverse effects associated with the accidental release would occur during construction.

The Phase I Environmental Site Assessment for the Shiloh Site did not identify a potential for contaminated soil on-site. In the unlikely case that construction personnel do encounter contaminated soil of any type prior to or during earth-moving activities, a significant hazardous material impact would exist. However, the BMPs identified in **Section 6** of this ROD and Section 2 of the FEIS would minimize the possible hazards associated with existing contamination. Implementation of these BMPs would further reduce the potential for Alternatives A through C to result in significant adverse effects associated with hazardous materials.

Operation – Operation of Alternatives A through C would utilize hazardous materials in varying quantities and capacities that would depend on the project component. The WWTP would require a limited quantity of chemicals to function, which could include liquid chlorine and liquid muriatic acid or dry granular sodium bisulfate. The maintenance of on-site landscaping would require the transportation, storage, and use of pesticides and fertilizers. Other hazardous materials used would be primarily for the operation and maintenance of project facilities may include, but are not limited to, motor oil, hydraulic fluid, solvents, cleaners, lubricants, paint, and paint thinner. All hazardous materials would be transported, stored, handled, and disposed of according to federal and manufacturer’s guidelines. Furthermore, the BMPs identified in **Section 6** of this ROD and Section 2 of the FEIS would minimize the possible hazards associated with operational activities. Therefore, Alternative A through C would not result in significant adverse effects related to the waste produced or hazardous materials used.

Construction Wildfire Risk - During construction of Alternatives A through C, the operation of equipment could create sparks or fire that could ignite the sparse vegetation on the Shiloh Site. Examples of construction equipment that could ignite a fire and thus increase risk include power tools and acetylene torches. However, implementation of BMPs identified in

**Section 6** of this ROD and Section 2 of the FEIS would reduce the probability of igniting a fire during construction. These BMPs include the prevention of fuel being spilled and putting spark arresters on equipment having the potential to create sparks. Therefore, construction of Alternatives A through C would not increase wildfire risk onsite or in the surrounding area.

Evacuation Impacts Due to Wildfire – The potential increase in evacuation times as a result of the operation of Alternatives A through C is a potentially significant impact. However, with implementation of Mitigation Measures included in **Section 6** of this ROD and Section 4 of the FEIS, the Shiloh Site is intended to be evacuated early and before community wide evacuation, to minimize the potential for increased evacuation timelines. Additionally, the Tribe would coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Shiloh Site and vicinity. These measures would improve the ability of the County to rapidly identify and respond to wildfire events, even further reducing the potential for a “No Notice” scenario. With implementation of the mitigation measures included in **Section 6** of this ROD and Section 4 of the FEIS, Alternatives A through C would not significantly inhibit local emergency response to or evacuation from wildfire or conflict with a local wildfire management plan.

#### **5.1.12 Aesthetics**

Operational Impacts - The development of Alternatives A through C would substantially alter the visual character of the Shiloh Site. However, the architectural design, which incorporates natural materials and colors, along with the incorporation of project design features described in Section 3.13 of the FEIS, would help integrate the development into the existing rural and wine country setting. Decorative screens would shield the parking garage, and the reclaimed water storage tanks would be painted with nature-themed murals to provide visual screening from nearby residential areas. Natural features on the Shiloh Site, including the Pruitt Creek riparian corridor and existing vineyard operations that buffer the site, would be preserved to maintain ecological functions and help blend the development with its surroundings. While development of the project alternatives would substantially alter views of the Shiloh Site as experienced from nearby residential areas, the overall viewshed and visual character as experienced from designated scenic corridors, including Highway 101 and Faught Road, would remain largely unchanged. While the Shiloh Site’s visual sensitivity is rated “High” under Sonoma County’s Visual Assessment Guidelines, the incorporation of project design features, which are consistent with recommended mitigation measures provided in the Guidelines, would reduce impacts to viewsheds during operation to less-than-significant levels.

Lighting, Shadow, and Glare - The height of the proposed buildings and the retention of existing trees along the Shiloh Site boundaries would ensure the development alternatives would not cast significant shadows on nearby private residences or public areas. The project alternatives would introduce new sources of light into the existing setting with the potential to increase light and glare in the vicinity. However, existing sources of nighttime lighting are already numerous, and with the incorporation of project design features and BMPs outlined in



Section 2 of the FEIS, lighting, shadow, and glare impacts would be reduced to less than significant levels.

#### **5.1.13 Indirect and Growth-Inducing Effects**

Indirect Effects from Traffic Improvements and Off-site Irrigation - Roadway improvements and pipeline construction could result in soil erosion, drainage modifications, air emissions, and potential risks from hazardous material use. These impacts would be mitigated through compliance with the CWA, NPDES requirements, and local stormwater management standards. A SWPPP would address hazardous material handling, erosion control, and sediment management. The use of recycled water for irrigation would meet California Title 22 standards, reducing off-site groundwater pumping while maintaining water quality. Construction emissions and dust would be minimized by adhering to BAAQMD standards. Combined, these measures would ensure impacts to water, land, air quality, and hazardous materials are less than significant.

Biological and cultural studies for the improvement areas, which are primarily previously disturbed or agricultural land, identified no significant sensitive habitats or cultural resources. Protections for special-status species, nesting birds, and waters of the U.S. under the federal Endangered Species Act, Migratory Bird Treaty Act, and CWA, as well as compliance with CEQA Guidelines for cultural resources, would address any potential impacts. Together, impacts to biological and cultural resources would remain less than significant.

Construction activities could temporarily disrupt traffic flow, generate noise, and create minor delays for local businesses and residences. These impacts would be minimized through traffic management plans, adherence to local noise ordinances restricting work to daytime hours and maintaining access during construction. Roadway improvements would occur within designated transportation or agricultural land use areas, aligning with existing land use plans. Any required right-of-way acquisitions would compensate property owners at fair market value. Visual impacts from roadway widening would be minimal, as the work would occur along existing infrastructure. Underground irrigation pipelines would have no permanent visual effects. Once completed, roadway improvements would enhance traffic flow and reduce congestion, creating long-term transportation benefits. Temporary socioeconomic effects, such as minor disruptions, would be resolved during construction, with no lasting impacts. Combined, these effects on transportation, socioeconomics, noise, land use, and aesthetics would remain less than significant.

Indirect Effects of On-Site Riparian Corridor Wildfire Management Plan Mitigation – Each of the project development alternatives (Alternatives A through C) would require implementation of a Riparian Corridor Wildfire Management Plan as part of the development alternatives mitigation, mitigation identified in in **Section 6** of this ROD and Section 2 of the Final EIS. These actions have the potential to impact biological and water resources and generate additional noise.

The mitigation measure contained standards and requirements protective of biological and water resources. These measures include limiting equipment to hand tools, prohibiting work

within the channel when wetted, prohibiting use of motorized vehicles within the channel, leaving large woody debris and root balls in place when located in the channel and banks, and avoiding vegetation on the channel banks. Vegetation enhancing biological or water resources, such as tree canopies providing shade to the channel, would be maintained. Further, these activities would occur outside of the nesting bird season, or only after a qualified biologist has confirmed no nesting birds would be impacted. As such, no significant indirect impacts to biological or water resources would occur as a result of implementation of the Riparian Corridor Wildfire Management Plan.

Although the Riparian Corridor Wildfire Management Plan would result in increased noise, these actions would not result in a significant adverse effect on ambient noise levels with inclusion of BMPs identified in Section 2 of the Final EIS for the development alternatives.

Growth-Inducing Effects – Each of the development alternatives (Alternatives A through C) would result in employment opportunities and economic activity, including direct, indirect, and induced opportunities. Indirect and induced output could stimulate further commercial growth; however, such demand would be diffused and distributed among a variety of different sectors and businesses in the Sonoma County Region and the State. As such, significant regional commercial growth inducing impacts would not be anticipated to occur under the development alternatives.

#### **5.1.14 Cumulative Effects**

The development of Alternatives A through C, when added to past, present, and reasonably foreseeable future actions would not result in significant cumulative impacts as discussed below.

Land Resources – Cumulative effects associated with land resources could occur as a result of future development in combination with the project alternatives. Approved developments would be required to follow applicable permitting procedures and development codes. Local permitting requirements for construction would address regional geotechnical and topographic conflicts, seismic hazards, and resource extraction availability. In addition, the project alternatives and all other developments that disturb one acre or more must comply with the requirements of the NPDES Construction General Permit, which would lessen the probability of significant erosion occurring regionally. The project would develop a project-specific SWPPP with BMPs for stormwater and erosion to lessen its potential impacts with regards to these environmental issue areas. Therefore, implementation of the project alternatives would not result in significant cumulative impacts to land resources.

Water Resources – Cumulative effects to water resources during the construction of the project alternatives may include erosion, sediment discharge, and discharge of oil or grease which could potentially affect both surface water and groundwater. As with Alternatives A through C, all potential cumulative developments would be required to apply for the NPDES Construction General Permit and develop site-specific SWPPPs to mitigate construction phase water quality impacts. Furthermore, BMPs identified in Section 2 of the Final EIS would ensure protection of surface water quality during construction and the implementation of

Alternatives A through C would not result in significant adverse effects to construction phase cumulative surface water impacts.

Cumulative stormwater discharges from developed sites could increase the chance of downstream pollution and flooding, and runoff characteristics of a watershed are altered when impervious surfaces replace natural vegetation, row crops, or bare soil. Changes in site runoff characteristics could increase drainage volumes, increase stream velocities, increase peak discharges, shorten the time to peak flows, and lessen groundwater contributions to stream base-flows during non-precipitation periods. The immediate area surrounding the Shiloh Site is either developed or zoned and used for agricultural purposes and thus is not anticipated to create cumulative increases in the quantity or velocity of stormwater. Further, the project alternatives include treatment and detention to limit off-site stormwater flows to predevelopment levels. Therefore, implementation of the project alternatives in combination with other cumulative development would not result in significant cumulative effects to surface water and flooding.

With respect to cumulative groundwater impacts, future demands on the groundwater basin from cumulative development would be controlled by local land use authorities, as well as Senate Bill 1168 that requires local agencies to create groundwater management plans, and Assembly Bill 1739 that allows the State to intervene if local groups do not adequately manage groundwater resources. However, Alternative A would contribute to potentially cumulatively significant impacts related to interference drawdown in shallow wells and degradation of groundwater dependent ecosystems during dry years in combination with potential pumping of the Esposti Park well and the North Windsor well by the Town of Windsor during multiple dry years. A Supplemental Evaluation of Potential Surface Water Depletion Impacts (included within **Attachment 3** of this ROD) was prepared concurrently with the Final EIS and did not result in any changes to the previous cumulative significance findings. It is assumed that the Town of Windsor will likely adopt applicable monitoring and mitigation measures identified in their 2009 Water Master Plan Update Environmental Impact Report to identify and substantially lessen or prevent potentially significant impacts associated with its operation of the Esposti Park and North Windsor Wells. If such measures are adopted, Mitigation Measures in **Section 6** of this ROD and Section 4 of this Final EIS require that the Tribe would participate in the development and implementation of the Town's mitigation program in proportion to its contribution to the potentially significant impacts associated with drawdown induced by the Project wells. In the event that the Town of Windsor does not implement a monitoring and mitigation program associated with the operation of the two new municipal wells, the Tribe would implement its own program, as required by mitigation in Section 4. Implementation of mitigation measures in Section 4 would reduce the cumulative impacts of Alternative A to a less-than-significant level. Development of Alternatives B and C would not result in cumulative impacts to groundwater.

The wastewater generated by Alternative A through C would have a less-than-significant water quality impacts due to proper treatment and disposal of effluent. Other cumulative developments would be required to adhere to local, State, and federal regulations with regard to wastewater treatment and disposal. Therefore, Alternatives A through C, in combination

with potential cumulative projects would not result in significant adverse cumulative effects to water quality.

Air Quality – A Final General Conformity Determination, included as Appendix F-4 of the FEIS, was conducted, which incorporated a CO hot spot analysis and dispersion modeling to evaluate CO emissions exceeding *de minimis* levels during project operation. The analysis concluded that the cumulative impacts to CO levels resulting from the project alternatives would be less than significant. A HRA, included as Appendix F-3 of the FEIS, was conducted to evaluate cumulative health risk impacts associated with the construction and operation of the project alternatives. The HRA concluded that the cumulative cancer risks for the maximally exposed individual resident (MEIR) and maximally exposed individual worker (MEIW) are below BAAQMD thresholds, and would not result in significant increases in cancer risk or human health impacts.

Emissions of all criteria pollutants from Alternatives A, B, and C are not considered to be cumulatively significant as they are not expected to significantly contribute to exceedances of NAAQS or alter the existing trend of improving air quality. Those improvements to air quality are largely a product of increasing fuel and vehicle emission standards. Likewise, the transition to electric vehicles is further reinforcing the trend of improving air quality. Other cumulative projects would either not generate significant emissions of criteria pollutants or would be subject to permitting requirements of the BAAQMD and must employ best available control technology to minimize pollution. The project alternatives include BMPs and mitigation to reduce emissions of criteria air pollutants in support of improving regional air quality. Cumulative air quality effects from operation of the project alternatives would be less than significant.

Development of the project alternatives would result in an increase in Greenhouse Gas (GHG) emissions. Because the majority of project-related GHG emissions would originate from indirect mobile sources during operation, regulatory measures enacted by the federal government and the State of California are expected to significantly reduce these emissions over time. Additionally, construction and operational BMPs detailed in Section 2 of the FEIS would further reduce the impacts of project-related GHG emissions. Consistent with CEQ Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, the social cost of GHG emissions was estimated for Alternatives A through C. Based on the consistency of the development alternatives with applicable federal plans to reduce GHG emissions, including those under AB 32 and SO 3399, the implementation of the development alternatives would not result in cumulatively considerable impacts associated with GHG emissions and climate change.

Biological Resources - As the development alternatives would not impact sensitive terrestrial habitats, the development alternatives would not cumulatively contribute to impacts to terrestrial habitats. The project alternatives do, however, have the potential to impact aquatic habitats. Mitigation for the development alternatives included in **Section 6** would prioritize avoidance of these habitats and would require compensatory mitigation for unavoidable impacts, thus offsetting potential impacts. With consideration of mitigation, this would not be cumulatively significant.

USFWS has acknowledged the BIA's determination of No Effect to federally-listed species under USFWS jurisdiction from the Proposed Project with inclusion of BMPs and mitigation (**Section 6**). Therefore, there would be no cumulative impact to federally-listed species under USFWS jurisdiction.

Regarding impacts to federally-listed fish, construction phase impacts would be temporary and would not result in adverse or long-term impacts to the quality of Pruitt Creek. Operational impacts to Pruitt Creek include potential habitat degradation from discharge into the creek. However, discharges would be subject to permitting standards and would be treated prior to discharge. Mitigation included in **Section 6** would ensure water quality parameters such as temperature would not be exceeded. Thus, impacts would be localized and minor and would not cumulatively impact federally-listed species reliant upon Pruitt Creek.

Potential impacts to critical habitat or Essential Fish Habitat would be limited to temporary and localized impacts during the construction phase. As impacts would be temporary and localized, a cumulative impact would not occur.

With inclusion of mitigation in **Section 6**, impacts to nesting birds would be avoided. Thus, the project alternatives would not cumulatively contribute to impacts to migratory birds and other birds of prey.

Cultural Resources – No known historic or paleontological resources were identified within the Shiloh Site; however, there is a potential for significant subsurface cultural resources to be buried beneath the Shiloh Site. Implementation of mitigation measures in **Section 6** of this ROD and Section 4 of the FEIS would reduce potential impacts to unknown subsurface cultural resources on the Shiloh Site to a less-than-significant level. Other development projects in the region would be required to implement similar mitigation measures to protect known and unknown cultural resources in accordance with federal, State, and local regulations. Therefore, with the implementation of mitigation measures specified in **Section 6** of this ROD and Section 4 of the FEIS, the development alternatives would not contribute to significant adverse cumulative effects to cultural resources.

Socioeconomic Conditions and Environmental Justice – The project alternatives in combination with the projects outlined in FEIS Section 3.14 would result in generally beneficial socioeconomic effects associated with economic output, job creation, and fiscal effects. The project alternatives would increase jobs and would create only nominal non-gaming substitution effects typical of similar developments. Any future non-tribal development in the vicinity would be subject to County or Town review and approval, payment of state and local taxes, and development impact fees as appropriate to offset fiscal effects. Mitigation measures in **Section 6** and FEIS Section 4 would require that project-related fiscal effects resulting from increased demands on law enforcement and fire protection providers would be offset through fair share payments. With mitigation, the project alternatives, when considered in combination with other projects, would not lead to significant adverse cumulative impacts associated with the economy, employment housing, or property values.

Although the cumulative substitution effects listed in FEIS Section 3.14 are higher than those described in FEIS Section 3.7.3, as described in that section, in the year or several years after substitution effects peak in 2033, it is anticipated that these tribal governments would continue to be funded at amounts not dissimilar to recent historical levels. Because cumulative substitution effects are larger than those listed in Section 3.7.3, it would likely take a number of years after 2033 for the facilities and associated tribes listed in FEIS Section 3.14 to return to current levels, or close to such levels. As described in Section 3.7.3, assuming typical business management strategies are employed, tribes would utilize the interim period prior to the opening of either Alternative A or B and other potential cumulative developments, including the Graton Casino expansion and Scotts Valley Casino, to adjust their operations in anticipation of market competition. In addition, tribes would prioritize those governmental services that they each deem as their highest priorities. The Dry Creek Band would be the exception, because under a scenario in which it does not proceed with its planned expansion, it would experience a dramatic decline in tribal governmental funding if closure of the River Rock Casino were to occur. Effects to all other existing casinos and the associated tribes are anticipated to be less than significant.

Transportation– Development of the project alternatives, in combination with anticipated growth, would result in increased traffic flow, congestion and a larger number of intersections and roadway segments that do not meet minimum LOS levels. Such effects would be reduced to less than significant levels through mitigation for cumulative project impacts described in **Section 6** of this ROD and Section 4 of the FEIS.

Land Use - Once the Shiloh Site is taken into federal trust, it would not be subject to local land use regulations. Mitigation measures outlined in Section 6 of this ROD would reduce land use conflicts, including inconsistencies with existing zoning, to less-than-significant levels. The project alternatives would not preclude agricultural uses on adjacent properties or result in significant impacts to agriculture. Cumulative impacts to land use and agriculture would be less than significant, as future planned development in the area would be subject to local land use regulations and approval.

Public Services – The project alternatives would not rely on public water or wastewater services and would not significantly increase the County’s population, avoiding cumulative impacts on schools and parks. However, cumulative developments in the area would increase demand for law enforcement and fire protection services, potentially requiring additional facilities, equipment, or personnel. The project alternatives’ impacts would be reduced through mitigation measures, including service agreements with the Sonoma County Fire District and Sonoma County Sheriff’s Office or by establishing a public safety building on-site.

For future projects, the County’s General Plan and local approval processes would ensure that future projects address public service needs through development impact fees, taxes, and service agreements. Additionally, statewide recycling goals would reduce cumulative impacts related to landfill capacity.

With mitigation measures, the project alternatives in combination with other cumulative developments would not result in significant cumulative impacts on public services.

Noise – Cumulative projects in the vicinity of the Shiloh Site, in combination with Alternatives A, B, or C, have the potential to create significant noise impacts. While all approved projects are required to mitigate their own noise and vibration impacts in accordance with local, State, and federal regulations, the cumulative traffic noise environment in 2040 was analyzed to assess the combined effects.

For Alternative A, cumulative traffic noise levels at existing sensitive receptors are projected to exceed significance thresholds along three roadway segments. Additionally, on two segments, cumulative plus project traffic noise levels would exceed the 67 dBA threshold for residential areas where baseline conditions currently do not exceed this threshold. These impacts, located along Shiloh Road (between Hembree Lane and Gridley Drive) and Old Redwood Highway (between Shiloh Road and the Project Entrance), are considered significant. Mitigation measures outlined in FEIS Section 4 and ROD **Section 6** include the installation of noise-reducing pavement along affected road segments under cumulative conditions. With these measures, cumulative noise impacts would be reduced to less-than-significant levels.

Alternatives B and C would result in similar cumulative impacts at these same locations due to shared roadway use. However, the reduced scale of these alternatives would result in slightly lesser impacts than Alternative A. With the implementation of the same mitigation measures, cumulative impacts for Alternatives B and C would also be reduced to less-than-significant levels.

Hazardous Materials and Hazards – There is the potential for cumulative impacts related to hazardous materials during construction of the project alternatives in combination with other projects. New developments on non-federal lands would be required to adhere to federal, State, and municipal regulations regarding the delivery, handling, and storage of hazardous materials, thereby reducing the risk to the public's health and welfare due to accidental exposure. Similarly, construction BMPs identified in Section 2 of the Final EIS for the project alternatives would limit and often eliminate the impact of such accidental releases of hazardous materials. Therefore, there are no significant cumulative hazardous materials impacts associated with the project alternatives.

There is the potential for impacts related to wildfire hazards in combination with other projects. However, new developments would be required to adhere to federal, State, and local building codes and fire protection codes and standards to mitigate impacts related to wildfire hazards. Alternatives A through C include the implementation of project design features and BMPs (described in Section 2 of the FEIS), and mitigation (identified in **Section 6** of this ROD and Section 4 of the FEIS) to reduce inherent wildfire risk. With the implementation of these BMPs and mitigation, construction or operation of the project alternatives would not increase wildfire risk onsite or in the surrounding area or inhibit local emergency response to or evacuation from wildfire. Therefore, cumulative impacts associated with wildfire would be less than significant.

Visual Resources - Alternatives A through C are consistent with existing and planned commercial and residential development northwest of the Shiloh Site. In combination with proposed future projects, they would not result in significant cumulative impacts on visual resources, as future non-tribal developments would be subject to Town or County review and approval processes.

#### **5.1.15 Unavoidable Adverse Effects**

In accordance with the analysis within the Final EIS, all identified impacts can be adequately mitigated with the exception of potential impacts under Alternatives A and B related to socioeconomic effects and environmental justice. The Dry Creek Band has indicated that the level of impact to the River Rock Casino from operation of Alternative A in combination with historical declines in revenue from the opening of the Graton Resort and Casino in 2013 would likely cause its facility to close and would prevent its ability to move forward with its expansion plans. The BIA does not have access to the confidential and proprietary business and financial data necessary to verify the ability of the River Rock Casino to remain open or to expand, although a review of similar case studies and market data suggests that it is unlikely that the River Rock Casino would no longer be economically viable should Alternative A or B be operational. Therefore, in the absence of this data, the potential for competitive effects resulting from Alternatives A and B to cause the closure of the River Rock Casino is considered a potentially significant impact. As the Dry Creek Band that operates River Rock Casino is an environmental justice population, and the closure of River Rock Casino would lead to decreased availability and/or quality of governmental services for the Dry Creek Band, this impact is considered to be a disproportionate and adverse impact on the Dry Creek Band. No feasible mitigation is available for this potentially significant impact. These effects may be reduced to a less-than-significant level should the Dry Creek Band proceed with the proposed expansion of the River Rock Casino.

### **6.0 MITIGATION MEASURES**

All practicable means to avoid or minimize environmental harm from the Proposed Action and alternatives have been identified and adopted. The following mitigation measures and related enforcement and monitoring programs have been adopted as a part of this decision. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, and agreements between the Tribe and appropriate governmental authorities, as well as this decision. Specific mitigation measures adopted pursuant to this decision are set forth below and included within the Mitigation Monitoring and Compliance Plan (MMCP) (see **Attachment 1** of this ROD). The Tribe has committed to the implementation of these mitigation measures as a matter of Tribal Law; refer to Koi Nation Gaming Ordinance Chapter 14 included in Final EIS Appendix Q..

#### **6.1 WATER RESOURCES**

The following measure shall be implemented to address cumulative groundwater impacts under a scenario in which the Town of Windsor is operating two new municipal wells under multiple dry year conditions:



A. **Well Interference Drawdown Mitigation.** Should the Town of Windsor determine pursuant to mitigation measure HYD-3 Section 2 in the Town's PEIR for adoption of the 2011 WMP Water Master Plan (Horizon, 2011), or an equivalent mitigation measure adopted in a subsequent California Environmental Quality Act (CEQA) document for these wells, that aquifer connectivity in the vicinity of the Esposti Park and/or North Windsor wells causes their operation to induce a substantial decrease in water levels in the shallow aquifer or in surrounding wells, then the Tribe shall participate in the development and implementation of an Interference Drawdown Monitoring and Mitigation Plan, and shall pay a share of the mitigation costs that is proportional to its contribution to the shallow aquifer impact being mitigated. The Tribe's obligation to contribute proportionate fair share funding shall be limited to measures to address impacts to existing domestic water supply wells from groundwater pumping; the Tribe shall have no obligation to participate in or fund other water supply initiatives or infrastructure improvements. Absent implementation of a mitigation plan by the Town of Windsor, the following monitoring and mitigation measures shall be implemented by the Tribe should the Town of Windsor operate two new municipal wells under multiple dry year conditions:

- Property owners and water agencies in the area where predicted drawdown exceeds 5 feet shall be notified by certified letter of the existence of a Well Interference Drawdown Monitoring and Mitigation Program and invited to register any domestic wells in the predicted 5-foot drawdown area and any municipal, industrial, or irrigation wells in the predicted 20-foot drawdown area to participate in the program. To register for the program, well owners will be required to complete a Well Information Questionnaire regarding the construction, use, history, and performance of their well, and to sign an Access Agreement that allows access for periodic measurement of water levels and assessment of well conditions and performance. A drawdown monitoring program shall be implemented to assess the extent and distribution of drawdown at the Site and in the vicinity.
- Well owners may submit claims for diminished well capacity or increased well maintenance costs. Such claims shall be evaluated to verify their veracity and whether the capacity loss or increased maintenance cost has occurred as a result of the Project. If well performance is found to be diminished by more than 25% or to be no longer adequate to meet historical water demands due to interference drawdown, registered participants will be eligible to receive reimbursement for reasonable and customary costs for well replacement, deepening or rehabilitation, or pump lowering as needed to restore adequate well function. In addition, the cost of additional maintenance attributable to interference drawdown caused by the Project will be eligible for reimbursement. The cost of reimbursement shall be borne by the Tribe.
- As an alternative to reimbursement, the Tribe may, at its sole discretion, elect to connect the claimant to an alternative potable water source at the Tribe's expense.
- Based on review of the extent to which the claim is due to drawdown caused by the Project vs. pumping by the Town of Windsor, 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.

B. **Baseline Groundwater Level and Stream Discharge Monitoring Program.** The Tribe shall implement a groundwater level and stream discharge monitoring program consisting of the following:

- A Groundwater Level Monitoring Workplan shall be developed and implemented to verify the Project drawdown effects on the production aquifer and at the water table and inform the Well Interference Mitigation described above and the Interconnected Surface Water (ISW) and Groundwater Dependent Ecosystem (GDE) Mitigation Program described below.
- Monitoring of at least one of the existing on-site supply wells, which shall be repurposed for monitoring purposes to assess groundwater levels in the pumped aquifer beneath the Shiloh Site or, if it is not feasible to convert one of the existing supply wells into a monitoring well, installing and monitoring an on-site monitoring well to an equivalent depth.
- Installation and monitoring of three shallow groundwater monitoring wells (one near Pruitt Creek; one near the southwestern boundary of the site; and one near the eastern side of the northern boundary of the site)
- Installation of gaging stations to monitor stream discharge rates in Pruitt Creek using surface velocity radar or similar non-invasive technology on-site in Pruitt Creek.
- The Tribe shall work with the Town and/or County to install a shallow groundwater monitoring well near the perennial pools upstream along Pruitt Creek by Faught Road and install a gaging station in Pruitt Creek at or near the Faught Road bridge. The Tribe shall work in good faith to install these improvements one year prior to Project pumping; however, off-site mitigation is not fully within the control of the Tribe or BIA.
- Monitoring shall begin at least one year prior to initiation of Project pumping.
- If the Town of Windsor plans to pump the Esposti Park well, monitoring shall continue for a period of at least 5 years after pumping of the Town of Windsor's Esposti Park well commences. The need for continued monitoring shall be assessed after this minimum duration and every five years thereafter. If it is determined that continued monitoring is no longer necessary, monitoring may be discontinued with the concurrence of BIA, Sonoma County, and the Town of Windsor.
- If the Town of Windsor decides not to pump the Esposti Park well and groundwater levels remain stable for at least 5 years after the commencement of Project pumping, monitoring may be discontinued with the concurrence of BIA.
- Groundwater level measurements shall be collected in the spring and fall of each year using an electronic well sounder to assess the depth to groundwater beneath a designated reference point. In addition, recording pressure transducers shall be deployed to assess short term changes in groundwater levels that can be compared to pumping of the on-site supply well(s) or nearby wells operated by the Town of Windsor and other parties.

- Stream discharge measurements shall be taken continually and collected using a data logger. The stream profile at the gage locations shall be surveyed and a staff gage and camera system installed to collect water surface levels in addition to surface radar velocity readings from which discharge shall be calculated in cubic feet/second.
- Observed groundwater levels shall be compared to predicted groundwater levels presented in the Groundwater Resources Impact Assessment (GRIA) to help guide the implementation of mitigation measures in cooperation with the Town of Windsor, if required. After at least one year of data collection, information regarding pumping rates, stream discharge rates pumped aquifer groundwater elevations, and water table groundwater elevations shall be used to develop an updated drawdown and surface-groundwater interaction model. The model shall be used to verify the extent of interconnected surface water throughout the year, identify times when aquatic ecosystems in Pruitt Creek are most vulnerable to depletion, evaluate the anticipated range of potential surface water depletion, and establish action thresholds for implementation of the mitigation programs. An annual monitoring report shall be submitted to the BIA by April 1 of the following year for distribution to other responsible agencies, Sonoma County and the Town of Windsor.

C. GDE Verification Monitoring. A GDE verification monitoring program shall be implemented at the expense of the Tribe, including the following:

- A GDE Verification Monitoring Workplan shall be developed and implemented prior to Project pumping to verify whether cumulative vegetation stress and habitat degradation is occurring along the riparian area of Pruitt Creek through the Shiloh Site. The GDE Monitoring Plan shall describe the program procedures, schedules, responsibilities, and documentation requirements.
- Baseline resource characterization and data acquisition shall be conducted by a qualified biologist in the on-site portion of the GDE, including documentation of species composition and habitat condition, and documentation of photo points and reference transects.
- Data collection at photo points and transects shall be conducted annually by a qualified biologist.
- Satellite data available from the Landsat or Sentinel program shall be assessed annually and compared to a baseline and to shallow groundwater level trends.
- Baseline data shall be analyzed for a period of at least six representative hydrologic years by using the satellite data to calculate a vegetation index such as Normalized Difference Vegetation Index or Leaf Area Index.
- Annual data shall be analyzed and compared to the baseline data to assess whether there is quantifiable remote sensing evidence of plant stress or reduced vigor.
- The biological and satellite data shall be evaluated, including consideration of groundwater levels in the shallow aquifer, Town of Windsor pumping records and precipitation records in a nearby representative meteorological station to assess whether a loss of vegetation vigor has occurred that may result in habitat

degradation and that is attributable to groundwater level changes caused by groundwater pumping.

- An annual monitoring report shall be submitted to the BIA by April 1 of the following year. If the program verifies that loss of plant vigor that may lead to habitat degradation is occurring, a meeting shall be convened between BIA, Sonoma County and the Town of Windsor to discuss and agree to thresholds for the mitigation actions, appropriate changes in groundwater pumping and management procedures, parties responsible for implementation and cost sharing.
- If the Town of Windsor plans to pump the Esposti Park well, monitoring shall continue for a period of at least 5 years after pumping of the Town of Windsor's Esposti Park well commences. The need for continued monitoring shall be assessed after this minimum duration and every five years thereafter. If it is determined that continued monitoring is no longer necessary, monitoring may be discontinued with the concurrence of BIA, Sonoma County and the Town of Windsor.
- If the Town of Windsor decides not to pump the Esposti Park well and vegetation vigor and biomass output within the on-site riparian area remains stable for at least 5 years after the commencement of Project pumping, monitoring may be discontinued with the concurrence of BIA.

D. GDE and ISW Mitigation. Should the Town of Windsor determine pursuant to mitigation measure HYD-3 Section 2 in the Town's PEIR for adoption of the 2011 WMP (Horizon 2011), or an equivalent mitigation measure adopted in a subsequent CEQA document for these wells, that operation of the Esposti Park and/or North Windsor wells causes their operation to induce a substantial decrease in water levels in the shallow aquifer, alterations to surface streamflow, impacts to groundwater-dependent vegetation or impacts to natural recharge, then the Tribe shall participate in the development and implementation of a GDE and ISW Mitigation Plan, and shall pay a share of the mitigation costs that is proportional to its contribution to the impact being mitigated. The Tribe's obligation to contribute proportionate fair share funding shall be limited to measures to address impacts to GDEs and/or ISW from local groundwater pumping; the Tribe shall have no obligation to participate in or fund other water supply initiatives or infrastructure improvements. Absent implementation of a mitigation plan by the Town of Windsor, the following mitigation measures shall be implemented by the Tribe should the Town of Windsor operate two new municipal wells under multiple dry year conditions:

- If modeling conducted under the Groundwater Level and Stream Discharge Monitoring Program or the GDE Monitoring Program indicates that vegetation decline is occurring that is correlated with groundwater level declines, or streamflow is anticipated to be depleted by more than 5% (the approximate error in typical discharge measurements), a Mitigation Plan shall be prepared that establishes thresholds for the following actions: (1) enhanced monitoring; (2) supplemental GDE and/or ISW characterization; and (3) mitigation actions. The Mitigation Plan shall be approved by BIA, CDFW, NOA Fisheries (if appropriate) and other responsible agencies.

- Level 1: Enhanced monitoring shall be implemented if one of the following occurs: (1) ambient groundwater level decline at the water table exceeds 2 feet; (2) groundwater level drawdown at the water table is greater than predicted in the GRIA; (3) post dry-year groundwater level recovery is slower than predicted; and/or (4) the extent of surface groundwater connection along Pruitt Creek is greater than the likely extent assumed in the GRIA. In the event one or more of these trigger conditions is identified, the monitoring program shall be enhanced in consultation with BIA and the other responsible agencies. Enhancement could include, but may not be limited to installation of additional monitoring wells or moisture sensors, additional water level or flow measurements, and/or additional fish or vegetation monitoring. The purpose of the enhanced monitoring will be to collect additional data to identify potential adverse trends that could lead to significant impacts.
- Level 2: Supplemental characterization investigations shall be implemented if (1) a decline in GDE vigor is documented; (2) if interconnected surface water depletion is predicted to exceed 5% (the commonly assumed error in discharge gauge measurements); and/or (3) updated modeling indicates potentially adverse impacts could occur, but significant data gaps are identified. Investigations would focus on better understanding the likelihood and nature of potential impacts and could include, but may not be limited to, biological resource characterizations, habitat assessment and succession evaluation, fisheries investigations, and surface-groundwater interaction investigations.
- Mitigation shall be implemented if one of the following occurs: (1) GDE vigor decline is significant and correlated with groundwater level trends; (2) potentially adverse depletion of ISW is predicted to occur; and/or (3) a decline in aquatic habitat or adverse impacts to fish are observed and correlated with declining groundwater levels. Mitigation options considered would include habitat enhancement projects, flow replacement by reclaimed water, and other potential mitigation measures selected in consultation with BIA and other responsible agencies.

See Hazardous Materials and Hazards – Wildfire Hazards mitigation below regarding water quality measures related to the riparian corridor wildfire management plan.

## **6.3 BIOLOGICAL RESOURCES**

### **6.3.1 Riparian Corridor**

The following measures shall be implemented to avoid and/or reduce impacts to the Riparian Corridor:

- A. Alterations to riparian vegetation from construction activities shall be avoided to the maximum extent possible. The project footprint shall be established at the minimum size necessary to complete the work. Temporary setback areas shall be marked with fencing to protect the riparian zone and its function. Any disturbed riparian areas shall be replanted with native trees and shrubs.

- B. Prior to constructions, a qualified biologist shall delineate an Environmentally Sensitive Area along Pruitt Creek. The contractor shall install high-visibility fence to prevent accidental incursion on the Environmentally Sensitive Area. The fence shall be maintained through construction activities.
- C. Staging areas, access routes, and total area of activity for construction activities shall be limited to the minimum area necessary to achieve Project goals. Routes and boundaries shall be clearly marked and outside of the riparian area and create a buffer zone wide enough to support sediment and nutrient control and bank stabilization function.
- D. Any disturbed riparian areas shall be mitigated at a 1:1 ratio of area restored to riparian area disturbed. The goal of on-site mitigation is to enhance and restore the stream and aquatic functions and resources (in-kind) that are impacted. On-site mitigation could include a variety of native planting and habitat enhancement approaches. These approaches include natural recruitment techniques as well as nursery stock tree and acorn planting, understory plantings along the bank and channel edge, and the installation of red and Pacific willow cuttings and nursery stock at the toe-of-bank. The primary objective is to enhance riparian habitat through greater canopy cover, shading, and develop a functioning understory along channels that are currently degraded. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction.

### **6.3.2 Wetlands and Waters of the U.S.**

The following measures shall be implemented to minimize or avoid potential impacts to wetlands, Waters of the U.S., and special-status species:

- E. Prior to the start of construction, wetlands and jurisdictional features shall be fenced, and excluded from activity. Fencing shall be located as far as feasible from the edge of wetlands and riparian habitats and installed prior to the dry season, after special-status species surveys have been conducted and prior to construction. The fencing shall remain in place until all construction activities on the site have been completed.
- F. Ground disturbing activities, such as grading, clearing, and excavation, within 50 feet of any U.S. Army Corps of Engineers (USACE) jurisdictional features identified in the formal delineation process shall be conducted during the dry season (between June 15 and October 15) to minimize erosion. In the event of substantial, unseasonably high flow within Pruitt Creek on or after April 15, work shall be altered or stopped until flow ceases in the creek. Temporary stormwater Best Management Practices such as vegetative stabilization and linear sediment barriers shall be established between disturbed portions of the Shiloh Site and Pruitt Creek to prevent sedimentation in the watercourse.
- G. Staging areas shall be located away from the areas of aquatic habitat that are fenced off. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to

remain on the site through the wet season shall be protected to prevent erosion (e.g. with tarps, silt fences, or straw bales).

- H. Standard precautions shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials associated with construction activities into jurisdictional features. A contaminant program shall be developed and implemented in the event of the release of hazardous materials.
- I. If impacts to Waters of the U.S. and wetland habitat are unavoidable, a 404 permit and 401 Certification under the Clean Water Act shall be obtained from the USACE and U.S. Environmental Protection Agency (USEPA). Mitigation measures may include creation or restoration of wetland habitats either on site or at an appropriate off-site location, or the purchase of approved credits in a wetland mitigation bank approved by the USACE. Compensatory mitigation shall occur at a minimum of 1:1 ratio or as required by the USACE and USEPA.
- J. Consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries for impacts to fish and essential fish habitat shall be conducted in accordance with Section 7 of the federal Endangered Species Act (FESA) and Magnuson-Stevens Act and any requirements resulting from that consultation shall be adhered to.
- K. Subject to the terms of an NPDES wastewater discharge permit and associated Section 7 consultation, wastewater discharged to Pruitt Creek shall flow through a gauge station. The gauge shall be located at the point of project-related discharge on Pruitt Creek. No more than 1% of Pruitt Creek flow shall be discharged, consistent with NCRWQCB Basin Plan standards for receiving waters. A water quality monitoring protocol and schedule shall be established to ensure that parameters are being met during discharge activities in Pruitt Creek.

### **6.3.3 California Red-Legged Frog (CRLF)**

- L. A qualified biologist shall conduct a preconstruction habitat assessment survey for CRLF following Appendix D of the U.S. Fish and Wildlife Service [USFWS (2005)] Revised Guidance of Site Assessments and Field Surveys for the California Red-legged Frog. The survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance, construction activities, and/or any project activity likely to impact the CRLF. The survey shall be conducted in all potential CRLF habitat on and within 200 feet of ground disturbance.
- M. If CRLF is detected during pre-construction surveys or during construction, the USFWS shall be contacted immediately to determine the best course of action.
- N. Should CRLF be identified during surveys, additional silt fencing shall be installed after surveys have been completed to further protect this species from construction impacts. The fencing shall remain in place until construction activities cease.

### **6.3.4 Northwestern Pond Turtle (NWPT)**

The following measures shall be implemented to avoid impacts to northwestern pond turtle (NWPT):

- O. A qualified biologist shall conduct a preconstruction survey for NWPT along Pruitt Creek 24 hours prior to the beginning of ground disturbance, construction activities,

and/or any project activity likely to impact the NWPT. The survey shall be conducted within 350 feet of the stretch of Pruitt Creek. If NWPT is detected within or immediately adjacent to the area of ground disturbance, the USFWS shall be contacted immediately to determine the best course of action.

- P. Should NWPT be identified during surveys, additional silt fencing shall be installed after surveys have been completed to further protect this species from construction impacts. The fencing shall remain in place until construction activities cease.

### **6.3.5 Migratory Birds and Birds of Prey**

The following measures shall be implemented to avoid and/or reduce impacts to potentially nesting migratory birds and other birds of prey in accordance with the federal Migratory Bird Treaty Act:

- Q. Removal of vegetation and trimming or removal of trees shall occur outside the bird nesting season (February 1 to August 31) to the extent feasible.
- R. If removal or trimming of vegetation and trees cannot avoid the bird nesting season, a qualified wildlife biologist shall conduct a pre-construction nesting survey within 7 days prior to the start of such activities or after any construction breaks of 14 days or more. Surveys shall be performed for the Shiloh Site and suitable habitat within 250 feet of the Shiloh Site in order to detect any active passerine (perching bird) nests and within 500 feet of the Shiloh Site to identify any active raptor (bird of prey) nests.
- S. If active nests are identified during the pre-construction bird nesting surveys, the wildlife biologist shall place species- and site-specific no-disturbance buffers around each nest. Buffer size would typically be between 50 and 250 feet for passerines and between 300 and 500 feet for raptors (birds of prey). These distances may be adjusted depending on the level of surrounding ambient activity (e.g., if the Shiloh Site is adjacent to a road or community development) and if an obstruction, such as a building structure, is within line-of-sight between the nest and construction. For bird species that are federally- and/or State-listed sensitive species (i.e., fully protected, endangered, threatened, species of special concern), a Project representative, supported by the wildlife biologist, shall consult with the USFWS and/or the California Department of Fish and Wildlife (CDFW) regarding modifying nest buffers. The following measures shall be implemented based on their determination:
- If construction would occur outside of the no-disturbance buffer and is not likely to affect the active nest, the construction may proceed. However, the biologist shall be consulted to determine if changes in the location or magnitude of construction activities (e.g., blasting) could affect the nest. In this case, the following measure would apply.
  - If construction may affect the active nest, the biologist and a Project representative shall consult with USFWS and/or CDFW, dependent on regulatory status, to develop alternative actions such as modifying construction or monitoring of the nest during construction.
  - A nest buffer shall remain in place until the end of the nesting season or if a qualified biologist conducts a follow-up survey and determines that the nest has failed and is no longer active or the young have fledged and are independent of the nest.



- T. Any birds that begin nesting within the Shiloh Site and survey buffers amid construction activities shall be assumed to be habituated to construction-related or similar noise and disturbance levels and minimum work exclusion zones of 25 feet shall be established around active nests in these cases.
- U. A qualified wildlife biologist shall conduct pre-construction burrowing owl surveys within 7 days prior to the start of such activities or after any construction breaks of 14 days or more. Surveys shall be performed at known mammal burrows or areas with the potential for new mammal burrows, within 250 feet of the Shiloh Site. Surveys shall be conducted between morning civil twilight and 10:00 AM or two hours before sunset until evening civil twilight to provide the highest detection probabilities.
- V. If surveys identify evidence of western burrowing owls within 250 feet of the Shiloh Site, the contractor shall:
  - Establish a 250-foot exclusion zone around the occupied burrow or nest, as directed by the qualified biologist.
  - Avoid the exclusion zone while the burrow is occupied.
  - Not resume construction activities within the 250-foot zone until the Project representative provides written Notice to Proceed based on the recommendation of the qualified biologist.
- W. If avoidance of occupied burrows is not feasible during the September 1 to January 31 non-breeding season, construction may occur within 250 feet of the overwintering burrows as long as the contractor's qualified biologist monitors the owls for at least 3 days prior to Project construction and during construction and finds no change in owl foraging behavior in response to construction activities. If there is any change in owl foraging behavior as a result of construction activities, activities shall cease within the 250-foot exclusion zone.
- X. If destruction of occupied burrows is necessary, burrow exclusion can be conducted in accordance with the Staff Report on Burrowing Owl Mitigation.

#### **6.4 CULTURAL RESOURCES**

The following mitigation measures shall be implemented to avoid or reduce potential impacts to previously unknown archaeological and historical resources that may exist on the Shiloh Site:

- A. Any ground-disturbing activities that occur within 150 feet of Pruitt Creek or within 50 feet of areas identified by the Canine Field Survey as having an "alert" shall be monitored by a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR § 61) and a Native American Tribal Monitor from Koi Nation. The Koi Nation will provide the BIA thirty (30) days notification prior to ground disturbance in the identified areas. Additionally, a Native American Tribal Monitor or archaeologist selected by the Interested Sonoma County Tribes (i.e. the Federated Indians of Graton Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, Dry Creek Rancheria Band of Pomo Indians, and any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction) will be invited to optionally participate in the monitoring at least seven (7) days prior to ground disturbance in the identified areas. An archaeological monitoring program shall be established by the professional archaeologist in

consultation with the BIA that includes protocols for consultation between the consulting professional archaeologist, BIA, Koi Nation, and Interested Sonoma County Tribes. The program shall clearly define the authority to temporarily halt/redirect construction should resources be encountered.

- B. In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA. All such finds shall be subject to Section 106 of the National Historic Preservation Act (NHPA) as amended (36 CFR Part 800); specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b) shall be followed. Consistent with 36 CFR § 800.13(b)(3), any Indian tribe that might attach religious and cultural significance to the affected property (i.e. the Interested Sonoma County Tribes), the Koi Nation, the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) will be notified within 48 hours of the discovery. The notification shall describe the assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The Indian tribe(s), SHPO, and the ACHP shall be given 48 hours to respond to the notification. The BIA shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The BIA shall provide the Indian tribe(s), SHPO, and the ACHP a report of the actions when they are completed.
- C. If human remains are discovered during ground-disturbing activities on the Shiloh Site, work within 50 feet of the find shall halt immediately consistent with 43 CFR Part 10.5(b)(1) and the BIA and County Coroner shall be notified. No further disturbance shall occur until the County Coroner has determined that the remains are not connected to criminal activity. Construction activities may continue in other areas but may not resume within 50 feet of the find until a plan for avoidance, removal or other disposition of the remains has been developed and implemented. If the remains are determined to be of Native American origin, the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands shall apply. Consistent with NAGPRA requirements, 1) reasonable effort shall be made to secure and protect the human remains, including, as appropriate, stabilizing or covering the human remains (43 CFR Part 10.5(a)(2)); 2) the BIA shall consult with Koi Nation and any other Indian Tribe with potential cultural affiliation (i.e. the Interested Sonoma County Tribes) to discuss the recovery and treatment of the remains (43 CFR Part 10.4(b)); 3) no later than 30 days after the remains are determined to be of Native American origin, a written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR Part 10.5(d)(1) and 43 CFR Part 10.4); and 4) the disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR Part 10.6.

- D. A professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) shall provide construction worker awareness training to machine operators and construction supervisors at regular intervals as needed to inform new construction contractor employees.

## **6.5 PUBLIC SERVICES AND UTILITIES**

The following mitigation measure shall be implemented to reduce impacts to police and fire services:

- A. Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the Sonoma County Sheriff’s Office (SCSO) to compensate SCSO for quantifiable direct and indirect costs incurred in conjunction with providing law enforcement services to the Shiloh Site. This shall include, but not be limited to, funding of six deputy sheriff allocations to staff one new 24-hour/7 days per week patrol fixed post position. The agreement shall include a provision requiring the Tribe to meet with SCSO at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project.
- B. Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the Sonoma County Fire District (SCFD) to compensate SCFD for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and emergency medical services to the Shiloh Site. The agreement shall address any required conditions and standards for emergency access and fire protection systems. The agreement shall include a provision requiring the Tribe to meet with SCFD at least once a year, if requested, to discuss ways to improve the provision of fire and emergency medical services to the project.
- C. If the Tribe does not enter into a service agreement for law enforcement and/or fire protection services the Tribe shall establish, equip, and staff a public safety building for such services on the Shiloh Site. The fire department component shall follow the certification and standards of the BIA and shall be staffed at all times with a minimum of 3 personnel, each trained as a firefighter and emergency medical technician. The law enforcement component shall be staffed at all times with a minimum of 2 personnel that have completed the Indian Country Police Officer Training Program (ICPOTP) provided by the Indian Police Academy under the BIA Office of Justice Services. The tribal building shall be located in the “treatment area” designated in the eastern portion of the Shiloh Site (**Figure 2.1-1**).

## **6.6 NOISE**

The following measures shall be implemented to reduce impacts from off-site traffic noise during the cumulative year. The timing and implementation of off-site noise mitigation for cumulative impacts is not fully within the control of the Tribe or BIA:

- A. The Tribe shall pay a fair share towards repaving and maintaining the following road segments with noise-reducing pavement:
- Shiloh Road, between Hembree Lane and Gridley Drive
  - Old Redwood Highway, between Shiloh Road and the Project Entrance.

The Tribe's estimated fair share contributions for the road repaving shall be placed in an escrow account, or other account as agreed to by the Tribe and relevant government agency, for use by the governmental entity with jurisdiction over the road to be repaved so that the entity may design, obtain approvals/permits for, and perform the repaving and maintenance of the roadways at their discretion.

B. If repaving is not necessitated by traffic improvements prior to 2040, the Tribe will compensate homeowners adjacent to the identified roadway segments for dual pane exterior windows or other noise reducing measures, such as installing window assemblies with higher than 27 Sound Transmission Class, that can achieve noise reduction in the interior of the sensitive receptors that meet federal, state, and local standards, at the request of the homeowner. Residents on the following roadway segments will be informed of the availability of this option should repaving not occur before 2040:

- Shiloh Road between Hembree Lane and Old Redwood Highway.
- Shiloh Road between Old Redwood Highway and Grindley Drive.
- Old Redwood Highway between Shiloh Road and the Project Entrance.

## **6.7 TRANSPORTATION AND CIRCULATION**

While the timing for the off-site roadway improvements is not within the jurisdiction or ability of the Tribe or BIA to control, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day. The Tribe shall either complete or make in-lieu fair share contributions to the cumulative 2040 traffic mitigation measures prior to the need for the improvements. The Tribe's fair share contribution percentage, as estimated in the Traffic Impact Study (Final EIS Appendix I), is included for each measure. Funding shall be for design standards consistent with those required for similar facilities in the region. The actual cost of the improvements shall be calculated by a California-licensed transportation engineer according to industry accepted practices, and in consultation with the governmental agency with jurisdiction over the roadway to be improved. These estimated fair share contributions may be adjusted based on an agreement with the governmental entity with jurisdiction over the road to be improved. Funds for opening year 2028 and cumulative 2040 mitigation measures shall be placed in an escrow account, or other account as agreed to by the Tribe and relevant government agency, for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design, obtain approvals/permits for, and construct the recommended road improvement. Funds for 2028 improvements shall be deposited no later than 1 year prior to the opening of Alternative A, and funds for 2040 improvements shall be deposited at which time the improvements are shown to be needed, or 5 years after the opening of the project alternative, whichever is sooner.

The following measures shall be implemented to reduce traffic impacts:

### **6.7.1 Opening Year 2028**

- A. For Intersection 1) Shiloh Rd. & Old Redwood Hwy. (100% fair share contribution)  
Convert split phasing in Eastbound (EB)/Westbound (WB) direction to protected phasing.
- Convert existing WB-through lane to an exclusive left-turn lane (storage length of 200 feet and taper length of 75 feet) and a shared through/right turn lane.
  - Restripe Northbound left (NBL) to give 215 ft. storage length.
  - Restripe Eastbound right (EBR) to give 175 ft. storage length.
  - Restripe Southbound left (SBL) to 195 ft. storage length.
  - Restripe SBR to 130 ft. storage length.
  - Construct Traffic Impact Fee (TIF) project to add second NBL turn lane and second WB receiving lane.
- B. For Intersection 2) Shiloh Rd. & Hembree Ln. (100% fair share contribution) -  
Optimize splits and cycle length.
- C. For Intersection 7) Shiloh Rd. & Casino Entrance 1 (100% fair share contribution)
- Signalize intersection.
  - Add exclusive EB right-turn lane (storage length of 150 feet and taper length of 75 feet). Additional right-of-way if needed shall be provided from the Shiloh Site.
- D. For Intersection 8) Old Redwood Hwy. & Casino Entrance 1 (100% fair share contribution)
- Signalize intersection.
  - Provide exclusive Northbound right (NBR) turn lane (storage length of 100 feet and taper length of 75 feet). Additional right-of-way if needed shall be provided from the Shiloh Site.
  - Provide exclusive SBL turn lane (storage length of 50 feet and taper length of 25 feet).
- E. For Intersection 9) Shiloh Rd. & Casino Entrance 3 (100% fair share contribution)-  
Provide exclusive EBR turn lane (storage length of 200 feet and taper length of 75 feet). Additional right-of-way if needed shall be provided from the Shiloh Site.

### **6.7.2 Cumulative Year 2040**

- F. For Intersection 1) Shiloh Rd. & Old Redwood Hwy. (39.4% fair share contribution)
- Convert split phasing in EB/WB direction to protected phasing.
  - Restripe NB approach to include two exclusive left turn lanes, two through lanes, and one exclusive right turn lane.
  - Restripe Southbound (SB) approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.

- Restripe EB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.
  - Restripe WB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.
  - Restripe Eastbound left (EBL) to give 425 ft. storage length.
  - Restripe Eastbound right (EBR) to give 200 ft. storage length.
  - Restripe SBL to 190 ft. storage length.
  - Restripe Southbound right (SBR) to 160 ft. storage length.
  - Widen Shiloh Rd. between Hembree Ln. and Old Redwood Hwy. from two to four lanes.
  - Widen Shiloh Rd. between Old Redwood Highway and Gridley Dr. from two lanes to four lanes. (This improvement shall be 100% funded by the Tribe). Additional right-of-way if needed shall be provided from the Shiloh Site.
- G. For Intersection 2) Shiloh Rd. & Hembree Ln. (36.4% fair share contribution)
- Convert split phasing in NB/SB direction to protected phasing.
  - Restripe NB approach to include one exclusive left turn lane and one shared through-right turn lane.
  - Restripe SB approach to include one exclusive left turn lane with 350 ft. storage length, one through lane, and two exclusive right turn lanes.
  - Restripe EB approach to include two exclusive left turn lanes, one through lane, and one shared through-right turn lane.
  - Restripe WB approach to include one exclusive left turn lane, one through lane, and one shared through-right turn lane.
- H. For Intersection 5) Shiloh Rd. & Caletti Ave. (5.9% fair share contribution) Restripe WB approach to include one exclusive left turn lane and two through lanes.
- I. For Intersections 2, 3, and 5 (27.4% fair share) – Contribute fair share payment to TIF Project #2 Shiloh Road Interchange; and restripe Northbound right (NBR) at Intersection 3 to 340 ft. storage length.
- J. For Intersection 6) Shiloh Rd. & Conde Ln. (6.3% fair share contribution)
- Optimize signal timing parameters.
  - Restripe SBR to give 65 ft. storage length.
- K. For Intersection 12) Old Redwood Hwy. & US 101 SB Ramp (5.2% fair share contribution) - Optimize signal timing parameters.

## **6.8 HAZARDOUS MATERIALS AND HAZARDS – WILDFIRE HAZARDS**

The following measures shall be implemented:

- A. Prior to opening day the Tribe shall engage a qualified arborist and/or biologist to develop a riparian corridor wildfire management plan to be implemented annually during operation. The goal of the plan shall be to reduce fire hazards on and adjacent

to the on-site riparian corridor. At a minimum the plan shall include the following procedures and best management practices that shall be overseen by a qualified arborist and/or biologist:

- Weed abatement and fuel load reduction outside of the creek channel shall be conducted in late Spring (May and June) by hand crews and repeated as necessary through the fire season.
- When riparian vegetation is within a 100-foot radius of a structure or the property line, the following procedures shall be implemented:
  - All dead or dying trees, branches, shrubs, or other plants adjacent to or overhanging buildings shall be removed.
  - Lower branches of trees shall be pruned to a height of 6 to 15 feet or 1/3 tree height for trees under 18 feet.
  - All dead or dying grass, leaves, needles, or other vegetation shall be removed.
  - Live flammable ground cover and shrubs shall be removed or separated.
  - Climbing vines shall be maintained free of dead or dying material or removed from trees and structures.
  - Dead or dying grass shall be mowed to a maximum of 4 inches in height. Trimmings may remain on the ground.
  - Live flammable ground cover less than 18 inches in height may remain, but overhanging and adjacent trees must be pruned to a height of 6 to 15 feet.
  - Logs and stumps embedded in the soil shall be removed or isolated from structures and other vegetation.
  - All dead or dying brush or trees, and all dead or dying tree branches within 15 feet of the ground shall be removed.
- Vegetation management is prohibited in the wetted channel (i.e., the creek must be dry to perform work)
- Vegetation removal is with hand tools; if a chain saw is needed to perform work, a tarp is used to contain any wood chips/debris.
- No motorized vehicles are allowed in the channel.
- Vegetation shall not be removed from channel banks.
- Large woody debris (downed logs and root wads) in the channel and banks shall remain in place.
- Debris jams (fallen trees) that block the channel causing obstruction shall be removed.
- Vegetation management shall be conducted in a manner that protects riparian habitat and water quality, including tree canopies that provide shade to the

channel (i.e., trees shall be trimmed only if a canopy can be maintained over the creek).

- Vegetation removal shall either be conducted outside the bird nesting season (February 1 to August 15) or a field survey for bird nests by a qualified biologist shall occur prior to starting work and implementing appropriate avoidance buffers.
- Following clearing of dead vegetation, the riparian corridor shall be evaluated for opportunities for native vegetation plantings. Native riparian vegetation plantings shall occur where space is reasonably available following removal of dead vegetation.

B. Prior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan that includes, but is not limited to, the following procedures and best management practices:

- The evacuation plan shall complement the County of Sonoma's Emergency Evacuation Plan, Operations Plan, supporting documents, and the standard operating procedures of fire, law, and emergency management agencies of the County.
- Designated staff shall coordinate evacuation procedures with the lead agency for evacuations and other participating agencies during an evacuation event.
- Unless a pre-determined evacuation zone specific to the casino-resort is created and/or unless specifically directed otherwise by the lead authority for evacuations, the casino-resort shall initiate a mandatory evacuation of the Shiloh Site as soon as the evacuation zones within the Trigger Evacuation Zone are issued an evacuation warning or order. The Trigger Evacuation Zone (shown on **Figure 3.12-6**) includes the following evacuation zones: SON-2K1, SON-2K2, SON-2K3, SON-2L4, SON-2L5, SON-2L6, SON-2L7, SON-2M1, SON-2N1, SON-3A1, SON-3B1, SON-3C1, SON-3C2, SON-3C3, SON-4A2, SON-4A3, WI-A01, WI-A02, WI-A03, WI-A04, WI-A05, WI-A06, WI-B01, WI-B02, WI-B03, WI-B04, WI-B05, WI-B06, WI-B07, WI-B08, WI-B09, WI-B10, WI-B11, WI-B12, WI-B13, WI-B14, WI-B15, WI-B16, WI-B17, WI-C01, WI-C02, WI-C03, WI-C04, WI-C05, WI-C06, WI-C07, WI-C08, WI-C09, WI-C10, WI-C11, WI-D01, WI-D02, WI-D03, WI-D04, WI-D05, WI-D06, WI-D07, WI-D08, WI-D09, WI-D10, WI-D11. This shall shut down all operations with visitors, hotel guests, and most staff evacuating immediately.
- Staff shall post critical emergency evacuation information (e.g., Red Flag Warnings and Fire Weather Watches) and handouts shall be made available to all visitors, guests, and staff. Staff shall incorporate the latest technology available, such as QR codes that contain links to web sites for mobile devices, or better technology as it evolves.



- Using the emergency evacuation information provided, guests shall be encouraged to make themselves familiar with available routes, stay informed and connected to all available emergency alert tools, and follow directions provided by staff, law enforcement, fire agencies, news media, and other credible sources.
- Staff and guests shall be provided with information on the local AM and FM radio stations to monitor for disaster information and all emergency alert tools like Emergency Alert System (EAS), SoCoAlert, and Nixle.
- Guests, through the emergency evacuation information, shall also be advised to not just rely on navigation apps that may inadvertently lead them toward an approaching wildfire, flooding, hazardous materials, or other hazards.
- Staff shall be trained on how to connect to the available emergency alert notification tools such as EAS, SoCoAlert, and Nixle. Staff shall monitor those services while at the facility.
- Designated staff shall be provided with Community Emergency Response Training. This training provides information on how to be prepared for disasters and emergencies and reorganize life-threatening conditions and apply life-saving techniques.
- A public address system shall be installed inside all occupied buildings so that emergency notifications can be provided by staff to visitors and guests. Additionally, designated staff shall be issued handheld portable radios for communication during an emergency.
- The hotel shall send registered guests emergency notification connection instructions to their mobile device at time of registration. This shall be done through the resort's registration process using guest registration information.
- Guests without cars or those who are uncomfortable driving themselves in an emergency shall be offered off-site transportation by staff in a resort vehicle, ride share, public transportation, and/or on-site shuttles. These options shall be directed to pre-established County Emergency Management approved community shelters.
- All intersections on the Shiloh Site shall include signage that clearly indicates the exit route from the property to major evacuation routes such as Old Redwood Highway and Shiloh Road to Highway 101.
- There shall be at least six trained traffic attendants to direct the vehicles exiting the garage and surface parking areas. In addition, at least two attendants shall be posted at each of the three Shiloh Site access points. A total of 12 persons would be needed during evacuation. These traffic attendants should be specially trained employees of the project.
- Trained on-site personnel shall direct roughly half of the vehicles from the garage and surface parking areas on the eastern portion of the Shiloh Site to

either the east Shiloh Road access point or the signalized Old Redwood Highway access point.

- C. Management and staff at the casino-resort shall be trained on evacuation procedures for guests and visitors as part of their new hire orientation and receive updated evacuation procedures training annually.
- D. The Tribe shall coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Shiloh Site and vicinity. These measures could include, but would not be limited to:
- Installation of a wildfire detection camera within the Shiloh Site and/or at another location in the vicinity of the Town of Windsor that would expand the coverage of the wildfire camera system. The wildfire camera(s) would be connected to the existing early detection system and be accessible to emergency officials.
  - Installation of variable message signs for the outbound lanes at the three project egress points that connect to Shiloh Road and Old Redwood Highway. The variable message signs shall be connected to on-site staff and the County Emergency Operations Center (EOC) so that evacuation-related messages can be controlled by fire personnel managing the evacuation. At the time of an evacuation order, evacuating project traffic shall be directed to alternate routes to US 101 and/or other areas of safety. Unless precluded by wildfire or otherwise directed by emergency officials, evacuation project traffic shall be directed to US 101, Old Redwood Highway, Fulton Road, and/or eastbound Shiloh Road towards Faught Road and Old Redwood Highway.
  - Installation of adaptive signal control (ASC) systems with remote access and override at key intersections along potential evacuation routes in the vicinity of the Shiloh Site that can adjust traffic signal timing to account for high volumes that occur during hazard events. These signals shall be upgraded to wireless communication with emergency battery backup. ASC systems could be implemented by emergency staff during a wildfire and significantly extend maximum green times on key evacuation approaches, depending on traffic conditions and evacuation patterns.

## **6.9 MITIGATION MEASURES THAT ARE NOT ADOPTED**

As Alternative A has been selected by the BIA in this ROD, mitigation measures for other alternatives in the Final EIS are not adopted.

## **7.0 DECISION TO IMPLEMENT THE PREFERRED ALTERNATIVE**

With this ROD, the Department announces that it will implement Alternative A as the Preferred Alternative. Of the alternatives evaluated in the EIS, Alternative A would best meet the purpose and need by promoting the long-term economic vitality and self-sufficiency, self-determination, and self-governance of the Tribe. The construction of Alternative A would provide the Tribe with the best opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its government. This would enable the Tribal government to establish, fund and maintain programs vital to Tribal members, as well as provide greater opportunities for employment and economic growth.

The development of Alternative A would meet the purpose and need of the Proposed Action better than the other development alternatives due to the reduced revenues that would be expected from the operation of Alternatives B and C. While Alternative A would have greater environmental impacts than the No Action Alternative, that alternative does not meet the purpose and need for the Proposed Action, and the BMPs and mitigation measures adopted in this ROD adequately address the environmental impacts of the Preferred Alternative. Accordingly, the Department will implement the Preferred Alternative subject to implementation of the applicable BMPs and the implementation of the mitigation measures listed in **Section 6** of this ROD.

### **7.1 THE PREFERRED ALTERNATIVE RESULTS IN SUBSTANTIAL BENEFICIAL IMPACTS**

The Preferred Alternative is reasonably expected to result in beneficial effects for the Tribe and its members, as well as residents of Sonoma County. Key beneficial effects include:

- Establishment of a land base for the Tribe to establish a viable business enterprise. Revenues from the operation of the casino would provide funding for a variety of health, housing, education, social, cultural, and other programs and services for Tribal members, and provide employment opportunities for its members.
- Revenue generated from the development will also provide capital for other economic development opportunities, and will allow the Tribe to achieve Tribal self-sufficiency, self-determination, and a strong, stable Tribal government.
- Generation of approximately 1,609 direct, indirect and induced full-time equivalent jobs within the region during the construction period.
- Generation of approximately 2,220 direct, indirect and induced full-time equivalent jobs within the region during the operational period. Total labor income is estimated to exceed \$96 million annually.
- One-time taxes resulting from construction activities are estimated at approximately \$51.4 million at the federal level and \$18.1 million at the State and local level.

- Taxes resulting from operating activities are estimated at approximately \$21.8 million at the federal level, \$10.7 million at the State level, and \$2.5 million at the local level.

**7.2 ALTERNATIVES B AND C RESULT IN FEWER BENEFICIAL EFFECTS**

Alternatives B and C would generate less revenue than the Preferred Alternative. As a result, these alternatives would restrict the Tribe’s ability to meet its needs and to foster Tribal economic development, self-determination, and self-sufficiency. The reduced economic and related benefits of these alternatives make them less viable options. Alternatives B and C fulfill the purpose and need for the Proposed Action to a lesser degree than Alternative A.

**7.3 NO ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED**

The No Action Alternative (Alternative D) would not meet the stated purpose and need. Specifically, it would not provide a land base for the Tribe and a source of net income to allow the Tribe to achieve self-sufficiency, self-determination, and a strong Tribal government. This alternative also would likely result in substantially less economic benefits to Sonoma County than the development alternatives.

**8.0 SIGNATURE**

By my signature, I indicate my decision to implement the Preferred Alternative and acquire the 68.6-Acre Shiloh Site in trust for the Koi Nation of Northern California.



Tony Dearman  
Director, Bureau of Indian Education  
Exercising by delegation the authority of the  
Assistant Secretary – Indian Affairs

**JAN 13 2025**

Date

**Attachment 1**  
**Mitigation Monitoring and Compliance Plan**

# Koi Nation of Northern California Shiloh Resort and Casino Project Mitigation Monitoring and Compliance Plan

The purpose of this Mitigation Monitoring and Compliance Plan (MMCP) is to guide compliance and implementation of mitigation measures associated with the Koi Nation of Northern California (Tribe) Shiloh Resort and Casino Project (Project). The mitigation measures listed in **Table 1** were identified within the Final Environmental Impact Statement (EIS) dated November 2024 and the Record of Decision. This MMCP has been prepared consistent with the requirements of the BIA NEPA Guidebook and 40 CFR § 1505.3 (c) and includes descriptions of the following:

- The mitigation measures identified within the EIS;
- The parties responsible for monitoring and implementing the mitigation measures;
- The anticipated timeframe for implementing and completing the mitigation measures; and
- Compliance standards and entities responsible for the enforcement of the mitigation measures.

Mitigation measures detailed in **Table 1** were included in Section 4 of the EIS and will be implemented to reduce potentially significant impacts to water resources, biological resources, cultural resources, public services and utilities, noise, transportation and circulation, and hazardous materials and hazards-wildfires. The Tribe will be the primary agency responsible for funding, monitoring, and/or implementing the mitigation measures, and has committed to the implementation of the mitigation measures as matter of tribal law (see Koi Nation Gaming Ordinance Chapter 14 included in Final EIS Appendix Q). Implementation of the mitigation measures will occur either during the planning phase, prior to beginning construction-related activities (pre-construction), during construction, or during operation. Where applicable, the mitigation measures will be monitored and enforced pursuant to federal law and agreements between the Tribe and appropriate governmental authorities. Non-compliance could result in the suspension of construction and/or regulatory fines.

**Table 1: Mitigation Monitoring and Compliance**

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<b>Water Resources</b>				
<b>Groundwater</b>				
<p>The following measures shall be implemented to address cumulative groundwater impacts under a scenario in which the Town of Windsor is operating two new municipal wells under multiple dry year conditions:</p> <p>A. Well Interference Drawdown Mitigation. Should the Town of Windsor determine pursuant to mitigation measure HYD-3 Section 2 in the Town’s PEIR for adoption of the 2011 WMP Water Master Plan (Horizon, 2011), or an equivalent mitigation measure adopted in a subsequent California Environmental Quality Act (CEQA) document for these wells, that aquifer connectivity in the vicinity of the Esposti Park and/or North Windsor wells causes their operation to induce a substantial decrease in water levels in the shallow aquifer or in surrounding wells, then the Tribe shall participate in the development and implementation of an Interference Drawdown Monitoring and Mitigation Plan, and shall pay a share of the mitigation costs that is proportional to its contribution to the shallow aquifer impact being mitigated. The Tribe’s obligation to contribute proportionate fair share funding shall be limited to measures to address impacts to existing domestic water supply wells from groundwater pumping; the Tribe shall have no obligation to participate in or fund other water supply initiatives or infrastructure improvements. Absent implementation of a mitigation plan by the Town of Windsor, the following monitoring and mitigation measures shall be implemented by the Tribe should the Town of Windsor operate two new municipal wells under multiple dry year conditions:</p> <ul style="list-style-type: none"> <li>▪ Property owners and water agencies in the area where predicted drawdown exceeds 5 feet shall be notified by certified letter of the existence of a Well Interference Drawdown Monitoring and Mitigation Program and invited to register any domestic wells in the predicted 5-foot drawdown area and any municipal, industrial, or irrigation wells in the predicted 20-foot drawdown area to participate in the program. To register for the program, well owners will be required to complete a Well Information Questionnaire regarding the construction, use, history, and performance of their well, and to sign an Access Agreement that allows access for periodic measurement of water levels and assessment of well conditions and performance. A drawdown monitoring program shall be implemented to assess the extent and distribution of drawdown at the Site and in the vicinity.</li> <li>▪ Well owners may submit claims for diminished well capacity or increased well maintenance costs. Such claims shall be evaluated to verify their veracity and whether the capacity loss or increased maintenance cost has occurred as a result of the Project. If well performance is found to be diminished by more than 25% or to be no longer adequate to meet historical water demands due to interference drawdown, registered participants will be eligible to receive reimbursement for</li> </ul>	Tribe	Construction Phase and Operation Phase	<ul style="list-style-type: none"> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> <li>▪ Local Approval for Off-Site Monitoring (Town and/or County)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Completion and adoption of the identified groundwater plans and programs by the Tribe and/or Town of Windsor.</li> <li>▪ Payment by the Tribe of applicable fair share fees.</li> <li>▪ Installation of well and gaging stations and completion of associated monitoring reports by qualified professionals contracted by the Tribe.</li> <li>▪ Completion of annual monitoring reports by qualified professionals contracted by the Tribe.</li> </ul>

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>reasonable and customary costs for well replacement, deepening or rehabilitation, or pump lowering as needed to restore adequate well function. In addition, the cost of additional maintenance attributable to interference drawdown caused by the Project will be eligible for reimbursement. The cost of reimbursement shall be borne by the Tribe.</p> <ul style="list-style-type: none"> <li>▪ As an alternative to reimbursement, the Tribe may, at its sole discretion, elect to connect the claimant to an alternative potable water source at the Tribe’s expense.</li> <li>▪ Based on review of the extent to which the claim is due to drawdown caused by the Project vs. pumping by the Town of Windsor, 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.</li> </ul> <p>B. Baseline Groundwater Level and Stream Discharge Monitoring Program. The Tribe shall implement a groundwater level and stream discharge monitoring program consisting of the following:</p> <ul style="list-style-type: none"> <li>▪ A Groundwater Level Monitoring Workplan shall be developed and implemented to verify the Project drawdown effects on the production aquifer and at the water table and inform the Well Interference Mitigation described above and the Interconnected Surface Water (ISW) and Groundwater Dependent Ecosystem (GDE) Mitigation Program described below.</li> <li>▪ Monitoring of at least one of the existing on-site supply wells, which shall be repurposed for monitoring purposes to assess groundwater levels in the pumped aquifer beneath the Project site or, if it is not feasible to convert one of the existing supply wells into a monitoring well, installing and monitoring an on-site monitoring well to an equivalent depth.</li> <li>▪ Installation and monitoring of three shallow groundwater monitoring wells (one near Pruitt Creek; one near the southwestern boundary of the site; and one near the eastern side of the northern boundary of the site)</li> <li>▪ Installation of gaging stations to monitor stream discharge rates in Pruitt Creek using surface velocity radar or similar non-invasive technology on-site in Pruitt Creek.</li> <li>▪ The Tribe shall work with the Town and/or County to install a shallow groundwater monitoring well near the perennial pools upstream along Pruitt Creek by Faught Road and install a gaging station in Pruitt Creek at or near the Faught Road bridge. The Tribe shall work in good faith to install these improvements one year prior to Project pumping; however, off-site mitigation is not fully within the control of the Tribe or BIA.</li> <li>▪ Monitoring shall begin at least one year prior to initiation of Project pumping.</li> <li>▪ If the Town of Windsor plans to pump the Esposti Park well, monitoring shall continue for a period of at least 5 years after pumping of the Town of Windsor’s Esposti Park well commences. The need for</li> </ul>				



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<p>continued monitoring shall be assessed after this minimum duration and every five years thereafter. If it is determined that continued monitoring is no longer necessary, monitoring may be discontinued with the concurrence of BIA, Sonoma County and the Town of Windsor.</p> <ul style="list-style-type: none"> <li>▪ If the Town of Windsor decides not to pump the Esposti Park well and groundwater levels remain stable for at least 5 years after the commencement of Project pumping, monitoring may be discontinued with the concurrence of BIA.</li> <li>▪ Groundwater level measurements shall be collected in the spring and fall of each year using an electronic well sounder to assess the depth to groundwater beneath a designated reference point. In addition, recording pressure transducers shall be deployed to assess short term changes in groundwater levels that can be compared to pumping of the on-site supply well(s) or nearby wells operated by the Town of Windsor and other parties.</li> <li>▪ Stream discharge measurements shall be taken continually and collected using a data logger. The stream profile at the gage locations shall be surveyed and a staff gage and camera system installed to collect water surface levels in addition to surface radar velocity readings from which discharge shall be calculated in cubic feet/second.</li> <li>▪ Observed groundwater levels shall be compared to predicted groundwater levels presented in the Groundwater Resources Impact Assessment (GRIA) to help guide the implementation of mitigation measures in cooperation with the Town of Windsor, if required. After at least one year of data collection, information regarding pumping rates, stream discharge rates pumped aquifer groundwater elevations, and water table groundwater elevations shall be used to develop an updated drawdown and surface-groundwater interaction model. The model shall be used to verify the extent of interconnected surface water throughout the year, identify times when aquatic ecosystems in Pruitt Creek are most vulnerable to depletion, evaluate the anticipated range of potential surface water depletion, and establish action thresholds for implementation of the mitigation programs. An annual monitoring report shall be submitted to the BIA by April 1 of the following year for distribution to other responsible agencies, Sonoma County and the Town of Windsor.</li> </ul> <p>C. GDE Verification Monitoring. A GDE verification monitoring program shall be implemented at the expense of the Tribe, including the following:</p> <ul style="list-style-type: none"> <li>▪ A GDE Verification Monitoring Workplan shall be developed and implemented prior to Project pumping to verify whether cumulative vegetation stress and habitat degradation is occurring along the riparian area of Pruitt Creek through the Project Site. The GDE Monitoring Plan shall describe the program procedures, schedules, responsibilities, and documentation requirements.</li> <li>▪ Baseline resource characterization and data acquisition shall be conducted by a qualified biologist in the on-site portion of the GDE, including documentation of species composition and habitat</li> </ul>				

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<p>condition, and documentation of photo points and reference transects.</p> <ul style="list-style-type: none"> <li>▪ Data collection at photo points and transects shall be conducted annually by a qualified biologist.</li> <li>▪ Satellite data available from the Landsat or Sentinel program shall be assessed annually and compared to a baseline and to shallow groundwater level trends.</li> <li>▪ Baseline data shall be analyzed for a period of at least six representative hydrologic years by using the satellite data to calculate a vegetation index such as Normalized Difference Vegetation Index or Leaf Area Index.</li> <li>▪ Annual data shall be analyzed and compared to the baseline data to assess whether there is quantifiable remote sensing evidence of plant stress or reduced vigor.</li> <li>▪ The biological and satellite data shall be evaluated, including consideration of groundwater levels in the shallow aquifer, Town of Windsor pumping records and precipitation records in a nearby representative meteorological station to assess whether a loss of vegetation vigor has occurred that may result in habitat degradation and that is attributable to groundwater level changes caused by groundwater pumping.</li> <li>▪ An annual monitoring report shall be submitted to the BIA by April 1 of the following year. If the program verifies that loss of plant vigor that may lead to habitat degradation is occurring, a meeting shall be convened between BIA, Sonoma County and the Town of Windsor to discuss and agree to thresholds for the mitigation actions, appropriate changes in groundwater pumping and management procedures, parties responsible for implementation and cost sharing.</li> <li>▪ If the Town of Windsor plans to pump the Esposti Park well, monitoring shall continue for a period of at least 5 years after pumping of the Town of Windsor’s Esposti Park well commences. The need for continued monitoring shall be assessed after this minimum duration and every five years thereafter. If it is determined that continued monitoring is no longer necessary, monitoring may be discontinued with the concurrence of BIA, Sonoma County and the Town of Windsor.</li> <li>▪ If the Town of Windsor decides not to pump the Esposti Park well and vegetation vigor and biomass output within the on-site riparian area remains stable for at least 5 years after the commencement of Project pumping, monitoring may be discontinued with the concurrence of BIA.</li> </ul> <p>D. GDE and ISW Mitigation. Should the Town of Windsor determine pursuant to mitigation measure HYD-3 Section 2 in the Town’s PEIR for adoption of the 2011 WMP (Horizon 2011), or an equivalent mitigation measure adopted in a subsequent CEQA document for these wells, that operation of the Esposti Park and/or North Windsor wells causes their operation to induce a substantial decrease in water levels in the shallow aquifer, alterations to surface streamflow, impacts to groundwater-dependent vegetation or impacts to natural recharge, then the Tribe shall participate in the development and implementation of</p>				

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<p>a GDE and ISW Mitigation Plan, and shall pay a share of the mitigation costs that is proportional to its contribution to the impact being mitigated. The Tribe’s obligation to contribute proportionate fair share funding shall be limited to measures to address impacts to GDEs and/or ISW from local groundwater pumping; the Tribe shall have no obligation to participate in or fund other water supply initiatives or infrastructure improvements. Absent implementation of a mitigation plan by the Town of Windsor, the following mitigation measures shall be implemented by the Tribe should the Town of Windsor operate two new municipal wells under multiple dry year conditions:</p> <ul style="list-style-type: none"> <li>▪ If modeling conducted under the Groundwater Level and Stream Discharge Monitoring Program or the GDE Monitoring Program indicates that vegetation decline is occurring that is correlated with groundwater level declines, or streamflow is anticipated to be depleted by more than 5% (the approximate error in typical discharge measurements), a Mitigation Plan shall be prepared that establishes thresholds for the following actions: (1) enhanced monitoring; (2) supplemental GDE and/or ISW characterization; and (3) mitigation actions. The Mitigation Plan shall be approved by BIA, CDFW, NOAA Fisheries (if appropriate) and other responsible agencies.</li> <li>▪ Level 1: Enhanced monitoring shall be implemented if one of the following occurs: (1) ambient groundwater level decline at the water table exceeds 2 feet; (2) groundwater level drawdown at the water table is greater than predicted in the GRIA; (3) post dry-year groundwater level recovery is slower than predicted; and/or (4) the extent of surface groundwater connection along Pruitt Creek is greater than the likely extent assumed in the GRIA. In the event one or more of these trigger conditions is identified, the monitoring program shall be enhanced in consultation with BIA and the other responsible agencies. Enhancement could include, but may not be limited to installation of additional monitoring wells or moisture sensors, additional water level or flow measurements, and/or additional fish or vegetation monitoring. The purpose of the enhanced monitoring will be to collect additional data to identify potential adverse trends that could lead to significant impacts.</li> <li>▪ Level 2: Supplemental characterization investigations shall be implemented if (1) a decline in GDE vigor is documented; (2) if interconnected surface water depletion is predicted to exceed 5% (the commonly assumed error in discharge gauge measurements); and/or (3) updated modeling indicates potentially adverse impacts could occur, but significant data gaps are identified. Investigations would focus on better understanding the likelihood and nature of potential impacts and could include, but may not be limited to, biological resource characterizations, habitat assessment and succession evaluation, fisheries investigations, and surface-groundwater interaction investigations.</li> <li>▪ Mitigation shall be implemented if one of the following occurs: (1) GDE vigor decline is significant and correlated with groundwater level trends; (2) potentially adverse depletion of ISW is predicted to occur; and/or (3) a decline in aquatic habitat or adverse impacts to fish are observed and correlated with declining groundwater levels. Mitigation options considered would include habitat enhancement projects, flow replacement by reclaimed water, and other potential mitigation</li> </ul>				

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<p>measures selected in consultation with BIA and other responsible agencies.</p> <p>See Hazardous Materials and Hazards – Wildfire Hazards mitigation below regarding water quality measures related to the riparian corridor wildfire management plan.</p>				
<b>Biological Resources</b>				
<b>Riparian Corridor</b>				
<p>The following measures shall be implemented to avoid and/or reduce impacts to the Riparian Corridor:</p> <p>A. Alterations to riparian vegetation from construction activities shall be avoided to the maximum extent possible. The project footprint shall be established at the minimum size necessary to complete the work. Temporary setback areas shall be marked with fencing to protect the riparian zone and its function. Any disturbed riparian areas shall be replanted with native trees and shrubs.</p> <p>B. Prior to constructions, a qualified biologist shall delineate an Environmentally Sensitive Area along Pruitt Creek. The contractor shall install high-visibility fence to prevent accidental incursion on the Environmentally Sensitive Area. The fence shall be maintained through construction activities.</p> <p>C. Staging areas, access routes, and total area of activity for construction activities shall be limited to the minimum area necessary to achieve Project goals. Routes and boundaries shall be clearly marked and outside of the riparian area and create a buffer zone wide enough to support sediment and nutrient control and bank stabilization function.</p> <p>D. Any disturbed riparian areas shall be mitigated at a 1:1 ratio of area restored to riparian area disturbed. The goal of on-site mitigation is to enhance and restore the stream and aquatic functions and resources (in-kind) that are impacted. On-site mitigation could include a variety of native planting and habitat enhancement approaches. These approaches include natural recruitment techniques as well as nursery stock tree and acorn planting, understory plantings along the bank and channel edge, and the installation of red and Pacific willow cuttings and nursery stock at the toe-of-bank. The primary objective is to enhance riparian habitat through greater canopy cover, shading, and develop a functioning understory along channels that are currently degraded. A restoration plan that includes clear goals, objectives, timelines and success criteria shall be developed in coordination with NMFS and shall be implemented within 1 year of construction.</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> <li>▪ Conditions of Clean Water Act Sections 404 and 401 permits (U.S. Army Corps of Engineers, U.S. Environmental Protection Agency)</li> <li>▪ Conditions of NPDES Discharge Permit (U.S. Environmental Protection Agency)</li> <li>▪ Federal Endangered Species Act and Magnuson–Stevens Fishery Conservation and Management Act (NMFS)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Requirements shall be identified on design plans and in construction contracts.</li> <li>▪ A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.</li> <li>▪ A restoration plan shall be prepared by a qualified biologist in consultation with NMFS.</li> </ul>
<b>Wetlands and Waters of the U.S.</b>				
<p>The following measures shall be implemented to minimize or avoid potential impacts to wetlands and Waters of the U.S.:</p> <p>E. Prior to the start of construction, wetlands and jurisdictional features shall be fenced, and excluded from activity. Fencing shall be located as far as feasible from the edge of wetlands and riparian habitats and</p>	Tribe	Construction Phase and Operation Phase	<ul style="list-style-type: none"> <li>▪ Clean Water Act Sections 401 and 404 (U.S. Army Corps of Engineers, U.S. Environmental Protection</li> </ul>	<ul style="list-style-type: none"> <li>▪ Requirements shall be identified on design plans and in construction contracts.</li> <li>▪ A qualified biologist shall be</li> </ul>

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>installed prior to the dry season, after special-status species surveys have been conducted and prior to construction. The fencing shall remain in place until all construction activities on the site have been completed.</p> <p>F. Ground disturbing activities, such as grading, clearing, and excavation, within 50 feet of any U.S. Army Corps of Engineers (USACE) jurisdictional features identified in the formal delineation process shall be conducted during the dry season (between June 15 and October 15) to minimize erosion. In the event of substantial, unseasonably high flow within Pruitt Creek on or after April 15, work shall be altered or stopped until flow ceases in the creek. Temporary stormwater Best Management Practices such as vegetative stabilization and linear sediment barriers shall be established between disturbed portions of the Project Site and Pruitt Creek to prevent sedimentation in the watercourse.</p> <p>G. Staging areas shall be located away from the areas of aquatic habitat that are fenced off. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas. Excess excavated soil shall be used on site or disposed of at a regional landfill or other appropriate facility. Stockpiles that are to remain on the site through the wet season shall be protected to prevent erosion (e.g. with tarps, silt fences, or straw bales).</p> <p>H. Standard precautions shall be employed by the construction contractor to prevent the accidental release of fuel, oil, lubricant, or other hazardous materials associated with construction activities into jurisdictional features. A contaminant program shall be developed and implemented in the event of the release of hazardous materials.</p> <p>I. If impacts to Waters of the U.S. and wetland habitat are unavoidable, a 404 permit and 401 Certification under the Clean Water Act shall be obtained from the USACE and U.S. Environmental Protection Agency (USEPA). Mitigation measures may include creation or restoration of wetland habitats either on site or at an appropriate off-site location, or the purchase of approved credits in a wetland mitigation bank approved by the USACE. Compensatory mitigation shall occur at a minimum of 1:1 ratio or as required by the USACE and USEPA.</p> <p>J. Consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries for impacts to fish and essential fish habitat shall be conducted in accordance with Section 7 of the federal Endangered Species Act (FESA) and Magnuson-Stevens Act and any requirements resulting from that consultation shall be adhered to.</p> <p>K. Subject to the terms of an NPDES wastewater discharge permit and associated Section 7 consultation, wastewater discharged to Pruitt Creek shall flow through a gauge station. The gauge shall be located at the point of project-related discharge on Pruitt Creek. No more than 1% of Pruitt Creek flow shall be discharged, consistent with NCRWQCB Basin Plan standards for receiving waters. A water quality monitoring protocol and schedule shall be established to ensure that parameters are being met during</p>			<p>Agency)</p> <ul style="list-style-type: none"> <li>▪ Conditions of NPDES Discharge Permit (U.S. Environmental Protection Agency)</li> <li>▪ Federal Endangered Species Act and Magnuson–Stevens Fishery Conservation and Management Act (NMFS)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	<p>engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.</p>

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discharge activities in Pruitt Creek.				
<b>California Red-Legged Frog</b>				
<p>The following measures shall be implemented to avoid impacts to California red-legged frogs (CRLF):</p> <p>L. A qualified biologist shall conduct a preconstruction habitat assessment survey for CRLF following Appendix D of the U.S. Fish and Wildlife Service [USFWS (2005)] Revised Guidance of Site Assessments and Field Surveys for the California Red-legged Frog. The survey shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance, construction activities, and/or any project activity likely to impact the CRLF. The survey shall be conducted in all potential CRLF habitat on and within 200 feet of ground disturbance.</p> <p>M. If CRLF is detected during pre-construction surveys or during construction, the USFWS shall be contacted immediately to determine the best course of action.</p> <p>N. Should CRLF be identified during surveys, additional silt fencing shall be installed after surveys have been completed to further protect this species from construction impacts. The fencing shall remain in place until construction activities cease.</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> <li>▪ Federal Endangered Species Act (USFWS)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.
<b>Northwestern Pond Turtle</b>				
<p>The following measures shall be implemented to avoid impacts to northwestern pond turtle (NWPT):</p> <p>O. A qualified biologist shall conduct a preconstruction survey for NWPT along Pruitt Creek 24 hours prior to the beginning of ground disturbance, construction activities, and/or any project activity likely to impact the NWPT. The survey shall be conducted within 350 feet of the stretch of Pruitt Creek. If NWPT is detected within or immediately adjacent to the area of ground disturbance, the USFWS shall be contacted immediately to determine the best course of action.</p> <p>P. Should NWPT be identified during surveys, additional silt fencing shall be installed after surveys have been completed to further protect this species from construction impacts. The fencing shall remain in place until construction activities cease.</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> <li>▪ Federal Endangered Species Act (USFWS)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.
<b>Migratory Birds and Birds of Prey</b>				
<p>The following measure shall be implemented to avoid and/or reduce impacts to potentially nesting migratory birds and other birds of prey in accordance with the federal Migratory Bird Treaty Act:</p> <p>Q. Removal of vegetation and trimming or removal of trees shall occur outside the bird nesting season (February 1 to August 31) to the extent feasible.</p> <p>R. If removal or trimming of vegetation and trees cannot avoid the bird nesting season, a qualified wildlife biologist shall conduct a pre-construction nesting survey within 7 days prior to the start of such activities</p>	Tribe	Pre-Construction Phase and Construction Phase	<ul style="list-style-type: none"> <li>▪ Migratory Bird Treaty Act (USFWS)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	A qualified biologist shall be engaged by the Tribe or construction contractor. A letter report shall be prepared by a qualified biologist documenting compliance.

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<p>or after any construction breaks of 14 days or more. Surveys shall be performed for the Project Site and suitable habitat within 250 feet of the Project Site in order to detect any active passerine (perching bird) nests and within 500 feet of the Project Site to identify any active raptor (bird of prey) nests.</p> <p>S. If active nests are identified during the pre-construction bird nesting surveys, the wildlife biologist shall place species- and site-specific no-disturbance buffers around each nest. Buffer size would typically be between 50 and 250 feet for passerines and between 300 and 500 feet for raptors (birds of prey). These distances may be adjusted depending on the level of surrounding ambient activity (e.g., if the Project Site is adjacent to a road or community development) and if an obstruction, such as a building structure, is within line-of-sight between the nest and construction. For bird species that are federally- and/or State-listed sensitive species (i.e., fully protected, endangered, threatened, species of special concern), a Project representative, supported by the wildlife biologist, shall consult with the USFWS and/or the California Department of Fish and Wildlife (CDFW) regarding modifying nest buffers. The following measures shall be implemented based on their determination:</p> <ul style="list-style-type: none"> <li>▪ If construction would occur outside of the no-disturbance buffer and is not likely to affect the active nest, the construction may proceed. However, the biologist shall be consulted to determine if changes in the location or magnitude of construction activities (e.g., blasting) could affect the nest. In this case, the following measure would apply.</li> <li>▪ If construction may affect the active nest, the biologist and a Project representative shall consult with USFWS and/or CDFW, dependent on regulatory status, to develop alternative actions such as modifying construction or monitoring of the nest during construction.</li> <li>▪ A nest buffer shall remain in place until the end of the nesting season or if a qualified biologist conducts a follow-up survey and determines that the nest has failed and is no longer active or the young have fledged and are independent of the nest.</li> </ul> <p>T. Any birds that begin nesting within the Project Site and survey buffers amid construction activities shall be assumed to be habituated to construction-related or similar noise and disturbance levels and minimum work exclusion zones of 25 feet shall be established around active nests in these cases.</p> <p>U. A qualified wildlife biologist shall conduct pre-construction burrowing owl surveys within 7 days prior to the start of such activities or after any construction breaks of 14 days or more. Surveys shall be performed at known mammal burrows or areas with the potential for new mammal burrows, within 250 feet of the Project Site. Surveys shall be conducted between morning civil twilight and 10:00 AM or two hours before sunset until evening civil twilight to provide the highest detection probabilities.</p> <p>V. If surveys identify evidence of western burrowing owls within 250 feet of the Project Site, the contractor shall:</p> <ul style="list-style-type: none"> <li>▪ Establish a 250-foot exclusion zone around the occupied burrow or nest, as directed by the qualified</li> </ul>				

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<p>biologist.</p> <ul style="list-style-type: none"> <li>▪ Avoid the exclusion zone while the burrow is occupied.</li> <li>▪ Not resume construction activities within the 250-foot zone until the Project representative provides written Notice to Proceed based on the recommendation of the qualified biologist.</li> </ul> <p>W. If avoidance of occupied burrows is not feasible during the September 1 to January 31 non-breeding season, construction may occur within 250 feet of the overwintering burrows as long as the contractor’s qualified biologist monitors the owls for at least 3 days prior to Project construction and during construction and finds no change in owl foraging behavior in response to construction activities. If there is any change in owl foraging behavior as a result of construction activities, activities shall cease within the 250-foot exclusion zone.</p> <p>X. If destruction of occupied burrows is necessary, burrow exclusion can be conducted in accordance with the Staff Report on Burrowing Owl Mitigation.</p>				
<b>Cultural Resources</b>				
<p>The following measures shall be implemented to avoid or reduce potential impacts to previously unknown archaeological and historical resources that may exist on the Project Site:</p> <p>A. Any ground-disturbing activities that occur within 150 feet of Pruitt Creek or within 50 feet of areas identified by the Canine Field Survey as having an “alert” shall be monitored by a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) and a Native American Tribal Monitor from Koi Nation. Additionally, a Native American Tribal Monitor or archaeologist selected by the Interested Sonoma County Tribes (i.e. the Federated Indians of Graton Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, Dry Creek Rancheria Band of Pomo Indians, and any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction) will be invited to optionally participate in the monitoring at least seven (7) days prior to ground disturbance in the identified areas. An archaeological monitoring program shall be established by the professional archaeologist in consultation with the BIA that includes protocols for consultation between the consulting professional archaeologist, BIA, Koi Nation, and Interested Sonoma County Tribes. The program shall clearly define the authority to temporarily halt/redirect construction should resources be encountered.</p> <p>B. In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA. All such finds shall be subject to Section 106 of the National Historic Preservation Act (NHPA) as amended (36 CFR Part 800); specifically, procedures for post-review</p>	<p>Tribe BIA as needed</p>	<p>Construction Phase</p>	<ul style="list-style-type: none"> <li>▪ National Historic Preservation Act (BIA/SHPO/ACHP)</li> <li>▪ Native American Graves Protection and Repatriation Act (BIA/SHPO/ACHP)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Requirements shall be identified in construction contracts.</li> <li>▪ A professional archaeologist meeting Secretary of the Interior’s qualifications shall be engaged by the Tribe or construction contractor. This archaeologist shall establish an archaeological monitoring program and conduct worker awareness training. A letter report shall be prepared by the archaeologist documenting compliance.</li> <li>▪ Documentation for inadvertent discoveries shall be prepared in accordance with NHPA and NAGPRA as described in the mitigation.</li> </ul>



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<p>discoveries without prior planning pursuant to 36 CFR § 800.13(b) shall be followed. Consistent with 36 CFR § 800.13(b)(3), any Indian tribe that might attach religious and cultural significance to the affected property (i.e. the Interested Sonoma County Tribes), the Koi Nation, the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) will be notified within 48 hours of the discovery. The notification shall describe the assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The Indian tribe(s), SHPO, and the ACHP shall be given 48 hours to respond to the notification. The BIA shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The BIA shall provide the Indian tribe(s), SHPO, and the ACHP a report of the actions when they are completed.</p> <p>C. If human remains are discovered during ground-disturbing activities on the Project Site, work within 50 feet of the find shall halt immediately consistent with 43 CFR Part 10.5(b)(1) and the BIA and County Coroner shall be notified. No further disturbance shall occur until the County Coroner has determined that the remains are not connected to criminal activity. Construction activities may continue in other areas but may not resume within 50 feet of the find until a plan for avoidance, removal or other disposition of the remains has been developed and implemented. If the remains are determined to be of Native American origin, the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands shall apply. Consistent with NAGPRA requirements, 1) reasonable effort shall be made to secure and protect the human remains, including, as appropriate, stabilizing or covering the human remains (43 CFR Part 10.5(a)(2)); 2) the BIA shall consult with Koi Nation and any other Indian Tribe with potential cultural affiliation (i.e. the Interested Sonoma County Tribes) to discuss the recovery and treatment of the remains (43 CFR Part 10.4(b)); 3) no later than 30 days after the remains are determined to be of Native American origin, a written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR Part 10.5(d)(1) and 43 CFR Part 10.4); and 4) the disposition of the human remains, funerary objects, sacred objects, or objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR Part 10.6.</p> <p>D. A professional archaeologist meeting the Secretary of the Interior’s qualifications (36 CFR § 61) shall provide construction worker awareness training to machine operators and construction supervisors at regular intervals as needed to inform new construction contractor employees.</p>				
<b>Public Services and Utilities</b>				
<b>Police and Fire Service</b>				
<p>The following measures shall be implemented to reduce impacts to police and fire services:</p> <p>A. Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the Sonoma County Sheriff’s Office (SCSO) to compensate SCSO for quantifiable direct and indirect costs</p>	Tribe	Planning Phase	<ul style="list-style-type: none"> <li>▪ Record of Decision (BIA)</li> <li>▪ If applicable, future Service Agreements between the</li> </ul>	A service agreement shall be negotiated between the Tribe and the Sonoma County Sheriff’s

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>incurred in conjunction with providing law enforcement services to the Project Site. This shall include, but not be limited to, funding of six deputy sheriff allocations to staff one new 24-hour/7days per week patrol fixed post position. The agreement shall include a provision requiring the Tribe to meet with SCSO at least once a year, if requested, to discuss ways to improve police services and prosecution of crimes associated with the project.</p> <p>B. Prior to operation, the Tribe shall make good faith efforts to enter into a service agreement with the Sonoma County Fire District (SCFD) to compensate SCFD for quantifiable direct and indirect costs incurred in conjunction with providing fire protection and emergency medical services to the Project Site. The agreement shall address any required conditions and standards for emergency access and fire protection systems. The agreement shall include a provision requiring the Tribe to meet with SCFD at least once a year, if requested, to discuss ways to improve the provision of fire and emergency medical services to the project.</p> <p>C. If the Tribe does not enter into a service agreement for law enforcement and/or fire protection services the Tribe shall establish, equip, and staff a public safety building for such services on the Project Site. The fire department component shall follow the certification and standards of the BIA and shall be staffed at all times with a minimum of 3 personnel, each trained as a firefighter and emergency medical technician. The law enforcement component shall be staffed at all times with a minimum of 2 personnel that have completed the Indian Country Police Officer Training Program (ICPOTP) provided by the Indian Police Academy under the BIA Office of Justice Services. The tribal building shall be located in the “treatment area” designated in the eastern portion of the Project Site (Figure 2.1-1).</p>			<p>Tribe and SCSO and SCFD (SCFO/SCFD/Tribe)</p> <ul style="list-style-type: none"> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	<p>Office, and the Tribe and the Sonoma County Fire District for compensation for law enforcement, fire protection, and emergency medical services. If an agreement is not reached, the Tribe shall establish a police station and/or fire department on the Project Site.</p>
<b>Noise</b>				
<p>The following measures shall be implemented to reduce impacts from off-site traffic noise during the cumulative year. The timing and implementation of off-site noise mitigation for cumulative impacts is not fully within the control of the Tribe or BIA:</p> <p>A. The Tribe shall pay a fair share towards repaving and maintaining the following road segments with noise-reducing pavement:</p> <ul style="list-style-type: none"> <li>▪ Shiloh Road, between Hembree Lane and Gridley Drive</li> <li>▪ Old Redwood Highway, between Shiloh Road and the Project Entrance.</li> </ul> <p>The Tribe's estimated fair share contributions for the road repaving shall be placed in an escrow account, or other account as agreed to by the Tribe and relevant government agency, for use by the governmental entity with jurisdiction over the road to be repaved so that the entity may design, obtain approvals/permits for, and perform the repaving and maintenance of the roadways at their discretion.</p> <p>B. If repaving is not necessitated by traffic improvements prior to 2040, the Tribe will compensate homeowners adjacent to the identified roadway segments for dual pane exterior windows or other noise reducing measures, such as installing window assemblies with higher than 27 Sound Transmission Class,</p>	<p>Tribe</p>	<p>Operation Phase</p>	<ul style="list-style-type: none"> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Payment of applicable fair share fees.</li> <li>▪ If repaving is not necessitated by traffic improvements prior to 2040, the Tribe shall prepare a report documenting outreach to eligible homeowners.</li> </ul>

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>that can achieve noise reduction in the interior of the sensitive receptors that meet federal, state, and local standards, at the request of the homeowner. Residents on the following roadway segments will be informed of the availability of this option should repaving not occur before 2040:</p> <ul style="list-style-type: none"> <li>▪ Shiloh Road between Hembree Lane and Old Redwood Highway.</li> <li>▪ Shiloh Road between Old Redwood Highway and Grindley Drive.</li> <li>▪ Old Redwood Highway between Shiloh Road and the Project Entrance.</li> </ul>				
<b>Transportation and Circulation</b>				
<p>While the timing for the off-site roadway improvements is not within the jurisdiction or ability of the Tribe or BIA to control, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day. The Tribe shall either complete or make in-lieu fair share contributions to the cumulative 2040 traffic mitigation measures prior to the need for the improvements. The Tribe's fair share contribution percentage, as estimated in the Traffic Impact Study (Appendix I), is included for each measure. Funding shall be for design standards consistent with those required for similar facilities in the region. The actual cost of the improvements shall be calculated by a California-licensed transportation engineer according to industry accepted practices, and in consultation with the governmental agency with jurisdiction over the roadway to be improved. These estimated fair share contributions may be adjusted based on an agreement with the governmental entity with jurisdiction over the road to be improved. Funds for opening year 2028 and cumulative 2040 mitigation measures shall be placed in an escrow account, or other account as agreed to by the Tribe and relevant government agency, for use by the governmental entity with jurisdiction over the road to be improved so that the entity may design, obtain approvals/permits for, and construct the recommended road improvement. Funds for 2028 improvements shall be deposited no later than 1 year prior to the opening of Alternative A, and funds for 2040 improvements shall be deposited at which time the improvements are shown to be needed, or 5 years after the opening of the project alternative, whichever is sooner.</p> <p>The following measures shall be implemented to reduce traffic impacts:</p>				
<b>Opening Year 2028</b>				
<p>A. For Intersection 1) Shiloh Rd. &amp; Old Redwood Hwy. (100% fair share contribution)</p> <ul style="list-style-type: none"> <li>▪ Convert split phasing in Eastbound (EB)/Westbound (WB) direction to protected phasing.</li> <li>▪ Convert existing WB-through lane to an exclusive left-turn lane (storage length of 200 feet and taper length of 75 feet) and a shared through/right turn lane.</li> <li>▪ Restripe Northbound left (NBL) to give 215 ft. storage length.</li> </ul>	Tribe	Construction Phase / Prior to Operation	<ul style="list-style-type: none"> <li>▪ Conditions of approval(s) and encroachment permits for off-site improvements (Sonoma County and/or Town of Windsor)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming</li> </ul>	<ul style="list-style-type: none"> <li>▪ Requirements shall be identified in construction contracts. Design plans must be submitted to Sonoma County and/or Town of Windsor for review and approval. Access approvals and encroachment permits will be</li> </ul>

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<ul style="list-style-type: none"> <li>▪ Restripe Eastbound right (EBR) to give 175 ft. storage length.</li> <li>▪ Restripe Southbound left (SBL) to 195 ft. storage length.</li> <li>▪ Restripe SBR to 130 ft. storage length.</li> <li>▪ Construct Traffic Impact Fee (TIF) project to add second NBL turn lane and second WB receiving lane.</li> </ul> <p>B. For Intersection 2) Shiloh Rd. &amp; Hembree Ln. (100% fair share contribution) - Optimize splits and cycle length.</p> <p>C. For Intersection 7) Shiloh Rd. &amp; Casino Entrance 1 (100% fair share contribution)</p> <ul style="list-style-type: none"> <li>▪ Signalize intersection.</li> <li>▪ Add exclusive EB right-turn lane (storage length of 150 feet and taper length of 75 feet). Additional right-of-way if needed shall be provided from the Project Site.</li> </ul> <p>D. For Intersection 8) Old Redwood Hwy. &amp; Casino Entrance 1 (100% fair share contribution)</p> <ul style="list-style-type: none"> <li>▪ Signalize intersection.</li> <li>▪ Provide exclusive Northbound right (NBR) turn lane (storage length of 100 feet and taper length of 75 feet).</li> </ul> <p>E. For Intersection 9) Shiloh Rd. &amp; Casino Entrance 3 (100% fair share contribution) - Provide exclusive EBR turn lane (storage length of 200 feet and taper length of 75 feet). Additional right-of-way if needed shall be provided from the Project Site.</p>			Ordinance (Tribe/NIGC)	<p>obtained prior to construction of improvements.</p> <ul style="list-style-type: none"> <li>▪ Payment by the Tribe of applicable fair share fees.</li> </ul>
<b>Cumulative Year 2040</b>				
<p>F. For Intersection 1) Shiloh Rd. &amp; Old Redwood Hwy. (39.4% fair share contribution)</p> <ul style="list-style-type: none"> <li>▪ Convert split phasing in EB/WB direction to protected phasing.</li> <li>▪ Restripe NB approach to include two exclusive left turn lanes, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe Southbound (SB) approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe EB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.</li> <li>▪ Restripe WB approach to include one exclusive left turn lane, two through lanes, and one exclusive right turn lane.</li> </ul>	Tribe	Operational Phase / Cumulative Year	<ul style="list-style-type: none"> <li>▪ Conditions of commercial access approval(s) and encroachment permits for work within right-of-way (Sonoma County and/or Town of Windsor)</li> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	Payment by the Tribe of applicable fair share fees.

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<ul style="list-style-type: none"> <li>▪ Restripe Eastbound left (EBL) to give 425 ft. storage length.</li> <li>▪ Restripe Eastbound right (EBR) to give 200 ft. storage length.</li> <li>▪ Restripe SBL to 190 ft. storage length.</li> <li>▪ Restripe Southbound right (SBR) to 160 ft. storage length.</li> <li>▪ Widen Shiloh Rd. between Hembree Ln. and Old Redwood Hwy. from two to four lanes.</li> <li>▪ Widen Shiloh Rd. between Old Redwood Highway and Gridley Dr. from two lanes to four lanes. (This improvement shall be 100% funded by the Tribe). Additional right-of-way if needed shall be provided from the Project Site.</li> </ul> <p>G. For Intersection 2) Shiloh Rd. &amp; Hembree Ln. (36.4% fair share contribution)</p> <ul style="list-style-type: none"> <li>▪ Convert split phasing in NB/SB direction to protected phasing.</li> <li>▪ Restripe NB approach to include one exclusive left turn lane and one shared through-right turn lane.</li> <li>▪ Restripe SB approach to include one exclusive left turn lane with 350 ft. storage length, one through lane, and two exclusive right turn lanes.</li> <li>▪ Restripe EB approach to include two exclusive left turn lanes, one through lane, and one shared through-right turn lane.</li> <li>▪ Restripe WB approach to include one exclusive left turn lane, one through lane, and one shared through-right turn lane.</li> </ul> <p>H. For Intersection 5) Shiloh Rd. &amp; Caletti Ave. (5.9% fair share contribution) Restripe WB approach to include one exclusive left turn lane and two through lanes.</p> <p>I. For Intersections 2, 3, and 5 (27.4% fair share) – Contribute fair share payment to TIF Project #2 Shiloh Road Interchange; and restripe Northbound right (NBR) at Intersection 3 to 340 ft. storage length.</p> <p>J. For Intersection 6) Shiloh Rd. &amp; Conde Ln. (6.3% fair share contribution)</p> <ul style="list-style-type: none"> <li>▪ Optimize signal timing parameters.</li> <li>▪ Restripe SBR to give 65 ft. storage length.</li> </ul> <p>K. For Intersection 12) Old Redwood Hwy. &amp; US 101 SB Ramp (5.2% fair share contribution) - Optimize signal timing parameters.</p>				
<b>Hazardous Materials and Hazards – Wildfire</b>				
A. Prior to opening day the Tribe shall engage a qualified arborist and/or biologist to develop a riparian	Tribe	Planning Phase,	▪ Record of Decision (BIA)	▪ The Tribe shall engage a

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>corridor wildfire management plan to be implemented annually during operation. The goal of the plan shall be to reduce fire hazards on and adjacent to the on-site riparian corridor. At a minimum the plan shall include the following procedures and best management practices that shall be overseen by a qualified arborist and/or biologist:</p> <ul style="list-style-type: none"> <li>▪ Weed abatement and fuel load reduction outside of the creek channel shall be conducted in late Spring (May and June) by hand crews and repeated as necessary through the fire season.</li> <li>▪ When riparian vegetation is within a 100-foot radius of a structure or the property line, the following procedures shall be implemented: <ul style="list-style-type: none"> <li>○ All dead or dying trees, branches, shrubs, or other plants adjacent to or overhanging buildings shall be removed.</li> <li>○ Lower branches of trees shall be pruned to a height of 6 to 15 feet or 1 /3 tree height for trees under 18 feet.</li> <li>○ All dead or dying grass, leaves, needles, or other vegetation shall be removed.</li> <li>○ Live flammable ground cover and shrubs shall be removed or separated.</li> <li>○ Climbing vines shall be maintained free of dead or dying material or removed from trees and structures.</li> <li>○ Dead or dying grass shall be mowed to a maximum of 4 inches in height. Trimmings may remain on the ground.</li> <li>○ Live flammable ground cover less than 18 inches in height may remain, but overhanging and adjacent trees must be pruned to a height of 6 to 15 feet.</li> <li>○ Logs and stumps embedded in the soil shall be removed or isolated from structures and other vegetation.</li> <li>○ All dead or dying brush or trees, and all dead or dying tree branches within 15 feet of the ground shall be removed.</li> </ul> </li> <li>▪ Vegetation management is prohibited in the wetted channel (i.e., the creek must be dry to perform work)</li> <li>▪ Vegetation removal is with hand tools; if a chain saw is needed to perform work, a tarp is used to contain any wood chips/debris.</li> <li>▪ No motorized vehicles are allowed in the channel.</li> <li>▪ Vegetation shall not be removed from channel banks.</li> </ul>		Operation Phase	<ul style="list-style-type: none"> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	qualified arborist and/or biologist to develop a riparian corridor and wildfire management plan.

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<ul style="list-style-type: none"> <li>▪ Large woody debris (downed logs and root wads) in the channel and banks shall remain in place.</li> <li>▪ Debris jams (fallen trees) that block the channel causing obstruction shall be removed.</li> <li>▪ Vegetation management shall be conducted in a manner that protects riparian habitat and water quality, including tree canopies that provide shade to the channel (i.e., trees shall be trimmed only if a canopy can be maintained over the creek).</li> <li>▪ Vegetation removal shall either be conducted outside the bird nesting season (February 1 to August 15) or a field survey for bird nests by a qualified biologist shall occur prior to starting work and implementing appropriate avoidance buffers.</li> <li>▪ Following clearing of dead vegetation, the riparian corridor shall be evaluated for opportunities for native vegetation plantings. Native riparian vegetation plantings shall occur where space is reasonably available following removal of dead vegetation.</li> </ul>				
<p>B. Prior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan that includes, but is not limited to, the following procedures and best management practices:</p> <ul style="list-style-type: none"> <li>▪ The evacuation plan shall complement the County of Sonoma’s Emergency Evacuation Plan, Operations Plan, supporting documents, and the standard operating procedures of fire, law, and emergency management agencies of the County.</li> <li>▪ Designated staff shall coordinate evacuation procedures with the lead agency for evacuations and other participating agencies during an evacuation event.</li> <li>▪ Unless a pre-determined evacuation zone specific to the casino-resort is created and/or unless specifically directed otherwise by the lead authority for evacuations, the casino-resort shall initiate a mandatory evacuation of the Project Site as soon as the evacuation zones within the Trigger Evacuation Zone are issued an evacuation warning or order. The Trigger Evacuation Zone (shown on Figure 3.12-6) includes the following evacuation zones: SON-2K1, SON-2K2, SON-2K3, SON-2L4, SON-2L5, SON-2L6, SON-2L7, SON-2M1, SON-2N1, SON-3A1, SON-3B1, SON-3C1, SON-3C2, SON-3C3, SON-4A2, SON-4A3, WI-A01, WI-A02, WI-A03, WI-A04, WI-A05, WI-A06, WI-B01, WI-B02, WI-B03, WI-B04, WI-B05, WI-B06, WI-B07, WI-B08, WI-B09, WI-B10, WI-B11, WI-B12, WI-B13, WI-B14, WI-B15, WI-B16, WI-B17, WI-C01, WI-C02, WI-C03, WI-C04, WI-C05, WI-C06, WI-C07, WI-C08, WI-C09, WI-C10, WI-C11, WI-D01, WI-D02, WI-D03, WI-D04, WI-D05, WI-D06, WI-D07, WI-D08, WI-D09, WI-D10, WI-D11. This shall shut down all operations with visitors, hotel guests, and most staff evacuating immediately.</li> <li>▪ Staff shall post critical emergency evacuation information (e.g., Red Flag Warnings and Fire Weather</li> </ul>	Tribe	Planning Phase, Operation Phase	<ul style="list-style-type: none"> <li>▪ Record of Decision (BIA)</li> <li>▪ Koi Nation Gaming Ordinance (Tribe/NIGC)</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan. All management and staff shall be trained on the evacuation plan.</li> <li>▪ Coordination with Sonoma County and the Town of Windsor on their respective emergency operation plans and the implementation or contribution to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity.</li> </ul>

Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>Watches) and handouts shall be made available to all visitors, guests, and staff. Staff shall incorporate the latest technology available, such as QR codes that contain links to webs sites for mobile devices, or better technology as it evolves.</p> <ul style="list-style-type: none"> <li>▪ Using the emergency evacuation information provided, guests shall be encouraged to make themselves familiar with available routes, stay informed and connected to all available emergency alert tools, and follow directions provided by staff, law enforcement, fire agencies, news media, and other credible sources.</li> <li>▪ Staff and guests shall be provided with information on the local AM and FM radio stations to monitor for disaster information and all emergency alert tools like Emergency Alert System (EAS), SoCoAlert, and Nixle.</li> <li>▪ Guests, through the emergency evacuation information, shall also be advised to not just rely on navigation apps that may inadvertently lead them toward an approaching wildfire, flooding, hazardous materials, or other hazards.</li> <li>▪ Staff shall be trained on how to connect to the available emergency alert notification tools such as EAS, SoCoAlert, and Nixle. Staff shall monitor those services while at the facility.</li> <li>▪ Designated staff shall be provided with Community Emergency Response Training. This training provides information on how to be prepared for disasters and emergencies and reorganize life-threatening conditions and apply life-saving techniques.</li> <li>▪ A public address system shall be installed inside all occupied buildings so that emergency notifications can be provided by staff to visitors and guests. Additionally, designated staff shall be issued handheld portable radios for communication during an emergency.</li> <li>▪ The hotel shall send registered guests emergency notification connection instructions to their mobile device at time of registration. This shall be done through the resort’s registration process using guest registration information.</li> <li>▪ Guests without cars or those who are uncomfortable driving themselves in an emergency shall be offered off-site transportation by staff in a resort vehicle, ride share, public transportation, and/or on-site shuttles. These options shall be directed to pre-established County Emergency Management approved community shelters.</li> <li>▪ All intersections on the Project Site shall include signage that clearly indicates the exit route from the property to major evacuation routes such as Old Redwood Highway and Shiloh Road to Highway 101.</li> <li>▪ There shall be at least six trained traffic attendants to direct the vehicles exiting the garage and surface parking areas. In addition, at least two attendants shall be posted at each of the three project site access points. A total of 12 persons would be needed during evacuation. These traffic attendants</li> </ul>				



Mitigation Measure	Party Responsible for Implementation	Timing of Implementation	Enforcement Authority/Applicable Regulation (Party Responsible for Monitoring)	Standard for Determining Compliance
<p>should be specially trained employees of the project.</p> <ul style="list-style-type: none"> <li>▪ Trained on-site personnel shall direct roughly half of the vehicles from the garage and surface parking areas on the eastern portion of the Project Site to either the east Shiloh Road access point or the signalized Old Redwood Highway access point.</li> </ul> <p>C. Management and staff at the casino-resort shall be trained on evacuation procedures for guests and visitors as part of their new hire orientation and receive updated evacuation procedures training annually.</p> <p>D. The Tribe shall coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. These measures could include, but would not be limited to:</p> <ul style="list-style-type: none"> <li>▪ Installation of a wildfire detection camera within the Project Site and/or at another location in the vicinity of the Town of Windsor that would expand the coverage of the wildfire camera system. The wildfire camera(s) would be connected to the existing early detection system and be accessible to emergency officials.</li> <li>▪ Installation of variable message signs for the outbound lanes at the three project egress points that connect to Shiloh Road and Old Redwood Highway. The variable message signs shall be connected to on-site staff and the County Emergency Operations Center (EOC) so that evacuation-related messages can be controlled by fire personnel managing the evacuation. At the time of an evacuation order, evacuating project traffic shall be directed to alternate routes to US 101 and/or other areas of safety. Unless precluded by wildfire or otherwise directed by emergency officials, evacuation project traffic shall be directed to US 101, Old Redwood Highway, Fulton Road, and/or eastbound Shiloh Road towards Faught Road and Old Redwood Highway.</li> <li>▪ Installation of adaptive signal control (ASC) systems with remote access and override at key intersections along potential evacuation routes in the vicinity of the Project Site that can adjust traffic signal timing to account for high volumes that occur during hazard events. These signals shall be upgraded to wireless communication with emergency battery backup. ASC systems could be implemented by emergency staff during a wildfire and significantly extend maximum green times on key evacuation approaches, depending on traffic conditions and evacuation patterns.</li> </ul>				

Attachment 2  
Final EIS Notices

requirements for conformity determinations.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2024-27409 Filed 11-21-24; 8:45 am]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 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

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the National Indian Gaming Commission (NIGC) and United States Environmental Protection Agency (EPA) serving as cooperating agencies, has filed a Final Environmental Impact Statement (FEIS) with the EPA in connection with the Koi Nation of Northern California's (Koi Nation) application for acquisition in trust by the United States of approximately 68.60 acres adjacent to the Town of Windsor, Sonoma County, California for gaming and other purposes.

**DATES:** The Record of Decision for the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. The BIA must receive any comments on the FEIS before that date.

**ADDRESSES:** You may send written comments by any of the following methods:

- *Mail or hand-delivery:* Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and "FEIS Comments, Shiloh Resort and Casino Project" on the first page of your written comments.

- *Email:* Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, at [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov) using "FEIS Comments, Shiloh Resort and Casino Project" as the subject of your email.

**FOR FURTHER INFORMATION CONTACT:** Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Room W-2820, Sacramento, California 95825;

telephone: (916) 978-6165; email: [chad.broussard@bia.gov](mailto:chad.broussard@bia.gov). Information is also available online at <https://www.shilohresortenvironmental.com/>.

**SUPPLEMENTARY INFORMATION:** The BIA previously prepared an EA that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments from September 12, 2023, through November 13, 2023, providing for a total of 60 days to submit comments on the EA. Upon consideration of the public and agency comments received, the BIA decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** and *The Press Democrat* on March 8, 2024. A Notice of Availability (NOA) was published in the **Federal Register** by the BIA on July 8, 2024 (89 FR 55968) and the EPA on July 12, 2024 (89 FR 57150). The Draft EIS was made available for a 45-day public comment period beginning July 12, 2024, and ending on August 26, 2024. A public meeting was held July 30, 2024, to collect verbal comments. In accordance with section 176 of the Clean Air Act and the EPA's general conformity regulations, a Draft Conformity Determination has been prepared for the Shiloh Resort and Casino Project. The Final Conformity Determination is contained within appendix F-2 of the FEIS.

#### Background

The following alternatives are considered in the FEIS: (A) Proposed Project; (B) Reduced Intensity Alternative; (C) Non-Gaming Alternative; and (D) No Action Alternative. The BIA has selected Alternative A, the Proposed Project as the Preferred Alternative as discussed in the FEIS.

Environmental issues addressed in the FEIS include land resources; water resources; air quality and climate change; noise; biological resources; cultural and paleontological resources; transportation and circulation; land use; hazardous materials and hazards; public services and utilities; socioeconomic; environmental justice; visual resources; and cumulative, indirect, and growth-inducing effects.

The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, will assist the Department in its review of the issues presented in the Tribe's application. Selection of the Preferred Alternative does not indicate the Department's final decision because the Department must

complete its review process. The Department's review process consists of (1) issuing the notice of availability of the FEIS; (2) issuing a Record of Decision no sooner than 30 days following publication of a Notice of Availability of the FEIS by the EPA in the **Federal Register**; and (3) transfer of the approximately 68.60 acres into trust.

*Locations where the FEIS is Available for Review:* The FEIS is available for review at <https://www.shilohresortenvironmental.com/>, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825 (with advance notice and during regular business hours), and Windsor Regional Library located at 9291 Old Redwood Hwy. #100, Windsor, CA 95492, telephone (707) 838-1020 (during regular business hours). Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Public Comment Availability:* Comments, including names and addresses of respondents, will be included as part of the administrative record and responses to comments on the Final EIS. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

#### Authority

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and section 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA, as amended (42 U.S.C. 4371, *et seq.*), and in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with 40 CFR 93.155, which provides reporting requirements for conformity determinations.

#### Wizipan Garriott,

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising by Delegation the Authority of the Assistant Secretary—Indian Affairs.*

[FR Doc. 2024-27430 Filed 11-21-24; 8:45 am]

**BILLING CODE 4337-15-P**

Convention. EPA seeks to enhance its current information on how much mercury is used, in which products and manufacturing processes, and whether certain products are manufactured domestically, imported, or exported.

Reporting is required from any person who manufactures (including imports) mercury or mercury-added products, as well as any person who otherwise intentionally uses mercury in a manufacturing process under TSCA section 8(b). The Agency promulgated reporting requirements at 40 CFR part 713. To avoid duplication, EPA coordinated the reporting with the Interstate Mercury Education and Reduction Clearinghouse (IMERC).

*Form number:* 9600–024.

*Respondents/affected entities:* Entities potentially affected are those that manufacture (including import) mercury, manufacture (including import) mercury containing products, and those who intentionally use mercury in a manufacturing process.

*Respondent's obligation to respond:* Mandatory, per TSCA section 8(b) and 40 CFR 713.

*Estimated number of respondents:* 105 (total).

*Frequency of response:* Triennial.

*Total estimated burden:* 2,573 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$223,592 (per year), which includes \$0 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is a decrease of 14,775 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease reflects a change in EPA's method of estimating the number of expected reports. In 2021, EPA amended the original final rule to effectuate the vacatur ordered by the Second Circuit Court. In this ICR, with data available from the Mercury Inventory and with no new changes to the rule itself, this ICR utilizes data from the Reporting Year 2021 of the Mercury Inventory. In the RY 2021, there were 105 submissions (the previous ICR used an estimate of 252). This ICR assumes each respondent completes the entire form. Wages were also updated to 2022 dollars. This change is an adjustment.

**Courtney Kerwin,**

*Director, Information Engagement Division.*

[FR Doc. 2024–27396 Filed 11–21–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–153]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS) Filed November 8, 2024 10 a.m. EST Through November 18, 2024 10 a.m. EST Pursuant to 40 CFR 1506.9.

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-ii/public/action/eis/search>.

EIS No. 20240216, Final, USGS, WI, Proposed Development of an Updated Facility for USGS National Wildlife Health Center Madison, Wisconsin, Review Period Ends: 12/23/2024, *Contact:* Jordan Sizemore 360–929–0783.

EIS No. 20240217, Final, NRC, MN, Site-Specific Environmental Impact Statement for License Renewal of Nuclear Plants Supplement 26, Second Renewal Regarding Subsequent License Renewal for Monticello Nuclear Generating Plant, Unit 1 Final Report, Review Period Ends: 12/23/2024, *Contact:* Jessica Umana 301–415–5207.

EIS No. 20240218, Draft, NMFS, PRO, Identification of Aquaculture Opportunity Areas in U.S. Federal Waters of the Gulf of Mexico, Comment Period Ends: 02/20/2025, *Contact:* Andrew Richard 727–551–5709.

EIS No. 20240219, Draft, NMFS, CA, Identification of Aquaculture Opportunity Areas in U.S. Federal Waters off of Southern California, Comment Period Ends: 02/20/2025, *Contact:* Celia Barroso 562–432–1850.

EIS No. 20240220, Final, BIA, OR, Coquille Indian Tribe Fee to Trust Gaming Facility Project, Review Period Ends: 12/23/2024, *Contact:* Brian Haug 503–347–0631.

EIS No. 20240221, Final, BIA, CA, Koi Nation Shiloh Resort and Casino, Review Period Ends: 12/23/2024, *Contact:* Chad Broussard 916–978–6165.

Dated: November 18, 2024.

**Nancy Abrams,**

*Associate Director, Office of Federal Activities.*

[FR Doc. 2024–27419 Filed 11–21–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–12404–01–OA]

### Animal Agriculture and Water Quality Subcommittee (AAWQ), Subcommittee of the Farm, Ranch, and Rural Communities Committee (FRRCC); Notice of Public Meeting Animal Agriculture and Water Quality Subcommittee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given that the next meeting of the Animal Agriculture and Water Quality Subcommittee, a subcommittee of the Farm, Ranch, and Rural Communities Advisory Committee (FRRCC) will be held virtually on December 6, 2024. The goal of the AAWQ subcommittee is to provide recommendations that will inform the Agency's decisions regarding how to improve the implementation of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) permitting program.

**DATES:** The public meeting of the AAWQ will be held virtually only on Friday, December 6, 2024, from approximately 8:30 a.m. to 5:30 p.m. (EST).

**ADDRESSES:** The meeting will take place virtually only. To register to attend virtually and receive information on how to listen to the meeting and to provide comments, please visit: [www.epa.gov/faca/frcc-0](http://www.epa.gov/faca/frcc-0). Virtual attendance will be via Zoom. The link to register for the meeting can be found on the FRRCC web page, [www.epa.gov/faca/frcc-0](http://www.epa.gov/faca/frcc-0). To provide public comments, attendees must submit request by Tuesday, November 26, 2024, at 11:59 p.m. (EST).

**FOR FURTHER INFORMATION CONTACT:** Dr. Venus Welch-White, Designated Federal Officer (DFO), at [AAWQ@epa.gov](mailto:AAWQ@epa.gov) or telephone. (202) 564–0595. General information regarding the FRRCC and AAWQ can be found on the EPA website at: [www.epa.gov/faca/frcc](http://www.epa.gov/faca/frcc).

**SUPPLEMENTARY INFORMATION:** Meetings of the AAWQ are open to the public. An agenda will be posted on AAWQ's website at <https://www.epa.gov/faca/frcc-0>.

*Access and Accommodations:* Requests for accessibility and/or accommodations for individuals with disabilities should be directed to [AAWQ@epa.gov](mailto:AAWQ@epa.gov) or at the phone number

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Sonoma

I am a citizen of the United States and a resident of the county aforesaid: am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of The Press Democrat, a newspaper of general circulation, printed and published DAILY IN THE City of Santa Rosa, County of Sonoma; and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Sonoma, State of California, under the date of November 29, 1951, Case number 34831, that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates to wit:

The Press Democrat - Legal Notices

11/22 - 11/22/2024

I certify (or declare) under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Dated 11/22/2024

at Santa Rosa, California

Stefanie Puckett

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs
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

AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Notice of Availability
SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), as lead agency, with the National Indian Gaming Commission (NIGC) and United States Environmental Protection Agency (EPA) serving as cooperating agencies, has filed a Final Environmental Impact Statement (FEIS) with the EPA in connection with the Koi Nation of Northern California's (Koi Nation) application for acquisition in trust by the United States of approximately 68.60 acres adjacent to the Town of Windsor, Sonoma County, California for gaming and other purposes.
DATES: The Record of Decision for the proposed action will be issued on or after 30 days from November 22, 2024 (the date the EPA published its Notice of Availability in the Federal Register). The BIA must receive any comments on the FEIS on or before December 23, 2024.

ADDRESSES: You may send written comments by any of the following methods:
• Mail or hand-delivery: Amy Dutschke, Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and "FEIS Comments, Shiloh Resort and Casino Project" on the first page of your written comments.
• Email: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, at chad.broussard@bia.gov using "FEIS Comments, Shiloh Resort and Casino Project" as the subject of your email.

FOR FURTHER INFORMATION CONTACT: Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Room W-2820, Sacramento, California 95825; telephone: (916) 978-6165; email: chad.broussard@bia.gov. Information is also available online at https://www.shilohresortenvironmental.com/.

SUPPLEMENTARY INFORMATION: The BIA previously prepared an EA that analyzed the potential environmental effects of the proposed action. The EA was made available for public comments from September 12, 2023, through November 13, 2023, providing for a total of 60 days to submit comments on the EA. Upon consideration of the public and agency comments received, the BIA decided to prepare an EIS to further analyze the environmental effects which may result from the proposed action. A Notice of Intent (NOI) to prepare an EIS was published in the Federal Register and The Press Democrat on March 8, 2024. A Notice of Availability (NOA) was published in the Federal Register by the BIA on July 8, 2024 (89 FR 55968) and the EPA on July 12, 2024 (89 FR 57150). The Draft EIS was made available for a 45-day public comment period beginning July 12, 2024, and ending on August 26, 2024. A public meeting was held July 30, 2024, to collect verbal comments. In accordance with section 176 of the Clean Air Act and the EPA's general conformity regulations, a Draft Conformity Determination has been prepared for the Shiloh Resort and Casino Project. The Final Conformity Determination is contained within appendix F-2 of the FEIS.

Background
The following alternatives are considered in the FEIS: (A) Proposed Project; (B) Reduced Intensity Alternative; (C) Non-Gaming Alternative; and (D) No Action Alternative. The BIA has selected Alternative A, the Proposed Project as the Preferred Alternative as discussed in the FEIS.

Environmental issues addressed in the FEIS include land resources; water resources; air quality and climate change; noise; biological resources; cultural and paleontological resources; transportation and circulation; land use; hazardous materials and hazards; public services and utilities; socioeconomics; environmental justice; visual resources; and cumulative, indirect, and growth-inducing effects.

The information and analysis contained in the FEIS, as well as its evaluation and assessment of the Preferred Alternative, will assist the Department in its review of the issues presented in the Tribe's application. Selection of the Preferred Alternative does not indicate the Department's final decision because the Department must complete its review process. The Department's review process consists of (1) issuing the notice of availability of the FEIS; (2) issuing a Record of Decision no sooner than 30 days following publication of a Notice of Availability of the FEIS by the EPA in the Federal Register; and (3) transfer of the approximately 68.60 acres into trust.

Locations where the FEIS is Available for Review: The FEIS is available for review at https://www.shilohresortenvironmental.com/. Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California 95825 (with advance notice and during regular business hours), and Windsor Regional Library located at 9291 Old Redwood Hwy #100, Windsor, CA 95492, telephone (707) 838-1020 (during regular business hours). Contact information is listed in the FOR FURTHER INFORMATION CONTACT section of this notice.

Public Comment Availability: Comments, including names and addresses of respondents, will be included as part of the administrative record and responses to comments on the Final EIS. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that your personal identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

Authority
This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and section 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA, as amended (42 U.S.C. 4371, et seq.), and in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8. This notice is also published in accordance with 40 CFR 93.155, which provides reporting requirements for conformity determinations.

# Attachment 3 - Comments and Response to Comments on the Final EIS

This attachment to the U.S. Department of Interior’s (DOI) Record of Decision (ROD) regarding the Trust Acquisition of the 68.6-acre “Shiloh Site” in Sonoma County, California (Proposed Action) for the Koi Nation Fee-To-Trust and Shiloh Resort and Casino Project (Proposed Project) contains responses to certain “new” comments that were received on the Final Environmental Impact Statement (Final EIS) following the publication of the Notice of Availability (NOA) in the Federal Register on November 22, 2024 (Vo. 89, No. 226, pg. 92713). A total of 469 letters were received during the waiting period and were considered by the DOI during the decision-making process for the Proposed Action. The commenters for these 469 letters are indexed in **Table 1** and copies of the comment letters are provided in **Exhibit 1** of this document. Specific responses to comments that were determined to potentially be “new and substantive” comments (i.e. not previously responded to during the EIS process) are provided below in **Table 2**.

In summary, the comments received by the BIA following publication of the NOA for the Final EIS did not reveal substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

**Table 1: List of Comment Letters**

Letter Number	Commenter	Date
<b>Agency</b>		
A1	Sonoma County Board of Supervisors	11/27/24
A2	Congress of the United States, House of Representatives	12/7/24
A3	Town of Windsor	12/10/24
A4	Office of Governor Gavin Newson	12/16/24
A5	USEPA, Environmental Review Section 2	12/20/24
A6	Town of Windsor	12/20/24
A7	County of Sonoma	12/23/24
<b>Tribal Government</b>		
T1	Lytton Rancheria of California	12/2/24
T2	Habematolel Pomo of Upper Lake	12/4/24
T3	Cloverdale Rancheria of Pomo Indians	12/2/24
T4	Cow Creek Band of Umpqua Tribe of Indians	12/19/24
T5	Jamul Indian Village of California	12/6/24
T6	Lytton Rancheria of California	12/17/24
T7	Cloverdale Rancheria of Pomo Indians	12/20/24
T8	Federated Indians of Graton Rancheria	12/23/24
T9	Federated Indians of Graton Rancheria	12/23/24
T10	Mishewal Wappo Tribe of Alexander Valley	12/23/24

<b>Letter Number</b>	<b>Commenter</b>	<b>Date</b>
T11	Circle Law Group: Dry Creek Rancheria	12/23/24
T12	Redding Rancheria	12/10/24
<b>Individual</b>		
I1	Lynne Morin, Asset Manager for Chevalier Partners	11/22/24
I2	Nicolas and Raquel LaBonte	11/22/24
I3	Janice Kane	11/22/24
I4	Donald Craig Mitchell	11/22/24
I5	Linda McBride	11/22/24
I6	Frances Simonson	11/22/24
I7	Anne Exton	11/23/24
I8	Dan Takasugi	11/23/24
I9	Carolyn Moore	11/23/24
I10	David Cohen	11/23/24
I11	Peter Neumeyer	11/23/24
I12	Sam Lando	11/23/24
I13	Lesley and Jerry Alexander	11/24/24
I14	Stephanie Lennox	11/24/24
I15	Gabriel Greene	11/24/24
I16	Ron and Sally Grassi	11/24/24
I17	Terry Abrams, Abrams Consulting	11/24/24
I18	Sandy Metzger	11/24/24
I19	Kathy Reiche	11/28/24
I20	John Stobel	11/30/24
I21	Xavier de la Prade	11/26/24
I22	Diana Dodson	11/22/24
I23	Diana Dodson	11/22/24
I24	Steve Vonk	11/22/24
I25	Laurie Landry	11/22/24
I26	Patricia Crawford	11/23/24
I27	Mike Stone	11/23/24
I28	Nancy and Steve Weiler	11/23/24
I29	Keri Davis	11/24/24
I30	Jason Tuck	11/25/24
I31	Peter Walker	11/25/24
I32	David Fiano	11/26/24
I33	Harold Minkin	11/27/24
I34	Larry Lapidés	11/27/24
I35	C Belden	11/27/24
I36	Walt Maack	11/28/24

Letter Number	Commenter	Date
137	David Cohen	11/28/24
138	Marilyn Volpert	11/28/24
139	C Belden	11/28/24
140	C Belden	11/28/24
141	Julie Edwards	11/28/24
142	Debra Lopez, Dry Creek Rancheria Band of Pomo Indians Elder	11/30/24
143	John Stobel	11/30/24
144	Mary Ann Zolli	12/1/24
145	Stefan and Kathy Parnay	12/1/24
146	Kona Waha Santana, Owner of Tribe Seed Health and Wellness	12/1/24
147	Lauren Sloan	12/2/24
148	Lauren Sloan	12/2/24
149	Jack Howard, Steel Partners Holdings LP	12/2/24
150	Marcia Witrogen	12/2/24
151	Michelle Henry	12/3/24
152	Sharon Conley	12/3/24
153	Chris Thuestad	12/3/24
154	Stefan and Kathy Parnay	12/3/24
155	Carrie Marvin	12/3/24
156	Kim Edwards	12/4/24
157	Padi Selwyn, Co-Chair of Preserve Rural Sonoma County	12/4/24
158	Erin Clark	12/4/24
159	Carol Rash	12/4/24
160	Jill Plamann	12/4/24
161	Steve Plamann	12/4/24
162	Therese Menzel	12/5/24
163	Reuben Weinzveg, Treasurer of Sonoma County Tomorrow, Inc.	12/4/24
164	George Woods	11/30/24
165	Dinah Costello	12/7/24
166	Betsy Mallace	12/7/24
167	Roberta Ann Wagner	12/7/24
168	Jonathan Fernandez	12/7/24
169	Patricia Stone	12/8/24
170	Christy Delucchi	12/8/24
171	Mike Stone	12/8/24
172	Miles Bradley	12/6/24
173	Larwrence S. Stern	12/6/24



Letter Number	Commenter	Date
I74	Virginia and James Gillen	12/9/24
I75	Ashley-Renee Nye	12/9/24
I76	Brian Williams	12/9/24
I77	Mary Jane Noble	12/9/24
I78	Dan Parsons	12/9/24
I79	Teara Smith	12/10/24
I80	Isaiah Jamison	12/10/24
I81	Leticia B. Jamison	12/10/24
I82	Mary McCarty and L.W. Harrison	12/10/24
I83	Hal Moorehead and Jayne Peters	12/10/24
I84	Momo Enriquez	12/10/24
I85	David Cohen	12/11/24
I86	Chris Rogers	12/11/24
I87	Terri and David Whetstone	12/11/24
I88	Judi Wiggins	12/11/24
I89	Ann Sebastian	12/11/24
I90	Mary Grishaver	12/11/24
I91	Debra Antone	12/11/24
I92	Barbara Weir	12/11/24
I93	Faxon Bishop	12/11/24
I94	William Stites	12/11/24
I95	Diana Dodson	12/11/24
I96	Catherine Marquez	12/11/24
I97	Dan Collins and Julie Jaquiss-Collins	12/11/24
I98	Gene and Jodi Hottel	12/11/24
I99	Terry Hunder	12/11/24
I100	Allan Cory	12/11/24
I101	Pamela Higi	12/11/24
I102	Lindsay Mickles	12/11/24
I103	Terry Marshall	12/11/24
I104	Joan Tabb	12/11/24
I105	Jeff Bertoli	12/11/24
I106	Judith Rousseau	12/11/24
I107	Shannon Schiller	12/11/24
I108	Judy Nassimbene	12/12/24
I109	Jennie Orvino	12/12/24
I110	David Banuelos	12/11/24
I111	Jan Mastrangelo	12/11/24
I112	Charles Zweig	12/11/24
I113	Dennis Kerby	12/11/24

Letter Number	Commenter	Date
I114	Sheri Graves	12/11/24
I115	Wesley Downing	12/11/24
I116	Audrey Chapman	12/12/24
I117	Gloria Heinzl	12/12/24
I118	Nancy Hair	12/12/24
I119	Emily McCutchan	12/12/24
I120	Kathryn Zook	12/12/24
I121	Judy Gage	12/12/24
I122	Richard N. Boyd	12/12/24
I123	Bonnie Farrow	12/2/24
I124	Dennis Cain	12/2/24
I125	Steve Kent and Lauren Kramer	12/2/24
I126	Julie Edwards	12/2/24
I127	Marcia Singer	12/2/24
I128	Lauren Sloan	12/4/24
I129	Carrie Marvin	12/10/24
I130	Mary Ann Sorensen	12/5/24
I131	Annette Flachman	12/10/24
I132	Bill Comings	12/10/24
I133	Kendra Gonzalez	12/11/24
I134	Chris Thuestad	12/10/24
I135	Margaret and Richard Addison	12/14/24
I136	Susan Yavorsky	12/12/24
I137	Karen Tarter	12/12/24
I138	George Antenucci	12/12/24
I139	Eddie Flayer	12/13/24
I140	Mary T. Hess	12/13/24
I141	Sidnee Cox	12/13/24
I142	Richard Abend	12/13/24
I143	Donald Hansen	12/13/24
I144	Claudia Abend	12/13/24
I145	Elizabeth Acosta	12/13/24
I146	Chad Thistle	12/14/24
I147	Name Withheld	12/14/24
I148	Dave Carson	12/14/24
I149	Kathleen DePuydt	12/15/24
I150	Mark Hauser	12/15/24
I151	Rick Dabney	12/16/24
I152	Carol Ann MacDonald	12/13/24
I153	Paul Sundquist	12/13/24

Letter Number	Commenter	Date
I154	Laurence Landa	12/13/24
I155	Maria Ramos	12/13/24
I156	Kendra Gonzalez	12/13/24
I157	Evan DeRouen	12/13/24
I158	Jean Davis	12/13/24
I159	Christi Unglaub	12/14/24
I160	Stephen and Kathleen Lawrence	12/14/24
I161	Marlene Martin	12/15/24
I162	Dennis Blasi	12/15/24
I163	Sharon Tellyer	12/16/24
I164	Dillon Gonzalez	12/16/24
I165	Joyce Jensch	12/16/24
I166	Michael and Alicia Bunce	12/16/24
I167	Don Ziskin	12/18/24
I168	Antonio Salas, Lytton Rancheria Tribal Member	12/17/24
I169	Janet Rustigan	12/18/24
I170	Dennis and Toni Dalbec	12/18/24
I171	Robert Pete	12/18/24
I172	Paul and Stephanie Browning	12/18/24
I173	Jim Wright	12/18/24
I174	Nina Cote	12/18/24
I175	Bill Bridges	12/19/24
I176	Sebastian Billy	12/19/24
I177	Josh Ratiani, Pastor of Shiloh Neighborhood Church	12/19/24
I178	Matt Praetzel	12/19/24
I179	Theresa Eaton	11/26/24
I180	Wilson Family	11/26/24
I181	William McCormick	12/5/24
I182	Ashley-Renee Nye	12/12/24
I183	Teara Smith	12/12/24
I184	Marquel Abend-Satterwhite	12/12/24
I185	Emanuel DeRouen	12/12/24
I186	Lynda Williams	12/12/24
I187	Janelle Ashley Montgomery	12/12/24
I188	Gail Cafferata	12/13/24
I189	Jon Bernal	12/16/24
I190	Anne Gray	12/19/24
I191	Don Gates and Tamar Cohen	12/19/24
I192	Larry Scharf	12/19/24

<b>Letter Number</b>	<b>Commenter</b>	<b>Date</b>
I193	Marie Scherf	12/19/24
I194	William and Joan Bolster	12/19/24
I195	Lynn Caruso	12/19/24
I196	Barbara Coen	12/20/24
I197	Carlos Longoria	12/20/24
I198	Lonnie Schick	12/20/24
I199	John Torres	12/20/24
I200	Arlene Knudsen	12/20/24
I201	Susan Dischler	12/20/24
I202	Norman Vachon	12/20/24
I203	Brenda Smith	12/20/24
I204	John Lilienthal	12/20/24
I205	David R. Brown	12/20/24
I206	Suzanne Calloway	12/20/24
I207	Andy Adams	12/20/24
I208	Laurie Leach	12/20/24
I209	Judy Cramer	12/20/24
I210	Robin Hartmann	12/20/24
I211	Terry Marshall	12/20/24
I212	Charles Foster	12/20/24
I213	Carl Euphrat	12/20/24
I214	Rolando Cardona, Vice Chairman of Dry Creek Rancheria of Pomo Indians	12/20/24
I215	Ronald Calloway	12/20/24
I216	Tony Martin	12/20/24
I217	Nadine Salas	12/20/24
I218	Alejandro Salas	12/20/24
I219	Ron and Michelle Blanc	12/20/24
I220	Louise Calderon	12/20/24
I221	Dawn Johnson Huff	12/20/24
I222	Holly Smith	12/20/24
I223	Dorothy Adams	12/20/24
I224	James Richter	12/14/24
I225	Anne Kirlian	12/15/24
I226	Antonio Salas	12/20/24
I227	Chris Lamela	12/19/24
I228	Thomas Schiff	12/20/24
I229	Kimberlee Keller	12/20/24
I230	Michael Krikorian	12/20/24
I231	Paul Lomeli	12/20/24

Letter Number	Commenter	Date
I232	Evan Schiff	12/20/24
I233	Beth Wolk	12/20/24
I234	A. Lura Tibbits-Kleber	12/20/24
I235	Jody Tuck	12/21/24
I236	Michael Cote	12/21/24
I237	Audrey Leyhe	12/21/24
I238	Darlys Perry	12/21/24
I239	Jack Long	12/21/24
I240	John Maier	12/21/24
I241	Michael R. Strider	12/21/24
I242	Stephen Rios and Elizabeth Acosta	12/21/24
I243	David Finigan	12/21/24
I244	Robert Pete	12/21/24
I245	Theresa Benson	12/21/24
I246	Steve Winton	12/21/24
I247	Diana Borges	12/21/24
I248	Steve Hogle	12/21/24
I249	Lynn Darst	12/22/24
I250	Michele Pagan	12/22/24
I251	Mark Greenwood	12/22/24
I252	Kay Hartman	12/22/24
I253	Sally Jacoby	12/22/24
I254	Carol Casselman	12/22/24
I255	Catherine Ernst	12/22/24
I256	Joyce Klein	12/22/24
I257	Albert Handelman	12/22/24
I258	Kevin Warren	12/22/24
I259	Anthony Sarto	12/22/24
I260	Robert Lyons	12/22/24
I261	Elizabeth McKee	12/22/24
I262	Mr. and Mrs. Moldenhauer	12/22/24
I263	Carolyn Williams	12/22/24
I264	Carol Areyano	12/22/24
I265	Donna Jeffers-Kalder	12/22/24
I266	William Cramer	12/22/24
I267	Suzanne Malay	12/22/24
I268	Melissa Giorgettii-Anderson	12/22/24
I269	Patricia Biggi	12/22/24
I270	Nicole Biggi	12/22/24
I271	Charlie Hardin Jr.	12/22/24

Letter Number	Commenter	Date
I272	Darlana Hardin	12/22/24
I273	Robert Hobbs	12/22/24
I274	Charles Hardin Sr.	12/22/24
I275	Cynthia Jimenez	12/22/24
I276	Romeo Steele	12/22/24
I277	Serena Corona	12/22/24
I278	Victoria Lopez	12/22/24
I279	Nancy Jimenez	12/22/24
I280	Grace Ocampo	12/22/24
I281	Dennis Ocampo	12/22/24
I282	Jacob Enriquez	12/23/24
I283	Merilee Maystrovich	12/23/24
I284	Michael Racho	12/23/24
I285	Avianna Dickerson	12/23/24
I286	Sue and Michael Brook	12/23/24
I287	Mark Hellender	12/23/24
I288	Sharon Morgan	12/23/24
I289	Eleanor Salanueva Billy	12/23/24
I290	Joseph Finigan	12/23/24
I291	Agustin Salanueva	12/23/24
I292	Kevin Warren	12/23/24
I293	Ray Farias	12/23/24
I294	Samuel Campos	12/23/24
I295	Gordon and Frances Lunde	12/23/24
I296	Angelina Smith	12/23/24
I297	Ruby Steele	12/23/24
I298	Sam Salmon	12/23/24
I299	Thomas Boek	12/23/24
I300	Marcus Youngblood	12/23/24
I301	Mary Euphrat	12/23/24
I302	Bob and Pam Janes	12/23/24
I303	Shar Nordstrom	12/23/24
I304	Sandra Peters	12/23/24
I305	Sandra Alvarez	12/23/24
I306	Elizabeth Quiroz	12/23/24
I307	Katrina Mejia Ebanks	12/23/24
I308	Linda Moreskine	12/23/24
I309	Priscilla and Richard Bale	12/23/24
I310	Ebony Steele	12/23/24
I311	Catherine Dodd	12/23/24

<b>Letter Number</b>	<b>Commenter</b>	<b>Date</b>
I312	Maureen Granados	12/23/24
I313	Tavia Hayes	12/23/24
I314	Kerry Bligh	12/23/24
I315	Areanna Gabriella Corona Galimba	12/23/24
I316	Darren Dickerson	12/23/24
I317	Justin LeRette	12/27/24
I318	Charles Wehn	12/20/24
I319	Lorraine Borel	12/15/24
I320	Reiley Family	12/16/24
I321	Elizabeth Pulcheon	12/17/24
I322	Richard Hernandez	12/18/24
I323	Maribeth Forsyth	12/19/24
I324	Claire Berglund	12/20/24
I325	Garold Bettega	12/20/24
I326	Anyessa Bettega	12/20/24
I327	Gayle Cunningham	12/20/24
I328	Joseph Hernandez and Sylvia Zensen	12/20/24
I329	John and Kathleen Henderson	12/23/24
I330	Ebony Steele	12/30/24
<b>Form Letters</b>		
F1.1	Danila Stephens	12/4/24
F1.2	Sam Ahalim	12/5/24
F1.3	Rem Henshaw	12/4/24
F1.4	Juana Cisneros	12/4/24
F1.5	Beatriz T Tlahuitzo-delao	12/4/24
F1.6	Calvin Kandarian	12/4/24
F1.7	George	12/4/24
F1.8	Yolanda Basurto	12/4/24
F1.9	Gary Hoffman	12/4/24
F1.10	Melissa Emma Rodriguez	12/4/24
F1.11	Kathy Herron	12/4/24
F1.12	Mike Smith	12/4/24
F1.13	Jose Curiel	12/4/24
F1.14	Archie Velasquez	12/4/24
F1.15	Joanne Townsend	12/4/24
F1.16	Lorena Licea	12/4/24
F1.17	Emily Lamb	12/4/24
F1.18	Kim Danoff	12/5/24
F1.19	Terrance Williams	12/5/24
F1.20	Carol Sellers	12/5/24

Letter Number	Commenter	Date
F1.21	Pam Haynes	12/4/24
F1.22	Jonathan Ryan Holt	12/5/24
F1.23	Richard D. Coreno	12/5/24
F1.24	Kevin Desai	12/5/24
F1.25	Rita Diserly	12/5/24
F1.26	Sheila O Keefe	12/5/24
F1.27	Regina Vargas	12/5/24
F1.28	Robert Young	12/5/24
F1.29	Robert A Boyce	12/4/24
F1.30	Crystal Diamante	12/5/24
F1.31	Marilyn Soldavini	12/5/24
F1.32	Lissa Coleman	12/5/24
F1.33	Rebecca Lopez	12/5/24
F1.34	Robert Ransom	12/5/24
F1.35	Margret Brown	12/5/24
F1.36	Diane McClelland	12/5/24
F1.37	Rico Pinola	12/4/24
F1.38	Jamie	12/5/24
F1.39	Regina Bertolucci	12/5/24
F1.40	Gloria Allen	12/5/24
F1.41	Richard Girard	12/5/24
F1.42	Salvador Jimenez	12/5/24
F1.43	Connie	12/5/24
F1.44	George Ng	12/4/24
F1.45	Camilo M Alcantara	12/5/24
F1.46	Raymond Trinidad	12/5/24
F1.47	Jay Bradshaw	12/9/24
F2.1	Georgianne Boissier	12/8/24
F2.2	Christine Wagner	12/8/24
F2.3	Mike and Tam Shook	12/8/24
F2.4	Scott Huhn	12/9/24
F2.5	Janice L. Sexton	12/6/24
F2.6	Kathleen Huhn	12/9/24
F2.7	Meredith Strom	12/9/24
F2.8	Stephen and Karen Marcelino	12/9/24
F2.9	Signe Sugiyama	12/9/24
F2.10	Abby L. Fletcher	12/9/24
F2.11	Candace Gagosian	12/9/24
F2.12	Jim and Meredith Popoff	12/10/24
F2.13	Rose McCoy	12/10/24



Letter Number	Commenter	Date
F2.14	Thomas Loos	12/10/24
F2.15	Scott Straub	12/11/24
F2.16	Marquel Abend	12/9/24
F2.17	Lillian Fonseca	12/11/24
F2.18	Barbara Rael	12/12/24
F2.19	Susan Levi	12/10/24
F2.20	Robin Herrick	12/13/24
F2.21	Ron and Carrie Myers	12/13/24
F2.22	Karen Wagenseller	12/13/24
F2.23	Linton G. Reid	12/18/24
F2.24	Lynne Carpenter	12/19/24
F2.25	Ron and Ramona Turner	12/12/24
F2.26	Garrett Satterwhite	12/12/24
F2.27	Meredith Popoff	12/13/24
F2.28	Kenneth Wright	12/18/24
F2.29	Rick Dabney	12/18/24
F2.30	Francisco H. Vazquez	12/19/24
F2.31	James Collins	12/20/24
F2.32	Mona Behan and Alan Crisp	12/6/24
F2.33	Lori Tomsy	12/13/24
F2.34	Eliseo Valladares	12/17/24
F2.35	Susan Morton	12/21/24
F2.36	Claudia Volpi	12/21/24
F2.37	Christopher and Leena Chung	12/21/24
F2.38	Jack Hartman	12/22/24
F2.39	Mark Maystrovich III	12/23/24
F2.40	Brenda Catelani	12/23/24
F2.41	Pat Warren	12/23/24
F2.42	Mark Catelani	12/23/24
F3.1	Rose Steele	12/23/24
F3.2	Baia-ku Redhawk	12/23/24
F3.3	Pawnum Redhawk	12/23/24
F3.4	Israel Steele	12/23/24
F3.5	Sherry Steele	12/23/24
F3.6	Cynthia Weekley	12/23/24
F3.7	Kaya Lane	12/23/24
F3.8	Jesus Galindo	12/23/24
F3.9	Amaya Galindo	12/23/24
F3.10	Valerie Viramontes	12/23/24
F3.11	Janna Roberts	12/23/24

Letter Number	Commenter	Date
F3.12	Mary Day	12/23/24
F3.13	Kate McKinnon	12/23/24
F3.14	Angel Galindo	12/23/24
F3.15	Valerie Nelson	12/23/24
F3.16	Paul Lopez	12/23/24
F3.17	Lenora Kauth	12/23/24
F3.18	Dawn Gonzalez	12/23/24
F4.1	Curtis Michelini, Sr.	12/23/24
F4.2	Chirleen Michelini	12/23/24
F4.3	Charles Hardin, Sr.	12/23/24
F4.4	Mark Stokes	12/23/24
F4.5	Jill Urquhart	12/23/24
F4.6	Lisa Hardin	12/23/24
F4.7	Curis Michelini, Jr.	12/23/24
F4.8	Maria Lena Romero	12/23/24
F4.9	Carlos Reyes	12/23/24
F4.10	Ignacio Barajas	12/23/24
F4.11	Manuel Mosher	12/23/24
F4.12	Elyana Aronow	12/23/24
F4.13	Sandra Mosher	12/23/24

**Table 2: Responses to “New” Comments on the Final EIS**

Comment Number	Comment	Response
General	Multiple commenters requested an extension of the comment period due to overlap of the time period with holidays, a Sonoma County flood emergency, or due to the volume of the document and appendices.	<p>The Department of the Interior (DOI) NEPA regulations (43 CFR Part 46) and CEQ Regulations for Implementing NEPA (40 CFR Parts 1500–1508) encourage agencies to facilitate public involvement in the NEPA process (40 CFR 1500.2(d); 40 CFR 1501.9); however, neither NEPA, the CEQ Regulations for Implementing NEPA, DOI’s NEPA Procedures or the BIA’s NEPA Guidebook (59 IAM 3-H) require a public comment period for a Final EIS. Rather, the DOI NEPA Procedures require that an agency may not issue a Record of Decision (ROD) until after 30 days from the publication by the USEPA of the Notice of Availability of the Final EIS in the federal register, with some exceptions (40 CFR 1506.10; 43 CFR 46.415(c)).</p> <p>As described in detail in the Final EIS, Appendix P, Master Response 1, extensive opportunities for public review and input have been provided throughout the EIS process in excess of the minimum requirements stipulated by the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Sections 1500 – 1508); the Department of the Interior’s NEPA Procedures (43 CFR Part 46) and the BIA’s NEPA Guidebook (59 IAM 3-H).</p> <p>Since the publication of the Draft EIS, substantial changes relevant to environmental concerns related to the Proposed Action have not been made, nor has a new alternative been introduced as the Proposed Action. Similarly, there are no significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Action or its impacts. In response to comments received on the Draft EIS, text and analyses contained in the EIS have been supplemented, modified, and improved; and factual corrections have been made. While new information has been presented, the information has not resulted in substantial changes in the EIS’s conclusions regarding the environmental impacts of the Proposed Action. Therefore, the BIA has determined that public engagement has been</p>

Comment Number	Comment	Response
		<p>conducted in accordance with NEPA and an extended waiting period for the Final EIS is not warranted.</p> <p>40 CFR 1501.10 and 40 CFR 1506.10 set forth the timelines for preparation of an EIS. 40 CFR 1501.10 (a) states:</p> <p>“To ensure that agencies conduct sound NEPA reviews as efficiently and expeditiously as practicable, Federal agencies shall set deadlines and schedules appropriate to individual actions or types of actions consistent with this section and the time intervals required by § 1506.10 of this subchapter....”</p> <p>The BIA has prepared the EIS consistent with these regulations.</p>
A6-1	<p>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</p>	<p>Table 6-7 of the Town of Windsor Urban Water Management Plan (UWMP) specifies that the Esposti potable well is planned to be used during single dry and multiple dry years at a rate of 350 acre-feet per year (Woodard and Curran, 2021, Page 6-17). Consistent with this information, as indicated on Page 21 of the Revised Supplemental Groundwater Resources Impact Assessment included as Appendix D-4 of the Final EIS (the GRIA), pumping of the Esposti well was simulated under the cumulative impact scenarios during periods of dry and multiple dry years at a rate of 350 acre-feet per year. As noted on Pages 26-28 of the GRIA, the drawdown resulting from the additional pumping of the Esposti potable well was predicted to stabilize relatively quickly. Based on this information, even if the City pumped the Esposti potable well during some non-dry years to supplement its water supply needs, the resulting drawdown would remain within the levels established by the simulation of the planned UWMP pumping. Furthermore, we note that drawdown impacts on the Esposti Potable well of the proposed use of groundwater to supply the Project will remain the same regardless of the operational schedule of the Esposti potable well, and are fully analyzed in</p>

Comment Number	Comment	Response
	<p>part of the baseline conditions and the Project evaluated from that baseline.</p> <p>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.</p>	<p>the GRIA and found to be less than significant (see Table 5 and Section 6.1 of the GRIA).</p> <p>Based on this information, the GRIA analyzes operation of the Esposti potable well consistent with the UWMP submitted by the Town to the California Department of Water Resources. Even if pumping of the well were to occur during additional non-dry periods, the impact conclusions presented in the GRIA would remain unchanged.</p>
A6-2	<p>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</p>	<p>As noted in Section 6.3 of the GRIA, the PEIR for adoption of the Town of Windsor 2011 Water Management Plan (WMP) recognized the potential for significant impacts to domestic wells and GDEs resulting from operation of the Esposti potable well, and stated that “implementation of Mitigation Measure HYD-3 is required to ensure impacts on groundwater level fluctuations would be less than significant” (Horizon 2011; Town of Windsor Agenda Report 2011). Although the Town has not published a CEQA analysis to evaluate the operation of the Esposti Park and North Windsor wells for groundwater extraction alone, several components of this measure would be applicable to the Town’s planned operation of these wells. As such, it is our understanding that the Town would have mitigation responsibility for its operation of these wells. Specifically, under Mitigation Measure HYD-3, the Town is responsible to meet specific monitoring, investigation and mitigation requirements associated with operation of the Esposti potable well.</p> <p>The need to coordinate groundwater resource-related monitoring and mitigation requirements between the two projects is therefore evident, as discussed on pages 3-158 and 3-159 of the Final EIS and Section 7 of the GRIA. To facilitate this coordination for cumulative impacts, the Tribe shall provide</p>

Comment Number	Comment	Response
	Town; therefore, the Town cannot concur with these statements or endorse these mitigations at this time.	future monitoring and investigation data to the Town on an annual basis. Future discussions are expected to occur in response to these monitoring data, and mitigation has been conditions so that the Tribe shall fully meet its monitoring and mitigation obligations regardless of whether the City ultimately undertakes any of its obligations under HYD-3.
A6-3	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.	The approach taken for the evaluation of cumulative drawdown impacts from the Proposed Project, existing pumping, and reasonably foreseeable non-Project pumping, is based on the available data, scientifically supported inferences and a thorough modeling study. These are described in the GRIA and the Supplemental Evaluation of Potential Surface Water Depletion Impacts, Shiloh Resort and Casino, Windsor, California (included as <b>Exhibit 2</b> to this Response to Comment document). Regarding cumulative impacts see also Final EIS, Appendix P, Responses to Comments A5-2, A5-3, A5-4, A5-7, A5-8, A9-81, A9-85 and T8-38.
A6-4	The FEIS fails to adequately address concerns about effluent discharge into Pruitt Creek. 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.	Year-round discharge of treated effluent is not proposed. Section 2.1.4 of the Final EIS notes that during the wet season (approximately October 1 through May 14), treated effluent may be discharged on-site to Pruitt Creek, subject to a USEPA NPDES discharge permit. Excess effluent that cannot be immediately reused or discharged to Pruitt Creek would be stored in a lined seasonal storage pond or enclosed tanks. A maximum effluent reuse scenario and storage during low-flow is already incorporated into the FEIS and project design and includes recycled water use for on-site for toilet flushing and cooling tower makeup, as well as for irrigation of approximately 4.4 acres of landscaping and 12.2 to 17.4 acres of on-site vineyards at agronomic rates. In addition to on-site landscaping and vineyard areas, recycled water may be utilized for irrigation of off-site landscaping or agricultural areas in proximity to the Project Site at agronomic rates, subject to federal, State, and local regulations. See also Final EIS, Appendix P, Response to Comment A7-4, Response to Comment A9-60 and Response to Comment T7-11 for additional discussion of seasonal discharge of treated effluent to Pruitt Creek. See Final

Comment Number	Comment	Response
		EIS, Appendix P, Response to Comment A8-64 for discussion of post-wildfire pollutants, such as ash and debris concentrations, on local waterways.
A6-5	<p>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.</p>	<p>Please see Final EIS, Appendix P, Response to Comment A8-8 for discussion of review of updated FEMA Flood Insurance Rate Maps. The Draft EIS was prepared and issued prior to the FEMA update of July 31, 2024. Review of the current FEMA flood tiles for the project location does not change floodplain limits or elevations used from the previous map. No additional re-evaluation is required. Please see Final EIS Section 3.3.3 and Final EIS, Appendix P, Response to Comment A7-3 for a discussion of project specific floodplain management activities.</p>
A6-6	<p>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.</p> <p>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.</p>	<p>Please see Final EIS, Appendix P, Response to Comment A9-16, Response to Comment A9-69 and Response to Comment T8-11. Subject to the terms of an NPDES wastewater discharge permit and associated Section 7 consultation, wastewater discharged to Pruitt Creek shall flow through a gauge station located at the point of project-related discharge on Pruitt Creek. No more than 1% of Pruitt Creek flow shall be discharged, consistent with NCRWQCB Basin Plan standards for receiving waters. As a typical condition of an NPDES discharge permit, a water quality monitoring protocol and schedule will be required to ensure that parameters are being met during discharge activities in Pruitt Creek.</p>

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A6-7	<p>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.</p>	<p>The estimated project water demands for each alternative are detailed in Section 2, Table 2-2 of the Final EIS. As stated on page 2-2 of the Final EIS, the projections are based on estimated average wastewater flows (Table 2-5) and include a 20 percent allowance for system losses as well as a safety factor to ensure adequate supply. The recommended firm water supply in Table 2-3 is a rounded conservative value intended to capture peak conditions. The recommended firm supply is not equivalent to demand and is intended to be greater than estimated demand to assure adequate water supply at all times. It is normal for wastewater flow to be less than water demand; as a portion of water is for consumptive uses and not discharged to the sewer. The design criteria for the WWTP is further described in Appendix D-1. Based on the weekend capacity, Table 2-8 in Appendix D-1 of the EIS and identifies the proposed design flows for the WWTP for Alternative A (400,000 gpd), B (300,000 gpd), and C (75,000 gpd). The design flows are higher than the actual projected flows (See Final EIS Appendix D-1, Tables 2-5 through 2-7) in order to provide a safety factor for design to account for the typical diurnal variation.</p>
A6-8	<p>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.</p> <p>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.</p>	<p>The location of the recycled water storage facilities are included in Final EIS Appendix D1 - Water and Wastewater Feasibility Study, Figures 2-7 through Figure 2-13 for all alternatives. Additional storage options are included in Final EIS Appendix D2 - Supplemental Wastewater Memorandum, Figures 1 through 3 for Alternative A.</p>
A6-9	<p>However, as discussed in the Transportation and Circulation section, the TIS underestimates trip generation by up to 25%,</p>	<p>Please see Final EIS, Appendix P, Response to Comment A8-29 and A9-37 and DEIS Appendix I regarding trip generation estimates. Refer to Final EIS,</p>



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	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.	Appendix P, Master Response 6 and 7 regarding BMP and mitigation measure enforcement. As discussed in the Final EIS Section 3.14.3, the proposed BoDean asphalt and construction material processing plant would operate under BAAQMD air permits, which would minimize pollution. Due to BAAQMD requirements and because the proposed plant is more than 0.5 miles from the Project Site, the emissions are not expected to impact the Project Site. Emission-reducing measures are in place for the Project Site to further minimize air quality impacts.
A6-10	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.	CDFW does not have jurisdiction on tribal trust land. The Final EIS provided an updated account on the Section 7 consultation process with USFWS and NMFS. As discussed in Final EIS, Section 3.14.4, consultation with USFWS has been concluded, and consultation with NMFS has been initiated and is ongoing at the time of the preparation of this response. Appendix G-7 of the Final EIS contains Section 7 correspondence. Final EIS, Section 5 provided a summary of agency consultation that occurred throughout preparation of the Final EIS. Additionally, the BIA No Effect Letter to USFWS on May 6, 2024 is included <b>Exhibit 4</b> of this Response to Comment document.
A6-10	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.	CDFW does not have jurisdiction on tribal trust land. The Final EIS provided an updated account on the Section 7 consultation process with USFWS and NMFS. As discussed in Final EIS, Section 3.14.4, consultation with USFWS has been concluded, and consultation with NMFS has been initiated and is ongoing at the time of the preparation of this response. Appendix G-7 of the Final EIS contains Section 7 correspondence. Final EIS, Section 5 provided a summary of agency consultation that occurred throughout preparation of the Final EIS. Additionally, the BIA No Effect Letter to USFWS on May 6, 2024 is included <b>Exhibit 4</b> of this Response to Comment document.
A6-11	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	As noted in the comment, the Sonoma County HCP/NCCP is in the planning stage. It is unclear how the Proposed Project would interfere with the HCP/NCCP as it does not yet exist and there are no enumerated adopted policies or goals to evaluate the Proposed Project against. There is no plan

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	<p>plan (HCP) under Section 10 of the Endangered Species Act and a Natural Community Conservation Plan (NCCP) under California Fish &amp; 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 policymaking and could have deleterious impacts to its implementation and conservation goals.</p>	<p>that has been formally adopted by any of the applicable regulatory agencies, and there is no guarantee at this time that a HCP/NCCP would be developed. Current development projects across the County, including the Proposed Project, are not required to postpone development for completion of the HCP/NCCP. As such, further analysis on this HCP/NCCP is not necessary. The Project Site would be taken into trust prior to development, and the Tribe does not intend to be a signatory to the HCP/NCCP, should one be developed. The BIA elected to undergo Section 7 consultation directly with the USFWS during the EIS process. As discussed in the Final EIS, consultation with USFWS under Section 7 of the ESA has already been concluded. Appendix G-7 of the Final EIS and <b>Exhibit 4</b> of this Response to Comment document contain the relevant Section 7 correspondence.</p>
A6-12	<p><b>Expanded Archaeological Monitoring</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ Implement comprehensive archaeological monitoring across the entire Project site during all ground-disturbing activities; and</li> <li>▪ Ensure that qualified tribal monitors are included in all archaeological monitoring activities.</li> </ul>	<p>Please refer to Final EIS, Appendix P, Response to Comment A8-23 regarding the extent of the tribal monitoring that is included as mitigation. As described in Final EIS Section 4, "Any ground-disturbing activities that occur within 150 feet of Pruitt Creek or within 50 feet of areas identified by the Canine Field Survey as having an "alert" shall be monitored by a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR § 61) <u>and a Native American Tribal Monitor from Koi Nation</u>. Additionally, a <u>Native American Tribal Monitor or archaeologist selected by the Interested Sonoma County Tribes</u> (i.e. the Federated Indians of Graton Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, Dry Creek Rancheria Band of Pomo Indians, and any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction) will be invited to optionally participate in the monitoring at least seven (7) days prior to ground disturbance in the identified areas." (<u>emphasis added</u>) Therefore, qualified tribal monitors will be included in all of the archaeological monitoring set forth in the mitigation.</p>

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A6-13	<p><b>Housing Impacts</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ 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.</li> </ul> <p>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</p>	<p>Responses to the comments are as follows:</p> <ul style="list-style-type: none"> <li>▪ High Cost of Living: The commenter is correct that Sonoma County has a relatively high cost of living. However, it is unclear from the comment how this would affect the housing analysis included in Final EIS, Section 3.7.3, which focuses on the impact of the Proposed Project on available housing. Issues associated with hiring and retaining qualified employees were specifically addressed in Final EIS, Response to Comment T5-20.</li> <li>▪ Competition with Other Developments: The commenter is correct that the Graton Resort and Casino expansion will likely cause the demand for housing to increase. However, as discussed in Final EIS, Section 3.7.3, substitution effects of the Proposed Project are estimated to cause a multi-year decline in the revenues of existing casinos in Sonoma County, including the Graton Resort and Casino. Such revenue declines would likely be accompanied by either temporary declines in employment, a slowdown in hiring or cessation in employee headcount increases at these facilities. This indirect effect was not factored into the housing demand analysis included in Final EIS, Section 3.7.3, or Appendix B-5, which resulted in a more conservative housing analysis. Had this factor been included, it would offset any increased employment that will result from the Graton Resort and Casino expansion.</li> <li>▪ In-Migration Underestimated: As described in Final EIS, Response to Comment A8-25 and Final EIS, Appendix B-5, the conservative case scenario was based on a 2019 survey conducted in by UMass Donahue Institute's Economic &amp; Public Policy Research Group. Final EIS, Appendix B-5 was prepared by Global Market Advisors (GMA), the consultant that prepared Draft EIS Appendix B-1. The survey cited in this appendix is titled New Employee Survey at MGM Springfield: March 2018 through December 2019. According to this survey, "...16 percent of all survey respondents—had moved, while</li> </ul>

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	<p>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.</p>	<p>the remaining 10 percent was still in the planning phases of moving and may not have moved at all.”<sup>1</sup> This survey forms the basis of the 26% estimated number of in-migrating employees described in the Appendix B-5 conservative case scenario. The County’s request for a more detailed and region-specific housing impact analysis is acknowledged. However, any estimate of housing impacts would still rely upon an estimate of the number of employees who would in-migrate as a result of the Proposed Project. The reason that the aforementioned survey was used as a source for the conservative case scenario is because it represents one of a small number of rigorous and apparently bias-free surveys on this subject.</p> <p>The region’s housing shortage is acknowledged. Nevertheless, the housing analysis performed in the Final EIS supports the conclusion that housing impacts under the Proposed Project would be less than significant.</p>
A6-14	<p><b>Economic Displacement</b></p> <p>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.</p> <p>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</p>	<p>Final EIS, Section 3.7.3 analyzed potential environmental justice effects to disadvantaged communities, including low-income and minority populations. This analysis did not identify any factors that would cause a significant economic displacement or other disproportionately high and adverse effects to low-income and non-tribal minority populations. Effects to non-tribal minority and low-income populations would include positive impacts from the Proposed Project’s beneficial impacts to the local economy, including the creation of permanent jobs. The Project Site contains one residence, and therefore the Proposed Project would result in the displacement of a very small amount of housing stock. However, due to substitution effects to existing tribal casinos, a potentially significant disproportionate and adverse effect to the Dry Creek Band and its members may occur.</p>

<sup>1</sup> University of Massachusetts, 2020 – New Employee Survey at MGM Springfield: March 2018 through December 2019, page 26. Available online at: <https://www.umass.edu/seigma/reports>. Accessed January 2025.

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	<p>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.</p>	<p>As described in Final EIS Section 3.7.3 and Final EIS Response to Comments, potential environmental justice impacts were analyzed pursuant to Executive Order 12898, Executive Order 14096, and CEQ regulations. The Final EIS, including Appendix B-4 analyzed the communities in the immediate vicinity of the Project Site to determine their vulnerability and susceptibility to potential effects. No significant effects were identified. Potential environmental justice effects were also addressed in Final EIS, Response to Comment T8-27 and T8-130.</p>
A6-15	<p><b>Peak Traffic Volumes and Trip Generation Estimates</b></p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ Weekday Daily Trip Generation: The TIS estimates 11,213 trips, whereas W-Trans data suggests the actual number should be 13,927 trips.</li> </ul>	<p>The Traffic Impact Study included as Final EIS, Appendix I used the best and most relevant information available at the time it was initiated from developments with similar land use characteristics (i.e., casino/hotel). Therefore, the trip generation rates used in the Draft EIS are appropriate for the land uses proposed as part of the Project and are supported by empirical data. The Town was provided a memo on June 9, 2022 that outlined the proposed scope of the traffic study for review and comment, including the proposed trip generation rates. The Town did not provide any feedback on the memo.</p> <p>Similar to Comment A8-28 and A8-29 of the Town's August 25, 2024 letter, the Town does not explain or provide supporting information regarding the statement that Sunday traffic volumes can exceed Saturday levels or how W-Trans estimated the Saturday and weekend daily trip generation. As explained in Final EIS, Appendix P, Master Response 3, "...responses are not required for comments that do not raise a substantive environmental issue or general statements and expressions of opinion <u>that are not explained with supporting data, sources, or methodologies.</u>" (<i>emphasis added</i>) Without the methodology for how these estimates were calculated, a technical review cannot be conducted; therefore, a more detailed response cannot be provided and, if determined to be appropriate, adjustments to the traffic analysis cannot be made.</p>

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	<p>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.</p>	
A6-16	<p><b>Queuing and Safety Hazards</b></p> <p>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.</p> <p>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.</p>	<p>The FEIS RTC erroneously stated that SimTraffic was used to conduct queuing analysis. As noted by the commenter, Synchro was used, consistent with industry standard and with the approved scope of work for the Proposed Project. SimTraffic is typically used on transportation projects and not on singular development projects. See Final EIS, Appendix P, Response to Comment A8-30 and A8-31 regarding queuing conditions at the Northbound US 101 Off-Ramp at Shiloh Road. As described therein, under Opening Year plus Project conditions, the 95th percentile projected queue length is 363 feet of the 1,100 feet between the stop bar and gore point. Consequently, the queue lengths that would occur as a result of the Proposed Project are not expected to extend onto the US 101 mainline and, therefore, would not impede mainline operations.</p>
A6-17	<p><b>Shiloh Road/Old Redwood Highway Intersection and Fair Share Contributions</b></p> <p>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</p>	<p>See Final EIS, Appendix P, Response to Comment A8-34 regarding overall consistency of proposed project mitigation with the Town's TIF and CIP programs. The Town's CIP project at the Shiloh Road/Old Redwood Highway intersection, as defined in the publicly-available document located here [<a href="https://www.townofwindsor.ca.gov/DocumentCenter/View/28313/Capital-">https://www.townofwindsor.ca.gov/DocumentCenter/View/28313/Capital-</a></p>

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	<p>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 contemplating in the Town's CIP.</p>	<p>Improvement-Projects-FY-2023-2028], does not specifically identify lane configurations. It states that "Preliminary geometric layouts have been completed for both a roundabout option and an improved signalized option." For this reason, it is not possible to make a direct comparison between the CIP project and the mitigation identified in the EIS designed to mitigate project impacts.</p> <p>Furthermore, Transportation and Circulation Mitigation Measure F presented in Final EIS, Section 4 was determined to be sufficient to mitigate cumulative (2040) impacts to the intersection to a less-than-significant level and the fair share contribution was calculated based on the estimated project trips in relation to the estimated cumulative traffic trips, consistent with industry standard. As noted in the introduction to the transportation and circulation mitigation "[t]hese estimated fair share contributions may be adjusted based on an agreement with the governmental entity with jurisdiction over the road to be improved." Therefore, the Town has the opportunity to negotiate different fair share rate prior to the mitigation measure being constructed.</p>
A6-18	<p><b>Impacts on Sensitive Receptors</b></p> <p>The FEIS does not adequately address noise impacts on sensitive receptors, including:</p> <ul style="list-style-type: none"> <li>▪ Esposti Park: Increased noise levels from traffic and project activities may disrupt recreational use and reduce the park's value to the community.</li> </ul>	<p>Impacts on sensitive receptors, including those that could be negatively affected by the construction and operation of the proposed alternatives, are addressed in Draft EIS, Section 3.11. Esposti Park is considered a sensitive receptor in this analysis. As illustrated in Figure 3.11-2 of the DEIS, projected noise contours from onsite operations indicate that increases in the sound environment would be perceivable only in the immediate vicinity of the Project Site and would not generate perceivable noise at Esposti Park.</p> <p>Traffic-related noise at the park is expected to increase to a level similar to that experienced by nearby residents (see Table 3.11-7 of the Draft EIS for anticipated traffic noise increases). The FHWA noise abatement criteria threshold for parks, comparable to residential thresholds, is 67 dBA. According to Table 3.11-3, the Shiloh Road segments bordering Esposti Park</p>

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		<p>from Old Redwood Highway to Gridley Drive would result in noise impacts below the FHWA threshold.</p> <p>Therefore, impacts to Esposti Park are anticipated to be less than significant and are not expected to disrupt recreational activities within the park. For further discussion on land use compatibility, please refer to Master Response 8: Land Use Compatibility.</p>
A6-20	<p><b>Wildfire Evacuation Planning and Analysis</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ Effectiveness of Mitigation Measures: The FEIS references the Evacuation Mitigation Plan and options</li> </ul>	<p>Timing and Assumptions: Final EIS, Section 3.12.3.2 acknowledged that the nature and timing of evacuation orders for a particular event are based on a number of considerations including, but not limited to, the nature and severity of impact, area affected and likely to be affected, expected duration of the incident, number of people to be evacuated, time available for evacuation, and impediments to and capacity of evacuation routes. As discussed in Final EIS, Appendix P, Response to Comment A9-46, the Trigger Evacuation Zone was determined by experts in the field of evacuation planning (see Final EIS, Appendix N-4) by analyzing the ETTA, including the 2028 Project-only evacuation time travel analysis; reviewing past fire behavior and the timing of evacuations by zones; and understanding how today's emergency managers would likely proceed with evacuations with the current pre-determined evacuation zone system. The tactical procedures included in the mitigation would minimize the potential for project-related evacuation traffic to coincide with community-wide evacuation orders, thereby minimizing the potential for project alternatives to contribute to traffic congestion and increased community-wide evacuation timelines. Additionally, Wildfire Hazards Mitigation Measure B also notes that the evacuation of the Project Site would occur "[u]nless a pre-determined evacuation zone specific to the casino-resort is created and/or unless specifically directed otherwise by the lead authority for evacuations" and "[d]esignated staff shall coordinate evacuation procedures with the lead agency for evacuations and other participating agencies during an evacuation</p>



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	<p>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.</p> <p><b>Mitigation Measures and Gaps</b></p> <p>The proposed mitigation measures, including the installation of wildfire detection cameras and variable message signs, are insufficient to fully mitigate the Project 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.</p>	<p>event"; therefore, the mitigation provides flexibility for the lead authority for evacuations.</p> <p>Cumulative Impacts: See Final EIS, Appendix P, Master Response 11 and Response to Comment T8-76. As stated therein, to represent cumulative 2040 conditions, a 1.4 percent per year growth factor was applied to the baseline traffic volumes, which was established using information from the SCTA travel demand model, which is consistent with the Sonoma County and Town of Windsor 2040 General Plan buildout estimates.</p> <p>Effectiveness of Mitigation Measures: Please see Final EIS, Appendix P, Master Response 7 regarding the enforceability of mitigation measures. Wildfire Hazards Mitigation Measure B, in part, requires that project-specific evacuation plan include procedures and best management practices for designated staff to coordinate evacuation procedures with the lead agency for evacuations and other participating agencies during an evacuation event. Further, Wildfire Hazards Mitigation Measure D, in part, requires that the Tribe coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans.</p> <p>Mitigation Measures and Gaps: See Final EIS, Appendix P, Master Response 7 regarding mitigation enforceability. Wildfire Hazards Mitigation Measure D requires the Tribe to coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity. The installation of one or two wildfire detection cameras would improve the ability of the County to rapidly identify and respond to wildfire events, even further reducing the potential for a "No Notice" scenario; while installation of variable message signs and adaptive signal control systems would improve evacuation of the area by communicating evacuation routes to drivers and adjusting traffic signal times to maximize the number of cars</p>

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		that could travel through an evacuation route. These mitigation measures together with Wildfire Hazards Mitigation Measures A - C, discussed above, would reduce the potential impact of the Proposed Project on local emergency response and evacuation from a wildfire.
A6-21	<p>Wildfire and Evacuation mitigation must include the following:</p> <ul style="list-style-type: none"> <li>▪ Specific coordination agreements with local and regional emergency management agencies.</li> <li>▪ Detailed traffic management strategies to address potential bottlenecks and prioritize vulnerable populations.</li> <li>▪ Funding and training for local emergency response staff to ensure readiness and effectiveness during wildfire evacuations.</li> <li>▪ Periodic drills and simulations to ensure preparedness for both "No Notice" and "With Notice" wildfire scenarios.</li> <li>▪ Expansion of key roadway segments to increase capacity.</li> <li>▪ Installation of additional egress routes from the Project site to reduce bottlenecks.</li> <li>▪ Design and construction of dedicated evacuation lanes where feasible</li> <li>▪ Expansion of wildfire detection systems, including additional cameras to improve coverage and response times.</li> <li>▪ Variable message signs and real-time traffic management tools to guide evacuees efficiently.</li> <li>▪ Additional funding for local emergency services to enhance capacity and readiness.</li> <li>▪ Detailed response plans for spills and releases during wildfire events. Specific measures to prevent post-</li> </ul>	<p>Several of the mitigation elements identified by the commenter are included in mitigation measures identified in the Final EIS, Section 4:</p> <ul style="list-style-type: none"> <li>▪ Specific coordination agreements with local and regional emergency management agencies. (Wildfire Hazard Mitigation Measures B and D).</li> <li>▪ Detailed traffic management strategies to address potential bottlenecks and prioritize vulnerable populations. (Wildfire Hazard Mitigation Measures B and D).</li> <li>▪ Periodic drills and simulations to ensure preparedness for both "No Notice" and "With Notice" wildfire scenarios. (Wildfire Hazard Mitigation Measures B and C).</li> <li>▪ Expansion of key roadway segments to increase capacity. (see Traffic mitigation for Opening and Cumulative years).</li> <li>▪ Expansion of wildfire detection systems, including additional cameras to improve coverage and response times (Wildfire Hazard Mitigation Measure D).</li> <li>▪ Variable message signs and real-time traffic management tools to guide evacuees efficiently. (Wildfire Hazard Mitigation Measure D).</li> </ul> <p>With respect to <i>"Funding and training for local emergency response staff to ensure readiness and effectiveness during wildfire evacuations."</i> and <i>"Additional funding for local emergency services to enhance capacity and readiness."</i>, these elements could be negotiated with the Town as part of Public Services Mitigation Measure B.</p> <p>With respect to <i>"Installation of additional egress routes from the Project site to reduce bottlenecks."</i> and <i>"Design and construction of dedicated evacuation lanes where feasible."</i>, the Proposed Project already includes two egress</p>

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	wildfire contamination of waterways, including runoff control and water quality monitoring.	<p>routes on Shiloh Road and one egress route on Old Redwood Highway. As required by Wildfire Hazard Mitigation Measure B, "[t]rained on-site personnel shall direct roughly half of the vehicles from the garage and surface parking areas on the eastern portion of the Project Site to either the east Shiloh Road access point or the signalized Old Redwood Highway access point." This would reduce bottlenecks from occurring during evacuation of the Project Site. Additionally, the Final EIS, Section 2.1.1 Roadway Access and Circulation, states that, "The loop road would be designed with at least one paved shoulder wide enough to handle in-bound traffic during evacuation."</p> <p>With respect to <i>"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."</i>, see Final EIS, Appendix P, Response to Comment A8-64.</p>
A6-22	<p>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 "subject to regulation by the Town and the compliance with applicable Town planning documents and codes."</p> <p>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.</p>	<p>Future projects would either be consistent with the Town and County land use policies and plans or they would require further agency review and local approvals, ensuring alignment with Town/County planning documents. Consequently, the suggestion for the Proposed Project to commit to providing technical assistance or funding to update the Town's planning documents is not necessary because the individual development projects would be responsible for mitigating their respective impacts on the Town and/or County.</p>
A6-23	<b>Traffic and Transportation</b>	As stated in the Final EIS, Section 4, "While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe,

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	<p>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.</p>	<p>the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day." Furthermore, Section 4 also describes how fair-share contributions were calculated and stipulates that they can be adjusted in agreement with the governing entity with jurisdiction over the roadway(s) where improvements are proposed and specifies when funding shall be placed in an escrow account for both Opening Year and Cumulative Year mitigation. Please also see Final EIS, Appendix P, Response to Comment A9-40.</p>
A6-24	<p><b>Greenhouse Gas Emissions</b></p> <p>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.</p>	<p>The number of electric vehicle (EV) capable spaces and chargers referenced in Table 2.1-3 of the FEIS is compliant with state regulations under the California Green Building Standards Code (CALGreen). Please refer to Section 3.14.3 of the FEIS for an evaluation of the Proposed Project's consistency with applicable state and federal plans to reduce GHG emissions. As described therein, based on the consistency of the proposed development with applicable policy recommendations and plans to reduce GHG emissions, and the implementation of BMPs, implementation of the project alternatives would not result in a significant adverse cumulative impact associated with climate change.</p>
A7-1	<p>1. Lack of completeness of the summarized record.</p> <p>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</p>	<p>Refer to the summary of effects to federally listed species and critical habitat, as well as consultation with NMFS in the ROD, Section 5.1.4.</p>

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	<p>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.</p>	
A7-2	<p>2. Lack of enforceability.</p> <p>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.</p> <p>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/FONSI 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.</p> <p>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</p>	<p>The NIGC's approval of the Tribe's Gaming Ordinance did not constitute an approval that would allow the Tribe to develop a gaming facility, and thus it was not a final agency action subject to compliance with NEPA; rather, the proposed federal action assessed in the EIS, the BIA's acquisition of the Project Site into federal trust for gaming purposes, is considered a final agency action that would grant the Tribe the ability to develop the Proposed Project. Chapter 14 of the Tribe's Gaming Ordinance states that the Tribe "imposes upon itself a legal obligation to comply with all Applicable Mitigations set forth in the Bureau of Indian Affairs' decision documents associated with the Trust Acquisition..." The term "Applicable Mitigations" is defined in Chapter 2 of the Gaming Ordinance to mean "collectively, the mitigation measures, conditions and commitments set forth in the <u>Record of Decision</u> approving any Applicable EIS". Thus the Gaming Ordinance commits the Tribe to the implementation of the mitigation requirements within the BIA's final ROD, and not the initial mitigation recommendations in the EA, Draft EIS or Final EIS (although it should be noted that all of the mitigation recommendations within the Final EIS have been adopted within the ROD). The NIGC's approval of gaming ordinance in advance of the finalization of mitigation in the BIA's ROD is not a violation of NEPA, because as explained above, its approval of the gaming ordinance was not a final agency action subject to NEPA review. Additionally, the commenter is incorrect in stating that the NIGC did not participate in the NEPA process; as stated the EIS, the NIGC participated as a cooperating agency throughout the NEPA process, including during the development of the EA, Draft EIS and Final EIS. As noted in the Final EIS Section 1, implementation of the Proposed Project will be subject to the NIGC's approval of a gaming management agreement, which, unlike the gaming ordinance approval, would be considered a subsequent</p>

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	<p>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). 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.</p> <p>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</p>	<p>agency action subject to NEPA compliance. The term "Management FONSI" in Chapter 14.01(B) of the Gaming Ordinance is undefined, but appears to be a reference to the NIGC's ability to enforce any mitigation measures that may later be adopted by the NIGC as part of its NEPA compliance procedures associated with a future management agreement. While this language in the Gaming Ordinance is unclear, the NIGC nevertheless would have the authority to monitor any mitigation that may be adopted in its future NEPA decision documents. Contrary to the comment, the Gaming Ordinance does not limit the NIGC's authority to monitor and enforce mitigation through applicable federal statutes and regulations.</p>

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	<p>so without authority and without complying with the Administrative Procedure Act (APA).</p> <p>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.</p> <p>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.</p>	
A7-3	<p>3. Tribal sovereignty does not excuse the Bureau’s NEPA non-compliance.</p> <p>The County understands the significance of tribal sovereignty and the important role it plays for tribes. This does not,</p>	<p>Refer to the Final EIS, Appendix P, Master Responses 6 and 7. A mitigation monitoring and compliance plan (MMCP) has been prepared and incorporated into the BIA’s ROD as Attachment 1. The monitoring and enforcement authority for each mitigation measure is outlined in the MMCP. Mitigation measures are enforceable through federal laws, regulations, and</p>

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	<p>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 decision maker 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).</p> <p>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</p>	<p>permit conditions, as well as through Tribal Law and the Gaming Ordinance, enforceable by the NIGC.</p> <p>The standard for determining whether an agency must prepare a Supplemental EIS is set out in 40 CFR § 1502.9(d)(1) of the CEQ regulations, which states:</p> <p>Federal agencies shall prepare supplements to either draft or final environmental impact statements if a major Federal action is incomplete or ongoing, and:</p> <ul style="list-style-type: none"> <li>i. The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or</li> <li>ii. There are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.</li> </ul> <p>The term "could" (versus "would") is used in the Final EIS Master Response 6 to acknowledge that certain changes to the project may not be relevant to environmental concerns or constitute new circumstances that bear on the analysis, and thus would not warrant a detailed Supplemental EIS analysis under the DOI's NEPA regulations and 40 CFR § 1502.9(d)(1).</p>



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	<p>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.</p>	
A7-4	<p>4. Verified, enforceable conformance with Building Code standards is essential.</p> <p>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. The need for conformance with safety standards, and the consequences of non-conformance, are not “speculative.”</p>	<p>Please refer to the Final EIS, Appendix P, Master Responses 6 and 7. In addition to the BIA NEPA Guidebook, the DOI NEPA Regulations at 43 CFR 46.130(b) provide the following direction with respect to applicant proposed measures: "An applicant's proposal presented to the bureau for analysis must include any ameliorative design elements (including stipulations, conditions, or best management practices), required to make the proposal conform to applicable legal requirements, as well as any voluntary ameliorative design element(s). The effects of any mitigation measures other than the ameliorative design elements included in the applicant's proposal must also be analyzed. The analysis of these mitigation measures can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation." The BIA has elected to consider the</p>

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	<p>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.</p> <p>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 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.<sup>5</sup> But upon review, the Tribe has exempted itself from its own building codes, legislating that</p>	<p>applicant proposed measures and BMPs outlined in the Final EIS as a matter of the consideration of alternatives, and not as separate mitigation measures to be imposed on the Preferred Alternative. Throughout the U.S., tribes, as sovereign nations, have the authority to adopt their own building practices and codes. As explained in the Final EIS, building code compliance will be enforceable as a matter of Tribal law pursuant to the Tribe’s Building and Safety Code of 2023, which is consistent with the 2022 California Building Code (CBC) and California Public Safety Code as set forth in Titles 19 and 24 of the California Code of Regulations, including building, electrical, energy, mechanical, plumbing, fire protection, interior noise standards, safety, and green building standards. The Tribe’s Building and Safety Code is available at <a href="https://www.koinationsonoma.com/documents/">https://www.koinationsonoma.com/documents/</a>. It should be noted that compliance with the CBC is a standard condition of all California State Tribal Gaming Compacts, including inspection requirements (see current California Compacts available here: <a href="https://www.cgcc.ca.gov/?pageID=compacts">https://www.cgcc.ca.gov/?pageID=compacts</a>). Therefore, it is not unreasonable for the BIA to assume that the Tribe will adhere to CBC requirements.</p>

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	<p>“the Nation need not comply,” making the code fundamentally ambiguous.</p> <p>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.</p> <p>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</p>	

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	<p>codes they are based on) would require hundreds upon hundreds of inspections by disinterested inspectors. There is no indication that the NIGC has ever 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.</p>	
T6-1	<p>We have heard from numerous concerned parties seeking to submit comments on the FEIS who do not know how as <a href="https://www.shilohresortenvironmental.com/">https://www.shilohresortenvironmental.com/</a> the website hosting the FEIS has taken down the instructions. For every previous document, the BIA has had detailed instructions on how to submit comments whether via email or mail. A similar application from the Coquille Indian Tribe at the site: <a href="https://coquille-eis.com/">https://coquille-eis.com/</a> contains detailed instructions on how to submit comments for their FEIS. It is unclear to us why instructions on how to submit comments would be taken down, or not included for the FEIS. We encourage the BIA to get these instructions back onto the page as soon as possible.</p>	<p>Instructions for submittal of comments were included within the Notice of Availability of the Final EIS. The Notice of Availability was made available on the project website referenced in the comment, and also published in the federal register and local paper, and mailed or emailed directly to interested parties.</p>
T8-1	<p>Moreover, both NEPA and the CEQ regulations direct that the text of a final EIS-exclusive of citations or appendices-should not exceed 150 pages, except for proposals of extraordinary complexity, "which shall not exceed 300 pages." 40 C.F.R. § 1502.7 (emphasis added); 1 see also 42 U.S.C. § 4336a(e)(I) (same). Excluding citations and appendices, the FEIS totals 311</p>	<p>The commenter incorrectly interprets the page limits of CEQ regulations. 40 CFR §1508.1 (bb) defines a "page" as "500 words and does not include citations, explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information." Using this</p>

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	pages. On these grounds alone, the FEIS violates CEQ regulations and NEPA.	definition, the text of the EIS was limited to less than 150 pages in compliance with NEPA requirements (40 CFR §1501.5(g)).
T8-2	Moreover, a number of the mitigation measures relied upon in the FEIS and that directly affect Lytton (rendering Lytton an "affected Tribe" entitled to deference on preferred mitigation strategies) failed to incorporate Lytton's input during development. To the extent the BIA has consistently failed to consult with Lytton, and excludes Lytton entirely from consideration within the FEIS, see, e.g. , § 3. 12, the federal government has breached its trust responsibility to Lytton. See <i>Oglala Sioux Tribe of Indians v. Andrus</i> , 603 F.2d 707, 721 (8th Cir.1979) (quoting <i>Morrison v. Ruiz</i> , 415 U.S. 199, 236 ( 1974)) (holding BIA violated trust obligation when failing to comply with own regulations).	<p>An information gathering letter was sent by Tom Origer, RPA, to Lytton Rancheria in July 2022 and an invitation to participate in Section 106 consultation was set by BIA to Lytton Rancheria in December 2022. No response to those letters was received by the BIA from Lytton. As discussed in Final EIS, Section 3.6.2 and Final EIS, Appendix P, Master Response 15 three tribes, FIGR, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, and Dry Creek Rancheria Band of Pomo Indians, affirmed their interest to participate in the Section 106 process. Additionally, Lytton Rancheria has been sent all notices associated with the NEPA process for this process. Comment letters received from Lytton Rancheria during the scoping period for the EA, comment period for the EA, scoping period for the EIS, and comment period for the Draft EIS have been reviewed and considered by the BIA. Furthermore, as noted in Final EIS, Appendix P, Master Response 15, a meeting on the Proposed Project was hosted by Lytton Rancheria on September 20, 2024, and attended by the Lytton Rancheria, Cloverdale Rancheria, Dry Creek Rancheria, Paula Hart (Director of the Indian Affairs Office of Indian Gaming), Amy Dutschke (Regional Director, BIA Pacific Region), and Chad Broussard (Environmental Protection Specialist, BIA Pacific Region). Concerns raised during that meeting have also been considered by the BIA.</p> <p>The Final EIS specifically considered potential impacts to Lytton in regards to cultural resources (i.e. that the Lytton Rancheria was invited to consult under Section 106) and potential substitution effects to the San Pablo Lytton Casino. Potential impacts to the general region of the Project Site, which includes the Lytton Housing Development west of the Town of Windsor, is discussed throughout the Final EIS.</p>
T8-3	As the BIA knows, the Lytton Rancheria, which borders the town of Windsor, has initiated a new development in the area	The mitigation cited by the commenter (Wildfire Hazards Mitigation Measure D) is specifically in regards to the implementation of measures intended to

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	<p>adding hundreds of residents, and possesses its own evacuation plans. Yet the mitigation measures described at ES-31 require the Koi Nation only to "coordinate with Sonoma County and the Town of Windsor on their respective emergency operation plans and implement or contribute to the implementation of measures intended to improve early detection of wildfire events, and evacuation times for the Project Site and vicinity." The FEIS' proposed mitigation plan ignores the inherent conflict in the existence of two potentially contradictory ( or identical) evacuation plans covering the same area.</p>	<p>improve early detection of wildfire events and evacuation times for the Project Site and vicinity and thereby improve the ability of the County to rapidly identify and respond to wildfire events, even further reducing the potential for a "No Notice" scenario. Coordination with the County and City would also minimize any conflicts or contradictions between emergency plans. Additionally, Wildfire Hazards Mitigation Measure B included in Final EIS, Section 4 would require that "[p]rior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan that includes, but is not limited to, the following procedures and best management practices." As the Project Site is located within the County, the list of procedures and best management practices included, in part, that "[t]he evacuation plan shall complement the County of Sonoma's Emergency Evacuation Plan, Operations Plan, supporting documents, and the standard operating procedures of fire, law, and emergency management agencies of the County." This would further minimize any conflicts or contradictions between emergency plans. Further, as discussed in Final EIS, Section 3.12.3.2, the Sonoma County Operational Area EOP Evacuation Annex outlines the strategies, procedures, and organizational structures to be used in managing coordinated, large-scale evacuations in the Sonoma County Operational Area. As described therein, the nature and timing of evacuation orders for a particular event are based on a number of considerations including, but not limited to, the nature and severity of impact, area affected and likely to be affected, expected duration of the incident, number of people to be evacuated, time available for evacuation, and impediments to and capacity of evacuation routes. Therefore, coordination with the County and Town regarding evacuation procedures, in addition to the other mitigation measures associated with emergency evacuation, will inform decisions made by the lead agency for evacuations and other participating agencies during an evacuation event.</p>
T8-4	<p>Finally, it is particularly galling for Lytton and other affected Tribes that the Koi Nation- which does not have its cultural or historic ties to this area- need not consult with the Tribes that</p>	<p>The mitigation cited by the commenter (Wildfire Hazards Mitigation Measure D) is specifically in regards to the implementation of measures intended to improve early detection of wildfire events and evacuation times for the</p>

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	<p>maintain their traditional connections to the land regarding use and protection of the area. Particularly as Koi Nation is engaged in litigation with the City of Clearlake over disturbances to their ancestral sites over 50 miles away.</p> <p>Lytton requested Section 106 consultation in September of 2024 to no response, it is clear that the BIA does not prioritize consultation with all affected government entities or Tribes. Indeed, with respect to mitigation, the BIA commits the Tribe to coordinate only with "Sonoma County and the Town of Windsor on their respective emergency operation plans," FEIS at 3-136, illogically omitting any reference to Lytton. whose homelands and housing project neighbor the same. See also id at ES-31 (omitting Lytton from evacuation mitigation plans); ES-42 (failing to account for new Lytton housing development); Table 3.12-6 (excluding Lytton from Trigger Evacuation Zone); 3-133 (not incorporating Lytton into evacuation times).</p>	<p>Project Site and vicinity and thereby improve the ability of the County to rapidly identify and respond to wildfire events, even further reducing the potential for a "No Notice" scenario. Coordination with the County and City would also minimize any conflicts or contradictions between emergency plans. Additionally, Wildfire Hazards Mitigation Measure B included in Final EIS, Section 4 would require that "[p]rior to occupancy, the Tribe shall coordinate with emergency evacuation and traffic experts to develop a project-specific evacuation plan that includes, but is not limited to, the following procedures and best management practices." As the Project Site is located within the County, the list of procedures and best management practices included, in part, that "[t]he evacuation plan shall complement the County of Sonoma's Emergency Evacuation Plan, Operations Plan, supporting documents, and the standard operating procedures of fire, law, and emergency management agencies of the County." This would further minimize any conflicts or contradictions between emergency plans. Further, as discussed in Final EIS, Section 3.12.3.2, the Sonoma County Operational Area EOP Evacuation Annex outlines the strategies, procedures, and organizational structures to be used in managing coordinated, large-scale evacuations in the Sonoma County Operational Area. As described therein, the nature and timing of evacuation orders for a particular event are based on a number of considerations including, but not limited to, the nature and severity of impact, area affected and likely to be affected, expected duration of the incident, number of people to be evacuated, time available for evacuation, and impediments to and capacity of evacuation routes. Therefore, coordination with the County and Town regarding evacuation procedures, in addition to the other mitigation measures associated with emergency evacuation, will inform decisions made by the lead agency for evacuations and other participating agencies during an evacuation event.</p>
T8-5	<p>Finally, it is uncertain to what extent Lytton can even rely upon the BIA's repeated representations that the ROD will include enforcement measures (subjective or tenuous as they maybe). Lytton notes with particular concern the recent holding in</p>	<p>The DOI is aware of the November 12, 2024 decision in <i>Marin Audubon Society v. Federal Aviation Administration</i>, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency</p>

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	<p>Marin Audubon Society, et al., v. Federal Aviation Administration, et al., 2024 WL 4745044 (D.C. Cir. ov. 12, 2024), wherein the United States Court of Appeals for the District of Columbia Circuit determined that CEQ regulations were promulgated ultra vires, and thus unlawfully. Lytton is concerned that should any enforcement actions be brought pursuant to the FEIS or any eventual ROD, the BIA and Koi Nation will attempt to cite Audubon for the proposition that enforceability regulations are void. Thus, while the BIA defers any mitigation enforcement to the development of a ROD under CEQ regulations, compliance under those regulations is not necessarily assured or even practically enforceable..</p>	<p>action, the DOI has nonetheless elected to follow those regulations at 40 C.F.R. Parts 1500– 1508, in addition to the Department of the Interior’s procedures/regulations implementing NEPA at 43 CFR Part 46, and the BIA NEPA Guidebook (59 Indian Affairs Manual 3-H) to meet the agency’s obligations under NEPA, 42 U.S.C. §§ 4321 et seq.</p> <p>Further, the CEQ regulations themselves are not the "enforcement mechanism" for mitigation measures. Rather, the CEQ regulations state that the ROD "shall identify the authority for enforceable mitigation, such as through permit conditions, agreements, or other measures, and prepare a monitoring and compliance plan." Regardless as to whether the CEQ regulations are ultimately determined to not be binding on the Proposed Action, the BIA has prepared a Mitigation Monitoring and Compliance Plan (MMCP) for the mitigation measures adopted in the ROD. The MMCP is provided as Attachment 1 of the ROD. The MMCP identifies mitigation enforcement through compliance with federal laws and permit conditions, and as a matter of tribal law (refer to the Tribal Gaming Ordinance in the Final EIS Appendix Q); the MMCP does not reference the CEQ regulations as the authority for enforcement of mitigation.</p>
T8-6	<p>IV. Traffic and Evacuation Concerns Have Not Been Addressed.</p> <p>Related to the wildfire concerns set forth above, Lytton and many others have raised alarm regarding the BIA's failure to adequately grapple with the Proposed Project's effects on traffic and evacuation concerns. In response, Appendix P to the FEIS simply states that the improvements discussed in the DEIS are "far from illusory," App.Pat 3-96, and assures Lytton that its evacuation model "included within its assumptions the development of the Lytton Housing Project in Windsor, Shiloh Terrace, Shiloh Crossing, Clearwater, and other development projects. The model also included Shiloh Estates and other developments in the Mayacamas Mountains both in the</p>	<p>The Evacuation Travel Time Assessment Technical Memorandum (Appendix N-2) states that the background traffic data is based on outputs from the Sonoma County Transportation Authority's Travel Demand Model (SCTA model) that were used in the Traffic Study (Appendix I) conducted for the Proposed Project. The SCTA model is approved by the County, and it is validated with the traffic count data, which is empirical data. The Traffic Study used existing traffic count data collected in 2022. For the evacuation travel time assessment, further adjustments were made using location-based services big data, another empirical data source, to establish an evacuation scenario baseline condition more closely aligns with critical fire season in Sonoma County.</p>



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	<p>opening year (2028) and the cumulative year (2040) scenarios." <i>Id.</i> at 3.1.11. But the BIA has failed to identify how it might require independent third parties to comply with the referenced mitigation measures, or support its claim that Lytton's housing development has been considered with any underlying data, studies, or references.</p> <p>Specifically, though the Evacuation Travel Time Assessment cited in the BIA's response describes "key assumptions... used in the development of background and evacuation traffic demand," App. N-2 at 6, neither the Lytton Housing Project nor any of the other projects identified in the Master Response are listed in these assumptions. The Evacuation Travel Time Assessment states that "Background traffic data was based on outputs from the SCTA travel demand model from the traffic study for the Project[,]" which we assume refers to the Revised Traffic Impact Study at Appendix I. The Revised Traffic Impact Study bases its "Existing Conditions" on data collected in July 2022, prior to the existence of Lytton's new housing development. The Study further provides that Opening Year 2028 No Project Conditions " includes Existing Conditions, but with the addition of traffic from approved projects that are in the development pipe] ine in the Town of Windsor and Sonoma County, as well as effects from planned roadway improvements constructed by approved projects ... (Emphasis added). It notes that "trips from the following approved projects were also added to the study intersections to estimate year 2028 traffic demands," providing a list of projects that notably does not include the Lytton Housing Project in Windsor. The BIA has thus failed to support its claim that the additional Lytton development is accounted for in the Study.</p>	<p>The land use assumptions for the evacuation analysis are based on the SCTA model, which is the County-approved model for growth in the area, and it reflects the general plan build out. The Lytton Housing Project includes 147 residential units. For the area bounded by Eastside Road, Windsor River Road, Windsor Road, and Starr Road, the SCTA model has 139 residential units in 2019, 321 residential units in 2040, and a growth of 182 units between 2019 and 2040, which indicates that the Lytton Housing Project is included in the model projected growth.</p>

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	<p>In the event of evacuation, the residents of Lytton's housing project will be among those forced to flee across Windsor and travel south on Route 101. They will be directly impacted and threatened by the delay the Koi Nation's Proposed Project will impose. These impacts, which are apparently not incorporated into the Study supporting BIA' s analysis, could harm not only Lytton members, but the entire community. The BIA's bare statement that these impacts are considered is not supported by any citation to the actual analysis and Lytton could not independently locate where or how its housing development is accounted for in the analysis. A conclusory finding "unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind ... affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives," <i>Seattle Audubon Society v. Moseley</i>, 798 F. Supp. 1473, 1479 (W.D. Wash. 1992), and therefore violates NEPA.</p>	
T8-7	<p>Lastly, the FEIS does not adequately address groundwater drawdown concerns or consider the impact to the new Lytton Rancheria development in its groundwater assessments. In particular, the Supplemental Groundwater Resources Impact Assessment ("SGRIA") still does not take into account the Lytton Rancheria housing development project and its reliance on groundwater wells for community water supply. ... [T]he FEIS fails to consider the 146 families residing in the new Lytton Rancheria housing development with regard to groundwater drawdown. ... Without considering the Lytton Rancheria housing development- which consists of approximately 150 homes and structures- and its use of groundwater wells, the FEIS entirely fails to accurately assess the impact the Project would have on local water supplies.</p>	<p>As shown on Figures 14 and 15 of the SGRIA included as Appendix D-4 to the Final EIS, the Lytton Rancheria development is located over 1 mile outside of the area predicted to be affected by potential Project drawdown in the groundwater aquifers underlying the area, and is therefore located outside the Area of Project Effects with respect to groundwater drawdown. No impacts are expected to occur.</p>

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T8-8	<p>In its comments to the DEIS, Lytton raised several concerns regarding the economic impact studies. The first being that the studies upon which the BIA relied are woefully dated and inaccurate. In response to these comments, the BIA agrees that the data is dated. but claims that "[i]t is not practical nor required by NEPA to continually update financial analyses for the passage of time that inevitably takes place during any project and public review." T5 18. This ignores the fact, however, that "[r]eliance on data that is too stale to carry the weight assigned to it may be arbitrary and capricious." N Plains Res. Council, 668 F.3d at 1086 (citing lands Council v. Powell, 395 F.3d 1019, 1031 (9th Cir. 2005)). Here, while economic data prepared by governmental agencies may lag, the BIA assigns great weight to the particular economic impact study here, which does not account for major changes in circumstance, like the fact that the study was conducted while the community was still recovering from the COVID-19 pandemic or without taking into account the Scotts Valley Casino. The data in that particular economic impact study is therefore too stale to carry the weight assigned to it by the BIA.</p> <p>Lytton is pleased that a supplemental substitution effects cumulative analysis that assumes the opening of the Scotts Valley Casino was prepared. FEIS. Appendix B-5. However, the FEIS still fails to address or mitigate the fact that the cumulative economic adverse effects of the Project will be far more impactful to the Tribes, including Lytton, actually located in Sonoma County and the result of those impacts on the quality</p>	<p>The commenter’s statement that the substitution analysis included in Draft EIS Appendix B-1 does not account for major changes in circumstance is inaccurate. Please see Final EIS Response to Comments T8-122, T8-124 and T8-125 below regarding the assumptions underlying the GMA substitution analysis. As described in Response to Comment T8-122, the Assumptions section of the GMA 2022 report, page 65: “Consumer behaviors, income growth, and spending patterns will recover from impacts of the COVID-19 pandemic by the end of calendar year 2022.” Please see <b>Exhibit 6</b> to this RTC document prepared by GMA regarding its assessment of the COVID-19 pandemic on casino patron behavior. Also, recent data on gaming revenue is consistent with the assumption listed on page 65 of the GMA 2022 report. For example, total U.S. tribal gross gaming revenue during Fiscal Year 2022 was \$40.9 billion, up from the \$34.6 billion for Fiscal Year 2019 (pre-COVID).<sup>2</sup> This represents a compound annual growth rate of 5.7%. By comparison, U.S. tribal Fiscal Year 2010 gross gaming revenue was \$26.5 billion. This implies a Fiscal Year 2010 to Fiscal Year 2019 compound annual growth rate of 3.0%. Thus, post-COVID U.S.-wide tribal gaming revenue has experienced similar but somewhat higher revenue growth as compared to the nine years prior to COVID. Part of the recent increase may be due to the realization of pent-up gaming demand that occurred during the COVID pandemic. In addition, as noted by the commenter, GMA updated its substitution analysis in Final EIS Appendix B-5 to include a cumulative analysis, assuming the simultaneous opening of both the Proposed Project and a facility owned by the Scotts Valley Tribe. This information is included in Final EIS, Appendix P, Response to Comment T5-18.</p> <p>The commenter statement that the Final EIS does not address cumulative and adverse effects to tribes based in Sonoma County is not understood. By</p>

<sup>2</sup> National Indian Gaming Commission, 2023. National Indian Gaming Commission (NIGC) website. Available online at: [https://www.nigc.gov/images/uploads/Pages\\_from\\_GGRFY22\\_071923\\_GGRTrending\\_Final.pdf](https://www.nigc.gov/images/uploads/Pages_from_GGRFY22_071923_GGRTrending_Final.pdf). Accessed January 6, 2025.

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	<p>of life and services available to their members. See id. at 3-166-67. In other words, the BIA's supplemental study still does not take the requisite "hard look" at the economic impacts of this Project.</p>	<p>definition, substitution effects will be greatest to those existing gaming facilities that are closest to the Proposed Project. Because the Proposed Project is located in Sonoma County, one would expect that substitution effects would be highest to existing casinos located in Sonoma County. The substitution effects analysis described in Final EIS Section 3.7.3 is consistent with this expectation. This same effect would occur for almost any proposed casino located in the United States. Substitution effects would be greatest for existing casinos located in that county. Also, the EIS did indeed analyze impacts to casinos and tribes located in Sonoma County, and found that effects would be highest for those casinos and tribes. In particular, as described in Final EIS Section 3.7.3, substitution effects to the Dry Creek Rancheria (the owner of the River Rock Casino) were analyzed and found to be potentially significant.</p>
T9-1	<p>Another noteworthy critical deficiency in the Final EIS is its complete failure to analyze the huge wildfire risks in this community, which has recently suffered two of the largest wildfires in California history. The Final EIS implausibly asserts that such risks will be less than significant. In reaching this wholly unsupported conclusion, BIA has failed to prepare a comprehensive wildfire risk analysis, which is standard practice now for addressing wildfire risks, and has proposed an evacuation plan that is woefully deficient. For instance, the Final EIS "doubles down" on the wildfire evacuation study (which it previously relied on in the Draft EIS), even though it lacked an in situ analysis that would establish baseline conditions for the roadway/intersection system that would be impacted by a wildfire evacuation. Moreover, a thorough review of the study showed no actual field measurements of traffic nature or volumes keyed to the road segments and intersections that would be involved in an evacuation process.</p>	<p>Contrary to this comment, the EIS does include a comprehensive assessment of wildfire risks effects associated with the Proposed Project consistent with NEPA requirements and industry standard processes. Please refer to Final EIS, Appendix P, Response to Comments T8-46 and T8-48 regarding how wildfire risk was considered in the analysis within the Final EIS, and Response to Comment A8-67 regarding the design features and best management practices that would reduce the wildfire risk associated with the project. Additionally Wildfire Hazards Mitigation Measure A requires the development of a riparian corridor management plan to reduce the potential for flammable vegetation in the riparian area on the Project Site, similar to the Town of Windsor Riparian Corridor Wildfire Fuel Management Plan.</p> <p>See Final EIS, Appendix P, Master Response 10 regarding Wildfire Evacuation, and Master Response 11 regarding Wildfire Evacuation Analysis Assumptions and Methodology. The Evacuation Travel Time Assessment Technical Memorandum (Appendix N-2) states that the background traffic data is based on outputs from the Sonoma County Transportation Authority's Travel Demand Model (SCTA model) that were used in the Traffic Study (Appendix I) conducted for the Proposed Project. The SCTA model is approved by the</p>

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		County, and it is validated with the traffic count data, which is empirical data. The Traffic Study used existing traffic count data collected in 2022. For the evacuation travel time assessment, further adjustments were made using location-based services big data, another empirical data source, to establish an evacuation scenario baseline condition more closely aligns with critical fire season in Sonoma County.
T9-2	<p>As noted in the FIGR DEIS Comments, there is a shortage of groundwater to support projected municipal, agricultural, and casino demands in the Project Site area. Shartsis Cmt. Ltr., Sect. 3.3(A). The Final EIS acknowledges that “potentially significant impacts were identified with future increased pumping” and, as a result, mitigation measures were proposed. FEIS, Appx. P, Resp. Cmt. T8-6 at 3-113. However, the BIA improperly puts the onus on the Town of Windsor to implement the mitigation measures. Id. This decision to place the burden on Windsor is perplexing as the town is not responsible for ensuring that the impact of the casino’s water demands are mitigated.</p> <p>Moreover, the Final EIS states that “in the event that the Town does not implement mitigation when necessary, similar mitigation would be implemented by [Koi Nation].” Id. However, no mitigation measures were actually proposed. FEIS, ES-5, Table ES-1 at ES-5. Instead, the Final EIS claims that the use of Best Management Practices (“BMPs”) would minimize the impact to the groundwater supply.<sup>2</sup> Conclusory statements as to the effectiveness of BMPs are not sufficient under NEPA. See, e.g., Wilderness Society v. Bosworth, 118 F. Supp. 2d 1082 (D. Mont. 2000).</p>	The groundwater impacts of the Proposed Project alone were determined to be less than significant (Final EIS Section 3.3.3 and GRIA Section 6); however, potentially significant cumulative impacts were identified with future increased pumping from the Town of Windsor (Final EIS Sections 3.14.2 and GRIA Section 6.3). For this reason, mitigation already proposed by the Town of Windsor in the Town’s PEIR for adoption of the 2011 WMP Water Master Plan (Horizon, 2011) could be used as a mechanism for the Tribe to pay a fair share to mitigate its contribution to cumulative impacts. Mitigation for cumulative impacts in the event that the referenced program is not implemented by the Town can be found in the cumulative section of the Executive Summary Table (pages ES-33 through 41) and also in the section dedicated to mitigation measures (Final EIS Section 4).
T9-3	The BIA attempts to gloss over the very real, direct, and significant impacts to FIGR and Southern Pomo cultural resources by proposing four mitigation measures. FEIS at 14-	As discussed in Final EIS, Section 3.6 and Appendix P, Master Response 15 and Response to Comment T6-6, the BIA considered technical studies, which included literature reviews, records searches, outreach to tribes, sample field

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	<p>26. Each of these mitigation measures, however, is primarily oriented around data recovery, not avoidance of impacts. Data recovery, by its very nature, does not avoid impacts to historic sites. Instead, it is designed to try to preserve information about the impacted resources. ACHP Section 106 Guidance at 27. Data recovery is not adequate mitigation in the context of impacts to tribal cultural resource rights and sovereignty. It should only be used after all attempts have been made to avoid impacts. Only through adequate consultation with FIGR and other Southern Pomo tribes could appropriate mitigation measures be developed. Yet, the BIA has refused to engage in appropriate discussions about the Project impacts. Further exacerbating these problems with the use of mitigation, the mitigation measures proposed still do not require FIGR involvement in the establishment of an archaeological monitoring program and Archaeological Design and Treatment Plan. The mitigation measures also prioritize consultation with the Koi Nation, even though the Koi Nation has no cultural affiliation with the Southern Pomo land of the Project site.</p>	<p>investigations, and field surveys conducted within the APE, as well as information provided by interested tribes in the identification of historic properties within the APE pursuant to 36 CFR Part 800.4 (b) in its determination that a finding of No Historic Properties Affected is appropriate for the Proposed Action. A finding of No Historic Properties Affected under Section 106 does not mean that potential impacts to cultural resources were not identified in the Draft EIS, only that no prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP would be affected. As discussed in more detail in Final EIS, Appendix P, Master Response 16, the Draft EIS acknowledged the potential for unknown subsurface cultural resources to be present and be potentially impacted by ground disturbance, based in part on information received during tribal consultation, and recommends mitigation to reduce the potential for significant impacts.</p> <p>These mitigation measures do not require that inadvertent finds be subject to data recovery over avoidance, as alleged by the commenter. Rather, Cultural Resources Mitigation Measure B requires that:</p> <p>"In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall be halted until a professional archaeologist meeting the Secretary of the Interior's qualifications (36 CFR Part 61), or paleontologist if the find is of a paleontological nature, can assess the significance of the find in consultation with the BIA. All such finds shall be subject to Section 106 of the National Historic Preservation Act (NHPA) as amended (36 CFR Part 800); specifically, procedures for post-review discoveries without prior planning pursuant to 36 CFR § 800.13(b) shall be followed. Consistent with 36 CFR § 800.13(b)(3), <u>any Indian tribe that might attach religious and cultural significance to the affected property (i.e. the Interested Sonoma County Tribes), the Koi Nation, the State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation</u></p>

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		<p><u>(ACHP) will be notified within 48 hours of the discovery. The notification shall describe the assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The Indian tribe(s), SHPO, and the ACHP shall be given 48 hours to respond to the notification. The BIA shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The BIA shall provide the Indian tribe(s), SHPO, and the ACHP a report of the actions when they are completed." (emphasis added)</u></p> <p>Similarly, Cultural Resources Mitigation Measure C requires that:</p> <p>"If human remains are discovered during ground-disturbing activities on the Project Site, work within 50 feet of the find shall halt immediately consistent with 43 CFR Part 10.5(b)(1) and the BIA and County Coroner shall be notified. No further disturbance shall occur until the County Coroner has determined that the remains are not connected to criminal activity. Construction activities may continue in other areas but may not resume within 50 feet of the find until a plan for avoidance, removal or other disposition of the remains has been developed and implemented. If the remains are determined to be of Native American origin, the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) regarding the protection of human remains or cultural items on federal or tribal lands shall apply. Consistent with NAGPRA requirements, 1) reasonable effort shall be made to secure and protect the human remains, including, as appropriate, stabilizing or covering the human remains (43 CFR Part 10.5(a)(2)); 2) <u>the BIA shall consult with Koi Nation and any other Indian Tribe with potential cultural affiliation (i.e. the Interested Sonoma County Tribes) to discuss the recovery and treatment of the remains (43 CFR Part 10.4(b));</u> 3) no later than 30 days after the remains are determined to be of Native American origin, a written plan of action shall be prepared that addresses the custody of the remains and the planned disposition (43 CFR Part 10.5(d)(1) and 43 CFR Part 10.4); and 4) the disposition of the human remains, funerary objects, sacred objects, or</p>

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		<p>objects of cultural patrimony shall be carried out in accordance with procedures set forth in 43 CFR Part 10.6." (<u>emphasis added</u>)</p> <p>Therefore, consistent with 36 CFR § 800.13(b)(3) and 43 CFR Part 10.4(b), Interested Sonoma County Tribes (defined in Cultural Resources Mitigation Measure A as the Federated Indians of Graton Rancheria, Kashia Band of Pomo Indians of the Stewarts Point Rancheria, Dry Creek Rancheria Band of Pomo Indians, and any other Sonoma County tribe that expresses interest in writing to the BIA prior to the initiation of construction) will be consulted regarding National Register eligibility and treatment of the inadvertent finds.</p> <p>In regards to archaeological monitoring, Cultural Resources Mitigation Measure A requires that Interested Sonoma County Tribes be invited to participate in the monitoring of "[a]ny ground-disturbing activities that occur within 150 feet of Pruitt Creek or within 50 feet of areas identified by the Canine Field Survey as having an 'alert'..." These areas were determined as the areas of the Project Site with the highest likelihood for finding cultural resources and human remains. Further, Cultural Resources Mitigation Measure A requires that "[a]n archaeological monitoring program shall be established by the professional archaeologist in consultation with the BIA that includes protocols for consultation between the consulting professional archaeologist, BIA, Koi Nation, and Interested Sonoma County Tribes." Therefore, while FIGR would not be involved in the preparation of the archaeological monitoring program, FIGR and other Interested Sonoma County Tribes would be invited to participate in the monitoring itself and the program will include protocols for consultation with FIGR and other Interested Sonoma County Tribes.</p>
T9-4	"As noted in the FIGR DEIS Comments, the assumption that only two new municipal wells that needed to be included in its cumulative impact analysis is misplaced. Shartsis Cmt. Ltr., Sect. 3.14(A). The BIA attempts to justify this assumption in the	As noted in Section 5.5 of the GRIA in Appendix D-4 of the FEIS and cited in Final EIS Appendix P Responses to Comments A5-2 and A5-5, climate change was included and addressed in the modeling conducted to support the GRIA. The approach to simulation of regional agricultural pumping and projected cumulative pumping is discussed in Section 5 of the GRIA and addressed in



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	<p>Final EIS on the basis that “an increase is not reasonably foreseeable.” This is because, according to the BIA:</p> <p>(1) recent agricultural groundwater demand trends in the Santa Rosa Plain are variable to decreasing;</p> <p>(2) vineyard development in the Project Site vicinity has remained relatively constant in the last 10 years and there appears to be little available land that could be converted to develop additional vineyards;</p> <p>(3) Sonoma County and Town of Windsor planning documents do not indicate a projected increase in agricultural demand in this area; and</p> <p>(4) the post-2022 decline in groundwater levels forecast to occur in nearby Representative Monitoring Points in the GSP has not occurred.</p> <p>Final EIS, Appx. P, Resp. Cmt. T8-38 at 3-125. This justification is flawed as it fails to consider the impacts of climate change on well usage and assumes that groundwater will rebound after a series of dry years. As previously note in the FIGR Draft EIS Comments, the cumulative analysis is also insufficient because it simulates pumping only during dry years rather than throughout the year. Shartsis Cmt. Ltr., Sect. 3.14(A) at 43. This shortcoming was not addressed anywhere in the Final EIS. Because agricultural well extractions (which will occur in both wet and dry years) are not included in the analysis and the wet year restoration is not justified, these cumulative impacts cannot be reduced to less than significant levels. "</p>	<p>Final EIS Appendix P Responses to Comments A5-2, A5-3 and A5-5. The comment is similar to comments from the same commenter regarding the approach to simulation of cumulative pumping by the Town of Windsor that were previously addressed in Final EIS Appendix P Responses to Comments T8-6, T8-38 and T8-88.</p>

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T9-5	<p>The BIA concedes that the cumulative impacts to groundwater dependent ecosystems (GDEs) would be potentially significant but contends that it did not try to minimize these impacts in the Draft EIS. Final EIS, Appx. P, Resp. Cmt. T8-39 at 3-126. According to the BIA, “[t]he available data indicates that while the [Koi] Project would make an incremental contribution to these impacts, the impacts of the [Koi] Project alone would be less than significant.” Id. (emphasis added). This contention highlights the BIA’s misunderstanding of the nature of cumulative impact analysis, which is to look at the total impacts across a larger area rather than focus on individual contributions. The BIA concedes that the cumulative impacts to groundwater dependent ecosystems (GDEs) would be potentially significant but contends that it did not try to minimize these impacts in the Draft EIS. Final EIS, Appx. P, Resp. Cmt. T8-39 at 3-126. According to the BIA, “[t]he available data indicates that while the [Koi] Project would make an incremental contribution to these impacts, the impacts of the [Koi] Project alone would be less than significant.” Id. (emphasis added). This contention highlights the BIA’s misunderstanding of the nature of cumulative impact analysis, which is to look at the total impacts across a larger area rather than focus on individual contributions.</p>	<p>Mitigation specifically states that absent implementation of a mitigation plan by the Town of Windsor, mitigation measures are to be implemented by the Tribe to lessen or prevent potentially significant cumulative impacts related to well GDE degradation or interconnected surface water (ISW) depletion. These measures would be triggered if modeling conducted under a required Groundwater Level and Stream Discharge Monitoring Program or the GDE Monitoring Program indicates that vegetation decline is occurring that is correlated with groundwater level declines, or streamflow is anticipated to be depleted by more than 5% (the approximate error in typical discharge measurements). In the event these triggers are reached, a Mitigation Plan shall be prepared and implemented that establishes thresholds for the following actions: (1) enhanced monitoring; (2) supplemental GDE and/or ISW characterization; and (3) mitigation actions to lessen or prevent potentially significant cumulative impacts. The Mitigation Plan shall be approved by BIA, NOAA Fisheries (if appropriate) and other responsible agencies.</p>
T9-6	<p>There are no federal requirements for recycled water production or use. EPA does not require or restrict any type of reuse.</p>	<p>In the event that the project includes a surface water discharge, the project shall be subject to the monitoring and reporting requirements set forth by the USEPA upon approval and issuance of an NPDES discharge permit. The NPDES permit would be consistent with the requirements adopted in the Basin Plan and the permit designed to protect the beneficial uses of the surface water. It is noted that offsite use of recycled water will be subject to State requirements. Any recycled water developed for offsite use will also comply with Title 22 requirements for recycled water production,</p>

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		distribution, and use per the SWRCB. All elements of the treatment and use are currently planned to comply with State requirements although any onsite production or use will be regulated at the federal level.
T9-7	Response to Comment T8-91 / A9-37: The applicant's response to comments T8- 91 / A9 – 37 (Casino Trip Generation) is patently false. The reason given for not following the standard of practice and using the Institute of Transportation Engineers (ITE) trip rates is because the ITE rates are based on sites in Las Vegas. However, the ITE description specifically states the rates are not based on Las Vegas type casinos (see Attachment A) and instead are based on actual counts at casinos in South Dakota, California, Massachusetts, and several other states. Using data from a 9-year-old Wilson Rancheria study that had its rates based on still other older casino traffic studies (Thunder Valley & Cache Creek) is flawed and substantially understates the trips that will be added to County and Caltrans Roadways. Potential impacts are therefore not being properly disclosed.	Please refer to Final EIS, Appendix P, Response to Comment A9-37. The use of proven trip generation rates from other casino/hotel facilities in Northern California with similar land use characteristics is more accurate than using ITE rates, which are not specific to Northern California and generalize all casinos into one monolithic land use. The Traffic Impact Study (Final EIS, Appendix I) used the best and most relevant information available at the time from developments located within the same region as the Proposed Project, and with similar land use characteristics (i.e., casino/hotel).
T9-8	Response to Comment T8-106: The response is flawed. There is no evidence provided in the report that shows the feasibility of the recommended mitigation, nor is there any information provided as to the timings of when the improvements will be implemented. As written, all of the impacts will occur without any assurance that the mitigation will be implemented.	See Final EIS, Appendix P, Response to Comment A8-34 regarding mitigation feasibility. As stated in the FEIS, Section 4 Mitigation Measures, "While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day." Furthermore, Section 4 also describes how fair-share contributions were calculated and stipulates that they can be adjusted in agreement with the governing entity with jurisdiction over the roadway(s) where improvements are proposed.
T9-9	New comment from November 4, 2024 TIA report review: Figures 7, 11, 14, 17, 21, 23, 25, 27, 29, 31 and 33 are missing	The peak hour volumes were mistakenly removed during the process of making the document 508 compliant. The information was also available within the Synchro output files in the Final EIS appendices and thus the figures error did not prevent the information from being available for public review.

Comment Number	Comment	Response
	peak hour volumes, making it impossible to provide an adequate review of the report.	The figures with peak hour volumes are provided as <b>Exhibit 3</b> to this Response to Comment document.
T9-10	<p>Review Item 11- Section 3.1.10. Master Response 10: Wildfire Evacuation</p> <p>Review of the provisions in the seven planning and policy documents showed them to generally lack tactical elements. As such, the information does not inform the process of analyzing impacts of actions required to mitigate the current risks of damage from wildfires or difficulties in evacuating people from ongoing, or potential wildfire zones.</p>	The seven planning and policy documents referenced by the commenter were summarized in the Final EIS to provide some context to the wildfire analysis included in the section. The current risk of damage from wildfires is provided in Final EIS, Section 3.12.2 under the "Wildfire" subsection and the potential effects of the Proposed Project on wildfire evacuation is included in Final EIS, Section 3.12.3.2 under the "Wildfire Evacuation" subsection.
T9-11	<p>Review Item 12 - Section 3.1.11. Master Response 11: Wildfire Evacuation Analysis Assumptions and Methodology</p> <p>The opening "Summary of Comments" section left out comments addressing the lack of, 1) an in situ analysis that would establish baseline conditions for the roadway/intersection system, and 2) a wildfire evacuation scenario comprised of comparative traffic models for typical baseline traffic and modeling for the added traffic during a wildfire-related evacuation. A thorough review of the Fehr and Peers report showed no actual field measurements of traffic nature or volumes keyed to the road segments and intersections that would be involved in an evacuation process. The evacuation time requirements appeared to be based entirely on published information inputted into a traffic modeling routine. Furthermore, although conversations with local fire and law enforcement personnel were cited there did not seem to be consideration given to 1) potential wildfire hazard and risk levels within the study area or 2) the particular</p>	<p>As described in Final EIS, Appendix P, Section 3.1 the Master Responses address comments with similar subject matter that were submitted multiple times in separate comments. The "Summary of Comments" presented at the beginning of each Master Response is a summary of the repeated comments that were addressed in the corresponding Master Response. Responses to individual substantive comments that were not summarized in the Master Responses is provided in Final EIS, Appendix P, Section 3.2.</p> <p>The Evacuation Travel Time Assessment Technical Memorandum (Appendix N-2) states that the background traffic data is based on outputs from the Sonoma County Transportation Authority's Travel Demand Model (SCTA model) that were used in the Traffic Study (Appendix I) conducted for the Proposed Project. The SCTA model is approved by the County, and it is validated with the traffic count data, which is empirical data. The Traffic Study used existing traffic count data collected in 2022. For the evacuation travel time assessment, further adjustments were made using location-based services big data, another empirical data source, to establish an evacuation</p>

Comment Number	Comment	Response
	<p>vulnerability of road segments, or intersections, to loss of function if involved in a wildfire incident. Given the apparent reliance on results from computer modeling, the lack of field data collection, and lack of consideration for wildfire behavior effects, TSS does not concur that the assumptions and methodology used in the analysis were sufficient.</p>	<p>scenario baseline condition more closely aligns with critical fire season in Sonoma County.</p> <p>The SCTA model represents the County's existing and future roadway networks. For the evacuation study, a 15% reduction in roadway capacity was applied to account for various incidents that may occur during a wildfire event. Potential fire scenarios were based on historical fire events and expert opinion from Vern Losh at Losh &amp; Associates (former head of the Sonoma County Department of Emergency Services), Robert Giordano (former Sonoma County Sheriff), and Clint Shubel (former Sonoma County Assistant Sheriff) at CAS Safety Consulting, LLC., who served as the Sonoma County Sheriff's Incident Commander during the 2017 Sonoma County Complex Wildfire Disaster.</p>
T9-12	<p>The response continues with the statement below: "The adoption of standard policies and procedures widely used across the region adequately addresses the effectiveness of Wildfire mitigation measures and BMPs included in the Draft EIS." It was, for the reviewer, difficult to 1) decipher the meaning of this statement and 2) to understand how it relates to "overlapping mandates and responsibilities with respect to managing the resources associated with the "Project area and surrounding lands". The reviewer would like to have seen a list of what constituted "standard policies and procedures" and those individuals or organizations, across the region, who have designated these actions suitable as mitigations within the NEPA framework. Once again, the Applicant has shown a completely "project-centric" approach; choosing not to even consider the importance to the safety of their patrons, much less those in the communities in the surrounding areas, in light of the demonstrated possibility of being involved in a catastrophic wildfire event. The Applicant's response merely</p>	<p>The follow up comment omits the key context of the quoted statement, that the Wildfire Hazard Mitigation Measures related to vegetation management provided in Section 4 of the Final EIS are consistent with the California Fire Code, Sonoma County Municipal Code, and the Sonoma County Fire District Weed Abatement Measures, which are standard policies and procedures meant to address wildfire hazards and are widely used across the region. A detailed description of what the Hazardous Materials and Hazards – Wildfire Hazards Mitigation Measures constitutes is presented in Section 4 of the Final EIS.</p>

Comment Number	Comment	Response
	covered "old ground" and was non-responsive to the FIG R's comments.	
T9-13	<p>There were risks of fire ignition identified in DEIS Section 3.12.3.2 that had to do with operation of equipment creating sparks, or fire itself. The following sentence is non-sensical. Regardless of the revision in the FEIS, the post-ROD timing of preparing this plan does not comply with NEPA requirements. Regarding the use of hand tools only; removal of larger diameter trees, especially those within the "fall zone" of structures cannot be done safely. Furthermore, any removal of stumps, or large diameter bole materials will require the use medium-to-heavy mechanized equipment.</p>	<p>As stated in the Final EIS, Appendix P, Response to Comment T8-69, "a significant ignition risk requiring mitigation was not identified." This is correct and is inclusive of the construction phase. Section 3.12.3.2 of the Final EIS does acknowledge risks such as equipment creating sparks, but determined that a significant impact requiring mitigation would not occur when considering project best management practices. This response was intended to clarify to the reader that the Wildfire Management Plan was proposed to offset operational wildfire hazard risks and is not necessary for the construction phase. Necessary plan components were outlined within the Final EIS, including timing of weed abatement and fuel load reduction, methodology for management of riparian vegetation, and prohibition against potentially impactful management strategies, such as a prohibition against motorized vehicles within the riparian habitat. The commenter states the opinion that the timing of the preparation of the Wildfire Management Plan does not comply with NEPA, but does not provide any reasoning as to why.</p> <p>To clarify, hand tools can include engine-powered tools such as chainsaws, which can be used by professionals to safely limb or fell dead vegetation even when within the fall zone of a structure. Stumps can also be removed via hand tools through several methods, including the use of handheld grinders and repeated wetting of soil, digging around the stump base, and cutting the root structure from the stump. Further, there is no requirement per the project mitigation that the totality of a stump and root ball be removed, so long as the associated fire risk is managed.</p>
T9-14	<p>RTC T8-74</p> <p>There has been an error as this response has no relationship to the FIGR comment. As well, Master Response 8 has no applicability to the FIGR comment.</p>	<p>The comment is erroneously referring to Final EIS, Appendix P, Response to Comment A8-74. The Final EIS, Appendix P, Response to Comment T8-74 is correct.</p>

Comment Number	Comment	Response
T9-15	<p>RTC T8-75</p> <p>There are two significant difficulties with the Applicant's response. The first is associated with the installation and use of the adaptive signal control system. While opening the intersection in one direction for a longer period of time does result in a greater volume of traffic in that direction. However, the action simultaneously reduces the time available for the cross traffic. This is the very kind of action, in terms of description detail, that needs to be subjected to a "Hard Look" in order to determine what the effects produced would be. The second is using remote and speculative future actions as mitigations; an action that is not within the performance standards of NEPA.</p>	<p>Refer to response TSS-TRAF-4 regarding mitigation. The commenter is correct that additional vehicle delay would be experienced by cross traffic as a result of measures identified reduce wildfire evacuation impacts, especially along Shiloh Road. However, mitigation specified in Section 4 of the FEIS indicates that ASC systems could be implemented by emergency staff during a wildfire and significantly extend maximum green times on key evacuation approaches, <i>depending on traffic conditions and evacuation patterns</i>. This gives staff the ability to utilize the technology based on real-time conditions, thus minimizing hazards related to lengthy vehicle delay on Shiloh Road cross streets. Furthermore, mitigation requires that the Proposed Project shall initiate a mandatory evacuation of the Project Site as soon as the evacuation zones within the Trigger Evacuation Zone are issued an evacuation warning or order. In other words, the Proposed Project would generate most evacuation-related traffic along Shiloh Road prior to the time that evacuation traffic from other nearby residences/businesses would be generated and, therefore, would not be competing for access to/from Shiloh Road.</p>
T9-16	<p>RTC T8-79</p> <p>The Applicant's response is completely unrelated to FIGR's comments; actually, it is unclear what federal actions are involved here. In the FEIS it appears that the other project information (Windsor Gardens, et.al.) has been placed in the Land Resources subsection (3.14.1). In FIGR's comment the federal actions that would be the subject are those comprising the emergency evacuation subject area. If this is the case then the most likely subsections with applicability would be 3.14.7 (Transportation) and 3.14.11 (Hazard i.e. Wildfire). In subsection 3.4.11 the use of a model was described with the dependent variable being time needed to leave the danger zone. However, what is missing are the independent variables used as inputs to the model. It is the nature of these independent variables, and how they are used as model inputs,</p>	<p>The comment is erroneously referring to Final EIS, Appendix P, Response to Comment A8-79. The Final EIS, Appendix P, Response to Comment T8-79 is correct.</p>

Comment Number	Comment	Response
	<p>that establishes the robustness of the model and increases the confidence in the results generated by the model. A good example, especially given the rural nature of the Project's setting, and one that has been completely left out of the evacuation process followed in the Applicant's EIS process, is the mix of vehicle types that characterizes baseline traffic and evacuation; with the harbinger being loaded horse trailers. In rural settings it has been consistently observed that wildfire evacuation traffic has higher proportions of medium-weight commercial grade vehicles and equipment and light-to medium duty vehicles pulling trailers. These types of vehicles create significant changes, in comparison to the baseline, in the use pattern of the road system and are more heavily impacted by the constraints and require far different considerations when doing emergency evacuation planning and mitigation identification. This particular response, taken into consideration along with the example, demonstrates shortcomings that are pervasive throughout this EIS process. Please refer to Appendix 4 of Letter T8 prepared by Meister Economic Consulting, LLC: Review of Final EIS Responses (December 23, 2024).</p>	
T9-17	<p>RTC T8-79 The Applicant's response is completely unrelated to FIGR's comments; actually, it is unclear what federal actions are involved here. In the FEIS it appears that the other project information (Windsor Gardens, et.al.) has been placed in the Land Resources subsection (3.14.1). In FIGR's comment the federal actions that would be the subject are those comprising the emergency evacuation subject area. If this is the case then the most likely subsections with applicability would be 3.14.7 (Transportation) and 3.14.11 (Hazard i.e. Wildfire). In subsection 3.4.11 the use of a model was described with the</p>	<p>Many of the comments in the Meister Economic Consulting ("MEC") letter dated December 23, 2024 were previously addressed in the Final EIS, or are anecdotal in nature. Further responses to some of the comments are included below:</p> <p>MEC Letter Page 1 – The commenter's statement that Acorn has no expertise in economics and gaming economics is inaccurate. In addition to technical experts in areas of environmental study, in the narrow definition of the word "environmental", Acorn employs professionals with expertise in planning, traffic analysis and finance. Acorn professionals have peer reviewed at least</p>



Comment Number	Comment	Response
	<p>dependent variable being time needed to leave the danger zone. However, what is missing are the independent variables used as inputs to the model. It is the nature of these independent variables, and how they are used as model inputs, that establishes the robustness of the model and increases the confidence in the results generated by the model. A good example, especially given the rural nature of the Project's setting, and one that has been completely left out of the evacuation process followed in the Applicant's EIS process, is the mix of vehicle types that characterizes baseline traffic and evacuation; with the harbinger being loaded horse trailers. In rural settings it has been consistently observed that wildfire evacuation traffic has higher proportions of medium-weight commercial grade vehicles and equipment and light-to medium duty vehicles pulling trailers. These types of vehicles create significant changes, in comparison to the baseline, in the use pattern of the road system and are more heavily impacted by the constraints and require far different considerations when doing emergency evacuation planning and mitigation identification. This particular response, taken into consideration along with the example, demonstrates shortcomings that are pervasive throughout this EIS process. Please refer to Appendix 4 of Letter T8 prepared by Meister Economic Consulting, LLC: Review of Final EIS Responses (December 23, 2024).</p>	<p>dozens if not in excess of one hundred economic/finance studies and reports as well as produced such studies and reports. Further, the conclusions described in the EIS are not merely "opinions" but are rather determinations supported by factual evidence and analyses prepared by highly qualified economic consultants, including GMA.</p> <p>MEC Letter Page 2 - Please see <b>Exhibit 6</b> prepared by GMA regarding the assumptions that underly the GMA substitution analysis. Please also see Final EIS, Appendix P, Response to Comment T8-122 and T8-124 and <b>Response to Comment T8-9 above</b>.</p> <p>MEC Letter Page 6 – Please see Final EIS, Appendix P, Response to Comment T8-128 regarding potential market saturation or market maturity. The fact the Graton Casino and Resort is undergoing a substantial expansion does not appear to be consistent with a Sonoma County gaming market that is currently saturated. MEC’s different perspective on this subject is acknowledged.</p> <p>MEC Letter Page 6 – Please see <b>Exhibit 6</b> prepared by GMA regarding potential impacts to card rooms. Also see Final EIS Response to Comment T8-128 regarding potential impacts to card rooms. As stated therein and in Final EIS Appendix B-5, GMA does not state that Alternative A would have no impact on card rooms. Rather, the impact would be minimal, which would be considered less than significant under NEPA.</p> <p>MEC Letter Page 7 – Please see <b>Exhibit 6</b> prepared by GMA regarding potential impacts from out-of-market revenue. Please also see Final EIS Response to Comment T8-28 and T8-128. The commenter’s statement that its comment on the Draft EIS was focused on understanding out-of-market patron effects on in-market facilities is a helpful clarification. The commenter should note that substitution effects estimates were updated in Final EIS Appendix B-5, Response to Comment T5-18 to include a cumulative analysis,</p>

Comment Number	Comment	Response
		<p>assuming the simultaneous opening of both the Proposed Project and a facility owned by the Scotts Valley Tribe. The estimates in this analysis were also updated to specifically include any “out-of-market” patron behavior on substitution effects to “in-market” facilities.</p> <p>MEC Letter Page 8 - Please see <b>Exhibit 6</b> prepared by GMA regarding how substitution effects are anticipated to diminish over time. Also see Final EIS Response to Comment T8-129. As described in that Response, the U.S. economy (as measured by Gross Domestic Product or GDP) typically grows in “real” or inflation adjusted terms on an annual basis. As defined by the U.S. Bureau of Economic Analysis, GDP equals “the total market value of the final goods and serviced produced within the United States in a year.”<sup>3</sup> Gaming revenue is included in GDP. As described in Final EIS Response to Comment T8-129, U.S. GDP grew by a total of 30.1% during the 10 years ended January 2024, or at a compound annual average of 2.7%. It is the case that such growth is not highly predictable in any particular period, but historically it has occurred, and there is no reason to believe that it will not continue to occur in the future. In the absence of new gaming competitors, if total gaming revenue within a particular market continues to grow on a “real” or inflation adjusted basis, and the number of gaming businesses remains constant, by definition the average “real” revenue of the gaming businesses will also increase.</p> <p>Furthermore, U.S. tribal gaming revenue has historically increased at a rate consistent with the overall growth in the U.S. economy. For example, total U.S. tribal gaming revenue increased from \$14.7 billion in Fiscal Year 2002 to \$40.9 billion in Fiscal Year 2022.<sup>4</sup> This equates to a 178% increase over 21</p>

<sup>3</sup> U.S. Bureau of Economic Analysis, 2025 - U.S. Bureau of Economic Analysis website, available online at: <https://www.bea.gov/system/files/2020-04/GDP-Education-by-BEA.pdf>. Accessed January 6, 2025.

<sup>4</sup> National Indian Gaming Commission, 2023. National Indian Gaming Commission (NIGC) website. Available online at: [https://www.nigc.gov/images/uploads/Pages\\_from\\_GGRFY22\\_071923\\_GGRTrending\\_Final.pdf](https://www.nigc.gov/images/uploads/Pages_from_GGRFY22_071923_GGRTrending_Final.pdf). Accessed January 6, 2025.

Comment Number	Comment	Response
		<p>years, or a compound average growth of 5.0% per year. This growth rate is “nominal” and not “real” (i.e., not adjusted for inflation). On an inflation adjusted basis, this growth is similar to the 2.7% annual “real” growth in U.S. GDP described above.</p> <p>It is acknowledged that part of the growth in U.S. tribal gaming revenue is due to an increase in the number of gaming facilities. This is why Draft EIS Section 3.7.3.2 was edited in the Final EIS to state “substitution effects tend to dissipate over time in a growing economy, if there are few or no new market entrants.” However, as stated in Final EIS Response to Comment T8-129, the Final EIS acknowledges that “The commenter is correct that the financial position of an existing tribal casino would be stronger in a situation in which a new competitor had not entered the market. This is true for any industry in which competition exists.”</p> <p>MEC Letter Page 10 and Page 12 - Please see Final EIS Response to Comment T8-129 and Final EIS Appendix B-5 regarding substitution effects related to hotels. The reason that this response did not address substitution effects related to other non-gaming amenities (e.g., food and beverage, etc.) is because the Draft EIS Comment T8-129 was focused on hotels. Please see Final EIS Response to Comments T8-124 and T8-125 and Final EIS Appendix B-5 regarding non-gaming amenities. Also, it should be noted that for a number of reasons, the substitution analysis performed by GMA in Draft EIS Appendix B-1 is focused on impacts to gaming revenues. This does not imply that there will be no impacts to non-gaming revenues. To the contrary, because the hotel element of the Proposed Project results in both gaming revenue and hotel revenue that would otherwise accrue to a competitor, both amounts are accounted for in the GMA substitution analysis. This is because substitution effects listed in Draft EIS Appendix B-1 are listed as percentages, not dollars. If effects to gaming revenues had been presented in dollars, the commenter would be correct that substitution effects to non-gaming amenities were excluded. However, because effects are expressed as</p>

Comment Number	Comment	Response
		percentages, these can be applied across the entirety of a casino/resort to estimate effects to the entire revenue stream. This is one of the reasons that estimated effects were presented in percentages, not dollars. Please see the GMA Also, it is a standard and accepted practice in the industry to express substitution effects in either percentages or dollars.
T10-1	Particularly the FEIS does not analyze the effects the casino would have, should Mishewal Wappo someday proceed with a similar project in order to provide for its members, who we emphasize, are actually from Sonoma County, and include the Project Site among our ancestral homelands. There is no analysis on what market share would be available to Mishewal Wappo, and to what degree of success a project from the Tribe could see. In other words, the BIA's supplemental study still does not take the requisite "hard look" at the economic impacts of this Project.	The substitution analyses presented in Draft EIS Appendix B-1 and Final EIS Appendix B-5 were not adjusted to reflect potential casino development plans for the Mishewal Wappo Tribe or many other tribes. This is because the circumstances surrounding hypothetical future casino development would be speculative at this time. In order to justify the inclusion of such an expansion in a NEPA analysis, the project (including circumstances such as timing and size) must be reasonably foreseeable. In this case, because the Mishewal Wappo Tribe is not federally recognized, the future development of a gaming facility by the Tribe is not reasonably foreseeable. Please see Final EIS Master Response 4 for further information regarding speculative projects.
178-1	It is well known that casinos are a liability to the family. This South Windsor community along Shiloh Road is growing, and so is traffic. Casino traffic is not that same as family traffic. Casinos encourage the use of alcohol as it is essential to its business. It is, therefore, inevitable that alcohol related fatalities will occur. The casino is a valid danger to this thriving family-based community. Please refer to the study - The impact of casinos on fatal alcohol-related traffic accidents in the United States - ScienceDirect for evidence supporting this.	<p>Risks associated with drunk driving incidents were analyzed in EIS Section 3.7.3.2. As stated therein:</p> <p>“The Proposed Project intends to serve alcohol consistent with a liquor license, which could result in an increase in drunk driving incidents. Drunk driving prevalence is not anticipated to increase significantly as a result of the proposed casino resort given the availability of alcohol throughout the area and State. BMPs described in Table 2.1-3, including the implementation of a “Responsible Alcoholic Beverage Policy,” would be implemented during the operation of the casino resort to reduce the likelihood of drunk driving resulting from Alternative A.”</p> <p>The commenter references two studies in support of its assertion that the Proposed Project would result in increased alcohol related traffic fatalities. These two studies are described and analyzed below.</p>

Comment Number	Comment	Response
		<p><i>The Impact of Casinos on Fatal Alcohol-related Traffic Accidents in the United States (December 2010)</i>. This study includes the following finding:</p> <p>“...that alcohol-related fatal accidents increase by about 9.2% for casino counties with the mean log population, yet this estimated effect declines as population increases.”<sup>5</sup></p> <p>Unfortunately, this study does not include the actual data described in the study, nor does it describe in detail the methods used to analyze the data. In addition, the finding that the effect declines with increases in county population appears logical, but the study does not describe how large this effect is. For example, it is unknown how the percentages vary between, for example, a county with 50,000 residents versus 200,000 residents. The average U.S. county has a population of approximately 106,000 residents<sup>6</sup>. Sonoma County has approximately 489,000 residents (Final EIS Table 3.7-2).</p> <p>Although the specific data analyzed was not included in the study, the text of the study implies that alcohol-related fatal accidents were compared between counties where casinos opened versus counties with no existing casinos. It is unknown if the same counties were analyzed before and after the opening of a casino, or if different counties were compared, i.e. those with casinos versus those without. Regardless, as described in EIS Section 3.7.3.2, a number of casinos already exist within Sonoma County. The</p>

<sup>5</sup> Journal of Health Economics, 2010. Available online at: <https://www.sciencedirect.com/science/article/abs/pii/S0167629610001013#:~:text=Specifically%2C%20our%20best%20estimate%20indicates,effect%20declines%20as%20population%20increases>. Accessed December, 2024.

<sup>6</sup> Calculated by Acorn as 106,007, which equals the total 2022 U.S. Population of 333,287,557 (U.S. Census Bureau, 2022. Available online at: <https://www.census.gov/newsroom/press-releases/2022/2022-population-estimates.html>. Accessed January 7, 2025) divided by the 3,144 U.S. counties and county equivalents (U.S. Census Bureau, 1990 – Table 4-3. Available online at: <https://www2.census.gov/geo/pdfs/reference/GARM/Ch4GARM.pdf>. Accessed January 7, 2025).

Comment Number	Comment	Response
		<p>Proposed Project would not involve the introduction of a casino to a county that previously had none. Thus, the circumstances analyzed in this study are not very similar to those that would occur under Alternative A.</p> <p><i>Assessment of the Casinos’ Impacts on Operating Under the Influence (OUI) and OUI Involved Traffic Collisions (January 2022)</i></p> <p>This study offered a basic formulaic model for estimating casino related drunk driving incidents. This model does not rely upon any particular observations (including the observational data described below) but rather is the result of a combination of assumptions made by the study authors.</p> <p>The study also analyzed before versus after drunk driving (OUI) “Complaints” and “Crashes with OUI Charges” within the study areas that correspond with three casino openings in Massachusetts. The study’s “Conclusion” section states that the operation of casinos caused an increase in OUIs. However, the data presented in the study is inconclusive. Data results are summarized below:</p> <ul style="list-style-type: none"> <li>▪ The study data indicated that after the opening of a casino, OUI Complaints declined slightly in the Plainridge Park region (through 2019), declined slightly in the MGM Springfield region (through 2019), increased in the MGM Springfield region (through 2020) and increased in the Encore Boston Harbor region (through 2020). There does appear to be a substantial difference between 2019 and 2020 results, which may be related to the COVID pandemic. This effect is mentioned, but potential causes are not analyzed.</li> <li>▪ Crashes with OUI Charges declined in the Plainridge Park region (through 2019), were relatively unchanged in the MGM Springfield region (through 2019), were relatively unchanged in the MGM</li> </ul>

Comment Number	Comment	Response
		<p data-bbox="1108 280 1919 345">Springfield region (through 2020) and increased substantially in the Encore Boston Harbor region (through 2020).</p> <p data-bbox="1052 386 1965 516">In summary, the 2022 study measured the effects of opening a casino within study areas where previously there were no casinos. Because a number of casinos currently exist in Sonoma County, the circumstances analyzed in this study are not very similar to those that would occur under Alternative A.</p>

Exhibit 1

# Comment Letters on the Final EIS



Exhibit 2

Supplemental Evaluation of Potential  
Surface Water Depletion Impacts, Shiloh  
Resort and Casino

## SUPPLEMENTAL EVALUATION OF POTENTIAL SURFACE WATER DEPLETION IMPACTS, SHILOH RESORT AND CASINO, WINDSOR, CALIFORNIA

PREPARED FOR: Acorn Environmental

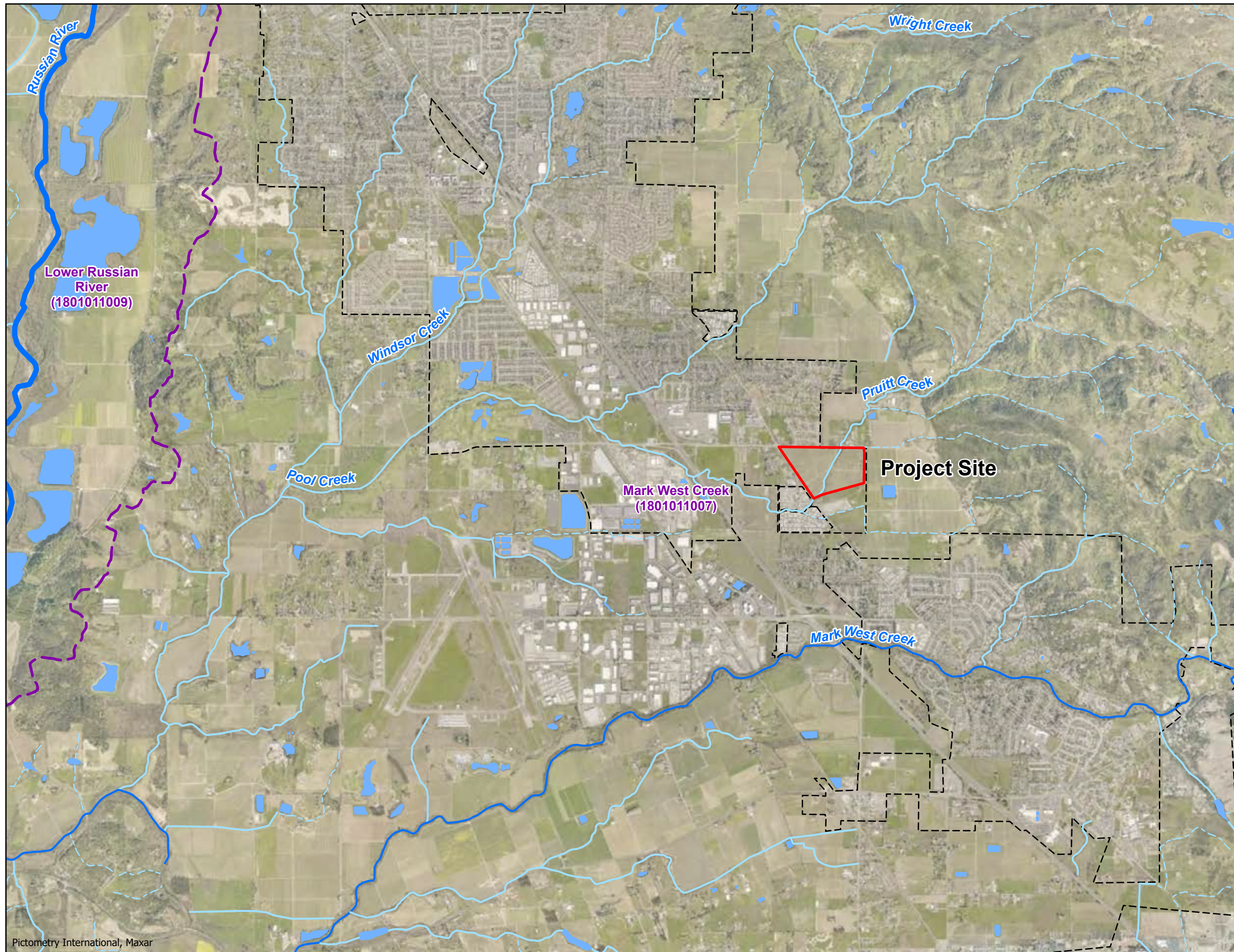
PREPARED BY: Michael Tietze, Christina Johnson and Will Gnesda, Formation Environmental, LLC

DATE: November 13, 2024

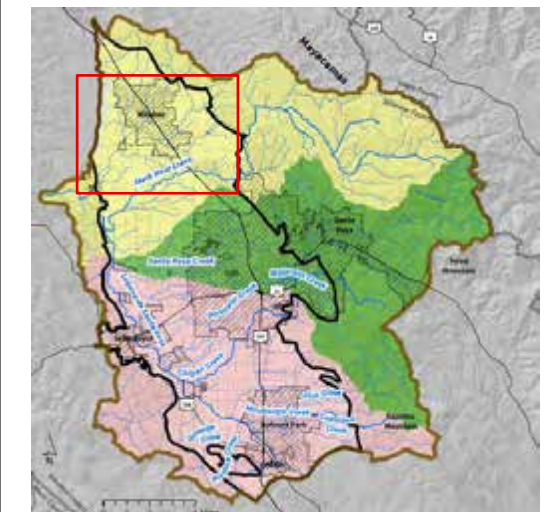


This technical memorandum describes the results of a supplemental groundwater modeling analysis to evaluate potential stream flow depletion impacts resulting from the Shiloh Resort and Casino Project southeast of the Town of Windsor, California (the Project, see Figure 1). This supplemental analysis was completed in response to comments on the public review draft Environmental Impact Statement (EIS) and Supplemental Groundwater Resources Impact Analysis (GRIA) prepared for the Project, which requested further analysis of potential Project and cumulative impacts to stream flow in Pruitt, Pool and Mark West Creeks and associated aquatic habitat and species. As indicated in the GRIA, the weight of the available data support an interpretation that these creeks are not groundwater connected except near the Mayacamas Mountains, and that the potential impacts to perennial reaches of these streams from groundwater extraction for the Project will be less than significant. The cumulative impacts of groundwater extraction for the Project and Town of Windsor were predicted to be greater, and it was not certain if these impacts would be significant. It was acknowledged that the uncertainty in these impact determinations would need to be addressed through the collection of monitoring data and the implementation of mitigation. The supplemental analysis presented in this Technical Memorandum is intended to provide additional insight into the nature and extent of potential stream flow depletion impacts that could result from groundwater extraction for the Project and the Town of Windsor.

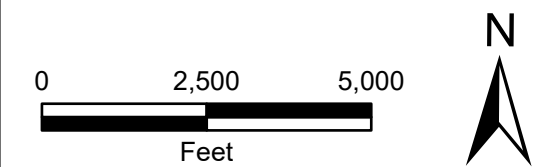




- Legend**
- Project Site
  - Watershed Boundary (HUC-10)
  - Municipal Water Service Areas
- Stream/River**
- Ephemeral
  - Intermittent
  - Perennial
  - Major River
  - Lake, Reservoir



Santa Rosa Plain Groundwater Subbasin - Sub-watersheds (GSP 2022)



Reference: National Hydrography Dataset (USGS 2006)

**SHILOH CASINO AND RESORT**  
KOI NATION OF NORTHERN CALIFORNIA

FIGURE 1

**PROJECT SETTING**

DATE: FEB 15, 2024

By: WRG For: NBB





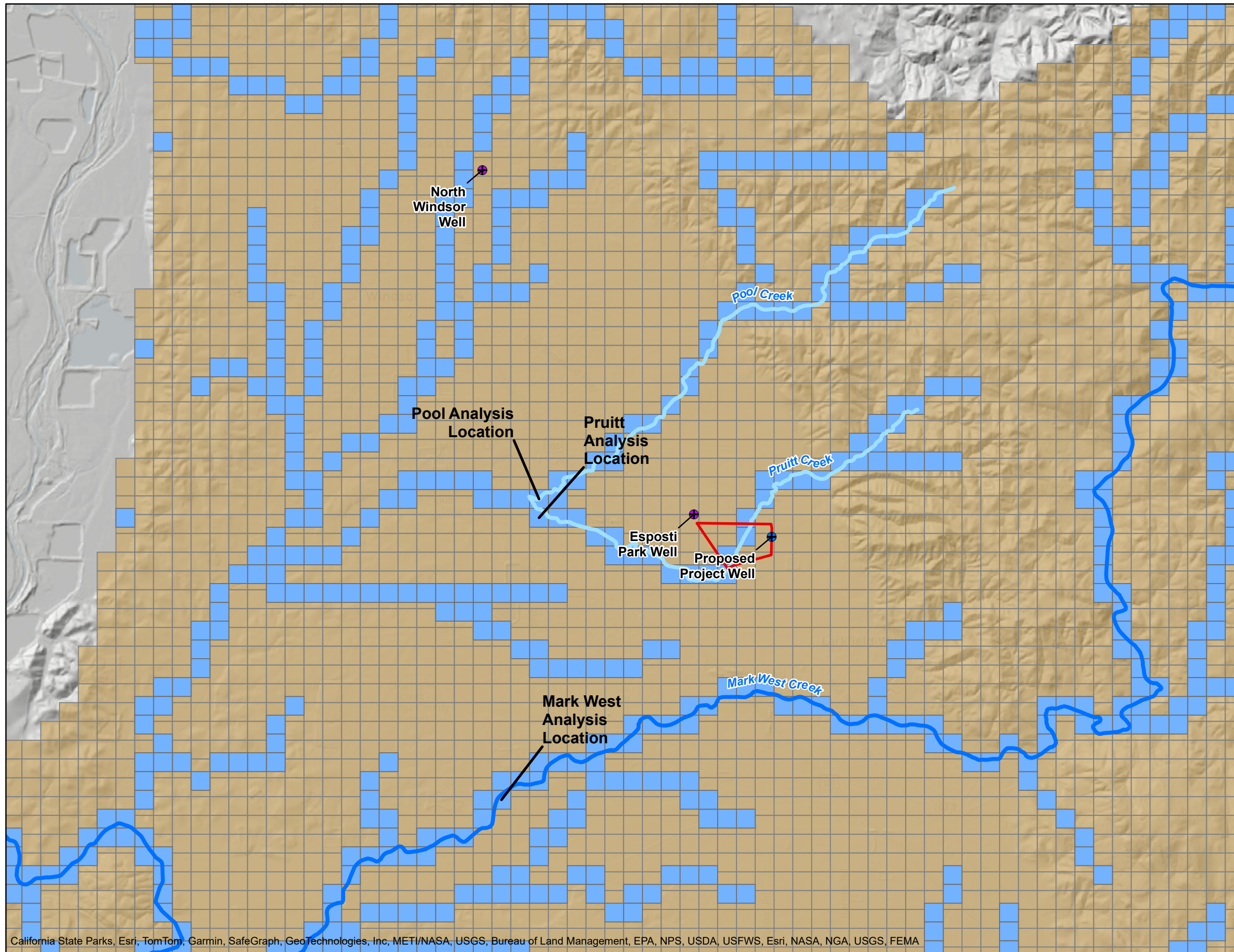
# 1 SETTING AND APPROACH

## 1.1 SURFACE HYDROLOGY

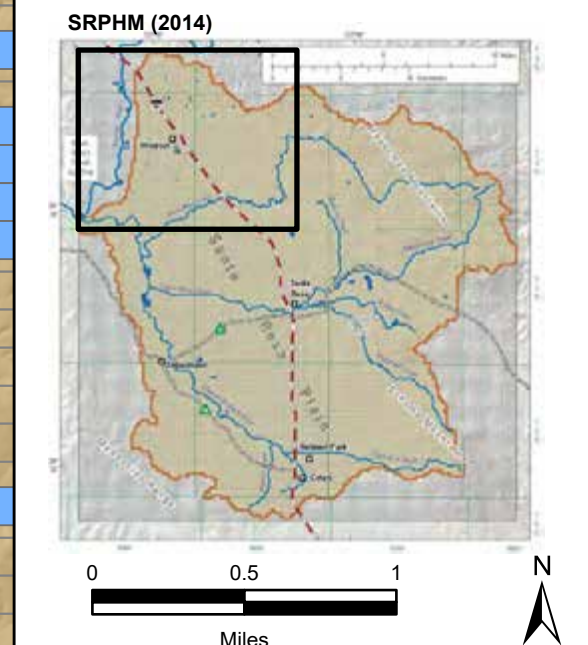
The streams located within the area of potential drawdown effects identified in the GRIA include Pruitt, Pool and Mark West Creek. Pruitt and Pool Creeks are tributaries of Mark West Creek. The headwaters of these creeks are in the Mayacamas Mountains, east of the Project site, and they drain into the Russian River, west of the Project site (Figure 2). Pruitt Creek runs through the Project site; Pool Creek is located north of the Project site and Mark West Creek is located approximately 1 mile south from the project site. Stream flow in creeks within the Santa Rosa Plain watershed is known to be highly variable, with high flows during winter and very low to zero flow during summer, and to respond rapidly to precipitation events (Nishikawa 2013; Woolfenden and Nishikawa 2014). Nishikawa (2013) indicates that Mark West Creek is reported to be perennial throughout its length, but that Pool Creek (and presumably its smaller tributary, Pruitt Creek) are intermittent streams that become dry during late spring to late summer. Nishikawa (2013) further states that even the main stream channels reportedly will often go dry during the summer if the preceding winter has been drier than normal. This is consistent with continuous discharge measurements for Mark West Creek collected by the USGS at Gaging Station no. 11466800 near Mirabel Heights. Flow at the Mirabel Heights gaging station is considered representative of surface water discharge conditions and surface-groundwater interaction in the watershed (SCWA, 2021), and based on measurements from October 2005 through September 2023 minimum discharge rates are reported as approximately 0.5 cubic foot/second (cfs) in June and 0 cfs from July through October.

As described in the Aquatic Resources Delineation Report (Sequoia 2022), Pruitt Creek is considered intermittent on the valley floor because (1) pooled and flowing water in the channel appears to be a result of seasonal rains and not perennial hydrology; (2) significant ordinary high-water mark indicators indicate seasonal flow; and/or (3) background sources (National Wetlands Inventory, National Hydrography Dataset, United States Geological Survey [USGS] topographic maps) indicate seasonal flow. Information provided by Sonoma County suggests a short reach of Pruitt Creek between the Mayacamas Mountains and Faught Road may support perennial flow (Sonoma Water 2023).

As discussed in the GRIA, the available data indicate that shallow groundwater levels near Pruitt, Pool and Mark West Creek are typically about 10 to 30 feet below ground level, which suggests these streams are likely not groundwater connected near the Project site, except in the perennial reaches near the Mayacamas Mountains. However, we acknowledge that in the absence of additional monitoring data, there is uncertainty whether the streams are groundwater connected, or include additional groundwater connected reaches during portions of the year. For these reasons, in this analysis it is assumed that any flowing reaches of Pruitt, Pool and Mark West Creeks are groundwater connected.



- Legend**
- Project Boundary
  - SRPHM Properties**
  - Active Area
  - Simulated Streams
  - Natural Streams and Rivers**
  - Intermittent
  - Perennial
  - Modeled Wells**
  - ⊕ Municipal
  - ⊕ Proposed (Alternative A)



References: Santa Rosa Plain Hydrologic Model (Woolfenden and Nishikawa 2014); USGS (2024)

**SHILOH RESORT AND CASINO**  
KOI NATION OF NORTHERN CALIFORNIA

FIGURE 2  
**STREAM LOCATIONS AND MODEL DISCRETIZATION**

DATE: NOV 13, 2024	<b>FORMATION</b> ENVIRONMENTAL
By: WRG	For: NBB

## 1.2 AQUATIC RESOURCES CONSIDERATIONS

Pruitt, Pool and Mark West Creeks are reported to contain threatened or endangered salmonid species (anadromous steelhead and/or Coho Salmon). Mark West Creek is a tributary to the lower Russian River and is known to support populations of Steelhead trout (*Oncorhynchus mykiss*) and Coho salmon (*Oncorhynchus kisutch*) and operates under the “Enhanced Water Conservation and Additional Water User Information for the Protection of Specific Fisheries in Tributaries to the Russian River” (CCR Title 23 Section 876). It is designated as critical habitat for California Coastal Coho Salmon, as well as Steelhead trout, and is designated as a Phase 1 stream for NOAA Fishery’s Central California Coast (CCC) Evolutionarily Significant Unit (ESU) Coho Salmon Recovery Plan (Center for Ecosystem Management and Restoration [CEMR], 2015). Steelhead trout are also reported to range into Pruitt and Pool Creeks (CDFW 2022) and are reported to have been observed in perennial pools of Pruitt Creek upstream from Faught Road (Sonoma Water 2023).

Stream flows and their potential effect on Steelhead trout and Coho salmon populations have been extensively studied on Mark West Creek, and it has been found that the most sensitive period for potential flow depletion impacts to these species is during the outmigration of juvenile fish, which occurs in the spring when flows taper off from their wintertime highs to low flows or dry conditions during the summer and fall (CDFW 2022a; CDFW 2022b; SRCD 2020). This tapering off of flows occurs from late March to middle or late May and is known as the spring flow recession. During this time, Steelhead and Coho salmon migrate from spawning and rearing locations within the Mayacamas Mountains to the Pacific Ocean. This migration begins with an initial spring pulse flow, signaling the migration, followed by a recession period typically extending to the end of May (CDFW 2022). Decreases in stream flow during this period could potentially leave fish stranded in ephemeral pools, resulting in possible die-offs similar to events that occurred in Mark West Creek during the spring of 2008, when an outmigration of juvenile Coho salmon coincided with extensive frost protection pumping near the creek (SRCD 2015). The impact analysis presented in this Technical Memorandum therefore places a special focus on potential depletion rates in April and May. It is noted that since Pruitt and Pool Creeks drain smaller watersheds, the spring flow recession in these streams likely tapers off before the spring flow recession in Mark West Creek.

## 1.3 DESCRIPTION OF THE MODELING APPROACH

For this supplemental analysis, Project and cumulative pumping were simulated using the Santa Rosa Plain Hydrologic Model (SRPHM) developed by the United States Geological Survey (USGS) in cooperation with the Sonoma County Water Agency and local municipalities (Woolfenden and Nishikawa 2014). The SRPHM is a coupled groundwater and surface-water Santa Rosa Plain Hydrologic Model that utilizes the modeling code GSFLOW to simulate hydrologic responses from watersheds to aquifers (Markstrom et al. 2008) and simulates groundwater flow using MODFLOW-NWT (Niswonger and others, 2011). The proposed Project well and the Town of Windsor Esposti Park and Bluebird wells were added to the model. In the GRIA, the SRPHM was refined in a child model area surrounding the area of potential Project effects with a smaller cell size and the inclusion of an additional aquitard unit at approximately 350 ft below ground surface; however, for this supplemental analysis, the SRPHM model was used without these refinements. We note

that without simulation of the additional aquitard, the predicted stream flow depletion resulting from well pumping will tend to be greater, leading to more conservative results.

Three scenarios were analyzed: (1) a baseline simulation without pumping of the Project and/or Town of Windsor wells, (2) a Project well pumping scenario, and (3) a cumulative scenario with implementation of pumping from the Project and Town of Windsor wells. Well pumping was simulated in accordance with the schedules and rates outlined in the GRIA. The depletion of stream flow relative to the baseline condition was analyzed under Project and cumulative scenarios over a 50-year period following the methods outlined in the GRIA under the PA2 climate scenario. For each scenario, monthly stream flow profile data were generated along Pruitt, Pool and Mark West Creeks.

Stream flow profile data were generated along the stream reaches of Pruitt and Pool Creeks extending from the Mayacamas Mountains to their confluence with Mark West Creek. For Mark West Creek, stream profile data were generated for the stream reach that extends from the Mayacamas Mountains to the confluence with the Russian River. Data generated along the stream profiles includes total average monthly stream discharge and stream flow depletion for representative dry, normal and wet years, with a focus on April and May.

An additional analysis of the temporal variability of stream discharge effects was conducted as follows. A model cell near the point where the maximum depletion was observed along each of the three creeks was selected for analysis. For the selected cell, all of the stream discharge, stream flow depletion and percent stream flow depletion data were plotted for each month using a “box and whiskers” distribution plot.

## **2 ANALYSIS OF POTENTIAL IMPACTS**

### **2.1 PROJECT SCENARIO**

Figures 3a-3c show simulated flow for the Baseline and Project Scenarios in April and May along Pruitt, Pool and Mark West Creeks between the Mayacamas Mountains and their terminal points (confluences) for the Baseline and Project Scenario. Distances along the stream profiles are shown on horizontal axis from east to west, the left axis shows stream flow rates and right axis shows flow depletion rates. Stream flow and depletion generally increase downstream and decrease between April and May. This is consistent with expected trends, where stream flow depletion is highest during wet periods when more in-channel flow is available for capture. Importantly, predicted stream flow differences between the Baseline and Project scenarios are relatively minor and the depleted stream flow cannot be distinguished from the baseline flow in these graphs. The maximum stream flow depletion rate is less than 0.1 cfs.

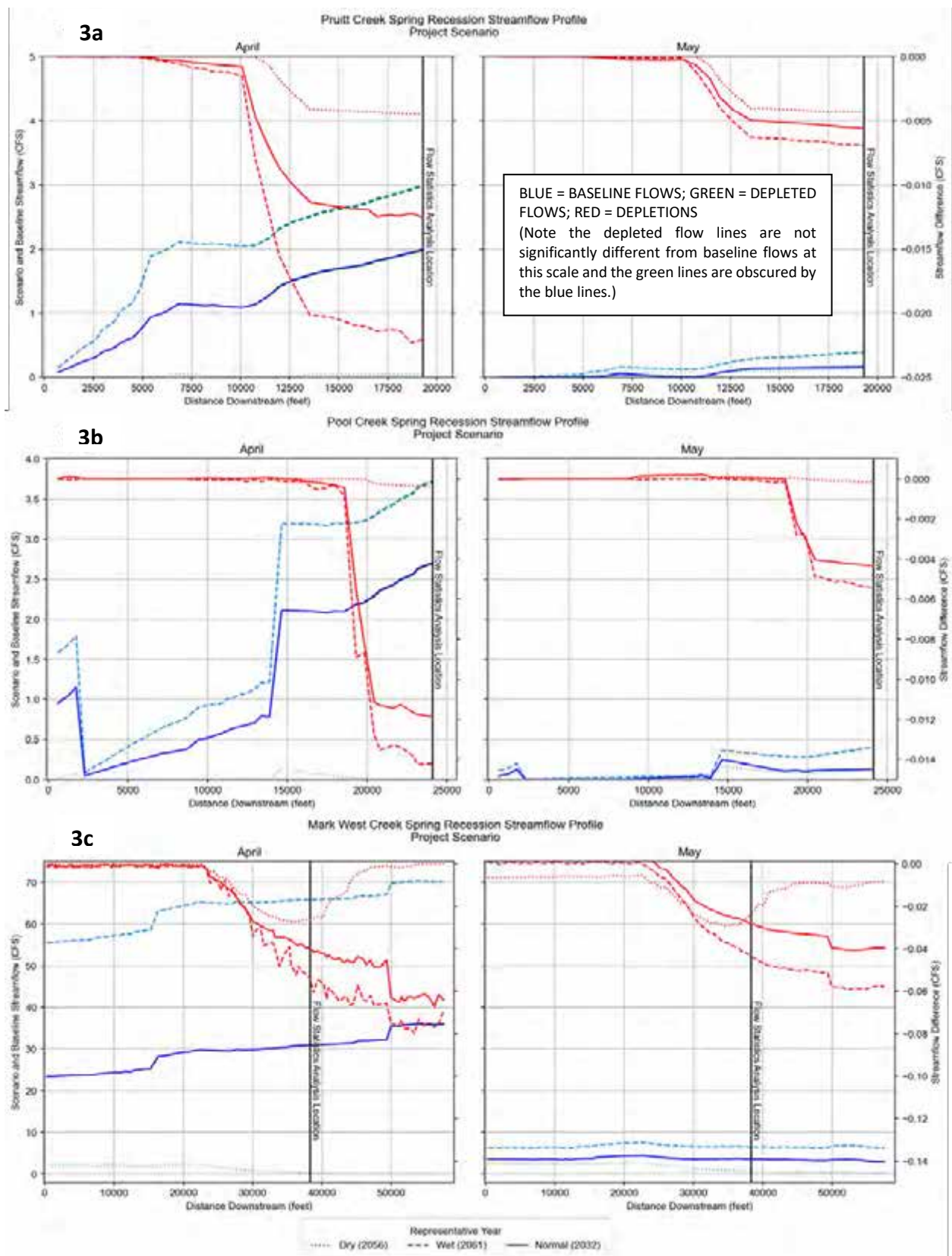
To evaluate the range of long-term average flow depletion impacts over the 50-year simulation period, a single model cell was selected for evaluation near the location of greatest accumulated stream flow depletion. These points are shown as vertical lines on the graphs in Figure 3 and are shown in map view in Attachment A. For Pruitt and Pool Creeks, an evaluation point was selected before the confluence between the two streams. For Mark West Creek, the point was selected near the point of maximum stream flow depletion during dry years. Results from this analysis are presented in Figures 4a-4c, and show

the monthly range in baseline flow, stream flow depletion, and stream flow depletion as a percentage of total flow. Months when the creeks are dry or nearly dry (i.e., June – September) were not considered in this evaluation because flows during these times do not support fish species and the modeled flow and depletion outputs are considered to be below the meaningful range of accuracy of the model.

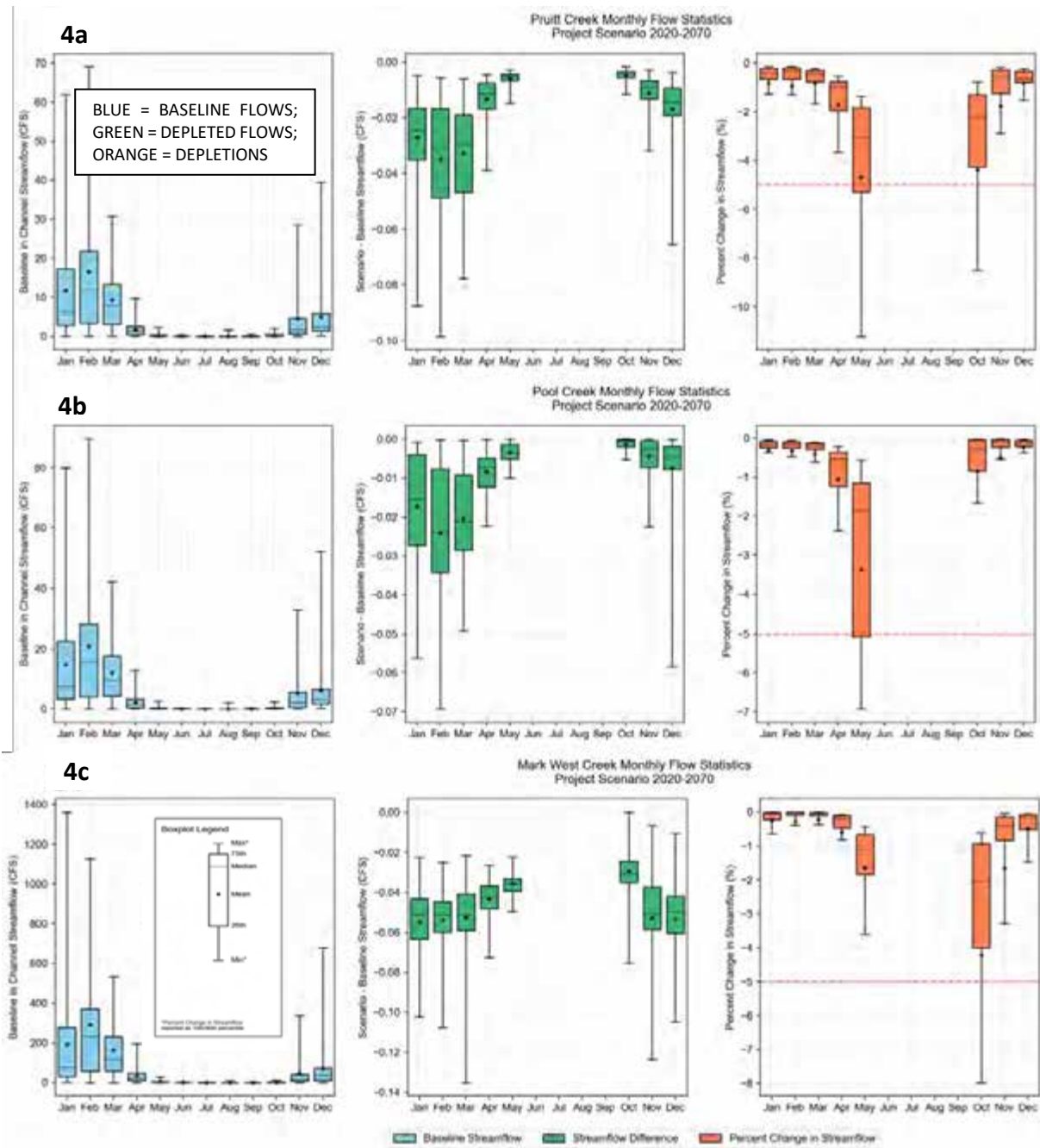
The graphs show that stream discharge and depletion varies from year to year and throughout the year, with a strong seasonal component. Stream flow depletion induced by Project pumping is predicted to be near or below 5% of total baseline flows (denoted by a dashed red line in the right-hand graphs). This is less than the typical error in stream discharge gage measurements, which ranges between 5-25% depending on the gage installation, quality of the rating curve, and stream stage (Tillery, et al. 2001), and therefore is not predicted to be measurable or observable. The timing of greatest relative stream flow depletion effect occurs during May and October when seasons are transitioning into and out of the summer months. During exceptionally dry years stream flow depletion along Pruitt and Pool Creeks is predicted to potentially exceed 5% in late spring and potentially reach up to 10% in isolated cases; however, this is likely a function a shorter spring flow recessional period in these creeks (i.e., the higher percentages occur when the creeks are already dry or nearly dry) and is within the range of error for typical gage data and for the model.



**FIGURE 3: SIMULATED BASELINE AND PROJECT SCENARIO STREAM FLOWS AND DEPLETIONS ALONG PRUITT, POOL AND MARK WEST CREEKS**



**FIGURE 4: SIMULATED RANGE OF MAXIMUM BASELINE AND PROJECT SCENARIO STREAM FLOWS AND DEPLETIONS ALONG PRUITT, POOL AND MARK WEST CREEKS**

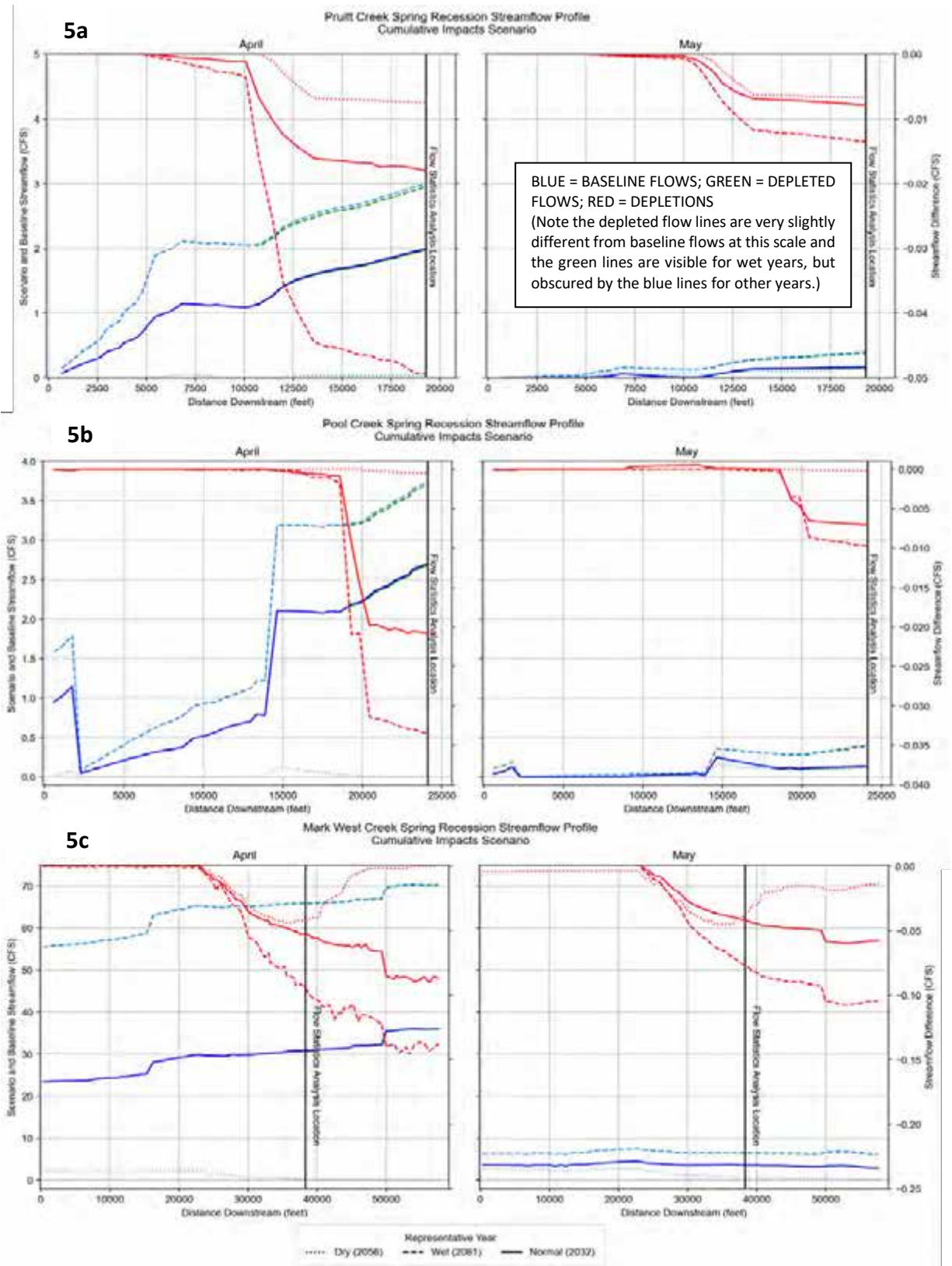


## 2.2 CUMULATIVE IMPACT SCENARIO

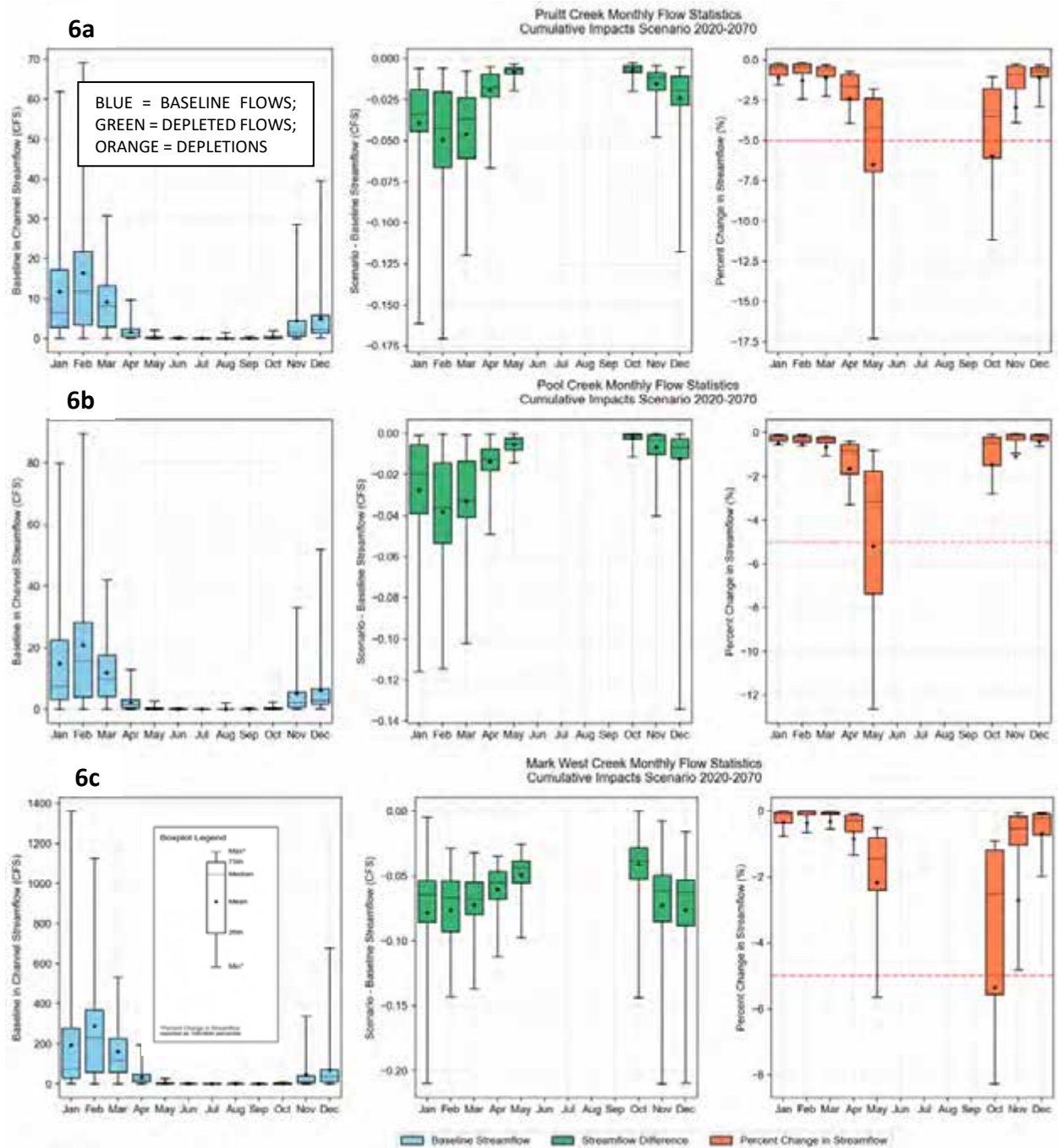
Figures 5a-5c show a similar stream flow data profile along each creek as Figures 3a-3c, but depict the effects of Project and Town of Windsor pumping as simulated in the Cumulative Impact Scenario. As in the Project Scenario, stream flow and depletion generally increase downstream and decrease between April and May. The predicted stream flow differences between the Baseline and Cumulative Scenarios are slightly greater but still relatively minor, and the depleted stream flow cannot be distinguished from the baseline flow in these graphs except during wet years. The maximum stream flow depletion rate is less than 0.15 cfs.

Figures 6a-6c summarize the range of long-term average cumulative depletion impacts over the 50-year simulation period, similar to Figures 4a-4c. Similar to the Project impacts, the graphs show that stream discharge and cumulative depletion varies from year to year and throughout the year, with a strong seasonal component; however, cumulative depletion rates average approximately 2-3% higher than for the Project Scenario, and predicted maximum depletions during extremely dry years reach 12 to 17.5%. While these predicted depletion percentages are still relatively low, within the typical range of error of stream flow measurements and likely related to an earlier onset of the spring stream flow recession, potentially significant cumulative impacts are incrementally slightly more difficult to rule out than significant Project impacts due to uncertainties in the interaction between the tail end of the spring stream flow recession and stream flow depletion. In addition, long-term forecasted climatic shifts towards drier years may increase the summer dry period and decrease the duration of the spring stream flow recession, leading to increased uncertainty regarding the future interaction between the spring flow recession and outmigration period and cumulative stream flow depletion.

**FIGURE 5: SIMULATED BASELINE AND CUMULATIVE SCENARIO STREAM FLOWS AND DEPLETIONS ALONG PRUITT, POOL AND MARK WEST CREEKS**



**FIGURE 6: SIMULATED RANGE OF MAXIMUM BASELINE AND CUMULATIVE SCENARIO STREAM FLOWS AND DEPLETIONS ALONG PRUITT, POOL AND MARK WEST CREEKS**





### 3 CONCLUSIONS AND RECOMMENDATIONS

As discussed in the GRIA, the available data support a conclusion that Pruitt, Pool and Mark West Creeks are not likely to be groundwater connected except near the Mayacamas Mountains, and that impacts to aquatic habitats and species will be less than significant for Project pumping, but that significant cumulative impacts cannot be ruled out; however, in the absence of more localized monitoring data these conclusions have inherent uncertainty. The purpose of the supplemental modeling analysis discussed herein was to help reduce this uncertainty by evaluating potential stream flow depletion impacts under the assumption that Pruitt, Pool and Mark West Creeks are groundwater connected throughout the area of project effects.

Predicted stream flow depletions under the Project Scenario are very small, and virtually indistinguishable from baseline non-Project flows. Depletions of this magnitude would be unlikely to noticeably affect outmigrating Coho salmon and Steelhead trout during the sensitive outmigration period in April and May. This analysis therefore supports our prior conclusion that Project impacts to stream flow, aquatic habitat and aquatic species, including threatened and endangered salmonids, will be less than significant.

Predicted stream flow depletions under Cumulative Scenario are also very small, but somewhat greater than for the Project alone. During dry years stream flow depletion may reach detectable rates, but that conclusion is uncertain. That is because a likely explanation for the increased stream flow depletion predicted in May for Pruitt and Pool Creeks may be related to an earlier drying of these creeks during dry years, which causes the model to produce unrealistically high stream flow depletion percentages. Based on these uncertainties, we conclude that the potential for significant stream flow depletion impacts to Pruitt and Pool Creeks cannot be ruled out. This is similar to our prior conclusion in the GRIA.

In order to effectively address the uncertainties related to the lack of near stream groundwater level monitoring and stream discharge data and the inherent uncertainties in the modeling study, which relies on a regional model, Section 7.1 of the GRIA recommends an expanded groundwater level and stream discharge monitoring program, and Section 7.3 of the GRIA outlines mitigation measures that will be triggered by the monitoring results and would decrease potential adverse impacts to stream discharge, aquatic habitat and aquatic species. With implementation of these monitoring and mitigation measures, Project and Cumulative impacts are expected to be less than significant.

## 4 REFERENCES

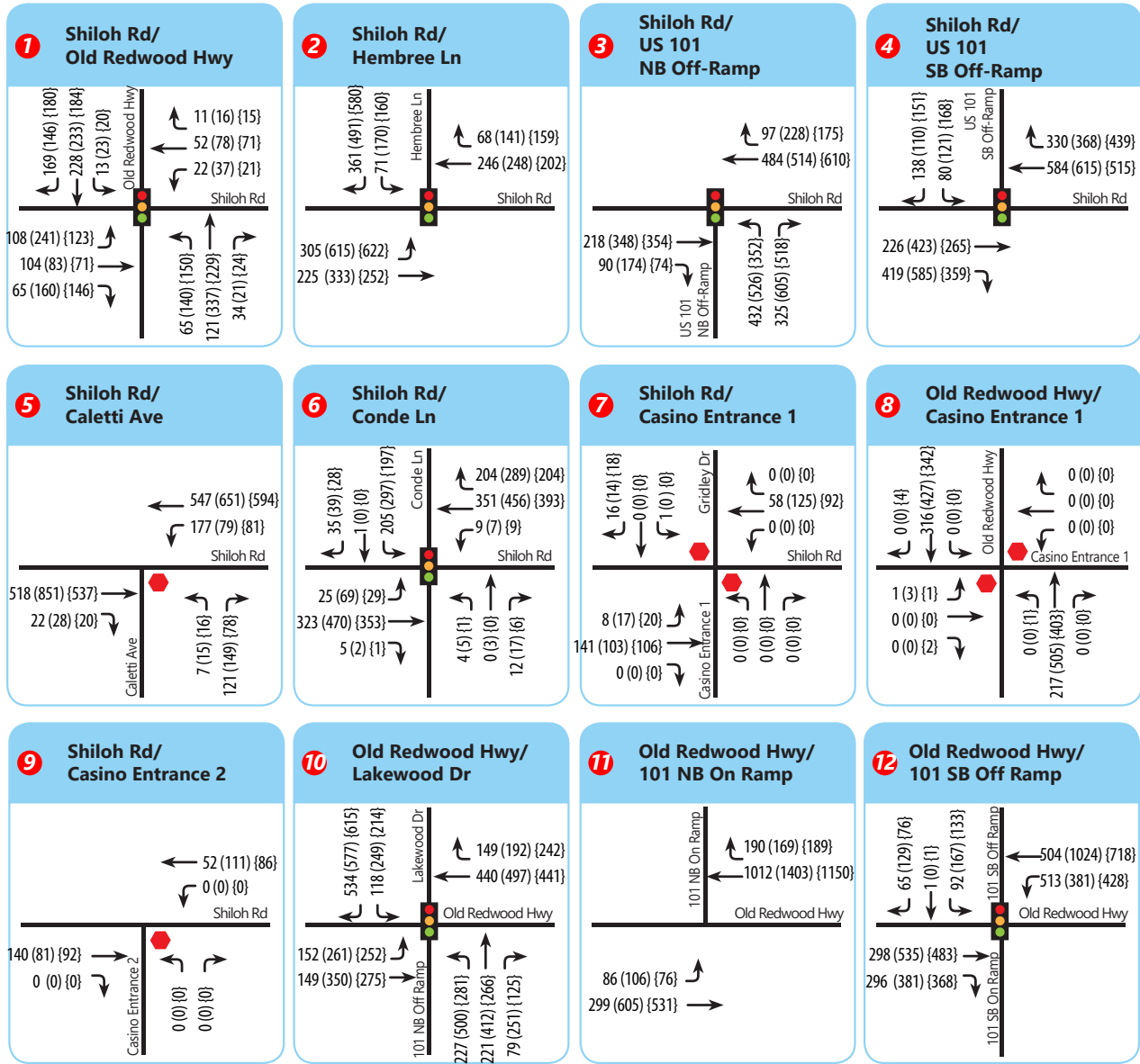
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- SRCD, 2020. Integrated Surface and Groundwater Modeling and Flow Availability Analysis for Restoration Prioritization Planning, Upper Mark West Creek Watershed, Sonoma County, CA. December.
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- Tillery, A.C., Phillips, J.V., and Capesius, J.P., 2001, Potential Errors Associated with Stage-Discharge Relations for Selected Streamflow-Gaging Stations, Maricopa County, Arizona. United States Geological Survey. Water-Resources Investigations Report 2000-4224. 47 p., DOI: 10.3133/wri004224.
- Wolfenden, Linda R., and Tracy Nishikawa, 2014. Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052. USGS Publications Warehouse. <https://doi.org/10.3133/sir20145052>.

Exhibit 3

Peak Hour Traffic Volume  
Figures



Figure 7: Existing Conditions Peak Hour Traffic Volumes

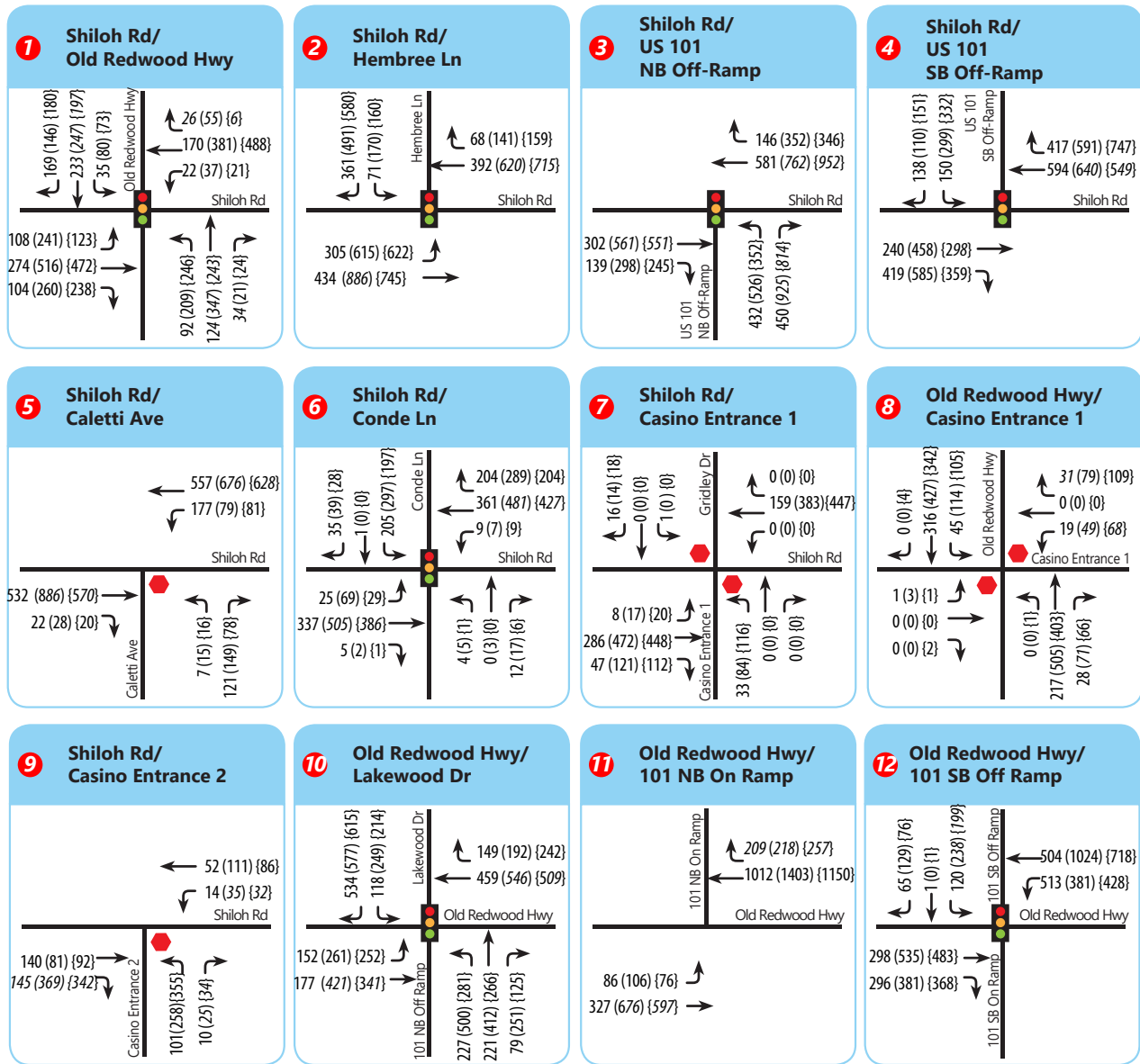


LEGEND

- Study Intersection
- Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 11: Existing Plus Alternative A Project Conditions Peak Hour Traffic Volumes

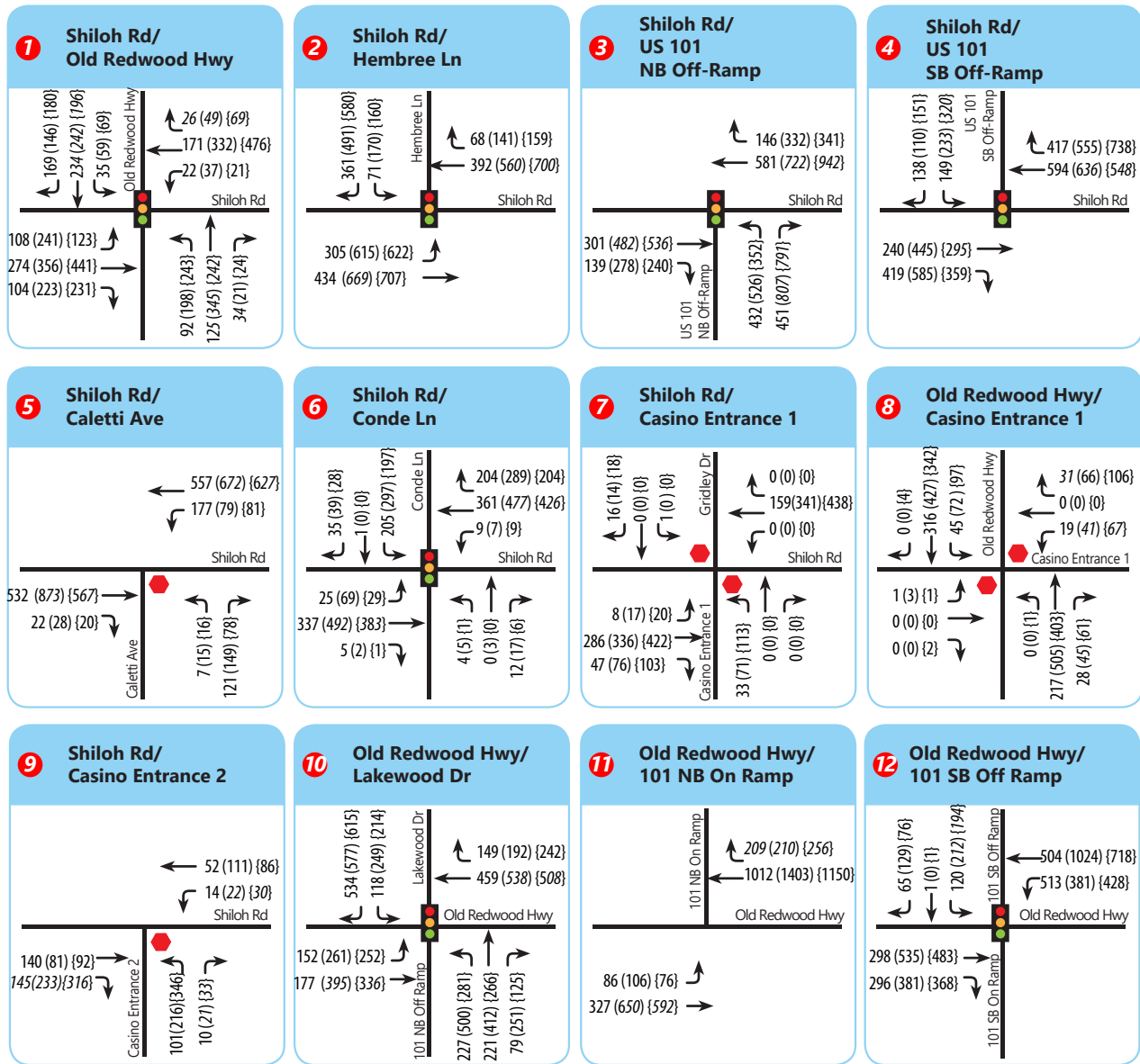


LEGEND

- ⊗ Study Intersection
- ⬮ Stop Sign
- XX AM Peak Hour Volumes
- Study Segment
- Traffic Signal
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 14: Existing Plus Alternative B Project Conditions Peak Hour Traffic Volumes

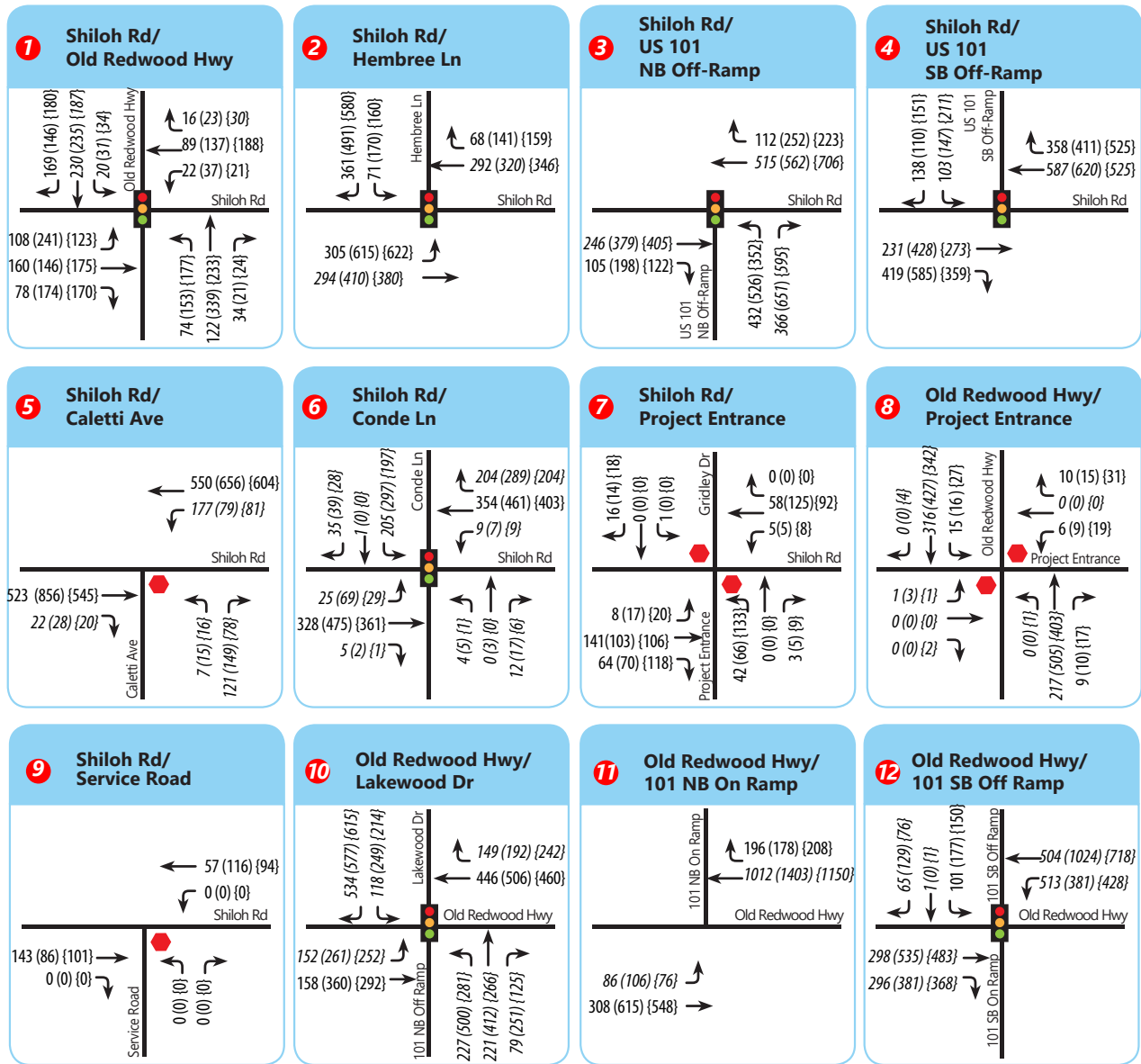


LEGEND

- Project Site
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes
- Study Intersection
- Study Segment



Figure 17: Existing Plus Alternative C Project Conditions Peak Hour Traffic Volumes

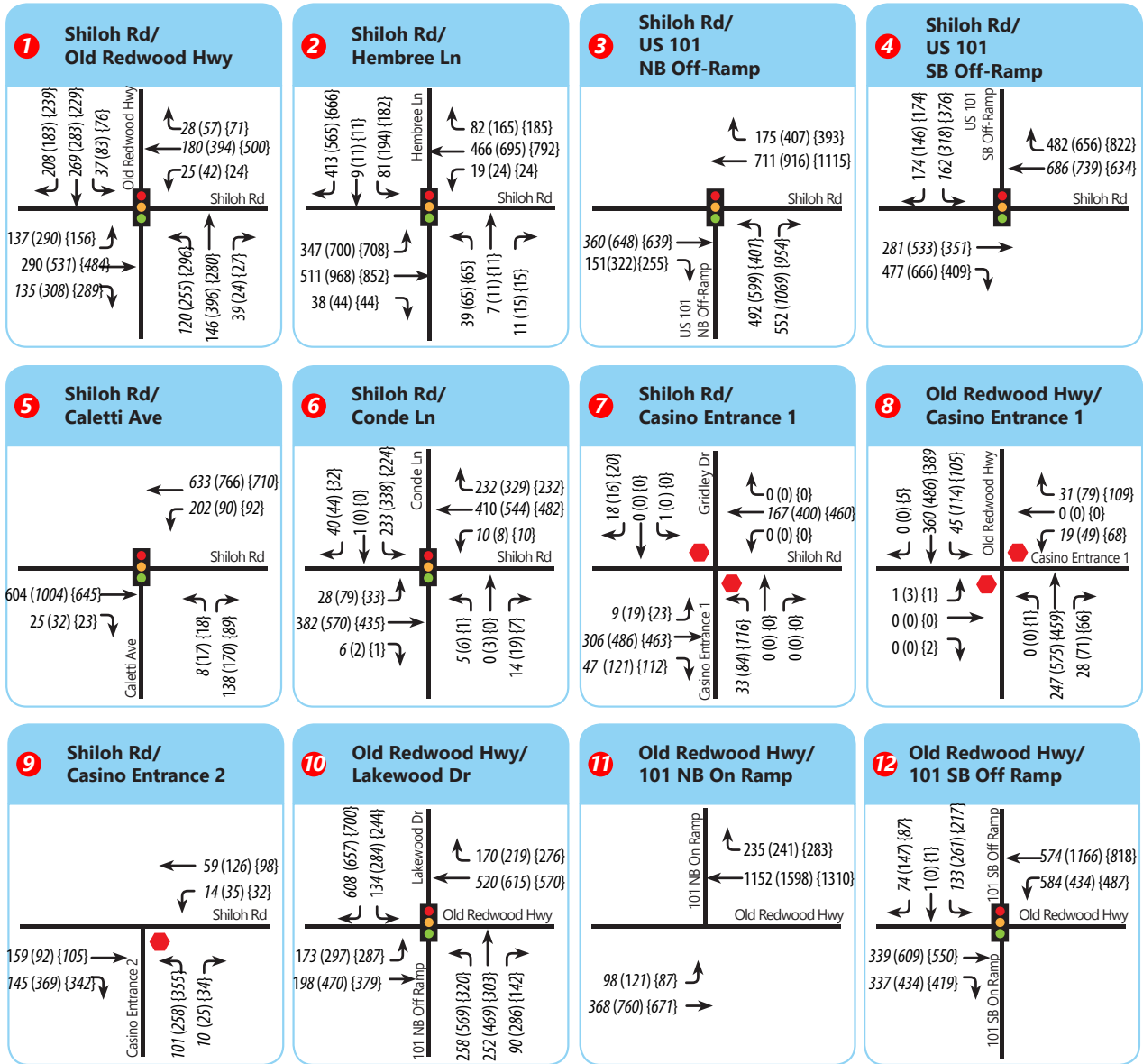


LEGEND

- ⊗ Study Intersection
- ⬢ Stop Sign
- XX AM Peak Hour Volumes
- x Study Segment
- Traffic Signal
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 21: 2028 Opening Year Plus Alternative A Project Conditions Peak Hour Traffic Volumes

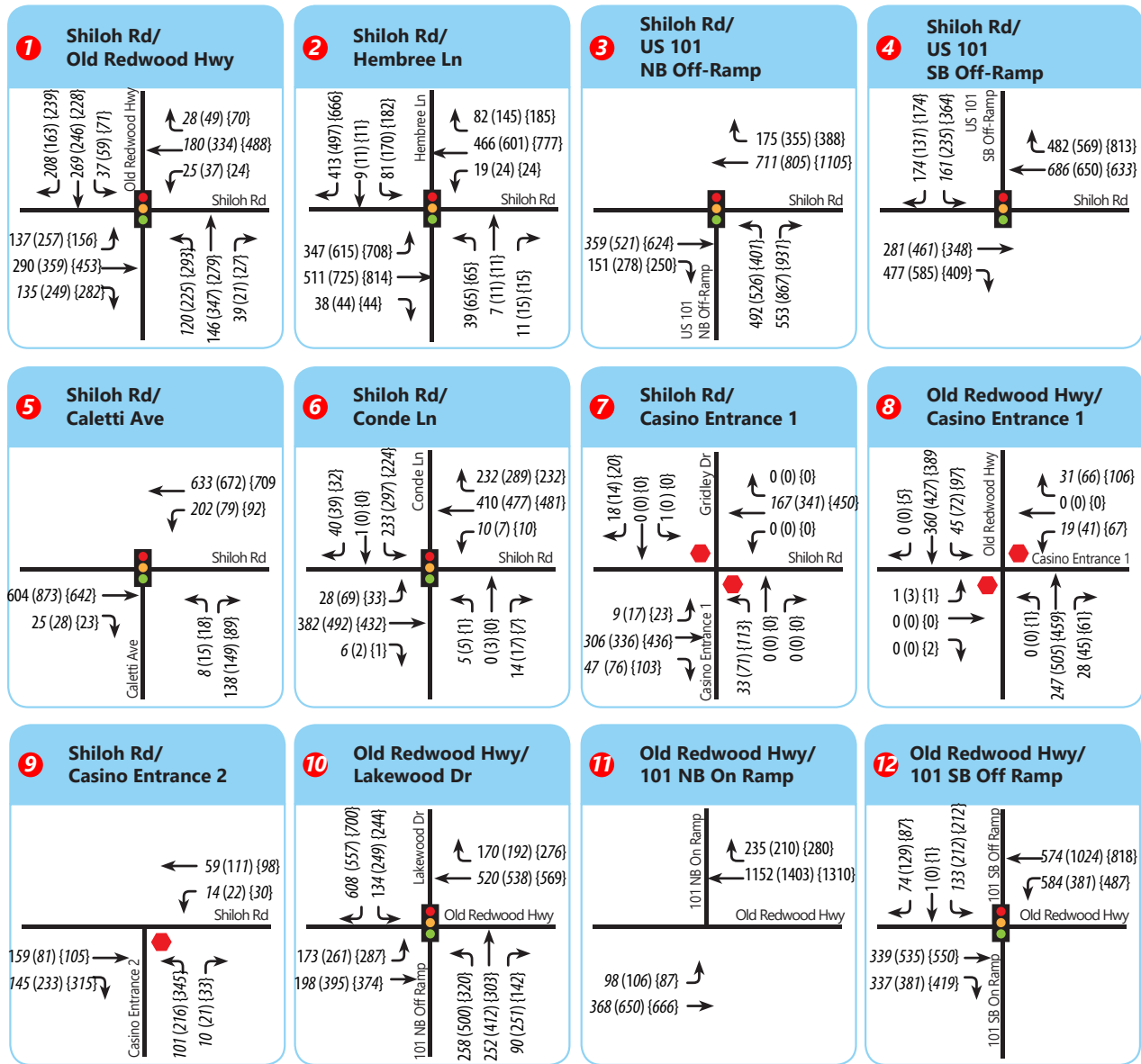


LEGEND

- X Study Intersection
- X Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 23: 2028 Opening Year Plus Alternative B Project Conditions Peak Hour Traffic Volumes

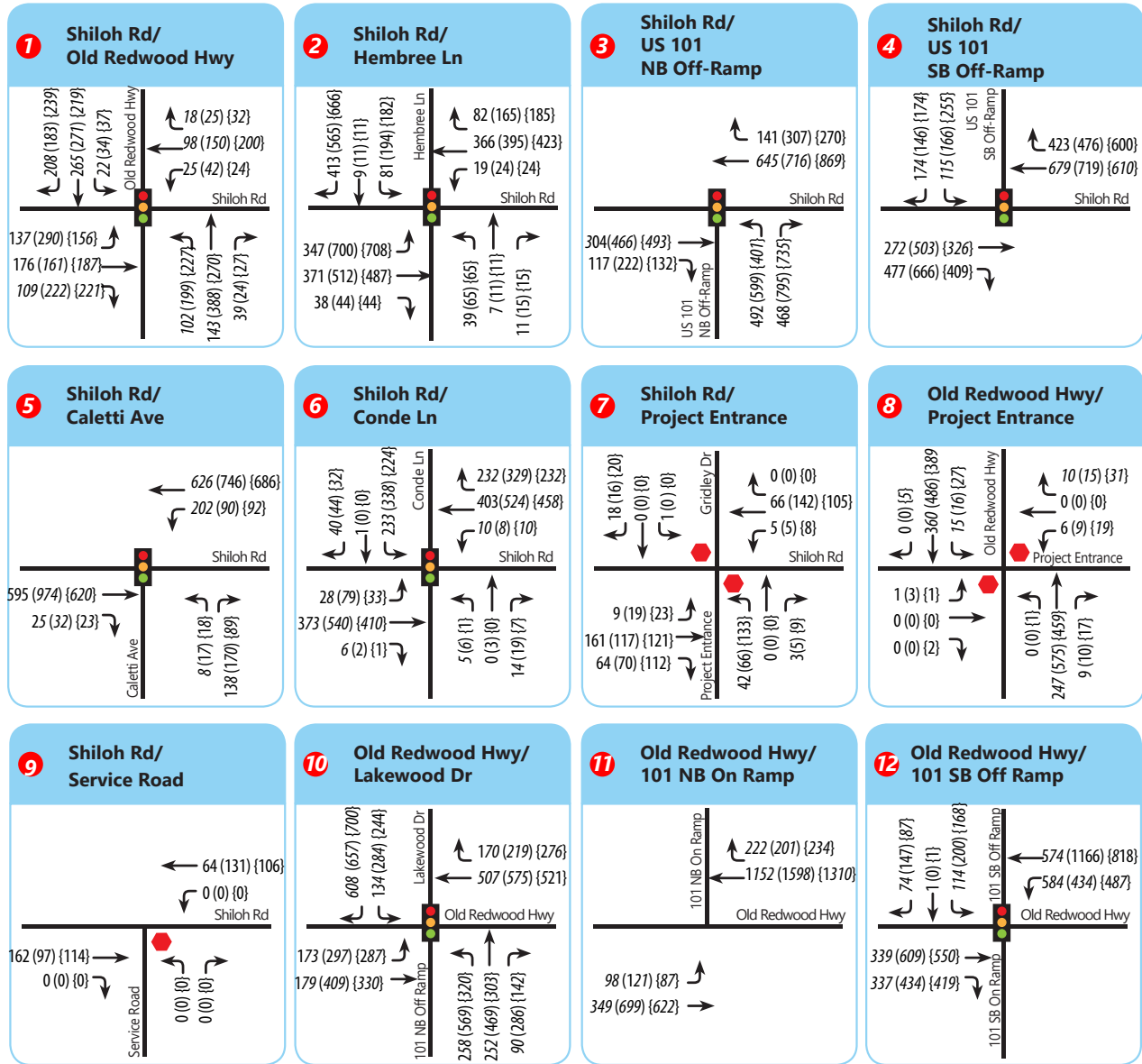


LEGEND

- ⊗ Study Intersection
- ⊗ Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 25: 2028 Opening Year Plus Alternative C Project Conditions Peak Hour Traffic Volumes



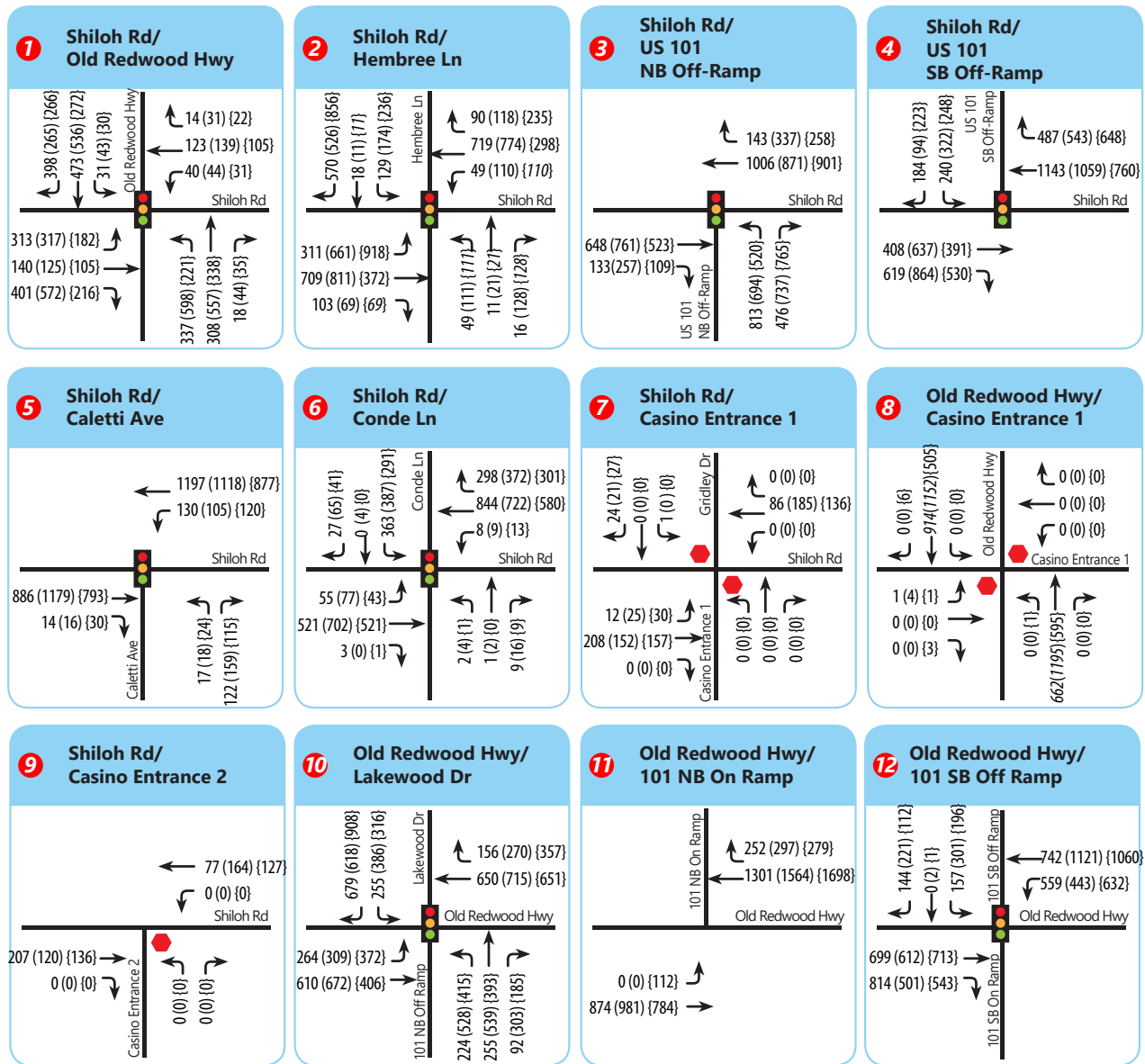
LEGEND

- X Study Intersection
- X Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes





Figure 27: General Plan 2040 No Project Conditions Peak Hour Traffic Volumes



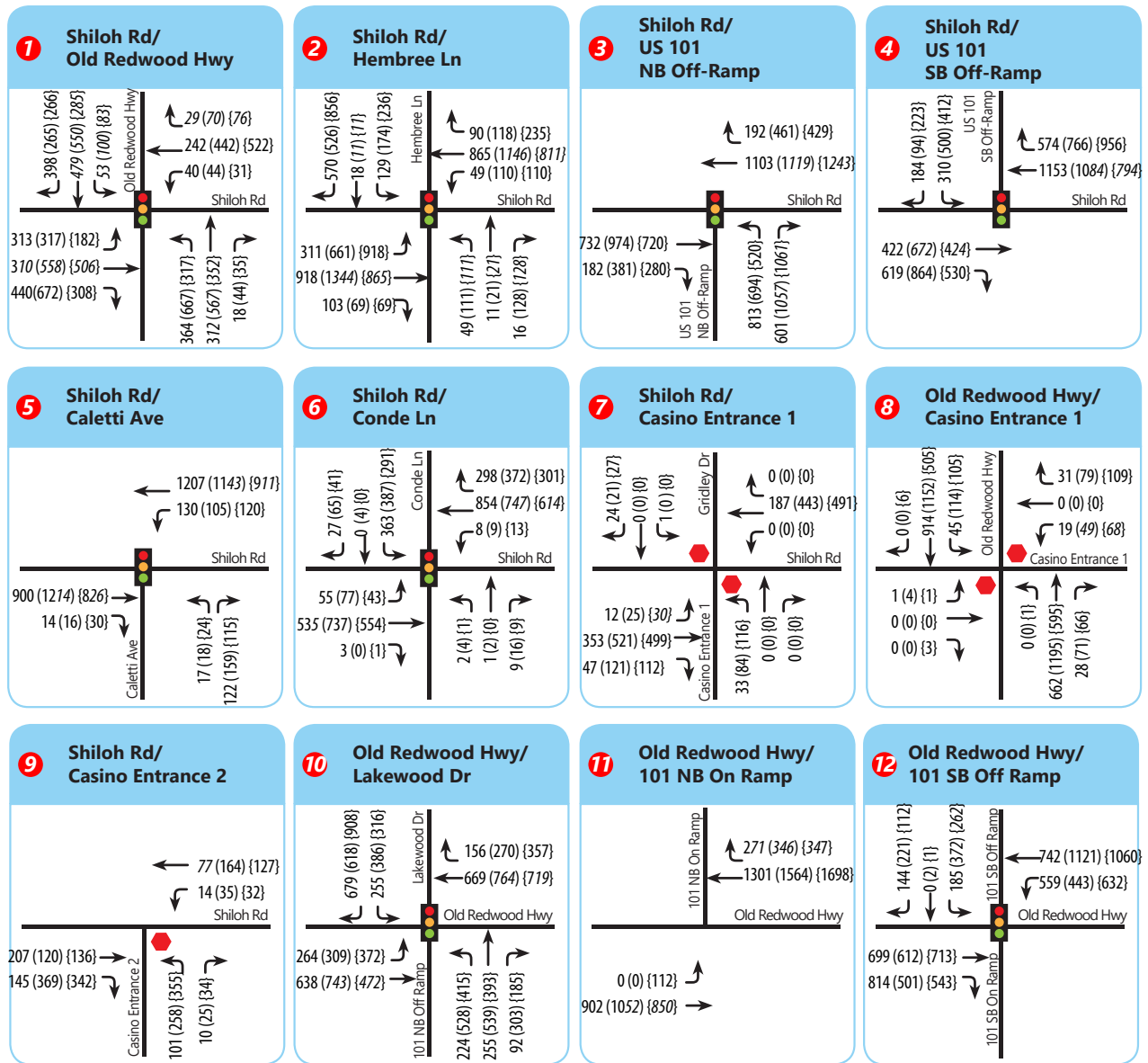
LEGEND

- X Study Intersection
- X Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes





Figure 29: General Plan 2040 Plus Alternative A Project Conditions Peak Hour Traffic Volumes

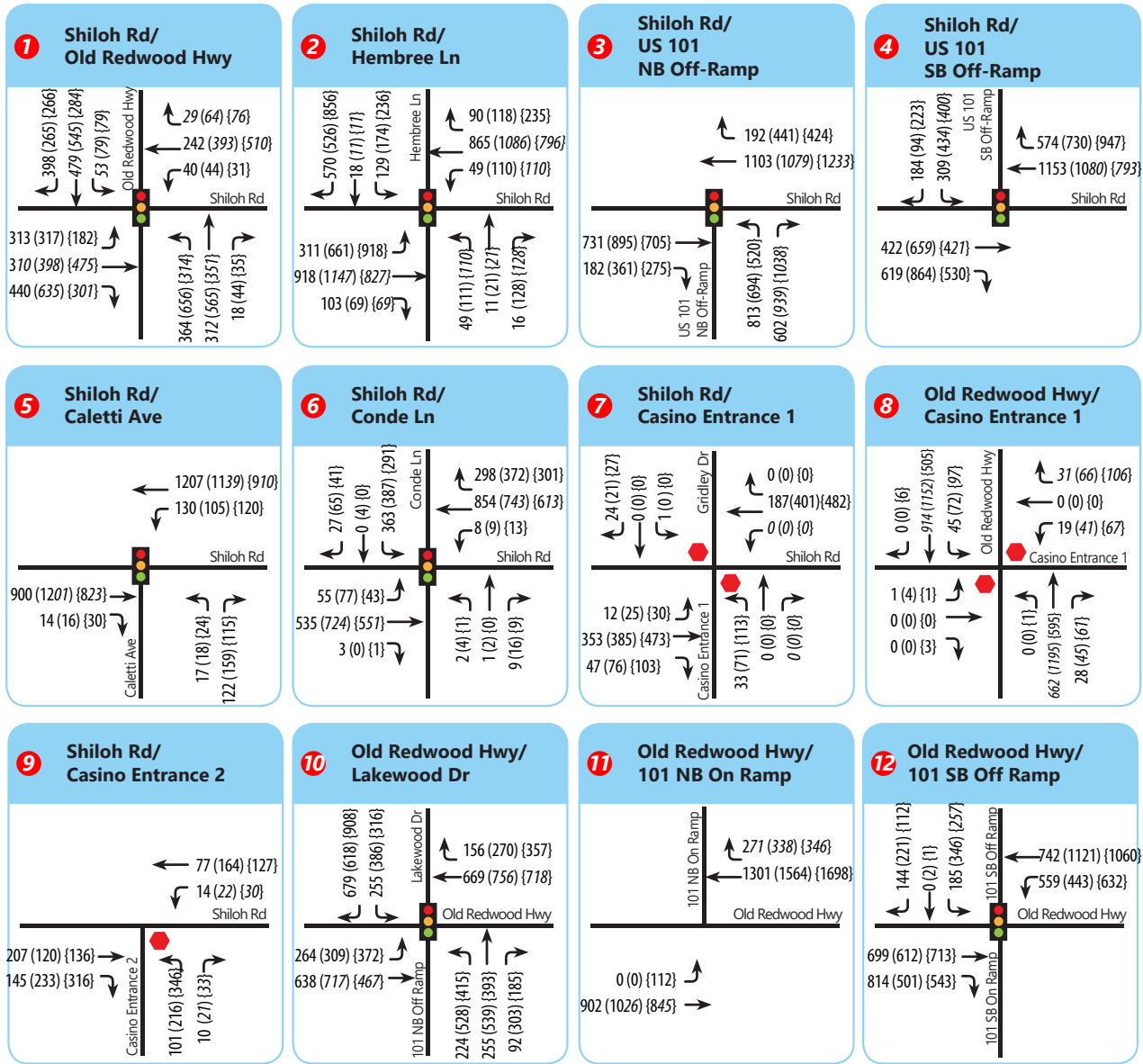


LEGEND

- ⊗ Study Intersection
- ⊗ Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 31: General Plan 2040 Plus Alternative B Project Conditions Peak Hour Traffic Volumes

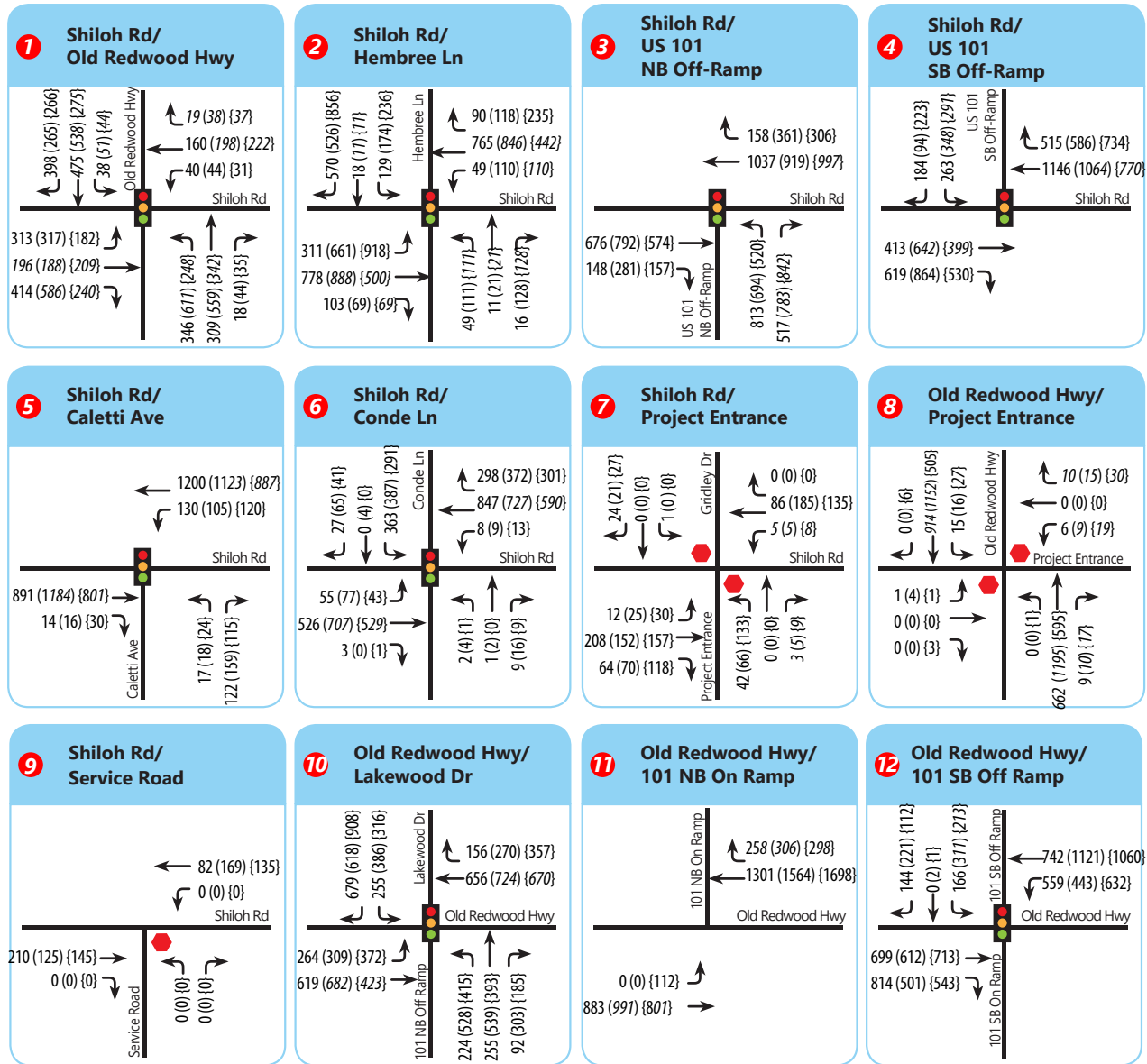


LEGEND

- ⊗ Study Intersection
- ⊗ Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Figure 33: General Plan 2040 Plus Alternative C Project Conditions Peak Hour Traffic Volumes



LEGEND

- ⊗ Study Intersection
- ⊗ Study Segment
- Stop Sign
- Traffic Signal
- XX AM Peak Hour Volumes
- (XX) PM Peak Hour Volumes
- {XX} Saturday Midday Peak Hour Volumes



Exhibit 4

# BIA Correspondence to USFWS



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825

IN REPLY REFER TO:  
TR-4516-P5 J51 639T No Effect Determination

U.S. Fish and Wildlife Service  
Attention: Michael Fris  
2800 Cottage Way, Room W-2605  
Sacramento, CA, 95825

Dear Mr. Fris,

The Bureau of Indian Affairs, Pacific Region, Division of Environmental, Cultural Resource Management and Safety, Environmental Section made a determination pursuant to Section 7 of the Endangered Species Act of 1973, as amended, for the Koi Nation (Tribe) Shiloh Resort and Casino Project near the Town of Windsor in Sonoma County, California. The Proposed Action includes the conveyance of approximately 68.6 acres into federal trust status for the benefit of the Tribe. The Proposed Project (Alternative A) consists of the acquisition of a 68.6-acre site (Project Site; Action Area) into federal trust status for the Tribe, and the development of the site with a resort and casino facility, hotel, parking garage, and supporting infrastructure. The Project Site does not fall within the United States Fish and Wildlife Service (USFWS) designated or proposed Critical Habitat.

The Environmental Section provided the Biological Assessment (BA) for the Koi Nation Shiloh Resort and Casino Project (dated November 2022) to the USFWS on 2/26/2024. Based on communication with the USFWS, the BA was updated in April 2024 and is attached for your review. The following changes were made from the previous version:

- An updated Information for Planning and Consultation (IPaC) report is included in Appendix B of the updated BA. While California tiger salamander (CTS) was not present on the updated IPaC report, the analysis of CTS was preserved in the BA due to the presence of nearby critical habitat and the regional importance of this species.
- The updated IPaC report included northwestern pond turtle (*Actinemys marmorata*), which was proposed as a federally threatened species on September 29, 2023 (89 FR 23534). As such, an analysis of northwestern pond turtle was included within the updated BA.
- Additional Avoidance and Minimization Measures have been incorporated into the updated BA, consistent with the proposed Project design, Best Management Practices, and mitigation measures for the Proposed Action.

The Environmental Section has determined that the Proposed Action will have No Effect on federally listed species or Critical Habitat, based on discussion with the USFWS, the surveys conducted, the analysis within the updated BA, and proposed Avoidance and Minimization Measures, and hereby requests your acknowledgement of this finding.

If you have any questions or need additional information, please contact Peter DeJongh, Regional Biologist at (916) 978-6044, or Felix Kitto, Deputy Regional Director, Indian Services at [felix.kitto@bia.gov](mailto:felix.kitto@bia.gov).

Sincerely,

AMY

DUTSCHKE

Regional Director

Digitally signed by AMY  
DUTSCHKE  
Date: 2024.05.06 10:14:55  
-07'00'

cc: Darin Beltran, Chairperson, Koi Nation  
Ryan Sawyer, Acorn Environmental

Attachments:

Biological Assessment, Proposed Shiloh Resort and Casino Project. Sonoma County, California  
(updated April 2024)

Exhibit 5

Memorandum of ICF  
Conference Calls

# Memorandum



**To:** Julie Taomia, Regional Archaeologist  
Chad Broussard, Environmental Protection Specialist  
Bureau of Indian Affairs, Pacific Regional Office

**From:** Ryan Sawyer, AICP, Principal  
Bibiana Sparks, Principal

**Date:** December 30, 2024

**Subject:** Koi Nation Shiloh Resort and Casino Project  
Summary of Conference Calls with the Institute of Canine Forensics

Below is a summary of conference calls on February 26, 2024 and December 30, 2024 with Adela Morris, Historic Human Remains Detection Specialist and Member of the Institute of Canine Forensics (ICF) Board of Directors. The calls were conducted to clarify the need for follow-up investigations based on the findings from the initial surveys in light of the conditions and results. In summary, ICF does not recommend the need for additional investigations based on the survey results.

## Conference Call with Institute for Canine Forensics, Bureau of Indian Affairs, and Acorn Environmental

**Date:** February 26, 2024

**Time:** 1:00 p.m. to 1:30 p.m. PST

### Participants:

- Bibiana Sparks, Principal, Acorn Environmental
- Adela Morris, Board of Director Member, Institute for Canine Forensics
- Dan Hall, Regional Archaeologist, Bureau of Indian Affairs - Pacific Region
- Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs - Pacific Region
- John Parker, Registered Professional Archaeologist, Archaeological Research

**Format:** Zoom Video Conference

**Topic:** Post-Survey Coordination and Preliminary Draft Report

### Summary of Call<sup>1</sup>:

*Dan Hall requested clarification from Adela Morris regarding the ranking of alerts described in the Preliminary Draft Report that was submitted to the BIA for review on February 20, 2024.*

In response, Ms. Morris explained that for Alert Level 1 and 2 one would expect to find something upon further investigation, even if it is just a bone fragment; but for Alert Level 3, the chances of finding anything is very small. Ms. Morris noted that the scent alerts near the creek indicated that there are

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<sup>1</sup> Summary of conference call based on phone notes by Bibiana Sparks, Principal, Acorn Environmental.



likely bone fragments or burial remnants within the creek area, but no intact burials are likely in the vineyard area.

Referring to the yellow scent areas shown on the “Map of Alerts and Scent Areas” on page 6 of the report, Ms. Morris explained that the yellow areas are the boundaries of the scent, but the dogs only alerted at the location where the alerts are indicated on the figure. Ms. Morris indicated that scent areas would likely be smaller in dryer weather conditions.

Ms. Morris stated that the alerts along the creek corridor could be from the creek carrying scent from upstream.

Ms. Morris stated that the Search Area 18 was a “hot spot” given the number of Level 3 alerts. Ms. Morris indicated that the scent areas would likely have been smaller in dryer conditions.

Ms. Morris stated that Search Area 20 had scent areas but no alerts occurred in the area. John Parker noted that Search Area 20 contains the location of an old ranch house and the southernmost scent area is where the debris from the ranch house was moved to.

*Mr. Hall asked how scent alerts were followed up on for past projects Ms. Morris has worked on.*

Ms. Morris responded by saying areas with Alert Levels 1 and 2 are usually avoided and no follow-up is needed for Alert Level 3. Ms. Morris suggested that the location of alerts in Search Area 18 should be monitored during construction, but that she does not recommend further testing in any other areas.

*Mr. Parker indicated that the chances of native ground below 2-4 feet are slim to none. Some gravel areas occur at that depth where the creek has meandered over time. Mr. Parker noted that nothing at any depth has been found in the area and that the old ranch house was removed sometime between 1993 and 2000.*

*Chad Broussard requested that clarifications should be made to the report regarding the alerts along the creek outside of Search Area 25 and that an overlay of the building footprint should be added to the alert map of the report to clearly show the Project footprint in relation to the alert areas along the creek.*

*Mr. Hall indicated that he was contemplating the need for additional testing in the areas of alerts and if needed he would prefer testing that involved excavation. Mr. Parker stated that testing could be done with an excavator doing scrapes in the areas of the alerts. Mr. Hall said he was going to discuss the approach with the Regional Director.*

## Acorn Environmental Interview with Adela Morris of Institute for Canine Forensics

**Date:** December 30, 2024

**Time:** 9:00 a.m. to 9:40 a.m. PST

**Participants:**

- Ryan Sawyer, Principal, Acorn Environmental
- Bibiana Sparks, Principal, Acorn Environmental
- Adela Morris, Board of Director Member, Institute for Canine Forensics

**Format:** Google Meet Video Conference

**Topic:** Shiloh Resort and Casino Canine Field Study and Report

## Summary of Call<sup>2</sup>:

*Bibiana Sparks began the call with a short summary of the NHPA and Section 106 process related to the Shiloh Resort and Casino Project (Project) and explained that questions that had been raised related to the Canine Survey conducted by the Institute for Canine Forensics (ICF) on January 23 and 24, 2024.*

*Specifically, Ms. Sparks stated that questions had come up during NEPA and Section 106 review process related to the wet conditions during the survey and how they might affect the survey results.*

*Ms. Sparks asked Ms. Morris to elaborate on statements in the ICF report indicating that “it is not known how much the standing water and soil-type affected the availability of scent to rise from the ground”.*

In response, Ms. Morris indicated that moisture is generally a good condition for canine scent surveys. ICF has conducted surveys under very dry conditions and again after rains, and dogs generally identify more scents under wet conditions. Water appears to release scent into the environment similar to cooking. Scent molecules compete for space with water molecules, and the water molecules push the scent molecules out releasing them into the atmosphere. Ms. Morris believes that there are scientific studies explaining this phenomenon and she will send Acorn references to such if she is able to locate them. In her experience, air temperature conditions during the survey were ideal – cool and moist. However, the ability of the dogs to identify scent under standing water is an uncertainty. She said that although the survey areas did not include the entire creek corridor, ICF handlers allowed the dogs to explore certain areas of the creek, and because they were alerting, she felt comfortable that the dogs were able to sufficiently determine scent under the conditions that were present during the surveys.

*Ms. Sawyer asked if Ms. Morris could explain or clarify the statement in the report that says “we feel it is highly likely that the creek area has the possibility of visible human remains and or burials.”*

Looking at report now, Ms. Morris indicated she would reword to clarify that there is “the possibility of burials or washed down bone fragments in the Creek area” versus the language in the report that states it is “highly likely that the creek area has the possibility of visible human remains and or burials”. Her interpretation is based on similar case studies along creeks. Due to the amount and type of scent alerts from the dogs, she believes there is a possibility for remains or fragments along the creek, however she cannot say if they originated on site or were washed down. She said that with climate change, creeks are flooding and carrying run-off from higher elevations that could carry fragments and associated scents. Based on the number of alerts along the creek corridor, it appeared that the creek area has a lot of scent. However, since the creek will be left in its natural state, she said it is not typical or necessary for additional investigations to be conducted. In the areas of the creek where the site plan shows project activities would occur (bridge crossings), the dog surveys were sufficiently conducted.

*Ms. Sparks explained that since the canine survey was conducted, excavations have occurred in the areas where the dogs detected scent, and the excavation results were negative for human remains.*

Ms. Morris indicated that based on the dogs' reactions within the survey area, it seemed at most that they may have smelled a bone fragment or soil that has been mixed with their target odor. She indicated that alerts occur at the strongest area of scent, that it does not take much for the dogs to alert on a scent, and all the alerts fell into category #3 as explained in the report. She does not believe that anywhere in the vineyard has potential for intact remains and further canine surveys are not recommended.

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<sup>2</sup> This summary of the call was confirmed by Adela Morris, Board of Director Member, Institute for Canine Forensics via email on December 30, 2024 (see Attachment 1).



## Attachment 1

Bibiana Sparks &lt;bsparks@acorn-env.com&gt;

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**Re: Shiloh Resort and Casino Canine Field Study**

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**Adela Morris** <adela@prusik.com>  
To: Bibiana Sparks <bsparks@acorn-env.com>  
Cc: "Sawyer, Ryan Lee" <rsawyer@acorn-env.com>

Mon, Dec 30, 2024 at 3:43 PM

hi Bibana

I am good with your comments about our meeting.

Adela Morris  
[adela@prusik.com](mailto:adela@prusik.com)  
Institute for Canine Forensics  
[www.ICFK9.org](http://www.ICFK9.org)  
650 867-0171

On Dec 30, 2024, at 2:18 PM, Bibiana Sparks <bsparks@acorn-env.com> wrote:

Hello Adela,

Thank you again for meeting with us this morning. We've drafted some meeting notes and just want to make sure that we covered everything. Please review the following and let me know if there are any clarifications you would like us to note.

*Bibiana Sparks began the call with a short summary of the NHPA and Section 106 process related to the Shiloh Resort and Casino Project (Project), and explained that questions that had been raised related to the Canine Survey conducted by the Institute for Canine Forensics (ICF) on January 23 and 24, 2024. Specifically, Ms. Sparks stated that questions had come up during NEPA and Section 106 review process related to the wet conditions during the survey and how they might affect the survey results.*

*Ms. Sparks asked Ms. Morris to elaborate on statements in the ICF report indicating that "it is not known how much the standing water and soil-type affected the availability of scent to rise from the ground".*

In response, Ms. Morris indicated that moisture is generally a good condition for canine scent surveys. ICF has conducted surveys under very dry conditions and again after rains, and dogs generally identify more scents under wet conditions. Water appears to release scent into the environment similar to cooking. Scent molecules compete for space with water molecules, and the water molecules push the scent molecules out releasing them into the atmosphere. Ms. Morris believes that there are scientific studies explaining this phenomenon and she will send Acorn references to such if she is able to locate them. In her experience, air temperature conditions during the survey were ideal – cool and moist. However, the ability of the dogs to identify scent under standing water is an uncertainty. She said that although the survey areas did not include the entire creek corridor, ICF handlers allowed the dogs to explore certain areas of the creek, and because they were alerting, she felt comfortable that the dogs were able to sufficiently determine scent under the conditions that were present during the surveys.

*Ms. Sawyer asked if Ms. Morris could explain or clarify the statement in the report that says “we feel it is highly likely that the creek area has the possibility of visible human remains and or burials.”*

Looking at report now, Ms. Morris indicated she would reword to clarify that there is “the possibility of burials or washed down bone fragments in the Creek area” versus the language in the report that states it is “highly likely that the creek area has the possibility of visible human remains and or burials”. Her interpretation is based on similar case studies along creeks. Due to the amount and type of scent alerts from the dogs, she believes there is a possibility for remains or fragments along the creek, however she cannot say if they originated on site or were washed down. She said that with climate change, creeks are flooding and carrying run-off from higher elevations that could carry fragments and associated scents. Based on the number of alerts along the creek corridor, it appeared that the creek area has a lot of scent. However, since the creek will be left in its natural state, she said it is not typical or necessary for additional investigations to be conducted. In the areas of the creek where the site plan shows project activities would occur (bridge crossings), the dog surveys were sufficiently conducted.

*Ms. Sparks explained that since the canine survey was conducted, excavations have occurred in the areas where the dogs detected scent, and the excavation results were negative for human remains.*

Ms. Morris indicated that based on the dogs' reactions within the survey area, it seemed at most that they may have smelled a bone fragment or soil that has been mixed with their target odor. She indicated that alerts occur at the strongest area of scent, that it doesn't take much for the dogs alert on a scent, and all of the alerts fell into category #3 as explained in the report. She does not believe that anywhere in the vineyard has potential for intact remains and further canine surveys are not recommended.

Bibiana Sparks | Project Director | she/her/Ms.  
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Exhibit 6

GMA Response to Comments  
Memorandum



**TO: Acorn Environmental**

**FROM: GMA Consulting**

**DATE: January 8, 2025**

**RE: Response to Meister Economic Consulting on behalf of the Federated Indians of Graton Rancheria**

## OVERVIEW

The following memorandum addresses the criticisms raised by Meister Economic Consulting (“Meister” or “MEC”) regarding GMA’s analyses and conclusions, providing clarifications and substantiating the methodologies employed. In this letter MEC makes multiple critiques to GMA’s analysis and subsequent comment responses regarding the proposed Koi Nation Casino. These critiques include, but are not limited to, the following items:

1. GMA Used Outdated Information
2. GMA Did Not Understand Key Underlying Assumptions in the Prior Work it Relied Upon
3. GMA Misrepresents Assumptions of the Prior Work it Relied Upon
4. Acorn and GMA Changed Alternative A Project Scope Without Revising Revenue/Cost Projections from the MEC’s Previous Work They Relied Upon
5. GMA Identifies Significant, Detrimental Competitive Impacts on Existing and Planned Tribal Casinos
6. GMA Grossly Understates Total Competitive Impact
7. Acorn Falsely Claims Competitive Impacts Dissipate Over Time
8. GMA’s Supplemental Competitive Effects Discussion Fails to Address True Detrimental Impact
9. GMA Does Not Provide Sufficient Information to Evaluate the Results of their Analyses
10. GMA Fails to Adequately Justify Alternative C’s Feasibility
11. GMA Does Not Provide Sufficient Information to Adequately Evaluate the Results of their Economic Impact Analyses
12. GMA Fails to Properly Exclude Operations Tax Impacts Koi Nation Would Not Pay as a Tribal Government

13. GMA Overestimates All Economic and Fiscal Impacts for Operation of All Alternatives by Not Accounting for Competitive Effects
14. GMA Fails to Properly Analyze Jobs in its Community Effects Analysis

This memorandum is in response to claims 1 through 3 regarding the usage of MEC’s previous work, claims in item 6 surrounding GMA grossly understating total competitive impact – specifically comments made about California card rooms and outer market revenue, claims made in item 7 concerning the dissipation of competitive impacts over time, and claims in item 9 regarding GMA’s usage of percentages in its substitution effects analysis. GMA has not provided responses to the remainder of the items listed as they are either anecdotal, or were addressed in previous responses to comments on the Draft EIS.

#### ITEMS 1 – 3 REGARDING GMA’S USAGE OF MEC’S PREVIOUS WORK

In this section, GMA has grouped certain comments within MEC’s letter in the below for response.

##### COMMENT

*First, GMA has always outwardly acknowledged that it took at face value results from MEC’s previous work and used them as the starting point for economic impact analysis. Second, despite GMA’s claim, its competitive effects analysis most certainly relied on the results of MEC’s previous work as well, namely the projected financial performance of the Proposed Koi Nation Casino, which is a key component of the competitive effects analysis.*

*As a result, GMA’s “if/then” approach is fundamentally flawed because we are currently aware that MEC’s previous work contains now outdated data, assumptions, and conclusions, making the conclusions of GMA’s economic impact analysis and competitive effects analysis invalid and unreliable. Notably, even slight adjustments to data and assumptions would affect the results of GMA’s analyses of competitive effects and economic impacts. “If” you use faulty inputs into an analysis, “then” you will get faulty results.*

*While we appreciate Acorn’s complimentary statement that GMA believed MEC’s previous work was reasonably accurate, the fact that our work was outdated by the time they got involved should have been reason enough to not rely on it and insist that the study be updated. We would never do a competitive impact analysis based on another consultant’s feasibility/market study. There are too many unknowns and likely to be irreconcilable differences that will exist between the methods used by two different consultants, making them incompatible for yielding reliable results.*

*In our comment, we did not contend that GMA was relying directly on our feasibility/market analysis gravity model. However, we know with 100% certainty that GMA used the results of our feasibility/market study, namely the projected performance of the Proposed Koi Nation Casino, as an input into its competitive effects analysis (aka, competitive impact analysis or substitution effects analysis). It had to do so because no one else has done a feasibility/market study but us as supported by the fact that neither GMA nor Acorn identify such an alternative source for the data upon which GMA based its analysis. GMA itself even admitted that it was asked to do its work “based on gross revenue estimates and project cost estimates as prepared in the Meister report” (pp. 13-15 of Appendix B-5 to FEIS, Reply T8-122).*

*GMA is now attempting to distance itself from its original claim that the key assumptions in its analyses were consistent with MEC’s previous work. However, the fact is GMA admitted to using the gross revenue estimates from our work, and those gross revenue estimates were derived based on a set of data and assumptions that we know very well, and those data and assumptions were outdated when GMA used them. Therefore, both GMA’s competitive effects analysis and economic impact analysis are outdated and unreliable. As previously stated, GMA’s “if/then” approach is fundamentally flawed and unreliable for the reasons set forth above.*

---

## RESPONSE

The criticisms of GMA’s analysis are unfounded and misrepresent the scope and integrity of the work performed. As directed by the Tribe, GMA did use gross revenue and project cost estimates prepared by MEC as a starting point in its substitution analysis. This was the extent of the usage of MEC’s data. All other inputs and analyses, including substitution effects and market revenue growth projections, were independently developed by GMA using established economic methodologies. The sequence of steps in the substitution analysis are described below.

MEC’s gross gaming revenue estimates were used as a baseline output for GMA’s gravity models. GMA then generated its own gravity models with its own assumptions in order to calibrate the model to Meister’s revenue projections. GMA tested and reviewed the validity of the assumptions necessary to recreate Meister’s revenue estimates by comparing the assumptions against its proprietary knowledge of gaming factors within the local market. GMA found the necessary assumptions to be reasonable and thus utilized the MEC revenue estimates in the subsequent steps in its substitution effects analysis.

The economic impact analyses prepared by GMA were current and up to date when initiated in 2022. Any perceived alignment with Meister’s work reflects compatibility rather than dependence. Additionally, GMA explicitly stated that it considered MEC’s construction cost estimates to be conservative.



GMA has a well-established reputation for integrity in the gaming and hospitality industry, consistently maintaining independence in its work. Its projections and analyses are unbiased and grounded in sound economic principles. GMA's impartiality is further demonstrated by its acknowledgment of substantial substitution effects. The substitution effects analysis conducted by GMA was based on an independent model that accounted for the competitive dynamics of the market.

GMA's analyses were conducted transparently and adhered to best practices, ensuring their validity and reliability. GMA stands by its results, which are neither fundamentally flawed nor dependent on outdated data, contrary to the MEC assertions.

#### ITEM 6 - COMMENT ON CALIFORNIA CARD ROOMS

*GMA's assertion that there is only limited competition between card rooms and casinos is misguided and demonstrates a lack of understanding of the market at hand. Although card rooms may be a form of convenience gaming, there is considerable overlap in patron bases, namely for table games. Also, the disparity in specific games offered does not eliminate competition. This overlap was evident during the pandemic when California tribal casinos benefited significantly from the forced closure of card rooms while tribal casinos remained open. Additionally, the experience of numerous gaming markets nationwide demonstrates that expansions in convenience gaming can and do erode casino revenues. Lastly, any previous impacts on card rooms due to previous casino developments in the region do not preclude further erosion.*

*A point of clarification regarding our comment on card rooms is needed. We did not comment in MEC's DEIS Preliminary Assessment that GMA failed to compute competitive effects on card rooms, although it is true that they did not. Our original comment was that GMA did not account for card rooms at all or adequately in the market model for its computation of competitive effects. Although GMA states in its comment response that it accounted for card rooms, their quick dismissal of the subject and the results of their analyses clearly indicate that GMA did not properly account for them, because, among other things, in the natural experiment during the pandemic when card rooms were closed, it resulted in increased business for tribal casinos.*

---

#### RESPONSE

GMA stands by its original analysis and response to comments on the Draft EIS regarding the competitive dynamics between casinos and card rooms in the market. The suggestion that there is "considerable overlap" in patron bases oversimplifies the market dynamics. While some overlap exists, card rooms primarily cater to convenience-based gaming, whereas tribal casinos

provide a broader destination experience, including diverse gaming options and non-gaming amenities. This distinction significantly limits direct competition.

The Bay Area casino card room facilities that exist within the local market cater to a distinct demographic segment and type of visitor. While these establishments contribute meaningfully to the local gaming economy, their limited table-based amenities do not parallel the expansive offerings featured by tribal casinos. Tribal casinos provide a wider array of gaming options, including slot machines and exclusive table games, as well as non-gaming attractions that appeal to a broader patron base. This differentiation is a critical factor in understanding the limited competition between these sectors.

The cited increase of tribal gaming revenues in California during the COVID-19 pandemic was due to various factors that occurred across the United States. During this time, regional gaming patron behavior was impacted by a variety of items including travel restrictions, entertainment/hospitality market closures, increased entertainment wallets (due to factors like stimulus payments), consumer psychographic changes which impacted desirability to travel, etc. The nature of the COVID-19 pandemic and its unprecedented impact on local economies, gaming and non-gaming alike, make drawing specific conclusions from patron behavior during this period extremely difficult.

GMA's local market revenue calculations account for the proximity and prevalence of card rooms in the market, with appropriate adjustments to gaming factors made for each individual market segment. GMA is highly familiar with the California gaming market, having completed numerous studies within the state.

GMA remains confident that its analysis accurately captures these dynamics, accounting for the size and role of the card room market within its models.

## ITEM 6 – COMMENTS ON OUTER MARKET REVENUE

### COMMENT

*Moreover, in MEC's DEIS Preliminary Assessment, we were not contending that competitive impacts on out-of-market casinos should have been assessed, but rather that the generation of outer market revenue by the Proposed Koi Nation Casino would have competitive impacts on in-market facilities just like the generation of local market revenue by the proposed casino would have competitive effects. Their attempt to exclude outer market revenue from the competitive effects analysis without adequate analysis is an error causing a clear underestimation of competitive impacts. It is noted that elsewhere in another comment reply (pp. 7-8 of Appendix B-5 to FEIS, T5-18) and text added to the FEIS (FEIS, p. 3-76), GMA makes vague mention of including*

*outer market revenue in new, never-before-seen substitution effect results, but what they provide in the included table does not make sense. In the table, each existing casino's substitution effect there is lower when including outer market revenue substitution effects than when excluding them. When adding in the outer market substitution effect to the local market substitution effect, the total of the two should be larger than the local market substitution effect. Because GMA neither discloses the basis for the numbers nor explains why they resulted in counterintuitive results, they have failed to properly incorporate the outer market impacts into the competitive impacts, and therefore underestimated the impacts on tribal governments with existing casinos.*

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## RESPONSE

Meister's shifting narrative reveals a lack of consistency in its arguments. Initially, it was claimed that GMA's "outer market" stemmed from "nowhere," but now MEC argues that its exclusion leads to an underestimation of competitive effects. Outer market revenue is a well-established concept in gaming industry analyses.

Casinos routinely draw revenue from patrons beyond their defined local market. These patrons include overnight hotel guests, second-home residents, and day-trip travelers passing through major thoroughfares. Outer market revenue can comprise a modest but meaningful portion of a casino's gross revenue, particularly in tourist-heavy regions. Amenities such as hotels amplify this revenue by accommodating distant visitors, encouraging longer stays, extended gaming sessions, and increased spending.

In Sonoma County, a region attracting over 10.3 million annual visitors, tourism further bolsters outer market revenue. The area's wineries, redwoods, scenic coastline, and historical landmarks ensure a larger-than-average outer market share. GMA appropriately accounted for this dynamic in its substitution analysis.

The gravity model utilized by GMA estimates the distribution of local market gaming revenue in a given market and can be subsequently utilized to estimate the amount of local market gaming revenue impacts created by new market entrants. Given the expansive geographic scope of the outer market, gravity models do not account for this market.

In gravity model-based analysis, a local market carve is designed to account for a vast majority of a subject property's local market gaming revenue as well as its direct competitors' local market gaming revenue. Inherently, casinos located in the middle of the local market carve garner a larger amount of local market gaming revenue as a percentage of total gaming revenue than casinos on the outskirts or outside of the defined local market carve. These less proximate facilities in the competitive set both yield a smaller percentage of revenue from the defined local

market area and often are less impacted by the competition as distance from the project increases.

In this unique marketplace, GMA found it may also be helpful to produce substitution impacts that were inclusive of outer market gaming revenue to demonstrate this fact and not overstate the actual impacts felt to casinos located further away from the project. This analysis was provided as an update to the original analysis in GMA's Final EIS Memo, Response T5-18. The assertion that percentage-based substitution effects should increase when including the outer market is completely unfounded. In the vast majority of cases, Native American casinos derive the majority of their revenue from patrons that reside in close proximity to the facility. While the total amount of gaming revenue impact may increase in number terms, it would actually blend down the percentage impact in comparison to local market impact projections.

A meaningful percentage of outer market revenue is often sourced from certain players who exhibit strong loyalty to a particular facility. These players are typically non-local residents and are not motivated primarily by convenience or proximity. As such, outer market revenue competes within a broader set of facilities and is less likely to be influenced by the introduction of a new casino within the local market.

Furthermore, GMA highlights the contradictions in MEC's claim from one project to the next. In its previous letter Meister states that GMA credits the proposed facility with new markets from "nowhere" in reference to GMA's outer market revenue projections. However, in another active BIA submission project Meister explicitly states, "What GMA typically calls "outer market" revenue in its studies includes gaming and nongaming revenue from tourists to the region, long-haul truck traffic, and other pass-through traffic." In this, MEC shows that it is aware of GMA's usage of the outer market when it is convenient for their argument; however, claims that this revenue is created out of "nowhere" at other times when it perceives the argument to be convenient for them.

## ITEM 7 – ACORN FALSELY CLAIMS COMPETITIVE IMPACTS DISSIPATE OVER TIME

### COMMENT

*First and foremost, Acorn gives economics and gaming economics opinions when it has no expertise in these areas. They are an environmental consulting firm. Second, perhaps due to its lack of subject matter expertise, Acorn is 100% wrong on the subject matter. And it is no surprise that GMA, its intended economic expert, is completely silent on the issue because it likely recognizes the lack of justification for Acorn's opinion. As already stated in MEC's DEIS Preliminary Assessment, substitution effects will not dissipate over time in a growing economy, regardless of how many new market entrants there are. Any natural growth in the market*

*resulting from economic growth is a separate phenomenon that would occur regardless of the opening of the Proposed Koi Nation Casino. Therefore, this natural market growth does not diminish or recover the lost revenue experienced by existing tribal casinos as a result of the Proposed Koi Nation Casino. In essence, while competitive tribal casinos may potentially regain their nominal revenue levels in a growing economy, these revenues, even if adjusted for inflation and market changes, will not restore the tribes to the financial position they would have held if a new casino had not entered the market.*

*Notwithstanding Acorn's attempted responses, the Proposed Koi Nation Casino represents a significant new market entrant. For the reasons outlined in MEC's DEIS Preliminary Assessment, we maintain that the competitive impacts resulting from the introduction of the Proposed Koi Nation Casino will not dissipate over time. The scale and nature of this new competitor suggest that its impact on existing casinos will be sustained, rather than diminishing.*

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#### RESPONSE

Acorn is correct in its assertion that substitution effects from new competition will naturally diminish over time as entities adapt to the evolving market environment. While nearby competitive facilities may not reach the level they would have without the introduction of the Koi Nation casino, competition is an inherent aspect of conducting business. Diminishment can also depend on the number and size of new market entrants, if any. The impacted Tribes have an opportunity to adjust and innovate to remain compelling gaming options within the market, leveraging their strengths to sustain competitiveness and implementing strategies to adapt to the challenges posed by the Project.

#### ITEM 9 - GMA DOES NOT PROVIDE SUFFICIENT INFORMATION TO EVALUATE THE RESULTS OF THEIR ANALYSES

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#### COMMENT

*Additionally, disclosing aggregate revenue impact figures, without revealing proprietary data, would enhance transparency and provide the Bureau of Indian Affairs (BIA) with a clearer understanding of the potential harm to tribal communities (we understand from various FEIS comment responses that the BIA and its consultants did not even have proprietary data anyway as tribes chose not to share their information). The absence of this level of detail weakens the ability of BIA and the public to accurately assess the Proposed Koi Nation Casino's true impact.*

---

## RESPONSE

GMA utilizes percentages in its Substitution Effects Analysis to avoid the unintended disclosure of financial data that could potentially be perceived as confidential and to focus the analysis on the relevant metrics. Percentages appropriately weigh substitution effects to tribes of different sizes. For example, a \$25 million effect may be more impactful to one tribe than another, whereas an effect that is 20% of baseline gaming revenue would have a similar level of impact to both.