UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, *et al*.,

Defendants.

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, *et al*.,

Defendants.

Consolidated Case Nos. 3:24-cv-8582-RFL, 3:25-cv-1640-RFL

DECLARATION OF LYNDA HOPKINS, CHAIR OF SONOMA COUNTY BOARD OF SUPERVISORS

I, Lynda Hopkins, hereby declare as follows:

1. I am the Chair of the Board of Supervisors for the County of Sonoma, and am the elected Supervisor for District 5 in the county. If called upon to do so, I am able to testify to these matters based on personal knowledge.
2. The Koi Casino project is within Sonoma County's boundaries, just outside of the incorporated Town of Windsor. Sonoma County has opposed the project because of its inappropriate location, risks to public safety, and environmental impacts.
3. On April 5, 2022, the Sonoma County Board of Supervisors unanimously adopted Resolution 22-0121, stating the Board's opposition to the project. A true and correct copy of Resolution 22-0121 is attached as **Exhibit A**.
4. To attempt to address the National Environmental Policy Act, the Bureau of Indian Affairs first proposed adopting an Environmental Assessment, and due to the many issues raised, later adopted an Environmental Impact Statement. A true and correct copy of Sonoma County's comments on the Environmental Assessment is attached as **Exhibit B**. A true and correct copy of Sonoma County's comments on the Draft Environmental Impact Statement is attached as **Exhibit C**. A true and correct copy of Sonoma County's comments on the Final Environmental Impact Statement is attached as **Exhibit D**.
5. The County's voluminous comments include numerous objections from County engineers, planners, hydro-geologists, biologists, and planners that should have given the Bureau of Indian Affairs – or really, any reasonable person – pause before approving the project that is at issue in this litigation. The project is in an area of the County that does not allow commercial development, and that has been subject to devastating wildfires. The basic infrastructural issues presented by this project concern both the environment and public safety. By way of the broadest example, the County has pointed out that "Picking a site for commercial development that is only undeveloped because local planning protects that site from commercial development … comes with multiple environmental and infrastructural challenges and costs, and these are not forthrightly addressed in the DEIS." Taking the

position that regional and local approaches to land protections can be ignored because they do not apply sidesteps rather than addresses the very significant issues with this project.

6. The County also submitted comments on the Fee to Trust application. A true and correct copy of these comments is attached as **Exhibit E**. In brief, these lengthy comments articulate why the application was not in the public interest and should not have been granted.

7. If the Federated Indians of Graton Racheria's complaints are dismissed before adjudication, for reasons of the Koi Nation's sovereign immunity, the Bureau of Indian Affairs' seriously flawed federal actions will evade judicial review. Sonoma County is gravely concerned about legal arguments that decisions by the Bureau of Indian Affairs to take land into trust can effectively become unreviewable due to sovereign immunity. Collectively, the County's comments in this matter illustrate that such a ruling would have very negative results for safety and the environment.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on April 23, 2025, in Santa Rosa, California.

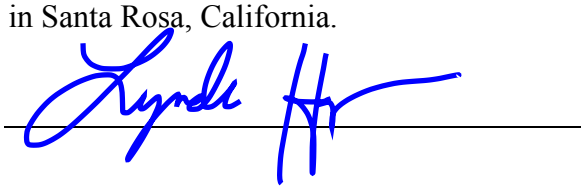


Exhibit A

County of Sonoma
State of California

THE WITHIN INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST: April 5, 2022
SHERYL BRATTON, Clerk/Secretary
BY Noelle Francis

Date: April 5, 2022

Item Number: 13
Resolution Number: 22-0121

☐ 4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Opposing the Establishment of a Casino By The Koi Nation, a Non-Sonoma County Tribe, Within the County

Whereas, the Sonoma County Board of Supervisors has consistently opposed the establishment of Nevada-style casino gaming in Sonoma County;

Whereas, within the geographic boundaries of the County of Sonoma, lies the historic and ancestral territory of five federally recognized Southern and Southwestern Pomo tribes: the Cloverdale Rancheria of Pomo Indians; the Dry Creek Rancheria Band of Pomo Indians; the Federated Indians of the Graton Rancheria, the Kashia Band of Pomo Indians of the Stewarts Point Reservation; and the Lytton Rancheria Band of Pomo Indians;

Whereas, within the geographic boundaries of Lake County, lies the historic and ancestral territory of seven federally recognized Southeastern Pomo tribes: Elem Indian Colony; Habematolel Pomo of Upper Lake; Big Valley Band of Pomo Indians; Scotts Valley Band of Pomo Indians; Robinson Rancheria; Koi Nation of Northern California (Lower Lake Rancheria); and Middletown Rancheria of Pomo Indians of California;

Whereas, in the 1950s and 1960s the federal government passed a series of laws including the California Rancheria Termination Acts, which among other things ended the federal government's relationship with, recognition of, and benefits to numerous tribes in California, including the Cloverdale Rancheria, Graton Rancheria, and Lytton Rancheria in Sonoma County, and the Lower Lake Rancheria (Koi Nation) in Lake County;

Whereas, several tribes have been restored to federal recognition through legislation or litigation, including the Cloverdale Rancheria, Graton Rancheria, and Lytton Rancheria in Sonoma County, and most recently the Lower Lake Rancheria (Koi Nation) in Lake County;

Whereas, around 2005, after changing its name, the Koi Nation unsuccessfully sought to acquire a site for a Las Vegas-style casino outside of Lake County, near the Oakland International Airport; and in 2014 the Koi Nation unsuccessful sought to establish a reservation and casino on Mare Island in the City of Vallejo;

Whereas, in 2019, the United States District Court for the District of Columbia, issued a decision declaring that the Koi Nation, as a reaffirmed tribe, was an Indian tribe restored to federal recognition; see *The Koi Nation of Northern California v. United States Dept. of the Interior* (D.C. Dist. Ct, Jan. 2019) 361 F. Supp. 3d 14;

Whereas, in September 2021, the Koi Nation, through its LLC, Sonoma Rose, purchased a ± 68.60 acre parcel (Subject Land), located at 222 E. Shiloh Road, on the southeast corner of the intersection of Shiloh Road and Old Redwood Highway, in the unincorporated area of the County;

Whereas, Shiloh Ranch Regional Park is to the east, residential development is north and south, the Town of Windsor is to the north and northwest, and the Sonoma County Airport is to the southwest of the Subject Land which is largely agricultural;

Whereas, in September 2021, the Koi Nation submitted an application to the federal government requesting that the United States Department of the Interior accept the Subject Land into trust for casino gaming and resort purposes under Part 151 of Title 25 of the Federal Code of Regulations;

Whereas, Federal law requires that a tribe restored to federal recognition have a "significant historical connection" to the land on which it proposes to game, 25 C.F.R. 292.12(b);

Whereas, the Koi Nation intends to operate its own gaming facility on the Subject Lands

to the exclusion of Sonoma County tribes;

Whereas, the Board of Supervisors strongly opposes tribes from outside Sonoma County attempting to use their tribal status to place lands within the County in trust and/or to otherwise establish gaming operations within the County;

Whereas, the Board of Supervisors strongly opposes tribes that do not have a clear significant historical connection to a specific property, or do not have authority to exercise jurisdiction in Sonoma County, from taking such property into trust or using such trust property for gaming purposes;

Whereas, the Board of Supervisors continues to encourage Sonoma County tribes to establish boundaries to assist in the determination of trust applications and other tribal issues;

Whereas, the five federally recognized Sonoma County based tribes (Cloverdale Rancheria, Dry Creek Rancheria, Lytton Rancheria, Stewart's Point Rancheria, and the Federated Indians of the Graton Rancheria) each sent the Board of Supervisors a letter or tribal resolution expressing unanimous opposition to the Koi Nation's proposal that the Department of the Interior to accept the Subject Land into trust for gaming purposes due to the Koi Nation's lack of significant historical connection to the Subject Land;

Whereas, gaming projects have significant environmental impacts and other effects on a community, particularly in an area that is predominantly agricultural and residential; and the County's infrastructure may not be able to adequately accommodate the proposed facility and its accompanying traffic, water, wastewater or other impacts;

Whereas, the Board of Supervisors respects tribal sovereignty and takes seriously its government-to-government relationship with tribes, and has worked in good faith with Sonoma County tribes towards a variety of shared goals, including the mitigation of off-reservation impacts stemming from on-reservation development;

Whereas, the Board of Supervisors supports and joins with Sonoma County tribes in opposing the Koi Nation's efforts at obtaining trust lands and establishing a resort

casino in Sonoma County; and

Whereas, allowing a tribe without a significant historical connection to the Subject Land, the area in the vicinity of the Subject Land, or the County of Sonoma generally, sets a significant negative regional precedent:

Now, Therefore, Be It Resolved, that the Board of Supervisors opposes any tribe attempting to establish trust property, exercise jurisdiction, or establish a gaming facility within the historical territory of other tribes without those tribes' explicit permission and partnership and supports an interpretation by the Governor of California, National Indian Gaming Commission, Bureau of Indian Affairs, and Department of the Interior of existing compacts and federal law to that effect; and

Be It Further Resolved, that the Board of Supervisors opposes efforts by any tribe to take land into trust or operate a casino unless it can demonstrate, to the satisfaction of the County of Sonoma, the State of California, and the Department of the Interior, compelling and significant historical ties to the specific designated property at issue and the right to exercise jurisdiction over that land.

Supervisors:

Gorin: Aye Rabbitt: Aye Coursey: Aye Hopkins: Aye Gore: Aye

Ayes: 5 Noes: 0 Absent: 0 Abstain: 0

So Ordered.

Exhibit B

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RE: EA Comments, Koi Nation Shiloh Resort and Casino

November 13, 2023

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the County of Sonoma, thank you for considering these comments on the Environmental Assessment (EA) prepared for the Koi Nation's proposed fee-to-trust application for its Shiloh Resort and Casino Project. The County is mindful of the Bureau of Indian Affairs' (Bureau) roles in reviewing and deciding on the application made by the Koi Nation and its role as a trustee for lands already held in trust for tribes in Sonoma County. The County is respectful of tribal sovereignty and understands the need for tribal self-determination and economic development to provide for tribal members. At the same time, Sonoma County objects to any attempt on the part of the federal government to take the present 68 acres of land located east of the Town of Windsor into trust for the benefit of the tribe for gaming in a manner that violates federal law.

Given the significant impacts of the project, and the controlling law that requires an Environmental Impact Statement (EIS) on these facts, the County of Sonoma respectfully urges the Bureau to forego any attempt to use this document to support a Finding of No Significant Impact (FONSI). This is not supportable. The County of Sonoma objects to the inadequate analysis and mitigation in the EA, and the failure of the Bureau to take a "hard look" at the environmental consequences of this proposal, as required by the National Environmental Policy Act (NEPA).

The Bureau should stop, think, and prepare the EIS that NEPA requires.

I. The EA contains inadequate analysis of the significant impacts of the project and an EIS must be prepared.

The Bureau has prepared a complete EIS for other very similar casino projects within Sonoma County, as well as elsewhere in California. By way of example, in Sonoma County, the Cloverdale Rancheria Band of Pomo Indians' fee-to-trust application sought 69.77 acres of land in trust for gaming about 25 miles north of the subject site. An EIS was prepared for the Cloverdale project.[1] The Bureau's action on the Cloverdale site was for a resort casino and hotel, including a tribal government building and 3,400 parking spaces, for a total non-parking square footage of 595,600 square feet. By way of comparison, the Koi Nation's project is for a similar project without a government building, and totals 807,067 square feet for non-parking coverage, and 5,119 parking spaces in addition (1,689,380 square feet in addition). For a similarly sized proposed land area, the Koi casino square footage is 135.5% of that proposed by Cloverdale, its hotel rooms are 164% of that proposed by Cloverdale, and the number of parking spaces is 150.5% of that proposed by Cloverdale. Even if the current project were to be reduced in size to what Cloverdale proposed, common sense would dictate an EIA. While an EA may be appropriate for some projects, the Koi Nation's destination casino project is not one of them.

The EA concedes that the project will have numerous significant impacts, but then backs away from the obviously required significance findings based on regulatory requirements that do not exist, inadequate baseline information to inform analysis, inadequate environmental analysis of direct and indirect impacts, inadequate analysis of cumulative impacts, inadequate and unenforceable mitigation requirements, the strategic mischaracterization of mitigation as "part of the project" to avoid accountability, vague and unenforceable project assumptions, and in many cases, a refusal to implement all the recommendations of the consultants that the EA itself relies upon.

The decision not to prepare an EIS for this project reflects a conscious refusal to take a hard look at the impacts of the project and indicates that NEPA review is improperly being used to paper over a decision that has already been made.

II. The EA is affirmatively misleading with respect to the "regulatory setting," contains no discussion of mitigation efficacy, and no evidence that key mitigation will be effective.

The EA is filled with references to California state law and State and local regulatory standards. State law is discussed in most of the "Regulatory Setting" sections of the impact discussions, and also in Appendix E. However, the project may only be

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[1] http://www.cloverdalerancheria.com/eis/deis.htm

built if the land is in trust and hence not within the civil regulatory jurisdiction of the State of California or County of Sonoma. Each reference is misleading because the referenced State legal requirements and local regulatory requirements do not apply to the project. The EA avoids providing a description and discussion of the actual regulatory setting (and associated issues with mitigation implementation that this setting presents). Tribal sovereign immunity is not mentioned in the EA, much less in the context of mitigation measures.

There is no discussion of what mechanism will be available or used by the Bureau as the decisionmaker on the Koi Nation's fee to trust application to impose enforceable mitigation on the Tribe. It is one thing to discuss how environmental impacts are addressed by existing, enforceable requirements, but it is quite another to pretend that impacts are addressed by background regulations that do not exist.

In places, the EA's impressionistic discussion of State law and tribal requirements is about as far from a "hard look" as one can get. Section 2.1.9 states:

> The proposed facilities would conform to applicable tribal building code requirements, which would be generally consistent with the CBC and California Public Safety Code, including building, electrical, energy, mechanical, plumbing, fire protection, and safety. An indoor sprinkler system would be installed to provide fire protection.

There is no indication that the Tribe currently has tribal building codes with "applicable" requirements, but if they existed, they would apparently only be "generally" consistent with the "California Public Safety Code" – a California statute that does not exist. The analysis appears to be based on an imaginary code that is based on an imaginary code. If there are tribal codes that apply, their text should be provided in the NEPA process such that their adequacy can be commented upon and evaluated.

It is also clear on the face of the EA that cited regulatory standards are being ignored. As noted by West Yost (Exhibit A), a great deal of emphasis is placed on compliance with Title 22 of the California Code of Regulations in the EA's discussion of recycled water (EA, Appendix B, 2-16, 4-2 and 4-3), but the whole dual plumbing design (using non-potable water within a building with food facilities, 22 Cal. Code Regs. § 60313), squarely violates Title 22.[2]

[2] Assuming compliance with Title 22 and non-compliance at the same time makes the EA fundamentally unclear. A project that complies with Title 22 would require a different water balance analysis than is found in the EA.

Compounding the problem is the fact that the EA discusses critical mitigation measures as "Best Management Practices" (Table 2.1-3) raising the issue of whether these purported "practices" will actually occur absent monitoring and enforcement. The Bureau's own NEPA guidance (59 IAM 3-H) is clear that mitigation measures must be enforceable to justify a FONSI. Simultaneously, the Bureau's analysis in the EA is clear that compliance with Table 2.1-3 is critical to the impact conclusions in the EA. The analysis returns to Table 2.1-3 for these conclusions repeatedly. There must, at a minimum, be a mitigation measure that requires compliance with Table 2.1-3 or, alternatively an explanation of how these critical requirements (which are not at all part of background legal requirements for the project) will be monitored and enforced. The entirety of Table 2.1-3 must be rewritten to allow the evaluation of the efficacy of the mitigation and remove the escape clauses – by way of example, "[e]xhaust stack and vents will be positioned to limit odor exposure to sensitive receptors *to the extent feasible*." Characterizing critical "mitigation" as "practices" to avoid environmental accountability hides the ball in terms of impact analysis and subverts NEPA's basic purpose.

The failure to discuss the actual "regulatory setting," and the related failure to discuss why the "practices" and "measures" will be effective within that regulatory setting, is a fatal omission for NEPA compliance. The EA fails to provide the "reasonably complete discussion of possible mitigation measures" that is necessary to facilitate the "'action forcing' function of NEPA." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Credible information on the efficacy of "practices" or "measures" must be provided, and enforcement and monitoring must be implemented. Where "measures" or "practices" are illusory, they cannot legally provide the basis for a FONSI.

III. The EA's discussion of groundwater and water quality impacts is inaccurate and utterly inadequate.

The EA assumes that Pacific salmonids are not present in Pruitt Creek, stating "[l]isted Pacific salmonids are assumed to be absent from Pruitt Creek based on observations from the February 23, 2022, site assessment coupled with background research and lack of historic occurrences. The potential for Pacific salmonids to occur and use habitat in this far east portion of the Russian River Basin is temporally and physically limited." In reality, federally listed steelhead, *Oncorhynchus mykiss*, 79 Fed. Reg. 20802, 20807 (2014), are known to exist in Pruitt Creek, and the attached memorandum by Jeff Church, a Sonoma County Water Agency biologist, documents observations both upstream and downstream from the project location. (Exhibit B.) Steelhead use this location, and the location is designated critical habitat. 70 Fed. Reg. 52488 (2005).

It is true that the reach of Pruitt Creek at the project site is intermittent, but the Bureau reaches the exact wrong conclusion based on this fact. The Bureau should recognize that this fish habitat is exceedingly sensitive to dewatering and pollution impacts, rather than justifying a truncated investigation based on an incorrect assumption that federally listed fish species are not present. As discussed by West Yost (Exhibit A), dewatering impacts need to be evaluated based on an evaluation of the baseline conditions that is sufficient to inform the impact analysis, and the EA makes conclusions that are entirely unwarranted based on the evidence. The Bureau may not rely on its own lack of investigation into hydrologic conditions to justify discounting environmental impacts. *S. Fork Band Council of W. Shoshone*, 588 F.3d at 727. The current cursory investigation and analysis is not adequate to determine that the project will not adversely modify critical habitat[3] and result in significant impacts to salmonids. The project may well result in both significant impacts and violations of section 9 of the Endangered Species Act.

Further, the actual local flows in Pruitt Creek need to be evaluated to understand the baseline conditions; the EA's chosen proxy site 5.5 miles away on a different creek is not representative. (Exhibits A, C.) In addition, the analysis must include future projections given the changing climate. There is no evidence that the proposed wastewater discharge solution is feasible given actual streamflows, meaning that the EA's analysis of what will actually occur is dubious at very best. Robert Pennington, a Professional Geologist with the County of Sonoma, explains:

> During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species. [¶] The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge #11466800 has a contributing watershed area of 251 square miles. The

[3] The Bureau cannot take the position that taking this land into trust removes the protections of critical habitat under the applicable designation (70 Fed. Reg. 52488), because the habitat benefits from the existing designation.

> contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. (Exhibit C)

Inadequate storage will lead to environmentally harmful discharges, and there is no enforceable mitigation that requires compliance with all aspects Title 22 in California Code of Regulations, and there is no mitigation that addresses the related issues addressed by California's recently adopted Recycled Water Policy.[4] The study on which the EA is based admits that "contingency plans should be developed for low flow conditions" (EA, Appendix C, 2-21), but these have not been developed, disclosed, and analyzed. Similarly, crucial components of the recycled water system have not been disclosed, including a feasible plan to expand it. Absent trucking out of wastewater, which has significant impacts that are unanalyzed, it is foreseeable that the project will be forced to discharge recycled water at rates far above the agronomic rate of uptake for the recycled water discharge locations, leading to discharges to groundwater, and in turn, potential plant death that further exacerbates groundwater discharges.

Mitigation is necessary to avoid groundwater and surface water contamination, and a hand wave about Clean Water Act compliance is insufficient to excuse substantive analysis given emerging contaminants and the foreseeability of discharges to both groundwater and surface water. An inadequate initial design will lead to "upsets" and "bypasses," and claims that these harmful discharges are permitted. (40 CFR § 122.41(m) and (n).) In addition to nutrients, contaminants of concern that will exist in discharges to groundwater and stormwater include pharmaceuticals and related hormones, metals, microplastics, and PFAS. These contaminants will also be present in the project's biosolids.[5] In the stormwater context, given the automobile-centric nature of the project, the Bureau also must evaluate emerging contaminants like 6PPD from tires, as these chemicals have recently been identified as a major driver in

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[4] State Water Resources Control Board, Water Quality Control Policy for Recycled Water, (2019) https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf.

[5] Pozzebon, E.A., Seifert, L. Emerging environmental health risks associated with the land application of biosolids: a scoping review. Environ Health 22, 57 (2023). https://doi.org/10.1186/s12940-023-01008-4.

salmonid extinction.[6] The required good faith analysis must be based on the fact that the project is proximate to salmonid habitat, not on convenient but incorrect factual assumptions to the contrary.

Additionally, the Bureau must evaluate the cumulative impacts of the planned groundwater pumping in light of the other existing and readily foreseeable wells in the immediate area, and also evaluate the cumulative impacts of extraction on the larger groundwater basin. The Bureau has not done so. The project would pump groundwater from the Santa Rosa Plain groundwater subbasin – a basin that requires special planning under California's Sustainable Groundwater Management Act (SGMA) to avoid adverse impacts. The groundwater in this basin is relied on for rural residential, agricultural, and municipal water supply. The EA fails to recognize – let alone analyze the impacts on – groundwater conditions and uses, and the EA lacks any analysis of long-term groundwater impacts. Mitigation measures are necessary to address groundwater impacts, and these are simply missing.

The current EA raises many more questions than it answers about whether and how the significant impacts of the project can feasibly be addressed. The current discussion only serves to document that they are not addressed. The EA cannot be used to support a FONSI for water quality and groundwater impacts. The groundwater "monitoring" mitigation measure merely documents that crucial information is missing from the EA that should have already been developed. The proposed "compensation" mitigation measure for groundwater depletion is not remotely adequate, and violates 40 CFR § 1508.20. The purported mitigation does not substitute for the environmental impacts that the EA ignores, and the EA similarly ignores the significant impacts of the mitigation itself.

In short, the EA is grossly deficient with respect to groundwater and water quality impacts.

IV. The EA fails to provide adequate analysis and mitigation for reasonably foreseeable impacts to law enforcement services.

The EA includes an analysis of Social Effects (e.g., gambling addiction, crime, drunk driving). Appendix B provides additional information on crime. The EA notes that increasing crime and calls for service to public safety are associated with any population increase, not necessarily gaming specifically, and concludes that the development, due

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[6] John Ramos, "Tire additive could push California salmon to extinction, study says," CBS Bay Area, August 23, 2023, https://www.cbsnews.com/sanfrancisco/news/tire-additive-could-push-california-salmon-to-extinction-study-says/; Tian et al., "A ubiquitous tire rubber–derived chemical induces acute mortality in coho salmon," *Science* 371, 185–189 (2021).

to its large gatherings of people, may result in increased calls to law enforcement. The EA then claims that "the addition of the Proposed Project is not expected to lead to a material increase in crime rates in the area." The EA concludes the proposal would increase total calls for service by 2.2% and increase total arrests by 1.4% (1,433 calls and 33 arrests).

This discussion is misleading. Contrary to the conclusions of the EA, the causal link to crime from casinos is clear, and there is no evidence that the project would not require additional law enforcement facilities. In 2012, before the opening of the Graton Casino, the area surrounding that location (288 Golf Course Drive) was very similar to the proposed project area, and it generated two calls for service. (In the calendar year 2022, the area surrounding the proposed site generated one call for service.) However, upon the opening of Graton Casino in 2013, the location generated 1,757 calls for service, an increase of 1,755 calls. Last fiscal year (22/23), Graton Casino generated 529 of the 6,680 calls for service in Sheriff's Office Zone 5 (a very large Patrol Zone that includes the unincorporated areas surrounding Petaluma, Rohnert Park, and Cotati, stretching from the northern city limits of Rohnert Park to the Sonoma/Marin County border). The calls for service included, but were not limited to, assaults, trespassing, multiple types of theft, stolen vehicles, public intoxication, and drug activity. The decline from opening to fiscal year 22/23 in the case of the Graton Casino is not necessarily good news, as deputies are no longer specifically assigned to the casino and some crime previously reported by the assigned deputies themselves is possibly going unreported.

The proposed mitigation measure (EA, 4-7) to make "good faith efforts" to enter into a service agreement is inadequate, and provides no information regarding the contents of the agreement. The EA's attempt to discount the impacts is discouraging. The requirement that the proposed agreement be based on "quantifiable direct and indirect costs" does not adequately mitigate the impact (1) without a description of how those costs will be determined and (2) without an enforcement mechanism, which together would demonstrate that the mitigation is not illusory.

V. The EA fails to provide adequate analysis and mitigation for foreseeable environmental impacts that will result from the economic impact of this casino.

The EA concludes that the project would not result in significant impacts due to the economic effects of the project. This conclusion is unsupported by the facts and evidence. The socio-economic report (EA, Appendix B) concludes that existing Sonoma County casinos would experience a possible business loss of 11% and 24% but concedes that none of the estimates hold any water if other casinos (such as the approved Cloverdale casino) are constructed. Completely elided from the EA is a discussion of the foreseeable *environmental* impacts of very foreseeable business

failures that may well occur as a result of this approval. These impacts bear on both the Bureau's NEPA and the Bureau's federal trust obligations.

The Global Market Advisors impact study (Appendix B) estimates that 95% of the proposed project's estimated revenues ($473 million) will be diverted from existing local casinos ($449.4 million). Appendix B then dilutes this local impact by saying this is only 13.7% of a much larger, non-local gaming market. However, the analysis concedes that the existing Dry Creek Rancheria's River Rock casino will face no less than a 24.4% decline in revenue, and Global Market Advisors further concedes that this is not a conservative assumption given the fact that other casinos could also be constructed. No analysis is provided of the economic effects if this assumption is incorrect.

The over-saturation of the gaming market has physical impacts on the environment and on other tribes. The introduction of this casino to the local casino market would not only negatively impact existing gaming casinos in the area but would likely cause the total closure of more remote facilities like the Dry Creek Rancheria's River Rock casino. The Bureau stands to be the proximate cause of this closure, and the proposed action is contrary to the federal government's trust responsibilities. It is entirely foreseeable that the Bureau's proposed action will result in a closure.

The EA fails to evaluate these readily foreseeable impacts. The economic context for the Dry Creek Rancheria Band's River Rock Casino, and other tribal casinos in the area, is particularly precarious given the opening of the Graton Casino in 2013. In 2014, the Dry Creek Rancheria Band defaulted on millions in bonded indebtedness ($150 million) to its casino investors, and in contractual obligations ($50 million) to the County of Sonoma pursuant to an enforceable intergovernmental mitigation agreement. (Exhibit D.) The Graton Casino broke ground on a $1 billion expansion this year.

The EA is incomplete without a factual analysis of the continued economic viability of the proximate competitors, and an analysis of environmental impacts associated with closures of existing tribal casinos and resultant blight, deterioration, and loss of function of tribal infrastructure and services. The Bureau should conduct a good faith analysis of the economic and environmental consequences of its action, and stress test the assumptions based on all the facts that are relevant to the local context. This includes, but is not limited to, economic uncertainties and the effects of natural disasters on the gaming market.

In a context of foreseeable failures, perhaps most troubling in Global Market Advisors' analysis is the analogy to "gravity" (notably, without any disclosure of the actual math), as it strongly suggests a dynamic where the Bureau's fiduciary solution to failing casinos may be the expansion of larger and larger casinos to attract more visitors from greater distances. The Bureau must evaluate not only the foreseeable impacts of casino failures, but the growth inducing response to those failures that naturally will follow.

The current analysis of the economic and environmental consequences of the proposal is wholly inadequate for purposes of NEPA and raises serious questions about how the Bureau, as trustee, exercises its responsibilities when holding existing lands in trust for the benefit of distinct tribes, when presented with a proposed fee-to-trust application for another tribe.

VI. The EA's discussion of the project's significant greenhouse gas emissions and Vehicle Miles Travelled is inaccurate and incoherent, and the significant greenhouse gas impacts of the project are not mitigated.

The estimated greenhouse emissions from this project are extremely high, especially for this type of project. They are, disturbingly, much higher than they need to be. The estimates of operational emissions for Alternatives A, B, and C are respectively 69,862, 55,932, and 7,100 annual metric tons of CO2 equivalent (MTCO2E). (EA 3-138.) The Bay Area Air Quality Management District's (BAAQMD's) former significance threshold based on California's science-based emissions targets for 2020 was 1,100 MTCO2E. California's targets have been reduced. A straight-line reduction of the former threshold based on current science-based targets for 2030 in California results in a 40% reduction, or 660 MTCO2E.[7] Likewise, the EA discloses extraordinarily high social costs related to the greenhouse gas emissions for this project: $129,479,003 for Alternative A, $103,352,963 for Alternative B, and $13,374,218 for Alternative C. (EA 3-139.) These social costs alone indicate that the project's greenhouse gas impacts are significant. But rather than mitigating the very significant greenhouse gas emissions of the project, or finding that they are significant in a good faith analysis in an EIS, the EA attempts to hide the ball and assert that the project is compliant with BAAQMD's recently revised guidance. (EA, 3-140.) It is not.

In 2022, BAAQMD revised its threshold to be based on the absence of the build out of any new natural gas infrastructure, and on a 15% reduction in vehicle miles travelled (VMT) below the regional average per capita. (Exhibit E.) The EA purports to rely on this threshold. The threshold is an aggressive ratcheting down of the prior threshold based on the severity of the climate crisis. The goal of the threshold is to evaluate the design elements that are necessary to facilitate achieving *complete carbon neutrality* in California by 2045. (Exhibit E.) The natural gas component is based on the

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[7] Under Health and Safety Code section 38566, SB 32 (2016), California's emissions reduction mandate for 2030 is 40% below its prior goal for 2020. Thus, many agencies have used 660 MTCO2E as an extrapolation of BAAQMD's 2020 threshold for this type of project (1,100 MTCO2E), as BAAQMD's threshold was based on California's 2020 targets. The alternatives in the EA are 105 times, 65 times, and 10 times this significance threshold.

judgment that global climate goals cannot be met with the expansion of natural gas infrastructure, given the need for major emissions reductions from existing infrastructure. The VMT component is based on guidance from the State's Office of Planning and Research, which the EA acknowledges.

The EA states:

> The Bay Area Air Quality Management District (BAAQMD) provided guidance in 2022 to determine the significance of climate impacts from land use projects (BAAQMD, 2022c). If a project will not include natural gas appliances, will not result in wasteful, inefficient or unnecessary energy use, will reduce project-generated vehicle miles traveled (VMT) below the regional average, and will provide EV facilities consistent with current California building standards, then a project's climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B and C would result in over a 15 percent reduction in VMT compared to the Sonoma County region. Therefore, with the implementation of BMPs, implementation of the project alternatives would not result in a significant adverse cumulative impact associated with climate change. (EA 3-140.)

In reality, neither of BAAQMD's referenced criteria are met. The project is not foregoing all natural gas as BAAQMD's threshold requires for a finding of "less than significant." Instead, Table 2.1-3 states: "The Tribe will use electric boilers and appliances in lieu of natural gas or propane units *to the greatest extent practicable*," whatever that means. The only thing this language clearly suggests is that the Tribe has considered the BAAQMD guidance regarding natural gas and rejected it.

Worse, the EA's statement that the project will result in "a 15 percent reduction in VMT compared to the Sonoma County region" has no basis whatsoever. Very clearly, this is not a VMT reduction project. The project's sponsors hope to draw customers from a very wide region, and have proposed no less than 5,110 parking spaces for the project. The study relied upon only looks at vehicle miles travelled associated with employees, not project visitors, which is to say that most VMT associated with the project is being ignored. This is the case even as the economic analysis in Appendix E, pages 65 and 66, describes a very large geographic market for visitors to the project, with the bulk of visitors not coming from Sonoma County. The purported "logic" of the EA is that: "The project's Home-Based VMT per employee value of 10.20 is lower than

the 85% VMT threshold for the Sonoma County region (10.53 VMT per employee). Thus, the proposed project at full buildout is expected to have a less-than-significant impact on VMT." These numbers do not elucidate the project's impacts. *Even after* improperly ignoring the visitor VMT completely, the VMT numbers cited reveal significant impacts. The EA deliberately evaluates the employee VMT average against the Sonoma County average rather than the regional average (which is significantly lower, because the region includes the metropolitan areas of the Bay Area),[8] and then, by a thin margin, finds the outcome to be less than significant. To the extent that any component of the math is credible at all, it has been subjected to outcome-oriented manipulation.

Nor do the practices in Table 2.1-3 address the greenhouse gas impacts as the EA claims. The Bureau has deliberately chosen mitigation language in Table 2.1-3 that is utterly vague and unenforceable: "Shuttle service to and from population centers will be provided *as feasible*, which would reduce CAPs and GHGs." The fleet mitigation is similarly vague and unenforceable, and has no standard through which efficacy can be evaluated. At the same time, as discussed more fully below, *all* of the recommendations of the traffic consultant concerning transit and pedestrian infrastructure have been summarily rejected without any explanation in the EA.

On top of these problems, the modeling assumptions in Appendix F do not hold up for very potent greenhouse gases like methane. Appendix F assumes "mitigation" that is not applied. While an unenforceable recycling "practice" has been proposed, no mitigation is imposed on the project requiring the source separation of organic waste such that it can be diverted from landfills. The lack of a feasible plan for organics diversion (including for biosolids), and the lack of any discussion of the project's integration with related landfill diversion processes under SB 1383 (2016), means the landfill diversion estimates are not credible. This in turn means that the assumptions about project emissions for potent gases like methane are not credible. Landfill diversion cannot be assumed if the project actively thwarts diversion.

The only way to reach the conclusion that the project's greenhouse gas impacts will be less than significant is by systematically ignoring the data, which the EA does. Perhaps the Bureau could use a different science-based analytical framework than BAAQMD and California's Office of Planning and Research have used, but it is arbitrary and capricious to manipulate data and say that cited significance criteria are met when they are not. A good faith analysis of the greenhouse gas impacts must be conducted, and if the analysis is based on an EA, the strategy of avoiding accountability by placing

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[8] In the context of similar attempts to dilute required VMT reductions, the California Office of Planning and Research (on whose guidance the EA purports to rely) has made clear that "regional average" means the average in the applicable Metropolitan Planning Organization, not the lower average within a county. (Exhibit F.)

mitigation with extensive escape clauses in the project description must be jettisoned. Given the project's high level of emissions, an EIS should be prepared. Absent an EIS, adequate and enforceable mitigation must be adopted for the project's emissions related to the project's energy sources, the project's energy consumption, transportation, and waste.

VII. The EA's traffic analysis ignores the recommendations of the underlying studies, and is based on inadequate and ineffective mitigation measures.

The EA reaches the logical conclusion that the project will have significant impacts on traffic without mitigation. However, the EA does not provide for enforceable mitigation that ensures that these impacts will be avoided.

The EA divides transportation into opening day mitigation and "cumulative" mitigation for 2040. For opening day, the mitigation measure states:

> While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make *good faith efforts to assist* with implementation of the opening year improvements prior to opening day. (EA 4-8, emphasis added)

The Tribe does have the ability to enter into enforceable contracts to construct the improvements (with local government assent), but the language in the EA scrupulously avoids anything concrete or enforceable. As written, the mitigation measure would allow for mere cheerleading, even as the traffic study (EA, Appendix I) assumes that the Tribe or Bureau will be responsible for the entire cost. What is needed to avoid significant impacts is the improvements, not "good faith efforts" that the Bureau declines to specify. Further, the analysis does not confirm there are no constraints for the improvements (environmental, real property, etc.), and does not analyze the improvements themselves. Ultimately, the measure does not commit the Tribe and/or Bureau to the improvements. The structural problem with the analysis is therefore that the EA provides no actual evidence that the improvements will occur, which on its own requires an EIS given the fact that impacts to be mitigated are significant.

The same issues arise for the "cumulative" improvements. The EA says:

> The Tribe shall make fair share contributions to the cumulative 2040 traffic mitigation measures. Funding shall be for design standards consistent with those required for similar facilities in the region. (EA, 4-8.)

First, the amount and timing of the payments is unspecified, and no evidence is provided that the cumulative improvements will actually be constructed on the timeline required to avoid significant cumulative impacts. There is no discussion of feasibility and constraints, and no discussion of any environmental issues that may exist with the improvements. Incredibly, the widening of Shiloh Road from 2 to 4 lanes is simply "assumed" without any substantive analysis (Appendix I, 168), and it is not required as mitigation – even as it is absolutely critical for the EA's conclusions about impacts.

Second, critical details are omitted from the mitigation measure, such as the nature of the fair share calculation (Table 33 in the traffic study is not mandated), the timing of project cost determinations, and the timing of payments. This information is crucial to evaluate the efficacy of the mitigation. Cost determinations must be based on actual facilities that meet County design standards, not hypothetically "similar" facilities, to ensure the improvements can actually be constructed. Effective mitigation measures will require enforceable agreements with the County.

Worse, without explanation, the EA inexplicably declines to impose mitigation recommended in the traffic study (EA, Appendix I) that could help address the project's transportation impacts. These recommendations include:

- "The proposed project should provide adequate pedestrian and bicycle facilities on its site (particularly at its planned driveways) to facilitate pedestrian and bicycle traffic to and from the project site." (EA, Appendix I, 6-7.)
- "Provide concrete sidewalks, and marked crosswalks at the proposed project driveways to connect with existing and planned pedestrian facilities along Shiloh Road and Old Redwood Highway." (EA, Appendix I, 6-7; section 15.4.)
- "Provide continuous, accessible pedestrian pathways between the nearby transit stops and project entrances." (EA, Appendix I, section 15.4.)
- "Provide pedestrian and bicycle facilities between the proposed project's driveways and the project's main facilities to improve on-site pedestrian and bicycle circulation" (EA, Appendix I, section15.4.)
- "The site is not proposing sidewalks along its frontages. However, pedestrian facilities should be provided at the two new traffic signals to provide a connection with the sidewalks on the north side of Shiloh and the urban features on the west side of Old Redwood Highway near the future signals at the church. TJKM also recommends constructing continuous, accessible pedestrian paths between the nearest bus stops, the project access points closest to Shiloh Road & Old Redwood Highway, and the nearest project entrances." (EA, Appendix I, section 15.2.)
- "Sonoma County Transit (SCT) serves the project area. Route 60 mostly travels along Old Redwood Highway between Cloverdale and Santa Rosa on headways varying between one to two hours. There is an existing pair of stops adjacent to the corner of Shiloh Road and Old Redwood Highway. With the addition of

accessible pedestrian pathways between the stops and the project entrances, this route has the potential to serve employees and patrons in the Old Redwood Highway corridor." (EA, Appendix I, 15.2.)

The failure to adopt these recommendations is unexplained. All of these mitigation measures would at least contribute to mitigating the very high VMT for the project. The EA's departure from these recommendations is neither explained nor justifiable.

Similarly, without the "hard look" required by NEPA, the EA does not impose the queueing mitigations that the traffic study recommends. These omissions leave significant traffic impacts, including on safety, unmitigated. The mitigation section of the EA contains no mention of the mitigations recommended in the traffic study (Appendix I) in section 4.5 (p. 42, 43), section 8.0 (p. 89), section 12.2 (p. 129-132), section 5.5 (p. 57-58), section 9.2 (p. 99, 100), section 6.5 (p. 72), section 10.2 (p. 109, 110), or section 14.2 (p. 159-162).

Finally, the EA also modifies the mitigations in the traffic study without justification or explanation. There are, for example, discrepancies between turn lane mitigations in the traffic study and in the EA, as well as lane "storage length" recommendations, where mitigation has been reduced in the EA relative to the traffic study without explanation. Whatever the reason for these changes, there is no evidence that these changes are appropriate.

In sum, the proposed traffic mitigation is not adequate, and the discussion of traffic impacts does not constitute a "reasonably complete" discussion of the direct and indirect traffic impacts of the project.

VIII. The EA's discussion of wildfire risks and mitigation is inadequate.

In the last decade, the project area has been the site of some of the worst wildfires in United States history. The project is very near to the burn areas of both the 2017 Tubbs Fire and the 2019 Kincade Fire. The EA acknowledges that the project is in a designated high fire risk area. (EA, figure 3.12-2.) The EA concedes that the elimination of fire barriers is a significant impact. Missing from the EA, however, is any recognition of the fact that the EA eliminates agricultural land that acts as a fire break (for the City of Windsor as well as for surrounding areas) and replaces it with flammable structures. This creates a potential ignition linkage from populated areas to a *very high* fire risk area. It is not as though the County has no experience with how this works. The EA contains a conclusory statement that no fire barriers will be eliminated. This is an odd mix of silly and irresponsible.

The EA cites State building standards relative to wildfire, and Former Chief Vern Losh recommends compliance with the wildfire (or "Wildland Urban Interface") provisions of the California Building Code. (EA, Appendix N1.) The EA does not

discuss the fact that these codes are inapplicable, and the EA does not require that they be imposed. The EA fails to discuss the fact that even a single ember in a poorly placed vent can defeat the protections provided by (already inapplicable) fire codes. Hurricane-force winds can transport these embers long distances at high velocities. It is understandable that, beyond the California code requirements, Former Fire Chief Losh recommends "special care" with locations where embers could intrude. No mitigation that implements and requires this care is imposed. No third-party plan checks are required. No substantive post-construction reviews are required. Indeed, no mitigation measures have been imposed to ensure that Chief Losh's generic assumptions about how projects should be built are true. Fire sprinklers are mentioned, but there is no discussion of the adequacy of water supplies and infrastructure to address firefighting. There is no discussion of the potential loss of water pressure or the frequent loss of power during fire weather, which can eliminate water supply. There is no discussion of the feasibility and impacts associated with the "back up" fire station that is proposed.

The outcome-oriented carelessness of the EA applied to very significant risks is unfortunate. Yet, the EA's failure to substantively examine evacuation risks is even more troubling. Evacuation risks are environmental risks with which Sonoma County has far too much familiarity. Evacuations have not always gone well, and timing has been crucial for the evacuations that have mitigated broader disasters. Very recent wildfires have required massive evacuations of the entire area in which the project is situated, including the complete evacuation of the adjacent Town of Windsor. The timely, total evacuation of the Town in 2019 was a key factor in allowing firefighters to save the Town and stop the further spread of the fire, as it allowed firefighters to battle flames without committing resources to rescues. (Exhibit G.) Evacuation requires sufficient infrastructure to allow occupants to leave and firefighters to enter without mutual interference. Experience has shown that the consequences of insufficient resources for evacuation can be dire.

Evacuation issues cannot be lightly treated as insignificant in Sonoma County. But that is exactly what the EA does. The CAS Safety Consulting LLC report makes numerous recommendations that have not been implemented in evacuation mitigation measures. Most problematically, these recommendations include traffic modeling that has not been completed. As the California Attorney General observes, "evacuation modeling and planning should be considered and developed at the time of project review and approval—when there is greater flexibility to modify a project's design, density, siting, and configuration to address wildfire considerations—rather than deferred to a later stage of the development process."[9] The "wait and see" approach

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[9] California Attorney General, "Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act," October, 10, 2022, https://oag.ca.gov/system/files/attachments/press-docs/2022.10.10%20-%20Wildfire%20Guidance.pdf.

which might suffice in some cases is completely inappropriate in this situation. The only thing close to modelling that has been disclosed is an implausible conclusion that a 6-8 hour estimate to evacuate the casino and the Town is adequate. The basis of the estimate is not provided, but the conclusion that this is possible is based on various assumptions. The assumptions include the questionable assumption that Shiloh Road will be expanded at opening, even as no mitigation is proposed to require this expansion prior to opening. The EA does not provide a plausible basis for concluding that the estimated time required for evacuation is sufficient, it does not state the range of cases where that conclusion would be true, and it does not stress test all assumptions – in terms of infrastructure, in terms of disaster response operations, and in terms of the increasing wildfire risks presented by climate change. The lack of adequate traffic mitigation greatly exacerbates the deficient analysis. The EA does not provide evidence that the impacts are less than significant.

Finally, and unfortunately, given the location and nature of the project, mitigation should be adopted to address the cleanup of the project if it does burn. It is well understood that commercial buildings that burn in wildfires present toxic hazards to the community,[10] and the surrounding community will not be able to ensure these hazards are abated without the imposition of mitigation that addresses these risks. Federal assistance is generally not available for commercial projects. Where cleanups are not financially convenient, they do not occur without mandatory requirements. This will result in a significant impact without mitigation.

[10] California EPA, Guidance for Conducting Emergency Debris, Waste and Hazardous Material Removal Actions Pursuant to a State or Local Emergency Proclamation, October 7, 2011, https://calepa.ca.gov/wp-content/uploads/sites/6/2019/06/Disaster-Documents-2011yr-GuideRemoval.pdf

IX. The EA fails to evaluate a reasonable range of alternatives.

Part of the reason why there is insufficient infrastructure for the project is the fact that the site is within an area where this type of project would never be permitted by existing local government planning. The location is zoned for agriculture,[11] but that is far from the only issue. Sonoma County local governments have each adopted Urban Growth Boundaries to contain auto-dependent sprawl and plan for city-centered growth. The County and the cities have voter approved Urban Growth Boundaries and Community Separators to preserve open space and protect Sonoma County's environment. The Community Separator areas are voter-approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development*. The project is outside the Town of Windsor's Urban Growth Boundary and inside the County's Community Separator. The existing infrastructure does not support this type of project because inter-governmental planning has sought to avoid this type of development in this area.[12] The Bureau's Scoping Memo partially acknowledges this fact in discussing the utility limitations that flow from the Town of Windsor's Urban Growth Boundary, but does not acknowledge or discuss the larger planning context.

The EA lacks a reasonable range of alternatives, and reading the Bureau's EA is torturous, like watching a fly in a bottle. Given the site constraints in terms of resources and infrastructure, it is illogical and absurd not to include off-site alternatives in the analysis. The EA asserts that the availability of other sites is economically "speculative" but this conclusory assertion flies in the face of the other casinos that have already been developed in the Tribe's territory (as the EA defines it). It also ignores the known economic resources of the Tribe's backers in this project. (Exhibit H.) It is foundational NEPA law that "[r]easonable alternatives include those that are *practical* or *feasible* from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." 46 Fed. Reg. 18026, 18027 (1981) (emphasis in original); *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (federal agency has the "duty under NEPA to exercise a degree of

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[11] Approximately 47 acres of the parcel consist of Farmland of Statewide Important; 8 acres are designated Farmland of Local Importance; and 13 acres are Prime Farmland.

[12] The relevant policies in the County's General Plan include, but are not limited to: "Objective OSRC-1.1: Preserve important open space areas in the Community Separators shown on Figures OSRC-5a through OSRC-5i of the Open Space and Resource Conservation Element"; "Objective OSRC-1.2: Retain a rural character and promote low intensities of development in Community Separators. Avoid their inclusion in City Urban Growth Boundaries or Spheres of Influence. Avoid their inclusion within Urbans Service Areas for unincorporated communities"; "Policy OSRC-1b: Avoid commercial or industrial uses in Community Separators other than those that are permitted by the agricultural or resource land use categories."

skepticism in dealing with self-serving statements from a prime beneficiary of the project" regarding alternatives). Further, constraining the analysis of reasonable alternatives (and the "purpose and need") to those that could be permitted under 25 CFR § 151.12 is contrary to longstanding Council of Environmental Quality guidance. 46 Fed. Reg. at 18027 (alternatives outside of lead agency jurisdiction must be analyzed; "A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.")

Picking a site for commercial development that is only available because local planning prevents commercial development of that site comes with multiple environmental and infrastructural challenges and costs. At bottom, it is hard to make this project work on this site without causing significant environmental impacts. The evaluation of off-site alternatives would allow the consideration of better sites, where the impacts could be better mitigated. If the site had better access to existing transportation (including multi-modal transportation) and utility infrastructure, the direct, indirect, and cumulative impacts would be easier to address. There is no need to site this project in a SGMA basin with water and wastewater constraints, or to site it in critical habitat for salmonids. The purpose and need and screening criteria have been engineered to screen out reasonable alternatives, and this is a completely unnecessary NEPA violation.

X. Conclusion.

The EA falls woefully short of providing "high quality" information and "accurate scientific analysis." *350 Mont. v. Haaland*, 29 F.4th 1158, 1176 (9th Cir. 2022). "An EIS is required of an agency in order that it explore, more thoroughly than an EA, the environmental consequences of a proposed action whenever substantial questions are raised as to whether a project *may* cause significant environmental degradation. That is exactly the circumstances of this case." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (emphasis in original, citation and internal punctuation omitted). The County looks forward to reviewing an EIS for this project, and will be happy to provide additional information.

Sincerely yours,



Verne Ball
Deputy County Counsel

EXHIBIT A

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Water. Engineered.

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November 9, 2023

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

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SUBJECT: Koi Nation Shiloh Resort and Casino Project Environmental Assessment, Comments on Water Resources Assessment

Dear Mr. Ball:

The County of Sonoma has retained West Yost to review the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West Yost staff reviewed the EA evaluation of proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Environmental Assessment for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023)
- Appendix C - Water and Wastewater Feasibility Study
- Appendix D - Grading and Hydrology Study

West Yost staff prepared these comments and recommendations based on information provided in materials provided by the County and relevant documents referenced in the EA.

PROPOSED PROJECT SUMMARY

The EA analyzes the Koi Nation of Northern California (Tribe) construction of a casino, hotel, spa, conference and event center, restaurants, parking, and support infrastructure (Alternative A and referred to here as the Proposed Project), which includes construction of a drinking water supply system, as well as wastewater treatment and disposal. The EA states that the average potable water demand for the site will be 170,000 gallons per day (gpd) with a peak demand of 294,000 gpd to be provided by on-site production wells (up to 700 feet deep). The estimated average wastewater generation is 232,000 gpd with an average weekend peak estimated at 335,000 gpd. Wastewater treatment is proposed using a package immersed membrane bioreactor (MBR) producing 108,000 gpd of tertiary treated recycled water for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Tertiary treated wastewater would be seasonally discharged on-site to Pruitt Creek.

COMMENT OVERVIEW

The project will have significant impacts related to surface and groundwater resources as described in Section 3.3.3.2 of the EA. Unless otherwise indicated, all comments are in response to "Alternative A" which is identified as the Proposed Project. Alternative A represents the most intense development considered for the site and is therefore associated with the greatest potential impacts to water resources.

While the EA provides some useful information about the Proposed Project and alternatives, the analysis presented lacks critical information that is needed to evaluate the severity of the Proposed Project's impacts. In general, the EA relies on regional rather than site specific data, its conclusions are often not supported by evidence, and the potential cumulative impacts of the Proposed Project are not considered. Additionally, some mitigation measures identified in the EA lack details needed to evaluate their feasibility and effectiveness, for example:

- **The EA lacks analysis and basic data needed to reach conclusions about likely impacts of the Proposed Project.** The potential impacts have not been fully analyzed and the EA lacks essential information needed to evaluate the project and alternatives.
- **Assumptions used in the analysis may be inappropriate and yield inaccurate results.** The water demand, wastewater production, and recycled water reuse values are based on assumptions that are not validated based on local conditions, without discussion of project-specific or site-specific conditions. For this reason, impacts appear to be underestimated.
- **The EA fails to consider the project's impacts in the context of cumulative, reasonably foreseeable future development.** Nor does the analysis consider climate change affects projected to occur over the life of the project.
- **Mitigation Measures outlined in the EA are inadequate.** Because the mitigation measures lack specifics relating to monitoring, criteria for success, and modes of enforcement, there is no certainty that mitigation measures will be effective in reducing potential environmental impacts.

Each of these topics are detailed further below and presented in the following categories as ordered in impact analysis Section 3.3.3.2 of the EA:

1. *Surface Water* – New Structures and Impervious Surfaces in Flood-Prone Areas
2. *Groundwater*– Groundwater Pumping Impacts on Neighboring Wells
3. *Groundwater*– Proposed Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act (SGMA)
4. *Wastewater Treatment and Disposal* – Effluent Discharge to Pruitt Creek
5. *Wastewater Treatment and Disposal* – Impacts to Laguna de Santa Rosa
6. *Wastewater Treatment and Disposal* – Wastewater Treatment and Recycled Water Use

SPECIFIC COMMENTS

The Water Resources Regulatory Setting identifies Federal and State Water Resource Regulations in Table 3.3-1. State regulations listed include Porter-Cologne Water Quality Act, Sustainable Groundwater Management Act, and Title 2 California Code of Regulations. However, it is unclear how these regulations and related policies would apply to the proposed project. California standards for wastewater treatment and disposal should be explicitly applied in technical assumptions, project description, impact analysis, and mitigation measure enforceability.

The EA lacks a discussion of climate change impacts and does not consider increased rainfall and higher temperatures in water and wastewater calculations. As noted in the North Bay Climate Adaptation Initiative's *Climate Ready Sonoma County*, Sonoma County is expected to experience more very hot days than in the past, and overall higher temperatures over a longer period of dry weather, even under forecasts that predict overall wetter conditions. Spring will come earlier and fall will come later, and these extended periods of hotter, drier weather will impact regional water availability. Heat will increase soil moisture deficit and reduce groundwater recharge, meaning that less water will be available even in futures with more precipitation. Heat will also increase the demand for water, exacerbating pressures on limited water resources in periods of drought (NBCAI, 2014).

1. Surface Water – New Structures and Impervious Surfaces in Flood-Prone Areas

The southwest portion of the site is within the Federal Emergency Management Agency (FEMA) regulated flood area and additional areas of the site are shown in The Town of Windsor's Storm Drainage Master Plan (2020) to be flood-prone.

Impervious Surfaces

The proposed action would increase impervious surfaces on the Project Site by up to 35.51 acres through the construction of buildings, circulation, parking, and infrastructure. Increased impervious surfaces would result in increased peak flows and increased total discharge from the Project Site during precipitation events. The Proposed Project will need to consider flood mitigations, to address potential downstream flooding and sediment transport impacts.

The EA states that the Proposed Project would limit post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. However, the plan to achieve this is not fully described or analyzed. Additional calculations and site planning are needed to demonstrate the feasibility of mitigating impacts from the significant addition of impervious surface area.

Floodplain Storage Capacity

Development on the site would displace agricultural land and floodplain area that currently provides floodwater storage and may exacerbate on-site and downstream flooding. Climate models forecast that the frequency and intensity of flooding will continue to increase beyond historical levels.

The environmental analysis should be expanded to consider impacts of climate change to the mapped limits of the 100-year flood and to the intensity of future flooding at the site. Additionally, the EA does not demonstrate how impacts to all floodplain functions would be mitigated to a less than significant level.

2. Groundwater – Groundwater Pumping Impacts on Neighboring Wells

The Proposed Project would pump groundwater from the Santa Rosa Plain groundwater subbasin. The Project Description estimates daily pumping of 170,000 gpd with a peak pumping of 294,000 gpd. Potable water would be sourced from on-site production wells, drilled up to 700 feet deep. Several existing wells are located in proximity to the site, including shallow residential wells at the Mobile Home Estate and two Windsor Water District municipal wells at Esposti Park, north of and in proximity to the Proposed Project site. The municipal wells are located within about 250 feet of the northwest project site boundary and about 2,200 feet from the "treatment area" as identified in Appendix C of the EA, the area tentatively designated for water and wastewater infrastructure.

The EA does not present a conceptual groundwater model of the site and limits the discussion of potential impact to the deep aquifer (300 to 600 feet deep). The geology of the Santa Rosa Plain is complex and groundwater pumping could adversely affect surface water flow and groundwater dependent ecosystems. An analysis of existing groundwater conditions and impacts of project pumping on nearby Pruitt Creek and potential cumulative impacts downstream in the Laguna de Santa Rosa is needed.

Water quality in the wells currently limits water use to irrigation. One of the wells at Esposti Park is used to irrigate the park. The other well, currently inactive, is identified in the Town of Windsor's Water Master Plan for future development of municipal drinking water and would include a water treatment process to remove contaminants.

Impacts to Neighboring Wells

The average and peak pumping of the Proposed Project could result in groundwater drawdown in neighboring wells and could significantly decrease the Esposti well output and potentially affect water quality. The Town of Windsor Water Master Plan (Woodard and Curran, 2019) estimates the sustainable yield of the municipal to be 400 gpm (0.6 million gallons per day) or 350 acre feet per year (AFY). Proposed Project pumping could significantly decrease the previously analyzed estimated yield. Groundwater pumping at the site could also result in adverse impact to domestic wells in the vicinity. This would include reducing production of neighboring wells and/or lowering groundwater levels below well pumps altogether, rendering neighboring wells unusable.

The EA cites a Town of Windsor 2017 aquifer test at the Esposti well as evidence that pumping from the aquifer deeper than 300 feet would not result in a decline in water level. However, although no drawdown occurred during that test, the test lasted only 28 hours. The aquifer test at the Esposti municipal well was over a short duration and is not an appropriate basis for assessing impacts of continuous groundwater pumping proposed as part of the Proposed Project. The EA further concludes, based on very limited data, that the Proposed Project would not affect groundwater levels or water availability in wells drilled to a depth of less than 370 feet. The EA lacks critical hydrogeologic data to reach this conclusion.

Additional groundwater monitoring is needed to confirm hydraulic separation between the upper and lower aquifers underlying the site and surrounding area. This monitoring should be conducted as part of the environmental evaluation and prior to project approval. Additional studies, including a well interference study and hydrogeologic testing, are needed to provide adequate information to allow for a reasonable evaluation of alternative development scenarios and impacts to neighboring wells.

Project wells should be located away from adjacent wells and outside the zone of influence around the existing Esposti wells. Pumping rates should be limited to amounts that avoid impacts to neighboring wells and ensure sustainable yield for the project wells and wells in the vicinity. Additional investigation and groundwater pump tests should be completed to determine the impact to nearby wells. Assessment of the impact to the municipal well, both the current use of the well for irrigation and future use as identified in the Town of Windsor Water Master Plan (2019), is needed to address cumulative impact.

Groundwater Mitigation Measure

Proposed Project groundwater pumping could adversely affect groundwater levels and well production. Mitigation measures listed in the EA include monitoring and compensation; however, the EA does not include metrics for determining when adverse impact has occurred, compensation actions that would be required should adverse impacts result, or an enforcement mechanism. The EA should clarify that both shallow and deep wells will be monitored and eligible for mitigation compensation.

The proposed mitigation measure to reimburse well owners should their well become unusable within five years of project pumping is not mitigation, let alone appropriate mitigation. The effects of environmental harm are more than monetary, and there are reasonably foreseeable indirect effects of unusable wells, such as impacts related to water hauling from traffic and associated GHG emissions, health and safety issues from lack of potable water, and impacts of extending municipal water service, that have not even been discussed.

Adequate data from both the shallow and deep aquifer should be collected prior to initiating groundwater pumping to fully evaluate the impact. Actions should be identified to avoid impacts to neighboring wells. The proposed mitigation measures further indicate that the Tribe, at its discretion and cost, could provide an alternative water supply. However, the EA does not identify the source of these alternative water supplies and it does not provide an evaluation of potential impacts associated with the buildout of alternative supplies. The buildout of alternative water supply infrastructure would likely have significant impacts that need to be analyzed.

3. Groundwater – Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act

With the Sustainable Groundwater Management Act (SGMA), California has identified groundwater basins that require special planning to avoid adverse impacts. The project is in one of these basins. The Santa Rosa Plain Groundwater Subbasin (basin number 1-55.01) is categorized as a medium priority basin by the California Department of Water Resources (DWR) and is, therefore, subject to special regulation and planning efforts. The Santa Rosa Plain groundwater basin is regulated under SGMA because the basin is densely populated, and groundwater use is relied on for rural residential, agricultural, commercial, and municipal water supply. Groundwater management is needed to avoid adverse impacts to the groundwater basin, but there is no discussion in the EA of the unique relationship of this project to groundwater management.

DWR approved a Groundwater Sustainability Plan (GSP) for the basin in January 2023 and the Groundwater Sustainability Agency (GSA) has prepared and will continue to prepare annual reports that provide updates about current groundwater conditions. The GSP states that the groundwater stored in the shallow and deep aquifer systems is declining on average by about 2,100 AFY. The 2022 Annual Report indicated that groundwater levels and groundwater storage capacity are stable but, importantly, future declines are projected. The Annual Report further indicates that more data are needed to assess the health of groundwater to interconnected surface waters and the impact of pumping on groundwater-dependent ecosystems.

Consistency with Santa Rosa Plain Groundwater Sustainability Plan (GSP)

The EA is significantly flawed by not considering cumulative impacts of groundwater extraction. While the analysis mentions the Santa Rosa Plain GSA, it provides no analysis of the Proposed Project's compatibility with the adopted GSP. The EA should include analysis of long-term pumping of 300,000 gpd on potential undesirable results as defined in the GSP, including for water quality. Groundwater pumped from the deeper aquifer in the northern portion of the Santa Rosa Plain subbasin underlying the Project Site is documented to contain elevated concentrations of arsenic and manganese. These constituents have been a constraint for the Town of Windsor's Esposti Park wells and the effects of additional pumping on groundwater water quality is crucial information that is missing from the EA. Additional analysis should consider planned future pumping from the Esposti well, as discussed above.

Long-Term Municipal Water Supply

Proposed Project groundwater pumping may adversely impact Windsor Water District's ability to meet water demands with supplemental groundwater supply and may reduce water supply resiliency during a drought. The EA lacks an analysis of long-term groundwater supply and fails to acknowledge the current and future use of groundwater to meet water demands. The EA should include a water supply assessment that evaluates long-term water supply sustainability using a 45-year time horizon and consider future drought conditions and climate scenarios.

Current developments regarding local water supplies cannot be ignored in the analysis. The decommissioning of the Potter Valley hydroelectric facility and likely reductions in Eel River flows into the Russian River system, could result in reduction of surface water deliveries to the Town of Windsor, resulting in the need for future increased groundwater extraction from municipal wells.

Groundwater Quality

The EA indicates that wellhead treatment would be needed but does not describe the nature of waste products that would result from water treatment to attain potable water, nor is a disposal location identified. Improper disposal will result in, for example, soil and water contamination. The EA should include an analysis of the potentially significant impacts from removing contaminants from wells where groundwater does not meet drinking water standards.

4. Wastewater Treatment and Disposal – Effluent discharge to Pruitt Creek

The EA states that the project will produce and estimated average wastewater flow of 232,000 gpd and a peak weekend flow of 335,000 gpd. For the purposes of design, an average daily flow of 300,000 gpd and average weekend flow of 400,000 gpd was assumed, which is equivalent to about 110 million gallons/year. During the dry season, tertiary treated recycled water would be used onsite for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. An additional 11-acres of off-site vineyard could also be irrigated. Appendix C presents several options for use and storage of recycled water in ponds and tanks. During the wet season, tertiary treated wastewater would be seasonally discharged onsite to Pruitt Creek.

The information presented in the EA does not fully analyze potential environmental impacts from proposed discharge of tertiary treated wastewater to Pruitt Creek. Additional analysis is needed to evaluate water-related impacts and support the EAs conclusion that there will not be significant impacts.

Seasonal Discharge Volume Estimate

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants (WWTPs) to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. Pruitt Creek is an ephemeral drainage with highly variable flow volume. Appendix C relies on streamflow statistics from a U.S. Geological Survey (USGS) gauging station located 5.5 miles downstream of the site, which significantly overestimates the capacity for discharge to Pruitt Creek. Appropriate discharge volumes must be calculated based on local stream flow data for the analysis to be reasonable.

Streamflow statistics at the downstream gauging station indicate that discharges immediately before and after the summertime months (May and October) may be limiting for the Proposed Project, and that streamflow rates are highly variable from year to year. Appendix C indicates that for any discharge scenario developed for the Proposed Project, backup contingency plans should be developed for low-flow conditions. However, the EA does not present this contingency plan, nor does it analyze potential on-site or secondary impacts of such discharge contingency.

The EA does not demonstrate the feasibility of seasonal discharge of anticipated wastewater flows to Pruitt Creek under all climate conditions, even though extremely varied climate conditions are foreseeable. The environmental assessment for the Proposed Project should include an analysis of seasonal discharge options to ensure capacity under all foreseeable climate scenarios.

Treatment Process Vulnerability

The Proposed Project includes construction of a self-contained package (immersed MBR) treatment plant to produce tertiary treated recycled water. The volume of influent will vary with casino usage, weather conditions, and infrastructure functioning. Any WWTP may be subject to "upset conditions", when a sudden and unexpected event prevents the facility from operating properly. There is no indication that the Tribe has considered coordination or mutual aid agreement with other sanitary service providers to provide backup or support in the event of a WWTP upset. The Proposed Project should establish enforceable agreements to engage in mutual aid with one or more sanitary service areas.

Construction of Outfall in Pruitt Creek

Installation of a wastewater outfall structure in Pruitt Creek will adversely affect riparian habitat without appropriate mitigation. Operation of the outfall could alter the flow and hydrology of the Pruitt Creek, resulting in erosion and exacerbated flooding. Information is needed to evaluate the foreseeable impacts of the outfall structure on Pruitt Creek in all flow conditions.

5. Wastewater Treatment and Disposal – Impacts to Laguna de Santa Rosa

Discharge of tertiary treated effluent to Pruitt Creek, a tributary to Mark West Creek which flows into the Laguna de Santa Rosa, could have significant impacts on water quality in the Laguna de Santa Rosa. The Regional Board and the State Water Resources Control Board (State Board) have designated the Russian River and its tributaries, including the Laguna de Santa Rosa, as impaired waterbodies. The Regional Board has adopted policies and Total Maximum Daily Loads (TMDL) (some adopted and some under development) for a range of parameters, including sediment, temperature, pathogens, nutrients (nitrogen and phosphorus), dissolved oxygen, and sedimentation/siltation. The Water Quality Trading Framework for the Laguna de Santa Rosa Watershed adopted by the Regional Board in 2021 sets a "no net loading" effluent limitation for total phosphorus in National Pollutant Discharge Elimination System (NPDES) permits for WWTP discharge to the Laguna de Santa Rosa and provides a mechanism to offset total phosphorus inputs to the system. These regulatory tools recognize WWTPs as potential pollutant sources and provide the mechanisms to address water quality impairment.

The Proposed Project discharge of recycled water would add sediment, nutrients, and phosphorous to the Laguna de Santa Rosa watershed, undermining regional efforts to address existing water quality impairment. No analysis of the impact of project discharge on the Laguna de Santa Rosa watershed is provided. The Proposed Project could contribute to cumulative impacts in the Laguna de Santa Rosa that have not been analyzed. More evidence is needed to support the assertion the proposed discharge would comply with all current and reasonably foreseeable future policies, water quality trading framework, TMDLs, and implementation plans that support the Basin Plan.

The EA concludes that "surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A would be less than significant," but fails to demonstrate ability to meet nutrient limitations for discharge to Mark West Creek and its tributaries. The environmental assessment for the Proposed Project must include an analysis demonstrating how the Proposed Project would meet the no net phosphorous discharge required under the Nutrient Trading Framework and a full analysis of the proposed discharge in the context of adopted and future TMDLs. Standards for effluent phosphorous loads and for a phosphorus offset program should be identified and mitigation measures to reduce impacts of phosphorous discharge and secondary impacts of offset projects should be evaluated.

6. Wastewater Treatment and Disposal – Wastewater Treatment and Recycled Water Use

The information presented in the EA does not fully analyze potential environmental impacts from proposed use and storage of recycled water on-site and off-site. Additional analysis is needed to demonstrate the feasibility of on-site wastewater treatment, recycled water storage and reuse, and potential use of recycled water off-site.

Storage Tank Capacity

The proposed on-site recycled water storage ponds and tanks would be located in the "Treatment Area" in the southeastern portion of the site. Several options for recycled water disposal are presented in Appendix C, including construction of 12- to 16-million gallon recycled water storage tanks. This would provide adequate storage for about 40 to 50 days. Since discharge will not occur between May 15 and September 30 (138 days) significantly more storage, on the order of 40 million gallons, would be needed. Proposed facilities are not shown on the site plan and more information is needed to ensure that there is adequate space to accommodate needed storage, applying site-specific evapotranspiration (ET) rates and discharge volumes.

Evapotranspiration Rates

The landscape and crop ET calculation used in the EA are substantially different from the recycled water applications rates set for the Windsor Water district, the nearest permitted recycled water producer to the site. Site-specific and ET rates should be used to recalculate, together, for a more realistic estimate of the volume of effluent that could be discharged to Pruitt Creek to fully evaluate impacts related to onsite recycled water use and storage.

Recycled Water Reuse

The Proposed Project relies on dry season use and disposal of recycled water, but has not demonstrated adequate opportunities to reuse the volume of wastewater projected to be produced at the site. Eleven acres of off-site vineyards are an optional component of the recycled water balance; however, the proposed irrigation sites have not been identified. The Proposed Project includes use of recycled water for dual plumbing and toilet flushing, however the State Division of Drinking Water (DDW) and applicable regulations do not permit recycled water use in food service buildings, such as restaurants and bars. The stated reliance on State standards is misleading. The recycling of water should be a concrete mitigation measure, with an analysis of the impacts of that mitigation. The analysis should include a realistic estimate of recycled water production, reasonable estimates for recycled water reuse based on acceptable ET rates, and identification of all on-site and off-site recycled water use and disposal options consistent with Title 24.

Biosolids and Brine

Proposed wastewater treatment would produce biosolids and brine that would require disposal. The EA indicates that biosolids produced by the WWTP would be dewatered on-site and periodically hauled to a Class III landfill. In the very near term, State landfill diversion targets (per SB 1383) will require the diversion of biosolids from landfills, and recent CalRecycle regulations have already clarified that biosolids cannot be exempted from diversion targets as alternative daily cover. State law requires a 75 percent reduction in the landfilling of organic wastes by 2025. In addition, biosolids from WWTPs contain constituents of concern, including PFAS (per- and polyfluoroalkyl substances), and both direct and lifecycle impacts of these contaminants should be analyzed. Pyrolysis and disposal that does not involve land application has other foreseeable impacts. Proposed disposal sites that can accept biosolids and brine may be located at great distance for the Proposed Project site so associated transport greenhouse gas emissions and secondary impacts should be evaluated.

CONCLUSION

In conclusion, the Proposed Project may have significant impacts that have not been fully analyzed and additional investigation is needed. The EA does not present adequate evidence to support the conclusion that there will not be significant water resource impacts. Potential project and secondary impacts have not been fully analyzed and the EA lacks information essential for a reasoned choice of alternative development proposals for the site. In light of these deficiencies, we recommend preparation of an Environmental Impact Statement.

Sincerely,
WEST YOST



Sandi Potter, PG, CEG
Senior Technical Specialist I

PG No. 5610
CEG No. 2170

EXHIBIT B

MEMORANDUM

DATE: October 27, 2023

TO: Verne Ball, Deputy County Counsel

FROM: **Jeff Church, Senior Environmental Specialist at Sonoma Water**

PROJECT: Koi Nation Casino Environmental Assessment

SUBJECT: Documentation of observations of steelhead salmon (Oncorhynchus mykiss) in Pruitt Creek, Windsor California.

A few notes on observations of both resident rainbow trout and anadromous steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek near Windsor, California.

The monitoring site was located in a reach of Pruitt Creek that crosses Faught Road, southeast of Windsor California. Observations were made on the upstream and downstream sides of Faught Road, including upstream to the creek culvert at Shiloh Ridge Road (approximately 450 linear feet of stream length). Pruitt Creek is perennial in pools immediately downstream of Faught Road and upstream of Faught Road approximately 0.5 miles as observed. Pruitt Creek transitions to an intermittent and ephemeral stream approximately 100 feet downstream of Faught Road during the dry season.

Monitoring began on December 7, 2001 and continued through July 28, 2016. Monitoring began as an effort to record water temperature measurements to determine whether Pruitt Creek could serve as a potential reference stream in the Russian River Watershed. As a reference stream it could provide information on natural water temperature patterns and ranges that could be expected to occur in similar sub-watersheds within the Russian River basin. Monitoring also included observations for the presence of steelhead salmon. Positive observations of the presence of steelhead coupled with water temperature data could be used to determine if water temperature regimes in Pruitt Creek (and similar sub-watersheds) are suitable for steelhead long-term survivability.

Monitoring frequency varied, with monitoring occurring as frequently as several times a day to as little as once or twice a week or monthly.

Steelhead were observed in all years of monitoring except during the beginning of the effort in December 2001 and winter/spring 2002 due to high turbidity (and low visibility) from a failed culvert and earthen creek crossing upstream of the monitoring location. The culvert and earthen crossing were removed and the site restored in late 2002 to early 2003. The majority of observations included resident rainbow trout of several age classes including fry and young of the year. Adult anadromous steelhead were observed migrating upstream on two different

occasions. The first observation occurred on February 3, 2008 and included one adult steelhead (approximately 18-20 inches in length) in a pool upstream of Faught Road but carried downstream to a pool below the Faught Road crossing. The second observation occurred on February 13, 2008 and included one adult steelhead (approximately 24 inches in length) under the Faught Road Bridge that also moved into the pool downstream of the crossing. This observation included a second smaller fish, approximately 10 to 12 inches in length.

Adult steelhead were also observed in Pool Creek downstream of the confluence with Pruitt Creek in a pool underneath the pedestrian bridge at Windsor Golf Course. Two separate observations of individual adult steelhead were made while golfing in the late 2000s or early 2010s. Observations were not part of a monitoring effort but were happenstance while golfing and so the dates are not exact, but the time period is accurate. Time of year was spring.

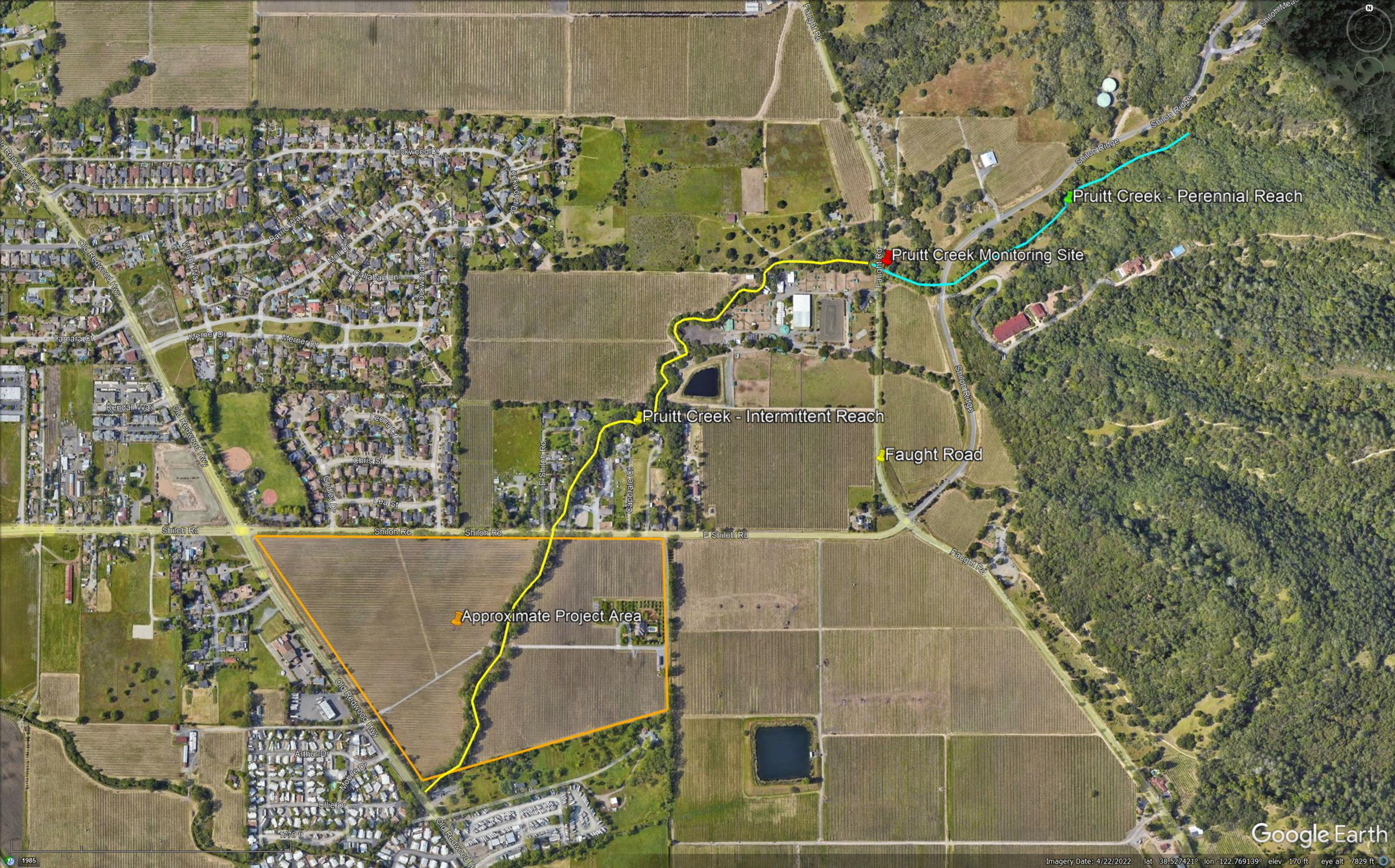

Pruitt Creek - Perennial Reach
Pruitt Creek Monitoring Site
Pruitt Creek - Intermittent Reach
Faught Road
Approximate Project Area
Shiloh Rd
E Shiloh Rd
Old Redwood Hwy
Lockwood Dr
Merner Dr
Shiloh Ridge
Faught Rd
Google Earth

EXHIBIT C

permit SONOMA

County of Sonoma
Permit & Resource Management Department

MEMORANDUM

To: Verne Ball, Deputy County Counsel
From: Robert Pennington, Professional Geologist
Date: November 07, 2023

Subject: Koi Nation Casino Environmental Assessment, Pruitt Creek Observations

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Dear Verne,

I reviewed the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs. I found the EA to be lacking in site specific analysis, particularly in regard to water supply and wastewater. This memo documents observed conditions in Pruitt Creek and discusses limitation to discharge of treated effluent to this waterway.

The National Hydrography Dataset identifies Pruitt Creek as intermittent, meaning that it has little or no flow for a substantial duration of the year. Local hydrologists and fish biologist know the Pruitt Creek near the project site to be dry for much of the year, even during the winter wet season, unless there have been substantial rains in the preceding months.

To verify stream conditions, I conducted a site visit on the morning of October 27th, 2023, and observed Pruitt Creek at the bridge crossing at Old Redwood Highway located immediately downstream of the project site. The creek was observed to be dry with no residual pools or standing water visible within 30 feet upstream or downstream of the bridge. See Figures 1 and 2. Note, the site visit was conducted on October 27, within what is considered the wet season.

The fact that Pruitt Creek in the vicinity of the project site is dry for much of the year presents a substantial limitation for the discharge of treated wastewater. The estimated average wastewater generation is 232,000 gallons per day (gpd) with an average weekend peak estimated at 335,000 gpd. During the dry season, wastewater would be used for vineyard irrigation and the remainder would be stored. During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species.

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge

#11466800 has a contributing watershed area of 251 square miles. The contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. Recycled water storage volumes must be sized for worst case drought conditions when flows if Pruitt Creek are lowest and dry or very low streamflow conditions may extend into much of the wet season.

It is recommended that multiple years of continuous streamflow data be collected at the site, including during at least one year of severe drought. These data could then be regressed with gauge records from nearby gauging stations with longer records to reconstruct a defensible streamflow hydrograph for the site on which to design wastewater disposal systems and analyze potential impacts.

In addition to streamflow, it is recommended that water quality be sampled including temperature, pH, dissolved oxygen, nitrates, and phosphates. These data are necessary to design and assess the feasibility the proposed wastewater treatment and disposal system, and to evaluate potential impacts to water quality, aquatic habitat, and beneficial uses of Pruitt Creek and the Laguna de Santa Rosa.



Figure 1. Image looking upstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.



Figure 2. Image looking downstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.

EXHIBIT D

RIVER ROCK TO DEFAULT ON BONDS: TRIBE TO MISS INTEREST PAYMENT, SAYS CASINO WILL REMAIN OPEN

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
BY ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
May 29, 2014

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

The River Rock Entertainment Authority announced it will not be making the May interest payment due Saturday on two outstanding notes, automatically triggering a default on the bonds.

The tribe emphasized the Alexander Valley casino will remain open for business. But it remains to be seen how the default may impact investors and tribal members who receive payments from the casino's profits.

"Although the scheduled interest payment will not be made, we want to assure our customers, vendors and employees that we are generating sufficient funds to operate our business and provide the excellent customer service that our patrons expect," David Fendrick, the casino's CEO and general manager, said in a statement.

The default comes just six months after the opening of a rival casino adjacent to Rohnert Park, which has cut into River Rock's revenues and drawn away gamblers that once flocked to the Alexander Valley casino.

"Our immediate focus is identifying cost savings opportunities to adjust to the challenges of our new competitive environment," Fendrick said.

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The tribe also has brought in consultants to help analyze the casino's marketing efforts, Dry Creek Tribal Chairman Harvey Hopkins said Wednesday. Tribal leaders are "looking at all options," he said in a brief interview.

"We've been constantly meeting with management of the casino, attorneys and financial advisers," Hopkins said. "It's been a long road to get here."

The River Rock Entertainment Authority, an unincorporated governmental arm of the tribe, on May 1 announced that it had failed to make the scheduled interest payment for the month. The authority said it would use a 30-day grace period to reduce costs and to have what Fendrick then characterized as "significant dialogue with our bondholders."

River Rock opened in 2002 as Sonoma County's first tribal casino. To finance construction, the tribe sold $200 million in senior notes to investors at 9.75 percent interest.

In 2011, the tribe restructured the debt after two rating agencies warned that the business otherwise faced a high risk of default. About $50 million of that debt since has been repaid, Hopkins said in March.

But Hopkins also acknowledged that River Rock's revenues had declined by more than 30 percent since the Graton Resort & Casino opened in Rohnert Park in November. The new casino is closer to Bay Area gamblers and has roughly five times the space of the 61,000-square-foot River Rock facility.

As a result of the drop in revenues, the Dry Creek tribe has cut per capita payments to its 640 members over the age of 18, Hopkins said in March. In total, the tribe has nearly 1,040 members.

On Saturday, the tribe will default on two bonds: its 9 percent Series A Senior Notes and its 8 percent Series B Tax-Exempt Senior Notes, both due in 2018.

The tribe's announcement did not disclose the size of the interest payment that is due Saturday or the amount of outstanding debt it owes to bondholders.

The default will trigger a "waterfall agreement" that dictates the use of the authority's cash flow, according to the announcement.

Analysts who follow the Indian gaming market have noted that creditors of tribal casinos can't seize assets as might be done under a normal loan default. Instead, they suggested that River Rock may once more seek to restructure its debt, possibly by winning concessions from creditors in regard to the repayment of both principal and interest.

A bondholder on Wednesday seemed to take the default in stride.

"I'm not happy about it," said Mike Hudson, an Indiana man who has owned River Rock bonds for more than five years. "There are many options on the table. This is just the beginning of the next chapter. It's not gloom and doom."

Hudson said that by missing the interest payment, the tribe will be subject to having the casino revenues overseen by a trustee for the bondholders.

"Instead of a democracy, it will be more of a dictatorship," Hudson said. "A professional manager will come and manage the way they see best for the benefit of creditors, not the tribe. Essentially, they've conceded control of the casino."

"It will probably work out. Most of these things usually do," he concluded.

The River Rock Entertainment Authority has retained the law firm Holland & Knight LLP as its legal adviser and will use Stuyvesant Square Advisors Inc. as its financial adviser.

You can reach Staff Writer Robert Digitale at 521-5285 or robert.digitale@ pressdemocrat.com. You can reach Staff Writer Clark Mason at 521-5214 or clark.mason@pressdemocrat.com.

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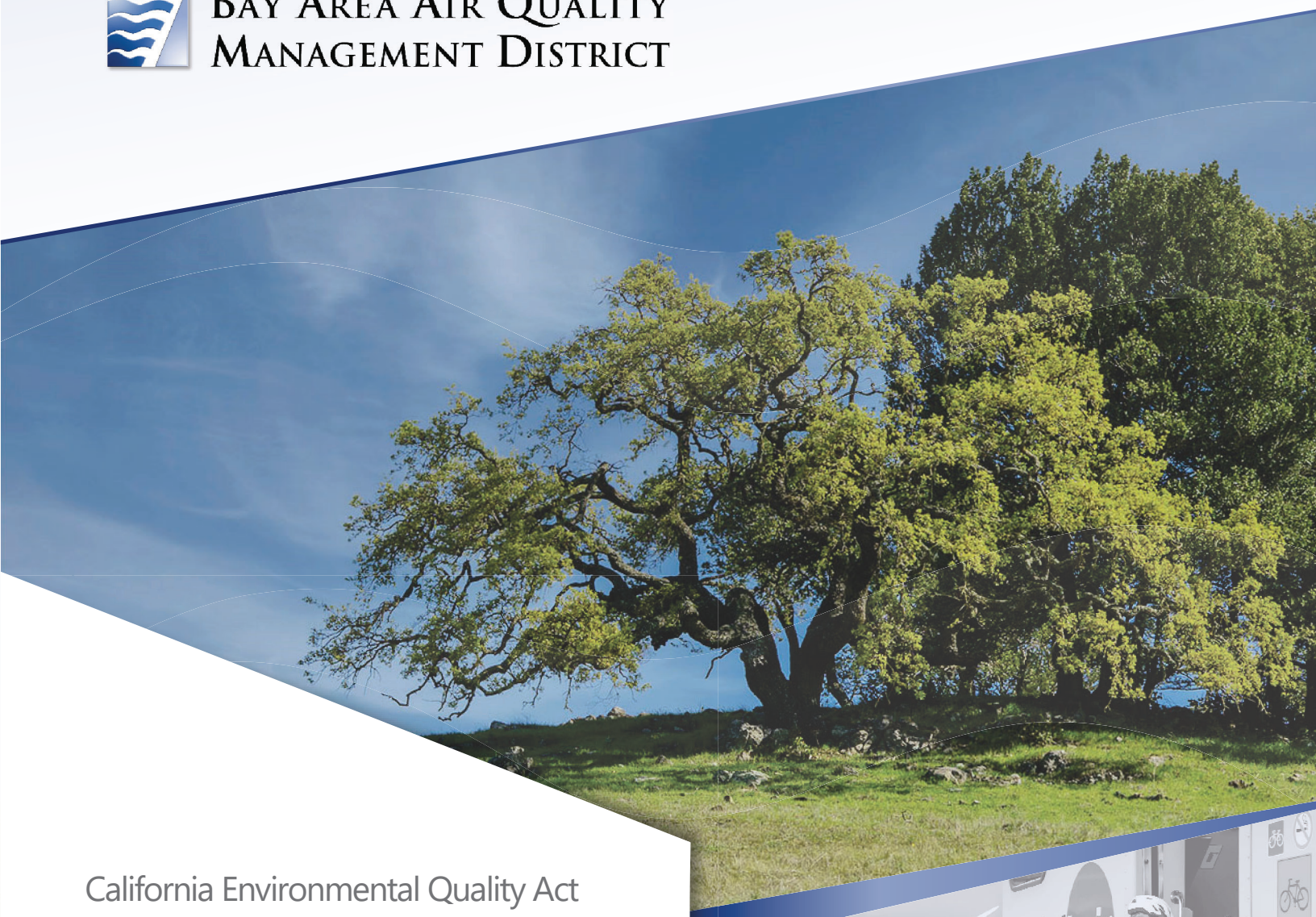
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EXHIBIT E

Bay Area Air Quality Management District

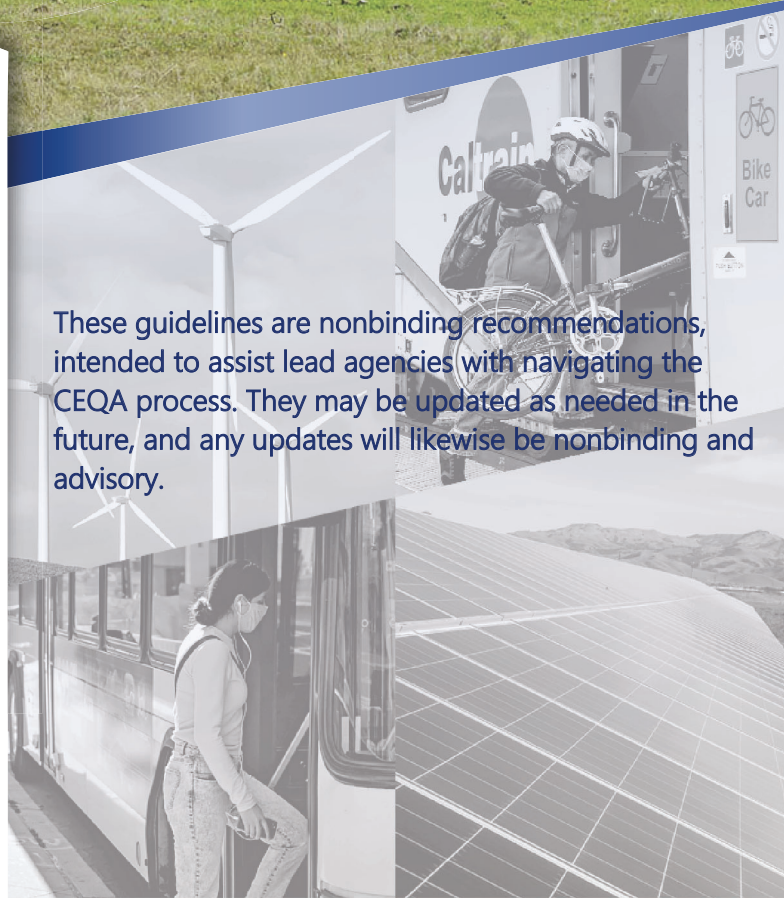


California Environmental Quality Act

Air Quality Guidelines Appendix B:

CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans

April 2022



These guidelines are nonbinding recommendations, intended to assist lead agencies with navigating the CEQA process. They may be updated as needed in the future, and any updates will likewise be nonbinding and advisory.

1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].)[1] But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

[1] The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: https://www.califaep.org/docs/CEQA_Handbook_2021.pdf.

Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California's long-term climate goal of carbon neutrality[2] by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its "fair share" of implementing the goal of carbon neutrality by 2045:

Thresholds for Land Use Projects (Must Include A or B)
A. Projects must include, at a minimum, the following project design elements: 1. Buildings a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development). b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines. 2. Transportation a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA: i. Residential projects: 15 percent below the existing VMT per capita ii. Office projects: 15 percent below the existing VMT per employee iii. Retail projects: no net increase in existing VMT b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California's long-term climate goals—its "fair share"—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California's efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

[2] "Carbon neutrality" is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.

EXHIBIT F

The County of San Diego

Planning Commission Hearing Report

Date:	July 22, 2022	**Project:**	Transportation Study Guide to Implement Vehicle Miles Traveled Analysis
Place:	County Operations Center (COC) Hearing Room 5520 Overland Avenue San Diego, CA 92123	**Case/File No.:**	N/A
Time:	9:00 a.m.	**Location:**	All Districts
Agenda Item:	#7	**General Plan:**	Various
Appeal Status:	Not applicable; Approval by the Board of Supervisors	**Zoning:**	Various
Applicant/Owner:	County of San Diego	**Communities:**	All unincorporated communities
Environmental:	Notice of Exemption; CEQA Section 15378 and 15060(c)(3)	**APNs:**	Various

A. OVERVIEW

The purpose of this staff report is to provide the Planning Commission with the information necessary to make a recommendation to the Board of Supervisors (Board) to adopt, adopt with modifications, or not adopt the proposed Transportation Study Guide (TSG). The revised TSG aligns with State guidance and establishes a threshold based on the regional average Vehicle Miles Traveled (VMT), which includes the entire San Diego region. The TSG also identifies Infill Areas where no VMT analysis or mitigation would be required for future development projects. The TSG also includes other standards and criteria that would be used to evaluate projects, including small projects, locally serving projects and public facilities. The TSG describes the process and procedures for project applicants to use when preparing transportation analyses for projects in the unincorporated area. If adopted, projects could use the TSG immediately as the basis to address the transportation effects of projects.

B. RECOMMENDATIONS

This is a request for the Planning Commission to consider the proposed Transportation Study Guide (TSG) and make recommendations to the Board. Planning & Development Services (PDS) recommends that the Planning Commission take the following actions:

1. Find that the proposed resolution complies with the CEQA and State and County CEQA Guidelines because the resolution is: (1) not a project as defined in the Public Resources Code section 21065

and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3); (2) categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and (3) subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the resolution implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

2. Recommend that the Board of Supervisors adopt the Resolution:

   RESOLUTION OF THE COUNTY OF SAN DIEGO BOARD OF SUPERVISORS ADOPTING THE TRANSPORTATION STUDY GUIDE INCLUDING TRANSPORTATION THRESHOLD OF SIGNIFICANCE FOR VEHICLE MILES TRAVELED

C. BACKGROUND

In 2013, the State of California (State) passed Senate Bill 743 (SB 743), which changes how jurisdictions, including the County of San Diego (County), are required to analyze transportation impacts from projects under the California Environmental Quality Act (CEQA). CEQA was signed into law in 1970 to provide standards for regulating pollution and preserving the natural environment. CEQA requires California's public agencies and local governments to measure the environmental impacts of development projects or other major land use decisions and to limit or avoid those impacts when possible. State CEQA Guidelines encourage lead agencies, like the County, to develop and publish guidelines to describe the level at which the environmental impacts become significant and therefore need to be reduced and/ or mitigated, or offset. These are called thresholds of significance. SB 743 required local jurisdictions to shift their environmental impact analysis for transportation from using traffic congestion or "level of service" (LOS) to Vehicle Miles Traveled (VMT) starting July 1, 2020. VMT replaces motorist delay and associated level of service (LOS) as the metric for analysis of transportation impacts under CEQA.

Although traffic congestion measured the impact on the driver, VMT is intended to balance the needs of congestion management with statewide goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation, such as walking and biking. VMT is calculated by determining the distance and number of vehicle trips generated from a home or business. When analyzing a project's impact on the environment from VMT, a lead agency can provide guidance on impacts from VMT by comparing the estimated VMT from the project to the average VMT in a defined area.

SB 743 does not require local agencies to adopt guidelines or to establish a threshold for VMT; however, agencies may adopt guidelines and thresholds after public review, and these guidelines and thresholds must be supported by substantial evidence. If an agency does not adopt guidelines or thresholds, each project must develop a specific threshold to determine whether the project's impacts will be significant under CEQA.

When analyzing a project's impact on the environment from VMT, the estimated VMT from the project is compared to the average VMT in a defined area. If a project decreases VMT from existing conditions within the defined area, it may be considered to have a less than significant impact on transportation, depending on the decrease. A project can also be considered to have a less than significant impact on VMT if it generates less than a specified number of average daily trips. Other criteria can also be used

to determine if a project has a less than significant impact from transportation on the environment, such as projects that are adjacent to existing major transit facilities.

Projects found to have a significant impact on the environment under CEQA are required to mitigate for, or offset, those impacts where feasible. Mitigation includes projects that reduce VMT like installing bike lanes and sidewalks, which reduce driving and vehicle trips. Because a project's VMT is largely based on y the location of the project, which cannot easily be changed, mitigating for significant VMT impacts can be difficult to accomplish without a defined mitigation program in place. Mitigation for transportation impacts can also be costly. Therefore, using VMT as the metric for analyzing transportation impacts under CEQA incentivizes development in higher density areas near transit with a diverse mix of uses, and disincentivizes it in lower density areas that are more distant from jobs, services, and transit.

A transportation analysis involves determining the project's VMT using nationally adopted traffic standards and modeling and comparing those to something like a regional VMT average. Then for a project to be considered efficient, it is compared to a threshold that is also adopted by a jurisdiction, such as 15 percent below the regional VMT average, which is the threshold recommended by the Governor's Office of Planning and Research (OPR). If the average VMT is below the threshold, the project does not have a significant VMT impact and can move forward, without further VMT analysis.

If the average VMT for the project exceeds the threshold, the project must propose mitigation to reduce the project's VMT to below the threshold (i.e., by providing multimodal or transit infrastructure or other measures to reduce or offset VMT). If the project cannot reduce their VMT to below the threshold, an Environmental Impact Report (EIR) is required with a statement of overriding considerations for the project's significant and unavoidable transportation impacts. VMT is one of multiple subject matter areas analyzed under CEQA. Even if a project does not have a VMT impact, the project still requires environmental review for other CEQA environmental subject matters like biology, cultural resources, and fire hazards.

OPR prepared a Technical Advisory document to assist local agencies when developing their own guidelines for the assessment of VMT, thresholds of significance, and mitigation measures. OPR stated that lead agencies have the discretion to set or apply their own thresholds of significance. Based on staff's research, jurisdictions across the state have taken different approaches to implement VMT. Of the 58 counties in the state, 16 adopted their own VMT guidelines, nine chose to rely on OPR guidance and not adopt their own guidelines, and 33 have no guidance, so projects develop their own VMT analysis on a case-by-case basis. Of the 16 counties that adopted their own VMT guidelines, eight counties adopted a threshold based on the unincorporated area average, six adopted a threshold based on the regional average, and two counties chose other alternatives.

On June 24, 2020 (6), the Board of Supervisors (Board) adopted a Transportation Study Guide (TSG) for the unincorporated area, a technical guide for analyzing transportation impacts for projects using VMT. The TSG described the process and procedures for project applicants and their consultants to use when preparing transportation analyses. The TSG also included a methodology referred to as Local Mobility Analysis (LMA) to meet the County's General Plan requirement for a Level of Service (LOS) D (which is considered a stable flow of traffic with an acceptable level of delay) or better and to ensure the safe operations of the roads for all users including bicyclists and pedestrians. In September 2020, Cleveland National Forest Foundation, Coastal Environmental Rights Foundation, and the Sierra Club filed suit against the County, alleging adoption of the TSG violated CEQA and SB 743.

On May 19, 2021 (1), the Board received an overview of how VMT implementation was progressing nearly a year after adoption of the County's TSG. Staff also requested the Board to provide direction on potential updates to the VMT thresholds used to evaluate the significance of a project's transportation impacts, including options for using an unincorporated area average, sub-areas average, or a regional average to measure existing average VMT, and the screening level threshold for "small" projects that should be exempt from performing additional transportation analysis. A project is considered "small" if it generates less than 110 Average Daily Trips (ADT). The Board was also given the option to leave the existing TSG in place.

After receiving the update, the Board provided direction to explore 13 items related to VMT:

1. Assess and explore the process by which infill development can be done in a manner to ensure no VMT mitigation is necessary.
2. Explore the potential creation of transit accessible areas and look at the intersection between VMT efficient areas or lower thresholds in accordance with the areas that do not require further analysis. Explore the potential transit corridors and look at the SANDAG Regional Transportation Plan (RTP), Metropolitan Transit System (MTS), North County Transit District (NCTD), and other possible areas and how that may impact VMT efficient areas or areas covered by the exemption.
3. Explore programmatic or plan-level mitigation opportunities for VMT, including the concept of a regional mitigation bank.
4. By-right process for development in VMT efficient areas.
5. Further exploration of exceptions to the VMT thresholds for affordable housing projects at less than 100 percent affordable, including mixed income and various components of Area Median Income (AMI), along with exploring the possibility of exceptions for middle income or workforce housing, local hire, and agriculture type projects that might have a net impact of lowering VMT.
6. Explore land use density of land that is in VMT efficient areas.
7. Continue to track guidance from the California Office of Planning and Research (OPR), along with other governing body efforts, including the SANDAG RTP.
8. Monitor the progress of other jurisdictions as it relates to their adoption, along with what unique programs, exemptions, or opportunities they may be exploring that the County may want to consider.
9. Consider a phase-in timeline to allow for a transition into a regional geography.
10. Consider compliance options for projects that have already been proposed or are in the process now.
11. Conduct an analysis of the options to remove the Local Mobility Analysis.
12. Inform the Board regarding updates on development of the Smart Growth component of the Climate Action Plan (CAP) Update and Supplemental EIR to ensure it is integrated and aligned with efforts around VMT.
13. Conduct an analysis of proposed housing projects designated for individuals under 60 percent AMI and under 80 percent AMI and the potential cost impact of switching to a regional geography.

After the May 19, 2021 Board meeting, OPR clarified that "regional" is defined as the full geography within the jurisdictional borders of a Metropolitan Planning Organization (MPO) or a Regional Transportation Planning Agency (RTPA). For San Diego County, this is the San Diego Association of Governments (SANDAG) region, which includes the entire county. Previously, in its 2018 guidance, OPR recommended that for projects in the unincorporated area, the lead agency compare a project's VMT to

a “citywide” average VMT or the “region’s” average VMT. For example, the City of San Diego could evaluate a project’s VMT compared to the citywide average or the overall region’s average. For comparison, the VMT threshold using the unincorporated average is 23.4 miles and the threshold using a regional average is 16.9 miles (average reduced by 15 percent as recommended by OPR).

Although the OPR Technical Advisory is intended to provide advice and recommendations and is not mandatory, as directed by item 7 above, staff returned to the Board on September 15, 2021 (1) with this new guidance, and the Board adopted a resolution to rescind the County’s TSG based on OPR’s updated guidance that the County should use the regional average VMT for projects in the unincorporated area.

On February 9, 2022 (7), the Board received the presentation and overview of the 13 items and provided direction on options to implement analysis of transportation impacts of proposed projects under CEQA using VMT in two phases.

Phase one included the following:

1. Prepare a revised TSG using a regional geography, circulate it for a 30-day public review, and return to the Board within six months for consideration with a cost of $100,000. The revised TSG should also include the following:
    a. Develop new VMT screening criteria for projects within Infill Areas and any surrounding “Village” as identified in the General Plan, excluding areas outside of existing or planned transit and areas mapped as High and Very High Fire Hazard Severity Zones. The screening criteria will allow projects located in Infill Areas and any surrounding “village” to move forward without VMT analysis or mitigation. This option would allow up to 5,870 homes to move forward without VMT analysis based on the General Plan (Infill Areas combined with VMT efficient areas). Projects located outside these areas will need to conduct a VMT analysis and propose mitigation to reduce their impacts.
    b. Adopt the 110 average daily trips small project screening criteria.
    c. Adopt OPR recommendation to screen out projects with 100 percent affordable housing from VMT analysis.
    d. Require an LMA. The LMA for discretionary projects would be used to evaluate road operations, traffic safety, and access. The study scope of LMA has been reduced when compared to the previous CEQA required traffic analysis based solely on Level of Service prior to the implementation of SB 743 in that the area evaluated is limited to intersections located near the project with the primary focus on traffic safety and not roadway capacity.

2. Directed staff to return with options for a sustainable land use framework (Option 6-D). Staff also recommends the Board direct staff to prepare options for further direction to inform the development of a sustainable land use framework for Board consideration and return to the Board in 120 days. Options would include the following: identification of principles for sustainable development that could inform future land use decisions; and comparison of planning mechanisms to implement Board directed principles, including zoning overlays, specific plans, community plan updates, or a general plan update and return to the Board within 120 days, including how to add a parcel-by-parcel analysis and convene stakeholder groups around the issue of addressing the additional considerations that would facilitate development in VMT exempted areas at a later date.

EXHIBIT G

Inside the fight to save Windsor from the Kincade fire

Officials were told Windsor would almost certainly lose homes to the Kincade fire, but not a single house was lost, thanks to hundreds of firefighters who braved great peril to face down a surging wildfire on Oct. 27.



SLIDE 1 OF 30

Santa Monica Fire Department firefighters Armando Reyes, left, and Andrew Klein quickly bundle their fire engine's hose to move to protect a different structure during the Kincade fire on Los Amigos Road in Windsor on Sunday, Oct. 27, 2019. (ALVIN JORNADA/ PD)

MARY CALLAHAN
THE PRESS DEMOCRAT
November 9, 2019

Flames were sweeping down the grassy slopes of Foothill Regional Park toward the near-empty town of Windsor when Sonoma County Fire District Battalion Chief Mike Elson drove up Cayetano Court and realized the moment they had all been bracing for had come.

Two-story flames and glowing firebrands whirled through the smoke-darkened skies, setting fences and trees ablaze, lighting landscaping and, soon, sparking fires at several homes in the neighborhood, as well.

The marauding Kincade fire had been bearing down on Windsor all morning, burning its way through a rural landscape across a wide area north of town, where an army of firefighting forces stood ready to face it late in the morning of Oct. 27.

But it would be northeast Windsor, in and around hundreds of homes in the Foothill Oaks Estates, where they confronted the biggest threat - a near-overwhelming battle to keep the blaze from taking the neighborhood and the town.

Scores of firefighters took part in the initial attack, making a stand amid the chaos, barely daring to hope they would prevent the fire from ripping through town, let alone sweeping across Highway 101 and burning a trail of destruction all the way to the coast.

"That fire coming off of Foothill Park, that fire was coming off that hill very quickly, and it was massive," said Elson, who was leading a nine-engine task force but eventually took command of the Foothills campaign. "It was a massive firefight. There were flames up over the tops of houses ... and those are mostly two-story houses, so they were 30, 40 feet in the air."

But in what became a pivotal juncture in the two-week effort to beat back Sonoma County's largest wildfire ever, the battle for Windsor spared every single home in the town of 27,000 people and substantially curbed the fire's spread.

Sonoma County fire officials credit 200 firefighters or more, both local and from outside the area, who jammed into the neighborhood and simply refused to give way to the flames.

They fought house-to-house, confronting the blaze so aggressively they pushed the boundaries of personal safety to the very limit - to the point Sonoma County Fire District Chief Mark Heine said he came close to ordering crews to fall back in a few cases.

"That was very dangerous firefighting in there," Heine said. "To enter someone's backyard, where everything in their backyard was on fire, meant they didn't know if they could get themselves back out. There was just that spirit of, 'We're not letting this fire come to our town.'?"

It came frighteningly close, making innumerable forays into the Foothills area, a neighborhood of several hundred homes tucked up against the hills of the regional park east of Arata and Hembree lanes in the northeast section of Windsor.

Particularly vulnerable were about 150 homes arrayed around cul-de-sacs, many of which had backyards exposed to the park or connected landscape, often separated from the parklands only by wire fencing.

But ferocious winds that sent sparks and flaming debris well ahead of the fire front that day meant anywhere in the neighborhood or even within a mile or two was at risk of blown embers and fire starts.

Were the fire to get established in even two or three homes, generating intense heat, large flames and embers, "We were likely to lose that whole neighborhood," Heine and others said.

Residents who returned to the area days later found singed trees and burned gardens, lengths of fencing turned to charcoal, ash-covered ground where the flames had spread directly from the blackened hills of Foothill park into their backyards. There were scores of places - outdoor sofa cushions, patches of grass, Halloween decorations - that had caught fire and been put out.

Firefighters had to kick down doors in a few cases to douse attic fires after embers ignited rooftops or burned fencing up to exterior walls like they did at Michelle and Brad Stibi's place on Valle Vista Court.

"We were the loop on national TV," Michelle Stibi, 50, said, her expression suggesting she was none too impressed with the celebrity brought by widely shared footage of the firefight in her yard. "This is going to be a concrete jungle when Brad gets done with it."

Fire officials say it would have been worse if it weren't for the stucco and tile or concrete roof construction that dominates the Spanish-styled Foothill Oaks Estates subdivision that makes up most of the area between Hembree Lane and Vinecrest Road, where the firefight took place.

"Some of those embers were still getting up into those eaves," Elson said, "but construction features that they built into those neighborhoods definitely helped."

A far more critical factor was the early evacuation of residents, clearing the way for firefighters to battle flames and defend property without the need to commit time and attention to rescue efforts. Saving lives and getting people out had completely consumed public safety personnel during the early phase of the 2017

Tubbs fire, which swept across Sonoma County from Calistoga by night with such speed that hundreds were trapped in their homes and neighborhoods and forced to flee through the flames.

"If people had stayed in those homes in Foothill, they would have died," Heine said starkly, "and if not, it would have created such a complex issue for us that we wouldn't have been able to fight the fire. It allowed us to focus on the fire and not life-safety and rescue."

The 77,758-acre Kincade fire, now 100% contained, started many miles north of Windsor, atop The Geysers, during extremely strong winds the night of Oct. 23. It had burned virtually unchecked for four days along a mostly southerly path before it rushed toward Windsor during a period of rapid, wind-driven growth around midday Oct. 27.

Sonoma County Sheriff Mark Essick had ordered all Windsor residents to leave home a day earlier in what would be a succession of evacuations that cleared out a huge swath of Sonoma County. More than a third of the county's population was under mandatory evacuation order, from Geyserville and Alexander Valley down to north Santa Rosa, and west to Jenner and Bodega Bay.

Hurricane-force winds coming out of the northeast and fire forecast modeling had contributed to the same terrifying prediction: that an unstoppable firestorm could burn through Windsor and jump the freeway into the thickly forested Russian River Valley, where flames fed by dense fuels unburned for decades would run all the way to the Pacific Ocean.

Public safety officials alerted the public to this "worst-case scenario" when evacuation orders were issued.

But it's not clear how many civilians appreciated the very real possibility of it coming to pass.

Most Californians are certainly aware of the increasing intensity of and destruction wrought by recent wildfires, experienced close to home in October 2017, when a series of fires rampaged through the region, killing 24 ?people in Sonoma County and destroying more than 5,300 homes.

But even Windsor Mayor Dominic Foppoli, during a celebration of the town's endurance last weekend, felt compelled to ensure his constituents understood the gravity of what they had faced a week earlier.

Foppoli, 37, said top fire brass briefed him and other town officials a short time before Essick ordered Windsor and Healdsburg to evacuate the morning of Oct. 26 and told them at least part of their community would likely be lost to fire before the flames continued westward.

"This was not an 'if,' but it was a 'when,'?" Foppoli told an estimated 4,500 who gathered in the town square to salute firefighters.

But there was positive side, too, Sonoma County Fire District Battalion Chief Marshal Cyndi Foreman said.

All the mapping, modeling and intelligence put Windsor squarely in the bull's-eye of the wildfire, Foreman said, so "we knew that we were not going to dodge this one, but we also knew it was coming."

While the Tubbs fire and last year's deadly Camp fire in Paradise continue to inform firefighters' expectations in an age of extreme fire behavior, the siege on Windsor came with the luxury of time to plan ahead.

"I'll take a disaster that we know is coming all day long, rather than something that's going to wake me up out of a dead sleep that I don't know is coming," Foreman said.

The Kincade fire was fought under the unified command of Cal Fire, the Sonoma County Sheriff's Department, the Sonoma County Fire District and several other agencies.

But the planning for Windsor was turned over largely to the Sonoma County Fire District and to Battalion Chief Mark Dunn, with the aid of Heine and other top officials, and support from many others, including fire personnel from other agencies who happen to live in northeast Windsor and offered to help.

Nothing less than the fate of the town hung in the balance, and many thought that even if the town were saved, hundreds of homes would be lost first.

Dunn, for instance, thought substantial residential losses were inevitable if the fire got established at Foothill Regional Park, as it did.

"When people have talked to me, I've been so emotional about it," Dunn said. "It's one thing to have a plan and to ask strike team leaders and strike teams and my own department, 'I need you to do this; you're going to go to this neighborhood and try to hold your ground.'

"That's one thing. But they actually did it, and they did it perfectly. So many individual engines from different agencies doing all that," he said. "It was amazing."

The firefighting force had to be ready to meet the blaze coming in from the north or the east - or both, which is how it transpired - and be prepared to hold Highway 101, whatever it might take, Dunn said.

They had to figure out where they might lose control of the fire and identify contingency plans that included lines which, once crossed, would trigger crews to fall back several blocks to preset points. There was even the potential for the fire to take successive neighborhoods, forcing the entire firefighting force to seek refuge across the freeway if it got bad enough.

Dozens of engines were moved into the area by Saturday night, Oct. 26, some staged at the Luther Burbank Center for the Arts in Santa Rosa. Three strike teams of five engines were prepositioned in Windsor, a number of them redeployed directly from the 4,615-acre Tick fire that was winding down in Southern California.

Sonoma County Fire District personnel and a fleet of bulldozers also were deployed around Windsor, many of them around Arata Lane and Highway 101/Los Amigos Road, near the command post.

As restless fire officials patrolled rural areas north of town late Sunday morning, around 11 a.m., the fire made a drive for Windsor, sweeping off the hills from Chalk Hill Road in several directions once, fire officials said. One head of the fire was veering past Hillview Road toward Limerick Lane and the highway, while another came down Hillview south toward Brooks Road and Arata Lane, and a third came down Chalk Hill Road toward the area of Vinecrest Road, though eventually the biggest threat came from edges of wildfire that merged in Foothill Park and spread swiftly through the grasses of the 211-acre open space.

Roberto Pardo, 54, and his family, meanwhile, were safely ensconced in a Napa hotel, anxiously monitoring news of the Kincade fire as they had through the night, when security cameras from his Windsor home began sending snippets of grainy footage to his cellphone.

Just before noon, he saw two fire engines pull into Miramar Court near the west side of Foothill park and observed firefighters go into his neighbors' backyards and his own - ensuring they had access in the event it was necessary, was Pardo's guess. He could see the wind whipping so fiercely it bent one of his palm trees nearly in half.

Then the six firefighters, apparently satisfied, lined up side by side in the road facing east and waited - watching, bracing, for the coming siege.

When he saw a law enforcement vehicle take a last, hasty spin around the court before speeding away - as if checking to make sure everybody was gone - he knew "that the fire was here," Pardo said.

Firefighters were frantically canvassing neighborhoods, moving propane tanks, lawn furniture, umbrellas and whatever flammable items they found away from homes, or kicking down fences to improve access or avoid creating fuses that might help ignite homes.

Sonoma County Fire District Capt. Mike Stornetta, whose own home is mere blocks away, had by then gone looking for the fire, dragging a fire hose into Foothill park with Capt. Fred Leuenberger and confronting it there amid the oak trees. They sounded the alarm in the moments before flames hit Cayetano Court and made entry into the neighborhood behind a number of homes at once.

His report marked the beginning of an epic battle, marked by what Dunn said was suddenly one report after another of the fire's arrival in neighboring cul-de-sacs and the response of dozens of fire crews into the area.

Foreman said, "It was like somebody blew the bugle and the cavalry arrived. You couldn't run 10 or 20 feet without running into another firefighter. There were so many resources that saturated that community."

Even so, it was daunting.

Elson said he thought for a second about the personal vehicle he had left at the Hembree Lane fire station more than a mile to the south and whether he would have time to move it before the fire got there.

"My gut reaction was that we were going to lose that whole neighborhood," he said.

Foreman remembers a point when the fire came down to Vinecrest Road toward the east edge of town when the whole sky went dark - "like somebody turned the lights off" - perhaps as the fire took three homes up a steep, narrow tail of Vinecrest, just outside the town limits.

In the Foothills neighborhood, the firefight lasted an hour, perhaps 90 minutes, a relentless attack in which each strike team and engine leader was authorized to exercise his or her own discretion as to what was needed to advance the cause.

Many neighborhood residents saw the battle unfold on TV or social media, including a widely watched video shared in real-time where they watched firefighters in their own yards and saw their properties in flames.

"We created a whole text group before we evacuated on Saturday, and we all talked to each other the whole time," said Beverly Madden, who retired to a home at the end of Valle Vista Court a few years ago and was alarmed by the video someone passed her way.

She now has ash across part of her backyard and new landscaping, now probably ruined. But "when we saw the video, compared to when we got here? We feel super, super great."

The fire came within yards of Mike Hoesly's home up a long drive way atop a hill at the north end of Cayetano Court, after "toasting" about two-thirds his vineyard and burning through a good deal of landscaping at the edge of his backyard just off Three Lakes Trail in the regional park.

But he's grateful that firefighters saved his heritage oak - the only thing growing on the property, when he and his wife, Kate, moved there in 1990.

"This could have been so tragic, you know?" said Hoesly, 70. "We just feel kind of like if the home construction had been different, it could have been a domino effect."

There would be more firefighting to do later that day and in the days to come, as the wildfire swept up toward Shiloh Ridge and the Mark West Creek watershed.

But for Elson and others from the district who fought the 2017 Tubbs fire and struggled fruitlessly to try to protect homes they instead watched burn, defending Windsor proved a watershed - a badly needed save, a source of redemption, he said.

"You know," said Stornetta, "with the winds that we were having and, with the experiences that we've had in this area and all over California, I was really not holding out a ton of hope that we were going to be able to save it. However, the mentality that everyone had was, 'Hey, we're not letting this happen again.'?"

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CALIFORNIA WILDFIRES

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

Kurtis Alexander, Steve Rubenstein, Alexei Koseff, Demian Bulwa

Oct. 26, 2019 | Updated: Feb. 24, 2020 4:20 p.m.

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Firefighters light back-fires along Pine Flat Road near Geyserville, Calif. on Saturday, October 26, 2019 to head off the Kincade Fire, which has grown to more than 25,000 acres and triggered mandatory evacuations in Windsor, Geyserville and Healdsburg.

Kurtis Alexander/Kurtis Alexander / The Chronicle

***Read the latest on the* Kincade Fire here.**

Two years after being scarred by the deadly Wine Country wildfires, Sonoma County was under siege again early Sunday as thousands of firefighters battled to keep powerful winds from pushing the massive Kincade Fire southwest through dense cities and towns toward the Pacific Ocean.

As of midnight, the county resembled a disaster zone from end to end. Some 90,000 residents has been ordered to flee their homes — including those in the touristy wine capital of Healdsburg, with its boutique hotels and tasting rooms, and the community of Larkfield-Wikiup, which saw whole subdivisions flattened by the Tubbs Fire of October 2017.

In the Santa Rosa neighborhoods of Coffey Park and Fountaingrove, meanwhile, residents in brand-new homes just rising from the ashes were warned they might be next to evacuate. Just about everyone else in the county was either under an evacuation order, an evacuation warning, or a power outage imposed by Pacific Gas and Electric Co. to keep additional blazes from sparking.

"We're kind of at the mercy of Mother Nature right now," said Jonathan Cox, spokesman for the state's Cal Fire agency. "Batten down the hatches and hope the storm passes."

As of midnight, the Kincade Fire in and around Geyserville — possibly sparked Wednesday by PG&E equipment that had been left on despite the outage — had blackened 26,000 acres and destroyed 31 homes and 46 other structures, according to Cal Fire.

The fire was just 11% contained, or surrounded. More than 2,800 firefighters and upward of 250 engines worked in rugged hills and canyons seeking to boost that figure as they prepared for winds from the northeast forecast to reach 40 mph — with gusts up to 80 mph.

No deaths had been been reported. Two civilians and one firefighter sustained non-life-threatening injuries Friday after the firefighter deployed his personal fire shelter to save himself and the two fleeing residents.

Saturday had been a day of preparation and worry. Authorities continually expanded evacuations, while opening shelters for evacuees. Fleeing residents jammed Highway 101, and lined up to fill their tanks at gas stations. Stores in Sonoma County and well beyond sold out of ice, batteries, portable generators and other supplies.

Evacuated areas included Windsor and Mark West Springs as well as Guerneville, Forestville, Occidental, Bodega Bay and other spots along the Russian River and the coast. Among those who had to move on were roughly 100 patients at Sutter Santa Rosa Regional Hospital, who were transferred to medical facilities in Novato and San Francisco. Sonoma County officials had to empty a jail as well, just in case.



A police officer leaves a home after placing an evacuation order in the mailbox on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

National Weather Service meteorologist Drew Peterson said the area was expected to see "extreme, extreme conditions." The strongest gusts were expected to pick up early Sunday in the hills and ridges and continue into Monday — a more intense and longer-lasting windstorm than the one that pushed the 2017 fires in Wine Country.

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On Saturday, in a last-ditch effort to halt the progress of the fire before the winds picked up, hundreds of firefighters aided by airplanes and helicopters pre-emptively burned vast stretches of grassland to create a fire break. The back-fires, many set along Pine Flat Road east of Geyserville as the sun went down, were designed to create a buffer zone between the fire and the many towns of the Sonoma Valley.

"We want to make sure it doesn't go down any farther," said Capt. Mike Tompkins of the Tiburon Fire Department.

His crew was part of a team using drip torches to light dry brush and grass on fire. Another team, high on a ridge above, was lighting fires back toward Tompkins' team so that the flames from both sides would merge and create one big fuel break. Asked if it would work, Tompkins raised crossed fingers and said, "We'll find out."



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Chris Markell momentarily stops his car on the 101 on ramp to photograph the Kincade Fire on Friday, Oct. 25, 2019, in Healdsburg, Calif.
Paul Kuroda / Special to The Chronicle

In Healdsburg and Windsor early Saturday, residents and businesses rushed to pack up and get out of town. Danielle Kuller, the manager at Amy's Wicked Slush ice cream store in Healdsburg, said the store shut down and sent employees home.

"We're just trying to make sure everyone's safe," Kuller said.

At KC's American Kitchen in Windsor, dozens of breakfast customers watched the sheriff's press conference on the restaurant TV and found out the town was being evacuated.

"They all paid their checks and left," said Sheryl Farmer, the restaurant manager. "The restaurant is empty now. Our staff is worried and frantic. They're all trying to get home to be with their families. It's a little stressful."

By afternoon, the only people still allowed in Windsor were law enforcement personnel putting barriers on roads, driving through neighborhoods with loudspeakers and sirens, and going door to door to reach residents.

"It was nuts," said Brian Benn, who waited 15 minutes to fill up at a gas station in north Santa Rosa, just outside the evacuation area, where he said the lines for each pump were six cars deep. "You can tell people are feeling a little panicked, and trying to get their stuff together."

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From left: Cal Fire Healdsburg's Daniel Frazee, Andrew Rush and Kassidy Harms watch as helicopters pass by and dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

About 90 people under a previous mandatory evacuation order from the Geyserville area spent Friday night at an emergency shelter at the Healdsburg Community Center, Red Cross spokeswoman Barbara Wood said. Half a dozen new arrivals joined other residents at the former elementary school. Restaurants provided meals and concerned citizens dropped off books, toothbrushes and fresh chrysanthemums for the dining hall tables. But by Saturday, the shelter was itself evacuated.

Down the road, Jorge Vazquez, 31, who works in the maintenance department at the Best Western Dry Creek Inn in Healdsburg, was tasked with going door to door telling guests to leave. Each was given 30 minutes. Many there were also evacuees from the Geyserville area, forced to make their second evacuation in three days.

"It took some convincing to get them to leave," Vazquez said. In one case, he said, he had to threaten to call the police.

New evacuation centers were opened at the veterans halls in Santa Rosa and Petaluma, and at the Petaluma Fairgrounds.



Fire-friendly weather conditions affected much of Northern California, where as many as 940,000 customers were expected to lose electricity in planned Pacific Gas & Electric Co. power outages designed to prevent the outbreak of additional fires.

With what forecasters called a "potentially historic" windstorm expected Saturday night into Sunday, PG&E began shutting off power to as many as 2.8 million people across huge swaths of the state in an attempt to avert wildfires. The utility said homes and businesses could lose power in portions of 38 counties across the Bay Area and throughout Northern and Central California.

"The next 72 hours will be challenging," Gov. Gavin Newsom said at a Napa event Saturday. "I could sugarcoat it, but I will not."



Roilene picks up last items before evacuating from her house with her husband Wolfgang on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

The planned outages were unprecedented, affecting far more people than two previous shutoffs. In the last widespread round of planned outages this month, 738,000 residences and businesses in Northern and Central California had their electricity cut off.

The first blackouts began Saturday afternoon, affecting portions of counties in Northern California and the Sierra foothills — Amador, Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Plumas, San Joaquin, Sierra, Siskiyou, Shasta, Tehama and Yuba counties. They later spread to the Bay Area, affecting Alameda, Contra Costa, Marin, Napa, Solano and Sonoma counties.

The Marin County Sheriff's Office said it expected the outages to affect 99% of the county.

"It almost feels like an apocalypse," said Armand Quintana, manager at Jackson's Hardware in San Rafael. "There are lines at the gas station, people are buying ice from grocery stores, they're out of ice. I'm looking for zombies."

The store ran out of its stock of 50 generators, which sell for $1,100 to $5,000. Just hours before the expected power outages Saturday, it ran out of flashlights, batteries, candles and other power-outage supplies.

Smoke from the blaze was wafting through the Bay Area and could be sniffed on Saturday in downtown San Francisco. Air quality experts advised that buying masks and filters is no substitute for finding clean-air spaces, such as libraries and shopping malls.



Helicopters dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

"Masks may not be the answer for a lot of people," said Dr. Jan Gurley of the San Francisco Department of Public Health. "Sometimes they make you feel a little better. But there are no substitutes for getting to where the air is clean."

Air quality throughout the Bay Area was expected to be "unhealthy for sensitive groups" and a Spare the Air Day was declared by the Bay Area Air Quality Management District. It was the 20th of 2019, compared with 13 days in all of 2018, 18 days in 2017 and 27 days in 2016. Residents were advised to limit outdoor activity and avoid driving and wood burning.

On Saturday, the Kincade Fire was burning in a southwesterly direction on the east side of Highway 128 and eastern Geyserville. Firefighters built containment lines on the edge of Geyserville, where 735 structures were under threat.

Newsom toured the fire area Friday, visiting residents, meeting local officials and praising firefighters for their "extraordinary heroism." The governor also stepped up his criticism of PG&E, as state regulators looked into whether the utility company's equipment played a role in the fire.

The company reported Thursday that equipment on one of its transmission towers broke near the origin point shortly before the Kincade Fire was reported at about 9:27 p.m. Wednesday. Power had been shut off in the area, but not on that specific transmission line, in an effort to prevent such an event.

Chronicle staff writers John King and Catherine Ho contributed to this report.

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EXHIBIT H

Brings Chickasaw's unparalleled gaming expertise and shared values to project to support Koi's economic independence on tribal lands in Sonoma

Santa Rosa, Calif. (24 January 2022)— The Koi Nation of Northern California, one of California's historic federally recognized Native American tribes, has executed a predevelopment agreement with Global Gaming Solutions (GGS), a wholly-owned business of the Chickasaw Nation of Oklahoma, to engage as the Koi's development partner for its planned Shiloh Casino & Resort in Sonoma County. GGS will also act as the manager and operator of the establishment when completed.

"We are honored to build this important business relationship with our brothers and sisters of the Chickasaw Nation, one of the most experienced Native American tribes in the gaming industry," said Darin Beltran, Koi Nation's Tribal Chair.

"Not only does the Chickasaw Nation have great expertise in gaming and resorts, but they also share the same values as the Koi Nation. Chickasaw leaders understand the importance of this project to the restoration of our economic self-reliance because they have walked the same path many times in support of their own people's future," said Dino Beltran, Koi Nation Vice Chair and Director of Development.

The Chickasaw Nation, with its tribal headquarters in Ada, Oklahoma, has an exemplary track record in developing and operating tribal gaming operations and related resort properties. It operates 23 gaming establishments around the nation, including Winstar World Casino and Resort, the largest casino in the world. The Chickasaw Nation also operates nearly 200 additional highly successful businesses, giving it a broad range of commercial expertise that makes it the ideal partner to develop and manage the Shiloh Resort & Casino.

"The Chickasaw Nation is pleased to play a role in this project, and we look forward to a successful collaboration," Chickasaw Nation Governor Bill Anoatubby said. "The prosperity of our citizens and a commitment to working together with our partners in the Koi Nation as well as local, state and

community officials are key components to our mission. We look forward to witnessing new jobs, additional businesses and increased tourism to this region."

"We are excited by the opportunity to use our expertise to help the Koi Nation realize this project and establish the economic self-sufficiency that is the inherent right of all Native American tribes," said Bill Lance, Commerce Secretary of the Chickasaw Nation. "We look forward to beginning a successful long-term economic partnership with the Koi."

About the project

The Shiloh Casino & Resort will be built on the Koi Nation's property at 222 E. Shiloh Road in unincorporated Sonoma County. The tribe purchased the 68-acre site late last year to re-establish its tribal land base more than a century after the Koi's ancestors were forced to relocate to the Santa Rosa/Sebastopol area.

The non-smoking Shiloh Casino & Resort will include a 2,500 Class III gaming machine facility, a 200-room hotel, six restaurant and food service areas, a meeting center and a spa, as well as a state-of-the-art live entertainment venue. The design for the low-rise facility integrates with the natural beauty of the region and will be energy-efficient and respectful of the environment, in keeping with the Tribe's historic relationship with the land.

The Shiloh Casino & Resort will employ more than 1,100 full-time workers when fully operational. The project also will create hundreds of jobs for workers in the construction trades and other skilled laborers. The Koi Nation anticipates that a portion of the resort's revenues will be shared with the broader community through the support of local organizations as well as collaborating with local governments to address their needs.

About the Koi Nation

The Koi Nation's mission is to empower our people to achieve a better way of life and to maintain tribal integrity and honor through responsive government. We are committed to protecting and exercising our inherent sovereign rights as a federally recognized tribe to their fullest extent,

including obtaining land to re-establish a permanent land base for our people who have lived in this region for thousands of years, and creating self-sustaining economic activity to support the tribal government and its people, and the entire community of Sonoma County. For more information visit https://www.koinationsonoma.com

About the Chickasaw Nation

With more than 73,000 citizens, the Chickasaw Nation is a democratic republic with executive, legislative and judicial departments elected by its citizens. The treaty territory of the tribe includes 7,648 square miles of south-central Oklahoma and encompasses all or parts of 13 Oklahoma counties. The Chickasaw Nation contributes billions to the Oklahoma economy annually and employs nearly 13,500 workers.

For more information, visit https://www.chickasaw.net

Exhibit C

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August 26, 2024

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RE: EIS Comments, Koi Nation Shiloh Resort and Casino

VIA EMAIL

Dear Ms. Dutschke and Mr. Broussard:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> In the approximately 126 measures and strategies identified [in the California Air Resources Board's Climate Scoping Plan] that would achieve a State-wide reduction in GHG emissions, only three would apply to the project alternatives: diesel anti-idling, achieve 50% State-wide recycling goal, and water use efficiency ….
>
> If a project will not include natural gas appliances; will not result in wasteful, inefficient, or unnecessary energy use; will generate an average vehicle miles traveled (VMT) per employee below 85% of the regional average; and will provide EV facilities consistent with current California building standards, then a project's climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B, and C would result in average VMT per employee that is lower than 85% of the regional average (10.53 VMT per employee). (DEIS 3-155.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[11] https://www.waterworld.com/home/article/14071013/microgrids-power-wastewater-treatment-plants (last visited Aug. 24, 2024)
[12] https://www.petaluma360.com/article/news/petaluma-plans-floating-solar-array-for-its-water-treatment-plant/ (last visited Aug. 24, 2024)
[13] https://www.gov.ca.gov/2024/04/11/solar-microgrid-breaks-ground-in-northern-california-tribal-community/ (last visited Aug. 24, 2024)
[14] https://investors.mgmresorts.com/investors/news-releases/press-release-details/2021/Las-Vegas-Strip-Goes-Solar-MGM-Resorts-Launches-100mw-Solar-Array-Delivering-Up-To-90-Of-Daytime-Power-To-13-Las-Vegas-Resorts/default.aspx (last visited Aug. 24, 2024)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

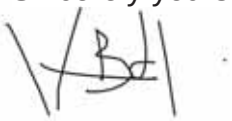
IX. The DEIS also lacks a detailed analysis of the alternatives it does consider.

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

X. Conclusion.

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

Sincerely yours,



Verne Ball

Attachments

Exhibit A

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April 5, 2024

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

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

VIA U.S. MAIL AND EMAIL

Dear Regional Director Dutschke:

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

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

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

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

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

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

Sincerely yours,



Verne Ball

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

Attachment

Exhibit B

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Ombudsperson

08/26/2024

Verne Ball
Sonoma County Counsel
575 Administration Drive
Santa Rosa, CA 95403

Regarding: Memorandum of Koi Nation Resort & Casino Grading & Hydrology Report Engineering Review Comments

Dear Verne,

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

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

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

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

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

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

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

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

   The LID Manual defines hydromodification as follows:

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

   Additionally, the LID Manual defines hydromodification control as follows:

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

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

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

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

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

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

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

Sincerely,

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Cities of Cloverdale, Cotati, Healdsburg, Rohnert Park, Santa Rosa, Sebastopol, and Ukiah, County of Sonoma, Sonoma Water and Town of Windsor

May 2017 (Revised Dec 2020)

Storm Water

Low Impact Development Technical Design Manual

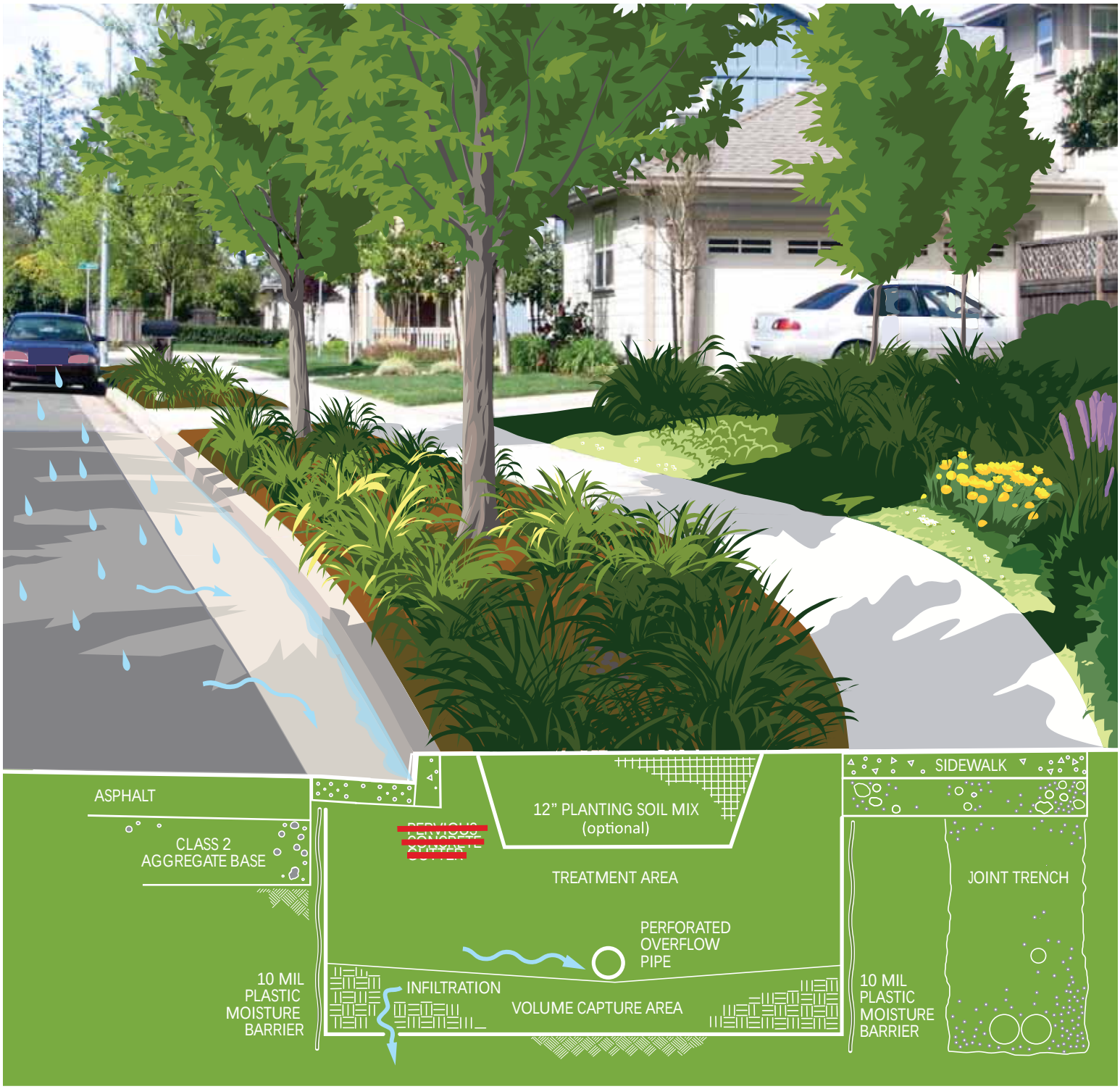


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ACRONYMS, ABBREVIATIONS AND DEFINITIONS

APN: Assessor's Parcel Number.

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

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

CC&Rs : Conditions, Covenants and Restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS4 PERMIT: Municipal Separate Storm Sewer Systems Permit.

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

NPDES: National Pollutant Discharge Elimination System.

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

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

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

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

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

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

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

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

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

STORM WATER: Flow generated by rainfall.

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

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

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

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

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

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

SWRCB: State Water Resources Control Board.

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

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

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

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

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

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

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

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

CHAPTER 1: INTRODUCTION

INTRODUCTION



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

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

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

BACKGROUND

The Federal Water Pollution Control Act of 1948 was the first major U.S. law to address water pollution. Growing public awareness and concern for controlling water pollution led to sweeping amendments in 1972. As amended in 1972, the law became commonly known as the Clean Water Act. Congress subsequently authorized the National Pollution Discharge Elimination System (NPDES), which regulates municipal storm water discharges through the issuance of Municipal Separate Storm Sewer System (MS4) permits.



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

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

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

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

PURPOSE OF THIS LID MANUAL

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



HOW THIS MANUAL RELATES TO OTHER REQUIREMENTS

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

CHAPTER 1: INTRODUCTION

WHAT IS STORM WATER LOW IMPACT DEVELOPMENT (LID)?

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

LID BMPs are permanent, small scale, planted features that aim to mimic the hydrologic function of the predevelopment site by capturing, treating, and infiltrating storm water as close to the source as possible. At plant maturity, at least 50% of a BMP must be vegetated for the BMP to be considered a LID BMP per the BMP Selection Table. If 50% vegetated cover will not be established before the completion of construction, the following shall be supplied as part of the project design submittal approval process in order to be considered a LID BMP: 1) an erosion control plan for the LID BMPs with sufficient measures to provide soil stabilization and treatment until plant maturity (e.g. ground-up, composted mulch on all bare soils with rock inlet protection); and 2) a planting and irrigation plan for the LID BMPs that shall include, by plant genus species and common name, selected plants, maximum spacing, total number of plants to be installed, and a table with mature plant size (canopy). Alternatively, a BMP can be considered to be a LID BMP if the Hydromodification Control BMP design criteria is met and it is paired with one of the Runoff Reduction Measures (Disconnected Roof Drains, Paved Area Disconnection, Interceptor Trees, Buffer Strips and Bovine Terraces) in series as part of a "treatment train."



LID is formally defined as:

"A development site design strategy with a goal of maintaining or reproducing the pre-development hydrologic system through the use of design techniques to create a functionally equivalent hydrologic setting. Hydrologic functions of storage, infiltration, and groundwater recharge, as well as the volume and frequency of discharges are maintained through the use of integrated and distributed small-scale storm water retention and detention areas, reduction of impervious surfaces, and the lengthening of flow paths, and runoff time."

(As defined in Attachment A of Order R1-2015-0030, NPDES Permit No. CA0025054)

The intention of this Manual is to promote the following LID goals:

- Minimize the adverse impacts from storm water runoff on water quality, the biological integrity of receiving waters, and the beneficial uses of water bodies.
- Minimize the percentage of impervious surfaces on land development projects and implement mitigation measures to mimic the pre-development water balance through infiltration, evapotranspiration, and capture and reuse of storm water.
- Minimize pollutant loadings from impervious surfaces such as roof tops, parking lots, and roadways through the use of properly designed, technically appropriate BMPs, including source control BMPs or good housekeeping practices, LID planning and design strategies, and treatment control BMPs.
- Proper selection, design and maintenance of treatment control BMPs, and Hydromodification Control BMPs to address pollutants generated by land development, minimizing post-development surface flows and velocities, assuring long-term functionality of BMPs, and avoiding the breeding of vectors.

REVISION AND AMENDMENT

It is recognized that LID is an emerging field, and that while every effort has been made to ensure that this Manual is complete and accurate, revisions and/or amendments may be necessary. Proposed revisions and/or amendments will be evaluated on a case by case basis and will require review and approval by the NCRWQCB.

CHAPTER 2: PROJECT TRIGGERS

PROJECTS THAT TRIGGER REQUIREMENTS

GEOGRAPHIC AREAS

The requirements set forth in this Storm Water Low Impact Development Technical Design Manual apply to projects within the jurisdiction of City of Santa Rosa, City of Healdsburg, Town of Windsor, City of Cotati, City of Sebastopol, City of Cloverdale, City of Ukiah and City of Rohnert Park as well as the portions of the County of Sonoma as shown in Attachment C of the NPDES MS4 Permit Order No. R1-2015-0030. Although the Sonoma Water is named in the Permit, it does not have land use authority.

This LID Manual does not apply to the areas south of the Russian River/Laguna De Santa Rosa watershed boundary, including portions of Petaluma, Sonoma, and the southern portion of the County of Sonoma as they are outside the jurisdiction of the North Coast Regional Water Quality Control Board and have distinct design requirements.

PROJECT TRIGGERS AND EXEMPTIONS

Since Storm Water LID features are designed to mitigate for the permanent impacts caused by impervious surfaces, the total amount of impervious surface must be considered when determining whether or not a project triggers Storm Water LID requirements. This evaluation must include the built-out project condition (including homes, structures, sidewalks, and/or roadways that will be completed under separate building permits) as well as all phases of a phased project. Note that for site tributary areas where no impervious surface will be added or replaced, the installation of BMPs are not required.

IMPERVIOUS SURFACE

An impervious surface is defined as areas that has been modified such that storm water percolation into underlying soils is reduced or prohibited. Examples of impervious surfaces include concrete, asphalt, and roofs. Additional examples include engineering practices such as compaction or lime treatment. Existing gravel on a project site placed prior to the proposed project is considered pervious unless documentation is provided that demonstrates that it is impervious. Gravel placed as part of the proposed project is considered impervious unless documentation is provided to verify that it is pervious.

SITE DETERMINATION

For the purposes of this Manual, the impacts that must be accounted for in the SWLID design includes everything within the project site of all improved parcels as well as all off-site or associated public improvements, such as trenching and repaving for utility connections.

CHAPTER 2: PROJECT TRIGGERS

The following flow chart (Figure 1) is provided as guidance in determining which projects trigger permanent water quality Treatment, Delta Volume Capture, and/or Hydromodification Control features which shall require the applicant to submit a SWLIDS report and which projects qualify for exemptions. Final determination is achieved by completing a "Storm Water LID Determination Worksheet", a copy of which is attached in Appendix A as reference.

Note that projects identified as exempt may still be required to implement permanent storm water quality features as a condition of other environmental permit processes.

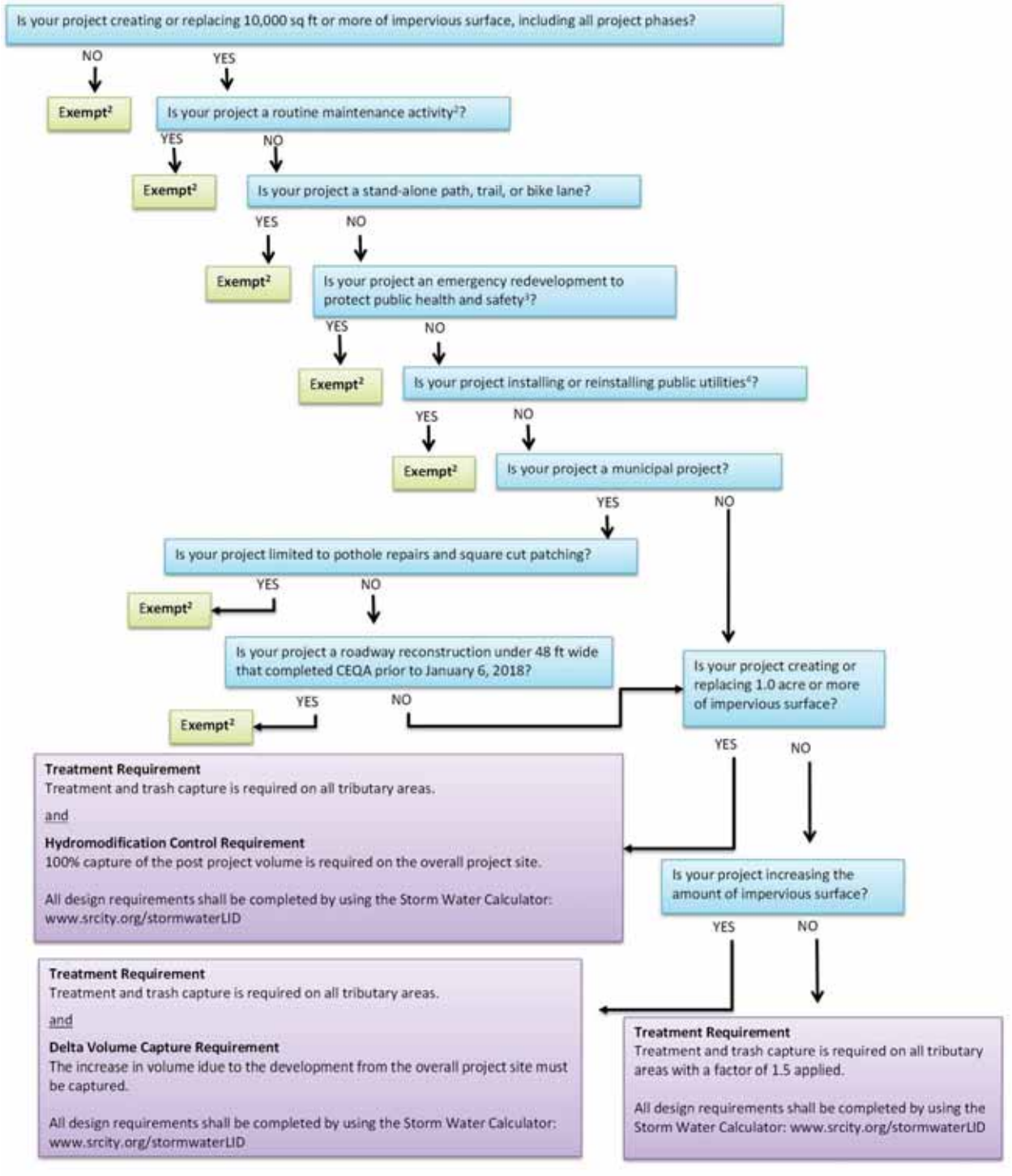
Figure 1 Footnotes

[2] "Routine Maintenance Activity" This exemption includes activities such as overlays, resurfacing, and/or road pavement structural section rehabilitation (e.g. FDR) of existing roads or parking lots as well as trenching and patching activities and reroofing activities. For activity to be routine maintenance it must no change existing lines and grades or hydraulic capacity. Minor changes to line or grade of 0.20 feet or less shall be considered as maintaining original line and grade. Replacement of existing pedestrian ramps to maintain compliance with current Americans with Disabilities Act Requirements shall be regarded as routine maintenance.

[3] The NCRWQCB must agree the activities are needed to protect public health and safety to qualify for this exemption.

[4] Applies to public utilities, such as sewer or water, only. The project must not include any additional street or road development or redevelopment activities beyond the paving activities needed as a result of construction impacts to the existing roadway.

Figure 1. Project Triggers and Exemptions Flow Chart



Note: Final determination is achieved by completing a "Storm Water LID Determination Worksheet".

IMPACTS TO BE MITIGATED

The specific level of treatment and/or retention required is determined on each tributary area and is different for offsite improvement areas. Design requirements for project sites that propose under 1.0 acre of new and/or replaced impervious surface are outlined in Table 1 on the on the following pages. Design requirements for project sites that propose over 1.0 acre of new and/or replaced impervious surface are outlined in Table 2 on the following pages.

Table 1: Design Requirements for Project Sites Under 1.0 Acre of New and/or Replaced Impervious Surface

	Description of Tributary Area	Design Requirements:	Notes
		All BMPs must meet the design criteria of a LID BMP as defined by this manual.	
1	Tributary area consists of both existing and new and/or replaced impervious area.	Existing impervious area: Treatment required. New and/or replaced impervious area: 100% Volume Capture or both Delta Volume Capture and Treatment required.	Order R1-2015-0030 trash capture requirements must be met in all tributary areas.[5]
2	Tributary area consists of new and/or replaced impervious area only.	100% Volume Capture or both Delta Volume Capture and Treatment required.	Order R1-2015-0030 trash capture requirements must be met in all tributary areas.[5]
3	Tributary area consists of existing impervious area only.	No requirements apply.	The project may need to meet the requirements of the Statewide Trash Amendment. Refer to the governing agency.
4	Tributary area consists of off-site improvements or public improvements only.	New and/or replaced impervious area only: 100% Volume Capture or both Delta Volume Capture and Treatment required.	The proposed BMP(s) should be designed to receive the runoff from the improved area whenever possible. If this is not possible, the BMPs required for off-site and/or public improvements may be constructed on-site as a "on-site offset" or the runoff accounted for by oversizing another BMP

[5] The trash capture requirements include compliance with the State Water Board's Amendment to the Water Quality Control Plan for the Ocean Waters and Part 1 Trash Provision of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Trash Amendment). LID BMPs must capture trash 100 microns in diameter and larger.

			within the same project, but in another tributary area. Trash Amendment requirements must be met where applicable.
5	Run-on from outside the project site.	No requirements apply if run-on is bypassed.	If the run-on reaches a BMP it must be either included in the sizing or designed to bypass.

Table 2: Design Requirements for Project Sites Over 1.0 Acre of New and/or Replaced Impervious Surface

	Description of Tributary Area	Design Requirements	Notes
		All BMP must meet the design criteria of a LID BMP as defined by this manual.	
1	Tributary area consists of both existing and new and/or replaced impervious area.	100% Volume Capture/Hydromodification Control required.	Order R1-2015-0030 trash capture must be met in all tributary areas.[6]
2	Tributary area consists of new and/or replaced impervious area only.	100% Volume Capture/Hydromodification Control required.	Order R1-2015-0030 trash capture must be met in all tributary areas.[6]
3	Tributary area consists of existing impervious area only.	No requirements apply.	The project may need to meet the requirements of the Statewide Trash Amendment. Refer to the governing agency.
4	Tributary area consists of off-site improvements or public improvements only	New and/or replaced impervious area only: 100% Volume Capture/Hydromodification Control or both Delta Volume Capture and Treatment required.	The proposed BMP should be designed to receive the runoff from the improved area whenever possible. If it is not possible for the BMP to be constructed to intercept the physical runoff at this location, the BMPs required for off-site improvements may be constructed on-site as a "on-site offset" or the runoff accounted for by oversizing another BMP within the same project, but in

[6] The trash capture requirements include compliance with the State Water Board's Amendment to the Water Quality Control Plan for the Ocean Waters and Part 1 Trash Provision of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Trash Amendment). LID BMPs must capture trash 100 microns in diameter and larger.

			another tributary area. Trash Amendment requirements must be met where applicable.
5	Run-on from outside the project site.	No requirements apply if run-on is bypassed.	If the run-on reaches a BMP it must be either included in the sizing or designed to bypass.

CHAPTER 3: SUBMITTAL PROCESS

SUBMITTAL PROCESS

Each step in the process is briefly described below and is discussed in further detail in the following chapters.

STEP 1: REQUIREMENTS

Evaluate your project and complete the Storm Water LID Determination Worksheet to determine whether or not the project will need to incorporate permanent LID Storm Water Best Management Practices (BMP's) and submit an Initial and a Final Storm Water Low Impact Development Submittal (SWLIDS) as required by the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer Systems (NPDES MS4) only.

The project may still need to incorporate permanent storm water LID BMP's as required by other regulations and approval agencies, such as but not limited to: California Building Code (CALGreen), North Coast Regional Water Quality Control Board (NCRWQCB) section 401 permit, or State Water Resources Control Board requirements.

STEP 2: CALCULATIONS

Assess your project design and layout. Select the highest priority BMPs applicable to your project by completing the BMP Selection Table. Complete sizing calculations for all BMPs using the Storm Water Calculator. Integrate these BMPs into your project's design documents. Ensure the applicable requirements (Treatment, Volume Capture, Trash Capture) are met and that all necessary tributary areas are addressed.

Note: In some cases, supplemental calculation and/or supporting documentation must be provided that is not incorporated into the Storm Water Calculator. Separate calculations may not be used as a replacement for the Storm Water Calculator.

STEP 3: INITIAL SWLIDS

Prepare and submit an Initial SWLIDS with your tentative map or other discretionary approval process. All calculations, design, and submittal requirements must be submitted. Fill out a Completeness Checklist and submit with the Initial SWLIDS.

STEP 4: UPDATE CALCULATIONS

This step is conducted with the design of Improvement Plans or other Final Ministerial Submittal. Re-evaluate project design and layout to verify the highest priority BMPs possible are used per the BMP Selection Table. Complete updated sizing calculations for all BMPs using

the Storm Water Calculator. Ensure the applicable requirements (Treatment, Volume Capture, Trash Capture) are met and that all necessary tributary areas are addressed.

Note: In some cases, supplemental calculation and/or supporting documentation must be provided that is not incorporated into the Storm Water Calculator. Separate calculations may not be used as a replacement for the Storm Water Calculator.

STEP 5: FINAL SWLIDS

Prepare and submit a Final SWLIDS with your Improvement Plans or other Final Ministerial Submittal. Ensure the applicable requirements (Treatment, Volume Capture, Trash Capture) are met and that all necessary tributary areas are addressed. Fill out a Completeness Checklist and submit with the Final SWLIDS.

Final SWLIDS must include a description of necessary maintenance, a maintenance checklist, guidelines, frequency of maintenance activities, and a Maintenance Declaration or other legally binding mechanism to assign maintenance responsibility and funding source.

STEP 6: MECHANISM OF MAINTENANCE

Record a Maintenance Declaration or other legally binding mechanism to assign maintenance responsibility and funding source before occupancy can be given.

STEP 7: CONSTRUCTION

Construct all BMPs per the approved construction documents. Protect BMPs from runoff and sediment loading during construction. Pay close attention to compaction, specified soil, contamination, planting, irrigation, and fine grading.

STEP 8: INSPECTION AND CERTIFICATION

The Engineer shall complete a final inspection and certify that all BMPs will function per the intent of the approved design. This certification shall be provided to the Governing Agency prior to the issuance of final occupancy.

The current versions of all documents referenced in the steps above and necessary design tools, including the Storm Water Calculator, can be found at www.srcity.org/stormwaterLID or the individual co-permittee websites.

CHAPTER 4: SITE ASSESSMENT

SITE ASSESSMENT

Keep clean water clean! Simple site layout considerations can dramatically affect the amount of storm water that will need to be treated and infiltrated. Storm water from undisturbed areas should be collected before it runs across parking lots or other impervious areas. Flow from impervious areas should be directed into landscapes or natural areas, to allow for infiltration. Impervious areas should be disconnected by breaking them up with landscaping. Hard piped systems should be used only when necessary. Pollutant generating activities should be located indoors or under a rooftop to minimize exposure to storm water. Minimize the use of pesticides, herbicides, fertilizers, and avoid over irrigation in landscape areas so that they don't contribute to runoff to the storm drain system. Implement practices during construction that minimize compaction, vegetation removal, and the need for lime treatment.

SOIL CLASSIFICATION

Sonoma County is largely made up of clay type soils. In order to achieve infiltration (a fundamental aspect of LID) in these soils, BMPs need to be carefully designed. They must allow infiltration to occur to the maximum extent that the native soil will accept. While it is required that the soils on site be classified into their hydrologic soil groups (A, B, C, or D) by a licensed Geotechnical, Soils, or Civil Engineer using one of the following tests, it is not necessary to conduct field infiltration or percolation tests on the native soil unless the proposed design has the potential to pond water on the surface of the BMP. In this case, field tests and calculations would need to be conducted to ensure that all ponded water will drain within 72 hours to eliminate the concern of attracting vectors such as mosquitos. Field test need to be conducted in the location and depth of the designed BMP.

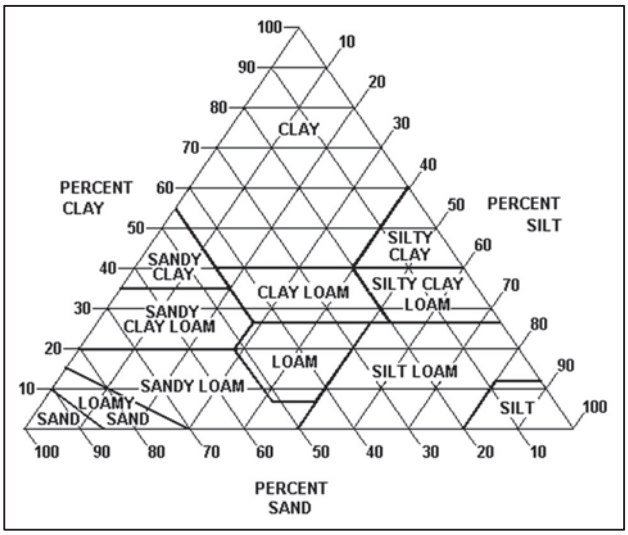
Soil Type Classification Methods:

Initial SWLIDS may be calculated using the soil type maps provided by the USGS if site specific soil evaluation has not yet been completed. These values are considered conservative and are only acceptable for Initial SWLIDS.

In order to identify the site soil type, which is necessary to complete the calculations, the designer can either use the published soil type per the Natural Resource Conservation Service (NRCS) or must use one of the following soil type evolution methods to determine the site specific conditions:

1. ASTM D 422 particle size analysis of soils, including hydrometer, using the following soil texture triangle shown in Figure 2.

Figure 2. Soil Texture Triangle



2. ASTM D 3385 infiltration rate of soils in field using double-ring infiltrometer test.

Areas of higher infiltration rates and low infiltration rates should be considered when locating buildings and open space. Using the soil survey completed by the Natural Resource Conservation Service (NRCS) of the U.S. Department of Agriculture, infiltration rates or particle size analysis, soils can be classified into Hydrologic Soil Groups, see Reference Document D.

DEPTH TO GROUNDWATER

The depth to seasonal high groundwater level shall be evaluated prior to selection of BMPs. If seasonal high groundwater exists less than 2' from the bottom of the selected BMP, a portion of the calculated capacity will be used up by the groundwater. A high water table may limit the use of infiltration based measures.

CONTAMINATION

In areas with known groundwater pollution, infiltration may need to be avoided, as it could contribute to the movement or dispersion of groundwater contamination. The California State Water Resources Control Board (SWRCB) maintains a database of registered contaminated sites through their Geotracker® Program. Registered contaminated sites can be identified in the project vicinity when the site address is typed into search. Mobilization of groundwater contaminants may also be of concern where contamination from natural sources is prevalent (e.g., marine sediments, selenium rich groundwater).

Infiltration on sites with contaminated soils and/or groundwater that could be mobilized or exacerbated by infiltration will require additional review by NCRWQCB and may require offset, either onsite and/or offsite.

SLOPE CONSTRAINTS

The effects of infiltrated storm water on soil properties and slope stability will need to be considered for a number of factors, including: ground subsidence, liquefaction, landslide potential, and distance to load bearing structures such as building foundations, and retaining walls.

These potential issues must be thoroughly reviewed by a licensed Geotechnical, Soils, or Civil Engineer and their recommendations incorporated into the site design.

NATURAL AREAS

Identify existing natural areas on the site and consider ways in which they can be preserved and integrated into the site design. Avoiding sensitive areas such as creeks, heritage trees, and wetlands reduces the need for other permits and reduces the amount of storm water that needs to be treated.

SPECIAL CONSIDERATIONS



POLLUTANTS OF CONCERN

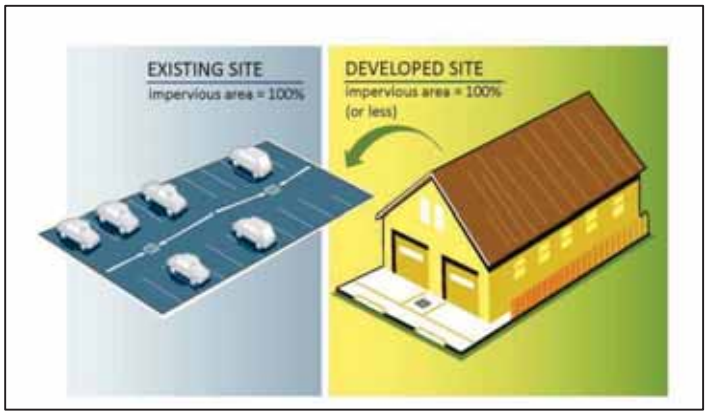
BMPs shall be selected and designed to treat the following pollutants of concern: dissolved and particulate metals, pathogens, nutrients, sediment, hydrocarbons, and trash, fine sediment, and other debris sized 100 microns and larger. This requirement may be met by directing flow and debris into a landscaped based infiltration feature that adequately captures these pollutants. All other pollutants shall be treated to the maximum extent practicable. It may be necessary to select and install multiple BMPs in order to treat all pollutants of concern.

TRASH CAPTURE

Trash is a key pollutant of concern and must be addressed in all tributary areas of the entire project. If the selected LID BMP does not adequately intercept trash as small as 100 microns by

virtue of its design (such as bioretention with curb openings) then an additional treatment BMP, such as capture inserts, baskets, or separators, may need to be used. All trash capture BMPs must be accessible and maintainable to ensure proper operation. The 100 microns requirement set forth by NPDES MS4 Permit Order No. R1-2015-0030, is stricter than the State Water Resource Control Board trash intercept requirement of 5 millimeters and therefore meets the State Water Resource Control Board requirement of 5 millimeters.

PREVIOUSLY DEVELOPED SITES - A SPECIAL CASE



Project sites that have existing impervious cover, such as existing pavement or buildings, in the pre-developed condition are different than projects that start with a fully undeveloped site. Since the volume capture requirement applies to any increase in storm water volume generated by the site, the greater the difference between the undeveloped condition and the developed condition, the greater the Delta Volume Capture requirement. Conversely, a site that is 100% impervious prior to development would not require any Delta Volume Capture, provided the final project did not create or replace 1 acre or more of impervious surface.

It should be noted that the requirement for treatment and trash capture would still apply to each tributary area.

If Delta Volume Capture is not required on a site, and treatment is the only requirement, apply a factor of 1.5 to the total flow that must be addressed. This factor is built into the Storm Water Calculator.

CHAPTER 4: SITE ASSESSMENT

SOIL

Many of the BMPs in this Manual use structural soil as a key component of their function. Structural soil is a specific soil mix that is primarily made up of angular rock, a small amount of organics, and a tackifier which binds the organics to the rock. Structural soil was originally developed for urban tree planting and is used in BMPs because it can be compacted to 95% to support traffic loading while still providing over 23 inches per hour of infiltration. Structural soil is most appropriately used in areas where the soil will be load bearing or where ground subsidence over time is not acceptable. For more information on structural soil see the "Reference Documents" section of this Manual.



Some BMPs may not require the use of structural soil and a more organic type planting soil and/or treatment media may be used in its place. It may be possible in some cases to use native soil or to amend the native soil so that it is suitable. Use of non-structural soil will depend on evaluation of the criteria in "Chapter 4: Site Assessment" as well as consideration of load bearing needs and may require evaluation by a licensed Geotechnical Engineer.

All soils used in BMPs must provide adequate porosity (as determined by the calculations and the design), be able to support plant life, and not introduce pollutants into the storm water.



LANDSCAPING REQUIREMENTS

Vegetation is an important element of the storm water BMPs in this manual. Plants provide a physical structure that increases storm water infiltration into the soil and promotes a soil community of microorganisms that remove pollutants. Therefore, it is critical that the vegetation is healthy and maintained throughout the life of the BMPs. The Maintenance Declaration, or equivalent mechanism, must ensure vegetation is maintained.

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

maturity (e.g. ground-up, composted mulch on all bare soils with rock inlet protection); and 2) a planting and irrigation plan for the LID BMPs that shall include, by plant genus species and common name, selected plants, maximum spacing, total number of plants to be installed, and a table with mature plant size (canopy). Alternatively, a BMP can be considered to be a LID BMP if the 100% Volume Capture/Hydromodification Control design criteria is met and the BMP is designed in series with one of the Runoff Reduction Measures (Disconnected Roof Drains, Paved Area Disconnection, Interceptor Trees, Buffer Strips and Bovine Terraces) as part of a "treatment train."

The environments within these BMPs, in particular long periods of inundation, can be stressful on many plant species. The BMP Approved Plant List, Appendix F, consists of California native plants and other cultivars that have been proven to thrive in the types of environments found in BMPs listed in this Manual.

These features are considered part of the landscaping and must, at a minimum, comply with the landscaping standards, building codes, and ordinances of the local Governing Agencies and must be maintained over time in conformance with the recorded Maintenance Declaration or other maintenance responsibility mechanism.

SITE DEFINITION AND CONTROL OF RUN-ON DRAINAGE

For the purposes of this manual, the definition of "site" includes any and all areas of improvements associated with the project, such as public improvements, frontages, utility services, and any other improvements associated with the development.

Run-on is the drainage generated from upstream tributary areas that drain into your site. The drainage entering the site that reaches a BMP needs to be incorporated into project design. All BMPs must be adequately sized to accept the runoff that they receive. It may be possible to collect offsite storm water before it enters the project site and bypassed. If offsite drainage will contribute to the storm water on-site then it must be considered in the sizing and location of the selected BMPs.

ON-SITE OFFSET

BMPs must be sized to address all flows and/or volume they physically receive. If this is not possible, another BMP within another project tributary area may be oversized and used to offset the shortfall. This practice is referred to as an "on-site offset." Justification for the use of an on-site offset must be provided to the Governing Agency explaining why the proposed design cannot accommodate all flows and/or volume. Most commonly, this would be due to the inability to physically route the water to the BMP or a physical lack of space due to other utilities.

The Volume Capture and Hydromodification Requirements apply to the entire project site, as opposed to particular tributary areas individually. Storm water may be routed to the portion of the site most suited for infiltration and Delta Volume Capture from other less suitable areas. This may be particularly useful on sites that are partially prohibited from infiltrating (e.g. contamination or slope stability issues) or have areas more suited to infiltration. On-site offset may not be provided to meet treatment and trash control requirements and must be met in each individual tributary.

MINIMIZING THE SIZE OF BMPS – RUNOFF REDUCTION MEASURES

There are a number of ways to reduce the amount of treatment and/or Delta Volume Capture required. One of the simplest ways is to minimize the amount of impervious area on the project site. Another way is to keep clean water clean. This means that if off-site drainage is directed onto the site and is collected and bypassed through the site instead of allowing it to contribute to the water to be treated, it may be excluded from the tributary area. If natural or landscaped areas drain to paved or impervious areas, collect the runoff while it is clean (while it is in the landscaped area) before it crosses impervious areas and picks up pollutants.



Runoff Reduction Measures can be implemented on-site to reduce the amount treatment and Volume Capture needed. Runoff reduction measures, like disconnecting downspouts, and planting interceptor trees, reduce the amount of storm water that needs to be managed by BMPs, by intercepting rainwater and/or allowing it to infiltrate. Using these types of Runoff Reduction Measures can reduce the size of the BMPs needed up to 50%.

Credit for Runoff Reduction Measures used shall be calculated as part of the "Storm Water Calculator" located in Appendix C. Additional information can be found in the Fact Sheets in Appendix E.

CHAPTER 5: BMP SELECTION

BMP SELECTION



PRIORITIZATION OF LID

Prioritization needs to be given to small scale landscaped based infiltration BMPs that treat storm water as close to the source as possible. These types of LID BMPs are given the highest priority in the selection process.

BMP FACT SHEETS

The Fact Sheets provide detailed information for each BMP including a description, advantages, limitations; key design features, sizing design, inspection and maintenance requirements, and a design detail where appropriate. Each BMP listed below, and in the "BMP Selection Table", has a Fact Sheet in Appendix E.

BMP SELECTION TABLE

BMP selection should be done for each project tributary area by completing a "BMP Selection Table" found in Appendix B. The selection table lays out the decision matrix as described above for the BMPs that will be used with the project.

This table shall be used for all projects in order to select the highest priority BMPs possible. BMPs rated with the highest priority should be used and an explanation of infeasibility will be required before a lower priority BMP may be selected. When selecting BMPs for a site, it is important to consider a number of factors. These feasibility factors include the elements identified in the site assessment, including: groundwater contamination, high bedrock or hardpan, and slope stability, among others.

SUMMARY OF BMP PRIORITY GROUPS

All projects should consider the use of the "Universal LID Features." If those features are unable to be used, then "Priority 1" should be considered. If those BMPs are inappropriate or infeasible, then "Priority 2" should be considered, and so on. Any time a lower priority BMP is selected, justifications shall be provided for reasons why higher-level priority BMPs are deemed inappropriate.

UNIVERSAL BMPs AND RUNOFF REDUCTION MEASURES

BMPs in this priority are generally not dependent on-site constraints and should be considered for use with all projects. BMPs in this category include rainwater harvesting,

green roofs, interceptor trees, buffer strips, and flow through planters. All BMPs shall be identified in the text and clearly identified visually on project site drawings in the Initial and Final SWLIDS including, but not limited to, rainwater harvesting, green roofs, interceptor trees, buffer strips, flow through planters, and downspout disconnects.

PRIORITY 1 - These features meet all the criteria of LID; they are small scale, vegetated, and infiltration based, and meet both the Delta Volume Capture and Treatment Requirements. BMPs in this priority are installed without perforated pipe and/or impermeable liners. Infiltration must be provided by the underlying native soils. All BMPs must be designed to eliminate all surface water within 72 hours to prevent mosquito breeding.

PRIORITY 2 - These features meet all the criteria of LID because they are small scale, vegetated and infiltration based, and meet both the Delta Volume Capture and Treatment Requirements. BMPs in this priority are designed with perforated pipe installed high in the treatment area, as opposed to at the bottom of the feature, to ensure that Delta Volume Capture occurs in the area below the perforated pipe. Once the volume below the perforated pipe is filled, any additional flow will be collected by the perforated pipe. This filtered storm water will then be conveyed to the storm drain system.

PRIORITY 3 - These BMPs filter storm water and then convey it to the storm drain system, and as such, do not meet all of the objectives of LID because they do not provide for infiltration, and thus do not provide Delta Volume Capture. BMPs in this priority are intentionally designed not to infiltrate and shall only be used in cases where infiltration is not possible or allowed.

Examples of site constraints that would preclude infiltration include: ground contamination, high groundwater, and slope instability. Further discussion of site evaluation and infiltration can be found in Chapter 4. The other appropriate use for Priority 3 BMPs is redevelopment of previously developed sites.

If the volume of storm water (and/or impervious area) of a developed site is not greater than that before it was developed, then the increase in volume would be zero and the Delta Volume Capture requirement would not apply, and only Treatment would be required. Infiltration still provides water quality benefits and is encouraged wherever feasible.

Priority 3 BMPs are designed with a moisture barrier lining and perforated pipe in the bottom of the feature to ensure drainage.

PRIORITY 4 - BMPs in this priority achieve either Delta Volume Capture or Treatment, but not both, and are typically landscape based. They may also be infiltration based, but not vegetated. They must be used as part of a treatment train in sequence with other BMPs in order to achieve both objectives. Examples include: Tree Filter Units, Modular Wetlands, or infiltration trenches without vegetation.



PRIORITY 5 - BMPs in this priority are physical structured units that do not achieve Volume Capture and are generally not landscape based. They must be used as part of a treatment train in sequence with other BMPs in order to achieve both objectives. These features may also be appropriate for high pollutant generating land uses that require pretreatment. Examples include: Chambered Separator Units and Trash Excluders.

PRIORITY 6 - OFFSET PROGRAM

Every effort should be made to address all storm water requirements on the project site. Treatment of the runoff (water quality flow) is a requirement that must be met on-site and in all tributary areas even when offset for volume capture is allowed. Trash capture measures still must be met as outlined in Tables 1 and 2.

Offset may only be considered when one of the following conditions is present:

(1) The project's proximity to geotechnical hazards preclude infiltration,

(2) The proposed BMPs location puts it in proximity to a contaminated groundwater site such that infiltration poses a risk of causing pollutant mobilization,

(3) Site constraints that prohibit the ability to infiltrate storm water due to shallow groundwater and/or depth to hardpan, or

(4) Other criteria proposed by a Governing Agency and approved by the NCRWQCB Executive Officer, in which compliance with Delta Volume Capture is not feasible, such as high-density development or sensitive biological areas.

If the project is unable to address all design requirements on-site and the use of offset is necessary, the project must either:

a) Be referred to the NCRWQCB for review and approval, if the Governing Agency does not have a NCRWQCB approved Offset Program, or
b) Follow the Governing Agency's approved Offset Program including all process, submittals, and requirements.

CONTRIBUTING USE/POLLUTANT LOADING

The offset selected should treat the same type of pollutants that are generated by the untreated portion of your projects. For example, if the portion of your site that is not treated is roadway, then the offset projects selected should treat runoff from a roadway.

LOCATION OF OFFSET

All offset projects should be located within the same city or unincorporated area in which the project causing the impact is located. Projects located in other areas may be approved on a case by case basis. Projects that have the potential to cause a significant impact to a particular creek, as determined by the governing agency, either because of the size of the project or the sensitivity of the creek, will need to complete an offset project in the same creek watershed, if feasible.

DETENTION

Detention facilities which are integrated for hydraulic system design may be used to provide Volume Capture and/or Treatment if the design meets the design criteria specified for LID in this LID Manual.

PROPRIETARY UNITS

Proprietary units, or vendor units, fall lower on the BMP prioritization because they generally do not meet both the Treatment and Delta or 100% Volume Capture requirements. These types of units can be very effective if used as part of a treatment train (in series with other BMPs), where specific pollutants are present (such as gas stations), or in infill situations where Volume Capture isn't required. If proprietary units are proposed, additional review by the Governing Agency and/or the NCRWQCB may be required. A maintenance plan and inspection checklist meeting the manufacturer's recommendations will need to be submitted for review with the SWLIDS.

HIGH POLLUTANT LOADING LAND USES

Some land uses, such as gas stations and loading docks, may produce especially high pollutant loads. In these cases, pretreatment devices, such as oil grease separators or inlet inserts, may be necessary to remove site specific pollutants, such as hydrocarbons, before storm water is directed to typical BMPs. This “treatment train” approach ensures that BMPs continue to function properly.

CHAPTER 6: SUBMITTAL

STORM WATER LOW IMPACT DEVELOPMENT SUBMITTAL (SWLIDS)

INITIAL SWLIDS

The Initial SWLIDS will be submitted with the entitlement application for the tentative map, design review, use permit, or equivalent level of design. The Initial SWLIDS shall include a completed Storm Water LID Determination Worksheet, an Initial SW LID Submittal Coversheet, site layout, selected BMPs with individual identifiers, their location shown on drawings (including, but not limited to, locations of rain water harvesting, green roofs, interceptor trees, and downspout disconnects), sizing calculations, tributary areas to each BMP, a description or diagram of how BMPs will be accessible for Post-Construction inspections, a narrative description of how the chosen BMPs are designed to work, a preliminary description of maintenance requirements and proposed funding source. The Initial SWLIDS will need to be approved by the appropriate Governing Agency prior to approval of the tentative map, design review, use permit, or equivalent.

FINAL SWLIDS

The Final SWLIDS is submitted with the Improvement Plans, Grading Permit, Building Permit, or equivalent level of design and shall include all of the elements required for the Initial SWLIDS. In addition, all elements of the designed BMPs shall be shown on their respective drawing sheet (i.e. swales shown on grading sheets and bypass inlets shown on utility sheets). A final version of the Inspection and Maintenance Plan is required which includes long term inspection and maintenance instructions and requirements, inspection checklists, identification of the responsible parties, and a funding source.

A signed and recorded copy of a Maintenance Declaration designating the responsible party for maintenance, including irrigation, and funding source must be submitted with the Final SWLIDS. The Final SWLIDS will need to be approved by the appropriate Governing Agency prior to approval of the Improvement Plans, Grading Permit, Building Permit, or equivalent. The Maintenance Declaration will need to be recorded before construction is completed and before occupancy can be given in order to capture any field construction changes that occur.

CHAPTER 6: SUBMITTAL

WHAT THE SW LID SUBMITTAL MUST INCLUDE:

NARRATIVE PORTION

PROJECT DESCRIPTION



The project description section of the narrative should describe the proposed project type, location, specific uses and features of note. Environmentally sensitive features such as creeks, wetlands, or trees should be described and whether they are going to be avoided, saved, or removed. The existing predevelopment site should be described, and any existing impervious area noted. Existing and proposed drainage patterns need to be discussed.

How these requirements were triggered (impervious area, CALGreen, etc.) and the level of Treatment and/or Volume Capture achieved should be included.

POLLUTION PREVENTION MEASURES

All pollution prevention measures should be described and any measures that are providing area reduction credits should be specifically noted.

DESCRIPTION OF THE TYPES OF BMPs SELECTED

Describe each type of BMP, its priority group, where it is intended to be used, and the reason for its selection. Identify any specific alterations to the design that is proposed. Any time a lower priority BMP is selected, justifications shall be provided for reasons why higher-level priority BMPs are deemed inappropriate.

DESCRIPTION OF MAINTENANCE PROCEDURES AND PROPOSED FUNDING SOURCE

Outline what maintenance is required for each type of BMP selected and how often it should be serviced. Describe the proposed funding source that will be utilized to ensure long-term maintenance, who will be financially responsible, and who will be responsible to ensure maintenance is performed. Required maintenance and funding sources shall include all items for the proper functioning of BMPs, including irrigation.

COMPLETED BMP SELECTION TABLE

Complete the "BMP Selection Table" for each tributary area within the site to demonstrate that the BMP of the highest priority has been selected in each location.

COPY OF COMPLETED STORM WATER LID DETERMINATION WORKSHEET

Include a copy of the Storm Water LID Determination Worksheet confirming that the project requires a SWLIDS.

EXHIBITS

EXHIBIT OR PLAN SHEET

All exhibits should be provided at an appropriate scale so that they are clear and legible and may be a plan sheet if necessary.

EXISTING CONDITION EXHIBIT

This exhibit shall show the proposed tributary areas over the existing site. The existing impervious area for each tributary area shall to be shown and labeled in square feet or acres. This exhibit will be used to determine the pre-development Curve Number and the Delta Volume Capture.

This exhibit shall show the different types of land cover and the associated C values in each tributary area. This information allows a composite C value calculation to be completed for the Treatment Requirement.

PROPOSED CONDITION EXHIBIT

This exhibit shall show the developed site layout, clearly delineated tributary areas and associated C values and/or CN values as appropriate, new or replaced area, labeled storm drain inlets, identification of all Runoff Reduction Measures, and all proposed BMPs with individual identifiers. All BMPs and Runoff Reduction Measures shall be dimensioned and labeled. The sites K value and the on-site soil type should be noted.

PRELIMINARY DETAIL FOR EACH TYPE OF BMP SELECTED

Provide a preliminary 8.5"x11" detail for each BMP type or include on submitted drawings. These should be taken straight from the Fact Sheets unless changes to the design are proposed. The reason for the deviation from the standard design should be address in the narrative portion of the SWLIDS. Required plantings, erosion control

while plantings are being established such as ground-up composted tree mulch (no floatable bark or wood chips allowed), irrigation, and inlet protection.

PROJECT DRAWINGS

Show all applicable elements of the selected BMPs on the appropriate plan sheet. For example; swales on the grading sheet, perforated pipe on the utilities sheet.

CALCULATIONS - FORMULAS

Complete calculations will need to be provided for each BMP using the "Storm Water Calculator" which can be downloaded from the City of Santa Rosa's website at www.srcity.org/stormwaterLID. Additional supporting calculations must be included where appropriate. Methodology, formulas, and references are described on the following pages.

HYDROMODIFICATION CONTROL REQUIREMENT

Hydromodification Control is required for any project that creates or replaces one acre or more of impervious area. The Hydromodification Control Requirement is to infiltrate and/or reuse 100% of the total calculated volume of storm water generated by the developed site for a 1.0 inch rain event in a 24-hour period. If this requirement is met with the installation of LID BMPs that include 50% or more mature vegetation coverage, then both the Delta Volume Capture and Treatment Requirements are satisfied. However, all tributary areas must provide trash capture. These requirements may be achieved using treatment trains where a variety of BMPs, both practices and constructed features, are constructed in series in order to achieve improved storm water quality.

All volume calculations are completed using the Curve Number Method, as described on the next page. The proposed site will be used to determine the tributary areas and post development curve number used for these calculations.

DESIGN REQUIREMENTS

The water quality design storm used for all SWLIDS calculations is 1.0 inch in a 24-hour period.

For all projects: The treatment component requires that all runoff generated by this water quality design storm from impermeable surfaces be treated on site for the pollutants of concern. Trash capture requirements must be met as outlined in Tables 1 and 2.

For projects that increase the amount of impervious surface, but create or replace less than a total of one acre: The Delta Volume Capture component requires that any increase in volume due to development for the water quality design storm must be infiltrated and/or reused on site. Further discussion of the Treatment and Delta Volume Capture requirements and the

accompanying formulas can be found in Chapter 6. Trash capture requirements must be met as outlined in Tables 1 and 2.

For projects that create or replace one acre or more of impervious surface: These larger projects must mitigate their impacts by capturing 100% of the post development volume generated by the water quality rain event.

The Delta Volume Capture and Hydromodification Requirements apply to the project site as a whole, as opposed to particular tributary areas individually. Storm water may be routed to the portion of the site most suited for infiltration and volume capture from other less suitable areas. This may be particularly useful on sites that are partially prohibited from infiltration (e.g. contamination or slope stability issues) or have areas more suited to infiltration.

Trash capture requirements must be met as outlined in Tables 1 and 2.

CHAPTER 7: MAINTENANCE AND INSPECTION

MAINTENANCE AND INSPECTION

INTRODUCTION



The maintenance and inspection section of the SWLIDS shall describe provisions required to keep BMPs operating as originally designed and approved. At a minimum, the SWLIDS and Maintenance Declaration shall include:

- Scope and frequency of BMP inspections.
- Regularly scheduled maintenance.
- Provisions for unscheduled maintenance.
- Recordkeeping requirements.
- Identification of the responsible party.
- Identification of the funding source, including irrigation.
- Identification of access routes to BMPs.
- Costs associated with inspection and maintenance.
- Design life including periodic replacement cost.
- Specific provisions recommended by the manufacturer of any proprietary system BMP.

Additional reference information regarding maintenance requirements and inspection checklists are included in BMP Fact Sheets which can be found in Appendix E.

REQUIREMENTS FOR BMPs ON PRIVATE LAND

RESPONSIBILITY FOR BMP ON PRIVATE LAND

Maintenance and Inspection of all BMPs on private land are the responsibility of the property owner. This responsibility shall run with the land and be legally recorded, executed, and transferred upon sale of the property. Property owners shall inspect, or ensure the inspection by a qualified professional, of all BMPs at least once a year or at the frequency specified in the BMP Fact Sheets and report it annually to the Governing Agency.

DECLARATION OF COVENANTS TO MAINTAIN BMP ON PRIVATE LAND

Legally binding, signed maintenance declaration of covenant, or equivalent mechanism, stating the ongoing maintenance of BMPs on private property are the owner's

responsibility is required for the long-term maintenance of all BMPs located on private properties. This declaration shall legally assign maintenance responsibility to the property owner and assure that all BMPs will remain fully functional and that all areas identified for Treatment and/or Volume Capture will discharge to the specified BMP.

This declaration shall be recorded among the deed records at the County Recorder's Office so that it will run with the title to the land and shall include a map clearly identifying each BMP. Additionally, a copy of this declaration shall be included in any sales and/or lease agreements for properties with storm water BMPs. A copy of the executed document shall be provided to the governing agency.

FUNDING AND MAINTENANCE ACTIVITY REQUIREMENTS FOR BMPs ON PRIVATE LAND

The funding of all inspection, maintenance, and replacement of BMPs on private land is the sole responsibility of the property owner.

RECORD KEEPING FOR BMP ON PRIVATE LAND

Records regarding annual inspections and maintenance shall be retained for at least five years and made available upon request to the Governing Agency. These records shall include copies of completed inspection reports and maintenance checklists to document any inspection and maintenance activities that were conducted over the last five years. Any corrective actions, repairs, or replacements shall also be documented and kept in the BMP inspection and maintenance records for a minimum of five years.



REMEDIATION OF PROBLEMS FOR BMP ON PRIVATE LAND

The remediation of problems, in addition to routine maintenance needed to keep the BMP in working order is the responsibility of the property owner. This responsibility runs with the land and transfers to the new owner in the event the property is sold. In the event adequate BMP maintenance is not conducted, the property owner shall allow the Governing Agency's staff, or their designees, to enter the property and take the necessary steps to restore the BMPs to good working order. The property owner will be responsible for reimbursing the Governing Agency for expenditures associated with restoring the BMPs to good working order, in addition to any administrative costs, fines, or penalties imposed.

CHAPTER 7: MAINTENANCE AND INSPECTION

REQUIREMENTS FOR BMPs ON COMMON LAND

RESPONSIBILITY FOR BMP ON COMMON LAND

Maintenance and inspection of all BMPs on common land (those held by Home Owners Associations or HOAs) are the responsibility of the HOA. This responsibility shall run with the land and be legally recorded, executed, and transferred upon sale of the property. The HOA shall inspect and/or ensure the inspection by a qualified professional, of all BMPs at least once a year and at the frequency specified in the maintenance and inspection section of the SWLIDS.

CC&Rs FOR BMP ON COMMON LAND

For projects with BMPs located within a common area or easement to be maintained by a HOA, language regarding the responsibility for inspection and maintenance must be included in the project's CC&R's. In addition, the CC&R's shall include the location and brief description of all storm water BMPs installed with the project. This language shall be reviewed and approved by the Governing Agency as part of the Final SWLIDS approval process.

SIGNED DECLARATION FOR BMP ON COMMON LAND

A legally binding, signed maintenance declaration, or equivalent mechanism approved by the Governing Agency, is required for all BMPs located on common land. This declaration shall legally assign maintenance responsibility to the HOA and will be executed by the HOA. The declaration shall be recorded at the County Recorder's Office. It will run with the title to the land. Additionally, a copy of this declaration shall be included in any sales and/or lease agreements for properties with storm water BMPs.

FUNDING FOR BMP ON COMMON LAND

The funding of all inspection, maintenance, replacement, and reporting of BMPs on common land is the sole responsibility of the HOA.

RECORD KEEPING FOR BMP ON COMMON LAND

Records regarding annual inspections and maintenance shall be retained for at least five years and made available upon request to the Governing Agency. These records shall include copies of completed inspection reports, and maintenance checklists to document any inspection and maintenance activities that were conducted over the last five years. Any corrective actions, repairs or replacements, shall also be documented and kept in the BMP inspection and maintenance records for a minimum of five years.

REMEDIATION OF PROBLEMS FOR BMP ON COMMON LAND

In the event adequate BMP maintenance is not achieved, the HOA shall allow the Governing Agency's staff to enter the property and take the necessary steps to restore the BMPs to good working order. The property owner will be responsible for reimbursing the Governing Agency for expenditures associated with restoring the BMPs to good working order in addition to any administrative costs, fines, or penalties imposed.

REQUIREMENTS FOR BMPs IN THE PUBLIC RIGHT OF WAY RESPONSIBILITY



Project sponsors and property owners are encouraged to locate storm water BMPs within the limits of their private property on the project site. However, in cases where proposed BMPs are required to treat/mitigate storm water runoff from public improvements, required as part of the project or existing public right of way that drains into the project area, BMPs may need to be located in the public right of way. If BMPs are proposed in a public area for transfer to, and long-term maintenance by, the Governing Agency, the BMPs must meet the design guidelines of this LID Manual. Check with the Governing Agency for any specific regulations related to BMPs in the right of way.

Also, it is expected that BMPs constructed as a part of public Capital Improvement Projects (CIP) will be located in the public right of way. While these projects do not need a recorded Maintenance Declaration, long term maintenance and funding must be considered.

Inspection and maintenance shall remain under the project or property owner's responsibility until the BMPs are legally transferred to public ownership. Additionally, by the use of maintenance indemnification agreements, a private entity may maintain BMP located in the public right of way. Once the BMPs are legally transferred, the maintenance, inspection, and replacement are the responsibility of the Governing Agency. Publicly constructed Capital Improvement Projects (CIP) are the responsibility of the Governing Agency.

SIGNED MAINTENANCE DECLARATION FOR BMP IN THE PUBLIC RIGHT OF WAY

For cases in which a Governing Agency agrees to accept responsibility for BMP long term operation, including inspection and maintenance, verification, such as a signed statement from the Governing Agency accepting responsibility for the BMP is required.

FUNDING FOR BMP IN THE PUBLIC RIGHT OF WAY

The funding of all inspection, maintenance, and replacement of BMPs built by private development is the sole responsibility of the property owner or developer. Funding shall include costs of irrigation if irrigation is required. With legal authorization, the Governing Agency may create a Special Tax District, or equivalent mechanism. A storm water tax would be assessed on the property owners within the Special Tax District to provide the funding for long term BMP inspection, maintenance, and periodic replacement which would be performed or coordinated by the applicable agency. Special Tax District funding shall also consider and include costs for governing agency administration (such as accounting, legal, tracking, etc.), contract management (for outside contractors), as well as contingency and escalating factors.

RECORD KEEPING FOR BMP IN THE PUBLIC RIGHT OF WAY

All records will be kept by the Governing Agency.

CHAPTER 8: CALCULATIONS

CALCULATIONS

All BMPs must be sized using the "Storm Water Calculator" which can be downloaded from the City of Santa Rosa's website at www.srcity.org/stormwaterLID. The following formulas are provided for reference and are used in the Storm Water Calculator. Additional supporting calculations may be submitted where appropriate.

HYDROMODIFICATION REQUIREMENT: 100% OF THE VOLUME GENERATED BY THE DEVELOPED SITE FOR A 1.0" RAIN EVENT OVER A 24-HOUR PERIOD

Required if the project creates or replaces 1.0 acre or more of impervious surface.

FORMULA: EQ. 6.1

$$S = \frac{1000}{CN_{POST}} - 10$$

WHERE:

S=Potential maximum retention after runoff (in)[7]
CN= Curve Number for the developed condition[8] associated with the tributary area (A) used below.

FORMULA: EQ. 6.2

$$Q = \frac{((P*K)-(0.2*S))^2}{((P*K)+(0.8*S))} * \frac{1ft}{12in}$$

WHERE:

Q= Runoff depth (ft)[9]
P=1.0" Precipitation
K=Seasonal Precipitation Factor[10]
S= Potential maximum retention after runoff (in)[7]

[7] As defined by the "Urban Hydrology for Small Watersheds" TR-55 manual.
[8] Per Table 2-2 of the "Urban Hydrology for Small Watersheds" TR-55 manual.
[9] Q in feet of depth as defined by the "Urban Hydrology for Small Watersheds" TR-55 Manual.
[10] From the Sonoma County Water Agency Flood Control Design Criteria.

FORMULA: EQ. 6.3

$$V = (Q)(A)$$

WHERE:

V= Volume of storm water to be retained (ft^3)
Q= Runoff depth (ft) [11]
A= Tributary Area (ft^2) corresponding to the associated Curve Number (CN) used above.

100% TREATMENT REQUIREMENT: All of the runoff generated by a rain event with an intensity of 0.20 in/hr must be treated from all tributary areas. All run-on must also be considered and either bypassed through the project site or include in the calculations for BMP sizing.

100% TREATMENT FLOW CALCULATION -RATIONAL METHOD

FORMULA: EQ. 6.4

$$Q_{TREATMENT=}(I)(A)(C_{POST})(K)$$

WHERE:

$Q_{TREATMENT}$= Design flow rate required to be treated (cfs)
I= 0.2 (in/hr) Intensity[12]
A= Tributary area (acres)
C_{POST}= Rational method runoff coefficient for the developed condition
K= Seasonal Precipitation Factor

DELTA VOLUME CAPTURE REQUIREMENT: The increase in volume of storm water generated by the developed site for a 1.0" rain event over a 24-hour period due to development must be infiltrated and/or reused on site. This requirement only applies if the total amount of impervious area is increased due to development. This requirement may be met on a site basis, meaning a greater volume of storm water may be captured in one tributary area to allow a lesser volume to be captured in another.

DELTA VOLUME CAPTURE CALCULATION- CURVE NUMBER METHOD
(Equations 6.5 and 6.6 will need to be calculated for both the pre-developed and post developed condition.)

[11] Q in feet of depth as defined by the "Urban Hydrology for Small Watersheds" TR-55 Manual.
[12] Intensity as defined by the NPDES MS4 Permit Order No. R1-2015-0030.

FORMULA: EQ. 6.5

$$S = \frac{1000}{CN} - 10$$

WHERE:
S= Potential maximum retention after runoff (in)[13]
CN= Curve Number[14] for the developed condition or pre-developed condition as appropriate.

FORMULA: EQ.6.6

$$Q = \frac{((P*K)-(0.2*S))^2}{((P*K)+(0.8*S))} * \frac{1ft}{12in}$$

WHERE:
Q= Runoff depth (ft)[15]
P= 1.0" Precipitation
K= Seasonal Precipitation Factor[16]
S= Potential maximum retention after runoff (in)[13]

FORMULA: EQ. 6.7

$\Delta Q = Q_{post} - Q_{pre}$

WHERE:
Q_{pre}=Pre-development runoff depth (ft)
Q_{post}= Post development runoff depth (ft)

FORMULA: EQ. 6.8

$$V = (\Delta Q)(K)(A)$$

WHERE:
V= Volume of storm water to be retained (ft^3)
$\Delta Q = Q_{post} - Q_{pre}$=Pre-development runoff depth (ft) – Post development runoff depth (ft)
K= Seasonal Precipitation Factor[16]
A= Tributary Area (ft^2)

[13] As defined by the "Urban Hydrology for Small Watersheds" TR-55 manual.
[14] Per Table 2-2 of the "Urban Hydrology for Small Watersheds" TR-55 manual.
[15] Q in feet of depth as defined by the "Urban Hydrology for Small Watersheds" TR-55 Manual.
[16] From the Sonoma County Water Agency Flood Control Design Criteria

Exhibit C

Sonoma County Public Infrastructure
Johannes J. Hoevertsz, Director
Monique Chapman, Deputy Director – Administration
Michelle Ling, Deputy Director – Facilities Development & Management
Trish Pisenti, Deputy Director – Transportation, Operations & Fleet
Janice Thompson, Deputy Director – Engineering & Maintenance

2300 COUNTY CENTER DRIVE, SUITE A220, SANTA ROSA, CA 95403 ❖ PH: 707.565.2550 ❖ FAX: 707.565.3240

SUBJECT: Koi Nation Shiloh Resort and Casino Project
County of Sonoma Public Infrastructure Department Comments on Draft Environmental Impact Statement, Released July 2024

Dear Deputy County Counsel Ball:

The County of Sonoma Public Infrastructure ("SPI") Department, given its principal responsibility for County roadways, coordinates and works closely with numerous agencies, municipalities, and other community stakeholders on matters involving traffic and circulation in and affecting the unincorporated areas of Sonoma County. Consistent with that role, SPI has reviewed and hereby submits comments on the Draft Environmental Impact Statement (DEIS) for the Koi Nation ("Tribe") Shiloh Resort and Casino Project. SPI's analysis reveals that the DEIS insufficiently addresses and fails to mitigate for numerous, significant traffic and safety impacts of the Project, along with failing to present adequate analysis and assessment of its own mitigation measures. Accordingly, SPI strongly urges the Bureau of Indian Affairs ("BIA") to reconsider the Project and endorse the "no project" alternative. Specific concerns with the DEIS are:

Vague, Missing, And Unenforceable Mitigation Measures, Which Are Unsupported By Any Effectiveness Assessment

For many identified Project impacts, the DEIS proposes use of "Best Management Practices" ("BMPs") that lack any detail or specific measures, are ambiguous and open-ended, and that implicitly suggest that such BMPs—and not general building codes or other generally-applicable standards—are the only measures to be used. The prescription of BMPs is made more troubling by the fact that other discussions in the DEIS refer to use of both BMPs and mitigation measures to address certain impacts, suggesting that BMPs differ from mitigation measures.

Moreover, insofar as the DEIS identifies mitigation measures that are left to be identified in either a "design-level geotechnical report" from "a registered design professional" that will be "no less stringent than" the California Building Code (DEIS, Table 2.1-3) or "If [species] is detected..., the USFWS shall be contacted immediately to determine the best course of action," impacts and mitigation measures remain unidentified, unspecified, and unable to be assessed for appropriateness or adequacy.

Even when mitigation measures are identified, the DEIS qualifies many of the measures as "to the extent feasible" (e.g, Biological Resources Mitigation Measure O). Such a nebulous and subjective standard fails to prescribe actual, enforceable, assessable measures for identified impacts.

Also, what other specific codes and standards that get referenced are either not made available for review, or are made up and non-existent. Specifically, in its discussion of Construction measures, the DEIS states that "The proposed facilities would conform to applicable requirements of the Tribe's Building and Safety Code of 2023, which are consistent with the CBC and California Public Safety Code, including building, electrical, energy,

mechanical, plumbing, fire protection, and safety." However, the Tribe's "Building and Safety Code" is not made available for review, and as a sovereign nation it is not clear what binding effect said Code may have on any Tribal activities. Oddly, a description of it is omitted from the "regulatory setting", even as inapplicable State codes are discussed at length. What is more, there is no such thing as the "California Public Safety Code" cited on page 2-14. The mitigation measures pertaining to methods, practices, materials, and other standards crucial for safe construction remain illusory and unable to be assessed.

Failure To Address Foreseeable Contingencies

The DEIS identifies adverse impacts to County law enforcement and related operations and budgets. As mitigation, the DEIS calls for "good faith efforts" by the Tribe to negotiate service agreements containing certain conditions with the Sonoma County Sheriff office and the Sonoma County Fire District. However, no provision is made should said negotiations with the Sheriff Office not come to fruition; in contrast to the prescribed fallback measure of building and maintaining a fire and EMT facility and staffing on site, no such or other mitigation measure is stated for provision of law enforcement (police) service onsite. (See Table ES-1; Section 3.7, "Fiscal Impacts": Mitigation Measures A and C.) The failure to specify any measure to apply in the event a service agreement cannot be reached leaves unmitigated the identified impacts. An obvious solution would be to compel the tribe to reach an agreement based on the impacts, rather than the "good faith efforts" approach. Absent the agreement, which the mitigation does not ensure, the impacts remain significant.

Unreliable Traffic Data Not Consistent with Actual Casino Use

The DEIS Traffic Study makes a fundamental misstep that leads to flawed analysis and conclusions. After invoking the Institute of Traffic Engineers (ITE) publication Trip Generation (11th Ed., 2021), which is widely-recognized across the country for development project trip generation analysis, the Traffic Study then "identifies" and selectively adopts data and 'observed rates' from several other casino projects, including a traffic study from 2015. Then, the Traffic Study inexplicably uses trip rates for a Hotel use, and meeting space and event center traffic generation data from the unrelated 2015 casino traffic study. These numbers were then further discounted by seventy-five percent based on assumptions that event attendance would include trips generated by the casino. (See Traffic Study, Appendix I, pg 30-31.)

However, the ITE Trip Generation Manual includes data specifically for Casino uses—yet the DEIS is silent as to why that more-specific, more current data was not used, and instead "observed trip generation rates" at two other casinos and data from a near-decade old, different casino traffic study in other parts of California were selected.

As a result, the trip counts used in the traffic analysis appear inapplicable to this casino project in this locale, and at a minimum they should be checked against the most current version of the Institute of Transportation Engineers Trip Generation Manual.

Traffic Impacts – "Fair Share" Payments Only

Even though numerous and major roadway improvement measures are identified as needed to mitigate significant traffic impacts and ensure needed circulation, every single measure (with one small exception,

discussed below) would only be subject to the Tribe paying "fair share" amounts—yet the required mitigation measures may never even be implemented or built.

The DEIS calls for significant roadway measures to maintain acceptable traffic circulation and mitigate project impacts, including to expand existing roads and intersections, add traffic lanes, lengthen turning lane storages, and add pedestrian improvements. However, the DEIS does not require that the Tribe actually undertake or ensure completion of the mitigation measures. Instead, the Tribe is given the option to only pay specified percentages of what these measures might cost. (See DEIS, Section 4, pg. 4-11: "The Tribe shall either complete or make in-lieu fair share contributions to the cumulative 2040 traffic mitigation measures prior to the need for the improvements. The Tribe's fair share contribution percentage, as estimated in the Traffic Impact Study (Appendix I), is included for each measure.")[1] Not one single measure would actually be required to be affirmatively performed or caused by the Tribe, nor made a condition of Project approval or for opening the proposed casino and resort. Simply providing payment does not mitigate impacts—only the actual mitigation measure projects would. Yet the DEIS findings would reflect 'no significant impacts' even if the actual mitigation projects do not come to fruition.

The only mitigation measure affirmatively imposed on the Tribe would be that, in the event the that certain repaving is not completed by other, piggybacked roadway projects by 2040 (see below), the Tribe to "compensate homeowners adjacent to the identified roadway segments for dual pane exterior windows or other noise reducing measures... at the request of the homeowner." (DEIS, Section 4, pg. 4-10.) On its face, this mitigation measure would only take place no sooner than 2040—more than a decade after Project opening—and the details regarding the universe of "adjacent owners," minimum and maximum amounts of compensation, and outreach and notification to subject homeowners, among other things—are left unspecified. As such, this one affirmative mitigation measure that would be imposed on the Tribe not only would be delayed while Project impacts would be occurring on a daily basis, but also cannot even be fully assessed. There also is no discussion of enforcement mechanics around how this in-kind mitigation measure would be assured.

The Bureau does have the ability to adopt mitigation that is binding on both Bureau and Tribe to ensure efficacy. For example, the Bureau could require that the casino not open until the mitigation is completed. Instead, should it rely on the DEIS, the Bureau would be asking everyone to hope and assume that its mitigation measures will be effective, without any assessment of the realities on the ground, and simply ignoring the findings that it needs to make if it does not adopt actual mitigation. Absent mitigation that is ensured to actually occur (and when and how it is needed in time for Project impacts), the DEIS forces only speculation and aspiration that impacts will be made less than significant.

To the extent that the DEIS evacuation analysis and conclusions (discussed below) rely on any of these mitigation measures to be actually implemented to facilitate and ameliorate Project traffic evacuation, the possibility that measures may become mere moneys on account makes such a mitigation approach all the more inadequate and, in fact, useless for mitigating Project impacts.

Traffic Mitigation Measures – No Foreseeable or Guaranteed Projects To "Piggyback"

[1] Notably, only "fair share" amounts for intersection improvement and road widening mitigation measures are specified in the DEIS. In contrast, the amount of "fair share" required for the "noise-reducing payment" (see DEIS, Section 4, pg. 4-10) measure required of the Tribe is completely unspecified, and therefore cannot be assessed.

What is more, the DEIS assumes and relies—that is, would piggyback--on several major, third-party roadway initiatives and potential future projects to provide expanded roadways and improved intersections to incidentally mitigate for Project-caused traffic. ("Widening is planned under the Town of Windsor General Plan and Traffic Impact Fee program and assumed to be implemented under mitigated conditions." DEIS, pg. 3-158; "While all scenarios experience 95th percentile queue lengths that are not consistent with Town of Windsor standards, the addition of project-related intersection improvements, restriping to increase storage length, *and planned improvements by the Town of Windsor and County of Sonoma* would mitigate project-related impacts to a level that would be consistent..."Traffic Study, pg. 6 [emphasis added].) These include projects to widen Shiloh Road (identified in the DEIS Traffic study as "Town of Windsor Project #2, Shiloh Road Interchange"), to construct a second northbound left turn lane and westbound receiving lane at Old Redwood Highway's intersection with Shiloh Road (identified as Town of Windsor's "Traffic Impact Fee project"), and completely unspecified "County of Sonoma" projects.

Reliance on "pipeline" projects and general planning concepts that might be undertaken by others, with no guarantee of timing, specific plans or specifications, or even that the projects will in fact be performed, reduces the Project mitigation measures to being contingent, unreliable, and illusory. Said another way, the Project would not independently mitigate for its own impacts and would need other, separate projects to—hopefully—occur and provide the needed mitigation. The DEIS admits this reality, yet all it requires is a Tribal 'best effort to assist' and with no meaningful provision to ensure mitigation should implementation not occur on the needed time frame: "While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make good faith efforts to assist with implementation of the opening year improvements prior to opening day." (DEIS, section 4, pg. 4-10.)[2]

Even if such projects are currently planned, they remain just that—plans for the future, and subject to a wide variety of variables. A simple review of Town of Windsor planning and project materials reveals that at least two of the major projects ("Town of Windsor Project #2, Shiloh Road Interchange" and Shiloh Road expansion from Hembree Lane to Old redwood Highway) relied on by the DEIS, are not even in current 5-year Capital Improvement Plans. As for the other major project (Town of Windsor's "Traffic Impact Fee project, to add turn and receiving lanes at Old Redwood Highway and Shiloh Road), the County is informed and believes that said project lacks complete funding and in accordance with Town plans, may be implemented as a major traffic roundabout that will require significant right of way acquisition from adjacent properties. Moreover, Town materials further indicate that significant portions of such projects would be undertaken by private development projects—if and when said projects ever come to fruition, and only to the extent of each project's respective impacts. What this means is the Town will not necessarily complete the entire 4-lane widening of all of Shiloh, as called-for by the DEIS. Should said private developments fail, or should the Town never initiate the major projects (and others) due to funding, planning, or other reasons, then the needed improvements and mitigations will not be realized. Project traffic and impacts would remain unmitigated, notwithstanding a check that would have been paid by the Tribe years before. The impacts, including life safety impacts related to fire evacuation, would remain.

[2] The County does not agree that off-site improvements are not within the "ability of the control of the Tribe" or that lack of "jurisdiction" is fatal to implementing needed mitigation. Project conditions and other prerequisite terms to meaningfully and timely mitigate for identified impacts could be imposed on the Project or any associated discretionary approval by the BIA or other agencies having jurisdiction.

To the extent Project mitigation would rely on specific construction or even materials used by projects undertaken by others, the DEIS fails to provide for assuring such specifics. For example, in calling for the Tribe to pay a "fair share" for "noise-reducing pavement" for roadway projects along Shiloh Road and on Old Redwood Highway (see DEIS, Section 4, pg. 4-10), actual mitigation for identified noise impacts would depend on construction means, methods, and materials of third-parties, including the Town of Windsor and the County of Sonoma and their contractors. However, there is no assurance that those agencies and their contractors would necessarily employ such "noise-reducing pavement." This serves as yet another example of needed mitigation proving to be unguaranteed and unenforceable, and ultimately illusory.

As for the reliance on the Shiloh Road expansion to a four-lane road, the DEIS and its Traffic Study call for Shiloh Road to be widened to the Gridley Drive intersection. (See Traffic Study, Appendix I, pg. 123; DEIS Proposed Mitigation Measure, Transportation and Circulation, Measure #E.) However, the Shiloh Road projects as identified in Town of Windsor Traffic Impact Fee studies and other local planning documents only call for 4-lane widening to the intersection of Shiloh with Old Redwood Highway. There is no project or planning document that would entail widening Shiloh beyond Old Redwood Highway anywhere to the east, including Gridley Drive. So, even as mitigation for significant Project impacts requires widening Shiloh Road east past Old Redwood Highway, no actual mitigation would actually be achieved—the Tribe would only be made to pay a "fair share" to a project that nobody owns, nobody is planning, and nobody is responsible for.

Required Mitigation Measures Would Require Right of Way Take and Possibly Condemnation

The numerous mitigation measures identified in the DEIS and Traffic Study appear to require significant expansion of existing rights of way. Yet the DEIR and Traffic study fail to account for the costs, delays, and associated impacts to adjacent properties.

Based on desk-level analysis and having been deprived by the Bureau of Indian Affairs of the time to obtain proper field surveys, the widened roadways and intersections and lengthened turn lanes called for as mitigation measures are expected to require expanded right of way take to accommodate the measures and needed appurtenances in accordance with modern road design standards. This reality is already recognized in the Town of Windsor's Traffic Impact Fee report, wherein the "Shiloh Road Interchange" and the "Shiloh Road – Hembree Lane to Old Redwood Highway" expansion projects list easements and right of way acquisition as included project scope and cost items. To accommodate the listed mitigation measures, additional rights of way appear to be needed for all approaches at the Shiloh Road/Old Redwood Highway intersection and the Hembree Lane approach at Shiloh Road.

Despite this, the DEIS fails to raise, analyze, or propose any mitigation measures to address the take of property needed to mitigate for the Project. No provision is made for the impacts to adjacent properties should rights of way be expanded, and yard space or other private property be taken for public use. Moreover, no treatment is afforded for the impact to the public park (Esposti Park) northeast of the Shiloh/Old Redwood Highway intersection, which stands to be impacted should that intersection be expanded to four lanes to mitigate for Project impacts.

In addition to denying the County the ability to assess such foreseeable Project impacts, the failure to account for the need to acquire property ignores the legal reality of eminent domain requirements. Without more, approval of a Project that will require significant property acquisition pre-supposes the legal ability to acquire such property in the first place. Is mitigation for a commercial casino project adequate legal grounds for a public entity to exercise the power of eminent domain to take property over owner opposition? If the federal government believes so, based on its trust obligations to a tribe, it should be the acquisition lead and take on that

responsibility as part of the mitigation. Absent legal authority to obtain such needed property, needed mitigation measures may become impossible.

Required Traffic Mitigation Measures Are Missing From the DEIS

The DEIS takes the approach of listing all mitigation measures for the Project in DEIS Section 4 ("Mitigation measures have been recommended as appropriate for any potentially significant effects identified following the incorporation of project design measures and BMPs and are listed in the table below.") and in Table ES-1 ("Summary of Impacts and Mitigation Measures").

However, the measures that do get listed in the DEIS variably ignore or misstate the measures that the Project's Traffic Study specified to address impacts. This in part reflects a discrepancy in the Traffic Study itself, where the narrative summary of required mitigation measures deviates from the content in the Traffic Study analysis tables. There is no explanation for *why* these deviations are made. Curiously, all deviations work to *reduce* the amount and degree of required mitigation as identified in the Traffic Study analysis. The mitigation measures that purportedly would be imposed on or incorporated in the Project therefore fail to fully address the very impacts the Project's Traffic Study identifies, including by completely leaving out certain measures without discussion or support. How can mitigation measures be proposed when they don't even reflect the very measures identified and called for by the supporting Traffic Study and other materials? This gap in analysis and lack of any supporting rationale not only suggests many of the measures are arbitrary, but also completely denies others, including the County, the ability to meaningfully analyze the measures for sufficiency in addressing impacts.

The following tables summarize the discrepancies and omissions:

Table 1:

Opening Year 2028 + Project Alternative A

Measure/Location	Traffic Study, Table 24	DEIS
Intersection 1, EBR lane	175 ft. storage length	150 ft only
Intersection 1, NBL turn lane	215 ft. storage length	(None)[3]
Intersection 1, SBL lane	195 ft. storage length	190 ft only
Intersection 1, SBR lane	130 ft. storage length	105 ft only
Intersection 7	Multiple turn lanes, dedicated	(None)

[3] Defers to Town of Windsor's "Traffic Impact Fee project" only.

	turn and receiving lanes	
Intersection 9	Stop sign for loop road traffic + dedicated right turn lane	(None)
Casino Entrances	Pedestrian facilities including concrete sidewalks and marked crosswalks	(None)
Adjacent Bus Stops	Continuous, accessible pedestrian pathways between transit stops and project entrances	"No mitigation required"

Table 2:

Cumulative Year 40 + Project Alternative A

Measure/Location	Traffic Study, Table 32	DEIS
Intersection 1, EBL lane	425 ft. storage length	385 ft only
Intersection 1, SBL lane	190 ft. storage length	145 ft only
Intersection 1, SBR lane	160 ft. storage length	105 ft only
Intersection 2,[4] SBL	350 ft storage length	(None)
Intersection 3, NBR	340 ft. storage length	(None)[5]

Extraneous Mitigation Measures Raise Questions and Doubts

There also are at least two examples of mitigation measures called for in the DEIS that are without support or analysis in the Traffic Study. Example 1: the DEIS states that a mitigation measure would include an "exclusive left turn lane and one shared through-right turn lane" at the northbound approach to this intersection (Shiloh Road and Hembree Lane). However, there is no northbound approach at this intersection—it is only a three-way intersection. Example 2: the DEIS states that a mitigation measure would include a "restripe SBR to give 65 ft. storage length" for mitigation, but that measure does not appear at all in the Traffic Study or anywhere else in the EIS. The Traffic Study Queue Length Tables lack any reference to any SBR or data for such (only a WBL is analyzed).

It is not known why these mitigation measures are included, raising questions about what methodology was used, attention to detail, and whether other information has been excluded for assessment.

[4] The DEIS states that a mitigation measure would include an "exclusive left turn lane and one shared through-right turn lane" at the northbound approach to this intersection (Shiloh Road and Hembree Lane). However, there is no northbound approach at this intersection—it is only a three-way intersection. It is not known why this mitigation measure was included, raising questions about methodology used, attention to detail, and whether other information has been excluded.

[5] Defers to "Town of Windsor Project #2, Shiloh Road Interchange" project only.

Impacts from a "No Notice" Fire Scenario Remain Completely Unmitigated

Having identified project traffic as a significant impact in the event of a wildfire evacuation in the Project area, the DEIS provides an Evacuation Mitigation Plan, with several options to "relieve evacuation traffic." However, the Plan and traffic relief options are only analyzed and concluded as adequate based on an assumed "With Notice" fire event. In contrast, a "No Notice" fire event is dismissed by the DEIS as "unlikely" to occur, because "the enhanced safety measures and procedures in place today significantly lower the chances of another No Notice Scenario, similar to the 2017 Tubbs Fire, from occurring." (DEIS, pg. 3-129.)

"Unlikely" and "lower" chances are not the same as there being no risk, or, that a sizable risk does not remain even though smaller than what it historically was. Yet, in fire-prone Northern California and in Sonoma County with its recent experiences and trends with devastating wildfires, the DEIS fails to specify even one single measure to mitigate for the "substantial congestion" and bottlenecks caused by the Project evacuation traffic identified in the "Evacuation Travel Time Assessment." Not one. This, despite a No Notice fire event on a holiday and harvest weekend being admitted as a "reasonable worst-case scenario." (DEIS, Appendix N-2, pg. 8.) The lack of any mitigation measures stands in stark contrast to the discussion and proposed mitigation measures for a With Notice fire scenario, where a "Project-only" evacuation protocol is determined to clear Project-related evacuation traffic within allegedly acceptable time frames. (Id., pg. 10.)

Instead, the "Evacuation Travel Time Assessment" and DEIS skip over further analysis and proposing any mitigation measures, on the assumption that a "No Notice scenario represents a mass evacuation that experts indicate is far larger than what would be reasonably expected in the future, and thus represents a worst-case scenario." (Id.) Yet, this is at odds with the DEIS's "Evacuation Recommendations Memorandum" (Appendix N-3), which states "Today, Sonoma County has developed fire preparedness education, advanced Alert and Warning Systems, Evacuation Zones, and early detection devices such as wildfire cameras to enhance life-safety through orderly evacuations. *However, "No Notice" events still merit significant consideration and planning.*" (Pg. 5 [emphasis added].)

This boils down to just a massive gamble that such a No Notice event will never again occur, rather than mitigating for significant, dangerous public safety impacts (given the reality of life and conditions in Sonoma County), even if the odds have recently been reduced.

"With Notice" Evacuation is Only Mitigated if a Single Zone or the Project Alone Evacuates at a Time

In yet another gamble, conclusions regarding mitigation hinge on yet another scenario which is not guaranteed: that evacuations proceed in sequential order and that the evacuation study area zones would not be simultaneously evacuated.

While never stated as an express assumption, the "Evacuation Travel Time Assessment" relies on a graduated, progressive evacuation that would allow for project-related traffic to evacuate separate from traffic in other evacuated areas:

"In this analysis, *the project employees and visitors evacuate with the phase 1 evacuation zones.* [...] The results of the evacuation travel time analysis are presented below in Table 2. The results of the analysis indicate the modeled amount of time to clear the study area of phase 1 evacuation demand under 2028 and 2040 conditions is less than 8.5 hour (510 minutes), which is t*he time difference between phase 1 and phase 2 zones receiving the evacuation orders*." (DEIS, Appendix N-2, pg 9 [emphasis added].)

The above belies the underlying assumption and prerequisite for all the evacuation and mitigation analysis to hold true: that the Phase 1 and Phase 2 areas would not be evacuated at the same time. However, such a scenario cannot ever be guaranteed, and there is no analysis or mitigation measures specified to address the impacts of an emergency where the entire evacuation zone is ordered to evacuate at the same time.

Evacuation Analysis Fails to Account for Pipeline Development Project Traffic

Analysis for Project-related evacuation traffic impacts assumed that Project-traffic would evacuate concurrently with traffic from the rest of the evacuation areas, along with traffic from only three planned projects.[6] This is incomplete and ignores the traffic from other projects that are planned and under development in the very same evacuation area studied by the Assessment. As stated by the Tribe's CAS safety Consultants, Inc., "We recommend evaluating the scale of the Shiloh Resort and Casino evacuation impact along with other proposed projects in the area. Traffic engineers should evaluate traffic conditions based on the cumulative impacts of known or planned projects in the area. *Any additional known or proposed project should be considered in determining the evacuation impacts of the Shiloh Resort and Casino and surrounding community*." (DEIS, Appendix N-3,p g. 10 [emphasis added].) According to Town of Windsor planning materials, there are many other planned projects in the evacuation study areas (Phase 1 and Phase 2 areas), including the "Estates at Ross Ranch," "Heritage Park," and "Shiloh Business Park."

The evacuation traffic data and analysis accordingly lack the cumulative impacts of these known, planned, and pipeline projects, and the study's assumptions of only three projects and an annual traffic growth rate may undercount actual, foreseeable, and more likely traffic conditions in future evacuation scenarios.

Conclusion

Assuming the DEIS and its supporting materials even adequately capture all significant Project impacts, the DEIS and the proposed mitigation measures fall short of providing complete, meaningful, and realistic analysis and mitigation assessment. Having identified many significant impacts the Project will create, the DEIS looks the other way and ignores the deficiencies of those measures, assumes that real-world scenarios will not occur, and fails to explain why the DEIS deviates from its own supporting Appendices and the conclusions therein. Project traffic needs to be mitigated as soon as casino doors open, not if and when other people's projects might get around to including measures to also handle the Project's traffic. "BMPs" and worst-case scenarios related to all the facets of the Project need to be articulated and assessed now, rather than deferred and left open-ended and unplanned-for. And, Project traffic needs to be safely evacuated during common fire situations like Sonoma County has already seen, not just under an entirely hypothetical, orderly, phased evacuation scenario where not everyone in the Project area is evacuating all at once.

Given these deficiencies, the County of Sonoma Public Infrastructure Department fails to see how the Project can be found to mitigate for and be determined to have 'less than significant' impacts, and urges that the BIA adopt the "no project" alterative.

[6] The planned projects are "Shiloh Terrace" residential development, and "Shiloh Crossing" and "Clearwater" mixed-uses developments.

Sincerely,



Janice Thompson
Deputy Director of Engineering and Maintenance

Exhibit D

permit SONOMA

County of Sonoma
Permit & Resource Management Department

MEMO

To:	Verne Ball, Deputy County Counsel
From:	Tennis Wick, AICP, Director Scott Orr, Assistant Director Ross Markey, Comprehensive Planning Division Manager Katrina Braehmer, Supervising Planner Eric Gage, Planner
Date:	21 August 2024
Subject:	Koi Nation Shiloh Resort Hotel & Casino: DEIS comments

Project Location/APN #:	222 E Shiloh Road, Santa Rosa, 95403 (APN 059-300-003)
Project Description:	The proposed project includes the development of a casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure within the project site.
General Plan Land Use:	Land Intensive Agriculture 20-acres per dwelling unit
Zoning:	LIA (Land Intensive Agriculture) B6 20 (20 acres per dwelling unit density), F1 (Floodway Combining District) F2 (Floodplain) RC50/25 (Riparian Corridor 50/25 foot setbacks) SR (Scenic Resources) VOH (Valley Oak Habitat)

Environmental Impact Assessment Comments

Chap 3.7 Socioeconomic Conditions and Environmental Justice

Comment: The DEIS finds that the project would not result in a change to the local population and therefore concludes that the project would not have impacts on the local workforce housing supply. Appendix B-1 states:

"The construction and operation of the subject facility will have a positive impact on local employment (thereby reducing the unemployment level). As the incremental number of people employed represents a comparatively small percentage of the unemployed population within the county, there is likely a good degree of availability of people currently residing in the area to fulfill

the available positions. Furthermore, a large influx of new residents to the host county and/or workforce is not expected to occur due to the construction of the facility as the Project site is proximate to a sizeable workforce in the subject county as well as nearby counties."

This paragraph is unsupported speculation. In turn, the conclusion that there will not be an impact on housing is not supported by actual data and analysis. Any impact should be considered significant given the context -- the overall housing crisis that exists in Sonoma County and the State of California. There is no discussion in the DEIS of non-compliance with typically applicable local affordable housing contributions that would otherwise apply. A project of this size would normally require the provision of 40 lower income residential units on-site or an equivalent alternative action. This project will exacerbate the affordability crisis for low-income housing in the county and region.

Chap 3.9 Land Use

Comment: The proposed project is inconsistent with the Sonoma County General Plan and Zoning Ordinance.

Approximately 47 acres of the project site is designated Farmland of Statewide Importance, 8 acres designated Farmland of Local Importance, and 13 acres of Prime Farmland. The project design includes vineyard buffers and screening, and siting of water treatment systems, to minimize impacts in areas adjacent to existing residential uses. The impact analysis of agricultural resources concludes that the conversion of agricultural land is less than significant based on USDA Farmland Conversion Impact rating.

The analysis should consider the regional context, but does not. Sonoma County General Plan General Plan Objective AR-4.1 establishes agricultural production as the highest priority use on agriculturally zoned parcels. General Plan Policy AR-4a explicitly states that visitor-serving uses in agricultural areas shall be accessory to a primary agricultural use and shall be limited in scope and intensity relative to the agricultural use. The proposed project is inconsistent with the General Plan policies pertaining to agricultural resources.
Consistent with General Plan policy, commercial entertainment centers, such as the proposed project, and similar intensities of commercial use are expressly not permitted in Land Intensive Agriculture zoning. The proposed project is inconsistent with the purpose of the Land Intensive Agriculture zoning district.

The project is also inconsistent with the stated purpose and provisions of applicable zoning. The site is within a voter-approved Community Separator, designated in the General Plan and by zoning as a Scenic Resource. The stated purpose of Community Separators is to preserve open space, retain rural visual character, limit new development in scale and intensity, and specifically avoid commercial development. Therefore the proposed large-scale, visitor-serving commercial use is inconsistent with the Community Separator policies and Scenic Resource (SR) Combining District.

The only actual analysis of the existing land use appears to be the following statement: "While the proposed uses within the Project Site are not similar in nature to the uses immediately surrounding the site, they are consistent with large scale commercial uses approximately 0.3 miles to the northwest, including big box stores and other high intensity commercial uses near the Highway 101 and Shiloh Road interchange." This sentence misinterprets or misrepresents the land use context, and fails to acknowledge that the local infrastructure has only been prepared for the planned land uses.

Chap 3.10 Public Services and Utilities

Comment: The proposed casino and resort exceed the intensity of development contemplated in the Sonoma County General Plan for the area and the subject parcel. The impacts of surrounding infrastructural improvements to accommodate the use are absent from the DEIS.

Chap 3.13 Visual Resources

Comment: The County's visual assessment guidelines were developed to provide a formal, consistent process for visual impact analyses to determine the significance of project impacts. The DEIS references the Sonoma County General Plan and Zoning Code policies governing scenic resources but does not utilize the County's visual assessment guidelines. Following these guidelines, the site would be characterized as having high sensitivity area due to its location within a Community Separator. The visual dominance of the project would be characterized as dominant because the project elements, including bulk and mass, height, and lighting, stand out against the existing setting and surrounding landscape. The County's visual assessment guidelines would find that a site with high sensitivity and a project with dominant elements would result in a significant visual impact requiring mitigation.

The DEIS lists "Protective Measures and Best Management Practices" in Table 2.1-3 that are intended to be incorporated into the project design that include measures to reduce impacts from project lighting but do not address other elements of the project that would result in impacts to scenic quality of the area. No mitigation measures for impacts to visual resources were proposed as would typically be required of private development projects that are found to have a significant impact under the County's visual assessment guidelines.

No visual assessment has been provided of the novel infrastructure that is contemplated, including 65 foot water tanks and leveed ponds.

Exhibit E

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John Mack
Natural Resources

Brian Keefer
Ombudsperson

TO: Verne Ball, Deputy County Counsel

FROM: John Mack, Division Manager, Natural Resources Division

DATE: August 25, 2024

RE: Review of Draft Environmental Impact Statement, Koi Nation of Northern California Shiloh Resort and Casino Project

CC: Scott Orr, Tennis Wick

Overview

A Draft Environmental Impact Statement (EIS) has been prepared pursuant to the National Environmental Quality Act (NEPA) to analyze potential impacts from the Koi Nation of Northern California (the Tribe0 proposed Shiloh Resort and Casino Project (the Project). The Project would include taking the entire 68.6 acre parcel on which the Project is located into federal trust status for the benefit of the Tribe for gaming purposes. Previously, a Notice of Preparation for the Project was noticed on May 27, 2022, a scoping report with comments received during the NOP comment period was published in September 2022, and an Environmental Assessment was circulated for public comment with the comment period ending on November 13, 2022. Based on this, the Bureau of Indian Affairs then decided to prepare an EIS for the Project and released the Draft EIS for public comment with the comment period ending on August 26, 2024.

The Draft EIS includes an analysis of four alternatives: the proposed project, a reduced intensity proposed project, a non-gaming alternative (winery with hotel) and no project alternative. The basic conclusion of the review below points to the basic incompatibility of the Project parcel with the scale of commercial development proposed.

The Draft EIS included an analysis of impacts for the following: Land Resources, Water Resources, Air Quality, Biological Resources, Cultural/Paleontological Resources, Socioeconomic Conditions/Environmental Justice, Transportation and Circulation, Land Use, Public Services and Utilities, Noise, Hazardous Materials and Hazards, Visual Resources, and Cumulative Effects.

In addition to the flawed alternatives analysis, the Project will, at a minimum, result in significant and unmitigated impacts to Land Resources, Water Resources, Biological Resources, Transportation and Circulation, Land Use, Hazards (Wildfire) Visual Resources, and Cumulative Effects (especially Greenhouse Gas Emissions). In addition, to these impacts, serious concerns and potential impacts exist with regards to groundwater resources (not evaluated here).

Project Setting

The Project parcel is located in the northeast corner of the Santa Rosa alluvial plains, within 0.5 miles of the southwest toe of Mayacamas Mountains foothills (Figure 1). The Project site is bisected by from NNE to SSW by Pruitt Creek and is basically flat with gentle slopes from east and west sides of parcel towards Pruitt Creek.

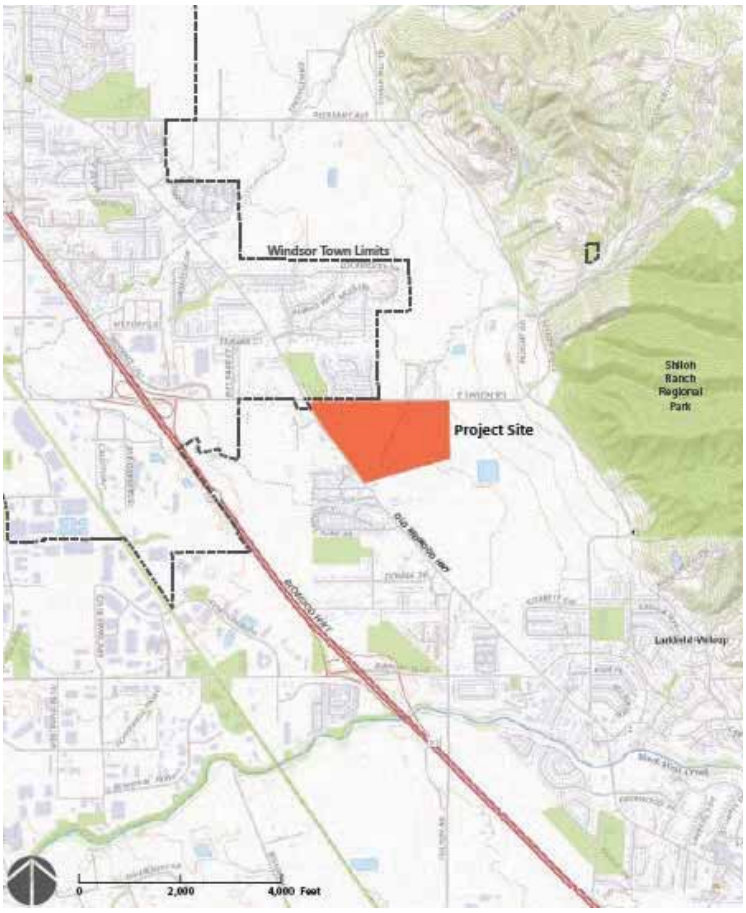


Figure 1. General location of Project parcel.

Pruitt Creek has its headwaters approximately 2 miles WNW of the Project parcel in the foothills of the Mayacamas Mountains. After debouching to the alluvial plains at Shiloh Road (Figure 2), Pruitt flows in an open channel with a forested riparian corridor through vineyards and rural residential lands until passing into the Project parcel via a short culvert under East Shiloh Road at the north into the project parcel (Figure 3).

Within the Project parcel the predominant land use is agriculture, with most of the Project parcel in active vineyard, except for a small residential/farm complex along the east property line. The Pruitt Creek riparian corridor is relatively intact through the Project parcel and is dominated by native valley oak trees. *The Pruitt Creek riparian corridor is protected in Sonoma County under three separate natural resource protection combining districts: riparian corridor, oak woodland, and valley oak.* Valley Oak woodland is considered a "sensitive natural plant community" under California Department of Fish and Wildlife plant community classification.

Other than some shallow, marginal roadside swales on Old Redwood Highway and East Shiloh Road, there are no ditches or channels within the existing vineyards on the Project Parcel that would concentrate flow to Pruitt Creek. Therefore, the dominant hydrologic pathway is vertical with most precipitation infiltrating into soils and the local water table and most losses being

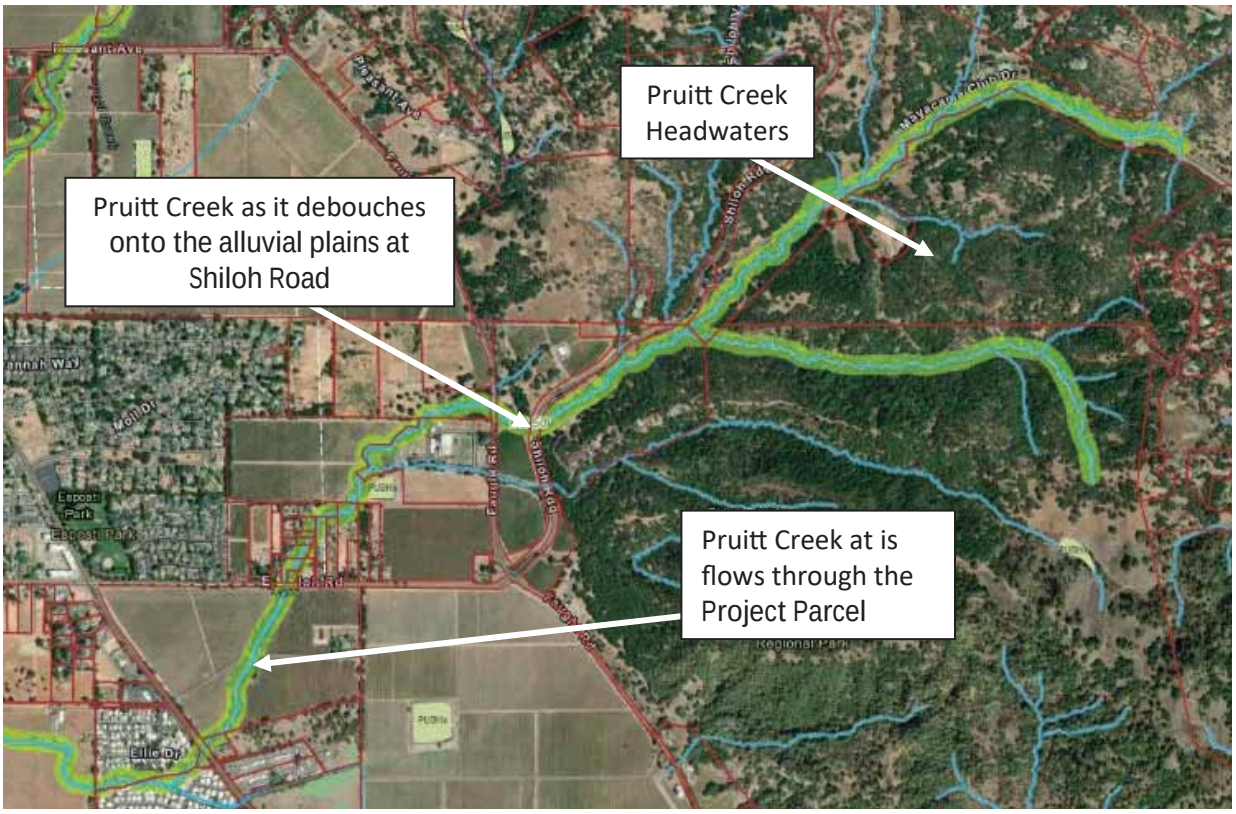


Figure 2. Pruitt Creek headwaters and mainstem as it passes through the Project parcel. Green is mapped and protected Riparian Corridor (50 feet from top of bank or dripline of trees rooted within 50 feet of top of bank.



Figure 3. Pruitt Creek as it enters and leaves Project Parcel with major soil types and F1 and F2 floodplain (blue, teal), and riparian corridor(green) shown.

due to evapotranspiration or subsurface flows to Pruitt Creek and the shallow aquifer system (See discussion below in Water Resources regarding inflated pre-development flow estimates).

Once Pruitt Creek leaves the project parcel via a short culvert under Old Redwood Highway (Figure 3) it flows westerly under US101 eventually joining Pool Creek just west of Conde Lane at the SMART rail line. From there, Pool Creek flows westerly to join Windsor Creek south of Starr Road and Windsor Creek flows south and southwesterly to join Mark West Creek east of Trenton-Healdsburg Road.

Proposed Project

The Project (as shown in the preferred Alternative A) represents essentially a full build out of the 68.6 acre parcel with likely only about 12 acres of "boutique" vineyard retained mostly as a visual buffer along the north and west margins of the casino development (Figure 4).



Figure 4. Alternative A Project Buildout.

Although the Project states it is largely avoiding the riparian corridor oak woodlands, it proposes development right up to the drip line of the trees with no protective buffering as well as development of stormwater management features in the F1/F2 floodplain. The project proposes at least two bridge incursions (one pedestrian and one vehicular) which will bisect the riparian corridor and up to seven outfalls (6 stormwater, 1 wastewater) which would need to be constructed into Pruitt Creek (see water resources discussion below).

LAND RESOURCES (EIS Section 3.2).

While the Project parcel is located outside the Alquist-Priolo zone, the locations is within a potential zone of "violent shaking" from a predicted 7.2 rupture of the Rodgers Creek fault system (https://www.arcgis.com/home/item.html?id=ff6b9344a63d41aba7929b0ef78b37e1). Rupture along the Rodgers Creek-Hayward Fault system is considered to one of the most serious earthquake risks in the Bay Area in the next 30 years:

https://www.usgs.gov/programs/earthquake-hazards/science/a-new-map-rodgers-creek-fault-sonoma-county-california#:~:text=The%20two%20sides%20of%20the,%2Dyear%20period%202014%2D2043.

The Draft EIS does not address these risks in any substantive fashion but relies on boilerplate reference to California building codes while proposing a multi-story visitor-serving facility.

WATER RESOURCES (EIS Section 3.3).

The 2024 SES basically concludes that since it is possible to apply for or obtain coverage under National Pollutant Discharge Elimination System (NPDES) Permits for stormwater and wastewater discharges, that this *ispo facto* means that there will be no significant negative water quality impacts from the operation of the Project. The Draft EIS bases its conclusion on observations of Pruitt Creek during several brief site visits in 2022, simplistic engineering calculations from a design manual that is inapplicable on its face to this type of development project, and the use of flow data from much higher order streams well downstream of Pruitt Creek rather actual flow data from Pruitt Creek itself or similarly situated streams in Sonoma County.

Stormwater

While summarized in EIS Section 3.3, detailed discussion of surface water hydrology impacts are found in technical reports in Appendix D: Grading and Hydrology Study (G&H Study), Water and Wastewater Feasibility Study (W&WF Study) and a Supplemental Wastewater Memorandum. These studies erroneously use use Flood Management Design Manual (Sonoma Water 2020)(https://www.sonomawater.org/fmdm) which states in its applicability section that,

> The focus of this FMDM is to provide hydrologic and hydraulic analysis methods and criteria for designing facilities to accommodate flood conditions. The focus of this manual is not to address the more frequent and lower magnitude stormwater flows that are typically the focus of NPDES requirements. The user of this manual, or project applicant, should consult with the appropriate

> RWQCB office and/or appropriate municipality (or the County) regarding potential NPDES regulatory requirements that may affect a specific project.

(emphasis added). In Sonoma County, the applicable method of review for determining structural post-construction stormwater best management practices is the Santa Rosa (https://www.srcity.org/1255/Low-Impact-Development) which is the standard of review required for Phase 1 MS4 Permit Boundary where the Project is located. Under the terms of the Phase 1 MS4 permit, the water quality treatment and volume detention standards provide a floor of protection to receiving waters. It is well known that precipitation that exceeds the BMP design standards is regularly discharged to receiving waters. Under provisions in the MS4 permit as well as the federal Antidegradation Policy, excess stormwater that is discharged to receiving waters must still not cause water quality or hydromodification of the receiving water.

Other than some shallow, marginal roadside swales on Old Redwood Highway and East Shiloh Road, there are no ditches or channels within the existing vineyards on the Project Parcel that would concentrate flow to Pruitt Creek. Therefore, the dominant hydrologic pathway is vertical with most precipitation infiltrating into soils and the local water table and most losses being due to evapotranspiration or subsurface flows to Pruitt Creek and the shallow aquifer system. Thus, concentrated surface flow pathways are not present on this largely undeveloped parcel and there are no pre-development point source discharges of stormwater. This lack of pathways for concentrating flow is readily apparent from the pre-development hydrology figure in Appendix B of the G&H Study. Despite this, the Appendix C of the G&H Study generates pre-development peak and total volume estimates that are only marginally lower than post-development hydrology. Post-development, there will be at least 4-6 new point source stormwater outfalls to Pruitt Creek where pre-development there are none (see Figure 3-1 in G&H Study (four stormwater outfalls) and Appendix G in G&H Study (six stormwater outfalls).

The Draft EIS is completely lacking in any actual water quality or flow data for Pruitt Creek to establish baseline conditions and is unable to determine that negative impacts will not occur to this important stream and salmonid resource.

Wastewater

In addition to concentrating stormwater discharges to Pruitt Creek via 4-6 new outfalls, under the wastewater management analysis for the project, large, daily discharges of wastewater appear unavoidable without making the currently speculative assumption that hundreds of acres of off-reservation lands can be made available for recycled water irrigation.

The Draft EIS makes the following estimates:

232,000 gpd weekday wastewater discharge (260 annual weekday days)

335,000 gpd weekend wastewater discharge (104 annual weekend days)

This results in

60.320 million gallons over 260 weekday days
34.840 million gallons over 104 weekend days
95.160 million gallons annually

The Draft EIS estimates that approximately 108 acre-feet (39.42 million gallons) can be used on the Project parcel annually for toilet flushing, vineyard irrigation, landscape irrigation, etc. This leaves a remaining 55.74 million gallons (171 acre-feet) annually or approximately 155,000 gpd to be managed.

The Draft EIS provides a per acre annual estimate for vineyard irrigation of 0.317 acre-feet per acre per year or approximately 539 vineyard acres. This would represent upwards of half of the total vineyard acreage located north, west, and south of the project. Moreover, vineyards are typically not irrigated during the peak of the rainy season when soils are saturated and water tables are high.

The Draft EIS states in several places (Section 3, G&H Study, W&WF Study), that there will be no summer discharge to Pruitt Creek from May 15 to October 1 but there will be winter discharge. However, the Supplemental Wastewater Memorandum in the Appendix D-4 appears to state the there will be zero discharges from the facility. This supplemental memorandum then presents several new scenarios for extensive on-site storage including deep, bermed ponds and multi-story water tanks (none of which are analyzed in the main body of the report). The reason for this supplemental rationalization of the wastewater discharges is that Draft EIS, even with liberal assumptions was unable to meet a protective (and presumably permittable) wastewater discharge amount for Pruitt Creek.

The G&H Study makes the case that flows and discharge volumes to Pruitt Creek should be estimated using a flow gauging station on lower Mark West Creek mainstem near its confluence with Windsor Creek. However, Mark West Creek is a much higher order mainstem stream at this location. Pruitt Creek at the Project parcel is a basically a low order stream in a "headwater" landscape position to Mark West Creek. The Draft EIS attempts to use 1% of the mainstem Mark West Creek flow as the protective discharge volume to Pruitt Creek but even using this quite liberal number, the Draft EIS still concludes that wastewater discharges in the late season shoulder month of October does not meet the less than 1% threshold the Draft EIS sets.

In fact, the hydrology of Pruitt Creek is much different than mainstem Mark West Creek. As an example, a recent study of the hydrology of upper Mark West Creek (which would be more

similar to Pruitt Creek in terms of stream order) found considerably lower discharge volumes in dry, moderate, and wet rain-years with basically only January, February, March and April having appreciable enough flow in a normal year to have assimilative capacity for the estimated wastewater generation rates proposed here (see Table 4 for Site 3, in *INSTREAM FLOW EVALUATION: JUVENILE REARING OF STEELHEAD AND COHO SALMON IN UPPER MARK WEST CREEK, SONOMA COUNTY*, Stream Evaluation Report 2022-01). During drought years, there would be virtually no assimilative capacity in any month.

While the Draft EIS goes to great lengths to wave smoke and mirrors over this issue, the management of wastewater from an on-site wastewater treatment plant with an outfall to Pruitt Creek is not at all resolved by the analysis presented. This again goes to the flaws in the Project's alternative analysis and that a project of this type is incompatible with this location.

BIOLOGICAL RESOURCES (EIS Section 3.5).

As discussed in the overview section, the riparian corridor plant community is itself a sensitive natural plant community (Valley Oak Woodland). The project essentially proposes intensive development up to the dripline of the trees and also proposes multiple incursions into the riparian corridor itself by constructing two bridges and up to 6 outfalls. It also does not address alterations to the hydrology which could negatively impact this sensitive natural plant community. The Draft EIS does not address this and proposes no mitigation for these impacts.

Pruitt Creek is also habitat for protected salmonid species. The Draft EIS attempts to minimize and avoid the results of this conclusion by concluding, without site specific flow and salmonid data, that Pruitt Creek is marginal salmonid habitat. At a minimum, several season, short interval flow monitoring and data regarding salmonid presence and breeding should be collected and incorporated into a detailed biological assessment that is incorporated into a biological opinion by National Marine Fisheries Service with appropriate protective and mitigation measures. This analysis should explicitly evaluate the effect of the hydromodifications to Pruitt Creek which will occur with the extensive alterations to the Creek's hydrology caused by stormwater and wastewater management the Project will require.

TRANSPORTATION AND CIRCULATION (EIS Section 3.8). A detailed traffic analysis is provided in the Draft EIS. <u>The overall conclusion is that there will be significant impacts to multiple roads and intersections between baseline and post-project level of service (LOS)</u> (see Table 3-12, p. 59). The project proposes at least seven structural fixes in attempt to offset these significant impacts to traffic and circulation (Table ES.5 Summary Matrix). As discussed above in for the alternatives analysis, the need to alter transportation facilities from the Project parcel to the major highway corridor at US101, is evidence of that proposed casino and hotel use is incompatible with the Project parcel.

LAND USE (EIS Section 3.9)

A cursory review of aerial photos and land use maps in the area around the Project parcel shows the Project parcel is a western part of a large (>1000 acre) complex of high value agricultural lands with protective agricultural base zoning. The Draft EIS confirms that the project is also considered high value agricultural lands under the State's classification system. The Project's preferred full buildout casino and hotel alternative would effectively remove these lands from agricultural use except for some fragments of vineyard retained for visual screening.

The best and highest uses of lands in the Project vicinity have been fully analyzed in County General Plan and zoning ordinances with carefully identified growth boundaries to prevent sprawl and loss of the County's rural character and important agricultural uses.

In addition, to fundamental land use conflicts with the County's agricultural zoning of the Project Parcel, the Pruitt Creek corridor has multiple combining district protections (riparian, oak woodland, valley oak) with the goal of maintaining the ecological functions and values of stream corridor and high value forest types from intensive development.

The multiple significant impacts identified in the Draft EIS relating to traffic, wildfire evacuation, greenhouse gas, wastewater, water supply, and ecological resources, etc. are the result of the basic incompatibility of the full buildout casino hotel use with this location. But, the Draft EIS dismisses these extensive land use conflicts with a tautology, by basically concluding that because the land will be taken into trust, local land use requirements will become in applicable, therefore, there is no significant impact (p. 3-90, Section 3.9.3.2).

If the project were properly located, it would be situated in a location where water supply, sanitary sewer and transportation facilities were already in place and designed for large-scale commercial development, rather than on marginally serviced parcel on high value agricultural lands.

XII. HAZARDOUS MATERIALS AND HAZARDS (EIS Section 3.12).

Much has changed in Sonoma County since the 2008 in terms of our understanding of wildfire risk. The threats from a large, northeast wind-driven fire throughout the Mayacamas Mountains areas are well understood and not to be minimized. One of the main risks to structures is the ember event that can precede the actual fire front by many miles, although at this location the Kincade fire front advanced within sight of the parcel location. Beyond alleged compliance with current building codes, the Draft EIS does not address this situation.

Of even more concern, is the Project's effect on evacuation on the surrounding community. The Draft EIS concludes the Project will have a significant negative impact on evacuation timeframes which is not surprising given the Project's incompatibility with the local

transportation infrastructure. The Draft EIS attempts to mitigate itself out of this problem by establishing a self-imposed and self-implemented early warning and evacuation of its potentially thousands of patrons and vehicles, essentially pushing them out onto the local transportation network before local residents are officially ordered to evacuate. It is highly speculative to expect a fast-moving, wind-driven fire like the Kincade, which resulted in the evacuation of Windsor, Healdsburg and many other County residents to the south, will oblige by providing sufficient notice to allow for such a pre-emptive evacuation. This again points to the basic incompatibility of this location, with the large, commercial development being proposed.

VISUAL RESOURCES (EIS Section 3.13). Without specifying an analysis methodology, the Draft EIS arrives at the conclusion that with various modest mitigations in terms of color palette and some peripheral vineyards, there would be a less than significant impact to visual resources from the Project. The County has developed principled Visual Assessment Guidelines (Guidelines) that can be found at https://permitsonoma.org/longrangeplans/proposedlong-rangeplans/environmentalreviewguidelines/visualassessmentguidelines. Using these guidelines, the location has at least a "high" site sensitivity (Table 1 in Guidelines) and the visual dominance of the site is "co-dominant" to "dominant" (Table 2 in the Guidelines). Thus, in Table 3 of the Guidelines (Thresholds of Significance), the existing facility would be considered to have a "significant" impact. The Proposed Project will have a multi-story hotel facility as well as potentially large ponds and multi-story water tanks that will be visible from the various vantage points. It will also completely change the local character of the rural and housing uses in the immediate project vicinity.

Again. this points to the basic incompatibility of the Project with this location.

CUMULATIVE EFFECTS (EIS SECTION 3.14).

Finally, I would note that despite estimating a nearly operational emissions of 70,000 Mt of CO_2e per year with a "social cost" from GHG emissions of $129 million dollars, the Project does not propose even the most basic of substantive on-site offsets like active solar power generation on building roofs or parking lots and garages or off-site offsets.

Exhibit F

MEMORANDUM

DATE: August 23, 2024

TO: Verne Ball, Deputy County Counsel

FROM: **Jeff Church, Senior Environmental Specialist at Sonoma Water**

PROJECT: Koi Nation Shiloh Casino Draft Environmental Impact Statement

SUBJECT: Response to DEIS characterization of the memorandum "Documentation of observations of steelhead salmon (Oncorhynchus mykiss) in Pruitt Creek, Windsor California (October 27, 2023)".

The Koi Nation Shiloh Casino DEIS misinterprets and/or mischaracterizes observations of steelhead salmon in Pruitt Creek that were documented in a previous memorandum titled "Documentation of observations of steelhead salmon (Oncorhynchus mykiss) in Pruitt Creek, Windsor California", dated October 27, 2023.

On page 3-55 of the DEIS, it is stated that steelhead occur regularly within Pruitt Creek upstream of the project site in years with adequate rainfall, but not during an extensive drought. However, a specific drought was not identified with this statement, so one cannot know whether or not a study was conducted to support this conclusion. If the reference is to the most recent extended drought (approximately 2020 through 2022), no surveys were identified as being conducted that could make this determination, including studies that focused specifically on upstream migration and spawning. If the reference is to the previous extended drought that occurred from approximately 2012 to 2014, young of the year steelhead were observed to be present in those years. Genetic analysis has not been conducted to determine whether the source of these young of the year were from anadromous steelhead or resident rainbow, however prior observations of both forms of steelhead coexisting in the creek support the potential that the young of the year in any given year could be a result of anadromy. A more comprehensive study of flows, including the timing and duration of flows during the spawning season would have needed to have been conducted (and preferably been conducted in coordination with a spawning study) in order the make the definitive conclusory statement that was made in the DEIS regarding absence of steelhead during drought periods.

Similarly, the statement that no evidence of breeding has been observed (p 3-55) implies that studies were conducted to specifically monitor for evidence of breeding with negative results. Specific studies focusing on spawning and breeding were not conducted, and therefore a definitive statement such as was made is not appropriate. The fact that anadromy has been observed in Pruitt Creek, and young of the year were observed in the stream, including during the extended drought of 2012 through 2014, belies this assertion and provides direct evidence

of breeding occurring on a regular basis in the stream. To reach a conclusion that is contrary to the available evidence, focused studies, including spawning and redd surveys, as well as genetic analysis of the young of the year would need to be conducted before any sort of conclusion on the absence of anadromous breeding in the stream could be made.

In light of the fact that this section of Pruitt Creek is within the critical habitat for steelhead, and supports a historic presence of resident rainbow trout and anadromous steelhead, this stream should be considered highly valuable for preservation of available spawning and rearing habitat, as well as a source and contributor of genetic diversity that is necessary to support the resiliency and continued survival of the species.

Given the concern outlined in the County of Sonoma's assessment of the potential for groundwater and surface water impacts as a result of the project, and the importance of available flow volume and depth during critical migratory periods from winter through spring, ongoing indiscriminate year round pumping of groundwater has a great potential for decreasing base flow volumes and depths that are necessary between storm events to provide migratory access through the project site to the upstream perennially flowing reach of Pruitt Creek. Insufficient storm water management could also alter flow patterns resulting in increased peak flows, decreased base flows, and inputs of contaminants into Pruitt Creek.

Should groundwater pumping result in a reduction in these base flows, as is implied in the County's assessment of the proposed project groundwater study, then it is very likely groundwater pumping would result in a reduction in the timing and duration of sufficient migratory flows. Based on professional judgment and experience working with the National Marine Fisheries Service, such a reduction in flows could result in adverse modification of critical habitat (adjacent to the project and with potential effects to migration through the project site to upstream spawning and rearing habitat) and a potential take of listed species. Should insufficient storm water management result in altered flow patterns and reduced water quality, then it is also very likely that changes to the duration, timing, and quality of suitable migratory flows could result in adverse modification of critical habitat in Pruitt Creek. The Bureau of Indian Affairs should be required to undergo formal Section 7 Consultation with the National Marine Fisheries Service to produce a biological opinion to address these impacts associated with the ongoing operation of this proposed project.

I reach these conclusions as a biologist that has worked for twenty-three years studying the Russian River watershed for both the North Coast Regional Water Quality Control Board and Sonoma Water, including Pruitt Creek.

Exhibit G

WEST YOST
Water. Engineered.

2235 Mercury Way
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August 22,2024

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

Verne Ball
Office of County Counsel
575 Administration Drive
Santa Rosa, CA 95403
verne.ball@sonoma-county.org

SUBJECT: Koi Nation Shiloh Resort and Casino Project Draft Environmental Impact Statement, Comments on Water Resources Assessment

Dear Verne,

The County of Sonoma has retained West-Yost to review the Draft Environmental Impact Statement (DEIS) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West-Yost staff reviewed the DEIS assessment of the proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Draft Environmental Impact Statement for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023), relevant sections;
- Appendix D-2 Supplemental Wastewater Memorandum;
- Appendix D-3 Grading and Hydrology Study; and
- Appendix D-4 Supplemental Groundwater Resources Impact Assessment.

This review is in addition to prior input on the Environmental Assessment (EA) for the Proposed Project dated September 2023. The County of Sonoma submitted a comment letter on November 9, 2023. In summary, that letter presented concerns in the following areas:

- The EA provides insufficient analysis and lacks basic data needed to reach conclusions about likely impacts of the Proposed Project;
- Assumptions used in the analysis may be inappropriate and yield inaccurate results;
- The EA fails to consider the project's impacts in the context of reasonably foreseeable future development; and
- Mitigation Measures outlined in the EA are inadequate.

Some supplemental water resource analyses have been provided in the DEIS in response to County input and public comment. The additional analyses in the DEIS provided initial responses to some

issues raised in the County EA comment letter. However, the additional analyses include information that indicates impacts have not been analyzed and assumptions that are unwarranted. New project elements have not been evaluated. The analysis identifies additional cumulative impacts that have not been analyzed and mitigation measures that are undeveloped.

Below are detailed comments on each of the three supplemental analyses: Appendix D-2, D-3, and D-4.

SUPPLEMENTAL WASTEWATER MEMORANDUM - APPENDIX D-2

Supplemental Wastewater Memorandum- Appendix D-2 (Supplemental Assessment) provides additional information that builds on the February 2023 Water and Wastewater Feasibility Study. The Supplemental Assessment evaluates four additional wastewater discharge options (Options 5-8) in which no wastewater is discharged to Pruitt Creek. It is understood that these new options are evaluated because there is substantial uncertainty to estimates of streamflow for Pruitt Creek at the Project Site, and it is unclear if an NPDES permit to discharge wastewater to this small intermittent stream could be attained. Instead of collecting streamflow data for the site and evaluating the feasibility discharge to Pruitt Creek using actual streamflow and water quality data, the Supplemental Assessment evaluates that scenario where all wastewater is discharged through irrigation (onsite and offsite) allegedly at agronomic rates. The agronomic rate is the amount of recycled water needed by the crop being grown that minimizes the movement of nutrients below the plants' root zone and prevents runoff.

Impacts of wastewater storage and disposal

The Supplemental Assessment estimates required wastewater storage and areas of vineyard or turf necessary to discharge wastewater under Project Alternative A (Preferred Project). The methods were reviewed and were only valid if the assumptions used remain applicable, but the data supporting the assumptions is not clear. The findings of the Supplemental Assessment clearly demonstrate the need for additional project planning and environmental assessment of impacts of wastewater discharge and related infrastructure development.

1. The Supplemental Assessment indicates that wastewater storage volumes of 86.7 to 103.7 acre-feet will be required (Appendix D-2, Table 2). An acre foot is an acre of land covered in 1 foot of water, or 325,851 gallons. Thus, the project requires approximately 33.79 million gallons of water storage. All options in the Supplemental Assessment include installation of holding tanks with heights of 65 feet (6 stories) and raising the levees on the proposed seasonal wastewater pond to up to 15 feet (Appendix D-2, page 3). Geotechnical feasibility and visual impacts of these facilities have not been disclosed and evaluated. The substantially higher pond levees could be subject to seismic activity and vulnerable to failure.

   The analysis is inadequate without a dam failure analysis and inundation map to address life safety impacts. Visual impacts of the proposed two large storage tanks should be evaluated and disclosed.

2. The Supplemental Assessment, (Appendix D-2, Table 3), indicates that under Options 5 and 6, 406 acres of offsite vineyard will be required to dispose of wastewater. Under Options 7 and 8, over 44 acres of offsite turf will be required to dispose of wastewater. No potential offsite vineyard or turf sites are identified. There are substantial areas of vineyard adjacent to the

Project Site to the east and north; however, no supporting information has been provided indicating existing landowners are interested in receiving recycled wastewater for irrigation. No discussion of pipeline routes, offsite holding tanks/reservoirs, and potential impacts of such facilities is provided. Recycled water is highly regulated in California and there is no substantive discussion of the ability of the project to comply with the applicable regulations. To receive permits to discharge on non-tribal land, the tribe will have to submit to California jurisdiction and there is no discussion of the tribe's willingness to do so. If it is not willing to do so, then offsite recycled water may not be feasible.

3. Before making assumptions, the Bureau of Indian Affairs should evaluate whether offsite vineyard or turf sites for recycled water irrigation is actually feasible based on concrete information. The location and description of infrastructure, including pipeline routes, offsite holding tanks/reservoirs, and potential impacts of such facilities should be described and evaluated for potential secondary impacts.

GRADING AND HYDROLOGY STUDY - APPENDIX D-3

The Grading and Hydrology Study-Appendix D-3 provides estimates of peak flow and stormwater volumes for both existing and post-development conditions. The analysis estimates impact of the proposed project and provides preliminary sizing for detentions basins to mitigate impacts from increased peak flow and stormwater runoff.

Peak Flow and Stormwater Runoff:

4. The Hydrology analysis appears to apply the Sonoma County Water Agency Flood Management Design Manual (FMDM) to evaluate pre- and post-development flow rates based on a comparison, which is not the intent of the FMDM methodologies. The FMDM is intended for sizing storm water conveyance features and for stream modeling. Consequently, the pre- and post- project peak flow and stormwater runoff volumes are not properly estimated, nor is adequate mitigation identified. The hydrologic analysis should be revised using Sonoma County's standards for Low Impact Development (LID) to accurately determine the runoff volume capture mitigation obligation. Adequate stormwater features to achieve 100 percent volume capture should be identified.

Flooding and Climate Change:

5. As presented in Appendix D 3, stormwater infrastructure is allegedly designed to attenuate peak flows under a 100-year storm event. To fully account for climate change and increase storm intensity (atmospheric rivers) U.S. Environmental Protection Agency (EPA) recommends using larger storm events, greater than 100-year recurrence, to evaluate stormwater impacts and flood hazards from future projects. EPA cited a USGS study *entitled Climate change, atmospheric rivers, and floods in California - a multimodel analysis of storm frequency and magnitude changes* (Journal of the American Water Resources Association, M.D. Dettinge) in their comment letter (November 18, 2020) on the FEIS for the Tejon Indian Tribe Trust Acquisition. EPA advises against development in the 100-year floodplain and recommends not using the 100-year storm event peak flows when planning for infrastructure in the floodplain since this

would not account for intense atmospheric rivers-induces precipitation extremes that are predicted to occur in California in the coming decades.

A critical gap is an analysis of potential flooding impacts on-site and off-site assuming a 500-year storm event peak flow to account for documented changes in local storm behavior.

Groundwater Recharge:

6. The evaluation of impacts to groundwater recharge assumes that stormwater infrastructure will maintain existing rates of groundwater recharge. As discussed in Appendix D-3, stormwater infrastructure is alleged to be designed to attenuate peak flows under a 100-year storm event so that peak flow is no greater than existing conditions. Proposed? Stormwater infrastructure is not designed to maintain the existing volumes of runoff or rates of groundwater recharge. It is unlikely that limited areas of bioswales and detention basins proposed as part of the stormwater design would result in comparable rates of groundwater recharge for the project that involves the creation of over 1.5 million square feet of impermeable surface. It is reasonable to expect that elevated rates of recharge will occur within detention basins, but there is no analysis to support or defend the assumption that associated increases in recharge within these limited areas mitigates for loss of recharge potential from the bulk of the Project Site. Furthermore, it is likely that detention basin bottoms will become clogged with fine sediment over time and provide little or no recharge potential.

   A reasonable analysis would include a realistic discussion of discharge, and a mitigation measure specifying regular maintenance of detention basins, at a five year or more frequent interval, including the removal of fine sediment such that rates of groundwater recharge are maximized. This analysis is not included in the DEIS.

7. The Appendix D-3 also states that due to the removal of vineyard and resulting reduction in evapotranspiration that there will be an increase in groundwater recharge. This assumption is not supported by the Project Description as the majority of converted vineyard will become impermeable pavement and buildings with little or no recharge potential. Vineyard converted to landscaped areas will have similar or greater irrigation and evapotranspiration rates to vineyard. Thus, project development that proposes the large-scale conversion of vineyard to hardscape with limited landscaped areas and stormwater infrastructure features is likely to reduce rates of groundwater recharge, which would foreseeably impact the local water balance and groundwater resources.

SUPPLEMENTAL GROUNDWATER RESOURCES IMPACT ASSESSMENT - APPENDIX D-4

The Groundwater Resources Impact Assessment (GRIA) presents an analysis of potential impacts of Project Alternative A (Proposed Project) on groundwater resources including reduced groundwater recharge, water level drawdown in nearby wells, and consistency with groundwater sustainability plans (GSP). Section 3.3.3.1 of the DEIS states that groundwater impacts would be significant if the alternative would impede groundwater recharge or if drawdown caused by pumping the proposed wells at the Project Site would adversely affect local water supply. Additionally, groundwater impacts would be significant if the Project would interfere with the implementation of local groundwater management plans

by causing or contributing to: chronic lowering of groundwater levels; depletion of groundwater storage; water quality degradation due to induced contaminant migration or interference with cleanup efforts or water quality management plans; depletion of interconnected surface waters, including potential flow in Pruitt Creek or impacts to groundwater-dependent ecosystems (GDEs); and/or land subsidence.

Groundwater Model Methods

8. The groundwater model presented in Appendix D-4 is based on the Santa Rosa Plain Hydrologic Model (SRPHM) 2014 version developed by the USGS (Woolfenden and Nishikawa 2014). This model has been updated (SRPHM 1.0+). Some of the key updates the GSA made to the original USGS SRPHM model for the GSP were:
    - A new approach to rural residential water demands that used the SRPGSA rate study to identify parcels that use wells for domestic use.
    - New agricultural pumping assumptions for crop coefficients, which is a significant change from the 2014 model.
    - Changes to climate inputs for precipitation and evapotranspiration
    - Inclusion of septic system return flows

    It is unclear how use of the updated SRPHM 1.0+ model would affect their work and results and conclusions of the GRIA, but the updated model should be reviewed and the Final EIS should disclose any potential changes to the conclusions presented in the DEIR. The updated model can be found at:https://santarosaplaingroundwater.org/wp-content/uploads/3-C-_SRPHM-Updates-Appendix_-3-C_ada-1.pdf
9. Section 4.3.3 of the GRIA conceptualizes three major hydro-stratigraphic units in the vicinity of the Project Site: 1) Shallow Zone (first water to approximately 120 feet below the ground surface [bgs]); 2) Intermediate Zone (Approximately 113 to 350 bgs); and 3) Deep Zone (greater than 350 feet bgs). The analysis presumes low permeability aquitards occur between each of the aquifer zones and inhibit vertical groundwater flow between zones. The Assessment states that there is limited data on which to base the presence of continuous aquitards. The assumption that continuous aquitards exist that separate the shallow zones from intermediate and deeper zones is not substantiated, and this assumption may impact modeled drawdown and related findings. The assumption that continuous aquitards exist results in lower estimates of project induced drawdown within the shallow aquifer than are likely present. Conservative assumptions should be utilized unless clear data supports fewer conservative assumptions.

    Well completion reports from nearby wells were independently reviewed and compared with the DEIS analysis. Well completion reports record intervals of clays, silts, sands, and gravels extending to depths greater than 400 feet. This data does not appear to support the existence of laterally continuous clay layers separating a shallow aquifer zone from an intermediate zone, or deep aquifer zone. A more representative conceptual model is likely a heterogeneous alluvial aquifer comprised of laterally discontinuous layers or lenses of sedimentary deposits of varying composition and hydraulic properties.

    No well completion report data is present in the analysis. Given the importance of the issue, absent very clear evidence of aquitards the conceptual model should be updated, and aquitard layers removed from the groundwater model. Reasonable assumptions for lithology

and groundwater flow should be maintained and the model should be re-run and updated results presented for predicted drawdown and streamflow depletion.

10. The GRIA implies that assumed climate for the 50-year simulation is based on those used by the USGS. However, the USGS used 30-year climate scenarios, and this is not disclosed in the analysis. The future climate scenario should be thoroughly described (e.g., source, precipitation, and evapotranspiration characteristics, etc.) and how the scenario was incorporated into the model should be described. Additionally, the forecast scenario used for the GRIA does not include future potential increases in pumping from nearby groundwater users other than the Koi Nation of Northern California (Tribe) and the Town of Windsor. The 50-year projections simulated in the GSP, which incorporate assumptions for changes in future municipal, agricultural, and rural residential groundwater extraction/land use should be evaluated and considered to determine whether these assumptions would alter the cumulative impacts findings of the GRIA.

    The GRIA should, but does not, evaluate the impact on groundwater recharge by the Proposed Project, evaluating simulated recharge scenarios that model existing conditions and estimated conditions with the Proposed Project.

Interconnected Surface Waters

11. The GRIA finds that there is little potential to impact interconnected surface waters. This finding is supported in part by the limited extent of interconnected surface water identified in the Assessment "*the documented depth to the regional water table indicates it is unlikely that* aquatic *resources, identified in the vicinity of the Site are groundwater connected, except for a possible perennial reach of Pruitt Creek located northeast of the Site at the foot of the Mayacamas Mountains*." Water level data used to make the assertion that the regional water table is too deep to be interconnected was from shallow monitoring wells located approximately 1 mile west and 0.8 miles south of the Project Site with reported water levels of approximately 10 to 25 feet below ground surface. These data, from relatively distant locations, are insufficient to make the finding that Pruitt Creek is disconnected. Even if groundwater levels were measured at 10 to 25 feet bgs nearer to the site, these are still relatively shallow groundwater levels and support the finding that the water table is likely hydraulically connected to local streams. This is especially so given that Pruitt Creek is incised by 10 or more feet. It is not clear why the remote wells were used. The GRIA maps four existing onsite water wells. Seasonal water level data from all onsite wells should be presented.

12. Pruitt Creek at the project site is identified as intermittent and has been observed by Sonoma Water staff to be perennial upstream of the project site. As stated in DWR's 2024 document titled *Depletions of Interconnected Surface Water, An Introduction*, perennial and intermittent surface water bodies are most likely to be interconnected surface waters. The adopted Santa Rosa Plain GSP identifies stream reaches of Pruitt Creek upstream and downstream of the project site as interconnected. The GRIA hypothesizes that streamflow in perennial reaches of Pruitt Creek is likely largely controlled by inflow from upstream sources and impedance of the streambed, and to a lesser degree the groundwater gradient in the alluvial aquifer near the Project Site.

    This finding is not supported by any analysis or data, and given the importance of the finding, the analysis should be more conservative absent data. Modeled drawdown, reported in Table

6 of the GRIA, estimates project specific drawdown of about 1.6 feet and cumulative drawdown with Town of Windsor pumping of close to 6 feet within the shallow aquifer zone at points along the mapped extent of riparian vegetation along Pruitt Creek, the groundwater dependent ecosystem of concern. In section 6.2.4, the GRIA dismisses the potential for impacts to aquatic resources on the basis that a drawdown of approximately 1 foot caused by the project is negligible; however, there is no analysis to support this finding. If existing groundwater levels are at or near the same level of the creek bed, then a reduction of 1.5 to 6 feet could result in substantial increases in rates of streamflow depletion and significant impacts on aquatic habitat.

The GRIA cites guidelines developed by New South Wales in Australia in 2012 to assess risk to groundwater dependent ecosystems that characterize drawdowns that are less than seasonal stream fluctuations as posing a low risk of adverse impacts. Use of this significant criteria is inappropriate for evaluating groundwater dependent ecosystem impacts in Sonoma County, California and criteria established in the Santa Rosa Plain GSP should be used.

Sustainable management criteria of the Santa Rosa Plain GSP demonstrate that changes in the water level within the shallow aquifer on the order of only a fraction of a foot can have large impacts on streamflow and habitat of interconnected surface waters. For context, the average difference in water table elevation between the Minimum Thresholds (i.e. undesirable water levels) and Measurable Objectives (i.e. objective water levels) for representative monitoring points of the Santa Rosa Plain basin for interconnected surface waters is less than 2 feet. For certain monitoring points the difference is less than 0.5 feet. To appropriately evaluate impacts on interconnected surface waters use of a well calibrated integrated hydrologic model capable of representing groundwater surface water interaction processes and estimating streamflow under existing and proposed conditions is needed.

The discussion of potential impacts to interconnected surface waters is entirely qualitative and not supported by any modeling or other quantitative analysis. It is unclear why the GRIA did not include output of the numeric hydrologic model to support findings related to impacts to interconnected surface waters. This is an inexplicable omission. The assessment developed and used a modified version of the USGS model of the Santa Rosa Plain to model drawdown and evaluate impacts of drawdown on nearby wells. The USGS model used by the Assessment was the same model used to prepare the report titled *Simulation of Groundwater and Surface-Water Resources of the Santa Rosa Plain Watershed, Sonoma County, California. Scientific Investigations Report 2014-5052* by Wolfenden, Linda R., and Tracy Nishikawa, 2014. A primary objective of the USGS study was to evaluate reductions in streamflow due to groundwater pumping in the Santa Rosa Plain. In fact, the model output presented in the USGS report specifically estimates streamflow under pumping and no pumping conditions of Pruitt Creek.

The GRIA lacks sufficient information to determine if Pruitt Creek flow is connected to surface water and states on page 32 that: "*Additional monitoring would be required to confirm whether surface water in Pruitt Creek at this location is groundwater connected, but assuming that it is, induced drawdown at the water table in the area could potentially increase vertical groundwater gradients and infiltration rates from the perennial reaches of the creek*." The DEIS acknowledges that there is not enough data to determine the nature of the interconnection of Pruitt Creek surface water with groundwater and indicates additional monitoring is needed. The analysis seems to assume that the creek is not interconnected with

groundwater but provides options for the future should monitoring data indicate a connection. This data is needed to determine the actual impact of the Proposed Project pumping.

Where there is uncertainty in the data assumptions that are most protective of sensitive resources should be employed. Appropriately conservative assumptions should be made in the model given the nature of the risk to hydrologic and biological resources, including federally protected endangered species.

The analysis lacks critical information, including modeled streamflow during the dry season (July, August, and September) at the upstream and downstream GDE locations under no pumping, existing, and proposed conditions. Alterations in flow relative to no pumping conditions should be used to assess if cumulative or project specific impacts on interconnected surface water are expected. The currently modeled drawdown extends below perennial portions of Pruitt, Pool, and Mark West Creek, and thus it is absolutely critical that reductions in flow be estimated for all potentially impacted salmonid bearing streams. Impacts to both rearing and migration have been ignored.

Cumulative Impacts and Mitigation Measures

13. The growth projections presented in the Groundwater Sustainability Plan (GSP) were based on general plan designations and the land use and water demand for the Project Site is assumed to remain agricultural. The GSP 40-year demand projections do not include the water-intensive, urban land uses proposed by the Project because the project would never be permitted in the current location (in the Community Separator, on agriculturally zoned land outside the Windsor Urban Growth Boundary). For these reasons, the water demand of the Project was not factored into the GSP and the sustainability strategies do not include this additional water demand. Extraction of an additional 156 AFY of water from the Santa Rosa Plain will substantially increase water demand in the subbasin placing additional pressures on sustainable management.
14. While the DEIS considers cumulative groundwater impacts associated with future pumping of the proposed Town of Windsor municipal well, it does not take into account other reasonably foreseeable future projects that could reduce overall available water supply resources in the Santa Rosa Plain. Specifically, PG&E's surrender and decommissioning of the Potter Valley Project will result in reduced water transfers from the Eel River basin into the Russian River watershed, reducing water availability and likely increasing groundwater pumping. Based on the fact that PG&E is decommissioning the project (Attachments A and B), including removing the dams, reduced water availability in the Russian River and potential cumulative impacts to groundwater levels from increased pumping, including from the Proposed Project, cannot be ignored. For example, on August 20, 2024 the Sonoma County Water Agency petitioned the State Water Resources Control Board for a Temporary Urgency Change (Attachment C) to water rights permits due to reductions in water storage in Lake Mendocino and reduced flows to the Russian River.
15. The analysis does not take into account these future conditions in estimating groundwater drawdown. The assumption that the Town of Windsor would only operate municipal wells during dry years is not conservative or appropriate.

16. The mitigation measure proposed to address cumulative groundwater resources is not fully developed and needs additional actions to mitigate adverse impacts. Monitoring, reporting, and convening meetings alone will not address the impact. The mitigation measure should include concrete actions to be taken if groundwater monitoring shows adverse impacts to existing domestic wells and/or groundwater dependent ecosystems.

    Visitor serving uses are notoriously water intensive, and a discussion of appropriate mitigation measures is wholly missing. The Bureau of Indian Affairs and Tribe could commit to curtailing water use during dry periods when stress on groundwater resources may results in adverse impacts. Obviously, this curtailment can impact casino operations, and the mitigation measure should make this clear. Even quite modest water conservation measures are missing. Water conservation measures that have been effective for hotel and restaurant uses include drinking water provided on request only; reduced towel and linen washing services; non-operation of ornamental water features; and restrictions on filling pools.

17. Additionally, a mitigation measure indicates that groundwater monitoring data would be submitted to the Bureau of Indian Affairs for review. This is conclusory and raises issues of expertise and licensing, and what the Bureau of Indian Affairs intends to do with the data, if anything. As is typical under NEPA with other specialized data (hydrogeologic data in this case) the mitigation should include a commitment to have the data reviewed by an objective and qualified professional, pursuant to objective standards dictated in the mitigation measure.

    Given the importance of the data, the presence of GDEs, and the need for formal consultation under the Endangered Species Act, the mitigation measure should include the submission of the data to the National Marine Fisheries Service (NMFS) as part of formal consultation mitigation measure, and additional review by the USGS.

18. The DEIS provides supplemental analysis in Appendix D-2, D-3, and D-4 solely for Alternative A Proposed Project, but no analysis at all is included to evaluate impacts from other Alternatives. A full and high-quality analysis of a reasonable range alternatives is missing. Other locations should be considered and fully analyzed. Few impacts to water resources would be likely if the Project were located where existing municipal water and wastewater could be provided with existing infrastructure. It cannot be said that a major issue with the proposal is not the location itself.

SUMMARY

The DEIS does not present adequate evidence to support the conclusion that there will not be significant impacts to groundwater levels, neighboring domestic and municipal wells, or groundwater dependent ecosystems. Potential project and secondary impacts have not been fully analyzed and the DEIS lacks information essential for a reasoned choice of alternative development proposals. Additional data collection and analysis should be performed and included in the Final EIS.

Sincerely,
WEST YOST



Sandi Potter; PG, CEG,
Senior Technical Specialist I
PG #5610

Attachment(s):

Attachment A: FERC Letter Regarding Potter Valley Project - Revised Schedule for Filing Surrender Application

Attachment B: PG&E Potter Valley Project FERC Decommissioning Schedule

Attachment C: Sonoma County Water Agency Temporary Urgency Change Petition Package

Attachment A

FERC Letter Regarding Potter Valley Project Revised Schedule for Filing Surrender Application

Pacific Gas and Electric Company

Power Generation

300 Lakeside Drive
Oakland, CA 94612

Mailing Address:
P.O. Box 28209
Oakland, CA 94604

June 6, 2024

Via Electronic Submittal (E-File)

Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E. Room 1A
Washington, DC 20426

Re: POTTER VALLEY HYDROELECTRIC PROJECT, FERC NO. 77
SURRENDER APPLICATION AND DECOMMISSIONING PLAN
Status Update and Revised Process Plan and Schedule

Dear Secretary Reese:

This letter presents Pacific Gas & Electric Company's (PG&E) update on the status of efforts to submit a Final Surrender Application and Decommissioning Plan for PG&E's Potter Valley Hydroelectric Project (Potter Valley), Federal Energy Regulatory Commission (FERC) No.77, and a revised process plan and schedule.

By letter dated May 11, 2022, FERC staff informed PG&E that because no third party had filed an adequate relicensing application for Potter Valley by the April 22, 2022, deadline for such applications, PG&E must file a plan and schedule for filing a license surrender application with FERC.[1] As directed, PG&E, on July 8, 2022, filed a plan and schedule for PG&E's preparation and filing of a surrender application with FERC.[2] PG&E's schedule outlined a 30-month period for it to secure consultant support, conduct outreach to agencies and other interested parties, prepare initial and final draft surrender applications (including a decommissioning plan for Potter Valley), obtain comments from agencies and other interested parties on these drafts, and prepare and file a final license surrender application with FERC.

By letter dated July 29, 2022, FERC accepted PG&E's proposed process plan and schedule.[3] Noting that PG&E's "proposed schedule allows for several iterations of consultation with the resource agencies,

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1 Letter from Shana Wiseman, FERC, to Jan Nimick, PG&E, at 2, Project No. 77-000, Accession No. 20220511-3004 (issued May 11, 2022).

2 Letter from Janet Walther, PG&E, to Kimberly D. Bose, FERC, Project No. 77-164, Accession No. 20220708-5267 (filed July 8, 2022).

3 Letter from Shana Wiseman, FERC, to Jan Nimick, PG&E, *et al.*, at 2, Project No. 77-000, Accession No. 20220729-5323 (issued July 29, 2922) ("We find this schedule acceptable.").

Tribes, and various stakeholders," FERC requested that "[i]f adjustments to this schedule are necessary, the licensee should notify Commission staff as soon as possible."[4]

PG&E is firmly committed to submitting a license surrender application with FERC at the earliest practicable date. For the last couple of years, since FERC accepted the license surrender process plan and schedule, PG&E has worked with agencies, Tribes, and other interested parties to develop and implement an integrated and coordinated solution to meet divergent interests present at Potter Valley. As part of this outreach, PG&E solicited proposals for interest in any of Potter Valley's facilities. In late 2023, PG&E received a proposal from a coalition referred to as the "Proponents" (consisting of Sonoma County Water Agency, Mendocino County Inland Water and Power Commission, Humboldt County, Round Valley Indian Tribes, California Trout, Trout Unlimited, and California Department of Fish and Wildlife) for the construction and operation of a New Eel-Russian Facility (NERF) using some of Potter Valley's facilities, which would integrate into PG&E's decommissioning plan to preserve some of the long-standing diversions from the Eel River to the Russian River, while concurrently improving habitat and flow conditions for migrating salmonids in the Eel River.

PG&E's primary goal is the decommissioning of Potter Valley and remains focused on the timely removal of both Scott Dam and Cape Horn Dam. The Proponents are committed to the coequal goals of (1) improving fish migration and habitat on the Eel River with the objective of achieving naturally reproducing, self-sustaining, and harvestable native anadromous fish populations and (2) maintaining material and continued water diversion from the Eel River through the existing tunnel to the Russian River to support water supply reliability, fisheries, and water quality in the Russian River basin. To this end, PG&E, the Proponents, and others have formed a steering committee to bring these interests into one agreement that aligns with PG&E's surrender application and accompanying Potter Valley decommissioning plan.

PG&E anticipates an additional 6 months (beyond the original 30-month period in the existing process plan and schedule) is needed to develop the final Surrender Application and Decommissioning Plan. Due to the progressive work with the steering committee, we do not consider this postponement in filing the Surrender Application and Decommissioning Plan to delay the eventual removal of the Potter Valley project. Both PG&E and the Proponents agree that the construction of the NERF will not interfere with or delay such deconstruction in any way. The commitment amongst the steering committee to develop common interest agreements, will create alignment amongst regulatory and interested parties regarding the proposed action and resource protection measures, allowing for an efficient regulatory process in obtaining affiliated permits and regulatory authorizations required for the decommissioning of Potter Valley.

For these reasons, and in accordance with FERC's July 29, 2022, PG&E believes that an extension of the process plan and schedule to allow parties to come together on these important matters is necessary. The adjusted process plan and schedule is as follows:

[4] *Id.*

Activity	Revised Schedule
Provide final draft surrender application and decommissioning plan to agencies and stakeholders for a 30-day review and comment period	January 25, 2025
Address comments from agencies and other stakeholders on final draft surrender application and decommissioning plan	March 2025 – May 2025
Prepare and file final surrender application and decommissioning plan	July 29, 2025

Should you have any questions concerning this matter, please contact PG&E's license project manager, Tony Gigliotti, at (925) 357-7120.

Sincerely,

Janet Walther
Senior Manager, Hydro Licensing

Attachment B

PG&E Potter Valley Project FERC Decommissioning Schedule

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

November 18, 2020

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

Subject: Final Environmental Impact Statement for the Tejon Indian Tribe Trust Acquisition and Casino Project, Kern County, California (EIS No. 20200207)

Dear Amy Dutschke:

The U.S. Environmental Protection Agency has reviewed the above-referenced document. We are providing comments pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. EPA is a cooperating agency on the project and provided scoping comments (September 3, 2015), comments on the Administrative Draft EIS (September 19, 2019), the Draft EIS (July 22, 2020), and the Administrative Final EIS (October 14, 2020).

In our previous comments, we expressed concerns regarding development in a floodplain at the Mettler site, which would require importing a large amount of fill to raise the site 2.5 feet to be sufficiently out of the floodplain. Trucking this large amount of fill would cause air quality impacts in an extreme ozone nonattainment area. The predicted mitigated oxides of nitrogen (NOx) construction emissions are close to the de minimis threshold (with unmitigated emissions above it) and we commented that should any changes or refinements to the project occur that could increase emissions above the threshold, a conformity determination for the construction phase would be needed before revisions to the project action could be approved. To provide for some flexibility and better avoid the potential to exceed the NOx de minimis threshold during the construction phase, we recommended strengthening the construction best management practices by requiring Tier 4 engines for all construction equipment with a horsepower rating of greater than 50, instead of CARB-rated Tier 3 engines as proposed. No changes to the BMPs are included in the FEIS. BIA responded that a Supplemental EIS would be prepared if actual emissions would be above the predicted emissions in the FEIS. We recommend including this commitment in the Record of Decision. 1-01

We continue to advise against development in a floodplain and continue to recommend against the use of the 100-year storm event peak flows when planning for infrastructure in the floodplain since this would not accommodate the intense atmospheric river-induced precipitation extremes that are predicted to occur in California in the coming decades.[1] Our comments and recommendations regarding placement of the wastewater effluent disposal percolation pond and stormwater detention basin in the floodplain 1-02

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

were addressed by BIA in noting that the design features included in the DEIS are for purposes of analyzing environmental impacts. According to the FEIS, prior to construction, a more detailed designed study would be conducted in order to produce construction drawings with detailed design elements and specifications. BIA states that the proposed percolation pond elements would be conservatively designed to accommodate both stormwater and treated effluent during a peak rainfall event. The mitigation measures for water resources (p. 4-2) continues to state that the wastewater treatment plant would comply with all permit requirements and regulations; we reiterate that we are not aware of applicable regulations or permits for the proposed onsite wastewater treatment plant located on tribal land. Please clarify the permits and regulations that would apply to this work in the Record of Decision.

1-02 (Cont.)

The EPA appreciates the opportunity to review this FEIS. We would appreciate receiving a copy of the Record of Decision when it is available. Please send an electronic copy to Karen Vitulano, the lead reviewer for this project, at vitulano.karen@epa.gov. If you have any questions, please contact me at (415) 947-4167, or contact Ms. Vitulano at 415-947-4178.

Sincerely,
JEAN PRIJATEL

Digitally signed by JEAN PRIJATEL
Date: 2020.11.18 16:27:43 -08'00'

Jean Prijatel
Manager, Environmental Review Branch

cc: Octavio Escobedo, Chairperson, Tejon Indian Tribe
Patia Siong, San Joaquin Air Pollution Control District

Attachment C

Sonoma County Water Agency Temporary Urgency Change Petition Package

Sonoma Water

August 20, 2024

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

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

Dear Mr. Ekdahl:

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

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

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

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

Sincerely,

Grant Davis
General Manager

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

rw S:\Clerical\Pinks\08-19-24\TUCP_Transmittal_20aug2024r.docx

Please indicate County where your project is located here:

Sonoma / Mendo.

MAIL FORM AND ATTACHMENTS TO:
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

☐ **Point of Diversion** Wat. Code, § 1701
☐ **Point of Rediversion** Cal. Code Regs., tit. 23, § 791(e)
☐ **Place of Use** Wat. Code, § 1701
☐ **Purpose of Use** Wat. Code, § 1701

☐ **Distribution of Storage** Cal. Code Regs., tit. 23, § 791(e)
☒ **Temporary Urgency** Wat. Code, § 1435
☐ **Instream Flow Dedication** Wat. Code, § 1707
☐ **Waste Water** Wat. Code, § 1211

☐ **Split** Cal. Code Regs., tit. 23, § 836
☐ **Terms or Conditions** Cal. Code Regs., tit. 23, § 791(e)
☐ **Other**

Application 12919A Permit 12947A License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Present:

Proposed:

Place of Use – Identify area using Public Land Survey System descriptions to ¼-¼ level; for irrigation, list number of acres irrigated.

Present:

Proposed:

Purpose of Use

Present:

Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:

Proposed:

Temporary Urgency
This temporary urgency change will be effective from November 1, 2024 to April 29, 2025 .

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

Instream Flow Dedication – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either: ☐ cubic feet per second or ☐ gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location? ◯ Yes ◯ No
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

Waste Water
If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water? ◯ Yes ◯ No

Will any legal user of the treated waste water discharged be affected? ◯ Yes ◯ No

General Information – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned? ◯ Yes ◉ No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:
☐ ownership ☐ lease ☐ verbal agreement ☐ written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

All Right Holders Must Sign This Form: I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated 08-20-2024 at Santa Rosa, CA .

Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

NOTE: All petitions must be accompanied by:
(1) the form Environmental Information for Petitions, including required attachments, available at: http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf
(2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/
(3) Department of Fish and Wildlife fee of $850 (Pub. Resources Code, § 10005)

Please indicate County where your project is located here:

Sonoma / Mendo.

MAIL FORM AND ATTACHMENTS TO:
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

☐ **Point of Diversion** Wat. Code, § 1701
☐ **Point of Rediversion** Cal. Code Regs., tit. 23, § 791(e)
☐ **Place of Use** Wat. Code, § 1701
☐ **Purpose of Use** Wat. Code, § 1701

☐ **Distribution of Storage** Cal. Code Regs., tit. 23, § 791(e)
☒ **Temporary Urgency** Wat. Code, § 1435
☐ **Instream Flow Dedication** Wat. Code, § 1707
☐ **Waste Water** Wat. Code, § 1211

☐ **Split** Cal. Code Regs., tit. 23, § 836
☐ **Terms or Conditions** Cal. Code Regs., tit. 23, § 791(e)
☐ **Other**

Application 15736 Permit 12949 License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Present:

Proposed:

Place of Use – Identify area using Public Land Survey System descriptions to ¼-¼ level; for irrigation, list number of acres irrigated.

Present:

Proposed:

Purpose of Use

Present:

Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:

Proposed:

Temporary Urgency
This temporary urgency change will be effective from November 1, 2024 to April 29, 2025 .

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

Instream Flow Dedication – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either: ☐ cubic feet per second or ☐ gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location? ◯ Yes ◯ No
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

Waste Water
If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water? ◯ Yes ◯ No

Will any legal user of the treated waste water discharged be affected? ◯ Yes ◯ No

General Information – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned? ◯ Yes ◉ No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:
☐ ownership ☐ lease ☐ verbal agreement ☐ written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

All Right Holders Must Sign This Form: I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated 08-20-2024 at Santa Rosa, CA .

Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

NOTE: All petitions must be accompanied by:
(1) the form Environmental Information for Petitions, including required attachments, available at: http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf
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Please indicate County where your project is located here:

Sonoma / Mendo.

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DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

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☐ **Point of Rediversion** Cal. Code Regs., tit. 23, § 791(e)
☐ **Place of Use** Wat. Code, § 1701
☐ **Purpose of Use** Wat. Code, § 1701

☐ **Distribution of Storage** Cal. Code Regs., tit. 23, § 791(e)
☒ **Temporary Urgency** Wat. Code, § 1435
☐ **Instream Flow Dedication** Wat. Code, § 1707
☐ **Waste Water** Wat. Code, § 1211

☐ **Split** Cal. Code Regs., tit. 23, § 836
☐ **Terms or Conditions** Cal. Code Regs., tit. 23, § 791(e)
☐ **Other**

Application 15737 Permit 12950 License Statement

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Present:

Proposed:

Place of Use – Identify area using Public Land Survey System descriptions to ¼-¼ level; for irrigation, list number of acres irrigated.

Present:

Proposed:

Purpose of Use

Present:

Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:

Proposed:

Temporary Urgency
This temporary urgency change will be effective from November 1, 2024 to April 29, 2025 .

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

Instream Flow Dedication – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either: ☐ cubic feet per second or ☐ gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location? ◯ Yes ◯ No
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

Waste Water
If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water? ◯ Yes ◯ No

Will any legal user of the treated waste water discharged be affected? ◯ Yes ◯ No

General Information – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned? ◯ Yes ◉ No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:
☐ ownership ☐ lease ☐ verbal agreement ☐ written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

All Right Holders Must Sign This Form: I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated 08-20-2024 at Santa Rosa, CA .

Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

NOTE: All petitions must be accompanied by:
(1) the form Environmental Information for Petitions, including required attachments, available at: http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf
(2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/
(3) Department of Fish and Wildlife fee of $850 (Pub. Resources Code, § 10005)

Please indicate County where your project is located here:

Sonoma / Mendo.

MAIL FORM AND ATTACHMENTS TO:
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
http://www.waterboards.ca.gov/waterrights

PETITION FOR CHANGE

Separate petitions are required for each water right. Mark all areas that apply to your proposed change(s). Incomplete forms may not be accepted. Location and area information must be provided on maps in accordance with established requirements. (Cal. Code Regs., tit. 23, § 715 et seq.) Provide attachments if necessary.

☐ **Point of Diversion** Wat. Code, § 1701
☐ **Point of Rediversion** Cal. Code Regs., tit. 23, § 791(e)
☐ **Place of Use** Wat. Code, § 1701
☐ **Purpose of Use** Wat. Code, § 1701
☐ **Distribution of Storage** Cal. Code Regs., tit. 23, § 791(e)
☒ **Temporary Urgency** Wat. Code, § 1435
☐ **Instream Flow Dedication** Wat. Code, § 1707
☐ **Waste Water** Wat. Code, § 1211
☐ **Split** Cal. Code Regs., tit. 23, § 836
☐ **Terms or Conditions** Cal. Code Regs., tit. 23, § 791(e)
☐ **Other**

Application 19351 Permit 16596 License _____ Statement _____

I (we) hereby petition for change(s) noted above and described as follows:

Point of Diversion or Rediversion – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Present:

Proposed:

Place of Use – Identify area using Public Land Survey System descriptions to ¼-¼ level; for irrigation, list number of acres irrigated.

Present:

Proposed:

Purpose of Use

Present:

Proposed:

Split

Provide the names, addresses, and phone numbers for all proposed water right holders.

In addition, provide a separate sheet with a table describing how the water right will be split between the water right holders: for each party list amount by direct diversion and/or storage, season of diversion, maximum annual amount, maximum diversion to offstream storage, point(s) of diversion, place(s) of use, and purpose(s) of use. Maps showing the point(s) of diversion and place of use for each party should be provided.

Distribution of Storage

Present:

Proposed:

Temporary Urgency
This temporary urgency change will be effective from November 1, 2024 to April 29, 2025 .

Include an attachment that describes the urgent need that is the basis of the temporary urgency change and whether the change will result in injury to any lawful user of water or have unreasonable effects on fish, wildlife or instream uses.

Instream Flow Dedication – Provide source name and identify points using both Public Land Survey System descriptions to ¼-¼ level and California Coordinate System (NAD 83).

Upstream Location:

Downstream Location:

List the quantities dedicated to instream flow in either: ☐ cubic feet per second or ☐ gallons per day:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec

Will the dedicated flow be diverted for consumptive use at a downstream location? ◯ Yes ◯ No
If yes, provide the source name, location coordinates, and the quantities of flow that will be diverted from the stream.

Waste Water
If applicable, provide the reduction in amount of treated waste water discharged in cubic feet per second.

Will this change involve water provided by a water service contract which prohibits your exclusive right to this treated waste water? ◯ Yes ◯ No

Will any legal user of the treated waste water discharged be affected? ◯ Yes ◯ No

General Information – For all Petitions, provide the following information, if applicable to your proposed change(s).

Will any current Point of Diversion, Point of Storage, or Place of Use be abandoned? ◯ Yes ◉ No

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of:
☐ ownership ☐ lease ☐ verbal agreement ☐ written agreement

If by lease or agreement, state name and address of person(s) from whom access has been obtained.

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

All Right Holders Must Sign This Form: I (we) declare under penalty of perjury that this change does not involve an increase in the amount of the appropriation or the season of diversion, and that the above is true and correct to the best of my (our) knowledge and belief. Dated 08-20-2024 at Santa Rosa, CA .

Right Holder or Authorized Agent Signature

Right Holder or Authorized Agent Signature

NOTE: All petitions must be accompanied by:
(1) the form Environmental Information for Petitions, including required attachments, available at: http://www.waterboards.ca.gov/waterrights/publications_forms/forms/docs/pet_info.pdf
(2) Division of Water Rights fee, per the Water Rights Fee Schedule, available at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/fees/
(3) Department of Fish and Wildlife fee of $850 (Pub. Resources Code, § 10005)

Sonoma County Water Agency

Supplement to the August 2024 Temporary Urgency Change Petitions

The Sonoma County Water Agency (Sonoma Water) seeks temporary urgency changes to its four water-right permits used to provide wholesale water to cities and water districts in Sonoma and Marin Counties. These changes are necessary to ensure that the water supply condition and corresponding minimum instream flow requirements in the Russian River watershed are aligned with actual watershed hydrologic conditions. This is essential to maintain sustainable reservoir and river operations to protect municipal water supply and listed salmon species in the Russian River.

Based on Sonoma Water's water right permits' terms established under State Water Resources Control Board (State Water Board) Decision 1610, the water supply condition for the Russian River is determined using cumulative inflow into Lake Pillsbury as the hydrologic index. Lake Pillsbury is a storage reservoir located in the Eel River watershed for Pacific Gas & Electric Company's (PG&E) Potter Valley Hydroelectric Project (PVP), which transfers water into the East Fork of the Russian River (East Fork). The Federal Energy Regulatory Commission (FERC) license for the PVP expired on April 14, 2022, and the PVP now operates on an annual license. PG&E has elected to surrender the operating license and decommission the PVP and developed a plan and schedule that was approved by FERC on July 29, 2022. In June 2024, PG&E requested an extension to the schedule with revised submittal dates of January 2025 for the draft license surrender application and decommissioning plan and June 2025 for the final submittal. FERC's license-surrender proceedings will likely take years before PVP operations and long-term rules governing any imports to the Russian River watershed are resolved.

Notwithstanding these long-term issues, PG&E submitted a long-term flow regime request to modify flow requirements under the current FERC license on July 31, 2023. To reduce the potential seismic risk at Lake Pillsbury's Scott Dam, PG&E made the decision to keep the spillway gates open atop Scott Dam indefinitely, reducing the water storage capacity in Lake Pillsbury by approximately 20,000 acre-feet. Consequently, PG&E claims that Lake Pillsbury can no longer sustain normal operations under the current license terms. PG&E has proposed a reduction in the minimum release flow requirements for the East Fork flows starting in 2024 until project decommissioning is complete.

In addition to these proposed reductions in transfers from lower minimum release flow requirements, a transformer bank failure at the PVP powerhouse in 2021 has resulted in significant reductions in transfers into the Russian River. This failure caused PVP hydropower generation to cease and, with it, all associated discretionary transfers of Eel River water to the East Fork. In October 2021, PG&E initially announced that the

anticipated repairs would take up to two years at a cost of five to ten million dollars. On March 22, 2023, PG&E announced in a letter to FERC that it does not intend to replace the transformer.

PG&E has indicated that without the ability to generate hydropower, PG&E will not likely make discretionary transfers through the PVP above its FERC license and contract obligations. Discretionary transfers to generate hydropower can occur up until early April if hydrologic conditions on the Eel River and at Lake Pillsbury are met. Without the discretionary transfer of Eel River water to generate hydropower, the total transfer through the PVP into the East Fork will be reduced by up to 456 acre-feet per day[1].

In the interim while the long-term flow regime request is under FERC review, PG&E has applied annually for a temporary variance of flow requirements due to the seismic risk at Scott Dam. On June 27, 2024, FERC issued an order approving this year's variance request. FERC approved changes to the minimum release flows in the Eel River and the East Fork. Minimum release flow requirements for the Eel River below Scott Dam were reduced to the critical water year type of 20 cfs. The FERC order authorized minimum release flow requirements for the East Fork to be immediately reduced from 75 cfs to 25 cfs and later reduced to 5 cfs if water temperatures of Lake Pillsbury releases exceeded 15 degrees Celsius. PG&E reported that minimum release flows to the East Fork were reduced to 5 cfs on July 3rd due to Lake Pillsbury release temperatures exceeding 15 degrees Celsius. This minimum release flow requirement will increase on September 30th to 35 cfs and remain there while the FERC order is in effect. After October 1st, the termination of the order will be dependent on when Lake Pillsbury storage exceeds 36,000 acre-feet.

As described above, multiple changes to the PVP operations have reduced and could further reduce the transfers of Eel River water into the Russian River. The historical link of the two watersheds on which Decision 1610 is based is no longer applicable. The hydrologic index of Decision 1610 is not a reliable metric for Russian River water supply conditions without the large inter-basin transfer and will not function as intended. While the Lake Pillsbury watershed on the Upper Eel River and the Upper Russian River are adjacent basins, the hydrologic conditions can be quite different. For example, in water

[1] PVP has design flow capacities of up to 240 cubic feet per second (cfs) through the powerhouse for power generation and up to 135 cfs through the powerhouse bypass to meet FERC license requirements for minimum release flows into the East Fork Russian River and water supply contract requirements with the Potter Valley Irrigation District.

year 2021, Lake Mendocino experienced the second driest year on record for the Ukiah Valley (period of record: 128 years), unequivocally a 'Critical' condition. However, based on the cumulative inflow to Lake Pillsbury, water supply conditions in the Russian River were classified as 'Normal' on January 1, 2021 and 'Dry' on February 1, which remained the designated water supply condition for the rest of the calendar year.

Over a month, the difference between water needed for a 'Normal' water supply condition and a 'Dry' condition to maintain instream flow requirements is almost 4,500 ac-ft under the winter minimum instream flow requirements of Decision 1610. Under spring and summer requirements, it amounts to over 6,500 ac-ft. Year-round, the additional amount of water needed between a 'Dry' water supply condition and a 'Critical' condition to maintain instream flow requirements is nearly 3,000 ac-ft over a month.

In February 2020, Lake Mendocino was above the water conservation pool and at the top of the Forecast Informed Reservoir Operations (FIRO) pool of 80,050 ac-ft. Over the next 20 months, the Russian River watershed experienced a severe drought and Lake Mendocino storage levels declined to 12,864 ac-ft in October 2021, despite Sonoma Water filing temporary urgency change petitions to drastically reduce minimum instream flow requirements and the State Water Board curtailing over 1,800 riparian claims and appropriative water rights. This recent historical example from the 2020-2022 drought highlights the diligence needed under the current conditions to prevent the complete draining of Lake Mendocino.

Under the current Decision 1610 hydrologic index, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at unsustainable levels if the Russian River watershed experiences significantly less rainfall than the Lake Pillsbury watershed. Given the changes to PVP operations, the influence of the Eel River water imports on downstream hydrologic conditions in the Russian River is greatly diminished. Therefore, cumulative inflow into Lake Pillsbury is no longer an appropriate metric to assess the hydrologic conditions in the Russian River watershed. Consequently, Sonoma Water requests that storage thresholds in Lake Mendocino be used as the hydrologic index to determine the water supply condition in the Russian River watershed upon which minimum instream requirements are based. This approach using a similar table of storage thresholds was requested by Sonoma Water in a prior State Water Board filing for Temporary Urgency Change Petitions (TUCP) in October 2023 (approved December 27, 2023). Additionally, TUCPs using the same approach were filed by Sonoma Water in December 2013 (approved December 31, 2013), January 2021 (approved February 4, 2021), November 2021 (approved December 10, 2021), and October 2022 (approved December 14, 2022). Under the current TUCP request, the

storage thresholds are the same as developed for the October 2023 TUCP, which were updated from prior uses of a hydrologic index based on storage thresholds to incorporate new operational conditions in the Russian River watershed and a new methodology (see Section 4.0).

1.0 BACKGROUND

Sonoma Water controls and coordinates water supply releases from Lake Mendocino and Lake Sonoma to implement the minimum instream flow requirements in water rights Decision 1610, which the State Water Board adopted on April 17, 1986. Decision 1610 specifies minimum flow requirements for the Upper Russian River, Dry Creek and the Lower Russian River[2]. These minimum flow requirements vary based on water supply conditions, which are also specified in Decision 1610. The Decision 1610 requirements for the Upper Russian River and Lower Russian River are contained in term 20 of Sonoma Water's water-right Permit 12947A (Application 12919A). The Decision 1610 requirements for the Lower Russian River are contained in term 17 of Sonoma Water's water-right Permit 12949 (Application 15736) and term 17 of Sonoma Water's water-right Permit 12950 (Application 15737). The Decision 1610 requirements for Dry Creek and the Lower Russian River are contained in term 13 of Sonoma Water's water-right Permit 16596 (Application 19351).

Sonoma Water's operations are also subject to the Russian River Biological Opinion issued by the National Marine Fisheries Service on September 24, 2008, and the consistency determination issued by the California Department of Fish and Wildlife on November 9, 2009.

1.1 MINIMUM FLOW REQUIREMENTS

Decision 1610 requires a minimum flow of 25 cubic feet per second (cfs) in the East Fork from Coyote Valley Dam to the confluence with the West Fork of the Russian River (West Fork) under all water supply conditions. From this point downstream to Dry Creek, the Decision 1610 required minimum flows in the Russian River are 185 cfs from April through

[2] The Upper Russian River is the stream reach from the confluence of the East Fork of the Russian River and West Fork of the Russian River to the Russian River's confluence of Dry Creek. The Lower Russian River is the stream reach from the confluence of Dry Creek and the Russian River to the Pacific Ocean.

August and 150 cfs from September through March during *Normal* water supply conditions, 75 cfs during *Dry* conditions and 25 cfs during *Critical* conditions. Decision 1610 further specifies two variations of the *Normal* water supply condition, commonly known as *Dry Spring 1* and *Dry Spring 2*. These conditions provide for lower minimum flow requirements in the Upper Russian River during times when the combined storage in Lake Pillsbury (owned and operated by the PG&E) and Lake Mendocino on May 31 is unusually low. *Dry Spring 1* conditions exist if the combined storage in Lake Pillsbury and Lake Mendocino is less than 150,000 acre-feet on May 31. Under *Dry Spring 1* conditions, the required minimum flow in the Upper Russian River between the confluence of the East Fork and West Fork and Healdsburg is 150 cfs from June through March, with a reduction to 75 cfs during October through December if Lake Mendocino storage is less than 30,000 acre-feet during those months. *Dry Spring 2* conditions exist if the combined storage in Lake Pillsbury and Lake Mendocino is less than 130,000 acre-feet on May 31. Under *Dry Spring 2* conditions, the required minimum flows in the Upper Russian River are 75 cfs from June through December and 150 cfs from January through March.

From Dry Creek to the Pacific Ocean, the required minimum flows in the Lower Russian River are 125 cfs during *Normal* water supply conditions, 85 cfs during *Dry* conditions and 35 cfs during *Critical* conditions.

In Dry Creek below Warm Springs Dam, the required minimum flows are 75 cfs from January through April, 80 cfs from May through October and 105 cfs in November and December during *Normal* water supply conditions. During *Dry* and *Critical* conditions, these required minimum flows are 25 cfs from April through October and 75 cfs from November through March.

Figure 1 shows all of the required minimum instream flows specified in Decision 1610 by river reach, the gauging stations used to monitor compliance, and the definitions of the various water supply conditions.

1.2 WATER SUPPLY CONDITIONS

There are three main water supply conditions that are defined in Decision 1610, which set the minimum instream flow requirements based on the hydrologic conditions for the Russian River system. These water supply conditions are determined based on criteria for the calculated cumulative inflow into Lake Pillsbury from October 1 to the first day of each month from January to June. Decision 1610 defines cumulative inflow for Lake Pillsbury as the algebraic sum of releases from Lake Pillsbury, change in storage and lake evaporation.

Dry water supply conditions exist when cumulative inflow to Lake Pillsbury from October 1 to the date specified below is less than:

- 8,000 acre-feet as of January 1;
- 39,200 acre-feet as of February 1;
- 65,700 acre-feet as of March 1;
- 114,500 acre-feet as of April 1;
- 145,600 acre-feet as of May 1; and
- 160,000 acre-feet as of June 1.

Critical water supply conditions exist when cumulative inflow to Lake Pillsbury from October 1 to the date specified below is less than:

- 4,000 acre-feet as of January 1:
- 20,000 acre-feet as of February 1;
- 45,000 acre-feet as of March 1;
- 50,000 acre-feet as of April 1;
- 70,000 acre-feet as of May 1; and
- 75,000 acre-feet as of June 1.

Normal water supply conditions exist whenever a *Dry* or *Critical* water supply condition is not present. As indicated above, Decision 1610 further specifies three variations of the *Normal* water supply condition based on the combined storage in Lake Pillsbury and Lake Mendocino on May 31. These three variations of the *Normal* water supply condition determine the required minimum instream flows for the Upper Russian River from the confluence of the East Fork and the West Fork to the Russian River's confluence with Dry Creek. This provision of Decision 1610 does not provide for any changes in the required minimum instream flows in Dry Creek or the Lower Russian River (the Russian River between its confluence with Dry Creek and the Pacific Ocean). A summary of the required minimum flows in the Russian River for *Normal*, *Normal — Dry Spring 1* and *Normal — Dry Spring 2* water supply conditions is provided here:

1. Normal: When the combined water in storage in Lake Pillsbury and Lake Mendocino on May 31 of any year exceeds 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through August 31	185 cfs
From September 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

2. Normal-Dry Spring 1: When the combined water in storage in Lake Pillsbury and Lake Mendocino on May 31 of any year is between 150,000 acre-feet or 90 percent of the estimated water supply storage capacity of the reservoirs, whichever is less, and 130,000 acre-feet or 80 percent or the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through March 31	150 cfs
From April 1 through May 31	185 cfs
If from October 1 through December 31, storage in Lake Mendocino is less than 30,000 acre-feet	75 cfs

3. Normal-Dry Spring 2: When the combined water in storage in Lake Pillsbury and Lake Mendocino on May 31 of any year is less than 130,000 acre-feet or 80 percent of the estimated water supply storage capacity of the reservoirs, whichever is less:

From June 1 through December 31	75 cfs
From January 1 through March 31	150 cfs
From April 1 through May 31	185 cfs

2.0 WATER SUPPLY CONDITIONS

On May 31, 2024, the cumulative inflow for the current water year (starting October 1, 2023) into Lake Pillsbury was 482,229 acre-feet and combined storage in Lake Pillsbury and Lake Mendocino was 152,413 acre-feet. Consequently, the water supply condition is

categorized as *Normal* for the remainder of 2024 under the current hydrologic index of Decision 1610. Sonoma Water is currently managing the Russian River under a *Normal* water supply condition with modified minimum instream flow requirements as authorized by the State Water Board's temporary urgency change order dated June 6, 2024, to comply with the requirements of the 2008 Biological Opinion. The order authorized a reduction in minimum instream flow requirements for the Upper and Lower Russian River that remains in effect until October 15, 2024. After October 15, 2024, the minimum instream flow requirements, for the remainder of the year, would revert to the Decision 1610 requirements under a *Normal* water supply condition. Minimum flow requirements would increase on the Upper Russian River from 125 cfs to 150 cfs and on the Lower Russian River from 70 cfs to 125 cfs.

2.1 POTTER VALLEY HYDROELECTRIC PROJECT

The PVP, owned and operated by PG&E, is located on the East Fork of the Russian River and the Eel River in Mendocino and Lake Counties. PVP's Lake Pillsbury is impounded by Scott Dam. Eel River natural flows and releases from Scott Dam can be diverted downstream at Cape Horn Dam through PG&E's generation facilities. Those generation facilities then release a portion of that water to the East Fork.

As discussed in the introduction above, the PVP powerhouse is inoperable and will not be repaired. This has severely reduced the transfer of Eel River water through the PVP. In addition, PG&E has revised operations at Lake Pillsbury to mitigate seismic risk, which led to a FERC-approved variance for this year and the filing of a long-term flow regime request that, if approved, would result in further reductions in transfers of Eel River water into the East Fork.

2.2 LAKE MENDOCINO

As of August 14, 2024, the water supply storage level in Lake Mendocino was 79,657 acre-feet. This storage level is approximately 72.4 percent of the water supply storage curve for this time of year. Figure 2 shows observed storage in Lake Mendocino from 2015 through August 14, 2024. Current U.S. Army Corps of Engineers (USACE) flood control operations at Lake Mendocino are conducted under the Forecast Informed Reservoir Operations (FIRO) program, which implemented a major deviation to the reservoir's Water Control Manual allowing discretionary encroachment into the reservoir's flood control pool. From May 11th through October 1st, the FIRO major deviation storage curve is equivalent to the water supply storage curve of the Water Control Manual at a constant 111,000 acre-feet.

2.3 LAKE SONOMA

As of August 14, 2024, the water supply storage level in Lake Sonoma was 241,889 acre-feet. This storage level is approximately 91.6 percent of the minor deviation storage curve for this time of year. Figure 3 shows observed storage in Lake Sonoma from 2015 through August 14, 2024. Current flood control operations at Lake Sonoma are conducted under the protocols of a minor deviation to the reservoir's Water Control Manual that was approved by the USACE in December 2022. From March 1st though September 30th, the minor deviation storage curve is at 264,000 acre-feet, or 19,000 acre-feet above the water supply curve of the Water Control Manual.

3.0 CRITERIA FOR APPROVING TEMPORARY URGENCY CHANGE TO PERMITS 12947A, 12949, 12950, AND 16596

As required by Water Code section 1435, subdivision (b), the State Water Board must make the following findings before issuing a temporary change order:

1. The permittee or licensee has an urgent need to make the proposed change;
2. The proposed change may be made without injury to any other lawful user of water;
3. The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. The proposed change is in the public interest.

3.1 URGENCY OF THE PROPOSED CHANGE

For these petitions, an urgent need exists to implement the proposed changes due to the drastic reduction of potential Eel River water imports through PVP resulting from the inoperability of the powerhouse and revised operations at Lake Pillsbury. The volume of Eel River water that can be transferred to the Russian River is no longer correlated to cumulative inflow into Lake Pillsbury. An evaluation of the hydrologic condition in the Russian River is more appropriately established by conditions in its watershed. Without the proposed changes, the applicable minimum instream flow requirements may require releases of water from Lake Mendocino and Lake Sonoma at levels that would risk significant depletions of storage levels. Such depletions in storage could cause serious impacts to human health and welfare and reduce water supplies needed for fishery protection.

3.2 No Injury to Any Other Lawful User of Water

If these petitions are granted, Sonoma Water will still be required to maintain specified minimum instream flows in the Russian River. Because Sonoma Water will continue to make reservoir releases as necessary to satisfy minimum instream flow requirements and pass through natural and imported flows for downstream senior water rights, all legal users of water will still be able to divert and use the amounts of water that they are legally entitled to. Accordingly, granting these petitions will not result in any injury to any other lawful user of water.

3.3 No Unreasonable Effect upon Fish, Wildlife, or Other Instream Beneficial Uses

If these petitions are approved, monthly storage thresholds in Lake Mendocino would determine the water supply condition that sets the Russian River minimum instream flow requirements. This change could result in lower instream flows in the Russian River. Any effects associated with such flow reductions would not be unreasonable, considering the potential catastrophic impacts to fish, wildlife and other instream beneficial uses that could occur under minimum instream flow requirements that the Russian River watershed and reservoirs cannot sustain.

3.4 The Proposed Change is in the Public Interest

Approval of these petitions would provide alternative criteria for determining minimum instream flow requirements for the Russian River that would be based on a more accurate assessment of water supply conditions in the Russian River watershed. This would result in minimum instream flow requirements that more likely can be sustained with releases from Lake Mendocino and Lake Sonoma without severely depleting storage. It is in the public interest to manage these water supplies based on an index that is more reflective of the hydrologic conditions of the Russian River watershed.

4.0 REQUESTED TEMPORARY URGENCY CHANGE TO PERMITS 12947A, 12949, 12950, AND 16596

To address the changes in PVP operations and corresponding loss of Eel River water imports through the project, Sonoma Water is filing these petitions requesting that the State Water Board make the following temporary changes to the Decision 1610

requirements[3]:

Starting November 1, 2024, the minimum instream flow requirements for the Russian River will be established using an index based on water storage in Lake Mendocino, rather than the current index based on cumulative inflow into Lake Pillsbury. This temporary change is requested to ensure that the water supply condition for the Russian River is determined by an index that is reflective of actual watershed conditions. Specifically, Sonoma Water proposes that the monthly storage values listed below be used, in lieu of cumulative Lake Pillsbury inflow, to determine the water supply conditions that establish which minimum instream flow requirements in Term 20 of Permit 12947A, Term 17 of Permits 12949 and 12950, and Term 13 of Permit 16596 will apply to the Russian River:

a. *Dry* water supply conditions will exist when storage in Lake Mendocino is less than:

58,000 acre-feet as of October 1
51,000 acre-feet as of November 1
49,000 acre-feet as of December 1
68,400 acre-feet as of January 1
68,400 acre-feet as of February 1
68,400 acre-feet as of March 1
77,000 acre-feet as of March 16
86,000 acre-feet as of April 1
91,000 acre-feet as of April 16
93,000 acre-feet as of May 1
94,000 acre-feet as of May 16
94,000 acre-feet as of June 1

b. *Critical* water supply conditions exist when storage in Lake Mendocino is less than:

46,000 acre-feet as of October 1
41,000 acre-feet as of November 1

[3] The analysis to develop a hydrologic index based on Lake Mendocino storage thresholds resulted in an evaluation period from October 1st through June 1st. While the requested period of these temporary urgency change petitions does not span the full period of these evaluation dates, the developed hydrologic index in full is requested as such to present the proposed hydrologic index in its totality.

40,000 acre-feet as of December 1
42,000 acre-feet as of January 1
49,000 acre-feet as of February 1
57,000 acre-feet as of March 1
67,000 acre-feet as of March 16
73,000 acre-feet as of April 1
74,000 acre-feet as of April 16
75,000 acre-feet as of May 1
76,000 acre-feet as of May 16
76,000 acre-feet as of June 1

c. *Normal* water supply conditions exist in the absence of defined *Dry* or *Critical* water supply conditions.

Because the proposed criteria for determining the applicable minimum instream flow requirements will be tied to Lake Mendocino storage, it will more accurately reflect the hydrologic conditions in the Russian River, adjusting monthly from October through February and then biweekly from March 1 through June 1. This framework allows more responsive changes to the minimum flows in the late winter and spring as yields and hydrologic conditions develop. The proposed index establishes new criteria for determining the water supply conditions of Decision 1610 and does not modify the associated minimum instream flow requirements. This will shift the criteria for establishing hydrologic conditions in the Russian River watershed to local conditions rather than rely on cumulative inflows to Lake Pillsbury in the Eel River watershed, which are no longer representative of Russian River hydrologic conditions.

These storage thresholds in Lake Mendocino were developed by Sonoma Water engineering staff using its Russian River ResSim Model. The modeling scenarios assume: (1) current Russian River system losses; (2) WY 1911 to WY 2017 unimpaired flow hydrology, and (3) Potter Valley Project operations (consistent with those outlined in the October 2023 and June 2024 FERC orders approving PG&E's flow variance requests). The thresholds were developed based on an analysis of maintaining carryover storage in Lake Mendocino over a simulated historical hydrologic dataset followed by a 1 in 100-year synthetic drought. A detailed description of the hydrologic analysis is presented in the technical memorandum included as Attachment A.

5.0 PROPOSED ACTIONS BY SONOMA WATER

To inform State Water Board staff and interested stakeholders in the Russian River

watershed regarding reservoir and watershed conditions, Sonoma Water will prepare a weekly hydrologic status report that contains the following information:

- Current reservoir levels and reservoir storage hydrographs for Lake Mendocino and Lake Sonoma;
- The daily rate of change in storage, inflow and reservoir release for Lake Mendocino and Lake Sonoma; and
- Cumulative rainfall plot for current water year versus historical precipitation range for Ukiah. Cumulative rainfall forecasts for 3-day, 7-day and 16-day.

These reports will be made available on Sonoma Water's website during the term of the order approving Sonoma Water's requested temporary changes.

6.0 WATER CONSERVATION ACTIVITIES

The following water conservation activities reflect the efforts of Sonoma Water and the Sonoma-Marin Saving Water Partnership (Partnership). The Partnership represents 13 North Bay water utilities in Sonoma and Marin counties that have joined together to provide regional solutions for water use efficiency. The utilities (Partners) are: the Cities of Santa Rosa, Rohnert Park, Petaluma, Sonoma, Cloverdale, Cotati, Healdsburg; North Marin, Valley of the Moon and Marin Municipal Water Districts; California American Water Company-Larkfield; the Town of Windsor and Sonoma Water. The Partnership was formed to identify and recommend water use efficiency projects and to maximize the cost-effectiveness of water use efficiency programs in our region.

Sonoma Water and the retail agencies of the Partnership continue to implement their primary programs, water waste prohibitions, and outreach campaigns to achieve long-term water savings and the adoption of efficient water use habits in alignment with the pending urban water use efficiency standards, objectives, and performance measures. The Partnership's 2024 water production totals through June are 13 percent below 2020 totals for the same period. As was anticipated, the 2024 percent reduction compared to 2020 increased once the irrigation months arrived. The water savings reflect the combined demand reductions from indoor and early summer outdoor water uses.

The Partnership completed the Dye Tab Challenge social media campaign in spring to incentivize customers to complete and report results of toilet leak tests during February and March. Free leak dye-test tablets were distributed by mail or made available for pickup

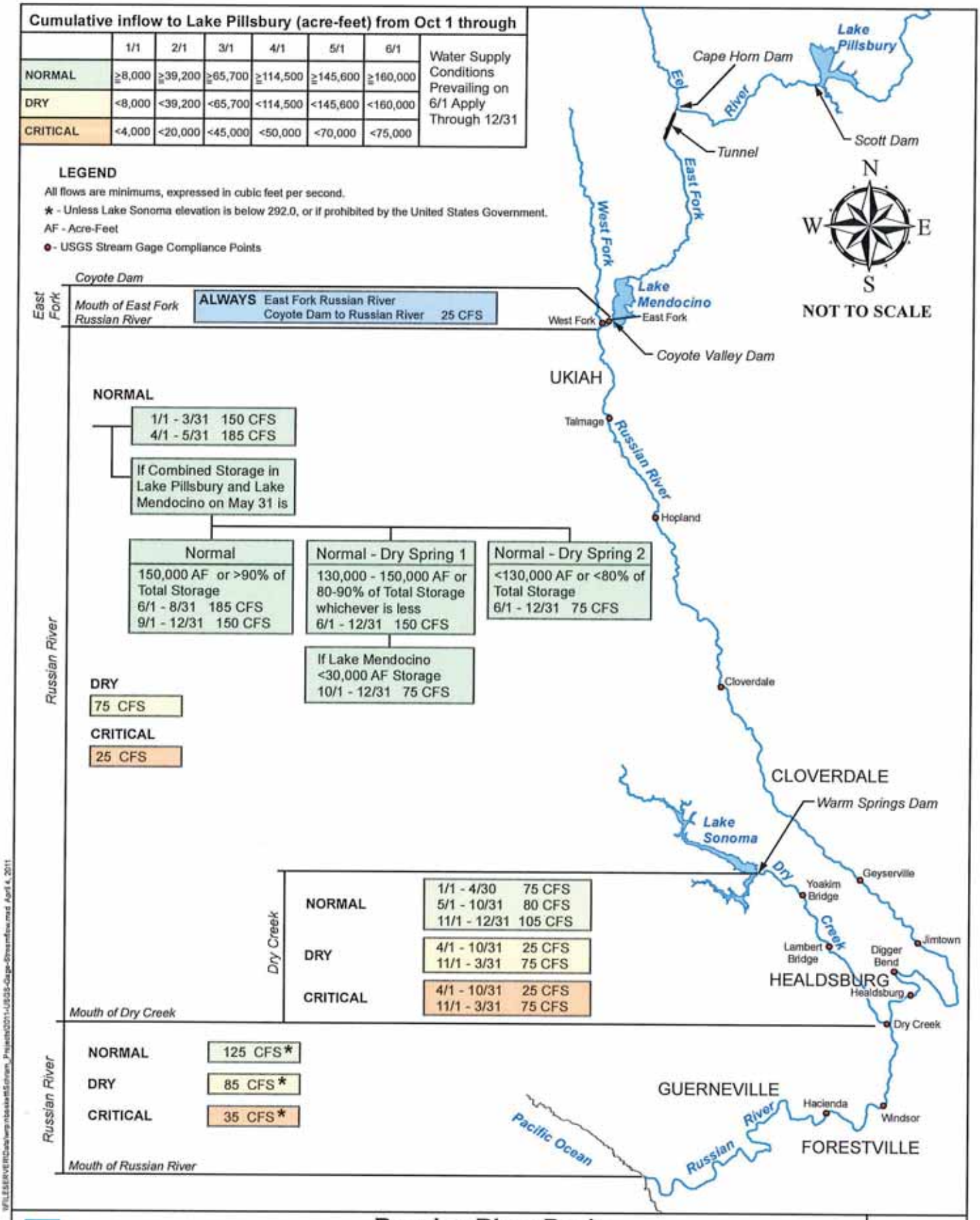
at utility offices. The Dye Tab Challenge coincided with the national E.P.A. WaterSense Program's Fix a Leak Week Campaign held March 18 to 24 and was promoted through a social media campaign on Facebook, X, Instagram, and Nextdoor. On May 18th, the Partnership hosted the annual Eco-Friendly Garden Tour at 26 gardens throughout Sonoma and Marin counties. The tour showcases water-wise and sustainable landscape practices to provide inspiration for participants interested in learning about and implementing similar practices at their homes. The tour had over 3,900 registered participants, with some of the gardens reporting over 350 visitors that day.

The Partnership's summer outreach campaign is underway and runs from June through September. This year's theme focuses on creating climate ready landscapes that are better adapted to survive the climate change induced weather extremes of fire, floods, and drought. The campaign highlights different topics each month, such as choosing water smart plants, irrigating efficiently, good garden design and maintenance, and use of rainwater and greywater. Weekly social media ads are placed over the 16-week campaign in addition to online and print ad placements. The Partnership also tables at in-person events in the spring, summer, and fall at popular community events such as Earth Day, the City of Santa Rosa WaterSmart Expo, Zero Waste Sonoma's Fix-it Fair, and the annual Fiesta de Independencia held at the Luther Burbank Center for the Arts. The Partnership collaborated with the Master Gardener Program of Sonoma County to install a sustainable, climate ready garden display outside the Hall of Flowers at the Sonoma County Fair from August 1-11. An additional project is underway to remove non-functional turf in front of the Sonoma County Fair administrative offices to install a demonstration low water use landscape. This project is being co-sponsored by the Partnership, the Master Gardener Program of Sonoma County, and private nursery and landscape contractor firms, with an anticipated construction period in fall 2024.

Lastly, the Partnership is hosting three Qualified Water Efficient Landscaper (QWEL) trainings this summer. The QWEL program is an EPA WaterSense labeled professional certification in irrigation system audits. QWEL Pros receive training in efficient irrigation principles and sustainable landscaping practices. The early August class is being taught in Spanish, with additional classes in English in August and September.

Additional program information, tools, and resources are available on the Partnership's website at https://www.savingwaterpartnership.org/.

FIGURES



Sonoma Water

Russian River Basin
Streamflow Requirements

Per State Water Resources Control Board Decision 1610, April 1986

Figure 1

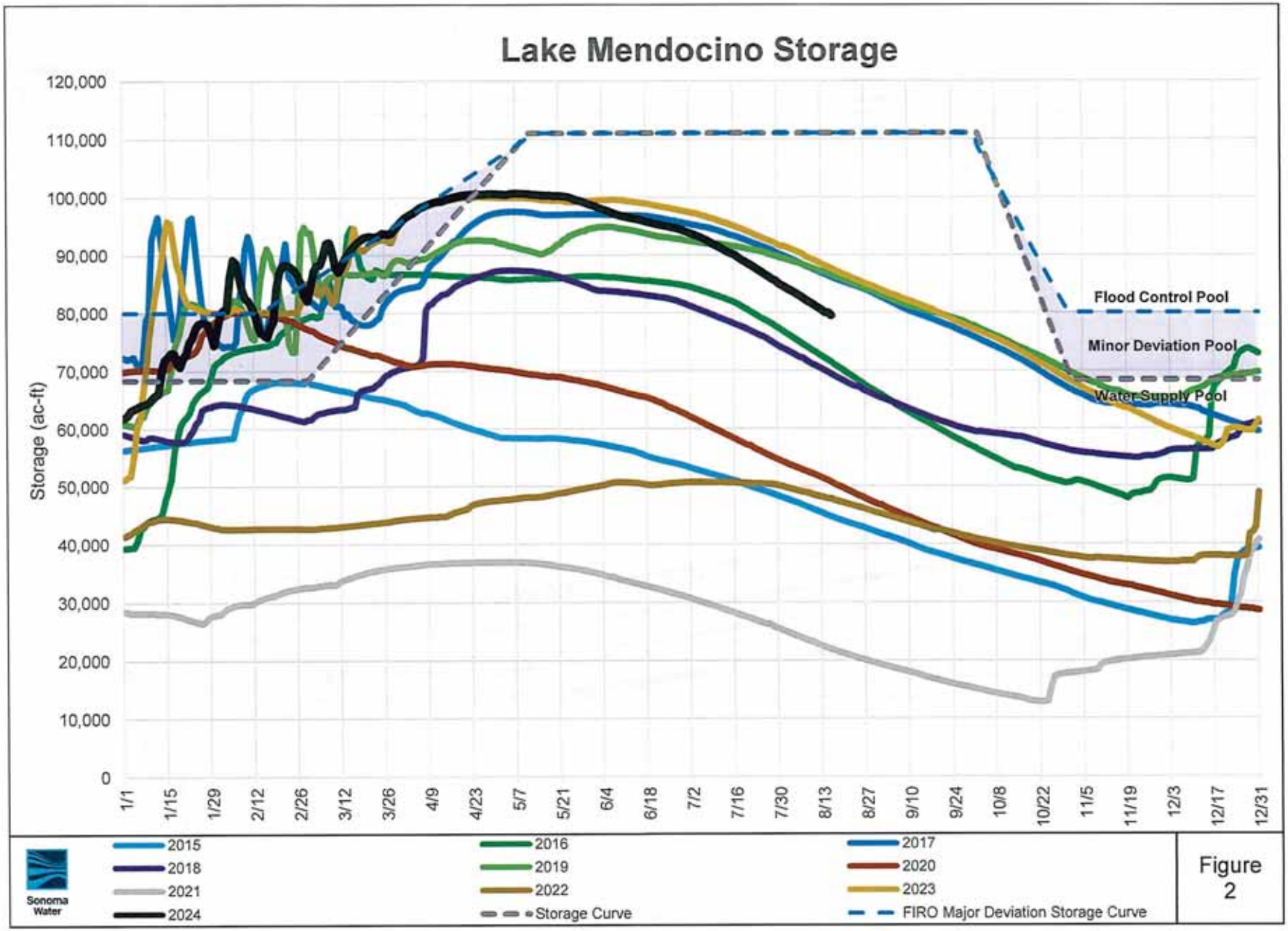

Lake Mendocino Storage
Storage (ac-ft)
120,000
110,000
100,000
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Flood Control Pool
Minor Deviation Pool
Water Supply Pool
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
Storage Curve
FIRO Major Deviation Storage Curve
Sonoma Water

Figure 2

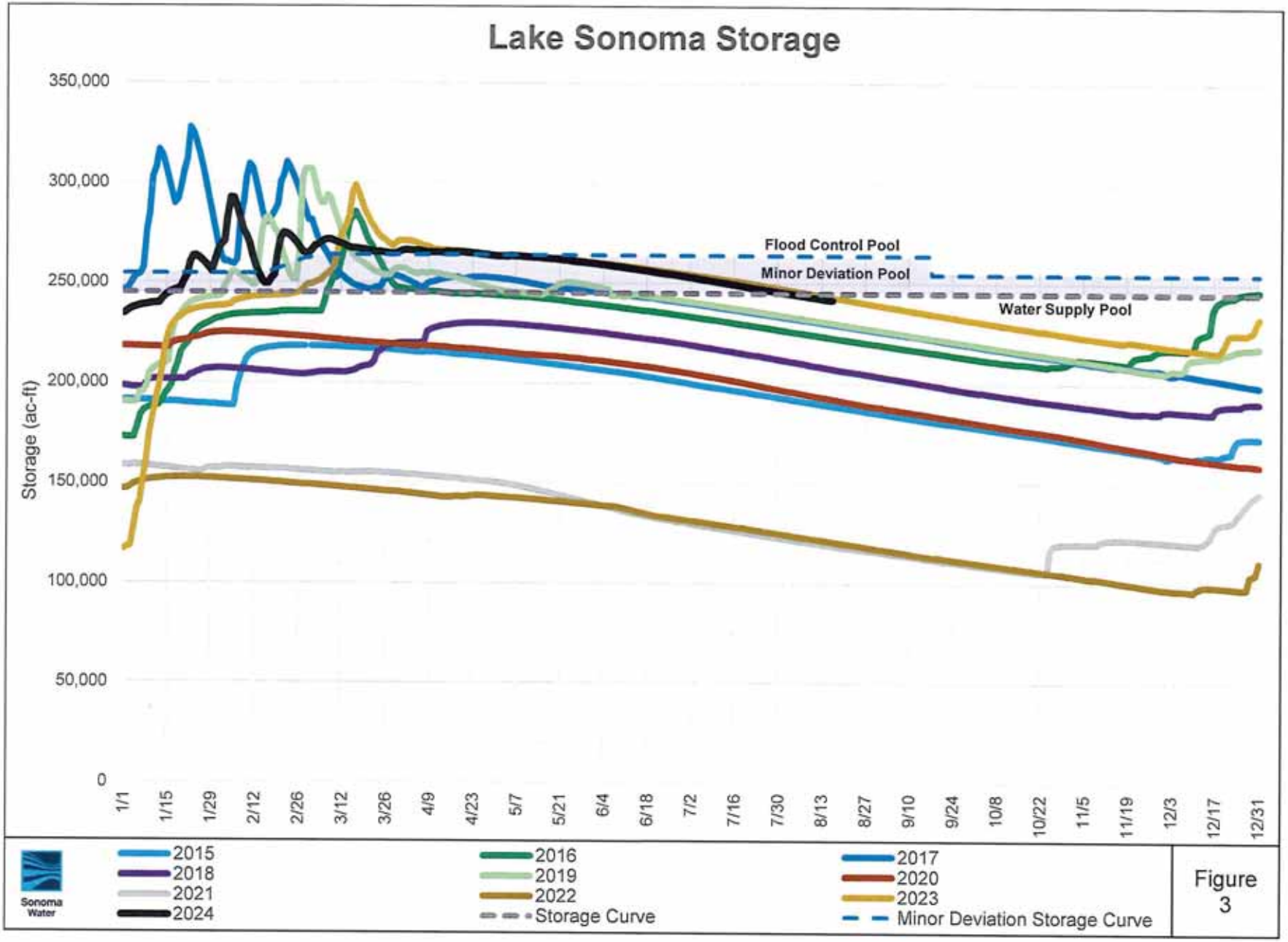

Lake Sonoma Storage
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
Storage (ac-ft)
Flood Control Pool
Minor Deviation Pool
Water Supply Pool
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
Storage Curve
Minor Deviation Storage Curve
Sonoma Water

Figure 3

EXHIBIT H

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RE: EA Comments, Koi Nation Shiloh Resort and Casino

November 13, 2023

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the County of Sonoma, thank you for considering these comments on the Environmental Assessment (EA) prepared for the Koi Nation's proposed fee-to-trust application for its Shiloh Resort and Casino Project. The County is mindful of the Bureau of Indian Affairs' (Bureau) roles in reviewing and deciding on the application made by the Koi Nation and its role as a trustee for lands already held in trust for tribes in Sonoma County. The County is respectful of tribal sovereignty and understands the need for tribal self-determination and economic development to provide for tribal members. At the same time, Sonoma County objects to any attempt on the part of the federal government to take the present 68 acres of land located east of the Town of Windsor into trust for the benefit of the tribe for gaming in a manner that violates federal law.

Given the significant impacts of the project, and the controlling law that requires an Environmental Impact Statement (EIS) on these facts, the County of Sonoma respectfully urges the Bureau to forego any attempt to use this document to support a Finding of No Significant Impact (FONSI). This is not supportable. The County of Sonoma objects to the inadequate analysis and mitigation in the EA, and the failure of the Bureau to take a "hard look" at the environmental consequences of this proposal, as required by the National Environmental Policy Act (NEPA).

The Bureau should stop, think, and prepare the EIS that NEPA requires.

I. The EA contains inadequate analysis of the significant impacts of the project and an EIS must be prepared.

The Bureau has prepared a complete EIS for other very similar casino projects within Sonoma County, as well as elsewhere in California. By way of example, in Sonoma County, the Cloverdale Rancheria Band of Pomo Indians' fee-to-trust application sought 69.77 acres of land in trust for gaming about 25 miles north of the subject site. An EIS was prepared for the Cloverdale project.[1] The Bureau's action on the Cloverdale site was for a resort casino and hotel, including a tribal government building and 3,400 parking spaces, for a total non-parking square footage of 595,600 square feet. By way of comparison, the Koi Nation's project is for a similar project without a government building, and totals 807,067 square feet for non-parking coverage, and 5,119 parking spaces in addition (1,689,380 square feet in addition). For a similarly sized proposed land area, the Koi casino square footage is 135.5% of that proposed by Cloverdale, its hotel rooms are 164% of that proposed by Cloverdale, and the number of parking spaces is 150.5% of that proposed by Cloverdale. Even if the current project were to be reduced in size to what Cloverdale proposed, common sense would dictate an EIA. While an EA may be appropriate for some projects, the Koi Nation's destination casino project is not one of them.

The EA concedes that the project will have numerous significant impacts, but then backs away from the obviously required significance findings based on regulatory requirements that do not exist, inadequate baseline information to inform analysis, inadequate environmental analysis of direct and indirect impacts, inadequate analysis of cumulative impacts, inadequate and unenforceable mitigation requirements, the strategic mischaracterization of mitigation as "part of the project" to avoid accountability, vague and unenforceable project assumptions, and in many cases, a refusal to implement all the recommendations of the consultants that the EA itself relies upon.

The decision not to prepare an EIS for this project reflects a conscious refusal to take a hard look at the impacts of the project and indicates that NEPA review is improperly being used to paper over a decision that has already been made.

II. The EA is affirmatively misleading with respect to the "regulatory setting," contains no discussion of mitigation efficacy, and no evidence that key mitigation will be effective.

The EA is filled with references to California state law and State and local regulatory standards. State law is discussed in most of the "Regulatory Setting" sections of the impact discussions, and also in Appendix E. However, the project may only be

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[1] http://www.cloverdalerancheria.com/eis/deis.htm

built if the land is in trust and hence not within the civil regulatory jurisdiction of the State of California or County of Sonoma. Each reference is misleading because the referenced State legal requirements and local regulatory requirements do not apply to the project. The EA avoids providing a description and discussion of the actual regulatory setting (and associated issues with mitigation implementation that this setting presents). Tribal sovereign immunity is not mentioned in the EA, much less in the context of mitigation measures.

There is no discussion of what mechanism will be available or used by the Bureau as the decisionmaker on the Koi Nation's fee to trust application to impose enforceable mitigation on the Tribe. It is one thing to discuss how environmental impacts are addressed by existing, enforceable requirements, but it is quite another to pretend that impacts are addressed by background regulations that do not exist.

In places, the EA's impressionistic discussion of State law and tribal requirements is about as far from a "hard look" as one can get. Section 2.1.9 states:

> The proposed facilities would conform to applicable tribal building code requirements, which would be generally consistent with the CBC and California Public Safety Code, including building, electrical, energy, mechanical, plumbing, fire protection, and safety. An indoor sprinkler system would be installed to provide fire protection.

There is no indication that the Tribe currently has tribal building codes with "applicable" requirements, but if they existed, they would apparently only be "generally" consistent with the "California Public Safety Code" – a California statute that does not exist. The analysis appears to be based on an imaginary code that is based on an imaginary code. If there are tribal codes that apply, their text should be provided in the NEPA process such that their adequacy can be commented upon and evaluated.

It is also clear on the face of the EA that cited regulatory standards are being ignored. As noted by West Yost (Exhibit A), a great deal of emphasis is placed on compliance with Title 22 of the California Code of Regulations in the EA's discussion of recycled water (EA, Appendix B, 2-16, 4-2 and 4-3), but the whole dual plumbing design (using non-potable water within a building with food facilities, 22 Cal. Code Regs. § 60313), squarely violates Title 22.[2]

[2] Assuming compliance with Title 22 and non-compliance at the same time makes the EA fundamentally unclear. A project that complies with Title 22 would require a different water balance analysis than is found in the EA.

Compounding the problem is the fact that the EA discusses critical mitigation measures as "Best Management Practices" (Table 2.1-3) raising the issue of whether these purported "practices" will actually occur absent monitoring and enforcement. The Bureau's own NEPA guidance (59 IAM 3-H) is clear that mitigation measures must be enforceable to justify a FONSI. Simultaneously, the Bureau's analysis in the EA is clear that compliance with Table 2.1-3 is critical to the impact conclusions in the EA. The analysis returns to Table 2.1-3 for these conclusions repeatedly. There must, at a minimum, be a mitigation measure that requires compliance with Table 2.1-3 or, alternatively an explanation of how these critical requirements (which are not at all part of background legal requirements for the project) will be monitored and enforced. The entirety of Table 2.1-3 must be rewritten to allow the evaluation of the efficacy of the mitigation and remove the escape clauses – by way of example, "[e]xhaust stack and vents will be positioned to limit odor exposure to sensitive receptors *to the extent feasible*." Characterizing critical "mitigation" as "practices" to avoid environmental accountability hides the ball in terms of impact analysis and subverts NEPA's basic purpose.

The failure to discuss the actual "regulatory setting," and the related failure to discuss why the "practices" and "measures" will be effective within that regulatory setting, is a fatal omission for NEPA compliance. The EA fails to provide the "reasonably complete discussion of possible mitigation measures" that is necessary to facilitate the "'action forcing' function of NEPA." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Credible information on the efficacy of "practices" or "measures" must be provided, and enforcement and monitoring must be implemented. Where "measures" or "practices" are illusory, they cannot legally provide the basis for a FONSI.

III. The EA's discussion of groundwater and water quality impacts is inaccurate and utterly inadequate.

The EA assumes that Pacific salmonids are not present in Pruitt Creek, stating "[l]isted Pacific salmonids are assumed to be absent from Pruitt Creek based on observations from the February 23, 2022, site assessment coupled with background research and lack of historic occurrences. The potential for Pacific salmonids to occur and use habitat in this far east portion of the Russian River Basin is temporally and physically limited." In reality, federally listed steelhead, *Oncorhynchus mykiss*, 79 Fed. Reg. 20802, 20807 (2014), are known to exist in Pruitt Creek, and the attached memorandum by Jeff Church, a Sonoma County Water Agency biologist, documents observations both upstream and downstream from the project location. (Exhibit B.) Steelhead use this location, and the location is designated critical habitat. 70 Fed. Reg. 52488 (2005).

It is true that the reach of Pruitt Creek at the project site is intermittent, but the Bureau reaches the exact wrong conclusion based on this fact. The Bureau should recognize that this fish habitat is exceedingly sensitive to dewatering and pollution impacts, rather than justifying a truncated investigation based on an incorrect assumption that federally listed fish species are not present. As discussed by West Yost (Exhibit A), dewatering impacts need to be evaluated based on an evaluation of the baseline conditions that is sufficient to inform the impact analysis, and the EA makes conclusions that are entirely unwarranted based on the evidence. The Bureau may not rely on its own lack of investigation into hydrologic conditions to justify discounting environmental impacts. *S. Fork Band Council of W. Shoshone*, 588 F.3d at 727. The current cursory investigation and analysis is not adequate to determine that the project will not adversely modify critical habitat[3] and result in significant impacts to salmonids. The project may well result in both significant impacts and violations of section 9 of the Endangered Species Act.

Further, the actual local flows in Pruitt Creek need to be evaluated to understand the baseline conditions; the EA's chosen proxy site 5.5 miles away on a different creek is not representative. (Exhibits A, C.) In addition, the analysis must include future projections given the changing climate. There is no evidence that the proposed wastewater discharge solution is feasible given actual streamflows, meaning that the EA's analysis of what will actually occur is dubious at very best. Robert Pennington, a Professional Geologist with the County of Sonoma, explains:

> During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species. [¶] The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge #11466800 has a contributing watershed area of 251 square miles. The

[3] The Bureau cannot take the position that taking this land into trust removes the protections of critical habitat under the applicable designation (70 Fed. Reg. 52488), because the habitat benefits from the existing designation.

> contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. (Exhibit C)

Inadequate storage will lead to environmentally harmful discharges, and there is no enforceable mitigation that requires compliance with all aspects Title 22 in California Code of Regulations, and there is no mitigation that addresses the related issues addressed by California's recently adopted Recycled Water Policy.[4] The study on which the EA is based admits that "contingency plans should be developed for low flow conditions" (EA, Appendix C, 2-21), but these have not been developed, disclosed, and analyzed. Similarly, crucial components of the recycled water system have not been disclosed, including a feasible plan to expand it. Absent trucking out of wastewater, which has significant impacts that are unanalyzed, it is foreseeable that the project will be forced to discharge recycled water at rates far above the agronomic rate of uptake for the recycled water discharge locations, leading to discharges to groundwater, and in turn, potential plant death that further exacerbates groundwater discharges.

Mitigation is necessary to avoid groundwater and surface water contamination, and a hand wave about Clean Water Act compliance is insufficient to excuse substantive analysis given emerging contaminants and the foreseeability of discharges to both groundwater and surface water. An inadequate initial design will lead to "upsets" and "bypasses," and claims that these harmful discharges are permitted. (40 CFR § 122.41(m) and (n).) In addition to nutrients, contaminants of concern that will exist in discharges to groundwater and stormwater include pharmaceuticals and related hormones, metals, microplastics, and PFAS. These contaminants will also be present in the project's biosolids.[5] In the stormwater context, given the automobile-centric nature of the project, the Bureau also must evaluate emerging contaminants like 6PPD from tires, as these chemicals have recently been identified as a major driver in

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[4] State Water Resources Control Board, Water Quality Control Policy for Recycled Water, (2019) https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf.

[5] Pozzebon, E.A., Seifert, L. Emerging environmental health risks associated with the land application of biosolids: a scoping review. Environ Health 22, 57 (2023). https://doi.org/10.1186/s12940-023-01008-4.

salmonid extinction.[6] The required good faith analysis must be based on the fact that the project is proximate to salmonid habitat, not on convenient but incorrect factual assumptions to the contrary.

Additionally, the Bureau must evaluate the cumulative impacts of the planned groundwater pumping in light of the other existing and readily foreseeable wells in the immediate area, and also evaluate the cumulative impacts of extraction on the larger groundwater basin. The Bureau has not done so. The project would pump groundwater from the Santa Rosa Plain groundwater subbasin – a basin that requires special planning under California's Sustainable Groundwater Management Act (SGMA) to avoid adverse impacts. The groundwater in this basin is relied on for rural residential, agricultural, and municipal water supply. The EA fails to recognize – let alone analyze the impacts on – groundwater conditions and uses, and the EA lacks any analysis of long-term groundwater impacts. Mitigation measures are necessary to address groundwater impacts, and these are simply missing.

The current EA raises many more questions than it answers about whether and how the significant impacts of the project can feasibly be addressed. The current discussion only serves to document that they are not addressed. The EA cannot be used to support a FONSI for water quality and groundwater impacts. The groundwater "monitoring" mitigation measure merely documents that crucial information is missing from the EA that should have already been developed. The proposed "compensation" mitigation measure for groundwater depletion is not remotely adequate, and violates 40 CFR § 1508.20. The purported mitigation does not substitute for the environmental impacts that the EA ignores, and the EA similarly ignores the significant impacts of the mitigation itself.

In short, the EA is grossly deficient with respect to groundwater and water quality impacts.

IV. The EA fails to provide adequate analysis and mitigation for reasonably foreseeable impacts to law enforcement services.

The EA includes an analysis of Social Effects (e.g., gambling addiction, crime, drunk driving). Appendix B provides additional information on crime. The EA notes that increasing crime and calls for service to public safety are associated with any population increase, not necessarily gaming specifically, and concludes that the development, due

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[6] John Ramos, "Tire additive could push California salmon to extinction, study says," CBS Bay Area, August 23, 2023, https://www.cbsnews.com/sanfrancisco/news/tire-additive-could-push-california-salmon-to-extinction-study-says/; Tian et al., "A ubiquitous tire rubber–derived chemical induces acute mortality in coho salmon," *Science* 371, 185–189 (2021).

to its large gatherings of people, may result in increased calls to law enforcement. The EA then claims that "the addition of the Proposed Project is not expected to lead to a material increase in crime rates in the area." The EA concludes the proposal would increase total calls for service by 2.2% and increase total arrests by 1.4% (1,433 calls and 33 arrests).

This discussion is misleading. Contrary to the conclusions of the EA, the causal link to crime from casinos is clear, and there is no evidence that the project would not require additional law enforcement facilities. In 2012, before the opening of the Graton Casino, the area surrounding that location (288 Golf Course Drive) was very similar to the proposed project area, and it generated two calls for service. (In the calendar year 2022, the area surrounding the proposed site generated one call for service.) However, upon the opening of Graton Casino in 2013, the location generated 1,757 calls for service, an increase of 1,755 calls. Last fiscal year (22/23), Graton Casino generated 529 of the 6,680 calls for service in Sheriff's Office Zone 5 (a very large Patrol Zone that includes the unincorporated areas surrounding Petaluma, Rohnert Park, and Cotati, stretching from the northern city limits of Rohnert Park to the Sonoma/Marin County border). The calls for service included, but were not limited to, assaults, trespassing, multiple types of theft, stolen vehicles, public intoxication, and drug activity. The decline from opening to fiscal year 22/23 in the case of the Graton Casino is not necessarily good news, as deputies are no longer specifically assigned to the casino and some crime previously reported by the assigned deputies themselves is possibly going unreported.

The proposed mitigation measure (EA, 4-7) to make "good faith efforts" to enter into a service agreement is inadequate, and provides no information regarding the contents of the agreement. The EA's attempt to discount the impacts is discouraging. The requirement that the proposed agreement be based on "quantifiable direct and indirect costs" does not adequately mitigate the impact (1) without a description of how those costs will be determined and (2) without an enforcement mechanism, which together would demonstrate that the mitigation is not illusory.

V. The EA fails to provide adequate analysis and mitigation for foreseeable environmental impacts that will result from the economic impact of this casino.

The EA concludes that the project would not result in significant impacts due to the economic effects of the project. This conclusion is unsupported by the facts and evidence. The socio-economic report (EA, Appendix B) concludes that existing Sonoma County casinos would experience a possible business loss of 11% and 24% but concedes that none of the estimates hold any water if other casinos (such as the approved Cloverdale casino) are constructed. Completely elided from the EA is a discussion of the foreseeable *environmental* impacts of very foreseeable business

failures that may well occur as a result of this approval. These impacts bear on both the Bureau's NEPA and the Bureau's federal trust obligations.

The Global Market Advisors impact study (Appendix B) estimates that 95% of the proposed project's estimated revenues ($473 million) will be diverted from existing local casinos ($449.4 million). Appendix B then dilutes this local impact by saying this is only 13.7% of a much larger, non-local gaming market. However, the analysis concedes that the existing Dry Creek Rancheria's River Rock casino will face no less than a 24.4% decline in revenue, and Global Market Advisors further concedes that this is not a conservative assumption given the fact that other casinos could also be constructed. No analysis is provided of the economic effects if this assumption is incorrect.

The over-saturation of the gaming market has physical impacts on the environment and on other tribes. The introduction of this casino to the local casino market would not only negatively impact existing gaming casinos in the area but would likely cause the total closure of more remote facilities like the Dry Creek Rancheria's River Rock casino. The Bureau stands to be the proximate cause of this closure, and the proposed action is contrary to the federal government's trust responsibilities. It is entirely foreseeable that the Bureau's proposed action will result in a closure.

The EA fails to evaluate these readily foreseeable impacts. The economic context for the Dry Creek Rancheria Band's River Rock Casino, and other tribal casinos in the area, is particularly precarious given the opening of the Graton Casino in 2013. In 2014, the Dry Creek Rancheria Band defaulted on millions in bonded indebtedness ($150 million) to its casino investors, and in contractual obligations ($50 million) to the County of Sonoma pursuant to an enforceable intergovernmental mitigation agreement. (Exhibit D.) The Graton Casino broke ground on a $1 billion expansion this year.

The EA is incomplete without a factual analysis of the continued economic viability of the proximate competitors, and an analysis of environmental impacts associated with closures of existing tribal casinos and resultant blight, deterioration, and loss of function of tribal infrastructure and services. The Bureau should conduct a good faith analysis of the economic and environmental consequences of its action, and stress test the assumptions based on all the facts that are relevant to the local context. This includes, but is not limited to, economic uncertainties and the effects of natural disasters on the gaming market.

In a context of foreseeable failures, perhaps most troubling in Global Market Advisors' analysis is the analogy to "gravity" (notably, without any disclosure of the actual math), as it strongly suggests a dynamic where the Bureau's fiduciary solution to failing casinos may be the expansion of larger and larger casinos to attract more visitors from greater distances. The Bureau must evaluate not only the foreseeable impacts of casino failures, but the growth inducing response to those failures that naturally will follow.

The current analysis of the economic and environmental consequences of the proposal is wholly inadequate for purposes of NEPA and raises serious questions about how the Bureau, as trustee, exercises its responsibilities when holding existing lands in trust for the benefit of distinct tribes, when presented with a proposed fee-to-trust application for another tribe.

VI. The EA's discussion of the project's significant greenhouse gas emissions and Vehicle Miles Travelled is inaccurate and incoherent, and the significant greenhouse gas impacts of the project are not mitigated.

The estimated greenhouse emissions from this project are extremely high, especially for this type of project. They are, disturbingly, much higher than they need to be. The estimates of operational emissions for Alternatives A, B, and C are respectively 69,862, 55,932, and 7,100 annual metric tons of CO2 equivalent (MTCO2E). (EA 3-138.) The Bay Area Air Quality Management District's (BAAQMD's) former significance threshold based on California's science-based emissions targets for 2020 was 1,100 MTCO2E. California's targets have been reduced. A straight-line reduction of the former threshold based on current science-based targets for 2030 in California results in a 40% reduction, or 660 MTCO2E.[7] Likewise, the EA discloses extraordinarily high social costs related to the greenhouse gas emissions for this project: $129,479,003 for Alternative A, $103,352,963 for Alternative B, and $13,374,218 for Alternative C. (EA 3-139.) These social costs alone indicate that the project's greenhouse gas impacts are significant. But rather than mitigating the very significant greenhouse gas emissions of the project, or finding that they are significant in a good faith analysis in an EIS, the EA attempts to hide the ball and assert that the project is compliant with BAAQMD's recently revised guidance. (EA, 3-140.) It is not.

In 2022, BAAQMD revised its threshold to be based on the absence of the build out of any new natural gas infrastructure, and on a 15% reduction in vehicle miles travelled (VMT) below the regional average per capita. (Exhibit E.) The EA purports to rely on this threshold. The threshold is an aggressive ratcheting down of the prior threshold based on the severity of the climate crisis. The goal of the threshold is to evaluate the design elements that are necessary to facilitate achieving *complete carbon neutrality* in California by 2045. (Exhibit E.) The natural gas component is based on the

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[7] Under Health and Safety Code section 38566, SB 32 (2016), California's emissions reduction mandate for 2030 is 40% below its prior goal for 2020. Thus, many agencies have used 660 MTCO2E as an extrapolation of BAAQMD's 2020 threshold for this type of project (1,100 MTCO2E), as BAAQMD's threshold was based on California's 2020 targets. The alternatives in the EA are 105 times, 65 times, and 10 times this significance threshold.

judgment that global climate goals cannot be met with the expansion of natural gas infrastructure, given the need for major emissions reductions from existing infrastructure. The VMT component is based on guidance from the State's Office of Planning and Research, which the EA acknowledges.

The EA states:

> The Bay Area Air Quality Management District (BAAQMD) provided guidance in 2022 to determine the significance of climate impacts from land use projects (BAAQMD, 2022c). If a project will not include natural gas appliances, will not result in wasteful, inefficient or unnecessary energy use, will reduce project-generated vehicle miles traveled (VMT) below the regional average, and will provide EV facilities consistent with current California building standards, then a project's climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B and C would result in over a 15 percent reduction in VMT compared to the Sonoma County region. Therefore, with the implementation of BMPs, implementation of the project alternatives would not result in a significant adverse cumulative impact associated with climate change. (EA 3-140.)

In reality, neither of BAAQMD's referenced criteria are met. The project is not foregoing all natural gas as BAAQMD's threshold requires for a finding of "less than significant." Instead, Table 2.1-3 states: "The Tribe will use electric boilers and appliances in lieu of natural gas or propane units *to the greatest extent practicable*," whatever that means. The only thing this language clearly suggests is that the Tribe has considered the BAAQMD guidance regarding natural gas and rejected it.

Worse, the EA's statement that the project will result in "a 15 percent reduction in VMT compared to the Sonoma County region" has no basis whatsoever. Very clearly, this is not a VMT reduction project. The project's sponsors hope to draw customers from a very wide region, and have proposed no less than 5,110 parking spaces for the project. The study relied upon only looks at vehicle miles travelled associated with employees, not project visitors, which is to say that most VMT associated with the project is being ignored. This is the case even as the economic analysis in Appendix E, pages 65 and 66, describes a very large geographic market for visitors to the project, with the bulk of visitors not coming from Sonoma County. The purported "logic" of the EA is that: "The project's Home-Based VMT per employee value of 10.20 is lower than

the 85% VMT threshold for the Sonoma County region (10.53 VMT per employee). Thus, the proposed project at full buildout is expected to have a less-than-significant impact on VMT." These numbers do not elucidate the project's impacts. *Even after* improperly ignoring the visitor VMT completely, the VMT numbers cited reveal significant impacts. The EA deliberately evaluates the employee VMT average against the Sonoma County average rather than the regional average (which is significantly lower, because the region includes the metropolitan areas of the Bay Area),[8] and then, by a thin margin, finds the outcome to be less than significant. To the extent that any component of the math is credible at all, it has been subjected to outcome-oriented manipulation.

Nor do the practices in Table 2.1-3 address the greenhouse gas impacts as the EA claims. The Bureau has deliberately chosen mitigation language in Table 2.1-3 that is utterly vague and unenforceable: "Shuttle service to and from population centers will be provided *as feasible*, which would reduce CAPs and GHGs." The fleet mitigation is similarly vague and unenforceable, and has no standard through which efficacy can be evaluated. At the same time, as discussed more fully below, *all* of the recommendations of the traffic consultant concerning transit and pedestrian infrastructure have been summarily rejected without any explanation in the EA.

On top of these problems, the modeling assumptions in Appendix F do not hold up for very potent greenhouse gases like methane. Appendix F assumes "mitigation" that is not applied. While an unenforceable recycling "practice" has been proposed, no mitigation is imposed on the project requiring the source separation of organic waste such that it can be diverted from landfills. The lack of a feasible plan for organics diversion (including for biosolids), and the lack of any discussion of the project's integration with related landfill diversion processes under SB 1383 (2016), means the landfill diversion estimates are not credible. This in turn means that the assumptions about project emissions for potent gases like methane are not credible. Landfill diversion cannot be assumed if the project actively thwarts diversion.

The only way to reach the conclusion that the project's greenhouse gas impacts will be less than significant is by systematically ignoring the data, which the EA does. Perhaps the Bureau could use a different science-based analytical framework than BAAQMD and California's Office of Planning and Research have used, but it is arbitrary and capricious to manipulate data and say that cited significance criteria are met when they are not. A good faith analysis of the greenhouse gas impacts must be conducted, and if the analysis is based on an EA, the strategy of avoiding accountability by placing

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[8] In the context of similar attempts to dilute required VMT reductions, the California Office of Planning and Research (on whose guidance the EA purports to rely) has made clear that "regional average" means the average in the applicable Metropolitan Planning Organization, not the lower average within a county. (Exhibit F.)

mitigation with extensive escape clauses in the project description must be jettisoned. Given the project's high level of emissions, an EIS should be prepared. Absent an EIS, adequate and enforceable mitigation must be adopted for the project's emissions related to the project's energy sources, the project's energy consumption, transportation, and waste.

VII. The EA's traffic analysis ignores the recommendations of the underlying studies, and is based on inadequate and ineffective mitigation measures.

The EA reaches the logical conclusion that the project will have significant impacts on traffic without mitigation. However, the EA does not provide for enforceable mitigation that ensures that these impacts will be avoided.

The EA divides transportation into opening day mitigation and "cumulative" mitigation for 2040. For opening day, the mitigation measure states:

> While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make *good faith efforts to assist* with implementation of the opening year improvements prior to opening day. (EA 4-8, emphasis added)

The Tribe does have the ability to enter into enforceable contracts to construct the improvements (with local government assent), but the language in the EA scrupulously avoids anything concrete or enforceable. As written, the mitigation measure would allow for mere cheerleading, even as the traffic study (EA, Appendix I) assumes that the Tribe or Bureau will be responsible for the entire cost. What is needed to avoid significant impacts is the improvements, not "good faith efforts" that the Bureau declines to specify. Further, the analysis does not confirm there are no constraints for the improvements (environmental, real property, etc.), and does not analyze the improvements themselves. Ultimately, the measure does not commit the Tribe and/or Bureau to the improvements. The structural problem with the analysis is therefore that the EA provides no actual evidence that the improvements will occur, which on its own requires an EIS given the fact that impacts to be mitigated are significant.

The same issues arise for the "cumulative" improvements. The EA says:

> The Tribe shall make fair share contributions to the cumulative 2040 traffic mitigation measures. Funding shall be for design standards consistent with those required for similar facilities in the region. (EA, 4-8.)

First, the amount and timing of the payments is unspecified, and no evidence is provided that the cumulative improvements will actually be constructed on the timeline required to avoid significant cumulative impacts. There is no discussion of feasibility and constraints, and no discussion of any environmental issues that may exist with the improvements. Incredibly, the widening of Shiloh Road from 2 to 4 lanes is simply "assumed" without any substantive analysis (Appendix I, 168), and it is not required as mitigation – even as it is absolutely critical for the EA's conclusions about impacts.

Second, critical details are omitted from the mitigation measure, such as the nature of the fair share calculation (Table 33 in the traffic study is not mandated), the timing of project cost determinations, and the timing of payments. This information is crucial to evaluate the efficacy of the mitigation. Cost determinations must be based on actual facilities that meet County design standards, not hypothetically "similar" facilities, to ensure the improvements can actually be constructed. Effective mitigation measures will require enforceable agreements with the County.

Worse, without explanation, the EA inexplicably declines to impose mitigation recommended in the traffic study (EA, Appendix I) that could help address the project's transportation impacts. These recommendations include:

- "The proposed project should provide adequate pedestrian and bicycle facilities on its site (particularly at its planned driveways) to facilitate pedestrian and bicycle traffic to and from the project site." (EA, Appendix I, 6-7.)
- "Provide concrete sidewalks, and marked crosswalks at the proposed project driveways to connect with existing and planned pedestrian facilities along Shiloh Road and Old Redwood Highway." (EA, Appendix I, 6-7; section 15.4.)
- "Provide continuous, accessible pedestrian pathways between the nearby transit stops and project entrances." (EA, Appendix I, section 15.4.)
- "Provide pedestrian and bicycle facilities between the proposed project's driveways and the project's main facilities to improve on-site pedestrian and bicycle circulation" (EA, Appendix I, section15.4.)
- "The site is not proposing sidewalks along its frontages. However, pedestrian facilities should be provided at the two new traffic signals to provide a connection with the sidewalks on the north side of Shiloh and the urban features on the west side of Old Redwood Highway near the future signals at the church. TJKM also recommends constructing continuous, accessible pedestrian paths between the nearest bus stops, the project access points closest to Shiloh Road & Old Redwood Highway, and the nearest project entrances." (EA, Appendix I, section 15.2.)
- "Sonoma County Transit (SCT) serves the project area. Route 60 mostly travels along Old Redwood Highway between Cloverdale and Santa Rosa on headways varying between one to two hours. There is an existing pair of stops adjacent to the corner of Shiloh Road and Old Redwood Highway. With the addition of

accessible pedestrian pathways between the stops and the project entrances, this route has the potential to serve employees and patrons in the Old Redwood Highway corridor." (EA, Appendix I, 15.2.)

The failure to adopt these recommendations is unexplained. All of these mitigation measures would at least contribute to mitigating the very high VMT for the project. The EA's departure from these recommendations is neither explained nor justifiable.

Similarly, without the "hard look" required by NEPA, the EA does not impose the queueing mitigations that the traffic study recommends. These omissions leave significant traffic impacts, including on safety, unmitigated. The mitigation section of the EA contains no mention of the mitigations recommended in the traffic study (Appendix I) in section 4.5 (p. 42, 43), section 8.0 (p. 89), section 12.2 (p. 129-132), section 5.5 (p. 57-58), section 9.2 (p. 99, 100), section 6.5 (p. 72), section 10.2 (p. 109, 110), or section 14.2 (p. 159-162).

Finally, the EA also modifies the mitigations in the traffic study without justification or explanation. There are, for example, discrepancies between turn lane mitigations in the traffic study and in the EA, as well as lane "storage length" recommendations, where mitigation has been reduced in the EA relative to the traffic study without explanation. Whatever the reason for these changes, there is no evidence that these changes are appropriate.

In sum, the proposed traffic mitigation is not adequate, and the discussion of traffic impacts does not constitute a "reasonably complete" discussion of the direct and indirect traffic impacts of the project.

VIII. The EA's discussion of wildfire risks and mitigation is inadequate.

In the last decade, the project area has been the site of some of the worst wildfires in United States history. The project is very near to the burn areas of both the 2017 Tubbs Fire and the 2019 Kincade Fire. The EA acknowledges that the project is in a designated high fire risk area. (EA, figure 3.12-2.) The EA concedes that the elimination of fire barriers is a significant impact. Missing from the EA, however, is any recognition of the fact that the EA eliminates agricultural land that acts as a fire break (for the City of Windsor as well as for surrounding areas) and replaces it with flammable structures. This creates a potential ignition linkage from populated areas to a *very high* fire risk area. It is not as though the County has no experience with how this works. The EA contains a conclusory statement that no fire barriers will be eliminated. This is an odd mix of silly and irresponsible.

The EA cites State building standards relative to wildfire, and Former Chief Vern Losh recommends compliance with the wildfire (or "Wildland Urban Interface") provisions of the California Building Code. (EA, Appendix N1.) The EA does not

discuss the fact that these codes are inapplicable, and the EA does not require that they be imposed. The EA fails to discuss the fact that even a single ember in a poorly placed vent can defeat the protections provided by (already inapplicable) fire codes. Hurricane-force winds can transport these embers long distances at high velocities. It is understandable that, beyond the California code requirements, Former Fire Chief Losh recommends "special care" with locations where embers could intrude. No mitigation that implements and requires this care is imposed. No third-party plan checks are required. No substantive post-construction reviews are required. Indeed, no mitigation measures have been imposed to ensure that Chief Losh's generic assumptions about how projects should be built are true. Fire sprinklers are mentioned, but there is no discussion of the adequacy of water supplies and infrastructure to address firefighting. There is no discussion of the potential loss of water pressure or the frequent loss of power during fire weather, which can eliminate water supply. There is no discussion of the feasibility and impacts associated with the "back up" fire station that is proposed.

The outcome-oriented carelessness of the EA applied to very significant risks is unfortunate. Yet, the EA's failure to substantively examine evacuation risks is even more troubling. Evacuation risks are environmental risks with which Sonoma County has far too much familiarity. Evacuations have not always gone well, and timing has been crucial for the evacuations that have mitigated broader disasters. Very recent wildfires have required massive evacuations of the entire area in which the project is situated, including the complete evacuation of the adjacent Town of Windsor. The timely, total evacuation of the Town in 2019 was a key factor in allowing firefighters to save the Town and stop the further spread of the fire, as it allowed firefighters to battle flames without committing resources to rescues. (Exhibit G.) Evacuation requires sufficient infrastructure to allow occupants to leave and firefighters to enter without mutual interference. Experience has shown that the consequences of insufficient resources for evacuation can be dire.

Evacuation issues cannot be lightly treated as insignificant in Sonoma County. But that is exactly what the EA does. The CAS Safety Consulting LLC report makes numerous recommendations that have not been implemented in evacuation mitigation measures. Most problematically, these recommendations include traffic modeling that has not been completed. As the California Attorney General observes, "evacuation modeling and planning should be considered and developed at the time of project review and approval—when there is greater flexibility to modify a project's design, density, siting, and configuration to address wildfire considerations—rather than deferred to a later stage of the development process."[9] The "wait and see" approach

[9] California Attorney General, "Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act," October, 10, 2022, https://oag.ca.gov/system/files/attachments/press-docs/2022.10.10%20-%20Wildfire%20Guidance.pdf.

which might suffice in some cases is completely inappropriate in this situation. The only thing close to modelling that has been disclosed is an implausible conclusion that a 6-8 hour estimate to evacuate the casino and the Town is adequate. The basis of the estimate is not provided, but the conclusion that this is possible is based on various assumptions. The assumptions include the questionable assumption that Shiloh Road will be expanded at opening, even as no mitigation is proposed to require this expansion prior to opening. The EA does not provide a plausible basis for concluding that the estimated time required for evacuation is sufficient, it does not state the range of cases where that conclusion would be true, and it does not stress test all assumptions – in terms of infrastructure, in terms of disaster response operations, and in terms of the increasing wildfire risks presented by climate change. The lack of adequate traffic mitigation greatly exacerbates the deficient analysis. The EA does not provide evidence that the impacts are less than significant.

Finally, and unfortunately, given the location and nature of the project, mitigation should be adopted to address the cleanup of the project if it does burn. It is well understood that commercial buildings that burn in wildfires present toxic hazards to the community,[10] and the surrounding community will not be able to ensure these hazards are abated without the imposition of mitigation that addresses these risks. Federal assistance is generally not available for commercial projects. Where cleanups are not financially convenient, they do not occur without mandatory requirements. This will result in a significant impact without mitigation.

[10] California EPA, Guidance for Conducting Emergency Debris, Waste and Hazardous Material Removal Actions Pursuant to a State or Local Emergency Proclamation, October 7, 2011, https://calepa.ca.gov/wp-content/uploads/sites/6/2019/06/Disaster-Documents-2011yr-GuideRemoval.pdf

IX. The EA fails to evaluate a reasonable range of alternatives.

Part of the reason why there is insufficient infrastructure for the project is the fact that the site is within an area where this type of project would never be permitted by existing local government planning. The location is zoned for agriculture,[11] but that is far from the only issue. Sonoma County local governments have each adopted Urban Growth Boundaries to contain auto-dependent sprawl and plan for city-centered growth. The County and the cities have voter approved Urban Growth Boundaries and Community Separators to preserve open space and protect Sonoma County's environment. The Community Separator areas are voter-approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development*. The project is outside the Town of Windsor's Urban Growth Boundary and inside the County's Community Separator. The existing infrastructure does not support this type of project because inter-governmental planning has sought to avoid this type of development in this area.[12] The Bureau's Scoping Memo partially acknowledges this fact in discussing the utility limitations that flow from the Town of Windsor's Urban Growth Boundary, but does not acknowledge or discuss the larger planning context.

The EA lacks a reasonable range of alternatives, and reading the Bureau's EA is torturous, like watching a fly in a bottle. Given the site constraints in terms of resources and infrastructure, it is illogical and absurd not to include off-site alternatives in the analysis. The EA asserts that the availability of other sites is economically "speculative" but this conclusory assertion flies in the face of the other casinos that have already been developed in the Tribe's territory (as the EA defines it). It also ignores the known economic resources of the Tribe's backers in this project. (Exhibit H.) It is foundational NEPA law that "[r]easonable alternatives include those that are *practical* or *feasible* from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." 46 Fed. Reg. 18026, 18027 (1981) (emphasis in original); *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (federal agency has the "duty under NEPA to exercise a degree of

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[11] Approximately 47 acres of the parcel consist of Farmland of Statewide Important; 8 acres are designated Farmland of Local Importance; and 13 acres are Prime Farmland.

[12] The relevant policies in the County's General Plan include, but are not limited to: "Objective OSRC-1.1: Preserve important open space areas in the Community Separators shown on Figures OSRC-5a through OSRC-5i of the Open Space and Resource Conservation Element"; "Objective OSRC-1.2: Retain a rural character and promote low intensities of development in Community Separators. Avoid their inclusion in City Urban Growth Boundaries or Spheres of Influence. Avoid their inclusion within Urbans Service Areas for unincorporated communities"; "Policy OSRC-1b: Avoid commercial or industrial uses in Community Separators other than those that are permitted by the agricultural or resource land use categories."

skepticism in dealing with self-serving statements from a prime beneficiary of the project" regarding alternatives). Further, constraining the analysis of reasonable alternatives (and the "purpose and need") to those that could be permitted under 25 CFR § 151.12 is contrary to longstanding Council of Environmental Quality guidance. 46 Fed. Reg. at 18027 (alternatives outside of lead agency jurisdiction must be analyzed; "A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.")

Picking a site for commercial development that is only available because local planning prevents commercial development of that site comes with multiple environmental and infrastructural challenges and costs. At bottom, it is hard to make this project work on this site without causing significant environmental impacts. The evaluation of off-site alternatives would allow the consideration of better sites, where the impacts could be better mitigated. If the site had better access to existing transportation (including multi-modal transportation) and utility infrastructure, the direct, indirect, and cumulative impacts would be easier to address. There is no need to site this project in a SGMA basin with water and wastewater constraints, or to site it in critical habitat for salmonids. The purpose and need and screening criteria have been engineered to screen out reasonable alternatives, and this is a completely unnecessary NEPA violation.

X. Conclusion.

The EA falls woefully short of providing "high quality" information and "accurate scientific analysis." *350 Mont. v. Haaland*, 29 F.4th 1158, 1176 (9th Cir. 2022). "An EIS is required of an agency in order that it explore, more thoroughly than an EA, the environmental consequences of a proposed action whenever substantial questions are raised as to whether a project *may* cause significant environmental degradation. That is exactly the circumstances of this case." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (emphasis in original, citation and internal punctuation omitted). The County looks forward to reviewing an EIS for this project, and will be happy to provide additional information.

Sincerely yours,



Verne Ball
Deputy County Counsel

EXHIBIT A

WEST YOST
Water. Engineered.

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November 9, 2023

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

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SUBJECT: Koi Nation Shiloh Resort and Casino Project Environmental Assessment, Comments on Water Resources Assessment

Dear Mr. Ball:

The County of Sonoma has retained West Yost to review the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West Yost staff reviewed the EA evaluation of proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Environmental Assessment for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023)
- Appendix C - Water and Wastewater Feasibility Study
- Appendix D - Grading and Hydrology Study

West Yost staff prepared these comments and recommendations based on information provided in materials provided by the County and relevant documents referenced in the EA.

PROPOSED PROJECT SUMMARY

The EA analyzes the Koi Nation of Northern California (Tribe) construction of a casino, hotel, spa, conference and event center, restaurants, parking, and support infrastructure (Alternative A and referred to here as the Proposed Project), which includes construction of a drinking water supply system, as well as wastewater treatment and disposal. The EA states that the average potable water demand for the site will be 170,000 gallons per day (gpd) with a peak demand of 294,000 gpd to be provided by on-site production wells (up to 700 feet deep). The estimated average wastewater generation is 232,000 gpd with an average weekend peak estimated at 335,000 gpd. Wastewater treatment is proposed using a package immersed membrane bioreactor (MBR) producing 108,000 gpd of tertiary treated recycled water for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Tertiary treated wastewater would be seasonally discharged on-site to Pruitt Creek.

COMMENT OVERVIEW

The project will have significant impacts related to surface and groundwater resources as described in Section 3.3.3.2 of the EA. Unless otherwise indicated, all comments are in response to "Alternative A" which is identified as the Proposed Project. Alternative A represents the most intense development considered for the site and is therefore associated with the greatest potential impacts to water resources.

While the EA provides some useful information about the Proposed Project and alternatives, the analysis presented lacks critical information that is needed to evaluate the severity of the Proposed Project's impacts. In general, the EA relies on regional rather than site specific data, its conclusions are often not supported by evidence, and the potential cumulative impacts of the Proposed Project are not considered. Additionally, some mitigation measures identified in the EA lack details needed to evaluate their feasibility and effectiveness, for example:

- **The EA lacks analysis and basic data needed to reach conclusions about likely impacts of the Proposed Project.** The potential impacts have not been fully analyzed and the EA lacks essential information needed to evaluate the project and alternatives.
- **Assumptions used in the analysis may be inappropriate and yield inaccurate results.** The water demand, wastewater production, and recycled water reuse values are based on assumptions that are not validated based on local conditions, without discussion of project-specific or site-specific conditions. For this reason, impacts appear to be underestimated.
- **The EA fails to consider the project's impacts in the context of cumulative, reasonably foreseeable future development.** Nor does the analysis consider climate change affects projected to occur over the life of the project.
- **Mitigation Measures outlined in the EA are inadequate.** Because the mitigation measures lack specifics relating to monitoring, criteria for success, and modes of enforcement, there is no certainty that mitigation measures will be effective in reducing potential environmental impacts.

Each of these topics are detailed further below and presented in the following categories as ordered in impact analysis Section 3.3.3.2 of the EA:

1. *Surface Water* – New Structures and Impervious Surfaces in Flood-Prone Areas
2. *Groundwater*– Groundwater Pumping Impacts on Neighboring Wells
3. *Groundwater*– Proposed Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act (SGMA)
4. *Wastewater Treatment and Disposal* – Effluent Discharge to Pruitt Creek
5. *Wastewater Treatment and Disposal* – Impacts to Laguna de Santa Rosa
6. *Wastewater Treatment and Disposal* – Wastewater Treatment and Recycled Water Use

SPECIFIC COMMENTS

The Water Resources Regulatory Setting identifies Federal and State Water Resource Regulations in Table 3.3-1. State regulations listed include Porter-Cologne Water Quality Act, Sustainable Groundwater Management Act, and Title 2 California Code of Regulations. However, it is unclear how these regulations and related policies would apply to the proposed project. California standards for wastewater treatment and disposal should be explicitly applied in technical assumptions, project description, impact analysis, and mitigation measure enforceability.

The EA lacks a discussion of climate change impacts and does not consider increased rainfall and higher temperatures in water and wastewater calculations. As noted in the North Bay Climate Adaptation Initiative's *Climate Ready Sonoma County*, Sonoma County is expected to experience more very hot days than in the past, and overall higher temperatures over a longer period of dry weather, even under forecasts that predict overall wetter conditions. Spring will come earlier and fall will come later, and these extended periods of hotter, drier weather will impact regional water availability. Heat will increase soil moisture deficit and reduce groundwater recharge, meaning that less water will be available even in futures with more precipitation. Heat will also increase the demand for water, exacerbating pressures on limited water resources in periods of drought (NBCAI, 2014).

1. Surface Water – New Structures and Impervious Surfaces in Flood-Prone Areas

The southwest portion of the site is within the Federal Emergency Management Agency (FEMA) regulated flood area and additional areas of the site are shown in The Town of Windsor's Storm Drainage Master Plan (2020) to be flood-prone.

Impervious Surfaces

The proposed action would increase impervious surfaces on the Project Site by up to 35.51 acres through the construction of buildings, circulation, parking, and infrastructure. Increased impervious surfaces would result in increased peak flows and increased total discharge from the Project Site during precipitation events. The Proposed Project will need to consider flood mitigations, to address potential downstream flooding and sediment transport impacts.

The EA states that the Proposed Project would limit post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. However, the plan to achieve this is not fully described or analyzed. Additional calculations and site planning are needed to demonstrate the feasibility of mitigating impacts from the significant addition of impervious surface area.

Floodplain Storage Capacity

Development on the site would displace agricultural land and floodplain area that currently provides floodwater storage and may exacerbate on-site and downstream flooding. Climate models forecast that the frequency and intensity of flooding will continue to increase beyond historical levels.

The environmental analysis should be expanded to consider impacts of climate change to the mapped limits of the 100-year flood and to the intensity of future flooding at the site. Additionally, the EA does not demonstrate how impacts to all floodplain functions would be mitigated to a less than significant level.

2. Groundwater – Groundwater Pumping Impacts on Neighboring Wells

The Proposed Project would pump groundwater from the Santa Rosa Plain groundwater subbasin. The Project Description estimates daily pumping of 170,000 gpd with a peak pumping of 294,000 gpd. Potable water would be sourced from on-site production wells, drilled up to 700 feet deep. Several existing wells are located in proximity to the site, including shallow residential wells at the Mobile Home Estate and two Windsor Water District municipal wells at Esposti Park, north of and in proximity to the Proposed Project site. The municipal wells are located within about 250 feet of the northwest project site boundary and about 2,200 feet from the "treatment area" as identified in Appendix C of the EA, the area tentatively designated for water and wastewater infrastructure.

The EA does not present a conceptual groundwater model of the site and limits the discussion of potential impact to the deep aquifer (300 to 600 feet deep). The geology of the Santa Rosa Plain is complex and groundwater pumping could adversely affect surface water flow and groundwater dependent ecosystems. An analysis of existing groundwater conditions and impacts of project pumping on nearby Pruitt Creek and potential cumulative impacts downstream in the Laguna de Santa Rosa is needed.

Water quality in the wells currently limits water use to irrigation. One of the wells at Esposti Park is used to irrigate the park. The other well, currently inactive, is identified in the Town of Windsor's Water Master Plan for future development of municipal drinking water and would include a water treatment process to remove contaminants.

Impacts to Neighboring Wells

The average and peak pumping of the Proposed Project could result in groundwater drawdown in neighboring wells and could significantly decrease the Esposti well output and potentially affect water quality. The Town of Windsor Water Master Plan (Woodard and Curran, 2019) estimates the sustainable yield of the municipal to be 400 gpm (0.6 million gallons per day) or 350 acre feet per year (AFY). Proposed Project pumping could significantly decrease the previously analyzed estimated yield. Groundwater pumping at the site could also result in adverse impact to domestic wells in the vicinity. This would include reducing production of neighboring wells and/or lowering groundwater levels below well pumps altogether, rendering neighboring wells unusable.

The EA cites a Town of Windsor 2017 aquifer test at the Esposti well as evidence that pumping from the aquifer deeper than 300 feet would not result in a decline in water level. However, although no drawdown occurred during that test, the test lasted only 28 hours. The aquifer test at the Esposti municipal well was over a short duration and is not an appropriate basis for assessing impacts of continuous groundwater pumping proposed as part of the Proposed Project. The EA further concludes, based on very limited data, that the Proposed Project would not affect groundwater levels or water availability in wells drilled to a depth of less than 370 feet. The EA lacks critical hydrogeologic data to reach this conclusion.

Additional groundwater monitoring is needed to confirm hydraulic separation between the upper and lower aquifers underlying the site and surrounding area. This monitoring should be conducted as part of the environmental evaluation and prior to project approval. Additional studies, including a well interference study and hydrogeologic testing, are needed to provide adequate information to allow for a reasonable evaluation of alternative development scenarios and impacts to neighboring wells.

Project wells should be located away from adjacent wells and outside the zone of influence around the existing Esposti wells. Pumping rates should be limited to amounts that avoid impacts to neighboring wells and ensure sustainable yield for the project wells and wells in the vicinity. Additional investigation and groundwater pump tests should be completed to determine the impact to nearby wells. Assessment of the impact to the municipal well, both the current use of the well for irrigation and future use as identified in the Town of Windsor Water Master Plan (2019), is needed to address cumulative impact.

Groundwater Mitigation Measure

Proposed Project groundwater pumping could adversely affect groundwater levels and well production. Mitigation measures listed in the EA include monitoring and compensation; however, the EA does not include metrics for determining when adverse impact has occurred, compensation actions that would be required should adverse impacts result, or an enforcement mechanism. The EA should clarify that both shallow and deep wells will be monitored and eligible for mitigation compensation.

The proposed mitigation measure to reimburse well owners should their well become unusable within five years of project pumping is not mitigation, let alone appropriate mitigation. The effects of environmental harm are more than monetary, and there are reasonably foreseeable indirect effects of unusable wells, such as impacts related to water hauling from traffic and associated GHG emissions, health and safety issues from lack of potable water, and impacts of extending municipal water service, that have not even been discussed.

Adequate data from both the shallow and deep aquifer should be collected prior to initiating groundwater pumping to fully evaluate the impact. Actions should be identified to avoid impacts to neighboring wells. The proposed mitigation measures further indicate that the Tribe, at its discretion and cost, could provide an alternative water supply. However, the EA does not identify the source of these alternative water supplies and it does not provide an evaluation of potential impacts associated with the buildout of alternative supplies. The buildout of alternative water supply infrastructure would likely have significant impacts that need to be analyzed.

3. Groundwater – Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act

With the Sustainable Groundwater Management Act (SGMA), California has identified groundwater basins that require special planning to avoid adverse impacts. The project is in one of these basins. The Santa Rosa Plain Groundwater Subbasin (basin number 1-55.01) is categorized as a medium priority basin by the California Department of Water Resources (DWR) and is, therefore, subject to special regulation and planning efforts. The Santa Rosa Plain groundwater basin is regulated under SGMA because the basin is densely populated, and groundwater use is relied on for rural residential, agricultural, commercial, and municipal water supply. Groundwater management is needed to avoid adverse impacts to the groundwater basin, but there is no discussion in the EA of the unique relationship of this project to groundwater management.

DWR approved a Groundwater Sustainability Plan (GSP) for the basin in January 2023 and the Groundwater Sustainability Agency (GSA) has prepared and will continue to prepare annual reports that provide updates about current groundwater conditions. The GSP states that the groundwater stored in the shallow and deep aquifer systems is declining on average by about 2,100 AFY. The 2022 Annual Report indicated that groundwater levels and groundwater storage capacity are stable but, importantly, future declines are projected. The Annual Report further indicates that more data are needed to assess the health of groundwater to interconnected surface waters and the impact of pumping on groundwater-dependent ecosystems.

Consistency with Santa Rosa Plain Groundwater Sustainability Plan (GSP)

The EA is significantly flawed by not considering cumulative impacts of groundwater extraction. While the analysis mentions the Santa Rosa Plain GSA, it provides no analysis of the Proposed Project's compatibility with the adopted GSP. The EA should include analysis of long-term pumping of 300,000 gpd on potential undesirable results as defined in the GSP, including for water quality. Groundwater pumped from the deeper aquifer in the northern portion of the Santa Rosa Plain subbasin underlying the Project Site is documented to contain elevated concentrations of arsenic and manganese. These constituents have been a constraint for the Town of Windsor's Esposti Park wells and the effects of additional pumping on groundwater water quality is crucial information that is missing from the EA. Additional analysis should consider planned future pumping from the Esposti well, as discussed above.

Long-Term Municipal Water Supply

Proposed Project groundwater pumping may adversely impact Windsor Water District's ability to meet water demands with supplemental groundwater supply and may reduce water supply resiliency during a drought. The EA lacks an analysis of long-term groundwater supply and fails to acknowledge the current and future use of groundwater to meet water demands. The EA should include a water supply assessment that evaluates long-term water supply sustainability using a 45-year time horizon and consider future drought conditions and climate scenarios.

Current developments regarding local water supplies cannot be ignored in the analysis. The decommissioning of the Potter Valley hydroelectric facility and likely reductions in Eel River flows into the Russian River system, could result in reduction of surface water deliveries to the Town of Windsor, resulting in the need for future increased groundwater extraction from municipal wells.

Groundwater Quality

The EA indicates that wellhead treatment would be needed but does not describe the nature of waste products that would result from water treatment to attain potable water, nor is a disposal location identified. Improper disposal will result in, for example, soil and water contamination. The EA should include an analysis of the potentially significant impacts from removing contaminants from wells where groundwater does not meet drinking water standards.

4. Wastewater Treatment and **Disposal – Effluent discharge to Pruitt Creek**

The EA states that the project will produce and estimated average wastewater flow of 232,000 gpd and a peak weekend flow of 335,000 gpd. For the purposes of design, an average daily flow of 300,000 gpd and average weekend flow of 400,000 gpd was assumed, which is equivalent to about 110 million gallons/year. During the dry season, tertiary treated recycled water would be used onsite for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. An additional 11-acres of off-site vineyard could also be irrigated. Appendix C presents several options for use and storage of recycled water in ponds and tanks. During the wet season, tertiary treated wastewater would be seasonally discharged onsite to Pruitt Creek.

The information presented in the EA does not fully analyze potential environmental impacts from proposed discharge of tertiary treated wastewater to Pruitt Creek. Additional analysis is needed to evaluate water-related impacts and support the EAs conclusion that there will not be significant impacts.

Seasonal Discharge Volume Estimate

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants (WWTPs) to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. Pruitt Creek is an ephemeral drainage with highly variable flow volume. Appendix C relies on streamflow statistics from a U.S. Geological Survey (USGS) gauging station located 5.5 miles downstream of the site, which significantly overestimates the capacity for discharge to Pruitt Creek. Appropriate discharge volumes must be calculated based on local stream flow data for the analysis to be reasonable.

Streamflow statistics at the downstream gauging station indicate that discharges immediately before and after the summertime months (May and October) may be limiting for the Proposed Project, and that streamflow rates are highly variable from year to year. Appendix C indicates that for any discharge scenario developed for the Proposed Project, backup contingency plans should be developed for low-flow conditions. However, the EA does not present this contingency plan, nor does it analyze potential on-site or secondary impacts of such discharge contingency.

The EA does not demonstrate the feasibility of seasonal discharge of anticipated wastewater flows to Pruitt Creek under all climate conditions, even though extremely varied climate conditions are foreseeable. The environmental assessment for the Proposed Project should include an analysis of seasonal discharge options to ensure capacity under all foreseeable climate scenarios.

Treatment Process Vulnerability

The Proposed Project includes construction of a self-contained package (immersed MBR) treatment plant to produce tertiary treated recycled water. The volume of influent will vary with casino usage, weather conditions, and infrastructure functioning. Any WWTP may be subject to "upset conditions", when a sudden and unexpected event prevents the facility from operating properly. There is no indication that the Tribe has considered coordination or mutual aid agreement with other sanitary service providers to provide backup or support in the event of a WWTP upset. The Proposed Project should establish enforceable agreements to engage in mutual aid with one or more sanitary service areas.

Construction of Outfall in Pruitt Creek

Installation of a wastewater outfall structure in Pruitt Creek will adversely affect riparian habitat without appropriate mitigation. Operation of the outfall could alter the flow and hydrology of the Pruitt Creek, resulting in erosion and exacerbated flooding. Information is needed to evaluate the foreseeable impacts of the outfall structure on Pruitt Creek in all flow conditions.

5. Wastewater Treatment and **Disposal – Impacts to Laguna de Santa Rosa**

Discharge of tertiary treated effluent to Pruitt Creek, a tributary to Mark West Creek which flows into the Laguna de Santa Rosa, could have significant impacts on water quality in the Laguna de Santa Rosa. The Regional Board and the State Water Resources Control Board (State Board) have designated the Russian River and its tributaries, including the Laguna de Santa Rosa, as impaired waterbodies. The Regional Board has adopted policies and Total Maximum Daily Loads (TMDL) (some adopted and some under development) for a range of parameters, including sediment, temperature, pathogens, nutrients (nitrogen and phosphorus), dissolved oxygen, and sedimentation/siltation. The Water Quality Trading Framework for the Laguna de Santa Rosa Watershed adopted by the Regional Board in 2021 sets a "no net loading" effluent limitation for total phosphorus in National Pollutant Discharge Elimination System (NPDES) permits for WWTP discharge to the Laguna de Santa Rosa and provides a mechanism to offset total phosphorus inputs to the system. These regulatory tools recognize WWTPs as potential pollutant sources and provide the mechanisms to address water quality impairment.

The Proposed Project discharge of recycled water would add sediment, nutrients, and phosphorous to the Laguna de Santa Rosa watershed, undermining regional efforts to address existing water quality impairment. No analysis of the impact of project discharge on the Laguna de Santa Rosa watershed is provided. The Proposed Project could contribute to cumulative impacts in the Laguna de Santa Rosa that have not been analyzed. More evidence is needed to support the assertion the proposed discharge would comply with all current and reasonably foreseeable future policies, water quality trading framework, TMDLs, and implementation plans that support the Basin Plan.

The EA concludes that "surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A would be less than significant," but fails to demonstrate ability to meet nutrient limitations for discharge to Mark West Creek and its tributaries. The environmental assessment for the Proposed Project must include an analysis demonstrating how the Proposed Project would meet the no net phosphorous discharge required under the Nutrient Trading Framework and a full analysis of the proposed discharge in the context of adopted and future TMDLs. Standards for effluent phosphorous loads and for a phosphorus offset program should be identified and mitigation measures to reduce impacts of phosphorous discharge and secondary impacts of offset projects should be evaluated.

6. Wastewater Treatment and Disposal – Wastewater Treatment and Recycled Water Use

The information presented in the EA does not fully analyze potential environmental impacts from proposed use and storage of recycled water on-site and off-site. Additional analysis is needed to demonstrate the feasibility of on-site wastewater treatment, recycled water storage and reuse, and potential use of recycled water off-site.

Storage Tank Capacity

The proposed on-site recycled water storage ponds and tanks would be located in the "Treatment Area" in the southeastern portion of the site. Several options for recycled water disposal are presented in Appendix C, including construction of 12- to 16-million gallon recycled water storage tanks. This would provide adequate storage for about 40 to 50 days. Since discharge will not occur between May 15 and September 30 (138 days) significantly more storage, on the order of 40 million gallons, would be needed. Proposed facilities are not shown on the site plan and more information is needed to ensure that there is adequate space to accommodate needed storage, applying site-specific evapotranspiration (ET) rates and discharge volumes.

Evapotranspiration Rates

The landscape and crop ET calculation used in the EA are substantially different from the recycled water applications rates set for the Windsor Water district, the nearest permitted recycled water producer to the site. Site-specific and ET rates should be used to recalculate, together, for a more realistic estimate of the volume of effluent that could be discharged to Pruitt Creek to fully evaluate impacts related to onsite recycled water use and storage.

Recycled Water Reuse

The Proposed Project relies on dry season use and disposal of recycled water, but has not demonstrated adequate opportunities to reuse the volume of wastewater projected to be produced at the site. Eleven acres of off-site vineyards are an optional component of the recycled water balance; however, the proposed irrigation sites have not been identified. The Proposed Project includes use of recycled water for dual plumbing and toilet flushing, however the State Division of Drinking Water (DDW) and applicable regulations do not permit recycled water use in food service buildings, such as restaurants and bars. The stated reliance on State standards is misleading. The recycling of water should be a concrete mitigation measure, with an analysis of the impacts of that mitigation. The analysis should include a realistic estimate of recycled water production, reasonable estimates for recycled water reuse based on acceptable ET rates, and identification of all on-site and off-site recycled water use and disposal options consistent with Title 24.

Biosolids and Brine

Proposed wastewater treatment would produce biosolids and brine that would require disposal. The EA indicates that biosolids produced by the WWTP would be dewatered on-site and periodically hauled to a Class III landfill. In the very near term, State landfill diversion targets (per SB 1383) will require the diversion of biosolids from landfills, and recent CalRecycle regulations have already clarified that biosolids cannot be exempted from diversion targets as alternative daily cover. State law requires a 75 percent reduction in the landfilling of organic wastes by 2025. In addition, biosolids from WWTPs contain constituents of concern, including PFAS (per- and polyfluoroalkyl substances), and both direct and lifecycle impacts of these contaminants should be analyzed. Pyrolysis and disposal that does not involve land application has other foreseeable impacts. Proposed disposal sites that can accept biosolids and brine may be located at great distance for the Proposed Project site so associated transport greenhouse gas emissions and secondary impacts should be evaluated.

CONCLUSION

In conclusion, the Proposed Project may have significant impacts that have not been fully analyzed and additional investigation is needed. The EA does not present adequate evidence to support the conclusion that there will not be significant water resource impacts. Potential project and secondary impacts have not been fully analyzed and the EA lacks information essential for a reasoned choice of alternative development proposals for the site. In light of these deficiencies, we recommend preparation of an Environmental Impact Statement.

Sincerely,
WEST YOST



Sandi Potter, PG, CEG
Senior Technical Specialist I

PG No. 5610
CEG No. 2170

EXHIBIT B

MEMORANDUM

DATE: October 27, 2023

TO: Verne Ball, Deputy County Counsel

FROM: **Jeff Church, Senior Environmental Specialist at Sonoma Water**

PROJECT: Koi Nation Casino Environmental Assessment

SUBJECT: Documentation of observations of steelhead salmon (Oncorhynchus mykiss) in Pruitt Creek, Windsor California.

A few notes on observations of both resident rainbow trout and anadromous steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek near Windsor, California.

The monitoring site was located in a reach of Pruitt Creek that crosses Faught Road, southeast of Windsor California. Observations were made on the upstream and downstream sides of Faught Road, including upstream to the creek culvert at Shiloh Ridge Road (approximately 450 linear feet of stream length). Pruitt Creek is perennial in pools immediately downstream of Faught Road and upstream of Faught Road approximately 0.5 miles as observed. Pruitt Creek transitions to an intermittent and ephemeral stream approximately 100 feet downstream of Faught Road during the dry season.

Monitoring began on December 7, 2001 and continued through July 28, 2016. Monitoring began as an effort to record water temperature measurements to determine whether Pruitt Creek could serve as a potential reference stream in the Russian River Watershed. As a reference stream it could provide information on natural water temperature patterns and ranges that could be expected to occur in similar sub-watersheds within the Russian River basin. Monitoring also included observations for the presence of steelhead salmon. Positive observations of the presence of steelhead coupled with water temperature data could be used to determine if water temperature regimes in Pruitt Creek (and similar sub-watersheds) are suitable for steelhead long-term survivability.

Monitoring frequency varied, with monitoring occurring as frequently as several times a day to as little as once or twice a week or monthly.

Steelhead were observed in all years of monitoring except during the beginning of the effort in December 2001 and winter/spring 2002 due to high turbidity (and low visibility) from a failed culvert and earthen creek crossing upstream of the monitoring location. The culvert and earthen crossing were removed and the site restored in late 2002 to early 2003. The majority of observations included resident rainbow trout of several age classes including fry and young of the year. Adult anadromous steelhead were observed migrating upstream on two different

occasions. The first observation occurred on February 3, 2008 and included one adult steelhead (approximately 18-20 inches in length) in a pool upstream of Faught Road but carried downstream to a pool below the Faught Road crossing. The second observation occurred on February 13, 2008 and included one adult steelhead (approximately 24 inches in length) under the Faught Road Bridge that also moved into the pool downstream of the crossing. This observation included a second smaller fish, approximately 10 to 12 inches in length.

Adult steelhead were also observed in Pool Creek downstream of the confluence with Pruitt Creek in a pool underneath the pedestrian bridge at Windsor Golf Course. Two separate observations of individual adult steelhead were made while golfing in the late 2000s or early 2010s. Observations were not part of a monitoring effort but were happenstance while golfing and so the dates are not exact, but the time period is accurate. Time of year was spring.


Pruitt Creek - Perennial Reach
Pruitt Creek Monitoring Site
Pruitt Creek - Intermittent Reach
Faught Road
Approximate Project Area
Google Earth

EXHIBIT C

permit SONOMA

County of Sonoma
Permit & Resource Management Department

MEMORANDUM

To: Verne Ball, Deputy County Counsel
From: Robert Pennington, Professional Geologist
Date: November 07, 2023

Subject: Koi Nation Casino Environmental Assessment, Pruitt Creek Observations

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Dear Verne,

I reviewed the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs. I found the EA to be lacking in site specific analysis, particularly in regard to water supply and wastewater. This memo documents observed conditions in Pruitt Creek and discusses limitation to discharge of treated effluent to this waterway.

The National Hydrography Dataset identifies Pruitt Creek as intermittent, meaning that it has little or no flow for a substantial duration of the year. Local hydrologists and fish biologist know the Pruitt Creek near the project site to be dry for much of the year, even during the winter wet season, unless there have been substantial rains in the preceding months.

To verify stream conditions, I conducted a site visit on the morning of October 27th, 2023, and observed Pruitt Creek at the bridge crossing at Old Redwood Highway located immediately downstream of the project site. The creek was observed to be dry with no residual pools or standing water visible within 30 feet upstream or downstream of the bridge. See Figures 1 and 2. Note, the site visit was conducted on October 27, within what is considered the wet season.

The fact that Pruitt Creek in the vicinity of the project site is dry for much of the year presents a substantial limitation for the discharge of treated wastewater. The estimated average wastewater generation is 232,000 gallons per day (gpd) with an average weekend peak estimated at 335,000 gpd. During the dry season, wastewater would be used for vineyard irrigation and the remainder would be stored. During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species.

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge

#11466800 has a contributing watershed area of 251 square miles. The contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. Recycled water storage volumes must be sized for worst case drought conditions when flows if Pruitt Creek are lowest and dry or very low streamflow conditions may extend into much of the wet season.

It is recommended that multiple years of continuous streamflow data be collected at the site, including during at least one year of severe drought. These data could then be regressed with gauge records from nearby gauging stations with longer records to reconstruct a defensible streamflow hydrograph for the site on which to design wastewater disposal systems and analyze potential impacts.

In addition to streamflow, it is recommended that water quality be sampled including temperature, pH, dissolved oxygen, nitrates, and phosphates. These data are necessary to design and assess the feasibility the proposed wastewater treatment and disposal system, and to evaluate potential impacts to water quality, aquatic habitat, and beneficial uses of Pruitt Creek and the Laguna de Santa Rosa.



Figure 1. Image looking upstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.



Figure 2. Image looking downstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.

EXHIBIT D

RIVER ROCK TO DEFAULT ON BONDS: TRIBE TO MISS INTEREST PAYMENT, SAYS CASINO WILL REMAIN OPEN

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT

BY ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
May 29, 2014

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

The River Rock Entertainment Authority announced it will not be making the May interest payment due Saturday on two outstanding notes, automatically triggering a default on the bonds.

The tribe emphasized the Alexander Valley casino will remain open for business. But it remains to be seen how the default may impact investors and tribal members who receive payments from the casino's profits.

"Although the scheduled interest payment will not be made, we want to assure our customers, vendors and employees that we are generating sufficient funds to operate our business and provide the excellent customer service that our patrons expect," David Fendrick, the casino's CEO and general manager, said in a statement.

The default comes just six months after the opening of a rival casino adjacent to Rohnert Park, which has cut into River Rock's revenues and drawn away gamblers that once flocked to the Alexander Valley casino.

"Our immediate focus is identifying cost savings opportunities to adjust to the challenges of our new competitive environment," Fendrick said.

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The tribe also has brought in consultants to help analyze the casino's marketing efforts, Dry Creek Tribal Chairman Harvey Hopkins said Wednesday. Tribal leaders are "looking at all options," he said in a brief interview.

"We've been constantly meeting with management of the casino, attorneys and financial advisers," Hopkins said. "It's been a long road to get here."

The River Rock Entertainment Authority, an unincorporated governmental arm of the tribe, on May 1 announced that it had failed to make the scheduled interest payment for the month. The authority said it would use a 30-day grace period to reduce costs and to have what Fendrick then characterized as "significant dialogue with our bondholders."

River Rock opened in 2002 as Sonoma County's first tribal casino. To finance construction, the tribe sold $200 million in senior notes to investors at 9.75 percent interest.

In 2011, the tribe restructured the debt after two rating agencies warned that the business otherwise faced a high risk of default. About $50 million of that debt since has been repaid, Hopkins said in March.

But Hopkins also acknowledged that River Rock's revenues had declined by more than 30 percent since the Graton Resort & Casino opened in Rohnert Park in November. The new casino is closer to Bay Area gamblers and has roughly five times the space of the 61,000-square-foot River Rock facility.

As a result of the drop in revenues, the Dry Creek tribe has cut per capita payments to its 640 members over the age of 18, Hopkins said in March. In total, the tribe has nearly 1,040 members.

On Saturday, the tribe will default on two bonds: its 9 percent Series A Senior Notes and its 8 percent Series B Tax-Exempt Senior Notes, both due in 2018.

The tribe's announcement did not disclose the size of the interest payment that is due Saturday or the amount of outstanding debt it owes to bondholders.

The default will trigger a "waterfall agreement" that dictates the use of the authority's cash flow, according to the announcement.

Analysts who follow the Indian gaming market have noted that creditors of tribal casinos can't seize assets as might be done under a normal loan default. Instead, they suggested that River Rock may once more seek to restructure its debt, possibly by winning concessions from creditors in regard to the repayment of both principal and interest.

A bondholder on Wednesday seemed to take the default in stride.

"I'm not happy about it," said Mike Hudson, an Indiana man who has owned River Rock bonds for more than five years. "There are many options on the table. This is just the beginning of the next chapter. It's not gloom and doom."

Hudson said that by missing the interest payment, the tribe will be subject to having the casino revenues overseen by a trustee for the bondholders.

"Instead of a democracy, it will be more of a dictatorship," Hudson said. "A professional manager will come and manage the way they see best for the benefit of creditors, not the tribe. Essentially, they've conceded control of the casino."

"It will probably work out. Most of these things usually do," he concluded.

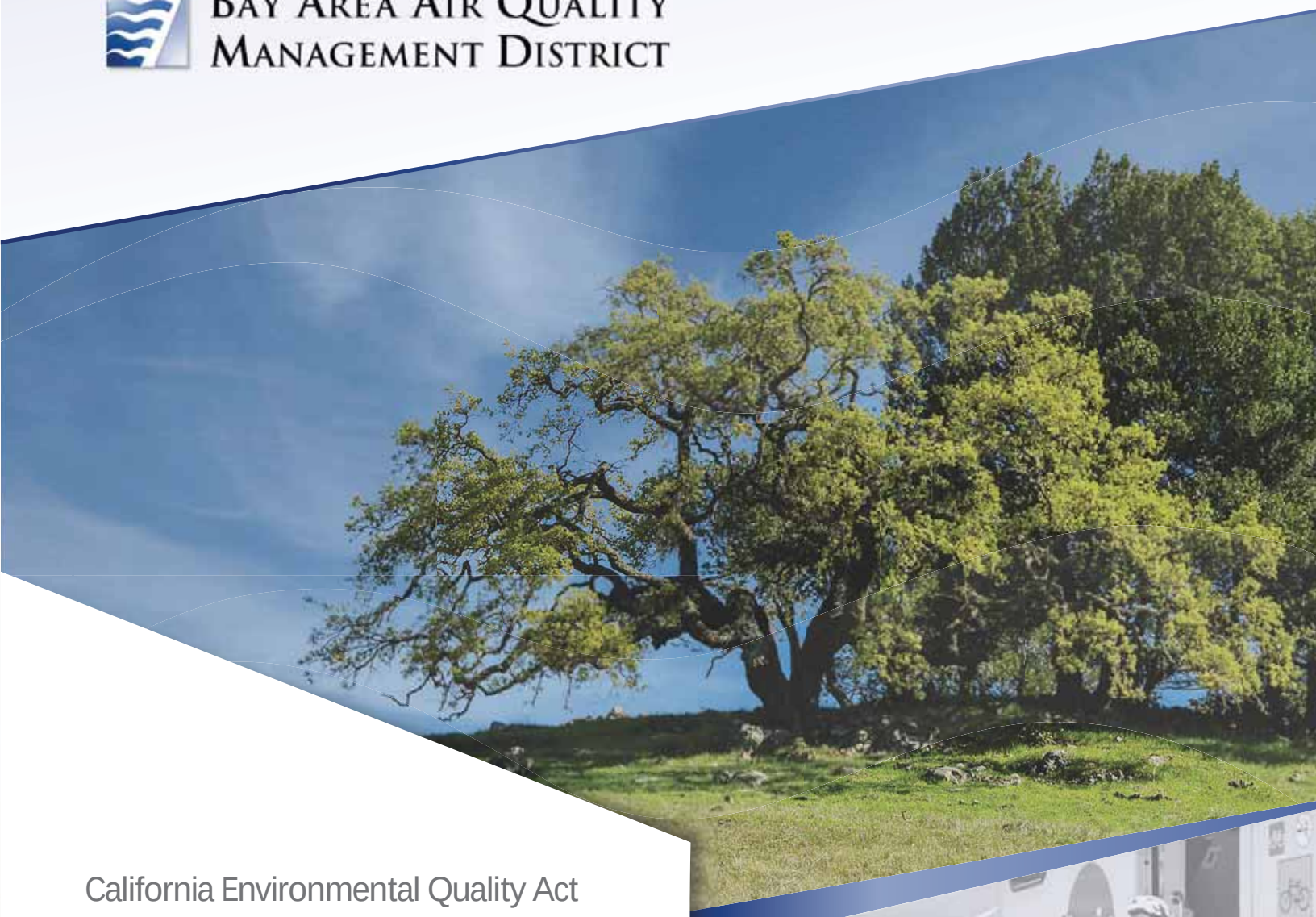
The River Rock Entertainment Authority has retained the law firm Holland & Knight LLP as its legal adviser and will use Stuyvesant Square Advisors Inc. as its financial adviser.

You can reach Staff Writer Robert Digitale at 521-5285 or robert.digitale@ pressdemocrat.com. You can reach Staff Writer Clark Mason at 521-5214 or clark.mason@pressdemocrat.com.

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EXHIBIT E

Bay Area Air Quality Management District



California Environmental Quality Act

Air Quality Guidelines Appendix B:

CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans

April 2022



These guidelines are nonbinding recommendations, intended to assist lead agencies with navigating the CEQA process. They may be updated as needed in the future, and any updates will likewise be nonbinding and advisory.

1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].)[1] But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

[1] The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: https://www.califaep.org/docs/CEQA_Handbook_2021.pdf.

Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California's long-term climate goal of carbon neutrality[2] by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its "fair share" of implementing the goal of carbon neutrality by 2045:

Thresholds for Land Use Projects (Must Include A or B)
A. Projects must include, at a minimum, the following project design elements: 1. Buildings a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development). b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines. 2. Transportation a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA: i. Residential projects: 15 percent below the existing VMT per capita ii. Office projects: 15 percent below the existing VMT per employee iii. Retail projects: no net increase in existing VMT b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California's long-term climate goals—its "fair share"—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California's efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

[2] "Carbon neutrality" is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.

EXHIBIT F

The County of San Diego

Planning Commission Hearing Report

Date:	July 22, 2022	Project:	Transportation Study Guide to Implement Vehicle Miles Traveled Analysis
Place:	County Operations Center (COC) Hearing Room 5520 Overland Avenue San Diego, CA 92123	Case/File No.:	N/A
Time:	9:00 a.m.	Location:	All Districts
Agenda Item:	#7	General Plan:	Various
Appeal Status:	Not applicable; Approval by the Board of Supervisors	Zoning:	Various
Applicant/Owner:	County of San Diego	Communities:	All unincorporated communities
Environmental:	Notice of Exemption; CEQA Section 15378 and 15060(c)(3)	APNs:	Various

A. OVERVIEW

The purpose of this staff report is to provide the Planning Commission with the information necessary to make a recommendation to the Board of Supervisors (Board) to adopt, adopt with modifications, or not adopt the proposed Transportation Study Guide (TSG). The revised TSG aligns with State guidance and establishes a threshold based on the regional average Vehicle Miles Traveled (VMT), which includes the entire San Diego region. The TSG also identifies Infill Areas where no VMT analysis or mitigation would be required for future development projects. The TSG also includes other standards and criteria that would be used to evaluate projects, including small projects, locally serving projects and public facilities. The TSG describes the process and procedures for project applicants to use when preparing transportation analyses for projects in the unincorporated area. If adopted, projects could use the TSG immediately as the basis to address the transportation effects of projects.

B. RECOMMENDATIONS

This is a request for the Planning Commission to consider the proposed Transportation Study Guide (TSG) and make recommendations to the Board. Planning & Development Services (PDS) recommends that the Planning Commission take the following actions:

1. Find that the proposed resolution complies with the CEQA and State and County CEQA Guidelines because the resolution is: (1) not a project as defined in the Public Resources Code section 21065

and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3); (2) categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and (3) subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the resolution implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

2. Recommend that the Board of Supervisors adopt the Resolution:

   RESOLUTION OF THE COUNTY OF SAN DIEGO BOARD OF SUPERVISORS ADOPTING THE TRANSPORTATION STUDY GUIDE INCLUDING TRANSPORTATION THRESHOLD OF SIGNIFICANCE FOR VEHICLE MILES TRAVELED

C. BACKGROUND

In 2013, the State of California (State) passed Senate Bill 743 (SB 743), which changes how jurisdictions, including the County of San Diego (County), are required to analyze transportation impacts from projects under the California Environmental Quality Act (CEQA). CEQA was signed into law in 1970 to provide standards for regulating pollution and preserving the natural environment. CEQA requires California's public agencies and local governments to measure the environmental impacts of development projects or other major land use decisions and to limit or avoid those impacts when possible. State CEQA Guidelines encourage lead agencies, like the County, to develop and publish guidelines to describe the level at which the environmental impacts become significant and therefore need to be reduced and/ or mitigated, or offset. These are called thresholds of significance. SB 743 required local jurisdictions to shift their environmental impact analysis for transportation from using traffic congestion or "level of service" (LOS) to Vehicle Miles Traveled (VMT) starting July 1, 2020. VMT replaces motorist delay and associated level of service (LOS) as the metric for analysis of transportation impacts under CEQA.

Although traffic congestion measured the impact on the driver, VMT is intended to balance the needs of congestion management with statewide goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation, such as walking and biking. VMT is calculated by determining the distance and number of vehicle trips generated from a home or business. When analyzing a project's impact on the environment from VMT, a lead agency can provide guidance on impacts from VMT by comparing the estimated VMT from the project to the average VMT in a defined area.

SB 743 does not require local agencies to adopt guidelines or to establish a threshold for VMT; however, agencies may adopt guidelines and thresholds after public review, and these guidelines and thresholds must be supported by substantial evidence. If an agency does not adopt guidelines or thresholds, each project must develop a specific threshold to determine whether the project's impacts will be significant under CEQA.

When analyzing a project's impact on the environment from VMT, the estimated VMT from the project is compared to the average VMT in a defined area. If a project decreases VMT from existing conditions within the defined area, it may be considered to have a less than significant impact on transportation, depending on the decrease. A project can also be considered to have a less than significant impact on VMT if it generates less than a specified number of average daily trips. Other criteria can also be used

to determine if a project has a less than significant impact from transportation on the environment, such as projects that are adjacent to existing major transit facilities.

Projects found to have a significant impact on the environment under CEQA are required to mitigate for, or offset, those impacts where feasible. Mitigation includes projects that reduce VMT like installing bike lanes and sidewalks, which reduce driving and vehicle trips. Because a project's VMT is largely based on y the location of the project, which cannot easily be changed, mitigating for significant VMT impacts can be difficult to accomplish without a defined mitigation program in place. Mitigation for transportation impacts can also be costly. Therefore, using VMT as the metric for analyzing transportation impacts under CEQA incentivizes development in higher density areas near transit with a diverse mix of uses, and disincentivizes it in lower density areas that are more distant from jobs, services, and transit.

A transportation analysis involves determining the project's VMT using nationally adopted traffic standards and modeling and comparing those to something like a regional VMT average. Then for a project to be considered efficient, it is compared to a threshold that is also adopted by a jurisdiction, such as 15 percent below the regional VMT average, which is the threshold recommended by the Governor's Office of Planning and Research (OPR). If the average VMT is below the threshold, the project does not have a significant VMT impact and can move forward, without further VMT analysis.

If the average VMT for the project exceeds the threshold, the project must propose mitigation to reduce the project's VMT to below the threshold (i.e., by providing multimodal or transit infrastructure or other measures to reduce or offset VMT). If the project cannot reduce their VMT to below the threshold, an Environmental Impact Report (EIR) is required with a statement of overriding considerations for the project's significant and unavoidable transportation impacts. VMT is one of multiple subject matter areas analyzed under CEQA. Even if a project does not have a VMT impact, the project still requires environmental review for other CEQA environmental subject matters like biology, cultural resources, and fire hazards.

OPR prepared a Technical Advisory document to assist local agencies when developing their own guidelines for the assessment of VMT, thresholds of significance, and mitigation measures. OPR stated that lead agencies have the discretion to set or apply their own thresholds of significance. Based on staff's research, jurisdictions across the state have taken different approaches to implement VMT. Of the 58 counties in the state, 16 adopted their own VMT guidelines, nine chose to rely on OPR guidance and not adopt their own guidelines, and 33 have no guidance, so projects develop their own VMT analysis on a case-by-case basis. Of the 16 counties that adopted their own VMT guidelines, eight counties adopted a threshold based on the unincorporated area average, six adopted a threshold based on the regional average, and two counties chose other alternatives.

On June 24, 2020 (6), the Board of Supervisors (Board) adopted a Transportation Study Guide (TSG) for the unincorporated area, a technical guide for analyzing transportation impacts for projects using VMT. The TSG described the process and procedures for project applicants and their consultants to use when preparing transportation analyses. The TSG also included a methodology referred to as Local Mobility Analysis (LMA) to meet the County's General Plan requirement for a Level of Service (LOS) D (which is considered a stable flow of traffic with an acceptable level of delay) or better and to ensure the safe operations of the roads for all users including bicyclists and pedestrians. In September 2020, Cleveland National Forest Foundation, Coastal Environmental Rights Foundation, and the Sierra Club filed suit against the County, alleging adoption of the TSG violated CEQA and SB 743.

On May 19, 2021 (1), the Board received an overview of how VMT implementation was progressing nearly a year after adoption of the County's TSG. Staff also requested the Board to provide direction on potential updates to the VMT thresholds used to evaluate the significance of a project's transportation impacts, including options for using an unincorporated area average, sub-areas average, or a regional average to measure existing average VMT, and the screening level threshold for "small" projects that should be exempt from performing additional transportation analysis. A project is considered "small" if it generates less than 110 Average Daily Trips (ADT). The Board was also given the option to leave the existing TSG in place.

After receiving the update, the Board provided direction to explore 13 items related to VMT:

1. Assess and explore the process by which infill development can be done in a manner to ensure no VMT mitigation is necessary.
2. Explore the potential creation of transit accessible areas and look at the intersection between VMT efficient areas or lower thresholds in accordance with the areas that do not require further analysis. Explore the potential transit corridors and look at the SANDAG Regional Transportation Plan (RTP), Metropolitan Transit System (MTS), North County Transit District (NCTD), and other possible areas and how that may impact VMT efficient areas or areas covered by the exemption.
3. Explore programmatic or plan-level mitigation opportunities for VMT, including the concept of a regional mitigation bank.
4. By-right process for development in VMT efficient areas.
5. Further exploration of exceptions to the VMT thresholds for affordable housing projects at less than 100 percent affordable, including mixed income and various components of Area Median Income (AMI), along with exploring the possibility of exceptions for middle income or workforce housing, local hire, and agriculture type projects that might have a net impact of lowering VMT.
6. Explore land use density of land that is in VMT efficient areas.
7. Continue to track guidance from the California Office of Planning and Research (OPR), along with other governing body efforts, including the SANDAG RTP.
8. Monitor the progress of other jurisdictions as it relates to their adoption, along with what unique programs, exemptions, or opportunities they may be exploring that the County may want to consider.
9. Consider a phase-in timeline to allow for a transition into a regional geography.
10. Consider compliance options for projects that have already been proposed or are in the process now.
11. Conduct an analysis of the options to remove the Local Mobility Analysis.
12. Inform the Board regarding updates on development of the Smart Growth component of the Climate Action Plan (CAP) Update and Supplemental EIR to ensure it is integrated and aligned with efforts around VMT.
13. Conduct an analysis of proposed housing projects designated for individuals under 60 percent AMI and under 80 percent AMI and the potential cost impact of switching to a regional geography.

After the May 19, 2021 Board meeting, OPR clarified that "regional" is defined as the full geography within the jurisdictional borders of a Metropolitan Planning Organization (MPO) or a Regional Transportation Planning Agency (RTPA). For San Diego County, this is the San Diego Association of Governments (SANDAG) region, which includes the entire county. Previously, in its 2018 guidance, OPR recommended that for projects in the unincorporated area, the lead agency compare a project's VMT to

a “citywide” average VMT or the “region’s” average VMT. For example, the City of San Diego could evaluate a project’s VMT compared to the citywide average or the overall region’s average. For comparison, the VMT threshold using the unincorporated average is 23.4 miles and the threshold using a regional average is 16.9 miles (average reduced by 15 percent as recommended by OPR).

Although the OPR Technical Advisory is intended to provide advice and recommendations and is not mandatory, as directed by item 7 above, staff returned to the Board on September 15, 2021 (1) with this new guidance, and the Board adopted a resolution to rescind the County’s TSG based on OPR’s updated guidance that the County should use the regional average VMT for projects in the unincorporated area.

On February 9, 2022 (7), the Board received the presentation and overview of the 13 items and provided direction on options to implement analysis of transportation impacts of proposed projects under CEQA using VMT in two phases.

Phase one included the following:

1. Prepare a revised TSG using a regional geography, circulate it for a 30-day public review, and return to the Board within six months for consideration with a cost of $100,000. The revised TSG should also include the following:
    a. Develop new VMT screening criteria for projects within Infill Areas and any surrounding “Village” as identified in the General Plan, excluding areas outside of existing or planned transit and areas mapped as High and Very High Fire Hazard Severity Zones. The screening criteria will allow projects located in Infill Areas and any surrounding “village” to move forward without VMT analysis or mitigation. This option would allow up to 5,870 homes to move forward without VMT analysis based on the General Plan (Infill Areas combined with VMT efficient areas). Projects located outside these areas will need to conduct a VMT analysis and propose mitigation to reduce their impacts.
    b. Adopt the 110 average daily trips small project screening criteria.
    c. Adopt OPR recommendation to screen out projects with 100 percent affordable housing from VMT analysis.
    d. Require an LMA. The LMA for discretionary projects would be used to evaluate road operations, traffic safety, and access. The study scope of LMA has been reduced when compared to the previous CEQA required traffic analysis based solely on Level of Service prior to the implementation of SB 743 in that the area evaluated is limited to intersections located near the project with the primary focus on traffic safety and not roadway capacity.

2. Directed staff to return with options for a sustainable land use framework (Option 6-D). Staff also recommends the Board direct staff to prepare options for further direction to inform the development of a sustainable land use framework for Board consideration and return to the Board in 120 days. Options would include the following: identification of principles for sustainable development that could inform future land use decisions; and comparison of planning mechanisms to implement Board directed principles, including zoning overlays, specific plans, community plan updates, or a general plan update and return to the Board within 120 days, including how to add a parcel-by-parcel analysis and convene stakeholder groups around the issue of addressing the additional considerations that would facilitate development in VMT exempted areas at a later date.

EXHIBIT G

Inside the fight to save Windsor from the Kincade fire

Officials were told Windsor would almost certainly lose homes to the Kincade fire, but not a single house was lost, thanks to hundreds of firefighters who braved great peril to face down a surging wildfire on Oct. 27.



SLIDE 1 OF 30

Santa Monica Fire Department firefighters Armando Reyes, left, and Andrew Klein quickly bundle their fire engine's hose to move to protect a different structure during the Kincade fire on Los Amigos Road in Windsor on Sunday, Oct. 27, 2019. (ALVIN JORNADA/ PD)

MARY CALLAHAN
THE PRESS DEMOCRAT
November 9, 2019

Flames were sweeping down the grassy slopes of Foothill Regional Park toward the near-empty town of Windsor when Sonoma County Fire District Battalion Chief Mike Elson drove up Cayetano Court and realized the moment they had all been bracing for had come.

Two-story flames and glowing firebrands whirled through the smoke-darkened skies, setting fences and trees ablaze, lighting landscaping and, soon, sparking fires at several homes in the neighborhood, as well.

The marauding Kincade fire had been bearing down on Windsor all morning, burning its way through a rural landscape across a wide area north of town, where an army of firefighting forces stood ready to face it late in the morning of Oct. 27.

But it would be northeast Windsor, in and around hundreds of homes in the Foothill Oaks Estates, where they confronted the biggest threat - a near-overwhelming battle to keep the blaze from taking the neighborhood and the town.

Scores of firefighters took part in the initial attack, making a stand amid the chaos, barely daring to hope they would prevent the fire from ripping through town, let alone sweeping across Highway 101 and burning a trail of destruction all the way to the coast.

"That fire coming off of Foothill Park, that fire was coming off that hill very quickly, and it was massive," said Elson, who was leading a nine-engine task force but eventually took command of the Foothills campaign. "It was a massive firefight. There were flames up over the tops of houses ... and those are mostly two-story houses, so they were 30, 40 feet in the air."

But in what became a pivotal juncture in the two-week effort to beat back Sonoma County's largest wildfire ever, the battle for Windsor spared every single home in the town of 27,000 people and substantially curbed the fire's spread.

Sonoma County fire officials credit 200 firefighters or more, both local and from outside the area, who jammed into the neighborhood and simply refused to give way to the flames.

They fought house-to-house, confronting the blaze so aggressively they pushed the boundaries of personal safety to the very limit - to the point Sonoma County Fire District Chief Mark Heine said he came close to ordering crews to fall back in a few cases.

"That was very dangerous firefighting in there," Heine said. "To enter someone's backyard, where everything in their backyard was on fire, meant they didn't know if they could get themselves back out. There was just that spirit of, 'We're not letting this fire come to our town.'?"

It came frighteningly close, making innumerable forays into the Foothills area, a neighborhood of several hundred homes tucked up against the hills of the regional park east of Arata and Hembree lanes in the northeast section of Windsor.

Particularly vulnerable were about 150 homes arrayed around cul-de-sacs, many of which had backyards exposed to the park or connected landscape, often separated from the parklands only by wire fencing.

But ferocious winds that sent sparks and flaming debris well ahead of the fire front that day meant anywhere in the neighborhood or even within a mile or two was at risk of blown embers and fire starts.

Were the fire to get established in even two or three homes, generating intense heat, large flames and embers, "We were likely to lose that whole neighborhood," Heine and others said.

Residents who returned to the area days later found singed trees and burned gardens, lengths of fencing turned to charcoal, ash-covered ground where the flames had spread directly from the blackened hills of Foothill park into their backyards. There were scores of places - outdoor sofa cushions, patches of grass, Halloween decorations - that had caught fire and been put out.

Firefighters had to kick down doors in a few cases to douse attic fires after embers ignited rooftops or burned fencing up to exterior walls like they did at Michelle and Brad Stibi's place on Valle Vista Court.

"We were the loop on national TV," Michelle Stibi, 50, said, her expression suggesting she was none too impressed with the celebrity brought by widely shared footage of the firefight in her yard. "This is going to be a concrete jungle when Brad gets done with it."

Fire officials say it would have been worse if it weren't for the stucco and tile or concrete roof construction that dominates the Spanish-styled Foothill Oaks Estates subdivision that makes up most of the area between Hembree Lane and Vinecrest Road, where the firefight took place.

"Some of those embers were still getting up into those eaves," Elson said, "but construction features that they built into those neighborhoods definitely helped."

A far more critical factor was the early evacuation of residents, clearing the way for firefighters to battle flames and defend property without the need to commit time and attention to rescue efforts. Saving lives and getting people out had completely consumed public safety personnel during the early phase of the 2017

Tubbs fire, which swept across Sonoma County from Calistoga by night with such speed that hundreds were trapped in their homes and neighborhoods and forced to flee through the flames.

"If people had stayed in those homes in Foothill, they would have died," Heine said starkly, "and if not, it would have created such a complex issue for us that we wouldn't have been able to fight the fire. It allowed us to focus on the fire and not life-safety and rescue."

The 77,758-acre Kincade fire, now 100% contained, started many miles north of Windsor, atop The Geysers, during extremely strong winds the night of Oct. 23. It had burned virtually unchecked for four days along a mostly southerly path before it rushed toward Windsor during a period of rapid, wind-driven growth around midday Oct. 27.

Sonoma County Sheriff Mark Essick had ordered all Windsor residents to leave home a day earlier in what would be a succession of evacuations that cleared out a huge swath of Sonoma County. More than a third of the county's population was under mandatory evacuation order, from Geyserville and Alexander Valley down to north Santa Rosa, and west to Jenner and Bodega Bay.

Hurricane-force winds coming out of the northeast and fire forecast modeling had contributed to the same terrifying prediction: that an unstoppable firestorm could burn through Windsor and jump the freeway into the thickly forested Russian River Valley, where flames fed by dense fuels unburned for decades would run all the way to the Pacific Ocean.

Public safety officials alerted the public to this "worst-case scenario" when evacuation orders were issued.

But it's not clear how many civilians appreciated the very real possibility of it coming to pass.

Most Californians are certainly aware of the increasing intensity of and destruction wrought by recent wildfires, experienced close to home in October 2017, when a series of fires rampaged through the region, killing 24 ?people in Sonoma County and destroying more than 5,300 homes.

But even Windsor Mayor Dominic Foppoli, during a celebration of the town's endurance last weekend, felt compelled to ensure his constituents understood the gravity of what they had faced a week earlier.

Foppoli, 37, said top fire brass briefed him and other town officials a short time before Essick ordered Windsor and Healdsburg to evacuate the morning of Oct. 26 and told them at least part of their community would likely be lost to fire before the flames continued westward.

"This was not an 'if,' but it was a 'when,'?" Foppoli told an estimated 4,500 who gathered in the town square to salute firefighters.

But there was positive side, too, Sonoma County Fire District Battalion Chief Marshal Cyndi Foreman said.

All the mapping, modeling and intelligence put Windsor squarely in the bull's-eye of the wildfire, Foreman said, so "we knew that we were not going to dodge this one, but we also knew it was coming."

While the Tubbs fire and last year's deadly Camp fire in Paradise continue to inform firefighters' expectations in an age of extreme fire behavior, the siege on Windsor came with the luxury of time to plan ahead.

"I'll take a disaster that we know is coming all day long, rather than something that's going to wake me up out of a dead sleep that I don't know is coming," Foreman said.

The Kincade fire was fought under the unified command of Cal Fire, the Sonoma County Sheriff's Department, the Sonoma County Fire District and several other agencies.

But the planning for Windsor was turned over largely to the Sonoma County Fire District and to Battalion Chief Mark Dunn, with the aid of Heine and other top officials, and support from many others, including fire personnel from other agencies who happen to live in northeast Windsor and offered to help.

Nothing less than the fate of the town hung in the balance, and many thought that even if the town were saved, hundreds of homes would be lost first.

Dunn, for instance, thought substantial residential losses were inevitable if the fire got established at Foothill Regional Park, as it did.

"When people have talked to me, I've been so emotional about it," Dunn said. "It's one thing to have a plan and to ask strike team leaders and strike teams and my own department, 'I need you to do this; you're going to go to this neighborhood and try to hold your ground.'

"That's one thing. But they actually did it, and they did it perfectly. So many individual engines from different agencies doing all that," he said. "It was amazing."

The firefighting force had to be ready to meet the blaze coming in from the north or the east - or both, which is how it transpired - and be prepared to hold Highway 101, whatever it might take, Dunn said.

They had to figure out where they might lose control of the fire and identify contingency plans that included lines which, once crossed, would trigger crews to fall back several blocks to preset points. There was even the potential for the fire to take successive neighborhoods, forcing the entire firefighting force to seek refuge across the freeway if it got bad enough.

Dozens of engines were moved into the area by Saturday night, Oct. 26, some staged at the Luther Burbank Center for the Arts in Santa Rosa. Three strike teams of five engines were prepositioned in Windsor, a number of them redeployed directly from the 4,615-acre Tick fire that was winding down in Southern California.

Sonoma County Fire District personnel and a fleet of bulldozers also were deployed around Windsor, many of them around Arata Lane and Highway 101/Los Amigos Road, near the command post.

As restless fire officials patrolled rural areas north of town late Sunday morning, around 11 a.m., the fire made a drive for Windsor, sweeping off the hills from Chalk Hill Road in several directions once, fire officials said. One head of the fire was veering past Hillview Road toward Limerick Lane and the highway, while another came down Hillview south toward Brooks Road and Arata Lane, and a third came down Chalk Hill Road toward the area of Vinecrest Road, though eventually the biggest threat came from edges of wildfire that merged in Foothill Park and spread swiftly through the grasses of the 211-acre open space.

Roberto Pardo, 54, and his family, meanwhile, were safely ensconced in a Napa hotel, anxiously monitoring news of the Kincade fire as they had through the night, when security cameras from his Windsor home began sending snippets of grainy footage to his cellphone.

Just before noon, he saw two fire engines pull into Miramar Court near the west side of Foothill park and observed firefighters go into his neighbors' backyards and his own - ensuring they had access in the event it was necessary, was Pardo's guess. He could see the wind whipping so fiercely it bent one of his palm trees nearly in half.

Then the six firefighters, apparently satisfied, lined up side by side in the road facing east and waited - watching, bracing, for the coming siege.

When he saw a law enforcement vehicle take a last, hasty spin around the court before speeding away - as if checking to make sure everybody was gone - he knew "that the fire was here," Pardo said.

Firefighters were frantically canvassing neighborhoods, moving propane tanks, lawn furniture, umbrellas and whatever flammable items they found away from homes, or kicking down fences to improve access or avoid creating fuses that might help ignite homes.

Sonoma County Fire District Capt. Mike Stornetta, whose own home is mere blocks away, had by then gone looking for the fire, dragging a fire hose into Foothill park with Capt. Fred Leuenberger and confronting it there amid the oak trees. They sounded the alarm in the moments before flames hit Cayetano Court and made entry into the neighborhood behind a number of homes at once.

His report marked the beginning of an epic battle, marked by what Dunn said was suddenly one report after another of the fire's arrival in neighboring cul-de-sacs and the response of dozens of fire crews into the area.

Foreman said, "It was like somebody blew the bugle and the cavalry arrived. You couldn't run 10 or 20 feet without running into another firefighter. There were so many resources that saturated that community."

Even so, it was daunting.

Elson said he thought for a second about the personal vehicle he had left at the Hembree Lane fire station more than a mile to the south and whether he would have time to move it before the fire got there.

"My gut reaction was that we were going to lose that whole neighborhood," he said.

Foreman remembers a point when the fire came down to Vinecrest Road toward the east edge of town when the whole sky went dark - "like somebody turned the lights off" - perhaps as the fire took three homes up a steep, narrow tail of Vinecrest, just outside the town limits.

In the Foothills neighborhood, the firefight lasted an hour, perhaps 90 minutes, a relentless attack in which each strike team and engine leader was authorized to exercise his or her own discretion as to what was needed to advance the cause.

Many neighborhood residents saw the battle unfold on TV or social media, including a widely watched video shared in real-time where they watched firefighters in their own yards and saw their properties in flames.

"We created a whole text group before we evacuated on Saturday, and we all talked to each other the whole time," said Beverly Madden, who retired to a home at the end of Valle Vista Court a few years ago and was alarmed by the video someone passed her way.

She now has ash across part of her backyard and new landscaping, now probably ruined. But "when we saw the video, compared to when we got here? We feel super, super great."

The fire came within yards of Mike Hoesly's home up a long drive way atop a hill at the north end of Cayetano Court, after "toasting" about two-thirds his vineyard and burning through a good deal of landscaping at the edge of his backyard just off Three Lakes Trail in the regional park.

But he's grateful that firefighters saved his heritage oak - the only thing growing on the property, when he and his wife, Kate, moved there in 1990.

"This could have been so tragic, you know?" said Hoesly, 70. "We just feel kind of like if the home construction had been different, it could have been a domino effect."

There would be more firefighting to do later that day and in the days to come, as the wildfire swept up toward Shiloh Ridge and the Mark West Creek watershed.

But for Elson and others from the district who fought the 2017 Tubbs fire and struggled fruitlessly to try to protect homes they instead watched burn, defending Windsor proved a watershed - a badly needed save, a source of redemption, he said.

"You know," said Stornetta, "with the winds that we were having and, with the experiences that we've had in this area and all over California, I was really not holding out a ton of hope that we were going to be able to save it. However, the mentality that everyone had was, 'Hey, we're not letting this happen again.'?"

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CALIFORNIA WILDFIRES

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

Kurtis Alexander, Steve Rubenstein, Alexei Koseff, Demian Bulwa

Oct. 26, 2019 | Updated: Feb. 24, 2020 4:20 p.m.

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1 of 13

Firefighters light back-fires along Pine Flat Road near Geyserville, Calif. on Saturday, October 26, 2019 to head off the Kincade Fire, which has grown to more than 25,000 acres and triggered mandatory evacuations in Windsor, Geyserville and Healdsburg.
Kurtis Alexander/Kurtis Alexander / The Chronicle

***Read the latest on the* Kincade Fire here.**

Two years after being scarred by the deadly Wine Country wildfires, Sonoma County was under siege again early Sunday as thousands of firefighters battled to keep powerful winds from pushing the massive Kincade Fire southwest through dense cities and towns toward the Pacific Ocean.

As of midnight, the county resembled a disaster zone from end to end. Some 90,000 residents has been ordered to flee their homes — including those in the touristy wine capital of Healdsburg, with its boutique hotels and tasting rooms, and the community of Larkfield-Wikiup, which saw whole subdivisions flattened by the Tubbs Fire of October 2017.

In the Santa Rosa neighborhoods of Coffey Park and Fountaingrove, meanwhile, residents in brand-new homes just rising from the ashes were warned they might be next to evacuate. Just about everyone else in the county was either under an evacuation order, an evacuation warning, or a power outage imposed by Pacific Gas and Electric Co. to keep additional blazes from sparking.

"We're kind of at the mercy of Mother Nature right now," said Jonathan Cox, spokesman for the state's Cal Fire agency. "Batten down the hatches and hope the storm passes."

As of midnight, the Kincade Fire in and around Geyserville — possibly sparked Wednesday by PG&E equipment that had been left on despite the outage — had blackened 26,000 acres and destroyed 31 homes and 46 other structures, according to Cal Fire.

The fire was just 11% contained, or surrounded. More than 2,800 firefighters and upward of 250 engines worked in rugged hills and canyons seeking to boost that figure as they prepared for winds from the northeast forecast to reach 40 mph — with gusts up to 80 mph.

No deaths had been been reported. Two civilians and one firefighter sustained non-life-threatening injuries Friday after the firefighter deployed his personal fire shelter to save himself and the two fleeing residents.

Saturday had been a day of preparation and worry. Authorities continually expanded evacuations, while opening shelters for evacuees. Fleeing residents jammed Highway 101, and lined up to fill their tanks at gas stations. Stores in Sonoma County and well beyond sold out of ice, batteries, portable generators and other supplies.

Evacuated areas included Windsor and Mark West Springs as well as Guerneville, Forestville, Occidental, Bodega Bay and other spots along the Russian River and the coast. Among those who had to move on were roughly 100 patients at Sutter Santa Rosa Regional Hospital, who were transferred to medical facilities in Novato and San Francisco. Sonoma County officials had to empty a jail as well, just in case.



A police officer leaves a home after placing an evacuation order in the mailbox on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

National Weather Service meteorologist Drew Peterson said the area was expected to see "extreme, extreme conditions." The strongest gusts were expected to pick up early Sunday in the hills and ridges and continue into Monday — a more intense and longer-lasting windstorm than the one that pushed the 2017 fires in Wine Country.

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On Saturday, in a last-ditch effort to halt the progress of the fire before the winds picked up, hundreds of firefighters aided by airplanes and helicopters pre-emptively burned vast stretches of grassland to create a fire break. The back-fires, many set along Pine Flat Road east of Geyserville as the sun went down, were designed to create a buffer zone between the fire and the many towns of the Sonoma Valley.

"We want to make sure it doesn't go down any farther," said Capt. Mike Tompkins of the Tiburon Fire Department.

His crew was part of a team using drip torches to light dry brush and grass on fire. Another team, high on a ridge above, was lighting fires back toward Tompkins' team so that the flames from both sides would merge and create one big fuel break. Asked if it would work, Tompkins raised crossed fingers and said, "We'll find out."



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Chris Markell momentarily stops his car on the 101 on ramp to photograph the Kincade Fire on Friday, Oct. 25, 2019, in Healdsburg, Calif.
Paul Kuroda / Special to The Chronicle

In Healdsburg and Windsor early Saturday, residents and businesses rushed to pack up and get out of town. Danielle Kuller, the manager at Amy's Wicked Slush ice cream store in Healdsburg, said the store shut down and sent employees home.

"We're just trying to make sure everyone's safe," Kuller said.

At KC's American Kitchen in Windsor, dozens of breakfast customers watched the sheriff's press conference on the restaurant TV and found out the town was being evacuated.

"They all paid their checks and left," said Sheryl Farmer, the restaurant manager. "The restaurant is empty now. Our staff is worried and frantic. They're all trying to get home to be with their families. It's a little stressful."

By afternoon, the only people still allowed in Windsor were law enforcement personnel putting barriers on roads, driving through neighborhoods with loudspeakers and sirens, and going door to door to reach residents.

"It was nuts," said Brian Benn, who waited 15 minutes to fill up at a gas station in north Santa Rosa, just outside the evacuation area, where he said the lines for each pump were six cars deep. "You can tell people are feeling a little panicked, and trying to get their stuff together."

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From left: Cal Fire Healdsburg's Daniel Frazee, Andrew Rush and Kassidy Harms watch as helicopters pass by and dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

About 90 people under a previous mandatory evacuation order from the Geyserville area spent Friday night at an emergency shelter at the Healdsburg Community Center, Red Cross spokeswoman Barbara Wood said. Half a dozen new arrivals joined other residents at the former elementary school. Restaurants provided meals and concerned citizens dropped off books, toothbrushes and fresh chrysanthemums for the dining hall tables. But by Saturday, the shelter was itself evacuated.

Down the road, Jorge Vazquez, 31, who works in the maintenance department at the Best Western Dry Creek Inn in Healdsburg, was tasked with going door to door telling guests to leave. Each was given 30 minutes. Many there were also evacuees from the Geyserville area, forced to make their second evacuation in three days.

"It took some convincing to get them to leave," Vazquez said. In one case, he said, he had to threaten to call the police.

New evacuation centers were opened at the veterans halls in Santa Rosa and Petaluma, and at the Petaluma Fairgrounds.



Fire-friendly weather conditions affected much of Northern California, where as many as 940,000 customers were expected to lose electricity in planned Pacific Gas & Electric Co. power outages designed to prevent the outbreak of additional fires.

With what forecasters called a "potentially historic" windstorm expected Saturday night into Sunday, PG&E began shutting off power to as many as 2.8 million people across huge swaths of the state in an attempt to avert wildfires. The utility said homes and businesses could lose power in portions of 38 counties across the Bay Area and throughout Northern and Central California.

"The next 72 hours will be challenging," Gov. Gavin Newsom said at a Napa event Saturday. "I could sugarcoat it, but I will not."



Roilene picks up last items before evacuating from her house with her husband Wolfgang on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

The planned outages were unprecedented, affecting far more people than two previous shutoffs. In the last widespread round of planned outages this month, 738,000 residences and businesses in Northern and Central California had their electricity cut off.

The first blackouts began Saturday afternoon, affecting portions of counties in Northern California and the Sierra foothills — Amador, Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Plumas, San Joaquin, Sierra, Siskiyou, Shasta, Tehama and Yuba counties. They later spread to the Bay Area, affecting Alameda, Contra Costa, Marin, Napa, Solano and Sonoma counties.

The Marin County Sheriff's Office said it expected the outages to affect 99% of the county.

"It almost feels like an apocalypse," said Armand Quintana, manager at Jackson's Hardware in San Rafael. "There are lines at the gas station, people are buying ice from grocery stores, they're out of ice. I'm looking for zombies."

The store ran out of its stock of 50 generators, which sell for $1,100 to $5,000. Just hours before the expected power outages Saturday, it ran out of flashlights, batteries, candles and other power-outage supplies.

Smoke from the blaze was wafting through the Bay Area and could be sniffed on Saturday in downtown San Francisco. Air quality experts advised that buying masks and filters is no substitute for finding clean-air spaces, such as libraries and shopping malls.



Helicopters dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

"Masks may not be the answer for a lot of people," said Dr. Jan Gurley of the San Francisco Department of Public Health. "Sometimes they make you feel a little better. But there are no substitutes for getting to where the air is clean."

Air quality throughout the Bay Area was expected to be "unhealthy for sensitive groups" and a Spare the Air Day was declared by the Bay Area Air Quality Management District. It was the 20th of 2019, compared with 13 days in all of 2018, 18 days in 2017 and 27 days in 2016. Residents were advised to limit outdoor activity and avoid driving and wood burning.

On Saturday, the Kincade Fire was burning in a southwesterly direction on the east side of Highway 128 and eastern Geyserville. Firefighters built containment lines on the edge of Geyserville, where 735 structures were under threat.

Newsom toured the fire area Friday, visiting residents, meeting local officials and praising firefighters for their "extraordinary heroism." The governor also stepped up his criticism of PG&E, as state regulators looked into whether the utility company's equipment played a role in the fire.

The company reported Thursday that equipment on one of its transmission towers broke near the origin point shortly before the Kincade Fire was reported at about 9:27 p.m. Wednesday. Power had been shut off in the area, but not on that specific transmission line, in an effort to prevent such an event.

Chronicle staff writers John King and Catherine Ho contributed to this report.

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EXHIBIT H

Brings Chickasaw's unparalleled gaming expertise and shared values to project to support Koi's economic independence on tribal lands in Sonoma

Santa Rosa, Calif. (24 January 2022)— The Koi Nation of Northern California, one of California's historic federally recognized Native American tribes, has executed a predevelopment agreement with Global Gaming Solutions (GGS), a wholly-owned business of the Chickasaw Nation of Oklahoma, to engage as the Koi's development partner for its planned Shiloh Casino & Resort in Sonoma County. GGS will also act as the manager and operator of the establishment when completed.

"We are honored to build this important business relationship with our brothers and sisters of the Chickasaw Nation, one of the most experienced Native American tribes in the gaming industry," said Darin Beltran, Koi Nation's Tribal Chair.

"Not only does the Chickasaw Nation have great expertise in gaming and resorts, but they also share the same values as the Koi Nation. Chickasaw leaders understand the importance of this project to the restoration of our economic self-reliance because they have walked the same path many times in support of their own people's future," said Dino Beltran, Koi Nation Vice Chair and Director of Development.

The Chickasaw Nation, with its tribal headquarters in Ada, Oklahoma, has an exemplary track record in developing and operating tribal gaming operations and related resort properties. It operates 23 gaming establishments around the nation, including Winstar World Casino and Resort, the largest casino in the world. The Chickasaw Nation also operates nearly 200 additional highly successful businesses, giving it a broad range of commercial expertise that makes it the ideal partner to develop and manage the Shiloh Resort & Casino.

"The Chickasaw Nation is pleased to play a role in this project, and we look forward to a successful collaboration," Chickasaw Nation Governor Bill Anoatubby said. "The prosperity of our citizens and a commitment to working together with our partners in the Koi Nation as well as local, state and

community officials are key components to our mission. We look forward to witnessing new jobs, additional businesses and increased tourism to this region."

"We are excited by the opportunity to use our expertise to help the Koi Nation realize this project and establish the economic self-sufficiency that is the inherent right of all Native American tribes," said Bill Lance, Commerce Secretary of the Chickasaw Nation. "We look forward to beginning a successful long-term economic partnership with the Koi."

About the project

The Shiloh Casino & Resort will be built on the Koi Nation's property at 222 E. Shiloh Road in unincorporated Sonoma County. The tribe purchased the 68-acre site late last year to re-establish its tribal land base more than a century after the Koi's ancestors were forced to relocate to the Santa Rosa/Sebastopol area.

The non-smoking Shiloh Casino & Resort will include a 2,500 Class III gaming machine facility, a 200-room hotel, six restaurant and food service areas, a meeting center and a spa, as well as a state-of-the-art live entertainment venue. The design for the low-rise facility integrates with the natural beauty of the region and will be energy-efficient and respectful of the environment, in keeping with the Tribe's historic relationship with the land.

The Shiloh Casino & Resort will employ more than 1,100 full-time workers when fully operational. The project also will create hundreds of jobs for workers in the construction trades and other skilled laborers. The Koi Nation anticipates that a portion of the resort's revenues will be shared with the broader community through the support of local organizations as well as collaborating with local governments to address their needs.

About the Koi Nation

The Koi Nation's mission is to empower our people to achieve a better way of life and to maintain tribal integrity and honor through responsive government. We are committed to protecting and exercising our inherent sovereign rights as a federally recognized tribe to their fullest extent,

including obtaining land to re-establish a permanent land base for our people who have lived in this region for thousands of years, and creating self-sustaining economic activity to support the tribal government and its people, and the entire community of Sonoma County. For more information visit https://www.koinationsonoma.com

About the Chickasaw Nation

With more than 73,000 citizens, the Chickasaw Nation is a democratic republic with executive, legislative and judicial departments elected by its citizens. The treaty territory of the tribe includes 7,648 square miles of south-central Oklahoma and encompasses all or parts of 13 Oklahoma counties. The Chickasaw Nation contributes billions to the Oklahoma economy annually and employs nearly 13,500 workers.

For more information, visit https://www.chickasaw.net

Exhibit I

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May 16, 2024

Via Email: Amy.dutschke@bia.gov
& Via FedEx: Tracking No. 818243443933

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

RE: The County of Sonoma's Comments On:
Koi Nation's Gaming Land Acquisition (Fee-to-Trust) Application
222 E. Shiloh Road; APN 059-300-003

Real Estate Services TR-4609-P5
Case Number: 33760

Dear Regional Director Dutschke:

The County of Sonoma has received the NOTICE OF GAMING LAND ACQUISITION APPLICATION from the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), for the Koi Nation's proposed resort casino. Thank you for a short extension of the time to today's date to submit the attached comments on the Application.

The County reviewed the copy of the application provided to it in December 2021 in response to its FOIA request. The Bureau did not acknowledge the County's second FOIA request made by email after receipt of the Notice for an updated copy of the Application, and an electronic copy of such updated application has not been provided to the County. Given the short time frame, and that the County's request for a full 30-day extension was not granted, we were not able to travel to Sacramento to view or request a copy of the Application in person. This seems to be an unnecessary burden to have placed on the County and other local jurisdictions from which the Bureau seeks comment, not to mention contrary to climate and paper reduction goals of the federal, state, local, and tribal governments. We ask that in the future, the public portions of fee-to-trust applications be included with the Notice or otherwise available electronically well before the comment period expires.

As you will see, the County's comments provide the requested information pursuant to Part 151. They also highlight several procedural and substantive flaws with the application that warrant denial, including, importantly, that proceeding under Part 151 is premature. The County requests that the Department of the Interior seriously considers these comments and hit pause on this application until it is complete and there is a final restored lands decision, among other things.

The County of Sonoma thanks the Bureau of Indian Affairs for the opportunity to review and comment on the Application. The County also looks forward to working with the Bureau and the Tribe to address the issues raised in the County's comments.

Please contact me at (707) 565-6007, or Jennifer.Klein@sonoma-county.org if you have any question or concerns about the attached comments.

Sincerely,

Jennifer C. Klein
Chief Deputy County Counsel

Enclosure – *County of Sonoma Comments with Attachments*

Cc:

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Chad Broussard (*via email only:* Chad.Broussard@bia.gov)
Koi Nation (*via email only:* kn@koination.com

THE COUNTY OF SONOMA'S COMMENTS

ON THE APPLICATION OF THE KOI NATION

TO THE SECRETARY OF THE INTERIOR

TO ACCEPT LAND INTO TRUST FOR GAMING PURPOSES

SUBMITTED: May 16, 2024

COUNTY OF SONOMA

By: Jennifer C. Klein **Date:** 5/16/2024

Jennifer C. Klein, Chief Deputy County Counsel

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I. INTRODUCTION

The County of Sonoma appreciates the purpose behind the federal fee to trust land process and the desire of the Koi Nation ("Tribe") to take land into trust to support self sufficiency and the exercise of sovereignty. However, the present Application by the Tribe to Take Land into Trust for Gaming Purposes ("Application") is fundamentally flawed on both a substantive and procedural basis and must be denied. The Application to take land into trust for a massive resort-casino development must be rejected due to pervasive deficiencies, including but not limited to that: 1) the proposal applies the wrong regulatory criteria to the proposed acquisition because the land has not been determined to be "restored lands"; even if the correct standard is referenced (which the County does not concede), the Application cannot be approved under Part 151 because additionally, 2) due process was violated, as all affected taxing entities and parties did not receive notice from the BIA; 3) the Application does not provide the true picture of loss of tax revenue stemming from removal of the property from the County or other local agencies' taxing jurisdiction because it does not recognize, among other things, the loss of revenue in perpetuity based on an equivalent level of development to the tribe's proposal or its likely demand for increased services; 4) the Application was circulated prematurely for comment – before all impacts had been identified in an EIS through the NEPA process – and hence estimates for costs to provide services or address off-reservation infrastructure needs stemming from the development – cannot be accurately calculated or provided by the County to the BIA; 5) the project would create significant negative environmental, financial, social, and jurisdictional impacts to the local community, which are presently unmitigated and weigh heavily against acceptance of the land into trust for gaming; and 6) the Application wrongly assumes that the fundamental conflicts of the project with the County's land use regulations do not exist because those regulations would not apply if the land is taken into trust – a position that ignores the reality that actual conflicts do exist and that adequate infrastructure is not available. Overall, for the reasons stated in this comment letter, including its attachments, the Tribe has failed to affirmatively demonstrate that the Secretary has the legal authority to accept the land into trust on its behalf, and as a result the Secretary cannot approve the Application. The Application should be rejected, and the Tribe should apply under the two-part test for taking land into trust if it desires to pursue the project because there is no "restored lands determination" presently.

II. TRIBE'S PROPOSAL

According to the Bureau of Indian Affairs (BIA), the Koi Nation submitted a Fee-to-Trust application "requesting the placement of approximately 68.60 acres of fee land in trust by the United States as restored lands pursuant to 25 CFR part 292 upon which the Koi Nation would construct a casino resort." (Federal Register 89:47 (March 8, 2024) p. 16782.) The land is located at 222 E. Shiloh Road, in the unincorporated area of the County of Sonoma, north of the City of

Santa Rosa, and southeast of both the City of Windsor and land held in trust for the Lytton Rancheria Band of Pomo Indians, and south of the City of Healdsburg and land held in trust for the Dry Creek Rancheria Band of Pomo Indians. The tribe's Application indicates it is filed pursuant to 25 CFR Part 151, concurrently with a request for a restored land determination pursuant to 25 CFR Part 292. The County's understanding is that there has been no restored lands determination for this land to date. The proposed land use as described in the Environmental Assessment is "a resort facility within the western portion of the Project Site that includes a three-story casino, a five-story hotel with spa and pool area, ballrooms/meeting space, and event center." It would also include parking facilities, and other "supporting infrastructure, including the proposed water treatment and wastewater treatment facilities." The County has not seen the project description in the Environmental Impact Statement as it has not yet been circulated. As of December 2021, the Fee-to-Trust Application only stated that for "Planned Land Use" the "current intended use for the Shiloh parcel is for a Class III gaming facility." The County is unaware if the Application has or will be updated to include the expansion of facilities beyond gaming, as contemplated in the EA. There is no mention of using the property for tribal governmental uses, tribal housing, a tribal museum, or cultural resource related preservation type uses. The project plans show use of areas of the project site for vineyards proximate to the casino resort facilities.

III. SEEKING COMMENT BY LOCAL GOVERNMENT ON THE APPLICATION IS PREMATURE.

A. The Application is Incomplete because there is no Restored Lands Determination.

The Application, as it was originally filed in September 2021, seeks land into trust for gaming under 25 CFR Part 151.11 applicable to off-reservation acquisitions. This path is not permitted at this time because the parcel that is the subject of the Application has not been determined to be "restored lands." Even if the tribe applied concurrently for fee to trust and restored lands determinations, moving forward to seek comment on the fee to trust Application, prior to the restored lands determination, was backwards, since the correct authority to apply to the tribe's fee to trust determination is dependent on, and cannot be correctly identified until, the pending restored lands determination is final and supports the Application path chosen by the tribe. Because the land is not currently "restored land," proceeding further under Part 151 is not only not permitted, but a waste of resources for those asked to participate in the process – including the County of Sonoma, federal and state agencies, and the various other interested tribal governments in Sonoma County and California, who may later be asked to re-engage and comment again if the restored lands determination is denied, and "two part" determination is alternatively pursued, if at all, under the Indian Gaming Regulatory Act (IGRA).

> The normal rule under IGRA is that a "two part" determination is applied to tribal requests that "off reservation" lands be taken into trust for potential gaming purposes. The "two part" test includes: (1) a determination by the

> Secretary that the gaming establishment is in the best interest of the tribe and would not be detrimental to the surrounding community; and (2) the concurrence of the state's Governor. The review of these applications is appropriately lengthy and deliberate. Given the complicated issues that applications of this nature raise, and the various levels of review and approval involved, they have been approved rarely despite a number of submissions over the years. (June 18, 2010, Secretary of the Interior Memo to Assistant Secretary; IGRA, 25 U.S.C. § 2719(b)(1)(A).)

To avoid this normal rule and proceed under the less onerous Part 151 provisions, the tribe's fee to trust Application must include a restored lands determination. The Application should not be considered complete until that determination is final and included in the fee to trust Application materials, and only then should the fee to trust Application be circulated for comment by local government. Until there is a restored lands determination that is consistent with the tribe's fee to trust Application, the appropriate authority for judging the present request for taking the 68.60 acre of land into trust for gaming purposes is the two-part test under IGRA, 25 U.S.C. § 2719(b)(1)(A), not 25 CFR 151. Without waiving that argument, and reserving the right to provide comment and engage as part of the normal two part determination where there is no restored lands determination, the County of Sonoma provides comments and information concerning the tribe's Application and its impact on tax revenue, jurisdictional conflicts and land use, and related matters based on the prior version of Section 151, since the Tribe has not elected to proceed under the version of Part 151 that became effective January 2024, after the tribe submitted its Application. If the Tribe makes such an election, the County of Sonoma requests notice of that election.

B. Application's Analysis under Section 151.11(c) (Economic Benefits to Tribe) is Omitted.

The Application acknowledges the criteria at §151.11(c), which requires the tribe to define the economic benefits justifying the trust acquisition, and references an "economic benefits report" at Attachment 11 to the Application, however, no analysis was provided to the County. Rather, Attachment 11 was designated as 'confidential' and consequently the County was unable to obtain a copy as part of its FOIA request. Public availability and review of the Tribe's business plan and analysis of economic benefits is particularly important as there are two tribal casinos currently operating in Sonoma County. One casino is operated by the Dry Creek Rancheria Band of Pomo Indians, and another operated by the Federated Indians of Graton Rancheria. The Lytton Rancheria has existing trust land not more than 5 miles from the Koi Nation's current proposed site. In addition, nongaming proximate uses deserve to be examined in the context of economic sustainability for the Koi Nation's proposed project. For instance, in 2022, the County approved Hyatt Place Wine Country Hotel recently, which when constructed will be a 165-room, six-story hotel, with a 150-plus-seat rooftop restaurant present potentially unsustainable economic uses. The site of the former Hilton Sonoma Wine Country hotel, which was destroyed in the 2017 Tubbs

Fire, is the subject of a permit application filed with the City of Santa Rosa to build a full-service hotel that will include a lobby, ballroom, a restaurant and bar, spa, pool, and outdoor reception area. A hotel project was recently approved for the Guerneville Hotel, about 18 miles directly west of the Koi Nation's proposed project site. Should the Lytton tribe, which has trust land not more than five miles from the proposed site, pursue non-gaming economic development of its trust land similar to the nongaming components of the Koi Nation's proposal (five-story hotel with spa and pool area, ballrooms/meeting space, and event center), then the economic benefits become even more questionable and unpredictable for tribal and non-tribal businesses and citizens.

It is unknown if the Koi Nation's business plan or "economic benefits report" addresses competition from nearby casinos, current or future, or in neighboring Lake and Mendocino counties, or otherwise addresses the economic viability of a gaming operation in the proposed location. It is also unknown if the "economic benefits report" examines the financial viability of the non-gaming components of the property in light of other hospitality projects planned, or planned and approved and under construction, but not yet open. The viability of the presently proposed casino by the Koi Nation must be analyzed in light of the existing field of competing casinos and non-gaming hospitality hotel, and resort development, in the region. The basic information concerning the planned business model should be disclosed.

IV. THE APPLICATION DOES NOT MEET THE REGULATORY REQUIREMENTS TO SUPPORT ACCEPTANCE OF LAND INTO TRUST

A. The Application Fails To Properly Analyze The Impact On The State And Its Political Subdivisions Resulting From The Removal Of The Land From The Tax Rolls (25 C.F.R. § 151.11(a), referencing §151.10(e)).

1. Impact to Taxes & Assessments.

The Application is required to analyze "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls." The Tribe incorrectly states that removal of the Property from the tax rolls will be "negligible" and "de minimis." (Application at pg. 7.) The Tribe's Application cites "approximately $266.5" as the total taxes collected by the County for FY 2020 to argue that the taxes collected for 2020-2021 for the property, cited at "$93,677.84," are not significant. This analysis is misleading and refers to non-current data.[1] The County is unaware if the tribe has updated its Application with current figures.

[1] It appears the Tribe's application used a pie chart published on the County's website to support its $266.5 million figure for the County **2020-21**. This is developed from the AB8 allocation and does not reflect actual collections and distributions to government entities, including school districts. Here's a link to the **23-24 chart** for your information: **https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/auditor-controller-treasurer-tax-collector/divisions/property-tax-accounting**. It shows the estimated total Proposition 13 tax levy at $1.5 billion for 2023-24 collected, with an estimated $306.5 million allocated to the County and the remaining allocated to special districts, cities, redevelopment, and schools.

The actual amount of taxes allocated to the County's General Fund, for 2019-20 was $267,585,034.95 (net after redevelopment contributions); for 2021-22 it was $295,344,895.85 (net after redevelopment contributions); for 2022-23 it was $316,131,595.80 (net after redevelopment contributions). The 2023-24 period has not yet closed, however, actual year to date figures show $316,596,253.23 collected (net after redevelopment contributions) for the current year. See Attachment A.

The amount of property taxes collected for the subject parcel from 2019-20 to current is shown in the chart below. (See Attachment B for additional detail.) The chart also shows the progressive increase over time due to changes in the consumer price index, and the substantial increases that can occur when property changes ownership and a new assessment at current fair market value is established as a new base year value, pursuant to California's Proposition 13, as demonstrated by the 47.26% increase in taxes upon the 2021 transfer to Sonoma Rose LLC.

	2019-20		2020-21		2021-22		2022-23		2023-24	
Tax Type	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax
Prop 13 1%	1.00000	$ 82,059.56	1.00000	$ 83,702.14	1.00000	$ 84,570.00	1.00000	$ 86,525.78	1.00000	$ 125,459.98
Ad Valorem	0.12750	10,462.60	0.11700	9,793.16	0.10950	9,260.38	0.10950	9,474.52	0.13450	16,874.22
Direct Charges		135.46		182.54		540.98		1,970.10		1,944.08
Total	**1.12750**	**$ 92,657.62**	**1.11700**	**$ 93,677.84**	**1.10950**	**$ 94,371.36**	**1.10950**	**$ 97,970.40**	**1.13450**	**$ 144,278.28**

The Tribe cites $266.5 million as the amount of property taxes collected by the County of Sonoma for fiscal year 2020-21. The amount stated by the Tribe is significantly lower than the amount actually collected, which includes amounts collected on behalf of schools and other entities.

If the Property is taken into trust, the County and State will suffer a material financial impact every year, and every decade, in perpetuity, unless and until the Property is removed from trust. For example, based on the current property taxes ($144,278.28), in a ten-year span, if the land is taken into trust, the jurisdictions will collectively suffer an impact of loss property tax revenue of approximately $1,609,131.87, depending on the market value of the property, and absent any new construction or changes of ownership, both of which are events that trigger reassessment for land not in trust. That figure assumes a modest average annual growth rate of 2%, (Proposition 13 caps annual property tax increases at 2%), and also assumes no changes in ownership or new construction or change in use or development. The loss of approximately $1,609,131.87, or more, in tax revenue every decade, which would fund essential government functions and services, cannot fairly be called immaterial, particularly for a parcel that, if developed as the tribe proposes, will demand increased government services and enhanced surrounding infrastructure over time compared to current day. See Attachment C for that future projected loss. See Attachment D for a list of affected taxing entities with their contact information. See Attachment E for assessment information for the property.

We explain below the numerous status quo restrictions on the property. The taxable value of the property reflects the restrictions on that use. If the Property were to stay in County's taxing

jurisdiction, and if the restrictions did not exist, then valuation of the property and corresponding taxes would be much higher. Moreover, if the land stayed in the County's taxing jurisdiction, the County would benefit over time from any reassessments triggered by changes in ownership of the property and/or the construction of new improvements. For instance, the costs to construct recent luxury hotels in the area are between $800-$1,200/sq ft or about $1.3M/room. The Sonoma County Assessor would estimate that the casino gaming area would involve similar costs as it would include significant electrical and security work. Based on the planned combined square footage of the planned hotel resort, casino, and event center at 807,067 square feet, using $1,000/sf cost figures, the development would be valued at $807,067,000 fair market value. *Using a 1.134500 tax rate, property taxes for the tribe's planned project would be approximately $9,156,175.12, annually, not accounting for increase to the CPI*. While we recognize that these are rough figures and that an income approach to valuation might be done to generate a comparison value, the County nevertheless provides this information to illustrate the point that when a development is assessed and taxed locally based on its fair market value as actually developed, then the revenue to the government from property taxes paid for the property to support services for that developed property is proportionate. To do otherwise artificially lessens the real impact to the local government. Moreover, the County notes that the BIA did not provide notice of the Application to affected taxing entities based on the service list attached to the notice the County received. The Bureau must give those entities an opportunity to comment directly as to impacts caused by loss of tax revenue stemming from a fee to trust acquisition. The County does not have the information for those independent entities, but the Bureau needs that information to fully evaluate the impact of the loss of tax revenue to the localities. Finally, it is not enough to say there is no impact because the land will not be taxable once the land is in trust. That interpretation of the regulatory standard would render it meaningless, which the rules of statutory construction abhor.

Tax revenue, both current and prospective, is used to support public services that directly and indirectly benefit the property. As a result, to appreciate the true impact to the County of the loss of land from its ad valorem tax roll, one must look at the status of the Property over time, and at the demand for public services created by the property's use.

The Secretary has specifically requested that the County identify the annual amount of property taxes allocated to the County, and any governmental services currently provided by the County. Again, please see Attachment B for tax information, and below for information on impacts to services as much as can be ascertained without a completed environmental impact statement. The County currently provides local governmental services to all parcels in the unincorporated area. These services include law enforcement and criminal justice, fire protection and other emergency services, health and human services, and transportation and public works, as detailed below. With a completed EIS (with a full project description) and more time for analysis the County may be able to provide dollar figures to quantify impacts. The Application lacks this critical information at this time.

2. Public Services to the Property.

Under 25 C.F.R. 151.11(a) and 151.10(e) the BIA must consider the impact on the County from removal of the land from tax rolls, which in this case is not only the lost revenue but also the adverse impact on government services. The Property is in the unincorporated area of the County and proposes a significant change in land use from agriculture to a large scale visitor-serving resort, open 24-hours per day, 7 days per week, in conflict with zoning and a voter community separator initiative, as described further in section B. below. The impacts of Application approval and such change in use of the property include those adverse service impacts identified below.

a. Law Enforcement & Criminal Justice.

It is well established that California is a mandatory Public Law 280 state. Under P.L. 280, the Sonoma County Sheriff's Office has criminal jurisdiction and enforcement authority over the land and activities on it. The services provided by the Sonoma County Sheriff's Office are one aspect of the services provided by the criminal justice system, which also includes SWAT, helicopter, and bomb squad services, as well as jail, district attorney, public defender, and court services. The Sonoma County Sheriff's Office advises that the proposed project will adversely impact law enforcement services by increasing the volume of calls for law enforcement services, the number of visitors to the area, response times, and crime rates. If the project is completed, the Sheriff's Office would require additional funding for at least one new 24-hour/7 days per week patrol fixed post position. A fixed post position can require at least six deputy sheriff allocations and overtime to cover the necessary shifts. Other divisions of the criminal justice system, including the jail, district attorney, public defender, and courts will be impacted relative to the number of offenders that enter the system as a result of conduct on or related to the casino property. The analysis fails to show how these impacts have been mitigated. Instead, they will be aggravated by the loss of tax revenue.

b. Fire Protection & Other Emergency Services.

The Sonoma County Fire Prevention Division is responsible for Fire Code enforcement as related to new development on the Property. The Sonoma County Office of Emergency Management would have a role in disaster response, and they oversee the Operational Area during a disaster, including coordinating and hosting a call of all area partners including tribes. It also handles disaster response planning. Sonoma County Fire District (an entity separate and independent from the County of Sonoma), currently provides fire services to the Property. Special districts, including fire districts, are experiencing reductions in funding and a corresponding reduction in personnel and capacity. The entire system is overburdened. It should be noted that if the Taxpayer Protection and Accountability Act of 2024 (a pending statewide initiative) passes, the District's financial resources will be impacted. The Application is silent as to whether Sonoma County Fire District has the capacity to provide services to the Property if

developed consistent with the Tribe's plans. Given the unclear capacity of the Sonoma County Fire in the Application and similar fire districts, and the responsibility of County Service Area departments to provide mutual aide, the reduction of tax revenue further impacts the County's ability to provide these critical life and safety services to the proposed trust property. Even if the Tribe proposes agreements with these entities, it is not stated if they require approval from the federal government or if they will include a waiver of sovereign immunity in order to be legally enforceable. Moreover, the impact of the proposed trust acquisition goes beyond providing services with no property tax revenue contributions from the parcel, but also the substantially increased service demands on the County and related disaster and fire response agencies should there be a need during, for example, a wildfire event. As stated earlier, the hotel five miles south of the facility burned in the 2017 Tubbs fire, so this is a real need to be prepared for and properly resourced for. The BIA must consider this impact. The existing transportation and road infrastructure was not built or designed to a standard to accommodate evacuation of a facility of the size planned by the Koi Nation. Those physical constraints make disaster response planning, staffing, and coordination even more important and costly. Inappropriate development in high-risk areas, with difficult or high-traffic-volume evacuation routes, costs money in terms of emergency preparation.

The BIA must consider that these impacts are not hypothetical, given recent experience with nearby wildfire necessitating regional evacuations.

c. Health & Human Services.

The County Departments of Health Services and Human Services are currently responsible for services to the Property. However, because the land is primarily agricultural, the County Department of Health Services is not actively providing specific services to the Property. However, if the property is developed as a resort casino, the areas of new demand for the Department of Health Services are: problem and pathological gambling, alcohol-related problems, and increased domestic violence and sexual assault, food-borne illnesses, pool illness and safety hazards, emergency medical services (EMS) impacts, inspection of business activities impacting health, and animal care and control issues. Additionally, as a large facility where substantial numbers of people work and congregate, managing disease control and response – such as was seen for the Covid-19 pandemic, becomes an added new burden on the department. It is not known if the tribe intends to follow future public health orders that may entail closing its facility; if not, it can unduly strain the county's disease response system. The areas of concern for the Department of Human Services overlap in several areas with those of the Department of Health Services, primarily regarding problem and pathological gambling, alcohol-related problems, and increased domestic violence and sexual assault, as these types of problems have a demonstrated connection to the safety of children, intimate partners, and vulnerable adults, primarily seniors. See Ontario Problem Gambling Study, June 2007, in which researchers studied 182 gamblers, with 62% of them self-reporting perpetration of a physical assault on an intimate

partner. Again, the impacts on public services are exacerbated by the project which will also not contribute to a stream of property tax that pay for them.

d. Transportation & Public Works.

The Sonoma Department of Transportation and Public Works (a.k.a. Sonoma Public Infrastructure or SPI) is presently responsible for maintaining the portion of Shiloh Road that provides direct access to the proposed casino project on the Property. The proposed trust acquisition presents significant transportation and traffic related impacts that have not been mitigated. First, the region is underserved by public transportation for the size of development contemplated by the tribe. Adding a business that relies heavily on lower paid unskilled labor, many of whom may be dependent on public transportation, not to mention customers who also may be dependent on public transportation, will further and significantly impact these resources and the public agencies that provide them. Second, SPI has not yet seen the traffic analysis in the planned but not released Environmental Impact Statement. The County expects over time there may be a need for a variety of traffic improvements outside of the property boundaries, such as traffic signals, signage, vegetation clearing, or turn lanes. But this cannot be confirmed without the EIS. The county does not own sufficient right of way to meaningfully widen the road. SPI would need more information regarding what off-reservation infrastructure improvements would be needed due to the project in order to provide cost estimates for constructing and maintaining such infrastructure. Third, impacts to Shiloh Road, Faught Road, and other surrounding roads are anticipated based on the traffic numbers reported in the EA), which should be updated and more fully analyzed in the anticipated EIS. Increased demand for maintenance of these roads presents an additional burden on the County.

These tax and related impacts demonstrate that, without a clear binding mitigation plan, the Secretary should exercise his discretion to deny the Application. The necessary information to approve the Application has not been provided.

B. The Level Of Jurisdictional Problems And Potential Conflicts Of Land Use Require That The Application Be Denied (25 C.F.R. § 151.11(a), referencing 25 C.F.R. § 151.10(f)).

In considering the Application the Secretary must carefully consider the: "Jurisdictional problems and potential conflicts of land use which may arise." (25 C.F.R. §151.11(a) referencing 151.10(f).) Much of the information about the project necessary to evaluate these problems and conflicts has not yet been provided, such that the public is being deprived of an opportunity to comment on the actual project. However, the available information indicates the problems and conflicts are major.

The Application utilizes both circular and incorrect logic to conclude that what it calls "jurisdictional issues" will not be present. Contrary to the applicant's statements in the Application, the State would not have civil jurisdiction over the land under P.L. 280. But more fundamentally, the applicant's logic ignores the actual scope of the regulation and the myriad of problems created by the proposal.

As discussed throughout these comments, the direct and cumulative impacts of placing a massive entertainment and lodging facility on land where this type of use is prohibited leads to very significant problems. Extensive planning efforts and voter-approved ballot measures have supported containing sprawl and maintaining the agricultural quality and character of the land between cities. Breach of these land use, zoning, and voter-enacted measures would adversely impact the environment, including federally protected species, and threaten the County's continuing efforts to contain sprawl, protect farmland, and coherently plan for major uses. The significance of this conflict is also that providing services to this use conflicts with regional planning initiatives. There is insufficient infrastructure for this use because the applicant has chosen a location where the use is prohibited, and urban services cannot be extended to the use. (General Plan Policy LU-3e).

1. Sonoma County General Plan and Zoning Ordinance Conflicts, And Associated Impacts And Conflicts With Regional Planning.

The Application at issue is a frontal assault on inter-governmental actions to constrain sprawl in Sonoma County. In 1989, Sonoma County adopted Community Separator policies in its General Plan. Community Separators are rural open space lands around cities and unincorporated communities in Sonoma County that maintain community identities, prevent sprawl, protect natural resources, and provide visual separation between cities and unincorporated communities. In 1996, these Community Separator policies were strengthened and reiterated by a ballot measure that required voter approval of any changes in land use density or intensity if the cities had adopted urban growth boundaries. In the same election or shortly thereafter the cities adopted complementary Urban Growth Boundaries, and Sonoma County became the first county in the nation to establish comprehensive, voter-approved growth boundaries and separators to require city-centered growth. Today, each city in the county has a voter-approved Urban Growth Boundary, and the County has a complementary and voter-approved greenbelt outside each Urban Growth Boundary. As the 1996 initiative discussed, this inter-agency planning framework also implemented many State anti-sprawl goals:

> "(a) Article XIII, section 8 of the California Constitution encouraging the 'conservation, preservation and continued existence of open space lands' for 'recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber.'
>
> (b) Articles XIIIA and XIIIB of the California Constitution limiting local government tax revenues and spending and thereby encouraging the efficient physical development of communities that will reduce expenditures for public safety, streets, utilities and other publicly financed, operated and maintained improvements.

(c) The Planning and Zoning Law (Government Code section 65562) assuring 'that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible' and that they will 'prepare and carry out open-space plans.'

(d) The Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§56000 et seq.) discouraging annexations and other changes in organization that result in urban sprawl and its implementation in Sonoma County by resolution number 2119, dated May 7, 1992, of the Sonoma County Local Agency Formation Commission." (Sonoma County Ordinance 5003R, 1996)

The framework established by Urban Growth Boundaries and Community Separators is core to the land use planning for the site, including the available infrastructure.

The Urban Growth Boundary framework is not only core to Sonoma County land use policy, but the growth policy for the Bay Area as a whole. The Association of Bay Area Governments and Metropolitan Transportation Commission have integrated the preservation of Urban Growth Boundaries into Plan Bay Area 2050, meaning that all land use and transportation planning (city and county) within the Bay Area's nine counties is framed around the preservation of these boundaries.[2]

The applicant's proposed site is outside of the Town of Windsor's Urban Growth Boundary and within the County's Community Separator. The project conflicts with the general plan and zoning designations that flow from the Community Separator controls on sprawl. The proposed property has a General Plan land use designation of "Land Intensive Agriculture 20-acre per dwelling unit." The property's zoning is "LIA (Land Intensive Agriculture) B6 20 (20 acres per dwelling unit density), F1 (Floodway Combining District) F2 (Floodplain) RC50/25 (Riparian Corridor 50/25 foot setbacks) SR (Scenic Resources) VOH (Valley Oak Habitat)."

As explained in more detail below, the conversion of the use of the parcel from the existing agricultural and single family residential to development and operation of a casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure within the

[2] ABAG & MTC, Plan Bay Area 2050 (2021), https://planbayarea.org/sites/default/files/documents/Plan_Bay_Area_2050_October_2021.pdf

project site, is inconsistent and in conflict with Sonoma County's General Plan and Zoning Ordinance, including the Community Separator initiative, Measure K.[3]

The property is zoned for Land Intensive Agricultural use. The purpose of the Land Intensive Agriculture (LIA) zoning district is to enhance and protect lands best suited for permanent agricultural use and capable of relatively high production per acre of land and implement the land intensive agriculture land use category of the general plan and the policies of the agricultural resources element (Zoning Code Section 26-06-020). Approximately 47 acres of the subject parcel is designated Farmland of Statewide Importance, 8 acres designated Farmland of Local Importance, and 13 acres of Prime Farmland. The Sonoma County General Plan Agricultural Resources Element and Open Space and Resource Conservation Element encourage the preservation of lands containing prime agricultural and productive woodland soils and to avoid conversion to incompatible commercial uses. The General Plan policies explicitly state that new uses on agriculturally zoned land that are not in the service of agricultural activities are not allowed. Policies further state that visitor-serving uses in agricultural areas shall be accessory to a primary agricultural use and shall be limited in scope and intensity relative to the agricultural use. Consistent with General Plan policy, commercial entertainment centers, such as the proposed project, and similar intensities of commercial use are expressly not permitted. The proposed project is inconsistent with the purpose of the Land Intensive Agriculture zoning district.

Hotels and resorts are largely permitted in commercial zones only and are limited to a maximum of 200 rooms (Zoning Code Section 26-28-150). Any hotel greater than 100 rooms must be located in an area served by public sewer. The project site is not currently within a designated urban service area and does not have access to public sewer service. Casinos are not an identified land use in the Sonoma County Zoning Ordinance, however, larger-scale, visitor serving uses, such as entertainment venues, are only permitted in commercial zones.

As the County has noted previously in its comments on the Environmental Assessment, the infrastructure to support this use is not in place precisely because the use is not allowed in the Community Separator. See Attachment F for those comments; see also Attachment G for comments on scope of EIS. The roads and utilities are not sufficient for this proposed use. The attempt to approve an extremely large facility without inter-governmental cooperation and the support of off-site utilities requires very thorough analysis that does not appear to be contemplated.

Pruitt Creek traverses the site from north to south. Pruitt Creek is designated critical habitat for Coho Salmon and Steelhead. Steelhead have been observed to rear and spawn in

[3] On November 8, 2016, the Community Separators Protection Ordinance, commonly called Measure K, passed with 81.1% approval. Measure K extends voter protections to Community Separator lands for 20 years.

upstream reaches where streamflow is perennial. Steelhead occupy downstream reaches during times of the year when there is flow and suitable water quality. The project has the potential to degrade habitat conditions through impacts to water quality and alterations to flow. Increased groundwater pumping has the potential to reduce streamflow. Wastewater and stormwater discharge may impact water quality due to elevated peak flows, sediment loads, and nutrients. Potential impacts to water quality and aquatic habitat conditions of Pruitt Creek should be thoroughly assessed.

The parcel's zoning includes corresponding Riparian Corridor (RC 50/25), Floodplain (F2), and Floodway (F1) combining districts along the creek. The intent of the Riparian Corridor combining district is to "to protect biotic resource communities, including critical habitat areas within and along riparian corridors, for their habitat and environmental value, and to implement the provisions of the General Plan Open Space and Resource Conservation and Water Resources Elements," (Zoning Code Section 26-65-005). The Riparian Corridor combining district establishes streamside conservation areas and largely prohibits development, including but not limited to grading, structures, vegetation removal and hardscape, with some exception, within these areas. To be consistent with the Riparian Corridor zoning district and associated General Plan policies, development of the site must protect and enhance the designated riparian corridor located along Pruitt Creek, including through the preservation of riparian vegetation, protection of water resources, floodplain management, wildlife habitat and movement, stream shade, fisheries, water quality, channel stability, groundwater recharge, opportunities for recreation, education and aesthetic appreciation and other riparian functions and values. The available information about the project to date indicates that not only is the habitat not being protected, but that the project may result in a violation of the Endangered Species Act. The project will add additional point discharge to Pruitt Creek and has potential to result in hydromodification and degraded water quality. Information about measures to ensure that stormwater impacts are fully mitigated to reduce peak runoff and protect water quality is crucial to evaluation the Application.

The water source and the wastewater for the project are of significant concern given the sensitive location. Utility services from the Town of Windsor are not available to the site because it is outside the Urban Growth Boundary. The applicant has previously proposed to treat wastewater via a proposed on-site tertiary wastewater treatment plant. This may not be feasible, and a feasible plan has certainly not been disclosed for comment. Details regarding the operation of the wastewater treatment plant, including an Operation & Maintenance Program to ensure the treatment plant is well maintained and that it operates correctly throughout the life of the project, are needed to evaluate the Application. If the project would discharge tertiary treated effluent to Pruitt Creek during the winter months, details are needed to demonstrate that the project would comply with state discharge regulations for the North Coast Regional Water Quality Control Board. Pruitt Creek downstream of the project site is known to have little or no flow for much of the year including winter months. Wastewater treatment and disposal designs should be based off site specific conditions. Multiple years of continuous streamflow data should be collected at the site, including at least one year of severe drought, to appropriately design the

wastewater treatment system, and assess potential impacts. This information is needed to evaluate this Application.

The project has previously proposed to use water from on-site wells, which would be located within the Santa Rosa Plain Groundwater Subbasin (Subbasin). This Subbasin is managed by the Santa Rosa Plain Groundwater Sustainability Agency, and recycled water from on-site wastewater treatment facilities. Insufficient data is available to analyze potential impacts of groundwater pumping on groundwater conditions and sustainability indicators within the Subbasin, including groundwater levels, groundwater storage, and depletion of interconnected surface water. The Santa Rosa Plain Groundwater Sustainability Plan, which was approved by the California Department of Water Resources in January 2023, describes sustainable management criteria that must be evaluated in assessing the Application.

There is also insufficient data to analyze potential well interference effects to nearby public and private wells, including cumulative effects, associated with future groundwater pumping. The project should coordinate with the County of Sonoma and Groundwater Sustainability Agency to implement projects and management actions identified in the Groundwater Sustainability Plan, including a monitoring program, increased conservation strategies, groundwater recharge, water reuse, and other actions to ensure groundwater sustainability. The Application cannot reasonably be evaluated without this information, but the available information indicates pronounced conflicts without a strategy to address them.

2. Other Jurisdictional Problems: Lack of Mitigation Agreements and Tribal Ordinances.

While the tribe has expressed a desire for an agreement with the County, it did not indicate if the agreement would be enforceable, and the copy of the Tribe's Application received by the County in December 2021 is silent regarding potential future legally enforceable government-to-government agreements with local governments, other tribal governments, or the State of California. Such agreements might address negative impacts from the acceptance of the land into trust, or development of the resort casino. However, at this stage it is totally speculative as to whether there will be such agreements, or if there are, whether the federal government would approve them, and if so, whether they would be legally enforceable. Because the BIA does not have the terms of such a speculative agreement, and because the parties have not agreed to presently negotiate such an agreement, there is no way of knowing if it will be reached, if it will adequately mitigate environmental impacts, if it compensate for financial impacts, and if it will be enforceable. Even if the tribe were to commit to such an agreement in its Application, in a way that mutually benefited the tribe and the County, the tribe cannot guarantee that the agreement would be approved by the federal government, under applicable federal regulations. The BIA should either refrain from acting on the Application until there is such an enforceable agreement approved by the federal government in place, or should deny the fee to trust Application for lack of such an agreement.

While the BIA certainly has a policy in favor of encouraging self-sufficiency, self-determination, and economic development for tribes; that policy is not incompatible with requiring recognition and mitigation of impacts to local governments prior to taking action on a fee-to-trust Application. This is clearly contemplated by the terms of 25 C.F.R § 151.10 and 151.11, which requires the BIA to evaluate impacts to local governments.

C. The Bureau Of Indian Affairs Is Not Equipped To Discharge The Additional Responsibilities Resulting From The Acquisition Of The Land In Trust Status (25 C.F.R. § 151.11(a), referencing 25 C.F.R. § 151.10(g)).

The Trust Application incorrectly asserts that the tribe "expects that the Bureau will be able to discharge any additional responsibilities that may arise in connection with the acquisition of the 68.60 acres in trust." The reason given for this is that the property will not be used for mining of natural resources or forestry requiring BIA management. (Application at p. 6.) We urge the Bureau to critically consider its role as owner of the property. The statements in the Application overlook the federal government's responsibilities to ensure that the operator and manager of the property (Barton Productions, LLC) is in compliance with federal law, including compliance with strict liability federal environmental laws (Endangered Species Act and Clean Water Act), and as trustee ensuring the property's natural resources, including water, are capable of sustaining the planned development and use of the property in perpetuity, or until the and is no longer in trust, and not draining local aquifers on which the property and surrounding properties depend. In this way, water resources, like timber and mineral resources, have value and need to be managed in a sustainable way. There is nothing in the Application to address what this will entail, or the burden it will place on the Bureau.

D. The Extent To Which The Tribe Has Provided Information That Allows The Secretary To Comply With The National Environmental Policy Act (25 C.F.R. § 151.11(A), Referencing 25 C.F.R. § 151.10(h)).

As noted above, the information provided to date is woefully insufficient for NEPA compliance. To date, the NEPA process has not been completed and, as demonstrated in the County's comments regarding the Environmental Assessment, has previously been seriously flawed. By circulating Notice of the Application for comment prior to completion of the Environmental Impact Statement, the Department has prevented the County from commenting on the actual project and the true impacts of the proposed acquisition and resort casino development. Both the County and the Bureau lack critical information. The Department has handicapped the County and other local agencies in being able to understand and comment on the Application, and this notice and comment period are entirely pre-mature. The Bureau does not have the information required to act on the proposed fee-to-trust acquisition. Once NEPA is complete and once the Application is complete (for instance, if a restored lands determination necessary to proceed under Part 151 is included), then the Bureau must re-notice the Application for comment.

VI. CONCLUSION

For the above reasons and light of the facts set forth in these Comments, the County of Sonoma strongly opposes the Application and urges the BIA to deny it. We remain available to discuss these comments with the BIA and the Tribe upon request.

ATTACHMENTS

A. Chart showing actual amount of taxes allocated to the County's General Fund prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC)
B. Chart showing amount of property taxes collected for the subject parcel from 2019-20 to current prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC).
C. Chart showing future projected tax loss for property if use remains the same (i.e. agricultural) prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC).
D. Distribution List: Taxing Entities – With Contact Information
E. Assessment Data from Sonoma County Assessor
F. County's Comments on EA
G. County's Scoping Comments for EIS

Attachment A
to FTT Comments

Budget v. Actual - Revenues

As Of = @current-fiscal-year-end; Years = 5; Chart Fields = Fund, Department, Account
Department [16020600] and Account [400, 40101, 42291]*
Run: 2024-05-07 08:39 PM

Account	Account Description	FY 2019-2020 Actual	FY 2020-2021 Actual	FY 2021-2022 Actual	FY 2022-2023 Actual	FY 2023-2024 Year-To-Date Actual
Fund: 10005 – General Fund						
Department: 16020600 – Prop 4 Revenue - Unallocated						
40002	Prop Tax - CY,Secured	199,506,359.08	208,601,943.13	217,320,965.02	231,472,881.11	234,237,496.93
40005	Prop Taxes - RDA Increment	(35,508,112.42)	(37,440,403.05)	(37,554,741.17)	(40,260,844.67)	(42,852,998.55)
40006	AB1290 RDA Pass Throughs	1,762,122.82	1,884,959.02	2,016,335.12	2,220,830.74	2,446,126.26
40007	H&S 33401 RDA Pass Throughs	19,308,527.04	20,092,518.52	20,293,791.10	21,954,475.93	22,660,745.31
40008	H&S 33676 RDA (2%) Allocation	1,991,092.00	2,082,132.00	2,130,234.00	2,224,058.00	2,319,758.00
40009	Property Taxes - VLF Swap	65,264,208.47	68,264,930.16	70,448,500.68	74,969,413.45	79,202,550.14
40010	Residual Prop Tax - RPTTF	6,730,435.26	11,555,134.14	11,886,730.80	13,978,780.02	8,173,229.49
40101	Prop Taxes - CY, Unsecured	7,339,482.66	7,478,496.67	7,646,527.65	8,468,982.05	9,478,022.43
42291	State Homeowners Prop Tax Relf	1,190,920.04	1,171,981.64	1,156,552.65	1,103,019.17	931,323.22
Total 16020600 – Prop 4 Revenue - Unallocated		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23
Total 10005 – General Fund		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23
		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23

Attachment B
to FTT Comments

County of Sonoma
Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2019-20 thru 2023-24

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

	FY 2019-20		FY 2020-21		FY 2021-22		FY 2022-23		FY2023-24	
Tax Type	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax
Prop 13 1%	1.00000	$ 82,059.56	1.00000	$ 83,702.14	1.00000	$ 84,570.00	1.00000	$ 86,525.78	1.00000	$ 125,459.98
Ad Valorem	0.12750	10,462.60	0.11700	9,793.16	0.10950	9,260.38	0.10950	9,474.52	0.13450	16,874.22
Direct Charges		135.46		182.54		540.98		1,970.10		1,944.08
Total	**1.12750**	**$ 92,657.62**	**1.11700**	**$ 93,677.84**	**1.10950**	**$ 94,371.36**	**1.10950**	**$ 97,970.40**	**1.13450**	**$ 144,278.28**

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2019-20

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **CLIFTON RANDALL C TR & CYNTHIA A TR**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,205,956	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.322101	26,431.47	$ 26,431.47	0.3310831182	$ (8,751.01)	**$ 17,680.46**
01300	COUNTY LIBRARY	0.021567	1,769.78	1,769.78	-	-	**1,769.78**
01700	ERAF	-	-	-	-	9,405.01	**9,405.01**
03100	SHILOH CEMETERY	0.008095	664.27	664.27	0.1118389920	(74.29)	**589.98**
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	8,921.60	8,921.60	0.0561309871	(500.78)	**8,420.82**
06000	GEN #1 SOCO WATER AGENCY	0.008683	712.52	712.52	0.0826963860	(58.92)	**653.60**
06100	SPRING LAKE PARK SCWA	0.002801	229.85	229.85	0.0827074388	(19.01)	**210.84**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,261.01	1,261.01	-	-	**1,261.01**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	230.01	230.01	-	-	**230.01**
11500	BAY AREA AIR QUALITY MGMT	0.002152	176.59	176.59	-	-	**176.59**
13200	SONOMA RCD	0.000108	8.86	8.86	0.1133990518	(1.00)	**7.86**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0925810538	-	**-**
30800	MARK WEST ELEM	0.134472	11,034.71	11,034.71	-	-	**11,034.71**
33700	SANTA ROSA CITY HIGH	0.198222	16,266.01	16,266.01	-	-	**16,266.01**
34300	SO CO JT JR COLLEGE	0.060875	4,995.38	4,995.38	-	-	**4,995.38**
34400	SCHOOL SERVICE ADMIN	0.022326	1,832.06	1,832.06	-	-	**1,832.06**
34800	SANTA ROSA AWUF	0.088077	7,227.56	7,227.56	-	-	**7,227.56**
35200	SCHOOLS EQUALIZAT AID	0.003630	297.88	297.88	-	-	**297.88**
	Prop 13 Total	1.000000	82,059.56	$ 82,059.56		$ 0.00	**$ 82,059.56**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	574.42	$ 574.42			**$ 574.42**
20603	MARK WEST ELEM 2002 BONDS	0.025000	2,051.48	2,051.48			**2,051.48**
20610	MARK WEST ELEM 2010 BONDS	0.010000	820.60	820.60			**820.60**
36700	SR HIGH DIST 1991 BOND	0.014000	1,148.84	1,148.84			**1,148.84**
36702	SR HIGH DIST 2002 BOND	0.014500	1,189.86	1,189.86			**1,189.86**
36703	SR HIGH DIST 2014 BOND	0.020000	1,641.20	1,641.20			**1,641.20**
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,066.78	1,066.78			**1,066.78**
39901	SOCO JR COLLEGE 2014 BOND	0.024000	1,969.42	1,969.42			**1,969.42**
	Ad Valorem Total	0.127500	10,462.60	10,462.60			**10,462.60**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		45.00	45.00			**45.00**
53901	SO CO FIRE DIST 2006 TAX		54.46	54.46			**54.46**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		135.46	$ 135.46			**$ 135.46**
	Grand Total	**1.127500**	**92,657.62**	**$ 92,657.62**			**$ 92,657.62**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2019-20 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2020-21

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **CLIFTON RANDALL C TR & CYNTHIA A TR**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,370,213	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.322101	26,960.55	$ 26,960.55	0.3306704042	$ (8,915.06)	**$ 18,045.49**
01300	COUNTY LIBRARY	0.021567	1,805.20	1,805.20	-	-	**1,805.20**
01700	ERAF	-	-	-	-	9,714.92	**9,714.92**
03100	SHILOH CEMETERY	0.008095	677.57	677.57	0.1117847178	(75.74)	**601.83**
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	9,100.18	9,100.18	0.0707329341	(643.68)	**8,456.50**
06000	GEN #1 SOCO WATER AGENCY	0.008683	726.79	726.79	0.0826245433	(60.05)	**666.74**
06100	SPRING LAKE PARK SCWA	0.002801	234.45	234.45	0.0826361098	(19.37)	**215.08**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,286.25	1,286.25	-	-	**1,286.25**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	234.62	234.62	-	-	**234.62**
11500	BAY AREA AIR QUALITY MGMT	0.002152	180.13	180.13	-	-	**180.13**
13200	SONOMA RCD	0.000108	9.04	9.04	0.1133049674	(1.02)	**8.02**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0919091798	-	**-**
30800	MARK WEST ELEM	0.134472	11,255.59	11,255.59	-	-	**11,255.59**
33700	SANTA ROSA CITY HIGH	0.198222	16,591.60	16,591.60	-	-	**16,591.60**
34300	SO CO JT JR COLLEGE	0.060875	5,095.37	5,095.37	-	-	**5,095.37**
34400	SCHOOL SERVICE ADMIN	0.022326	1,868.73	1,868.73	-	-	**1,868.73**
34800	SANTA ROSA AWUF	0.088077	7,372.23	7,372.23	-	-	**7,372.23**
35200	SCHOOLS EQUALIZAT AID	0.003630	303.84	303.84	-	-	**303.84**
	Prop 13 Total	1.000000	83,702.14	$ 83,702.14		$ 0.00	**$ 83,702.14**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	585.92	$ 585.92			**$ 585.92**
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,259.96	2,259.96			**2,259.96**
20610	MARK WEST ELEM 2010 BONDS	0.010000	837.02	837.02			**837.02**
36700	SR HIGH DIST 1991 BOND	0.007500	627.76	627.76			**627.76**
36702	SR HIGH DIST 2002 BOND	0.013500	1,129.98	1,129.98			**1,129.98**
36703	SR HIGH DIST 2014 BOND	0.015000	1,255.54	1,255.54			**1,255.54**
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,088.12	1,088.12			**1,088.12**
39901	SOCO JR COLLEGE 2014 BOND	0.024000	2,008.86	2,008.86			**2,008.86**
	Ad Valorem Total	0.117000	9,793.16	9,793.16			**9,793.16**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		90.00	90.00			**90.00**
53901	SO CO FIRE DIST 2006 TAX		56.54	56.54			**56.54**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		182.54	$ 182.54			**$ 182.54**
	Grand Total	**1.117000**	**93,677.84**	**$ 93,677.84**			**$ 93,677.84**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2020-21 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2021-22

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,456,999	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.322101	27,240.10	$ 27,240.10	0.3318590317	$ (9,039.87)	**$ 18,200.23**
01300	COUNTY LIBRARY	0.021567	1,823.92	1,823.92	-	-	**1,823.92**
01700	ERAF	-	-	-	-	9,850.13	**9,850.13**
03100	SHILOH CEMETERY	0.008095	684.59	684.59	0.1119967875	(76.67)	**607.92**
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	9,194.53	9,194.53	0.0709154931	(652.03)	**8,542.50**
06000	GEN #1 SOCO WATER AGENCY	0.008683	734.32	734.32	0.0829167850	(60.89)	**673.43**
06100	SPRING LAKE PARK SCWA	0.002801	236.88	236.88	0.0829282069	(19.64)	**217.24**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,299.59	1,299.59	-	-	**1,299.59**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	237.05	237.05	-	-	**237.05**
11500	BAY AREA AIR QUALITY MGMT	0.002152	181.99	181.99	-	-	**181.99**
13200	SONOMA RCD	0.000108	9.13	9.13	0.1132552714	(1.03)	**8.10**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0914965724	-	**-**
30800	MARK WEST ELEM	0.134472	11,372.30	11,372.30	-	-	**11,372.30**
33700	SANTA ROSA CITY HIGH	0.198222	16,763.63	16,763.63	-	-	**16,763.63**
34300	SO CO JT JR COLLEGE	0.060875	5,148.20	5,148.20	-	-	**5,148.20**
34400	SCHOOL SERVICE ADMIN	0.022326	1,888.11	1,888.11	-	-	**1,888.11**
34800	SANTA ROSA AWUF	0.088077	7,448.67	7,448.67	-	-	**7,448.67**
35200	SCHOOLS EQUALIZAT AID	0.003630	306.99	306.99	-	-	**306.99**
	Prop 13 Total	1.000000	84,570.00	$ 84,570.00		$ 0.00	**$ 84,570.00**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	591.98	$ 591.98			**$ 591.98**
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,283.38	2,283.38			**2,283.38**
20610	MARK WEST ELEM 2010 BONDS	0.010000	845.70	845.70			**845.70**
36702	SR HIGH DIST 2002 BOND	0.013500	1,141.70	1,141.70			**1,141.70**
36703	SR HIGH DIST 2014 BOND	0.015000	1,268.54	1,268.54			**1,268.54**
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,099.40	1,099.40			**1,099.40**
39901	SOCO JR COLLEGE 2014 BOND	0.024000	2,029.68	2,029.68			**2,029.68**
	Ad Valorem Total	0.109500	9,260.38	9,260.38			**9,260.38**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			**67.50**
53901	SO CO FIRE DIST 2006 TAX		437.48	437.48			**437.48**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		540.98	$ 540.98			**$ 540.98**
	Grand Total	**1.109500**	**94,371.36**	**$ 94,371.36**			**$ 94,371.36**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2021-22 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2022-23

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,652,578	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.332685	28,785.83	$ 28,785.83	0.3314985406	$ (9,542.46)	**$ 19,243.37**
01300	COUNTY LIBRARY	0.022276	1,927.45	1,927.45	-	-	**1,927.45**
01700	ERAF	-	-	-	-	10,148.09	**10,148.09**
03100	SHILOH CEMETERY	0.008361	723.44	723.44	0.1120287674	(81.05)	**642.39**
05900	SONOMA COUNTY FIRE DISTRICT	0.079433	6,873.00	6,873.00	0.0637944813	(438.46)	**6,434.54**
06000	GEN #1 SOCO WATER AGENCY	0.008969	776.05	776.05	0.0828453614	(64.29)	**711.76**
06100	SPRING LAKE PARK SCWA	0.002893	250.32	250.32	0.0828574114	(20.74)	**229.58**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015872	1,373.34	1,373.34	-	-	**1,373.34**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002895	250.49	250.49	-	-	**250.49**
11500	BAY AREA AIR QUALITY MGMT	0.002223	192.35	192.35	-	-	**192.35**
13200	SONOMA RCD	0.000111	9.60	9.60	0.1131833957	(1.09)	**8.51**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0906084479	-	**-**
30800	MARK WEST ELEM	0.138891	12,017.65	12,017.65	-	-	**12,017.65**
33700	SANTA ROSA CITY HIGH	0.204736	17,714.94	17,714.94	-	-	**17,714.94**
34300	SO CO JT JR COLLEGE	0.062876	5,440.39	5,440.39	-	-	**5,440.39**
34400	SCHOOL SERVICE ADMIN	0.023059	1,995.20	1,995.20	-	-	**1,995.20**
34800	SANTA ROSA AWUF	0.090971	7,871.34	7,871.34	-	-	**7,871.34**
35200	SCHOOLS EQUALIZAT AID	0.003749	324.39	324.39	-	-	**324.39**
	Prop 13 Total	1.000000	86,525.78	$ 86,525.78		$ (0.00)	**$ 86,525.78**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	605.68	$ 605.68			**$ 605.68**
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,336.18	2,336.18			**2,336.18**
20610	MARK WEST ELEM 2010 BONDS	0.011000	951.78	951.78			**951.78**
36702	SR HIGH DIST 2002 BOND	0.011000	951.78	951.78			**951.78**
36703	SR HIGH DIST 2014 BOND	0.018500	1,600.72	1,600.72			**1,600.72**
39900	SOCO JR COLLEGE 2002 BOND	0.012000	1,038.30	1,038.30			**1,038.30**
39901	SOCO JR COLLEGE 2014 BOND	0.023000	1,990.08	1,990.08			**1,990.08**
	Ad Valorem Total	0.109500	9,474.52	9,474.52			**9,474.52**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			**67.50**
53901	SO CO FIRE DIST 2006 TAX		570.20	570.20			**570.20**
58400	SANTA ROSA PLAIN GSA FEE		1,296.40	1,296.40			**1,296.40**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		1,970.10	$ 1,970.10			**$ 1,970.10**
	Grand Total	**1.109500**	**97,970.40**	**$ 97,970.40**			**$ 97,970.40**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2022-23 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2023-24

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 12,545,999	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.332685	41,738.64	$ 41,738.64	0.3311356897	$ (13,821.15)	**$ 27,917.49**
01300	COUNTY LIBRARY	0.022276	2,794.75	2,794.75	-	-	**2,794.75**
01700	ERAF	-	-	-	-	14,728.29	**14,728.29**
03100	SHILOH CEMETERY	0.008361	1,048.97	1,048.97	0.1120143760	(117.50)	**931.47**
05900	SONOMA COUNTY FIRE DISTRICT	0.079433	9,965.66	9,965.66	0.0667177562	(664.89)	**9,300.77**
06000	GEN #1 SOCO WATER AGENCY	0.008969	1,125.25	1,125.25	0.0827609724	(93.13)	**1,032.12**
06100	SPRING LAKE PARK SCWA	0.002893	362.96	362.96	0.0827730183	(30.04)	**332.92**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015872	1,991.30	1,991.30	-	-	**1,991.30**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002895	363.21	363.21	-	-	**363.21**
11500	BAY AREA AIR QUALITY MGMT	0.002223	278.90	278.90	-	-	**278.90**
13200	SONOMA RCD	0.000111	13.93	13.93	0.1130824262	(1.58)	**12.35**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0897720282	-	**-**
30800	MARK WEST ELEM	0.138891	17,425.26	17,425.26	-	-	**17,425.26**
33700	SANTA ROSA CITY HIGH	0.204736	25,686.18	25,686.18	-	-	**25,686.18**
34300	SO CO JT JR COLLEGE	0.062876	7,888.42	7,888.42	-	-	**7,888.42**
34400	SCHOOL SERVICE ADMIN	0.023059	2,892.98	2,892.98	-	-	**2,892.98**
34800	SANTA ROSA AWUF	0.090971	11,413.22	11,413.22	-	-	**11,413.22**
35200	SCHOOLS EQUALIZAT AID	0.003749	470.35	470.35	-	-	**470.35**
	Prop 13 Total	1.000000	125,459.98	$ 125,459.98		$ (0.00)	**$ 125,459.98**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	878.20	$ 878.20			**$ 878.20**
20603	MARK WEST ELEM 2002 BONDS	0.027000	3,387.40	3,387.40			**3,387.40**
20610	MARK WEST ELEM 2010 BONDS	0.011000	1,380.04	1,380.04			**1,380.04**
36702	SR HIGH DIST 2002 BOND	0.010000	1,254.58	1,254.58			**1,254.58**
36703	SR HIGH DIST 2014 BOND	0.018000	2,258.26	2,258.26			**2,258.26**
36704	SR HIGH DIST 2022 BOND	0.028000	3,512.86	3,512.86			**3,512.86**
39900	SOCO JR COLLEGE 2002 BOND	0.011500	1,442.78	1,442.78			**1,442.78**
39901	SOCO JR COLLEGE 2014 BOND	0.022000	2,760.10	2,760.10			**2,760.10**
	Ad Valorem Total	0.134500	16,874.22	16,874.22			**16,874.22**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			**67.50**
53901	SO CO FIRE DIST 2006 TAX		544.38	544.38			**544.38**
58400	SANTA ROSA PLAIN GSA FEE		1,296.20	1,296.20			**1,296.20**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		1,944.08	$ 1,944.08			**$ 1,944.08**
	Grand Total	**1.134500**	**144,278.28**	**$ 144,278.28**			**$ 144,278.28**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2023-24 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

Attachment C
to FTT Comments

County of Sonoma
10-Year Property Tax Projection by Taxing Agency
Koi Nation of Northern California
FY 2024-25 thru 2033-34

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**
Projected Annual Assessed Value Increase: **2.00%**

Tax Code	Taxing Agencies	*Base Year Property Tax FY 2023-24*	Projected Annual Property Tax Loss										**Total 10-Year Projected Loss**
			FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	FY 2029-30	FY 2030-31	FY 2031-32	FY 2032-33	FY 2033-34	
	Prop 13 (1%) Levy												
01200	COUNTY GENERAL	*27,917.49*	28,475.84	29,045.36	29,626.27	30,218.80	30,823.18	31,439.64	32,068.43	32,709.80	33,364.00	34,031.28	**311,802.60**
01300	COUNTY LIBRARY	*2,794.75*	2,850.65	2,907.66	2,965.81	3,025.13	3,085.63	3,147.34	3,210.29	3,274.50	3,339.99	3,406.79	**31,213.79**
01700	ERAF	*14,728.29*	15,022.86	15,323.32	15,629.79	15,942.39	16,261.24	16,586.46	16,918.19	17,256.55	17,601.68	17,953.71	**164,496.19**
03100	SHILOH CEMETERY	*931.47*	950.10	969.10	988.48	1,008.25	1,028.42	1,048.99	1,069.97	1,091.37	1,113.20	1,135.46	**10,403.34**
05900	SONOMA COUNTY FIRE DISTRICT	*9,300.77*	9,486.79	9,676.53	9,870.06	10,067.46	10,268.81	10,474.19	10,683.67	10,897.34	11,115.29	11,337.60	**103,877.74**
06000	GEN #1 SOCO WATER AGENCY	*1,032.12*	1,052.76	1,073.82	1,095.30	1,117.21	1,139.55	1,162.34	1,185.59	1,209.30	1,233.49	1,258.16	**11,527.52**
06100	SPRING LAKE PARK SCWA	*332.92*	339.58	346.37	353.30	360.37	367.58	374.93	382.43	390.08	397.88	405.84	**3,718.36**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	*1,991.30*	2,031.13	2,071.75	2,113.19	2,155.45	2,198.56	2,242.53	2,287.38	2,333.13	2,379.79	2,427.39	**22,240.30**
10000	MARIN/SONOMA MOSQUITO & VECTOR	*363.21*	370.47	377.88	385.44	393.15	401.01	409.03	417.21	425.55	434.06	442.74	**4,056.54**
11500	BAY AREA AIR QUALITY MGMT	*278.90*	284.48	290.17	295.97	301.89	307.93	314.09	320.37	326.78	333.32	339.99	**3,114.99**
13200	SONOMA RCD	*12.35*	12.60	12.85	13.11	13.37	13.64	13.91	14.19	14.47	14.76	15.06	**137.96**
30800	MARK WEST ELEM	*17,425.26*	17,773.77	18,129.25	18,491.84	18,861.68	19,238.91	19,623.69	20,016.16	20,416.48	20,824.81	21,241.31	**194,617.90**
33700	SANTA ROSA CITY HIGH	*25,686.18*	26,199.90	26,723.90	27,258.38	27,803.55	28,359.62	28,926.81	29,505.35	30,095.46	30,697.37	31,311.32	**286,881.66**
34300	SO CO JT JR COLLEGE	*7,888.42*	8,046.19	8,207.11	8,371.25	8,538.68	8,709.45	8,883.64	9,061.31	9,242.54	9,427.39	9,615.94	**88,103.50**
34400	SCHOOL SERVICE ADMIN	*2,892.98*	2,950.84	3,009.86	3,070.06	3,131.46	3,194.09	3,257.97	3,323.13	3,389.59	3,457.38	3,526.53	**32,310.91**
34800	SANTA ROSA AWUF	*11,413.22*	11,641.48	11,874.31	12,111.80	12,354.04	12,601.12	12,853.14	13,110.20	13,372.40	13,639.85	13,912.65	**127,470.99**
35200	SCHOOLS EQUALIZAT AID	*470.35*	479.76	489.36	499.15	509.13	519.31	529.70	540.29	551.10	562.12	573.36	**5,253.28**
	Prop 13 Total	*125,459.98*	127,969.20	130,528.60	133,139.20	135,802.01	138,518.05	141,288.40	144,114.16	146,996.44	149,936.38	152,935.13	**1,401,227.57**
	Voter Approved Debt												
06700	WS DAM-RUSSIAN RIVER PROJ	*878.20*	895.76	913.68	931.95	950.59	969.60	988.99	1,008.77	1,028.95	1,049.53	1,070.52	**9,808.34**
20603	MARK WEST ELEM 2002 BONDS	*3,387.40*	3,455.15	3,524.25	3,594.74	3,666.63	3,739.96	3,814.76	3,891.06	3,968.88	4,048.26	4,129.23	**37,832.92**
20610	MARK WEST ELEM 2010 BONDS	*1,380.04*	1,407.64	1,435.79	1,464.51	1,493.80	1,523.68	1,554.15	1,585.23	1,616.93	1,649.27	1,682.26	**15,413.26**
36702	SR HIGH DIST 2002 BOND	*1,254.58*	1,279.67	1,305.26	1,331.37	1,358.00	1,385.16	1,412.86	1,441.12	1,469.94	1,499.34	1,529.33	**14,012.05**
36703	SR HIGH DIST 2014 BOND	*2,258.26*	2,303.43	2,349.50	2,396.49	2,444.42	2,493.31	2,543.18	2,594.04	2,645.92	2,698.84	2,752.82	**25,221.95**
36704	SR HIGH DIST 2022 BOND	*3,512.86*	3,583.12	3,654.78	3,727.88	3,802.44	3,878.49	3,956.06	4,035.18	4,115.88	4,198.20	4,282.16	**39,234.19**
39900	SOCO JR COLLEGE 2002 BOND	*1,442.78*	1,471.64	1,501.07	1,531.09	1,561.71	1,592.94	1,624.80	1,657.30	1,690.45	1,724.26	1,758.75	**16,114.01**
39901	SOCO JR COLLEGE 2014 BOND	*2,760.10*	2,815.30	2,871.61	2,929.04	2,987.62	3,047.37	3,108.32	3,170.49	3,233.90	3,298.58	3,364.55	**30,826.78**
	Ad Valorem Total	*16,874.22*	17,211.71	17,555.94	17,907.07	18,265.21	18,630.51	19,003.12	19,383.19	19,770.85	20,166.28	20,569.62	**188,463.50**
	Direct Charges												
53900	SO CO FIRE DIST SPEC TAX	*67.50*	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	**675.00**
53901	SO CO FIRE DIST 2006 TAX	*544.38*	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	**5,443.80**
58400	SANTA ROSA PLAIN GSA FEE	*1,296.20*	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	**12,962.00**
74200	MARIN-SONOMA MOSQUITO #1	*24.00*	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	**240.00**
96200	SF BAY RESTORATION AUTH	*12.00*	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	**120.00**
	Direct Charge Total	*1,944.08*	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	**19,440.80**
	Grand Total	*144,278.28*	**147,124.99**	**150,028.62**	**152,990.35**	**156,011.30**	**159,092.64**	**162,235.60**	**165,441.43**	**168,711.37**	**172,046.74**	**175,448.83**	**1,609,131.87**

Note:
1) The projected annual assessed value increase of 2% is based on the Prop 13 annual inflation factor limit pursuant to Revenue and Taxation Code §51.
2) Direct charges are projected to remain flat and are not adjusted by the annual inflation factor.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/14/2024

Attachment D
to FTT Comments

Tax Code	Description	Revenue Type	Local Agency Name	Local Agency Contact Name	Local Agency Contact Email	23-24 Tax Bill Amount
01200	COUNTY GENERAL	Prop 13	County of Sonoma	Lindsay VanMidde	lindsay.vanmidde@sonoma-county.org	$ 27,917.49
01300	COUNTY LIBRARY	Prop 13	Sonoma County Library	Ludmyrna Lopez	accounting@sonomalibrary.org	2,794.75
01700	ERAF		Sonoma County Office of Education	Felicia Aguirre	faguirre@scoe.org	14,728.29
03100	SHILOH CEMETERY	Prop 13	Shiloh District Cemetery	Victor Kunkel	shilohcemetery@gmail.com	931.47
05900	SONOMA COUNTY FIRE DISTRICT	Prop 13	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	9,300.77
06000	GENERAL #1 WATER	Prop 13	Sonoma County Water Agency	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	1,032.12
06100	SPRING LAKE PARK WATER	Prop 13	Sonoma County Spring Lake Park Water	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	332.92
06200	ZN 1A LAGUNA-MARK WEST WATER	Prop 13	Sonoma County Zn1A Laguna-MW Water	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	1,991.30
10000	MARIN-SONOMA MCQITO ABT	Prop 13	Marin/Sonoma Mosquito & Vector Control District	Elizabeth Garcia	LizG@msmosquito.org	363.21
11500	BAY AREA AIR QUALITY MGMT	Prop 13	Bay Area Air Quality Management District	Candace Pina	airdistricttax@baaqmd.gov	278.90
13200	SONOMA RCD	Prop 13	Sonoma Resource Conservation District	Erin Rickard	erickard@sonomarcd.org	12.35
30800	MARK WEST ELEM	Prop 13	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	17,425.26
33700	SANTA ROSA CITY HIGH	Prop 13	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	25,686.18
34300	SONOMA COUNTY JC	Prop 13	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	7,888.42
34400	SCHOOL SERVICE	Prop 13	Sonoma County Office of Education	Jeanine Thibeau	jthibeau@scoe.org	2,892.98
34800	SANTA ROSA AWUF	Prop 13	Sonoma County Office of Education	Felicia Aguirre	faguirre@scoe.org	11,413.22
35200	SCHOOL EQUALIZATION AID	Prop 13	Sonoma County Office of Education	Jeanine Thibeau	jthibeau@scoe.org	470.35
06700	WS DAM-RUSSIAN RIVER PROJ	Ad Valorem	Sonoma County Water Agency	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	878.20
20603	MARK WEST ELEM 2002 BONDS	Ad Valorem	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	3,387.40
20610	MARK WEST ELEM 2010 BONDS	Ad Valorem	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	1,380.04
36702	SR HIGH DIST 2002 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	1,254.58
36703	SR HIGH DIST 2014 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	2,258.26
36704	SR HIGH DIST 2022 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	3,512.86
39900	SOCO JR COLLEGE 2002 BOND	Ad Valorem	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	1,442.78
39901	SOCO JR COLLEGE 2014 BOND	Ad Valorem	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	2,760.10
53900	SO CO FIRE DIST SPEC TAX	Direct Charge	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	67.50
53901	SO CO FIRE DIST 2006 TAX	Direct Charge	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	544.38
58400	SANTA ROSA PLAIN GSA FEE	Direct Charge	Santa Rosa Plain Groundwater Sustainability Agency	Andy Rodgers	arodgers@westyost.com	1,296.20
74200	MARIN-SONOMA MCQITO ABT	Direct Charge	Marin/Sonoma Mosquito & Vector Control District	Elizabeth Garcia	LizG@msmosquito.org	24.00
96200	SF BAY RESTORATION AUTH	Direct Charge	SF Bay Restoration Authority	Jason Roth	jroth@nbsgov.com	12.00
						$ 144,278.28

ASW0100 - Megabyte Property Tax System - County of SONOMA

File Edit View Reports Help

ASW0100v2.5.1.029: Main **Assessor Inquiry** *May 14, 2024 9:22:19 AM (-07:00)*

Asmt: 059-300-003-000 Feeparcel: 059-300-003-000 Status: ACTIVE Owner: SONOMA ROSE LLC

Situs Address	222 E SHILOH RD SANTA ROSA		
Name Address	SONOMA ROSE LLC PO BOX 3162 SANTA ROSA CA 95402		
Status	ACTIVE	Status Date	10/27/2006
Taxability Code	000	TRA	120-009
Parcel Description	NORMAL OWNERSHIP		
SBE Number		Base Date	01/01/2022
Creating Doc#	2006I132956	Create Date	10/27/2006
Current Doc#	2021R100185	Cur Date	09/03/2021
Terminating Doc#		Term Date	
Neighborhood Code	WR1	Supl Cnt	1
Asmt Description	2007 FM REM 059-300-002 OPEN TO RD PER OR		
LandUse 1	0423 IRR VINEYD/PREMIUM W/RES		
LandUse 2			
Zoning 1		Dwell 1	1
Acres	68.60	SqFt	
SSN 1	___-__-_	SSN 2	___-__-_
Comments	FM REM 059-300-002		

Values

	Taxroll	Current	Aprdate
Land	7,835,660	7,835,660	
Structure	2,652,000	2,652,000	
FixtureRP	389,415	389,415	
Growing	1,668,924	1,668,924	
Total L&I	12,545,999	12,545,999	
Fixtures			
PPMH			
PP			
Exemption			
Net	12,545,999	12,545,999	
Homesite			

R/C # TR/Date Status

Description ENROLLED is BASE YEAR

1/2

☐ TPZ ☐ Ag Pres ☐ Etal ☐ Bonds

☐ Multi Situs ☐ 910 MH ☐ Flag 1 ☐ Flag 2 ☐ Prop 19

☐ Asmt PP ☐ Tax PP ☐ Appeal ☐ Split

Main | Has Notes | Ownership Detail | Ownership History | Exemptions | Prop Exclusions | Mfg Homes | Attributes | Value History | Situs | Sales | Parcel Desc

1/1 | Update | Phy Char. | DE | MH | TC Inq. | Apr Cntl | R/C | W/S | Images

1 records found. WIN\sql12admin, 06/29/2023 9:10:26 AM

Attachment E
to FTT Comments

OFFICE OF THE COUNTY CLERK-RECORDER-ASSESSOR-REGISTRAR OF VOTERS DEPARTMENT

Assessor Division
585 Fiscal Dr., Rm. 104
Santa Rosa, CA 95403

(707) 565-1888
Assessor@sonomacounty.ca.gov

Parcel Information	
Parcel Number	059-300-003

Situs Address	
Situs Formatted 1	222 E SHILOH RD
Situs Formatted 2	SANTA ROSA CA

Assessment	
Assessment	059300003000
Secured Assessment	1
Assessment Status	A
Assessment Description	2007 FM REM 059-300-002 OPEN TO RD PER OR

Value History	
Roll Year	2023
Land Value	$7,835,660
Structure Value	$2,652,000
Growing Value	$1,668,924
Total LI Value	$12,545,999
Fixtures Value	$0
Fixtures RP Value	$389,415
PP Business Value	$0
PP Mobile Home Value	$0
Net Value	$12,545,999

Tax Information	
Taxability Full	000
Taxability Description	NORMAL OWNERSHIP
Tax Rate Area	120009

Exemptions	
Homeowner Exemption	$0
Other Exemption	$0
Other Exemption Code	

The information contained in this report is maintained by the Assessor's Office for assessment purposes only. The Assessor's Office is not liable for any error, omission or other defect in the information provided.

Report Generated: 5/14/2024 9:20:55 AM

OFFICE OF THE COUNTY CLERK-RECORDER-ASSESSOR-REGISTRAR OF VOTERS DEPARTMENT

Assessor Division
585 Fiscal Dr., Rm. 104
Santa Rosa, CA 95403

(707) 565-1888
Assessor@sonomacounty.ca.gov

Property Information	
Use Code	0423
Use Code Description	IRR VINEYD/PREMIUM W/RES
Use Code Type	Agricultural
Current Document #	2021R100185
Current Document Date	9/3/2021
Is Restricted	0
Land Size (SqFt)	0
Land Size (Acres)	68.59
Has Pool	1

Primary Building	
Primary Building	1
Quality Class	D090DM
Year Built	2004
Effective Year	2004
Size	5665
Bedrooms	3
Bathrooms	4
Half Baths	2
Total Rooms	10
Attached Garage	896
Carport	
Building Count	1

Agriculture	
Contract Effective Date	
Contract Expiration Date	
Non Renewal	0

Secondary Building	
Secondary Building	1
Size	1000
Attached Garage	
Detached Garage	
Carport	

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Report Generated: 5/14/2024 9:20:55 AM

Exhibit D

ROBERT H. PITTMAN, COUNTY COUNSEL
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Santa Rosa, CA 95403

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

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

December 23, 2024

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

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

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

RE: FEIS Comments, Shiloh Resort and Casino Project

Dear Ms. Dutschke and Mr. Broussard:

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

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

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

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

1. Lack of completeness of the summarized record.

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

2. Lack of enforceability.

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

The Bureau pre-committed itself to the Koi project by relying on that pre-EIS NIGC approval for the Tribe's gaming ordinance for NEPA compliance for the Fee to Trust application, which in turn relied upon, ambiguously, either the abandoned EA/FONSI[1] or the mitigation measures identified in the Bureau's EIS that had not yet been adopted. The NIGC had a mandatory duty to disapprove the ordinance, as it relied on a legal process that NIGC was not participating in, which even now has not been completed.

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

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

---

[11] The ordinance references the "Management FONSI."

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

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

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

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

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

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

The strategic disingenuousness is illustrated by the following sentence in Master Response 6: "The BIA has analyzed the project as proposed by the Tribe and is not required to assess an infinite number of scenarios in which the project would be developed in a different manner than proposed. Later changes to or elimination of the assumed BMPs *could* [emphasis added] constitute a substantive change to the project that could trigger the need for supplemental NEPA review." The choice of the ambiguous word "could" in this case appears to be simple obfuscation. When would such supplemental NEPA review be required? Outside of the limited subset of mitigations that the Bureau is willing to characterize as "mitigation measures," which do not even include the referenced environmental and safety "BMPs," the Bureau cites to no restrictions that ***any part of the project*** will be built as proposed once the land is taken into trust. The issue is not the red herring of infinite variations, but the Bureau's failure to place restrictions on ***this project*** that tie the NEPA analysis of ***this project*** to the construction of ***this project***. It is not as though changes are unforeseeable. The Tribe has submitted a wide variety of variations already. With additional changes, future NEPA obligation would fall on the federal government, not the Tribe, and only if those changes required a federal action. A much larger or smaller casino could be built. Indeed, under the Bureau's current approach, the Bureau provides no explanation as to why the Tribe cannot construct a much more impactful *non*-gaming development once the land is taken into trust, thus avoiding the NIGC's jurisdiction entirely.

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

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

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

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

[44] https://crsreports.congress.gov/product/pdf/R/R47665

continues to rely on its distinction between Best Management Practices (BMPs) and mitigation measures. The distinction that the Final EIS draws is not found in NEPA and represents an extremely aggressive interpretation of the 2012 BIA NEPA guidebook (59 IAM 3-H). If this is the meaning of the guidebook, the guidebook violates NEPA. The standards and verification procedures that a project must meet to be safe are not the "design elements" for a project that are discussed in 59 IAM 3-H. The FEIS suggests that building codes apply to this project as a matter of general background principles. To the contrary, when the environmental review for this project began, and when the Bureau began relying on Best Management Practices, the Tribe lacked any tribal building codes. Although not included in the FEIS, the FEIS now announces that the Tribe apparently adopted building codes on November 6, 2023.[5] But upon review, the Tribe has exempted itself from its own building codes, legislating that "the Nation need not comply," making the code fundamentally ambiguous.

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

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

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

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

Conclusion

The FEIS is not in compliance with NEPA and cannot support a decision on the Tribe's Part 151 fee to trust application for gaming purposes. Nor can it support a companion decision on the Tribe's pending restored lands determination, which is a condition precedent to following the Part 151 procedures in the first place. Nor can it support the NIGC's approval of the inadequate ordinance that was already approved in violation of IGRA. Based on the existing environmental review, the Bureau's only legal option remains to adopt the no project alternative. In the interests of the environment and public safety, the County urges the Bureau to do so.

Sincerely yours,
COUNTY OF SONOMA

Jennifer C. Klein

By: Jennifer C. Klein
Chief Deputy County Counsel

Exhibit E

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May 16, 2024

Via Email: Amy.dutschke@bia.gov
& Via FedEx: Tracking No. 818243443933

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

RE: The County of Sonoma's Comments On:
Koi Nation's Gaming Land Acquisition (Fee-to-Trust) Application
222 E. Shiloh Road; APN 059-300-003

Real Estate Services TR-4609-P5
Case Number: 33760

Dear Regional Director Dutschke:

The County of Sonoma has received the NOTICE OF GAMING LAND ACQUISITION APPLICATION from the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), for the Koi Nation's proposed resort casino. Thank you for a short extension of the time to today's date to submit the attached comments on the Application.

The County reviewed the copy of the application provided to it in December 2021 in response to its FOIA request. The Bureau did not acknowledge the County's second FOIA request made by email after receipt of the Notice for an updated copy of the Application, and an electronic copy of such updated application has not been provided to the County. Given the short time frame, and that the County's request for a full 30-day extension was not granted, we were not able to travel to Sacramento to view or request a copy of the Application in person. This seems to be an unnecessary burden to have placed on the County and other local jurisdictions from which the Bureau seeks comment, not to mention contrary to climate and paper reduction goals of the federal, state, local, and tribal governments. We ask that in the future, the public portions of fee-to-trust applications be included with the Notice or otherwise available electronically well before the comment period expires.

As you will see, the County's comments provide the requested information pursuant to Part 151. They also highlight several procedural and substantive flaws with the application that warrant denial, including, importantly, that proceeding under Part 151 is premature. The County requests that the Department of the Interior seriously considers these comments and hit pause on this application until it is complete and there is a final restored lands decision, among other things.

The County of Sonoma thanks the Bureau of Indian Affairs for the opportunity to review and comment on the Application. The County also looks forward to working with the Bureau and the Tribe to address the issues raised in the County's comments.

Please contact me at (707) 565-6007, or Jennifer.Klein@sonoma-county.org if you have any question or concerns about the attached comments.

Sincerely,

Jennifer C. Klein
Chief Deputy County Counsel

Enclosure – *County of Sonoma Comments with Attachments*

Cc:

Sonoma County Board of Supervisors (*via email only*: bos@sonoma-county.org
Lorrae Russell, (*via email only:* Lorrae.Russell@bia.gov)
Chad Broussard (*via email only:* Chad.Broussard@bia.gov)
Koi Nation (*via email only:* kn@koination.com

THE COUNTY OF SONOMA'S COMMENTS

ON THE APPLICATION OF THE KOI NATION

TO THE SECRETARY OF THE INTERIOR

TO ACCEPT LAND INTO TRUST FOR GAMING PURPOSES

SUBMITTED: May 16, 2024

COUNTY OF SONOMA

By: Jennifer C. Klein **Date:** 5/16/2024

Jennifer C. Klein, Chief Deputy County Counsel

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I. INTRODUCTION

The County of Sonoma appreciates the purpose behind the federal fee to trust land process and the desire of the Koi Nation ("Tribe") to take land into trust to support self sufficiency and the exercise of sovereignty. However, the present Application by the Tribe to Take Land into Trust for Gaming Purposes ("Application") is fundamentally flawed on both a substantive and procedural basis and must be denied. The Application to take land into trust for a massive resort-casino development must be rejected due to pervasive deficiencies, including but not limited to that: 1) the proposal applies the wrong regulatory criteria to the proposed acquisition because the land has not been determined to be "restored lands"; even if the correct standard is referenced (which the County does not concede), the Application cannot be approved under Part 151 because additionally, 2) due process was violated, as all affected taxing entities and parties did not receive notice from the BIA; 3) the Application does not provide the true picture of loss of tax revenue stemming from removal of the property from the County or other local agencies' taxing jurisdiction because it does not recognize, among other things, the loss of revenue in perpetuity based on an equivalent level of development to the tribe's proposal or its likely demand for increased services; 4) the Application was circulated prematurely for comment – before all impacts had been identified in an EIS through the NEPA process – and hence estimates for costs to provide services or address off-reservation infrastructure needs stemming from the development – cannot be accurately calculated or provided by the County to the BIA; 5) the project would create significant negative environmental, financial, social, and jurisdictional impacts to the local community, which are presently unmitigated and weigh heavily against acceptance of the land into trust for gaming; and 6) the Application wrongly assumes that the fundamental conflicts of the project with the County's land use regulations do not exist because those regulations would not apply if the land is taken into trust – a position that ignores the reality that actual conflicts do exist and that adequate infrastructure is not available. Overall, for the reasons stated in this comment letter, including its attachments, the Tribe has failed to affirmatively demonstrate that the Secretary has the legal authority to accept the land into trust on its behalf, and as a result the Secretary cannot approve the Application. The Application should be rejected, and the Tribe should apply under the two-part test for taking land into trust if it desires to pursue the project because there is no "restored lands determination" presently.

II. TRIBE'S PROPOSAL

According to the Bureau of Indian Affairs (BIA), the Koi Nation submitted a Fee-to-Trust application "requesting the placement of approximately 68.60 acres of fee land in trust by the United States as restored lands pursuant to 25 CFR part 292 upon which the Koi Nation would construct a casino resort." (Federal Register 89:47 (March 8, 2024) p. 16782.) The land is located at 222 E. Shiloh Road, in the unincorporated area of the County of Sonoma, north of the City of

Santa Rosa, and southeast of both the City of Windsor and land held in trust for the Lytton Rancheria Band of Pomo Indians, and south of the City of Healdsburg and land held in trust for the Dry Creek Rancheria Band of Pomo Indians. The tribe's Application indicates it is filed pursuant to 25 CFR Part 151, concurrently with a request for a restored land determination pursuant to 25 CFR Part 292. The County's understanding is that there has been no restored lands determination for this land to date. The proposed land use as described in the Environmental Assessment is "a resort facility within the western portion of the Project Site that includes a three-story casino, a five-story hotel with spa and pool area, ballrooms/meeting space, and event center." It would also include parking facilities, and other "supporting infrastructure, including the proposed water treatment and wastewater treatment facilities." The County has not seen the project description in the Environmental Impact Statement as it has not yet been circulated. As of December 2021, the Fee-to-Trust Application only stated that for "Planned Land Use" the "current intended use for the Shiloh parcel is for a Class III gaming facility." The County is unaware if the Application has or will be updated to include the expansion of facilities beyond gaming, as contemplated in the EA. There is no mention of using the property for tribal governmental uses, tribal housing, a tribal museum, or cultural resource related preservation type uses. The project plans show use of areas of the project site for vineyards proximate to the casino resort facilities.

III. SEEKING COMMENT BY LOCAL GOVERNMENT ON THE APPLICATION IS PREMATURE.

A. The Application is Incomplete because there is no Restored Lands Determination.

The Application, as it was originally filed in September 2021, seeks land into trust for gaming under 25 CFR Part 151.11 applicable to off-reservation acquisitions. This path is not permitted at this time because the parcel that is the subject of the Application has not been determined to be "restored lands." Even if the tribe applied concurrently for fee to trust and restored lands determinations, moving forward to seek comment on the fee to trust Application, prior to the restored lands determination, was backwards, since the correct authority to apply to the tribe's fee to trust determination is dependent on, and cannot be correctly identified until, the pending restored lands determination is final and supports the Application path chosen by the tribe. Because the land is not currently "restored land," proceeding further under Part 151 is not only not permitted, but a waste of resources for those asked to participate in the process – including the County of Sonoma, federal and state agencies, and the various other interested tribal governments in Sonoma County and California, who may later be asked to re-engage and comment again if the restored lands determination is denied, and "two part" determination is alternatively pursued, if at all, under the Indian Gaming Regulatory Act (IGRA).

> The normal rule under IGRA is that a "two part" determination is applied to tribal requests that "off reservation" lands be taken into trust for potential gaming purposes. The "two part" test includes: (1) a determination by the

> Secretary that the gaming establishment is in the best interest of the tribe and would not be detrimental to the surrounding community; and (2) the concurrence of the state's Governor. The review of these applications is appropriately lengthy and deliberate. Given the complicated issues that applications of this nature raise, and the various levels of review and approval involved, they have been approved rarely despite a number of submissions over the years. (June 18, 2010, Secretary of the Interior Memo to Assistant Secretary; IGRA, 25 U.S.C. § 2719(b)(1)(A).)

To avoid this normal rule and proceed under the less onerous Part 151 provisions, the tribe's fee to trust Application must include a restored lands determination. The Application should not be considered complete until that determination is final and included in the fee to trust Application materials, and only then should the fee to trust Application be circulated for comment by local government. Until there is a restored lands determination that is consistent with the tribe's fee to trust Application, the appropriate authority for judging the present request for taking the 68.60 acre of land into trust for gaming purposes is the two-part test under IGRA, 25 U.S.C. § 2719(b)(1)(A), not 25 CFR 151. Without waiving that argument, and reserving the right to provide comment and engage as part of the normal two part determination where there is no restored lands determination, the County of Sonoma provides comments and information concerning the tribe's Application and its impact on tax revenue, jurisdictional conflicts and land use, and related matters based on the prior version of Section 151, since the Tribe has not elected to proceed under the version of Part 151 that became effective January 2024, after the tribe submitted its Application. If the Tribe makes such an election, the County of Sonoma requests notice of that election.

B. Application's Analysis under Section 151.11(c) (Economic Benefits to Tribe) is Omitted.

The Application acknowledges the criteria at §151.11(c), which requires the tribe to define the economic benefits justifying the trust acquisition, and references an "economic benefits report" at Attachment 11 to the Application, however, no analysis was provided to the County. Rather, Attachment 11 was designated as 'confidential' and consequently the County was unable to obtain a copy as part of its FOIA request. Public availability and review of the Tribe's business plan and analysis of economic benefits is particularly important as there are two tribal casinos currently operating in Sonoma County. One casino is operated by the Dry Creek Rancheria Band of Pomo Indians, and another operated by the Federated Indians of Graton Rancheria. The Lytton Rancheria has existing trust land not more than 5 miles from the Koi Nation's current proposed site. In addition, nongaming proximate uses deserve to be examined in the context of economic sustainability for the Koi Nation's proposed project. For instance, in 2022, the County approved Hyatt Place Wine Country Hotel recently, which when constructed will be a 165-room, six-story hotel, with a 150-plus-seat rooftop restaurant present potentially unsustainable economic uses. The site of the former Hilton Sonoma Wine Country hotel, which was destroyed in the 2017 Tubbs

Fire, is the subject of a permit application filed with the City of Santa Rosa to build a full-service hotel that will include a lobby, ballroom, a restaurant and bar, spa, pool, and outdoor reception area. A hotel project was recently approved for the Guerneville Hotel, about 18 miles directly west of the Koi Nation's proposed project site. Should the Lytton tribe, which has trust land not more than five miles from the proposed site, pursue non-gaming economic development of its trust land similar to the nongaming components of the Koi Nation's proposal (five-story hotel with spa and pool area, ballrooms/meeting space, and event center), then the economic benefits become even more questionable and unpredictable for tribal and non-tribal businesses and citizens.

It is unknown if the Koi Nation's business plan or "economic benefits report" addresses competition from nearby casinos, current or future, or in neighboring Lake and Mendocino counties, or otherwise addresses the economic viability of a gaming operation in the proposed location. It is also unknown if the "economic benefits report" examines the financial viability of the non-gaming components of the property in light of other hospitality projects planned, or planned and approved and under construction, but not yet open. The viability of the presently proposed casino by the Koi Nation must be analyzed in light of the existing field of competing casinos and non-gaming hospitality hotel, and resort development, in the region. The basic information concerning the planned business model should be disclosed.

IV. THE APPLICATION DOES NOT MEET THE REGULATORY REQUIREMENTS TO SUPPORT ACCEPTANCE OF LAND INTO TRUST

A. The Application Fails To Properly Analyze The Impact On The State And Its Political Subdivisions Resulting From The Removal Of The Land From The Tax Rolls (25 C.F.R. § 151.11(a), referencing §151.10(e)).

1. Impact to Taxes & Assessments.

The Application is required to analyze "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls." The Tribe incorrectly states that removal of the Property from the tax rolls will be "negligible" and "de minimis." (Application at pg. 7.) The Tribe's Application cites "approximately $266.5" as the total taxes collected by the County for FY 2020 to argue that the taxes collected for 2020-2021 for the property, cited at "$93,677.84," are not significant. This analysis is misleading and refers to non-current data.[1] The County is unaware if the tribe has updated its Application with current figures.

[1] It appears the Tribe's application used a pie chart published on the County's website to support its $266.5 million figure for the County **2020-21**. This is developed from the AB8 allocation and does not reflect actual collections and distributions to government entities, including school districts. Here's a link to the **23-24 chart** for your information: **https://sonomacounty.ca.gov/administrative-support-and-fiscal-services/auditor-controller-treasurer-tax-collector/divisions/property-tax-accounting**. It shows the estimated total Proposition 13 tax levy at $1.5 billion for 2023-24 collected, with an estimated $306.5 million allocated to the County and the remaining allocated to special districts, cities, redevelopment, and schools.

The actual amount of taxes allocated to the County's General Fund, for 2019-20 was $267,585,034.95 (net after redevelopment contributions); for 2021-22 it was $295,344,895.85 (net after redevelopment contributions); for 2022-23 it was $316,131,595.80 (net after redevelopment contributions). The 2023-24 period has not yet closed, however, actual year to date figures show $316,596,253.23 collected (net after redevelopment contributions) for the current year. See Attachment A.

The amount of property taxes collected for the subject parcel from 2019-20 to current is shown in the chart below. (See Attachment B for additional detail.) The chart also shows the progressive increase over time due to changes in the consumer price index, and the substantial increases that can occur when property changes ownership and a new assessment at current fair market value is established as a new base year value, pursuant to California's Proposition 13, as demonstrated by the 47.26% increase in taxes upon the 2021 transfer to Sonoma Rose LLC.

	2019-20		2020-21		2021-22		2022-23		2023-24	
Tax Type	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax
Prop 13 1%	1.00000	$ 82,059.56	1.00000	$ 83,702.14	1.00000	$ 84,570.00	1.00000	$ 86,525.78	1.00000	$ 125,459.98
Ad Valorem	0.12750	10,462.60	0.11700	9,793.16	0.10950	9,260.38	0.10950	9,474.52	0.13450	16,874.22
Direct Charges		135.46		182.54		540.98		1,970.10		1,944.08
Total	**1.12750**	**$ 92,657.62**	**1.11700**	**$ 93,677.84**	**1.10950**	**$ 94,371.36**	**1.10950**	**$ 97,970.40**	**1.13450**	**$ 144,278.28**

The Tribe cites $266.5 million as the amount of property taxes collected by the County of Sonoma for fiscal year 2020-21. The amount stated by the Tribe is significantly lower than the amount actually collected, which includes amounts collected on behalf of schools and other entities.

If the Property is taken into trust, the County and State will suffer a material financial impact every year, and every decade, in perpetuity, unless and until the Property is removed from trust. For example, based on the current property taxes ($144,278.28), in a ten-year span, if the land is taken into trust, the jurisdictions will collectively suffer an impact of loss property tax revenue of approximately $1,609,131.87, depending on the market value of the property, and absent any new construction or changes of ownership, both of which are events that trigger reassessment for land not in trust. That figure assumes a modest average annual growth rate of 2%, (Proposition 13 caps annual property tax increases at 2%), and also assumes no changes in ownership or new construction or change in use or development. The loss of approximately $1,609,131.87, or more, in tax revenue every decade, which would fund essential government functions and services, cannot fairly be called immaterial, particularly for a parcel that, if developed as the tribe proposes, will demand increased government services and enhanced surrounding infrastructure over time compared to current day. See Attachment C for that future projected loss. See Attachment D for a list of affected taxing entities with their contact information. See Attachment E for assessment information for the property.

We explain below the numerous status quo restrictions on the property. The taxable value of the property reflects the restrictions on that use. If the Property were to stay in County's taxing

jurisdiction, and if the restrictions did not exist, then valuation of the property and corresponding taxes would be much higher. Moreover, if the land stayed in the County's taxing jurisdiction, the County would benefit over time from any reassessments triggered by changes in ownership of the property and/or the construction of new improvements. For instance, the costs to construct recent luxury hotels in the area are between $800-$1,200/sq ft or about $1.3M/room. The Sonoma County Assessor would estimate that the casino gaming area would involve similar costs as it would include significant electrical and security work. Based on the planned combined square footage of the planned hotel resort, casino, and event center at 807,067 square feet, using $1,000/sf cost figures, the development would be valued at $807,067,000 fair market value. *Using a 1.134500 tax rate, property taxes for the tribe's planned project would be approximately $9,156,175.12, annually, not accounting for increase to the CPI*. While we recognize that these are rough figures and that an income approach to valuation might be done to generate a comparison value, the County nevertheless provides this information to illustrate the point that when a development is assessed and taxed locally based on its fair market value as actually developed, then the revenue to the government from property taxes paid for the property to support services for that developed property is proportionate. To do otherwise artificially lessens the real impact to the local government. Moreover, the County notes that the BIA did not provide notice of the Application to affected taxing entities based on the service list attached to the notice the County received. The Bureau must give those entities an opportunity to comment directly as to impacts caused by loss of tax revenue stemming from a fee to trust acquisition. The County does not have the information for those independent entities, but the Bureau needs that information to fully evaluate the impact of the loss of tax revenue to the localities. Finally, it is not enough to say there is no impact because the land will not be taxable once the land is in trust. That interpretation of the regulatory standard would render it meaningless, which the rules of statutory construction abhor.

Tax revenue, both current and prospective, is used to support public services that directly and indirectly benefit the property. As a result, to appreciate the true impact to the County of the loss of land from its ad valorem tax roll, one must look at the status of the Property over time, and at the demand for public services created by the property's use.

The Secretary has specifically requested that the County identify the annual amount of property taxes allocated to the County, and any governmental services currently provided by the County. Again, please see Attachment B for tax information, and below for information on impacts to services as much as can be ascertained without a completed environmental impact statement. The County currently provides local governmental services to all parcels in the unincorporated area. These services include law enforcement and criminal justice, fire protection and other emergency services, health and human services, and transportation and public works, as detailed below. With a completed EIS (with a full project description) and more time for analysis the County may be able to provide dollar figures to quantify impacts. The Application lacks this critical information at this time.

2. Public Services to the Property.

Under 25 C.F.R. 151.11(a) and 151.10(e) the BIA must consider the impact on the County from removal of the land from tax rolls, which in this case is not only the lost revenue but also the adverse impact on government services. The Property is in the unincorporated area of the County and proposes a significant change in land use from agriculture to a large scale visitor-serving resort, open 24-hours per day, 7 days per week, in conflict with zoning and a voter community separator initiative, as described further in section B. below. The impacts of Application approval and such change in use of the property include those adverse service impacts identified below.

a. Law Enforcement & Criminal Justice.

It is well established that California is a mandatory Public Law 280 state. Under P.L. 280, the Sonoma County Sheriff's Office has criminal jurisdiction and enforcement authority over the land and activities on it. The services provided by the Sonoma County Sheriff's Office are one aspect of the services provided by the criminal justice system, which also includes SWAT, helicopter, and bomb squad services, as well as jail, district attorney, public defender, and court services. The Sonoma County Sheriff's Office advises that the proposed project will adversely impact law enforcement services by increasing the volume of calls for law enforcement services, the number of visitors to the area, response times, and crime rates. If the project is completed, the Sheriff's Office would require additional funding for at least one new 24-hour/7 days per week patrol fixed post position. A fixed post position can require at least six deputy sheriff allocations and overtime to cover the necessary shifts. Other divisions of the criminal justice system, including the jail, district attorney, public defender, and courts will be impacted relative to the number of offenders that enter the system as a result of conduct on or related to the casino property. The analysis fails to show how these impacts have been mitigated. Instead, they will be aggravated by the loss of tax revenue.

b. Fire Protection & Other Emergency Services.

The Sonoma County Fire Prevention Division is responsible for Fire Code enforcement as related to new development on the Property. The Sonoma County Office of Emergency Management would have a role in disaster response, and they oversee the Operational Area during a disaster, including coordinating and hosting a call of all area partners including tribes. It also handles disaster response planning. Sonoma County Fire District (an entity separate and independent from the County of Sonoma), currently provides fire services to the Property. Special districts, including fire districts, are experiencing reductions in funding and a corresponding reduction in personnel and capacity. The entire system is overburdened. It should be noted that if the Taxpayer Protection and Accountability Act of 2024 (a pending statewide initiative) passes, the District's financial resources will be impacted. The Application is silent as to whether Sonoma County Fire District has the capacity to provide services to the Property if

developed consistent with the Tribe's plans. Given the unclear capacity of the Sonoma County Fire in the Application and similar fire districts, and the responsibility of County Service Area departments to provide mutual aide, the reduction of tax revenue further impacts the County's ability to provide these critical life and safety services to the proposed trust property. Even if the Tribe proposes agreements with these entities, it is not stated if they require approval from the federal government or if they will include a waiver of sovereign immunity in order to be legally enforceable. Moreover, the impact of the proposed trust acquisition goes beyond providing services with no property tax revenue contributions from the parcel, but also the substantially increased service demands on the County and related disaster and fire response agencies should there be a need during, for example, a wildfire event. As stated earlier, the hotel five miles south of the facility burned in the 2017 Tubbs fire, so this is a real need to be prepared for and properly resourced for. The BIA must consider this impact. The existing transportation and road infrastructure was not built or designed to a standard to accommodate evacuation of a facility of the size planned by the Koi Nation. Those physical constraints make disaster response planning, staffing, and coordination even more important and costly. Inappropriate development in high-risk areas, with difficult or high-traffic-volume evacuation routes, costs money in terms of emergency preparation.

The BIA must consider that these impacts are not hypothetical, given recent experience with nearby wildfire necessitating regional evacuations.

c. Health & Human Services.

The County Departments of Health Services and Human Services are currently responsible for services to the Property. However, because the land is primarily agricultural, the County Department of Health Services is not actively providing specific services to the Property. However, if the property is developed as a resort casino, the areas of new demand for the Department of Health Services are: problem and pathological gambling, alcohol-related problems, and increased domestic violence and sexual assault, food-borne illnesses, pool illness and safety hazards, emergency medical services (EMS) impacts, inspection of business activities impacting health, and animal care and control issues. Additionally, as a large facility where substantial numbers of people work and congregate, managing disease control and response – such as was seen for the Covid-19 pandemic, becomes an added new burden on the department. It is not known if the tribe intends to follow future public health orders that may entail closing its facility; if not, it can unduly strain the county's disease response system. The areas of concern for the Department of Human Services overlap in several areas with those of the Department of Health Services, primarily regarding problem and pathological gambling, alcohol-related problems, and increased domestic violence and sexual assault, as these types of problems have a demonstrated connection to the safety of children, intimate partners, and vulnerable adults, primarily seniors. See Ontario Problem Gambling Study, June 2007, in which researchers studied 182 gamblers, with 62% of them self-reporting perpetration of a physical assault on an intimate

partner. Again, the impacts on public services are exacerbated by the project which will also not contribute to a stream of property tax that pay for them.

d. Transportation & Public Works.

The Sonoma Department of Transportation and Public Works (a.k.a. Sonoma Public Infrastructure or SPI) is presently responsible for maintaining the portion of Shiloh Road that provides direct access to the proposed casino project on the Property. The proposed trust acquisition presents significant transportation and traffic related impacts that have not been mitigated. First, the region is underserved by public transportation for the size of development contemplated by the tribe. Adding a business that relies heavily on lower paid unskilled labor, many of whom may be dependent on public transportation, not to mention customers who also may be dependent on public transportation, will further and significantly impact these resources and the public agencies that provide them. Second, SPI has not yet seen the traffic analysis in the planned but not released Environmental Impact Statement. The County expects over time there may be a need for a variety of traffic improvements outside of the property boundaries, such as traffic signals, signage, vegetation clearing, or turn lanes. But this cannot be confirmed without the EIS. The county does not own sufficient right of way to meaningfully widen the road. SPI would need more information regarding what off-reservation infrastructure improvements would be needed due to the project in order to provide cost estimates for constructing and maintaining such infrastructure. Third, impacts to Shiloh Road, Faught Road, and other surrounding roads are anticipated based on the traffic numbers reported in the EA), which should be updated and more fully analyzed in the anticipated EIS. Increased demand for maintenance of these roads presents an additional burden on the County.

These tax and related impacts demonstrate that, without a clear binding mitigation plan, the Secretary should exercise his discretion to deny the Application. The necessary information to approve the Application has not been provided.

B. The Level Of Jurisdictional Problems And Potential Conflicts Of Land Use Require That The Application Be Denied (25 C.F.R. § 151.11(a), referencing 25 C.F.R. § 151.10(f)).

In considering the Application the Secretary must carefully consider the: "Jurisdictional problems and potential conflicts of land use which may arise." (25 C.F.R. §151.11(a) referencing 151.10(f).) Much of the information about the project necessary to evaluate these problems and conflicts has not yet been provided, such that the public is being deprived of an opportunity to comment on the actual project. However, the available information indicates the problems and conflicts are major.

The Application utilizes both circular and incorrect logic to conclude that what it calls "jurisdictional issues" will not be present. Contrary to the applicant's statements in the Application, the State would not have civil jurisdiction over the land under P.L. 280. But more fundamentally, the applicant's logic ignores the actual scope of the regulation and the myriad of problems created by the proposal.

As discussed throughout these comments, the direct and cumulative impacts of placing a massive entertainment and lodging facility on land where this type of use is prohibited leads to very significant problems. Extensive planning efforts and voter-approved ballot measures have supported containing sprawl and maintaining the agricultural quality and character of the land between cities. Breach of these land use, zoning, and voter-enacted measures would adversely impact the environment, including federally protected species, and threaten the County's continuing efforts to contain sprawl, protect farmland, and coherently plan for major uses. The significance of this conflict is also that providing services to this use conflicts with regional planning initiatives. There is insufficient infrastructure for this use because the applicant has chosen a location where the use is prohibited, and urban services cannot be extended to the use. (General Plan Policy LU-3e).

1. Sonoma County General Plan and Zoning Ordinance Conflicts, And Associated Impacts And Conflicts With Regional Planning.

The Application at issue is a frontal assault on inter-governmental actions to constrain sprawl in Sonoma County. In 1989, Sonoma County adopted Community Separator policies in its General Plan. Community Separators are rural open space lands around cities and unincorporated communities in Sonoma County that maintain community identities, prevent sprawl, protect natural resources, and provide visual separation between cities and unincorporated communities. In 1996, these Community Separator policies were strengthened and reiterated by a ballot measure that required voter approval of any changes in land use density or intensity if the cities had adopted urban growth boundaries. In the same election or shortly thereafter the cities adopted complementary Urban Growth Boundaries, and Sonoma County became the first county in the nation to establish comprehensive, voter-approved growth boundaries and separators to require city-centered growth. Today, each city in the county has a voter-approved Urban Growth Boundary, and the County has a complementary and voter-approved greenbelt outside each Urban Growth Boundary. As the 1996 initiative discussed, this inter-agency planning framework also implemented many State anti-sprawl goals:

> "(a) Article XIII, section 8 of the California Constitution encouraging the 'conservation, preservation and continued existence of open space lands' for 'recreation, enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber.'
>
> (b) Articles XIIIA and XIIIB of the California Constitution limiting local government tax revenues and spending and thereby encouraging the efficient physical development of communities that will reduce expenditures for public safety, streets, utilities and other publicly financed, operated and maintained improvements.

(c) The Planning and Zoning Law (Government Code section 65562) assuring 'that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible' and that they will 'prepare and carry out open-space plans.'

(d) The Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§56000 et seq.) discouraging annexations and other changes in organization that result in urban sprawl and its implementation in Sonoma County by resolution number 2119, dated May 7, 1992, of the Sonoma County Local Agency Formation Commission." (Sonoma County Ordinance 5003R, 1996)

The framework established by Urban Growth Boundaries and Community Separators is core to the land use planning for the site, including the available infrastructure.

The Urban Growth Boundary framework is not only core to Sonoma County land use policy, but the growth policy for the Bay Area as a whole. The Association of Bay Area Governments and Metropolitan Transportation Commission have integrated the preservation of Urban Growth Boundaries into Plan Bay Area 2050, meaning that all land use and transportation planning (city and county) within the Bay Area's nine counties is framed around the preservation of these boundaries.[2]

The applicant's proposed site is outside of the Town of Windsor's Urban Growth Boundary and within the County's Community Separator. The project conflicts with the general plan and zoning designations that flow from the Community Separator controls on sprawl. The proposed property has a General Plan land use designation of "Land Intensive Agriculture 20-acre per dwelling unit." The property's zoning is "LIA (Land Intensive Agriculture) B6 20 (20 acres per dwelling unit density), F1 (Floodway Combining District) F2 (Floodplain) RC50/25 (Riparian Corridor 50/25 foot setbacks) SR (Scenic Resources) VOH (Valley Oak Habitat)."

As explained in more detail below, the conversion of the use of the parcel from the existing agricultural and single family residential to development and operation of a casino, hotel, conference/event center, restaurant/bars, and supporting parking and infrastructure within the

[2] ABAG & MTC, Plan Bay Area 2050 (2021), https://planbayarea.org/sites/default/files/documents/Plan_Bay_Area_2050_October_2021.pdf

project site, is inconsistent and in conflict with Sonoma County's General Plan and Zoning Ordinance, including the Community Separator initiative, Measure K.[3]

The property is zoned for Land Intensive Agricultural use. The purpose of the Land Intensive Agriculture (LIA) zoning district is to enhance and protect lands best suited for permanent agricultural use and capable of relatively high production per acre of land and implement the land intensive agriculture land use category of the general plan and the policies of the agricultural resources element (Zoning Code Section 26-06-020). Approximately 47 acres of the subject parcel is designated Farmland of Statewide Importance, 8 acres designated Farmland of Local Importance, and 13 acres of Prime Farmland. The Sonoma County General Plan Agricultural Resources Element and Open Space and Resource Conservation Element encourage the preservation of lands containing prime agricultural and productive woodland soils and to avoid conversion to incompatible commercial uses. The General Plan policies explicitly state that new uses on agriculturally zoned land that are not in the service of agricultural activities are not allowed. Policies further state that visitor-serving uses in agricultural areas shall be accessory to a primary agricultural use and shall be limited in scope and intensity relative to the agricultural use. Consistent with General Plan policy, commercial entertainment centers, such as the proposed project, and similar intensities of commercial use are expressly not permitted. The proposed project is inconsistent with the purpose of the Land Intensive Agriculture zoning district.

Hotels and resorts are largely permitted in commercial zones only and are limited to a maximum of 200 rooms (Zoning Code Section 26-28-150). Any hotel greater than 100 rooms must be located in an area served by public sewer. The project site is not currently within a designated urban service area and does not have access to public sewer service. Casinos are not an identified land use in the Sonoma County Zoning Ordinance, however, larger-scale, visitor serving uses, such as entertainment venues, are only permitted in commercial zones.

As the County has noted previously in its comments on the Environmental Assessment, the infrastructure to support this use is not in place precisely because the use is not allowed in the Community Separator. See Attachment F for those comments; see also Attachment G for comments on scope of EIS. The roads and utilities are not sufficient for this proposed use. The attempt to approve an extremely large facility without inter-governmental cooperation and the support of off-site utilities requires very thorough analysis that does not appear to be contemplated.

Pruitt Creek traverses the site from north to south. Pruitt Creek is designated critical habitat for Coho Salmon and Steelhead. Steelhead have been observed to rear and spawn in

[3] On November 8, 2016, the Community Separators Protection Ordinance, commonly called Measure K, passed with 81.1% approval. Measure K extends voter protections to Community Separator lands for 20 years.

upstream reaches where streamflow is perennial. Steelhead occupy downstream reaches during times of the year when there is flow and suitable water quality. The project has the potential to degrade habitat conditions through impacts to water quality and alterations to flow. Increased groundwater pumping has the potential to reduce streamflow. Wastewater and stormwater discharge may impact water quality due to elevated peak flows, sediment loads, and nutrients. Potential impacts to water quality and aquatic habitat conditions of Pruitt Creek should be thoroughly assessed.

The parcel's zoning includes corresponding Riparian Corridor (RC 50/25), Floodplain (F2), and Floodway (F1) combining districts along the creek. The intent of the Riparian Corridor combining district is to "to protect biotic resource communities, including critical habitat areas within and along riparian corridors, for their habitat and environmental value, and to implement the provisions of the General Plan Open Space and Resource Conservation and Water Resources Elements," (Zoning Code Section 26-65-005). The Riparian Corridor combining district establishes streamside conservation areas and largely prohibits development, including but not limited to grading, structures, vegetation removal and hardscape, with some exception, within these areas. To be consistent with the Riparian Corridor zoning district and associated General Plan policies, development of the site must protect and enhance the designated riparian corridor located along Pruitt Creek, including through the preservation of riparian vegetation, protection of water resources, floodplain management, wildlife habitat and movement, stream shade, fisheries, water quality, channel stability, groundwater recharge, opportunities for recreation, education and aesthetic appreciation and other riparian functions and values. The available information about the project to date indicates that not only is the habitat not being protected, but that the project may result in a violation of the Endangered Species Act. The project will add additional point discharge to Pruitt Creek and has potential to result in hydromodification and degraded water quality. Information about measures to ensure that stormwater impacts are fully mitigated to reduce peak runoff and protect water quality is crucial to evaluation the Application.

The water source and the wastewater for the project are of significant concern given the sensitive location. Utility services from the Town of Windsor are not available to the site because it is outside the Urban Growth Boundary. The applicant has previously proposed to treat wastewater via a proposed on-site tertiary wastewater treatment plant. This may not be feasible, and a feasible plan has certainly not been disclosed for comment. Details regarding the operation of the wastewater treatment plant, including an Operation & Maintenance Program to ensure the treatment plant is well maintained and that it operates correctly throughout the life of the project, are needed to evaluate the Application. If the project would discharge tertiary treated effluent to Pruitt Creek during the winter months, details are needed to demonstrate that the project would comply with state discharge regulations for the North Coast Regional Water Quality Control Board. Pruitt Creek downstream of the project site is known to have little or no flow for much of the year including winter months. Wastewater treatment and disposal designs should be based off site specific conditions. Multiple years of continuous streamflow data should be collected at the site, including at least one year of severe drought, to appropriately design the

wastewater treatment system, and assess potential impacts. This information is needed to evaluate this Application.

The project has previously proposed to use water from on-site wells, which would be located within the Santa Rosa Plain Groundwater Subbasin (Subbasin). This Subbasin is managed by the Santa Rosa Plain Groundwater Sustainability Agency, and recycled water from on-site wastewater treatment facilities. Insufficient data is available to analyze potential impacts of groundwater pumping on groundwater conditions and sustainability indicators within the Subbasin, including groundwater levels, groundwater storage, and depletion of interconnected surface water. The Santa Rosa Plain Groundwater Sustainability Plan, which was approved by the California Department of Water Resources in January 2023, describes sustainable management criteria that must be evaluated in assessing the Application.

There is also insufficient data to analyze potential well interference effects to nearby public and private wells, including cumulative effects, associated with future groundwater pumping. The project should coordinate with the County of Sonoma and Groundwater Sustainability Agency to implement projects and management actions identified in the Groundwater Sustainability Plan, including a monitoring program, increased conservation strategies, groundwater recharge, water reuse, and other actions to ensure groundwater sustainability. The Application cannot reasonably be evaluated without this information, but the available information indicates pronounced conflicts without a strategy to address them.

2. Other Jurisdictional Problems: Lack of Mitigation Agreements and Tribal Ordinances.

While the tribe has expressed a desire for an agreement with the County, it did not indicate if the agreement would be enforceable, and the copy of the Tribe's Application received by the County in December 2021 is silent regarding potential future legally enforceable government-to-government agreements with local governments, other tribal governments, or the State of California. Such agreements might address negative impacts from the acceptance of the land into trust, or development of the resort casino. However, at this stage it is totally speculative as to whether there will be such agreements, or if there are, whether the federal government would approve them, and if so, whether they would be legally enforceable. Because the BIA does not have the terms of such a speculative agreement, and because the parties have not agreed to presently negotiate such an agreement, there is no way of knowing if it will be reached, if it will adequately mitigate environmental impacts, if it compensate for financial impacts, and if it will be enforceable. Even if the tribe were to commit to such an agreement in its Application, in a way that mutually benefited the tribe and the County, the tribe cannot guarantee that the agreement would be approved by the federal government, under applicable federal regulations. The BIA should either refrain from acting on the Application until there is such an enforceable agreement approved by the federal government in place, or should deny the fee to trust Application for lack of such an agreement.

While the BIA certainly has a policy in favor of encouraging self-sufficiency, self-determination, and economic development for tribes; that policy is not incompatible with requiring recognition and mitigation of impacts to local governments prior to taking action on a fee-to-trust Application. This is clearly contemplated by the terms of 25 C.F.R § 151.10 and 151.11, which requires the BIA to evaluate impacts to local governments.

C. The Bureau Of Indian Affairs Is Not Equipped To Discharge The Additional Responsibilities Resulting From The Acquisition Of The Land In Trust Status (25 C.F.R. § 151.11(a), referencing 25 C.F.R. § 151.10(g)).

The Trust Application incorrectly asserts that the tribe "expects that the Bureau will be able to discharge any additional responsibilities that may arise in connection with the acquisition of the 68.60 acres in trust." The reason given for this is that the property will not be used for mining of natural resources or forestry requiring BIA management. (Application at p. 6.) We urge the Bureau to critically consider its role as owner of the property. The statements in the Application overlook the federal government's responsibilities to ensure that the operator and manager of the property (Barton Productions, LLC) is in compliance with federal law, including compliance with strict liability federal environmental laws (Endangered Species Act and Clean Water Act), and as trustee ensuring the property's natural resources, including water, are capable of sustaining the planned development and use of the property in perpetuity, or until the and is no longer in trust, and not draining local aquifers on which the property and surrounding properties depend. In this way, water resources, like timber and mineral resources, have value and need to be managed in a sustainable way. There is nothing in the Application to address what this will entail, or the burden it will place on the Bureau.

D. The Extent To Which The Tribe Has Provided Information That Allows The Secretary To Comply With The National Environmental Policy Act (25 C.F.R. § 151.11(A), Referencing 25 C.F.R. § 151.10(h)).

As noted above, the information provided to date is woefully insufficient for NEPA compliance. To date, the NEPA process has not been completed and, as demonstrated in the County's comments regarding the Environmental Assessment, has previously been seriously flawed. By circulating Notice of the Application for comment prior to completion of the Environmental Impact Statement, the Department has prevented the County from commenting on the actual project and the true impacts of the proposed acquisition and resort casino development. Both the County and the Bureau lack critical information. The Department has handicapped the County and other local agencies in being able to understand and comment on the Application, and this notice and comment period are entirely pre-mature. The Bureau does not have the information required to act on the proposed fee-to-trust acquisition. Once NEPA is complete and once the Application is complete (for instance, if a restored lands determination necessary to proceed under Part 151 is included), then the Bureau must re-notice the Application for comment.

VI. CONCLUSION

For the above reasons and light of the facts set forth in these Comments, the County of Sonoma strongly opposes the Application and urges the BIA to deny it. We remain available to discuss these comments with the BIA and the Tribe upon request.

ATTACHMENTS

A. Chart showing actual amount of taxes allocated to the County's General Fund prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC)
B. Chart showing amount of property taxes collected for the subject parcel from 2019-20 to current prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC).
C. Chart showing future projected tax loss for property if use remains the same (i.e. agricultural) prepared by Sonoma County Auditor Controller Treasurer Tax Collector (ACTTC).
D. Distribution List: Taxing Entities – With Contact Information
E. Assessment Data from Sonoma County Assessor
F. County's Comments on EA
G. County's Scoping Comments for EIS

Attachment A
to FTT Comments

Budget v. Actual - Revenues

As Of = @current-fiscal-year-end; Years = 5; Chart Fields = Fund, Department, Account
Department [16020600] and Account [400, 40101, 42291]*
Run: 2024-05-07 08:39 PM

Account	Account Description	FY 2019-2020 Actual	FY 2020-2021 Actual	FY 2021-2022 Actual	FY 2022-2023 Actual	FY 2023-2024 Year-To-Date Actual
Fund: 10005 – General Fund						
Department: 16020600 – Prop 4 Revenue - Unallocated						
40002	Prop Tax - CY,Secured	199,506,359.08	208,601,943.13	217,320,965.02	231,472,881.11	234,237,496.93
40005	Prop Taxes - RDA Increment	(35,508,112.42)	(37,440,403.05)	(37,554,741.17)	(40,260,844.67)	(42,852,998.55)
40006	AB1290 RDA Pass Throughs	1,762,122.82	1,884,959.02	2,016,335.12	2,220,830.74	2,446,126.26
40007	H&S 33401 RDA Pass Throughs	19,308,527.04	20,092,518.52	20,293,791.10	21,954,475.93	22,660,745.31
40008	H&S 33676 RDA (2%) Allocation	1,991,092.00	2,082,132.00	2,130,234.00	2,224,058.00	2,319,758.00
40009	Property Taxes - VLF Swap	65,264,208.47	68,264,930.16	70,448,500.68	74,969,413.45	79,202,550.14
40010	Residual Prop Tax - RPTTF	6,730,435.26	11,555,134.14	11,886,730.80	13,978,780.02	8,173,229.49
40101	Prop Taxes - CY, Unsecured	7,339,482.66	7,478,496.67	7,646,527.65	8,468,982.05	9,478,022.43
42291	State Homeowners Prop Tax Relf	1,190,920.04	1,171,981.64	1,156,552.65	1,103,019.17	931,323.22
Total 16020600 – Prop 4 Revenue - Unallocated		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23
Total 10005 – General Fund		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23
		267,585,034.95	283,691,692.23	295,344,895.85	316,131,595.80	316,596,253.23

Attachment B
to FTT Comments

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2019-20 thru 2023-24

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

	FY 2019-20		FY 2020-21		FY 2021-22		FY 2022-23		FY2023-24	
Tax Type	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax	Tax Rate	Property Tax
Prop 13 1%	1.00000	$ 82,059.56	1.00000	$ 83,702.14	1.00000	$ 84,570.00	1.00000	$ 86,525.78	1.00000	$ 125,459.98
Ad Valorem	0.12750	10,462.60	0.11700	9,793.16	0.10950	9,260.38	0.10950	9,474.52	0.13450	16,874.22
Direct Charges		135.46		182.54		540.98		1,970.10		1,944.08
Total	**1.12750**	**$ 92,657.62**	**1.11700**	**$ 93,677.84**	**1.10950**	**$ 94,371.36**	**1.10950**	**$ 97,970.40**	**1.13450**	**$ 144,278.28**

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2019-20

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **CLIFTON RANDALL C TR & CYNTHIA A TR**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,205,956	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.322101	26,431.47	$ 26,431.47	0.3310831182	$ (8,751.01)	**$ 17,680.46**
01300	COUNTY LIBRARY	0.021567	1,769.78	1,769.78	-	-	**1,769.78**
01700	ERAF	-	-	-	-	9,405.01	**9,405.01**
03100	SHILOH CEMETERY	0.008095	664.27	664.27	0.1118389920	(74.29)	**589.98**
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	8,921.60	8,921.60	0.0561309871	(500.78)	**8,420.82**
06000	GEN #1 SOCO WATER AGENCY	0.008683	712.52	712.52	0.0826963860	(58.92)	**653.60**
06100	SPRING LAKE PARK SCWA	0.002801	229.85	229.85	0.0827074388	(19.01)	**210.84**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,261.01	1,261.01	-	-	**1,261.01**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	230.01	230.01	-	-	**230.01**
11500	BAY AREA AIR QUALITY MGMT	0.002152	176.59	176.59	-	-	**176.59**
13200	SONOMA RCD	0.000108	8.86	8.86	0.1133990518	(1.00)	**7.86**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0925810538	-	**-**
30800	MARK WEST ELEM	0.134472	11,034.71	11,034.71	-	-	**11,034.71**
33700	SANTA ROSA CITY HIGH	0.198222	16,266.01	16,266.01	-	-	**16,266.01**
34300	SO CO JT JR COLLEGE	0.060875	4,995.38	4,995.38	-	-	**4,995.38**
34400	SCHOOL SERVICE ADMIN	0.022326	1,832.06	1,832.06	-	-	**1,832.06**
34800	SANTA ROSA AWUF	0.088077	7,227.56	7,227.56	-	-	**7,227.56**
35200	SCHOOLS EQUALIZAT AID	0.003630	297.88	297.88	-	-	**297.88**
	Prop 13 Total	1.000000	82,059.56	$ 82,059.56		$ 0.00	**$ 82,059.56**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	574.42	$ 574.42			**$ 574.42**
20603	MARK WEST ELEM 2002 BONDS	0.025000	2,051.48	2,051.48			**2,051.48**
20610	MARK WEST ELEM 2010 BONDS	0.010000	820.60	820.60			**820.60**
36700	SR HIGH DIST 1991 BOND	0.014000	1,148.84	1,148.84			**1,148.84**
36702	SR HIGH DIST 2002 BOND	0.014500	1,189.86	1,189.86			**1,189.86**
36703	SR HIGH DIST 2014 BOND	0.020000	1,641.20	1,641.20			**1,641.20**
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,066.78	1,066.78			**1,066.78**
39901	SOCO JR COLLEGE 2014 BOND	0.024000	1,969.42	1,969.42			**1,969.42**
	Ad Valorem Total	0.127500	10,462.60	10,462.60			**10,462.60**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		45.00	45.00			**45.00**
53901	SO CO FIRE DIST 2006 TAX		54.46	54.46			**54.46**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		135.46	$ 135.46			**$ 135.46**
	Grand Total	**1.127500**	**92,657.62**	**$ 92,657.62**			**$ 92,657.62**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2019-20 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2020-21

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **CLIFTON RANDALL C TR & CYNTHIA A TR**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,370,213	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.322101	26,960.55	$ 26,960.55	0.3306704042	$ (8,915.06)	**$ 18,045.49**
01300	COUNTY LIBRARY	0.021567	1,805.20	1,805.20	-	-	**1,805.20**
01700	ERAF	-	-	-	-	9,714.92	**9,714.92**
03100	SHILOH CEMETERY	0.008095	677.57	677.57	0.1117847178	(75.74)	**601.83**
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	9,100.18	9,100.18	0.0707329341	(643.68)	**8,456.50**
06000	GEN #1 SOCO WATER AGENCY	0.008683	726.79	726.79	0.0826245433	(60.05)	**666.74**
06100	SPRING LAKE PARK SCWA	0.002801	234.45	234.45	0.0826361098	(19.37)	**215.08**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,286.25	1,286.25	-	-	**1,286.25**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	234.62	234.62	-	-	**234.62**
11500	BAY AREA AIR QUALITY MGMT	0.002152	180.13	180.13	-	-	**180.13**
13200	SONOMA RCD	0.000108	9.04	9.04	0.1133049674	(1.02)	**8.02**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0919091798	-	**-**
30800	MARK WEST ELEM	0.134472	11,255.59	11,255.59	-	-	**11,255.59**
33700	SANTA ROSA CITY HIGH	0.198222	16,591.60	16,591.60	-	-	**16,591.60**
34300	SO CO JT JR COLLEGE	0.060875	5,095.37	5,095.37	-	-	**5,095.37**
34400	SCHOOL SERVICE ADMIN	0.022326	1,868.73	1,868.73	-	-	**1,868.73**
34800	SANTA ROSA AWUF	0.088077	7,372.23	7,372.23	-	-	**7,372.23**
35200	SCHOOLS EQUALIZAT AID	0.003630	303.84	303.84	-	-	**303.84**
	Prop 13 Total	1.000000	83,702.14	$ 83,702.14		$ 0.00	**$ 83,702.14**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	585.92	$ 585.92			**$ 585.92**
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,259.96	2,259.96			**2,259.96**
20610	MARK WEST ELEM 2010 BONDS	0.010000	837.02	837.02			**837.02**
36700	SR HIGH DIST 1991 BOND	0.007500	627.76	627.76			**627.76**
36702	SR HIGH DIST 2002 BOND	0.013500	1,129.98	1,129.98			**1,129.98**
36703	SR HIGH DIST 2014 BOND	0.015000	1,255.54	1,255.54			**1,255.54**
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,088.12	1,088.12			**1,088.12**
39901	SOCO JR COLLEGE 2014 BOND	0.024000	2,008.86	2,008.86			**2,008.86**
	Ad Valorem Total	0.117000	9,793.16	9,793.16			**9,793.16**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		90.00	90.00			**90.00**
53901	SO CO FIRE DIST 2006 TAX		56.54	56.54			**56.54**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		182.54	$ 182.54			**$ 182.54**
	Grand Total	**1.117000**	**93,677.84**	**$ 93,677.84**			**$ 93,677.84**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2020-21 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2021-22

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,456,999	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.322101	27,240.10	$ 27,240.10	0.3318590317	$ (9,039.87)	**$ 18,200.23**
01300	COUNTY LIBRARY	0.021567	1,823.92	1,823.92	-	-	**1,823.92**
01700	ERAF	-	-	-	-	9,850.13	**9,850.13**
03100	SHILOH CEMETERY	0.008095	684.59	684.59	0.1119967875	(76.67)	**607.92**
05900	SONOMA COUNTY FIRE DISTRICT	0.108721	9,194.53	9,194.53	0.0709154931	(652.03)	**8,542.50**
06000	GEN #1 SOCO WATER AGENCY	0.008683	734.32	734.32	0.0829167850	(60.89)	**673.43**
06100	SPRING LAKE PARK SCWA	0.002801	236.88	236.88	0.0829282069	(19.64)	**217.24**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015367	1,299.59	1,299.59	-	-	**1,299.59**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002803	237.05	237.05	-	-	**237.05**
11500	BAY AREA AIR QUALITY MGMT	0.002152	181.99	181.99	-	-	**181.99**
13200	SONOMA RCD	0.000108	9.13	9.13	0.1132552714	(1.03)	**8.10**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0914965724	-	**-**
30800	MARK WEST ELEM	0.134472	11,372.30	11,372.30	-	-	**11,372.30**
33700	SANTA ROSA CITY HIGH	0.198222	16,763.63	16,763.63	-	-	**16,763.63**
34300	SO CO JT JR COLLEGE	0.060875	5,148.20	5,148.20	-	-	**5,148.20**
34400	SCHOOL SERVICE ADMIN	0.022326	1,888.11	1,888.11	-	-	**1,888.11**
34800	SANTA ROSA AWUF	0.088077	7,448.67	7,448.67	-	-	**7,448.67**
35200	SCHOOLS EQUALIZAT AID	0.003630	306.99	306.99	-	-	**306.99**
	Prop 13 Total	1.000000	84,570.00	$ 84,570.00		$ 0.00	**$ 84,570.00**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	591.98	$ 591.98			**$ 591.98**
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,283.38	2,283.38			**2,283.38**
20610	MARK WEST ELEM 2010 BONDS	0.010000	845.70	845.70			**845.70**
36702	SR HIGH DIST 2002 BOND	0.013500	1,141.70	1,141.70			**1,141.70**
36703	SR HIGH DIST 2014 BOND	0.015000	1,268.54	1,268.54			**1,268.54**
39900	SOCO JR COLLEGE 2002 BOND	0.013000	1,099.40	1,099.40			**1,099.40**
39901	SOCO JR COLLEGE 2014 BOND	0.024000	2,029.68	2,029.68			**2,029.68**
	Ad Valorem Total	0.109500	9,260.38	9,260.38			**9,260.38**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			**67.50**
53901	SO CO FIRE DIST 2006 TAX		437.48	437.48			**437.48**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		540.98	$ 540.98			**$ 540.98**
	Grand Total	**1.109500**	**94,371.36**	**$ 94,371.36**			**$ 94,371.36**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2021-22 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2022-23

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 8,652,578	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.332685	28,785.83	$ 28,785.83	0.3314985406	$ (9,542.46)	**$ 19,243.37**
01300	COUNTY LIBRARY	0.022276	1,927.45	1,927.45	-	-	**1,927.45**
01700	ERAF	-	-	-	-	10,148.09	**10,148.09**
03100	SHILOH CEMETERY	0.008361	723.44	723.44	0.1120287674	(81.05)	**642.39**
05900	SONOMA COUNTY FIRE DISTRICT	0.079433	6,873.00	6,873.00	0.0637944813	(438.46)	**6,434.54**
06000	GEN #1 SOCO WATER AGENCY	0.008969	776.05	776.05	0.0828453614	(64.29)	**711.76**
06100	SPRING LAKE PARK SCWA	0.002893	250.32	250.32	0.0828574114	(20.74)	**229.58**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015872	1,373.34	1,373.34	-	-	**1,373.34**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002895	250.49	250.49	-	-	**250.49**
11500	BAY AREA AIR QUALITY MGMT	0.002223	192.35	192.35	-	-	**192.35**
13200	SONOMA RCD	0.000111	9.60	9.60	0.1131833957	(1.09)	**8.51**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0906084479	-	**-**
30800	MARK WEST ELEM	0.138891	12,017.65	12,017.65	-	-	**12,017.65**
33700	SANTA ROSA CITY HIGH	0.204736	17,714.94	17,714.94	-	-	**17,714.94**
34300	SO CO JT JR COLLEGE	0.062876	5,440.39	5,440.39	-	-	**5,440.39**
34400	SCHOOL SERVICE ADMIN	0.023059	1,995.20	1,995.20	-	-	**1,995.20**
34800	SANTA ROSA AWUF	0.090971	7,871.34	7,871.34	-	-	**7,871.34**
35200	SCHOOLS EQUALIZAT AID	0.003749	324.39	324.39	-	-	**324.39**
	Prop 13 Total	1.000000	86,525.78	$ 86,525.78		$ (0.00)	**$ 86,525.78**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	605.68	$ 605.68			**$ 605.68**
20603	MARK WEST ELEM 2002 BONDS	0.027000	2,336.18	2,336.18			**2,336.18**
20610	MARK WEST ELEM 2010 BONDS	0.011000	951.78	951.78			**951.78**
36702	SR HIGH DIST 2002 BOND	0.011000	951.78	951.78			**951.78**
36703	SR HIGH DIST 2014 BOND	0.018500	1,600.72	1,600.72			**1,600.72**
39900	SOCO JR COLLEGE 2002 BOND	0.012000	1,038.30	1,038.30			**1,038.30**
39901	SOCO JR COLLEGE 2014 BOND	0.023000	1,990.08	1,990.08			**1,990.08**
	Ad Valorem Total	0.109500	9,474.52	9,474.52			**9,474.52**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			**67.50**
53901	SO CO FIRE DIST 2006 TAX		570.20	570.20			**570.20**
58400	SANTA ROSA PLAIN GSA FEE		1,296.40	1,296.40			**1,296.40**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		1,970.10	$ 1,970.10			**$ 1,970.10**
	Grand Total	**1.109500**	**97,970.40**	**$ 97,970.40**			**$ 97,970.40**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2022-23 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

County of Sonoma

Property Taxes Levied by Taxing Agency
Koi Nation of Northern California
FY 2023-24

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**

Tax Code	Taxing Agencies	Tax Rate	Taxable Value 12,545,999	Pre-ERAF Tax Total	ERAF Shift Factor	Less: ERAF Shift	**Net of ERAF Total**
	Prop 13 (1%) Levy						
01200	COUNTY GENERAL	0.332685	41,738.64	$ 41,738.64	0.3311356897	$ (13,821.15)	**$ 27,917.49**
01300	COUNTY LIBRARY	0.022276	2,794.75	2,794.75	-	-	**2,794.75**
01700	ERAF	-	-	-	-	14,728.29	**14,728.29**
03100	SHILOH CEMETERY	0.008361	1,048.97	1,048.97	0.1120143760	(117.50)	**931.47**
05900	SONOMA COUNTY FIRE DISTRICT	0.079433	9,965.66	9,965.66	0.0667177562	(664.89)	**9,300.77**
06000	GEN #1 SOCO WATER AGENCY	0.008969	1,125.25	1,125.25	0.0827609724	(93.13)	**1,032.12**
06100	SPRING LAKE PARK SCWA	0.002893	362.96	362.96	0.0827730183	(30.04)	**332.92**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	0.015872	1,991.30	1,991.30	-	-	**1,991.30**
10000	MARIN/SONOMA MOSQUITO & VECTOR	0.002895	363.21	363.21	-	-	**363.21**
11500	BAY AREA AIR QUALITY MGMT	0.002223	278.90	278.90	-	-	**278.90**
13200	SONOMA RCD	0.000111	13.93	13.93	0.1130824262	(1.58)	**12.35**
17300	CSA #41 (MULTI SVC - LIGHTING)	-	-	-	0.0897720282	-	**-**
30800	MARK WEST ELEM	0.138891	17,425.26	17,425.26	-	-	**17,425.26**
33700	SANTA ROSA CITY HIGH	0.204736	25,686.18	25,686.18	-	-	**25,686.18**
34300	SO CO JT JR COLLEGE	0.062876	7,888.42	7,888.42	-	-	**7,888.42**
34400	SCHOOL SERVICE ADMIN	0.023059	2,892.98	2,892.98	-	-	**2,892.98**
34800	SANTA ROSA AWUF	0.090971	11,413.22	11,413.22	-	-	**11,413.22**
35200	SCHOOLS EQUALIZAT AID	0.003749	470.35	470.35	-	-	**470.35**
	Prop 13 Total	1.000000	125,459.98	$ 125,459.98		$ (0.00)	**$ 125,459.98**
	Voter Approved Debt						
06700	WS DAM-RUSSIAN RIVER PROJ	0.007000	878.20	$ 878.20			**$ 878.20**
20603	MARK WEST ELEM 2002 BONDS	0.027000	3,387.40	3,387.40			**3,387.40**
20610	MARK WEST ELEM 2010 BONDS	0.011000	1,380.04	1,380.04			**1,380.04**
36702	SR HIGH DIST 2002 BOND	0.010000	1,254.58	1,254.58			**1,254.58**
36703	SR HIGH DIST 2014 BOND	0.018000	2,258.26	2,258.26			**2,258.26**
36704	SR HIGH DIST 2022 BOND	0.028000	3,512.86	3,512.86			**3,512.86**
39900	SOCO JR COLLEGE 2002 BOND	0.011500	1,442.78	1,442.78			**1,442.78**
39901	SOCO JR COLLEGE 2014 BOND	0.022000	2,760.10	2,760.10			**2,760.10**
	Ad Valorem Total	0.134500	16,874.22	16,874.22			**16,874.22**
	Direct Charges						
53900	SO CO FIRE DIST SPEC TAX		67.50	67.50			**67.50**
53901	SO CO FIRE DIST 2006 TAX		544.38	544.38			**544.38**
58400	SANTA ROSA PLAIN GSA FEE		1,296.20	1,296.20			**1,296.20**
74200	MARIN-SONOMA MOSQUITO #1		24.00	24.00			**24.00**
96200	SF BAY RESTORATION AUTH		12.00	12.00			**12.00**
	Direct Charge Total		1,944.08	$ 1,944.08			**$ 1,944.08**
	Grand Total	**1.134500**	**144,278.28**	**$ 144,278.28**			**$ 144,278.28**

Note:
1) Prop 13 and Debt Service amounts are based on the Sonoma County Assessor's 2023-24 certified values.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/8/2024

Attachment C
to FTT Comments

County of Sonoma
10-Year Property Tax Projection by Taxing Agency
Koi Nation of Northern California
FY 2024-25 thru 2033-34

APN: **059-300-003-000**
Situs: **222 E SHILOH RD**
Owner: **SONOMA ROSE LLC**
TRA: **120-009**
Projected Annual Assessed Value Increase: **2.00%**

Tax Code	Taxing Agencies	*Base Year Property Tax FY 2023-24*	Projected Annual Property Tax Loss FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	FY 2029-30	FY 2030-31	FY 2031-32	FY 2032-33	FY 2033-34	**Total 10-Year Projected Loss**
	Prop 13 (1%) Levy												
01200	COUNTY GENERAL	*27,917.49*	28,475.84	29,045.36	29,626.27	30,218.80	30,823.18	31,439.64	32,068.43	32,709.80	33,364.00	34,031.28	**311,802.60**
01300	COUNTY LIBRARY	*2,794.75*	2,850.65	2,907.66	2,965.81	3,025.13	3,085.63	3,147.34	3,210.29	3,274.50	3,339.99	3,406.79	**31,213.79**
01700	ERAF	*14,728.29*	15,022.86	15,323.32	15,629.79	15,942.39	16,261.24	16,586.46	16,918.19	17,256.55	17,601.68	17,953.71	**164,496.19**
03100	SHILOH CEMETERY	*931.47*	950.10	969.10	988.48	1,008.25	1,028.42	1,048.99	1,069.97	1,091.37	1,113.20	1,135.46	**10,403.34**
05900	SONOMA COUNTY FIRE DISTRICT	*9,300.77*	9,486.79	9,676.53	9,870.06	10,067.46	10,268.81	10,474.19	10,683.67	10,897.34	11,115.29	11,337.60	**103,877.74**
06000	GEN #1 SOCO WATER AGENCY	*1,032.12*	1,052.76	1,073.82	1,095.30	1,117.21	1,139.55	1,162.34	1,185.59	1,209.30	1,233.49	1,258.16	**11,527.52**
06100	SPRING LAKE PARK SCWA	*332.92*	339.58	346.37	353.30	360.37	367.58	374.93	382.43	390.08	397.88	405.84	**3,718.36**
06200	FLOOD ZN 1A LAGUNA-MARK WEST	*1,991.30*	2,031.13	2,071.75	2,113.19	2,155.45	2,198.56	2,242.53	2,287.38	2,333.13	2,379.79	2,427.39	**22,240.30**
10000	MARIN/SONOMA MOSQUITO & VECTOR	*363.21*	370.47	377.88	385.44	393.15	401.01	409.03	417.21	425.55	434.06	442.74	**4,056.54**
11500	BAY AREA AIR QUALITY MGMT	*278.90*	284.48	290.17	295.97	301.89	307.93	314.09	320.37	326.78	333.32	339.99	**3,114.99**
13200	SONOMA RCD	*12.35*	12.60	12.85	13.11	13.37	13.64	13.91	14.19	14.47	14.76	15.06	**137.96**
30800	MARK WEST ELEM	*17,425.26*	17,773.77	18,129.25	18,491.84	18,861.68	19,238.91	19,623.69	20,016.16	20,416.48	20,824.81	21,241.31	**194,617.90**
33700	SANTA ROSA CITY HIGH	*25,686.18*	26,199.90	26,723.90	27,258.38	27,803.55	28,359.62	28,926.81	29,505.35	30,095.46	30,697.37	31,311.32	**286,881.66**
34300	SO CO JT JR COLLEGE	*7,888.42*	8,046.19	8,207.11	8,371.25	8,538.68	8,709.45	8,883.64	9,061.31	9,242.54	9,427.39	9,615.94	**88,103.50**
34400	SCHOOL SERVICE ADMIN	*2,892.98*	2,950.84	3,009.86	3,070.06	3,131.46	3,194.09	3,257.97	3,323.13	3,389.59	3,457.38	3,526.53	**32,310.91**
34800	SANTA ROSA AWUF	*11,413.22*	11,641.48	11,874.31	12,111.80	12,354.04	12,601.12	12,853.14	13,110.20	13,372.40	13,639.85	13,912.65	**127,470.99**
35200	SCHOOLS EQUALIZAT AID	*470.35*	479.76	489.36	499.15	509.13	519.31	529.70	540.29	551.10	562.12	573.36	**5,253.28**
	Prop 13 Total	*125,459.98*	127,969.20	130,528.60	133,139.20	135,802.01	138,518.05	141,288.40	144,114.16	146,996.44	149,936.38	152,935.13	**1,401,227.57**
	Voter Approved Debt												
06700	WS DAM-RUSSIAN RIVER PROJ	*878.20*	895.76	913.68	931.95	950.59	969.60	988.99	1,008.77	1,028.95	1,049.53	1,070.52	**9,808.34**
20603	MARK WEST ELEM 2002 BONDS	*3,387.40*	3,455.15	3,524.25	3,594.74	3,666.63	3,739.96	3,814.76	3,891.06	3,968.88	4,048.26	4,129.23	**37,832.92**
20610	MARK WEST ELEM 2010 BONDS	*1,380.04*	1,407.64	1,435.79	1,464.51	1,493.80	1,523.68	1,554.15	1,585.23	1,616.93	1,649.27	1,682.26	**15,413.26**
36702	SR HIGH DIST 2002 BOND	*1,254.58*	1,279.67	1,305.26	1,331.37	1,358.00	1,385.16	1,412.86	1,441.12	1,469.94	1,499.34	1,529.33	**14,012.05**
36703	SR HIGH DIST 2014 BOND	*2,258.26*	2,303.43	2,349.50	2,396.49	2,444.42	2,493.31	2,543.18	2,594.04	2,645.92	2,698.84	2,752.82	**25,221.95**
36704	SR HIGH DIST 2022 BOND	*3,512.86*	3,583.12	3,654.78	3,727.88	3,802.44	3,878.49	3,956.06	4,035.18	4,115.88	4,198.20	4,282.16	**39,234.19**
39900	SOCO JR COLLEGE 2002 BOND	*1,442.78*	1,471.64	1,501.07	1,531.09	1,561.71	1,592.94	1,624.80	1,657.30	1,690.45	1,724.26	1,758.75	**16,114.01**
39901	SOCO JR COLLEGE 2014 BOND	*2,760.10*	2,815.30	2,871.61	2,929.04	2,987.62	3,047.37	3,108.32	3,170.49	3,233.90	3,298.58	3,364.55	**30,826.78**
	Ad Valorem Total	*16,874.22*	17,211.71	17,555.94	17,907.07	18,265.21	18,630.51	19,003.12	19,383.19	19,770.85	20,166.28	20,569.62	**188,463.50**
	Direct Charges												
53900	SO CO FIRE DIST SPEC TAX	*67.50*	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	67.50	**675.00**
53901	SO CO FIRE DIST 2006 TAX	*544.38*	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	544.38	**5,443.80**
58400	SANTA ROSA PLAIN GSA FEE	*1,296.20*	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	1,296.20	**12,962.00**
74200	MARIN-SONOMA MOSQUITO #1	*24.00*	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	24.00	**240.00**
96200	SF BAY RESTORATION AUTH	*12.00*	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	12.00	**120.00**
	Direct Charge Total	*1,944.08*	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	1,944.08	**19,440.80**
	Grand Total	***144,278.28***	**147,124.99**	**150,028.62**	**152,990.35**	**156,011.30**	**159,092.64**	**162,235.60**	**165,441.43**	**168,711.37**	**172,046.74**	**175,448.83**	**1,609,131.87**

Note:
1) The projected annual assessed value increase of 2% is based on the Prop 13 annual inflation factor limit pursuant to Revenue and Taxation Code §51.
2) Direct charges are projected to remain flat and are not adjusted by the annual inflation factor.

Prepared by: Sonoma County Auditor-Controller Treasurer-Tax Collector
5/14/2024

Attachment D
to FTT Comments

Tax Code	Description	Revenue Type	Local Agency Name	Local Agency Contact Name	Local Agency Contact Email	23-24 Tax Bill Amount
01200	COUNTY GENERAL	Prop 13	County of Sonoma	Lindsay VanMidde	lindsay.vanmidde@sonoma-county.org	$ 27,917.49
01300	COUNTY LIBRARY	Prop 13	Sonoma County Library	Ludmyrna Lopez	accounting@sonomalibrary.org	2,794.75
01700	ERAF		Sonoma County Office of Education	Felicia Aguirre	faguirre@scoe.org	14,728.29
03100	SHILOH CEMETERY	Prop 13	Shiloh District Cemetery	Victor Kunkel	shilohcemetery@gmail.com	931.47
05900	SONOMA COUNTY FIRE DISTRICT	Prop 13	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	9,300.77
06000	GENERAL #1 WATER	Prop 13	Sonoma County Water Agency	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	1,032.12
06100	SPRING LAKE PARK WATER	Prop 13	Sonoma County Spring Lake Park Water	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	332.92
06200	ZN 1A LAGUNA-MARK WEST WATER	Prop 13	Sonoma County Zn1A Laguna-MW Water	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	1,991.30
10000	MARIN-SONOMA MCQITO ABT	Prop 13	Marin/Sonoma Mosquito & Vector Control District	Elizabeth Garcia	LizG@msmosquito.org	363.21
11500	BAY AREA AIR QUALITY MGMT	Prop 13	Bay Area Air Quality Management District	Candace Pina	airdistricttax@baaqmd.gov	278.90
13200	SONOMA RCD	Prop 13	Sonoma Resource Conservation District	Erin Rickard	erickard@sonomarcd.org	12.35
30800	MARK WEST ELEM	Prop 13	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	17,425.26
33700	SANTA ROSA CITY HIGH	Prop 13	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	25,686.18
34300	SONOMA COUNTY JC	Prop 13	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	7,888.42
34400	SCHOOL SERVICE	Prop 13	Sonoma County Office of Education	Jeanine Thibeau	jthibeau@scoe.org	2,892.98
34800	SANTA ROSA AWUF	Prop 13	Sonoma County Office of Education	Felicia Aguirre	faguirre@scoe.org	11,413.22
35200	SCHOOL EQUALIZATION AID	Prop 13	Sonoma County Office of Education	Jeanine Thibeau	jthibeau@scoe.org	470.35
06700	WS DAM-RUSSIAN RIVER PROJ	Ad Valorem	Sonoma County Water Agency	Lynne Roselli	Lynne.Rosselli@scwa.ca.gov	878.20
20603	MARK WEST ELEM 2002 BONDS	Ad Valorem	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	3,387.40
20610	MARK WEST ELEM 2010 BONDS	Ad Valorem	Mark West Union School District	Renee Loeza	rloeza@mwusd.org	1,380.04
36702	SR HIGH DIST 2002 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	1,254.58
36703	SR HIGH DIST 2014 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	2,258.26
36704	SR HIGH DIST 2022 BOND	Ad Valorem	Santa Rosa City High School District	Joel Dontos	jdontos@srcs.k12.ca.us	3,512.86
39900	SOCO JR COLLEGE 2002 BOND	Ad Valorem	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	1,442.78
39901	SOCO JR COLLEGE 2014 BOND	Ad Valorem	Santa Rosa Junior College	Whitney Schultz	wschultz@santarosa.edu	2,760.10
53900	SO CO FIRE DIST SPEC TAX	Direct Charge	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	67.50
53901	SO CO FIRE DIST 2006 TAX	Direct Charge	Sonoma County Fire District	Terri Bolduc	tbolduc@sonomacountyfd.org	544.38
58400	SANTA ROSA PLAIN GSA FEE	Direct Charge	Santa Rosa Plain Groundwater Sustainability Agency	Andy Rodgers	arodgers@westyost.com	1,296.20
74200	MARIN-SONOMA MCQITO ABT	Direct Charge	Marin/Sonoma Mosquito & Vector Control District	Elizabeth Garcia	LizG@msmosquito.org	24.00
96200	SF BAY RESTORATION AUTH	Direct Charge	SF Bay Restoration Authority	Jason Roth	jroth@nbsgov.com	12.00
						$ 144,278.28

ASW0100 - Megabyte Property Tax System - County of SONOMA

File Edit View Reports Help

ASW0100v2.5.1.029: Main **Assessor Inquiry** *May 14, 2024 9:22:19 AM (-07:00)*

Asmt: 059-300-003-000 Feeparcel: 059-300-003-000 Status: ACTIVE Owner: SONOMA ROSE LLC

Situs Address	222 E SHILOH RD SANTA ROSA		
Name Address	SONOMA ROSE LLC PO BOX 3162 SANTA ROSA CA 95402		
Status	ACTIVE	Status Date	10/27/2006
Taxability Code	000	TRA	120-009
Parcel Description	NORMAL OWNERSHIP		
SBE Number		Base Date	01/01/2022
Creating Doc#	2006I132956	Create Date	10/27/2006
Current Doc#	2021R100185	Cur Date	09/03/2021
Terminating Doc#		Term Date	
Neighborhood Code	WR1	Supl Cnt	1
Asmt Description	2007 FM REM 059-300-002 OPEN TO RD PER OR		
LandUse 1	0423 IRR VINEYD/PREMIUM W/RES		
LandUse 2			
Zoning 1		Dwell 1	1
Acres	68.60	SqFt	
SSN 1	___-__-_	SSN 2	___-__-_
Comments	FM REM 059-300-002		

Values

	Taxroll	Current	Aprdate
Land	7,835,660	7,835,660	
Structure	2,652,000	2,652,000	
FixtureRP	389,415	389,415	
Growing	1,668,924	1,668,924	
Total L&I	12,545,999	12,545,999	
Fixtures			
PPMH			
PP			
Exemption			
Net	12,545,999	12,545,999	
Homesite			

R/C # TR/Date Status

Description ENROLLED is BASE YEAR

1/2

☐ TPZ ☐ Ag Pres ☐ Etal ☐ Bonds

☐ Multi Situs ☐ 910 MH ☐ Flag 1 ☐ Flag 2 ☐ Prop 19

☐ Asmt PP ☐ Tax PP ☐ Appeal ☐ Split

Main | Has Notes | Ownership Detail | Ownership History | Exemptions | Prop Exclusions | Mfg Homes | Attributes | Value History | Situs | Sales | Parcel Desc

1/1 Update Phy Char. DE MH TC Inq. Apr Cntl R/C W/S Images

1 records found. WIN\sql12admin, 06/29/2023 9:10:26 AM

Attachment E
to FTT Comments

OFFICE OF THE COUNTY CLERK-RECORDER-ASSESSOR-REGISTRAR OF VOTERS DEPARTMENT

Assessor Division
585 Fiscal Dr., Rm. 104
Santa Rosa, CA 95403

(707) 565-1888
Assessor@sonomacounty.ca.gov

Parcel Information	
Parcel Number	059-300-003

Situs Address	
Situs Formatted 1	222 E SHILOH RD
Situs Formatted 2	SANTA ROSA CA

Assessment	
Assessment	059300003000
Secured Assessment	1
Assessment Status	A
Assessment Description	2007 FM REM 059-300-002 OPEN TO RD PER OR

Value History	
Roll Year	2023
Land Value	$7,835,660
Structure Value	$2,652,000
Growing Value	$1,668,924
Total LI Value	$12,545,999
Fixtures Value	$0
Fixtures RP Value	$389,415
PP Business Value	$0
PP Mobile Home Value	$0
Net Value	$12,545,999

Tax Information	
Taxability Full	000
Taxability Description	NORMAL OWNERSHIP
Tax Rate Area	120009

Exemptions	
Homeowner Exemption	$0
Other Exemption	$0
Other Exemption Code	

The information contained in this report is maintained by the Assessor's Office for assessment purposes only. The Assessor's Office is not liable for any error, omission or other defect in the information provided.

Report Generated: 5/14/2024 9:20:55 AM

OFFICE OF THE COUNTY CLERK-RECORDER-ASSESSOR-REGISTRAR OF VOTERS DEPARTMENT

Assessor Division
585 Fiscal Dr., Rm. 104
Santa Rosa, CA 95403

(707) 565-1888
Assessor@sonomacounty.ca.gov

Property Information	
Use Code	0423
Use Code Description	IRR VINEYD/PREMIUM W/RES
Use Code Type	Agricultural
Current Document #	2021R100185
Current Document Date	9/3/2021
Is Restricted	0
Land Size (SqFt)	0
Land Size (Acres)	68.59
Has Pool	1

Primary Building	
Primary Building	1
Quality Class	D090DM
Year Built	2004
Effective Year	2004
Size	5665
Bedrooms	3
Bathrooms	4
Half Baths	2
Total Rooms	10
Attached Garage	896
Carport	
Building Count	1

Agriculture	
Contract Effective Date	
Contract Expiration Date	
Non Renewal	0

Secondary Building	
Secondary Building	1
Size	1000
Attached Garage	
Detached Garage	
Carport	

The information contained in this report is maintained by the Assessor's Office for assessment purposes only. The Assessor's Office is not liable for any error, omission or other defect in the information provided.

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Attachment F
to FTT Comments

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CORY W. O'DONNELL
ADAM L. BRAND
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TASHAWN C. SANDERS

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

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

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

RE: EA Comments, Koi Nation Shiloh Resort and Casino

November 13, 2023

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the County of Sonoma, thank you for considering these comments on the Environmental Assessment (EA) prepared for the Koi Nation's proposed fee-to-trust application for its Shiloh Resort and Casino Project. The County is mindful of the Bureau of Indian Affairs' (Bureau) roles in reviewing and deciding on the application made by the Koi Nation and its role as a trustee for lands already held in trust for tribes in Sonoma County. The County is respectful of tribal sovereignty and understands the need for tribal self-determination and economic development to provide for tribal members. At the same time, Sonoma County objects to any attempt on the part of the federal government to take the present 68 acres of land located east of the Town of Windsor into trust for the benefit of the tribe for gaming in a manner that violates federal law.

Given the significant impacts of the project, and the controlling law that requires an Environmental Impact Statement (EIS) on these facts, the County of Sonoma respectfully urges the Bureau to forego any attempt to use this document to support a Finding of No Significant Impact (FONSI). This is not supportable. The County of Sonoma objects to the inadequate analysis and mitigation in the EA, and the failure of the Bureau to take a "hard look" at the environmental consequences of this proposal, as required by the National Environmental Policy Act (NEPA).

The Bureau should stop, think, and prepare the EIS that NEPA requires.

I. The EA contains inadequate analysis of the significant impacts of the project and an EIS must be prepared.

The Bureau has prepared a complete EIS for other very similar casino projects within Sonoma County, as well as elsewhere in California. By way of example, in Sonoma County, the Cloverdale Rancheria Band of Pomo Indians' fee-to-trust application sought 69.77 acres of land in trust for gaming about 25 miles north of the subject site. An EIS was prepared for the Cloverdale project.[1] The Bureau's action on the Cloverdale site was for a resort casino and hotel, including a tribal government building and 3,400 parking spaces, for a total non-parking square footage of 595,600 square feet. By way of comparison, the Koi Nation's project is for a similar project without a government building, and totals 807,067 square feet for non-parking coverage, and 5,119 parking spaces in addition (1,689,380 square feet in addition). For a similarly sized proposed land area, the Koi casino square footage is 135.5% of that proposed by Cloverdale, its hotel rooms are 164% of that proposed by Cloverdale, and the number of parking spaces is 150.5% of that proposed by Cloverdale. Even if the current project were to be reduced in size to what Cloverdale proposed, common sense would dictate an EIA. While an EA may be appropriate for some projects, the Koi Nation's destination casino project is not one of them.

The EA concedes that the project will have numerous significant impacts, but then backs away from the obviously required significance findings based on regulatory requirements that do not exist, inadequate baseline information to inform analysis, inadequate environmental analysis of direct and indirect impacts, inadequate analysis of cumulative impacts, inadequate and unenforceable mitigation requirements, the strategic mischaracterization of mitigation as "part of the project" to avoid accountability, vague and unenforceable project assumptions, and in many cases, a refusal to implement all the recommendations of the consultants that the EA itself relies upon.

The decision not to prepare an EIS for this project reflects a conscious refusal to take a hard look at the impacts of the project and indicates that NEPA review is improperly being used to paper over a decision that has already been made.

II. The EA is affirmatively misleading with respect to the "regulatory setting," contains no discussion of mitigation efficacy, and no evidence that key mitigation will be effective.

The EA is filled with references to California state law and State and local regulatory standards. State law is discussed in most of the "Regulatory Setting" sections of the impact discussions, and also in Appendix E. However, the project may only be

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[1] http://www.cloverdalerancheria.com/eis/deis.htm

built if the land is in trust and hence not within the civil regulatory jurisdiction of the State of California or County of Sonoma. Each reference is misleading because the referenced State legal requirements and local regulatory requirements do not apply to the project. The EA avoids providing a description and discussion of the actual regulatory setting (and associated issues with mitigation implementation that this setting presents). Tribal sovereign immunity is not mentioned in the EA, much less in the context of mitigation measures.

There is no discussion of what mechanism will be available or used by the Bureau as the decisionmaker on the Koi Nation's fee to trust application to impose enforceable mitigation on the Tribe. It is one thing to discuss how environmental impacts are addressed by existing, enforceable requirements, but it is quite another to pretend that impacts are addressed by background regulations that do not exist.

In places, the EA's impressionistic discussion of State law and tribal requirements is about as far from a "hard look" as one can get. Section 2.1.9 states:

> The proposed facilities would conform to applicable tribal building code requirements, which would be generally consistent with the CBC and California Public Safety Code, including building, electrical, energy, mechanical, plumbing, fire protection, and safety. An indoor sprinkler system would be installed to provide fire protection.

There is no indication that the Tribe currently has tribal building codes with "applicable" requirements, but if they existed, they would apparently only be "generally" consistent with the "California Public Safety Code" – a California statute that does not exist. The analysis appears to be based on an imaginary code that is based on an imaginary code. If there are tribal codes that apply, their text should be provided in the NEPA process such that their adequacy can be commented upon and evaluated.

It is also clear on the face of the EA that cited regulatory standards are being ignored. As noted by West Yost (Exhibit A), a great deal of emphasis is placed on compliance with Title 22 of the California Code of Regulations in the EA's discussion of recycled water (EA, Appendix B, 2-16, 4-2 and 4-3), but the whole dual plumbing design (using non-potable water within a building with food facilities, 22 Cal. Code Regs. § 60313), squarely violates Title 22.[2]

[2] Assuming compliance with Title 22 and non-compliance at the same time makes the EA fundamentally unclear. A project that complies with Title 22 would require a different water balance analysis than is found in the EA.

Compounding the problem is the fact that the EA discusses critical mitigation measures as "Best Management Practices" (Table 2.1-3) raising the issue of whether these purported "practices" will actually occur absent monitoring and enforcement. The Bureau's own NEPA guidance (59 IAM 3-H) is clear that mitigation measures must be enforceable to justify a FONSI. Simultaneously, the Bureau's analysis in the EA is clear that compliance with Table 2.1-3 is critical to the impact conclusions in the EA. The analysis returns to Table 2.1-3 for these conclusions repeatedly. There must, at a minimum, be a mitigation measure that requires compliance with Table 2.1-3 or, alternatively an explanation of how these critical requirements (which are not at all part of background legal requirements for the project) will be monitored and enforced. The entirety of Table 2.1-3 must be rewritten to allow the evaluation of the efficacy of the mitigation and remove the escape clauses – by way of example, "[e]xhaust stack and vents will be positioned to limit odor exposure to sensitive receptors *to the extent feasible*." Characterizing critical "mitigation" as "practices" to avoid environmental accountability hides the ball in terms of impact analysis and subverts NEPA's basic purpose.

The failure to discuss the actual "regulatory setting," and the related failure to discuss why the "practices" and "measures" will be effective within that regulatory setting, is a fatal omission for NEPA compliance. The EA fails to provide the "reasonably complete discussion of possible mitigation measures" that is necessary to facilitate the "'action forcing' function of NEPA." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Credible information on the efficacy of "practices" or "measures" must be provided, and enforcement and monitoring must be implemented. Where "measures" or "practices" are illusory, they cannot legally provide the basis for a FONSI.

III. The EA's discussion of groundwater and water quality impacts is inaccurate and utterly inadequate.

The EA assumes that Pacific salmonids are not present in Pruitt Creek, stating "[l]isted Pacific salmonids are assumed to be absent from Pruitt Creek based on observations from the February 23, 2022, site assessment coupled with background research and lack of historic occurrences. The potential for Pacific salmonids to occur and use habitat in this far east portion of the Russian River Basin is temporally and physically limited." In reality, federally listed steelhead, *Oncorhynchus mykiss*, 79 Fed. Reg. 20802, 20807 (2014), are known to exist in Pruitt Creek, and the attached memorandum by Jeff Church, a Sonoma County Water Agency biologist, documents observations both upstream and downstream from the project location. (Exhibit B.) Steelhead use this location, and the location is designated critical habitat. 70 Fed. Reg. 52488 (2005).

It is true that the reach of Pruitt Creek at the project site is intermittent, but the Bureau reaches the exact wrong conclusion based on this fact. The Bureau should recognize that this fish habitat is exceedingly sensitive to dewatering and pollution impacts, rather than justifying a truncated investigation based on an incorrect assumption that federally listed fish species are not present. As discussed by West Yost (Exhibit A), dewatering impacts need to be evaluated based on an evaluation of the baseline conditions that is sufficient to inform the impact analysis, and the EA makes conclusions that are entirely unwarranted based on the evidence. The Bureau may not rely on its own lack of investigation into hydrologic conditions to justify discounting environmental impacts. *S. Fork Band Council of W. Shoshone*, 588 F.3d at 727. The current cursory investigation and analysis is not adequate to determine that the project will not adversely modify critical habitat[3] and result in significant impacts to salmonids. The project may well result in both significant impacts and violations of section 9 of the Endangered Species Act.

Further, the actual local flows in Pruitt Creek need to be evaluated to understand the baseline conditions; the EA's chosen proxy site 5.5 miles away on a different creek is not representative. (Exhibits A, C.) In addition, the analysis must include future projections given the changing climate. There is no evidence that the proposed wastewater discharge solution is feasible given actual streamflows, meaning that the EA's analysis of what will actually occur is dubious at very best. Robert Pennington, a Professional Geologist with the County of Sonoma, explains:

> During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species. [¶] The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge #11466800 has a contributing watershed area of 251 square miles. The

[3] The Bureau cannot take the position that taking this land into trust removes the protections of critical habitat under the applicable designation (70 Fed. Reg. 52488), because the habitat benefits from the existing designation.

> contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. (Exhibit C)

Inadequate storage will lead to environmentally harmful discharges, and there is no enforceable mitigation that requires compliance with all aspects Title 22 in California Code of Regulations, and there is no mitigation that addresses the related issues addressed by California's recently adopted Recycled Water Policy.[4] The study on which the EA is based admits that "contingency plans should be developed for low flow conditions" (EA, Appendix C, 2-21), but these have not been developed, disclosed, and analyzed. Similarly, crucial components of the recycled water system have not been disclosed, including a feasible plan to expand it. Absent trucking out of wastewater, which has significant impacts that are unanalyzed, it is foreseeable that the project will be forced to discharge recycled water at rates far above the agronomic rate of uptake for the recycled water discharge locations, leading to discharges to groundwater, and in turn, potential plant death that further exacerbates groundwater discharges.

Mitigation is necessary to avoid groundwater and surface water contamination, and a hand wave about Clean Water Act compliance is insufficient to excuse substantive analysis given emerging contaminants and the foreseeability of discharges to both groundwater and surface water. An inadequate initial design will lead to "upsets" and "bypasses," and claims that these harmful discharges are permitted. (40 CFR § 122.41(m) and (n).) In addition to nutrients, contaminants of concern that will exist in discharges to groundwater and stormwater include pharmaceuticals and related hormones, metals, microplastics, and PFAS. These contaminants will also be present in the project's biosolids.[5] In the stormwater context, given the automobile-centric nature of the project, the Bureau also must evaluate emerging contaminants like 6PPD from tires, as these chemicals have recently been identified as a major driver in

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[4] State Water Resources Control Board, Water Quality Control Policy for Recycled Water, (2019) https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf.

[5] Pozzebon, E.A., Seifert, L. Emerging environmental health risks associated with the land application of biosolids: a scoping review. Environ Health 22, 57 (2023). https://doi.org/10.1186/s12940-023-01008-4.

salmonid extinction.[6] The required good faith analysis must be based on the fact that the project is proximate to salmonid habitat, not on convenient but incorrect factual assumptions to the contrary.

Additionally, the Bureau must evaluate the cumulative impacts of the planned groundwater pumping in light of the other existing and readily foreseeable wells in the immediate area, and also evaluate the cumulative impacts of extraction on the larger groundwater basin. The Bureau has not done so. The project would pump groundwater from the Santa Rosa Plain groundwater subbasin – a basin that requires special planning under California's Sustainable Groundwater Management Act (SGMA) to avoid adverse impacts. The groundwater in this basin is relied on for rural residential, agricultural, and municipal water supply. The EA fails to recognize – let alone analyze the impacts on – groundwater conditions and uses, and the EA lacks any analysis of long-term groundwater impacts. Mitigation measures are necessary to address groundwater impacts, and these are simply missing.

The current EA raises many more questions than it answers about whether and how the significant impacts of the project can feasibly be addressed. The current discussion only serves to document that they are not addressed. The EA cannot be used to support a FONSI for water quality and groundwater impacts. The groundwater "monitoring" mitigation measure merely documents that crucial information is missing from the EA that should have already been developed. The proposed "compensation" mitigation measure for groundwater depletion is not remotely adequate, and violates 40 CFR § 1508.20. The purported mitigation does not substitute for the environmental impacts that the EA ignores, and the EA similarly ignores the significant impacts of the mitigation itself.

In short, the EA is grossly deficient with respect to groundwater and water quality impacts.

IV. The EA fails to provide adequate analysis and mitigation for reasonably foreseeable impacts to law enforcement services.

The EA includes an analysis of Social Effects (e.g., gambling addiction, crime, drunk driving). Appendix B provides additional information on crime. The EA notes that increasing crime and calls for service to public safety are associated with any population increase, not necessarily gaming specifically, and concludes that the development, due

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[6] John Ramos, "Tire additive could push California salmon to extinction, study says," CBS Bay Area, August 23, 2023, https://www.cbsnews.com/sanfrancisco/news/tire-additive-could-push-california-salmon-to-extinction-study-says/; Tian et al., "A ubiquitous tire rubber–derived chemical induces acute mortality in coho salmon," *Science* 371, 185–189 (2021).

to its large gatherings of people, may result in increased calls to law enforcement. The EA then claims that "the addition of the Proposed Project is not expected to lead to a material increase in crime rates in the area." The EA concludes the proposal would increase total calls for service by 2.2% and increase total arrests by 1.4% (1,433 calls and 33 arrests).

This discussion is misleading. Contrary to the conclusions of the EA, the causal link to crime from casinos is clear, and there is no evidence that the project would not require additional law enforcement facilities. In 2012, before the opening of the Graton Casino, the area surrounding that location (288 Golf Course Drive) was very similar to the proposed project area, and it generated two calls for service. (In the calendar year 2022, the area surrounding the proposed site generated one call for service.) However, upon the opening of Graton Casino in 2013, the location generated 1,757 calls for service, an increase of 1,755 calls. Last fiscal year (22/23), Graton Casino generated 529 of the 6,680 calls for service in Sheriff's Office Zone 5 (a very large Patrol Zone that includes the unincorporated areas surrounding Petaluma, Rohnert Park, and Cotati, stretching from the northern city limits of Rohnert Park to the Sonoma/Marin County border). The calls for service included, but were not limited to, assaults, trespassing, multiple types of theft, stolen vehicles, public intoxication, and drug activity. The decline from opening to fiscal year 22/23 in the case of the Graton Casino is not necessarily good news, as deputies are no longer specifically assigned to the casino and some crime previously reported by the assigned deputies themselves is possibly going unreported.

The proposed mitigation measure (EA, 4-7) to make "good faith efforts" to enter into a service agreement is inadequate, and provides no information regarding the contents of the agreement. The EA's attempt to discount the impacts is discouraging. The requirement that the proposed agreement be based on "quantifiable direct and indirect costs" does not adequately mitigate the impact (1) without a description of how those costs will be determined and (2) without an enforcement mechanism, which together would demonstrate that the mitigation is not illusory.

V. The EA fails to provide adequate analysis and mitigation for foreseeable environmental impacts that will result from the economic impact of this casino.

The EA concludes that the project would not result in significant impacts due to the economic effects of the project. This conclusion is unsupported by the facts and evidence. The socio-economic report (EA, Appendix B) concludes that existing Sonoma County casinos would experience a possible business loss of 11% and 24% but concedes that none of the estimates hold any water if other casinos (such as the approved Cloverdale casino) are constructed. Completely elided from the EA is a discussion of the foreseeable *environmental* impacts of very foreseeable business

failures that may well occur as a result of this approval. These impacts bear on both the Bureau's NEPA and the Bureau's federal trust obligations.

The Global Market Advisors impact study (Appendix B) estimates that 95% of the proposed project's estimated revenues ($473 million) will be diverted from existing local casinos ($449.4 million). Appendix B then dilutes this local impact by saying this is only 13.7% of a much larger, non-local gaming market. However, the analysis concedes that the existing Dry Creek Rancheria's River Rock casino will face no less than a 24.4% decline in revenue, and Global Market Advisors further concedes that this is not a conservative assumption given the fact that other casinos could also be constructed. No analysis is provided of the economic effects if this assumption is incorrect.

The over-saturation of the gaming market has physical impacts on the environment and on other tribes. The introduction of this casino to the local casino market would not only negatively impact existing gaming casinos in the area but would likely cause the total closure of more remote facilities like the Dry Creek Rancheria's River Rock casino. The Bureau stands to be the proximate cause of this closure, and the proposed action is contrary to the federal government's trust responsibilities. It is entirely foreseeable that the Bureau's proposed action will result in a closure.

The EA fails to evaluate these readily foreseeable impacts. The economic context for the Dry Creek Rancheria Band's River Rock Casino, and other tribal casinos in the area, is particularly precarious given the opening of the Graton Casino in 2013. In 2014, the Dry Creek Rancheria Band defaulted on millions in bonded indebtedness ($150 million) to its casino investors, and in contractual obligations ($50 million) to the County of Sonoma pursuant to an enforceable intergovernmental mitigation agreement. (Exhibit D.) The Graton Casino broke ground on a $1 billion expansion this year.

The EA is incomplete without a factual analysis of the continued economic viability of the proximate competitors, and an analysis of environmental impacts associated with closures of existing tribal casinos and resultant blight, deterioration, and loss of function of tribal infrastructure and services. The Bureau should conduct a good faith analysis of the economic and environmental consequences of its action, and stress test the assumptions based on all the facts that are relevant to the local context. This includes, but is not limited to, economic uncertainties and the effects of natural disasters on the gaming market.

In a context of foreseeable failures, perhaps most troubling in Global Market Advisors' analysis is the analogy to "gravity" (notably, without any disclosure of the actual math), as it strongly suggests a dynamic where the Bureau's fiduciary solution to failing casinos may be the expansion of larger and larger casinos to attract more visitors from greater distances. The Bureau must evaluate not only the foreseeable impacts of casino failures, but the growth inducing response to those failures that naturally will follow.

The current analysis of the economic and environmental consequences of the proposal is wholly inadequate for purposes of NEPA and raises serious questions about how the Bureau, as trustee, exercises its responsibilities when holding existing lands in trust for the benefit of distinct tribes, when presented with a proposed fee-to-trust application for another tribe.

VI. The EA's discussion of the project's significant greenhouse gas emissions and Vehicle Miles Travelled is inaccurate and incoherent, and the significant greenhouse gas impacts of the project are not mitigated.

The estimated greenhouse emissions from this project are extremely high, especially for this type of project. They are, disturbingly, much higher than they need to be. The estimates of operational emissions for Alternatives A, B, and C are respectively 69,862, 55,932, and 7,100 annual metric tons of CO2 equivalent (MTCO2E). (EA 3-138.) The Bay Area Air Quality Management District's (BAAQMD's) former significance threshold based on California's science-based emissions targets for 2020 was 1,100 MTCO2E. California's targets have been reduced. A straight-line reduction of the former threshold based on current science-based targets for 2030 in California results in a 40% reduction, or 660 MTCO2E.[7] Likewise, the EA discloses extraordinarily high social costs related to the greenhouse gas emissions for this project: $129,479,003 for Alternative A, $103,352,963 for Alternative B, and $13,374,218 for Alternative C. (EA 3-139.) These social costs alone indicate that the project's greenhouse gas impacts are significant. But rather than mitigating the very significant greenhouse gas emissions of the project, or finding that they are significant in a good faith analysis in an EIS, the EA attempts to hide the ball and assert that the project is compliant with BAAQMD's recently revised guidance. (EA, 3-140.) It is not.

In 2022, BAAQMD revised its threshold to be based on the absence of the build out of any new natural gas infrastructure, and on a 15% reduction in vehicle miles travelled (VMT) below the regional average per capita. (Exhibit E.) The EA purports to rely on this threshold. The threshold is an aggressive ratcheting down of the prior threshold based on the severity of the climate crisis. The goal of the threshold is to evaluate the design elements that are necessary to facilitate achieving *complete carbon neutrality* in California by 2045. (Exhibit E.) The natural gas component is based on the

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[7] Under Health and Safety Code section 38566, SB 32 (2016), California's emissions reduction mandate for 2030 is 40% below its prior goal for 2020. Thus, many agencies have used 660 MTCO2E as an extrapolation of BAAQMD's 2020 threshold for this type of project (1,100 MTCO2E), as BAAQMD's threshold was based on California's 2020 targets. The alternatives in the EA are 105 times, 65 times, and 10 times this significance threshold.

judgment that global climate goals cannot be met with the expansion of natural gas infrastructure, given the need for major emissions reductions from existing infrastructure. The VMT component is based on guidance from the State's Office of Planning and Research, which the EA acknowledges.

The EA states:

> The Bay Area Air Quality Management District (BAAQMD) provided guidance in 2022 to determine the significance of climate impacts from land use projects (BAAQMD, 2022c). If a project will not include natural gas appliances, will not result in wasteful, inefficient or unnecessary energy use, will reduce project-generated vehicle miles traveled (VMT) below the regional average, and will provide EV facilities consistent with current California building standards, then a project's climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B and C would result in over a 15 percent reduction in VMT compared to the Sonoma County region. Therefore, with the implementation of BMPs, implementation of the project alternatives would not result in a significant adverse cumulative impact associated with climate change. (EA 3-140.)

In reality, neither of BAAQMD's referenced criteria are met. The project is not foregoing all natural gas as BAAQMD's threshold requires for a finding of "less than significant." Instead, Table 2.1-3 states: "The Tribe will use electric boilers and appliances in lieu of natural gas or propane units *to the greatest extent practicable*," whatever that means. The only thing this language clearly suggests is that the Tribe has considered the BAAQMD guidance regarding natural gas and rejected it.

Worse, the EA's statement that the project will result in "a 15 percent reduction in VMT compared to the Sonoma County region" has no basis whatsoever. Very clearly, this is not a VMT reduction project. The project's sponsors hope to draw customers from a very wide region, and have proposed no less than 5,110 parking spaces for the project. The study relied upon only looks at vehicle miles travelled associated with employees, not project visitors, which is to say that most VMT associated with the project is being ignored. This is the case even as the economic analysis in Appendix E, pages 65 and 66, describes a very large geographic market for visitors to the project, with the bulk of visitors not coming from Sonoma County. The purported "logic" of the EA is that: "The project's Home-Based VMT per employee value of 10.20 is lower than

the 85% VMT threshold for the Sonoma County region (10.53 VMT per employee). Thus, the proposed project at full buildout is expected to have a less-than-significant impact on VMT." These numbers do not elucidate the project's impacts. *Even after* improperly ignoring the visitor VMT completely, the VMT numbers cited reveal significant impacts. The EA deliberately evaluates the employee VMT average against the Sonoma County average rather than the regional average (which is significantly lower, because the region includes the metropolitan areas of the Bay Area),[8] and then, by a thin margin, finds the outcome to be less than significant. To the extent that any component of the math is credible at all, it has been subjected to outcome-oriented manipulation.

Nor do the practices in Table 2.1-3 address the greenhouse gas impacts as the EA claims. The Bureau has deliberately chosen mitigation language in Table 2.1-3 that is utterly vague and unenforceable: "Shuttle service to and from population centers will be provided *as feasible*, which would reduce CAPs and GHGs." The fleet mitigation is similarly vague and unenforceable, and has no standard through which efficacy can be evaluated. At the same time, as discussed more fully below, *all* of the recommendations of the traffic consultant concerning transit and pedestrian infrastructure have been summarily rejected without any explanation in the EA.

On top of these problems, the modeling assumptions in Appendix F do not hold up for very potent greenhouse gases like methane. Appendix F assumes "mitigation" that is not applied. While an unenforceable recycling "practice" has been proposed, no mitigation is imposed on the project requiring the source separation of organic waste such that it can be diverted from landfills. The lack of a feasible plan for organics diversion (including for biosolids), and the lack of any discussion of the project's integration with related landfill diversion processes under SB 1383 (2016), means the landfill diversion estimates are not credible. This in turn means that the assumptions about project emissions for potent gases like methane are not credible. Landfill diversion cannot be assumed if the project actively thwarts diversion.

The only way to reach the conclusion that the project's greenhouse gas impacts will be less than significant is by systematically ignoring the data, which the EA does. Perhaps the Bureau could use a different science-based analytical framework than BAAQMD and California's Office of Planning and Research have used, but it is arbitrary and capricious to manipulate data and say that cited significance criteria are met when they are not. A good faith analysis of the greenhouse gas impacts must be conducted, and if the analysis is based on an EA, the strategy of avoiding accountability by placing

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[8] In the context of similar attempts to dilute required VMT reductions, the California Office of Planning and Research (on whose guidance the EA purports to rely) has made clear that "regional average" means the average in the applicable Metropolitan Planning Organization, not the lower average within a county. (Exhibit F.)

mitigation with extensive escape clauses in the project description must be jettisoned. Given the project's high level of emissions, an EIS should be prepared. Absent an EIS, adequate and enforceable mitigation must be adopted for the project's emissions related to the project's energy sources, the project's energy consumption, transportation, and waste.

VII. The EA's traffic analysis ignores the recommendations of the underlying studies, and is based on inadequate and ineffective mitigation measures.

The EA reaches the logical conclusion that the project will have significant impacts on traffic without mitigation. However, the EA does not provide for enforceable mitigation that ensures that these impacts will be avoided.

The EA divides transportation into opening day mitigation and "cumulative" mitigation for 2040. For opening day, the mitigation measure states:

> While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make *good faith efforts to assist* with implementation of the opening year improvements prior to opening day. (EA 4-8, emphasis added)

The Tribe does have the ability to enter into enforceable contracts to construct the improvements (with local government assent), but the language in the EA scrupulously avoids anything concrete or enforceable. As written, the mitigation measure would allow for mere cheerleading, even as the traffic study (EA, Appendix I) assumes that the Tribe or Bureau will be responsible for the entire cost. What is needed to avoid significant impacts is the improvements, not "good faith efforts" that the Bureau declines to specify. Further, the analysis does not confirm there are no constraints for the improvements (environmental, real property, etc.), and does not analyze the improvements themselves. Ultimately, the measure does not commit the Tribe and/or Bureau to the improvements. The structural problem with the analysis is therefore that the EA provides no actual evidence that the improvements will occur, which on its own requires an EIS given the fact that impacts to be mitigated are significant.

The same issues arise for the "cumulative" improvements. The EA says:

> The Tribe shall make fair share contributions to the cumulative 2040 traffic mitigation measures. Funding shall be for design standards consistent with those required for similar facilities in the region. (EA, 4-8.)

First, the amount and timing of the payments is unspecified, and no evidence is provided that the cumulative improvements will actually be constructed on the timeline required to avoid significant cumulative impacts. There is no discussion of feasibility and constraints, and no discussion of any environmental issues that may exist with the improvements. Incredibly, the widening of Shiloh Road from 2 to 4 lanes is simply "assumed" without any substantive analysis (Appendix I, 168), and it is not required as mitigation – even as it is absolutely critical for the EA's conclusions about impacts.

Second, critical details are omitted from the mitigation measure, such as the nature of the fair share calculation (Table 33 in the traffic study is not mandated), the timing of project cost determinations, and the timing of payments. This information is crucial to evaluate the efficacy of the mitigation. Cost determinations must be based on actual facilities that meet County design standards, not hypothetically "similar" facilities, to ensure the improvements can actually be constructed. Effective mitigation measures will require enforceable agreements with the County.

Worse, without explanation, the EA inexplicably declines to impose mitigation recommended in the traffic study (EA, Appendix I) that could help address the project's transportation impacts. These recommendations include:

- "The proposed project should provide adequate pedestrian and bicycle facilities on its site (particularly at its planned driveways) to facilitate pedestrian and bicycle traffic to and from the project site." (EA, Appendix I, 6-7.)
- "Provide concrete sidewalks, and marked crosswalks at the proposed project driveways to connect with existing and planned pedestrian facilities along Shiloh Road and Old Redwood Highway." (EA, Appendix I, 6-7; section 15.4.)
- "Provide continuous, accessible pedestrian pathways between the nearby transit stops and project entrances." (EA, Appendix I, section 15.4.)
- "Provide pedestrian and bicycle facilities between the proposed project's driveways and the project's main facilities to improve on-site pedestrian and bicycle circulation" (EA, Appendix I, section15.4.)
- "The site is not proposing sidewalks along its frontages. However, pedestrian facilities should be provided at the two new traffic signals to provide a connection with the sidewalks on the north side of Shiloh and the urban features on the west side of Old Redwood Highway near the future signals at the church. TJKM also recommends constructing continuous, accessible pedestrian paths between the nearest bus stops, the project access points closest to Shiloh Road & Old Redwood Highway, and the nearest project entrances." (EA, Appendix I, section 15.2.)
- "Sonoma County Transit (SCT) serves the project area. Route 60 mostly travels along Old Redwood Highway between Cloverdale and Santa Rosa on headways varying between one to two hours. There is an existing pair of stops adjacent to the corner of Shiloh Road and Old Redwood Highway. With the addition of

accessible pedestrian pathways between the stops and the project entrances, this route has the potential to serve employees and patrons in the Old Redwood Highway corridor." (EA, Appendix I, 15.2.)

The failure to adopt these recommendations is unexplained. All of these mitigation measures would at least contribute to mitigating the very high VMT for the project. The EA's departure from these recommendations is neither explained nor justifiable.

Similarly, without the "hard look" required by NEPA, the EA does not impose the queueing mitigations that the traffic study recommends. These omissions leave significant traffic impacts, including on safety, unmitigated. The mitigation section of the EA contains no mention of the mitigations recommended in the traffic study (Appendix I) in section 4.5 (p. 42, 43), section 8.0 (p. 89), section 12.2 (p. 129-132), section 5.5 (p. 57-58), section 9.2 (p. 99, 100), section 6.5 (p. 72), section 10.2 (p. 109, 110), or section 14.2 (p. 159-162).

Finally, the EA also modifies the mitigations in the traffic study without justification or explanation. There are, for example, discrepancies between turn lane mitigations in the traffic study and in the EA, as well as lane "storage length" recommendations, where mitigation has been reduced in the EA relative to the traffic study without explanation. Whatever the reason for these changes, there is no evidence that these changes are appropriate.

In sum, the proposed traffic mitigation is not adequate, and the discussion of traffic impacts does not constitute a "reasonably complete" discussion of the direct and indirect traffic impacts of the project.

VIII. The EA's discussion of wildfire risks and mitigation is inadequate.

In the last decade, the project area has been the site of some of the worst wildfires in United States history. The project is very near to the burn areas of both the 2017 Tubbs Fire and the 2019 Kincade Fire. The EA acknowledges that the project is in a designated high fire risk area. (EA, figure 3.12-2.) The EA concedes that the elimination of fire barriers is a significant impact. Missing from the EA, however, is any recognition of the fact that the EA eliminates agricultural land that acts as a fire break (for the City of Windsor as well as for surrounding areas) and replaces it with flammable structures. This creates a potential ignition linkage from populated areas to a *very high* fire risk area. It is not as though the County has no experience with how this works. The EA contains a conclusory statement that no fire barriers will be eliminated. This is an odd mix of silly and irresponsible.

The EA cites State building standards relative to wildfire, and Former Chief Vern Losh recommends compliance with the wildfire (or "Wildland Urban Interface") provisions of the California Building Code. (EA, Appendix N1.) The EA does not

discuss the fact that these codes are inapplicable, and the EA does not require that they be imposed. The EA fails to discuss the fact that even a single ember in a poorly placed vent can defeat the protections provided by (already inapplicable) fire codes. Hurricane-force winds can transport these embers long distances at high velocities. It is understandable that, beyond the California code requirements, Former Fire Chief Losh recommends "special care" with locations where embers could intrude. No mitigation that implements and requires this care is imposed. No third-party plan checks are required. No substantive post-construction reviews are required. Indeed, no mitigation measures have been imposed to ensure that Chief Losh's generic assumptions about how projects should be built are true. Fire sprinklers are mentioned, but there is no discussion of the adequacy of water supplies and infrastructure to address firefighting. There is no discussion of the potential loss of water pressure or the frequent loss of power during fire weather, which can eliminate water supply. There is no discussion of the feasibility and impacts associated with the "back up" fire station that is proposed.

The outcome-oriented carelessness of the EA applied to very significant risks is unfortunate. Yet, the EA's failure to substantively examine evacuation risks is even more troubling. Evacuation risks are environmental risks with which Sonoma County has far too much familiarity. Evacuations have not always gone well, and timing has been crucial for the evacuations that have mitigated broader disasters. Very recent wildfires have required massive evacuations of the entire area in which the project is situated, including the complete evacuation of the adjacent Town of Windsor. The timely, total evacuation of the Town in 2019 was a key factor in allowing firefighters to save the Town and stop the further spread of the fire, as it allowed firefighters to battle flames without committing resources to rescues. (Exhibit G.) Evacuation requires sufficient infrastructure to allow occupants to leave and firefighters to enter without mutual interference. Experience has shown that the consequences of insufficient resources for evacuation can be dire.

Evacuation issues cannot be lightly treated as insignificant in Sonoma County. But that is exactly what the EA does. The CAS Safety Consulting LLC report makes numerous recommendations that have not been implemented in evacuation mitigation measures. Most problematically, these recommendations include traffic modeling that has not been completed. As the California Attorney General observes, "evacuation modeling and planning should be considered and developed at the time of project review and approval—when there is greater flexibility to modify a project's design, density, siting, and configuration to address wildfire considerations—rather than deferred to a later stage of the development process."[9] The "wait and see" approach

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[9] California Attorney General, "Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act," October, 10, 2022, https://oag.ca.gov/system/files/attachments/press-docs/2022.10.10%20-%20Wildfire%20Guidance.pdf.

which might suffice in some cases is completely inappropriate in this situation. The only thing close to modelling that has been disclosed is an implausible conclusion that a 6-8 hour estimate to evacuate the casino and the Town is adequate. The basis of the estimate is not provided, but the conclusion that this is possible is based on various assumptions. The assumptions include the questionable assumption that Shiloh Road will be expanded at opening, even as no mitigation is proposed to require this expansion prior to opening. The EA does not provide a plausible basis for concluding that the estimated time required for evacuation is sufficient, it does not state the range of cases where that conclusion would be true, and it does not stress test all assumptions – in terms of infrastructure, in terms of disaster response operations, and in terms of the increasing wildfire risks presented by climate change. The lack of adequate traffic mitigation greatly exacerbates the deficient analysis. The EA does not provide evidence that the impacts are less than significant.

Finally, and unfortunately, given the location and nature of the project, mitigation should be adopted to address the cleanup of the project if it does burn. It is well understood that commercial buildings that burn in wildfires present toxic hazards to the community,[10] and the surrounding community will not be able to ensure these hazards are abated without the imposition of mitigation that addresses these risks. Federal assistance is generally not available for commercial projects. Where cleanups are not financially convenient, they do not occur without mandatory requirements. This will result in a significant impact without mitigation.

[10] California EPA, Guidance for Conducting Emergency Debris, Waste and Hazardous Material Removal Actions Pursuant to a State or Local Emergency Proclamation, October 7, 2011, https://calepa.ca.gov/wp-content/uploads/sites/6/2019/06/Disaster-Documents-2011yr-GuideRemoval.pdf

IX. The EA fails to evaluate a reasonable range of alternatives.

Part of the reason why there is insufficient infrastructure for the project is the fact that the site is within an area where this type of project would never be permitted by existing local government planning. The location is zoned for agriculture,[11] but that is far from the only issue. Sonoma County local governments have each adopted Urban Growth Boundaries to contain auto-dependent sprawl and plan for city-centered growth. The County and the cities have voter approved Urban Growth Boundaries and Community Separators to preserve open space and protect Sonoma County's environment. The Community Separator areas are voter-approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development*. The project is outside the Town of Windsor's Urban Growth Boundary and inside the County's Community Separator. The existing infrastructure does not support this type of project because inter-governmental planning has sought to avoid this type of development in this area.[12] The Bureau's Scoping Memo partially acknowledges this fact in discussing the utility limitations that flow from the Town of Windsor's Urban Growth Boundary, but does not acknowledge or discuss the larger planning context.

The EA lacks a reasonable range of alternatives, and reading the Bureau's EA is torturous, like watching a fly in a bottle. Given the site constraints in terms of resources and infrastructure, it is illogical and absurd not to include off-site alternatives in the analysis. The EA asserts that the availability of other sites is economically "speculative" but this conclusory assertion flies in the face of the other casinos that have already been developed in the Tribe's territory (as the EA defines it). It also ignores the known economic resources of the Tribe's backers in this project. (Exhibit H.) It is foundational NEPA law that "[r]easonable alternatives include those that are *practical* or *feasible* from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." 46 Fed. Reg. 18026, 18027 (1981) (emphasis in original); *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (federal agency has the "duty under NEPA to exercise a degree of

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[11] Approximately 47 acres of the parcel consist of Farmland of Statewide Important; 8 acres are designated Farmland of Local Importance; and 13 acres are Prime Farmland.

[12] The relevant policies in the County's General Plan include, but are not limited to: "Objective OSRC-1.1: Preserve important open space areas in the Community Separators shown on Figures OSRC-5a through OSRC-5i of the Open Space and Resource Conservation Element"; "Objective OSRC-1.2: Retain a rural character and promote low intensities of development in Community Separators. Avoid their inclusion in City Urban Growth Boundaries or Spheres of Influence. Avoid their inclusion within Urbans Service Areas for unincorporated communities"; "Policy OSRC-1b: Avoid commercial or industrial uses in Community Separators other than those that are permitted by the agricultural or resource land use categories."

skepticism in dealing with self-serving statements from a prime beneficiary of the project" regarding alternatives). Further, constraining the analysis of reasonable alternatives (and the "purpose and need") to those that could be permitted under 25 CFR § 151.12 is contrary to longstanding Council of Environmental Quality guidance. 46 Fed. Reg. at 18027 (alternatives outside of lead agency jurisdiction must be analyzed; "A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.")

Picking a site for commercial development that is only available because local planning prevents commercial development of that site comes with multiple environmental and infrastructural challenges and costs. At bottom, it is hard to make this project work on this site without causing significant environmental impacts. The evaluation of off-site alternatives would allow the consideration of better sites, where the impacts could be better mitigated. If the site had better access to existing transportation (including multi-modal transportation) and utility infrastructure, the direct, indirect, and cumulative impacts would be easier to address. There is no need to site this project in a SGMA basin with water and wastewater constraints, or to site it in critical habitat for salmonids. The purpose and need and screening criteria have been engineered to screen out reasonable alternatives, and this is a completely unnecessary NEPA violation.

X. Conclusion.

The EA falls woefully short of providing "high quality" information and "accurate scientific analysis." *350 Mont. v. Haaland*, 29 F.4th 1158, 1176 (9th Cir. 2022). "An EIS is required of an agency in order that it explore, more thoroughly than an EA, the environmental consequences of a proposed action whenever substantial questions are raised as to whether a project *may* cause significant environmental degradation. That is exactly the circumstances of this case." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (emphasis in original, citation and internal punctuation omitted). The County looks forward to reviewing an EIS for this project, and will be happy to provide additional information.

Sincerely yours,



Verne Ball
Deputy County Counsel

EXHIBIT A

WEST YOST
Water. Engineered.

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November 9, 2023

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

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SUBJECT: Koi Nation Shiloh Resort and Casino Project Environmental Assessment, Comments on Water Resources Assessment

Dear Mr. Ball:

The County of Sonoma has retained West Yost to review the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West Yost staff reviewed the EA evaluation of proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Environmental Assessment for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023)
- Appendix C - Water and Wastewater Feasibility Study
- Appendix D - Grading and Hydrology Study

West Yost staff prepared these comments and recommendations based on information provided in materials provided by the County and relevant documents referenced in the EA.

PROPOSED PROJECT SUMMARY

The EA analyzes the Koi Nation of Northern California (Tribe) construction of a casino, hotel, spa, conference and event center, restaurants, parking, and support infrastructure (Alternative A and referred to here as the Proposed Project), which includes construction of a drinking water supply system, as well as wastewater treatment and disposal. The EA states that the average potable water demand for the site will be 170,000 gallons per day (gpd) with a peak demand of 294,000 gpd to be provided by on-site production wells (up to 700 feet deep). The estimated average wastewater generation is 232,000 gpd with an average weekend peak estimated at 335,000 gpd. Wastewater treatment is proposed using a package immersed membrane bioreactor (MBR) producing 108,000 gpd of tertiary treated recycled water for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Tertiary treated wastewater would be seasonally discharged on-site to Pruitt Creek.

COMMENT OVERVIEW

The project will have significant impacts related to surface and groundwater resources as described in Section 3.3.3.2 of the EA. Unless otherwise indicated, all comments are in response to "Alternative A" which is identified as the Proposed Project. Alternative A represents the most intense development considered for the site and is therefore associated with the greatest potential impacts to water resources.

While the EA provides some useful information about the Proposed Project and alternatives, the analysis presented lacks critical information that is needed to evaluate the severity of the Proposed Project's impacts. In general, the EA relies on regional rather than site specific data, its conclusions are often not supported by evidence, and the potential cumulative impacts of the Proposed Project are not considered. Additionally, some mitigation measures identified in the EA lack details needed to evaluate their feasibility and effectiveness, for example:

- **The EA lacks analysis and basic data needed to reach conclusions about likely impacts of the Proposed Project.** The potential impacts have not been fully analyzed and the EA lacks essential information needed to evaluate the project and alternatives.
- **Assumptions used in the analysis may be inappropriate and yield inaccurate results.** The water demand, wastewater production, and recycled water reuse values are based on assumptions that are not validated based on local conditions, without discussion of project-specific or site-specific conditions. For this reason, impacts appear to be underestimated.
- **The EA fails to consider the project's impacts in the context of cumulative, reasonably foreseeable future development.** Nor does the analysis consider climate change affects projected to occur over the life of the project.
- **Mitigation Measures outlined in the EA are inadequate.** Because the mitigation measures lack specifics relating to monitoring, criteria for success, and modes of enforcement, there is no certainty that mitigation measures will be effective in reducing potential environmental impacts.

Each of these topics are detailed further below and presented in the following categories as ordered in impact analysis Section 3.3.3.2 of the EA:

1. *Surface Water* – New Structures and Impervious Surfaces in Flood-Prone Areas
2. *Groundwater*– Groundwater Pumping Impacts on Neighboring Wells
3. *Groundwater*– Proposed Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act (SGMA)
4. *Wastewater Treatment and Disposal* – Effluent Discharge to Pruitt Creek
5. *Wastewater Treatment and Disposal* – Impacts to Laguna de Santa Rosa
6. *Wastewater Treatment and Disposal* – Wastewater Treatment and Recycled Water Use

SPECIFIC COMMENTS

The Water Resources Regulatory Setting identifies Federal and State Water Resource Regulations in Table 3.3-1. State regulations listed include Porter-Cologne Water Quality Act, Sustainable Groundwater Management Act, and Title 2 California Code of Regulations. However, it is unclear how these regulations and related policies would apply to the proposed project. California standards for wastewater treatment and disposal should be explicitly applied in technical assumptions, project description, impact analysis, and mitigation measure enforceability.

The EA lacks a discussion of climate change impacts and does not consider increased rainfall and higher temperatures in water and wastewater calculations. As noted in the North Bay Climate Adaptation Initiative's *Climate Ready Sonoma County*, Sonoma County is expected to experience more very hot days than in the past, and overall higher temperatures over a longer period of dry weather, even under forecasts that predict overall wetter conditions. Spring will come earlier and fall will come later, and these extended periods of hotter, drier weather will impact regional water availability. Heat will increase soil moisture deficit and reduce groundwater recharge, meaning that less water will be available even in futures with more precipitation. Heat will also increase the demand for water, exacerbating pressures on limited water resources in periods of drought (NBCAI, 2014).

1. Surface Water – New Structures and Impervious Surfaces in Flood-Prone Areas

The southwest portion of the site is within the Federal Emergency Management Agency (FEMA) regulated flood area and additional areas of the site are shown in The Town of Windsor's Storm Drainage Master Plan (2020) to be flood-prone.

Impervious Surfaces

The proposed action would increase impervious surfaces on the Project Site by up to 35.51 acres through the construction of buildings, circulation, parking, and infrastructure. Increased impervious surfaces would result in increased peak flows and increased total discharge from the Project Site during precipitation events. The Proposed Project will need to consider flood mitigations, to address potential downstream flooding and sediment transport impacts.

The EA states that the Proposed Project would limit post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. However, the plan to achieve this is not fully described or analyzed. Additional calculations and site planning are needed to demonstrate the feasibility of mitigating impacts from the significant addition of impervious surface area.

Floodplain Storage Capacity

Development on the site would displace agricultural land and floodplain area that currently provides floodwater storage and may exacerbate on-site and downstream flooding. Climate models forecast that the frequency and intensity of flooding will continue to increase beyond historical levels.

The environmental analysis should be expanded to consider impacts of climate change to the mapped limits of the 100-year flood and to the intensity of future flooding at the site. Additionally, the EA does not demonstrate how impacts to all floodplain functions would be mitigated to a less than significant level.

2. Groundwater – Groundwater Pumping Impacts on Neighboring Wells

The Proposed Project would pump groundwater from the Santa Rosa Plain groundwater subbasin. The Project Description estimates daily pumping of 170,000 gpd with a peak pumping of 294,000 gpd. Potable water would be sourced from on-site production wells, drilled up to 700 feet deep. Several existing wells are located in proximity to the site, including shallow residential wells at the Mobile Home Estate and two Windsor Water District municipal wells at Esposti Park, north of and in proximity to the Proposed Project site. The municipal wells are located within about 250 feet of the northwest project site boundary and about 2,200 feet from the "treatment area" as identified in Appendix C of the EA, the area tentatively designated for water and wastewater infrastructure.

The EA does not present a conceptual groundwater model of the site and limits the discussion of potential impact to the deep aquifer (300 to 600 feet deep). The geology of the Santa Rosa Plain is complex and groundwater pumping could adversely affect surface water flow and groundwater dependent ecosystems. An analysis of existing groundwater conditions and impacts of project pumping on nearby Pruitt Creek and potential cumulative impacts downstream in the Laguna de Santa Rosa is needed.

Water quality in the wells currently limits water use to irrigation. One of the wells at Esposti Park is used to irrigate the park. The other well, currently inactive, is identified in the Town of Windsor's Water Master Plan for future development of municipal drinking water and would include a water treatment process to remove contaminants.

Impacts to Neighboring Wells

The average and peak pumping of the Proposed Project could result in groundwater drawdown in neighboring wells and could significantly decrease the Esposti well output and potentially affect water quality. The Town of Windsor Water Master Plan (Woodard and Curran, 2019) estimates the sustainable yield of the municipal to be 400 gpm (0.6 million gallons per day) or 350 acre feet per year (AFY). Proposed Project pumping could significantly decrease the previously analyzed estimated yield. Groundwater pumping at the site could also result in adverse impact to domestic wells in the vicinity. This would include reducing production of neighboring wells and/or lowering groundwater levels below well pumps altogether, rendering neighboring wells unusable.

The EA cites a Town of Windsor 2017 aquifer test at the Esposti well as evidence that pumping from the aquifer deeper than 300 feet would not result in a decline in water level. However, although no drawdown occurred during that test, the test lasted only 28 hours. The aquifer test at the Esposti municipal well was over a short duration and is not an appropriate basis for assessing impacts of continuous groundwater pumping proposed as part of the Proposed Project. The EA further concludes, based on very limited data, that the Proposed Project would not affect groundwater levels or water availability in wells drilled to a depth of less than 370 feet. The EA lacks critical hydrogeologic data to reach this conclusion.

Additional groundwater monitoring is needed to confirm hydraulic separation between the upper and lower aquifers underlying the site and surrounding area. This monitoring should be conducted as part of the environmental evaluation and prior to project approval. Additional studies, including a well interference study and hydrogeologic testing, are needed to provide adequate information to allow for a reasonable evaluation of alternative development scenarios and impacts to neighboring wells.

Project wells should be located away from adjacent wells and outside the zone of influence around the existing Esposti wells. Pumping rates should be limited to amounts that avoid impacts to neighboring wells and ensure sustainable yield for the project wells and wells in the vicinity. Additional investigation and groundwater pump tests should be completed to determine the impact to nearby wells. Assessment of the impact to the municipal well, both the current use of the well for irrigation and future use as identified in the Town of Windsor Water Master Plan (2019), is needed to address cumulative impact.

Groundwater Mitigation Measure

Proposed Project groundwater pumping could adversely affect groundwater levels and well production. Mitigation measures listed in the EA include monitoring and compensation; however, the EA does not include metrics for determining when adverse impact has occurred, compensation actions that would be required should adverse impacts result, or an enforcement mechanism. The EA should clarify that both shallow and deep wells will be monitored and eligible for mitigation compensation.

The proposed mitigation measure to reimburse well owners should their well become unusable within five years of project pumping is not mitigation, let alone appropriate mitigation. The effects of environmental harm are more than monetary, and there are reasonably foreseeable indirect effects of unusable wells, such as impacts related to water hauling from traffic and associated GHG emissions, health and safety issues from lack of potable water, and impacts of extending municipal water service, that have not even been discussed.

Adequate data from both the shallow and deep aquifer should be collected prior to initiating groundwater pumping to fully evaluate the impact. Actions should be identified to avoid impacts to neighboring wells. The proposed mitigation measures further indicate that the Tribe, at its discretion and cost, could provide an alternative water supply. However, the EA does not identify the source of these alternative water supplies and it does not provide an evaluation of potential impacts associated with the buildout of alternative supplies. The buildout of alternative water supply infrastructure would likely have significant impacts that need to be analyzed.

3. Groundwater – Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act

With the Sustainable Groundwater Management Act (SGMA), California has identified groundwater basins that require special planning to avoid adverse impacts. The project is in one of these basins. The Santa Rosa Plain Groundwater Subbasin (basin number 1-55.01) is categorized as a medium priority basin by the California Department of Water Resources (DWR) and is, therefore, subject to special regulation and planning efforts. The Santa Rosa Plain groundwater basin is regulated under SGMA because the basin is densely populated, and groundwater use is relied on for rural residential, agricultural, commercial, and municipal water supply. Groundwater management is needed to avoid adverse impacts to the groundwater basin, but there is no discussion in the EA of the unique relationship of this project to groundwater management.

DWR approved a Groundwater Sustainability Plan (GSP) for the basin in January 2023 and the Groundwater Sustainability Agency (GSA) has prepared and will continue to prepare annual reports that provide updates about current groundwater conditions. The GSP states that the groundwater stored in the shallow and deep aquifer systems is declining on average by about 2,100 AFY. The 2022 Annual Report indicated that groundwater levels and groundwater storage capacity are stable but, importantly, future declines are projected. The Annual Report further indicates that more data are needed to assess the health of groundwater to interconnected surface waters and the impact of pumping on groundwater-dependent ecosystems.

Consistency with Santa Rosa Plain Groundwater Sustainability Plan (GSP)

The EA is significantly flawed by not considering cumulative impacts of groundwater extraction. While the analysis mentions the Santa Rosa Plain GSA, it provides no analysis of the Proposed Project's compatibility with the adopted GSP. The EA should include analysis of long-term pumping of 300,000 gpd on potential undesirable results as defined in the GSP, including for water quality. Groundwater pumped from the deeper aquifer in the northern portion of the Santa Rosa Plain subbasin underlying the Project Site is documented to contain elevated concentrations of arsenic and manganese. These constituents have been a constraint for the Town of Windsor's Esposti Park wells and the effects of additional pumping on groundwater water quality is crucial information that is missing from the EA. Additional analysis should consider planned future pumping from the Esposti well, as discussed above.

Long-Term Municipal Water Supply

Proposed Project groundwater pumping may adversely impact Windsor Water District's ability to meet water demands with supplemental groundwater supply and may reduce water supply resiliency during a drought. The EA lacks an analysis of long-term groundwater supply and fails to acknowledge the current and future use of groundwater to meet water demands. The EA should include a water supply assessment that evaluates long-term water supply sustainability using a 45-year time horizon and consider future drought conditions and climate scenarios.

Current developments regarding local water supplies cannot be ignored in the analysis. The decommissioning of the Potter Valley hydroelectric facility and likely reductions in Eel River flows into the Russian River system, could result in reduction of surface water deliveries to the Town of Windsor, resulting in the need for future increased groundwater extraction from municipal wells.

Groundwater Quality

The EA indicates that wellhead treatment would be needed but does not describe the nature of waste products that would result from water treatment to attain potable water, nor is a disposal location identified. Improper disposal will result in, for example, soil and water contamination. The EA should include an analysis of the potentially significant impacts from removing contaminants from wells where groundwater does not meet drinking water standards.

4. Wastewater Treatment and Disposal – Effluent discharge to Pruitt Creek

The EA states that the project will produce and estimated average wastewater flow of 232,000 gpd and a peak weekend flow of 335,000 gpd. For the purposes of design, an average daily flow of 300,000 gpd and average weekend flow of 400,000 gpd was assumed, which is equivalent to about 110 million gallons/year. During the dry season, tertiary treated recycled water would be used onsite for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. An additional 11-acres of off-site vineyard could also be irrigated. Appendix C presents several options for use and storage of recycled water in ponds and tanks. During the wet season, tertiary treated wastewater would be seasonally discharged onsite to Pruitt Creek.

The information presented in the EA does not fully analyze potential environmental impacts from proposed discharge of tertiary treated wastewater to Pruitt Creek. Additional analysis is needed to evaluate water-related impacts and support the EAs conclusion that there will not be significant impacts.

Seasonal Discharge Volume Estimate

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants (WWTPs) to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. Pruitt Creek is an ephemeral drainage with highly variable flow volume. Appendix C relies on streamflow statistics from a U.S. Geological Survey (USGS) gauging station located 5.5 miles downstream of the site, which significantly overestimates the capacity for discharge to Pruitt Creek. Appropriate discharge volumes must be calculated based on local stream flow data for the analysis to be reasonable.

Streamflow statistics at the downstream gauging station indicate that discharges immediately before and after the summertime months (May and October) may be limiting for the Proposed Project, and that streamflow rates are highly variable from year to year. Appendix C indicates that for any discharge scenario developed for the Proposed Project, backup contingency plans should be developed for low-flow conditions. However, the EA does not present this contingency plan, nor does it analyze potential on-site or secondary impacts of such discharge contingency.

The EA does not demonstrate the feasibility of seasonal discharge of anticipated wastewater flows to Pruitt Creek under all climate conditions, even though extremely varied climate conditions are foreseeable. The environmental assessment for the Proposed Project should include an analysis of seasonal discharge options to ensure capacity under all foreseeable climate scenarios.

Treatment Process Vulnerability

The Proposed Project includes construction of a self-contained package (immersed MBR) treatment plant to produce tertiary treated recycled water. The volume of influent will vary with casino usage, weather conditions, and infrastructure functioning. Any WWTP may be subject to "upset conditions", when a sudden and unexpected event prevents the facility from operating properly. There is no indication that the Tribe has considered coordination or mutual aid agreement with other sanitary service providers to provide backup or support in the event of a WWTP upset. The Proposed Project should establish enforceable agreements to engage in mutual aid with one or more sanitary service areas.

Construction of Outfall in Pruitt Creek

Installation of a wastewater outfall structure in Pruitt Creek will adversely affect riparian habitat without appropriate mitigation. Operation of the outfall could alter the flow and hydrology of the Pruitt Creek, resulting in erosion and exacerbated flooding. Information is needed to evaluate the foreseeable impacts of the outfall structure on Pruitt Creek in all flow conditions.

5. Wastewater Treatment and Disposal – Impacts to Laguna de Santa Rosa

Discharge of tertiary treated effluent to Pruitt Creek, a tributary to Mark West Creek which flows into the Laguna de Santa Rosa, could have significant impacts on water quality in the Laguna de Santa Rosa. The Regional Board and the State Water Resources Control Board (State Board) have designated the Russian River and its tributaries, including the Laguna de Santa Rosa, as impaired waterbodies. The Regional Board has adopted policies and Total Maximum Daily Loads (TMDL) (some adopted and some under development) for a range of parameters, including sediment, temperature, pathogens, nutrients (nitrogen and phosphorus), dissolved oxygen, and sedimentation/siltation. The Water Quality Trading Framework for the Laguna de Santa Rosa Watershed adopted by the Regional Board in 2021 sets a "no net loading" effluent limitation for total phosphorus in National Pollutant Discharge Elimination System (NPDES) permits for WWTP discharge to the Laguna de Santa Rosa and provides a mechanism to offset total phosphorus inputs to the system. These regulatory tools recognize WWTPs as potential pollutant sources and provide the mechanisms to address water quality impairment.

The Proposed Project discharge of recycled water would add sediment, nutrients, and phosphorous to the Laguna de Santa Rosa watershed, undermining regional efforts to address existing water quality impairment. No analysis of the impact of project discharge on the Laguna de Santa Rosa watershed is provided. The Proposed Project could contribute to cumulative impacts in the Laguna de Santa Rosa that have not been analyzed. More evidence is needed to support the assertion the proposed discharge would comply with all current and reasonably foreseeable future policies, water quality trading framework, TMDLs, and implementation plans that support the Basin Plan.

The EA concludes that "surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A would be less than significant," but fails to demonstrate ability to meet nutrient limitations for discharge to Mark West Creek and its tributaries. The environmental assessment for the Proposed Project must include an analysis demonstrating how the Proposed Project would meet the no net phosphorous discharge required under the Nutrient Trading Framework and a full analysis of the proposed discharge in the context of adopted and future TMDLs. Standards for effluent phosphorous loads and for a phosphorus offset program should be identified and mitigation measures to reduce impacts of phosphorous discharge and secondary impacts of offset projects should be evaluated.

6. Wastewater Treatment and Disposal – Wastewater Treatment and Recycled Water Use

The information presented in the EA does not fully analyze potential environmental impacts from proposed use and storage of recycled water on-site and off-site. Additional analysis is needed to demonstrate the feasibility of on-site wastewater treatment, recycled water storage and reuse, and potential use of recycled water off-site.

Storage Tank Capacity

The proposed on-site recycled water storage ponds and tanks would be located in the "Treatment Area" in the southeastern portion of the site. Several options for recycled water disposal are presented in Appendix C, including construction of 12- to 16-million gallon recycled water storage tanks. This would provide adequate storage for about 40 to 50 days. Since discharge will not occur between May 15 and September 30 (138 days) significantly more storage, on the order of 40 million gallons, would be needed. Proposed facilities are not shown on the site plan and more information is needed to ensure that there is adequate space to accommodate needed storage, applying site-specific evapotranspiration (ET) rates and discharge volumes.

Evapotranspiration Rates

The landscape and crop ET calculation used in the EA are substantially different from the recycled water applications rates set for the Windsor Water district, the nearest permitted recycled water producer to the site. Site-specific and ET rates should be used to recalculate, together, for a more realistic estimate of the volume of effluent that could be discharged to Pruitt Creek to fully evaluate impacts related to onsite recycled water use and storage.

Recycled Water Reuse

The Proposed Project relies on dry season use and disposal of recycled water, but has not demonstrated adequate opportunities to reuse the volume of wastewater projected to be produced at the site. Eleven acres of off-site vineyards are an optional component of the recycled water balance; however, the proposed irrigation sites have not been identified. The Proposed Project includes use of recycled water for dual plumbing and toilet flushing, however the State Division of Drinking Water (DDW) and applicable regulations do not permit recycled water use in food service buildings, such as restaurants and bars. The stated reliance on State standards is misleading. The recycling of water should be a concrete mitigation measure, with an analysis of the impacts of that mitigation. The analysis should include a realistic estimate of recycled water production, reasonable estimates for recycled water reuse based on acceptable ET rates, and identification of all on-site and off-site recycled water use and disposal options consistent with Title 24.

Biosolids and Brine

Proposed wastewater treatment would produce biosolids and brine that would require disposal. The EA indicates that biosolids produced by the WWTP would be dewatered on-site and periodically hauled to a Class III landfill. In the very near term, State landfill diversion targets (per SB 1383) will require the diversion of biosolids from landfills, and recent CalRecycle regulations have already clarified that biosolids cannot be exempted from diversion targets as alternative daily cover. State law requires a 75 percent reduction in the landfilling of organic wastes by 2025. In addition, biosolids from WWTPs contain constituents of concern, including PFAS (per- and polyfluoroalkyl substances), and both direct and lifecycle impacts of these contaminants should be analyzed. Pyrolysis and disposal that does not involve land application has other foreseeable impacts. Proposed disposal sites that can accept biosolids and brine may be located at great distance for the Proposed Project site so associated transport greenhouse gas emissions and secondary impacts should be evaluated.

CONCLUSION

In conclusion, the Proposed Project may have significant impacts that have not been fully analyzed and additional investigation is needed. The EA does not present adequate evidence to support the conclusion that there will not be significant water resource impacts. Potential project and secondary impacts have not been fully analyzed and the EA lacks information essential for a reasoned choice of alternative development proposals for the site. In light of these deficiencies, we recommend preparation of an Environmental Impact Statement.

Sincerely,
WEST YOST



Sandi Potter, PG, CEG
Senior Technical Specialist I

PG No. 5610
CEG No. 2170

EXHIBIT B

MEMORANDUM

DATE: October 27, 2023

TO: Verne Ball, Deputy County Counsel

FROM: **Jeff Church, Senior Environmental Specialist at Sonoma Water**

PROJECT: Koi Nation Casino Environmental Assessment

SUBJECT: Documentation of observations of steelhead salmon (Oncorhynchus mykiss) in Pruitt Creek, Windsor California.

A few notes on observations of both resident rainbow trout and anadromous steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek near Windsor, California.

The monitoring site was located in a reach of Pruitt Creek that crosses Faught Road, southeast of Windsor California. Observations were made on the upstream and downstream sides of Faught Road, including upstream to the creek culvert at Shiloh Ridge Road (approximately 450 linear feet of stream length). Pruitt Creek is perennial in pools immediately downstream of Faught Road and upstream of Faught Road approximately 0.5 miles as observed. Pruitt Creek transitions to an intermittent and ephemeral stream approximately 100 feet downstream of Faught Road during the dry season.

Monitoring began on December 7, 2001 and continued through July 28, 2016. Monitoring began as an effort to record water temperature measurements to determine whether Pruitt Creek could serve as a potential reference stream in the Russian River Watershed. As a reference stream it could provide information on natural water temperature patterns and ranges that could be expected to occur in similar sub-watersheds within the Russian River basin. Monitoring also included observations for the presence of steelhead salmon. Positive observations of the presence of steelhead coupled with water temperature data could be used to determine if water temperature regimes in Pruitt Creek (and similar sub-watersheds) are suitable for steelhead long-term survivability.

Monitoring frequency varied, with monitoring occurring as frequently as several times a day to as little as once or twice a week or monthly.

Steelhead were observed in all years of monitoring except during the beginning of the effort in December 2001 and winter/spring 2002 due to high turbidity (and low visibility) from a failed culvert and earthen creek crossing upstream of the monitoring location. The culvert and earthen crossing were removed and the site restored in late 2002 to early 2003. The majority of observations included resident rainbow trout of several age classes including fry and young of the year. Adult anadromous steelhead were observed migrating upstream on two different

occasions. The first observation occurred on February 3, 2008 and included one adult steelhead (approximately 18-20 inches in length) in a pool upstream of Faught Road but carried downstream to a pool below the Faught Road crossing. The second observation occurred on February 13, 2008 and included one adult steelhead (approximately 24 inches in length) under the Faught Road Bridge that also moved into the pool downstream of the crossing. This observation included a second smaller fish, approximately 10 to 12 inches in length.

Adult steelhead were also observed in Pool Creek downstream of the confluence with Pruitt Creek in a pool underneath the pedestrian bridge at Windsor Golf Course. Two separate observations of individual adult steelhead were made while golfing in the late 2000s or early 2010s. Observations were not part of a monitoring effort but were happenstance while golfing and so the dates are not exact, but the time period is accurate. Time of year was spring.

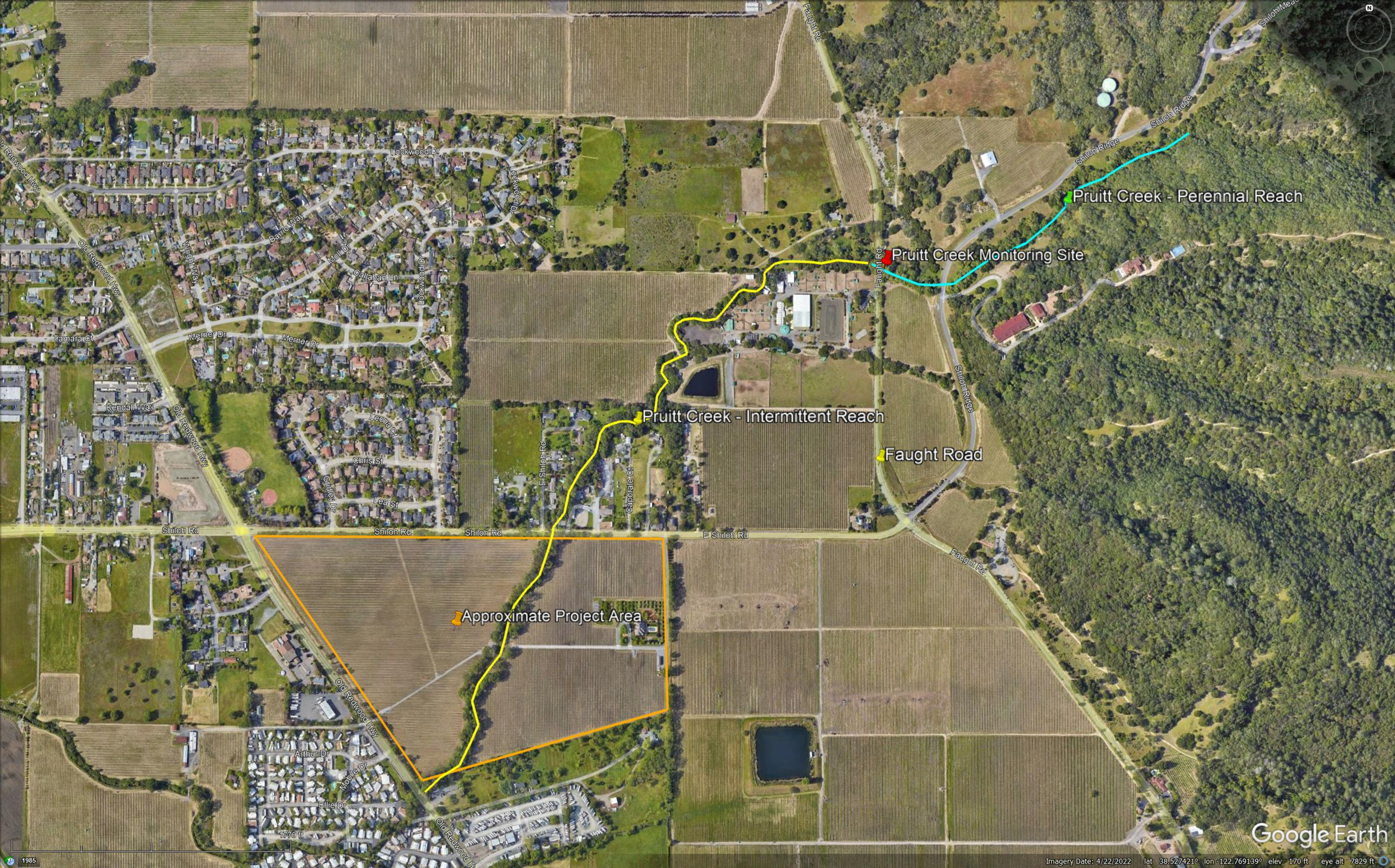

Pruitt Creek - Perennial Reach
Pruitt Creek Monitoring Site
Pruitt Creek - Intermittent Reach
Faught Road
Approximate Project Area
Shiloh Rd
E Shiloh Rd
Old Redwood Hwy
Lockwood Dr
Merner Dr
Shiloh Ridge
Faught Rd
Google Earth

EXHIBIT C

permit SONOMA

County of Sonoma
Permit & Resource Management Department

MEMORANDUM

To: Verne Ball, Deputy County Counsel
From: Robert Pennington, Professional Geologist
Date: November 07, 2023

Subject: Koi Nation Casino Environmental Assessment, Pruitt Creek Observations

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Dear Verne,

I reviewed the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs. I found the EA to be lacking in site specific analysis, particularly in regard to water supply and wastewater. This memo documents observed conditions in Pruitt Creek and discusses limitation to discharge of treated effluent to this waterway.

The National Hydrography Dataset identifies Pruitt Creek as intermittent, meaning that it has little or no flow for a substantial duration of the year. Local hydrologists and fish biologist know the Pruitt Creek near the project site to be dry for much of the year, even during the winter wet season, unless there have been substantial rains in the preceding months.

To verify stream conditions, I conducted a site visit on the morning of October 27th, 2023, and observed Pruitt Creek at the bridge crossing at Old Redwood Highway located immediately downstream of the project site. The creek was observed to be dry with no residual pools or standing water visible within 30 feet upstream or downstream of the bridge. See Figures 1 and 2. Note, the site visit was conducted on October 27, within what is considered the wet season.

The fact that Pruitt Creek in the vicinity of the project site is dry for much of the year presents a substantial limitation for the discharge of treated wastewater. The estimated average wastewater generation is 232,000 gallons per day (gpd) with an average weekend peak estimated at 335,000 gpd. During the dry season, wastewater would be used for vineyard irrigation and the remainder would be stored. During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species.

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge

#11466800 has a contributing watershed area of 251 square miles. The contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. Recycled water storage volumes must be sized for worst case drought conditions when flows if Pruitt Creek are lowest and dry or very low streamflow conditions may extend into much of the wet season.

It is recommended that multiple years of continuous streamflow data be collected at the site, including during at least one year of severe drought. These data could then be regressed with gauge records from nearby gauging stations with longer records to reconstruct a defensible streamflow hydrograph for the site on which to design wastewater disposal systems and analyze potential impacts.

In addition to streamflow, it is recommended that water quality be sampled including temperature, pH, dissolved oxygen, nitrates, and phosphates. These data are necessary to design and assess the feasibility the proposed wastewater treatment and disposal system, and to evaluate potential impacts to water quality, aquatic habitat, and beneficial uses of Pruitt Creek and the Laguna de Santa Rosa.



Figure 1. Image looking upstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.



Figure 2. Image looking downstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.

EXHIBIT D

RIVER ROCK TO DEFAULT ON BONDS: TRIBE TO MISS INTEREST PAYMENT, SAYS CASINO WILL REMAIN OPEN

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
BY ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
May 29, 2014

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

The River Rock Entertainment Authority announced it will not be making the May interest payment due Saturday on two outstanding notes, automatically triggering a default on the bonds.

The tribe emphasized the Alexander Valley casino will remain open for business. But it remains to be seen how the default may impact investors and tribal members who receive payments from the casino's profits.

"Although the scheduled interest payment will not be made, we want to assure our customers, vendors and employees that we are generating sufficient funds to operate our business and provide the excellent customer service that our patrons expect," David Fendrick, the casino's CEO and general manager, said in a statement.

The default comes just six months after the opening of a rival casino adjacent to Rohnert Park, which has cut into River Rock's revenues and drawn away gamblers that once flocked to the Alexander Valley casino.

"Our immediate focus is identifying cost savings opportunities to adjust to the challenges of our new competitive environment," Fendrick said.

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The tribe also has brought in consultants to help analyze the casino's marketing efforts, Dry Creek Tribal Chairman Harvey Hopkins said Wednesday. Tribal leaders are "looking at all options," he said in a brief interview.

"We've been constantly meeting with management of the casino, attorneys and financial advisers," Hopkins said. "It's been a long road to get here."

The River Rock Entertainment Authority, an unincorporated governmental arm of the tribe, on May 1 announced that it had failed to make the scheduled interest payment for the month. The authority said it would use a 30-day grace period to reduce costs and to have what Fendrick then characterized as "significant dialogue with our bondholders."

River Rock opened in 2002 as Sonoma County's first tribal casino. To finance construction, the tribe sold $200 million in senior notes to investors at 9.75 percent interest.

In 2011, the tribe restructured the debt after two rating agencies warned that the business otherwise faced a high risk of default. About $50 million of that debt since has been repaid, Hopkins said in March.

But Hopkins also acknowledged that River Rock's revenues had declined by more than 30 percent since the Graton Resort & Casino opened in Rohnert Park in November. The new casino is closer to Bay Area gamblers and has roughly five times the space of the 61,000-square-foot River Rock facility.

As a result of the drop in revenues, the Dry Creek tribe has cut per capita payments to its 640 members over the age of 18, Hopkins said in March. In total, the tribe has nearly 1,040 members.

On Saturday, the tribe will default on two bonds: its 9 percent Series A Senior Notes and its 8 percent Series B Tax-Exempt Senior Notes, both due in 2018.

The tribe's announcement did not disclose the size of the interest payment that is due Saturday or the amount of outstanding debt it owes to bondholders.

The default will trigger a "waterfall agreement" that dictates the use of the authority's cash flow, according to the announcement.

Analysts who follow the Indian gaming market have noted that creditors of tribal casinos can't seize assets as might be done under a normal loan default. Instead, they suggested that River Rock may once more seek to restructure its debt, possibly by winning concessions from creditors in regard to the repayment of both principal and interest.

A bondholder on Wednesday seemed to take the default in stride.

"I'm not happy about it," said Mike Hudson, an Indiana man who has owned River Rock bonds for more than five years. "There are many options on the table. This is just the beginning of the next chapter. It's not gloom and doom."

Hudson said that by missing the interest payment, the tribe will be subject to having the casino revenues overseen by a trustee for the bondholders.

"Instead of a democracy, it will be more of a dictatorship," Hudson said. "A professional manager will come and manage the way they see best for the benefit of creditors, not the tribe. Essentially, they've conceded control of the casino."

"It will probably work out. Most of these things usually do," he concluded.

The River Rock Entertainment Authority has retained the law firm Holland & Knight LLP as its legal adviser and will use Stuyvesant Square Advisors Inc. as its financial adviser.

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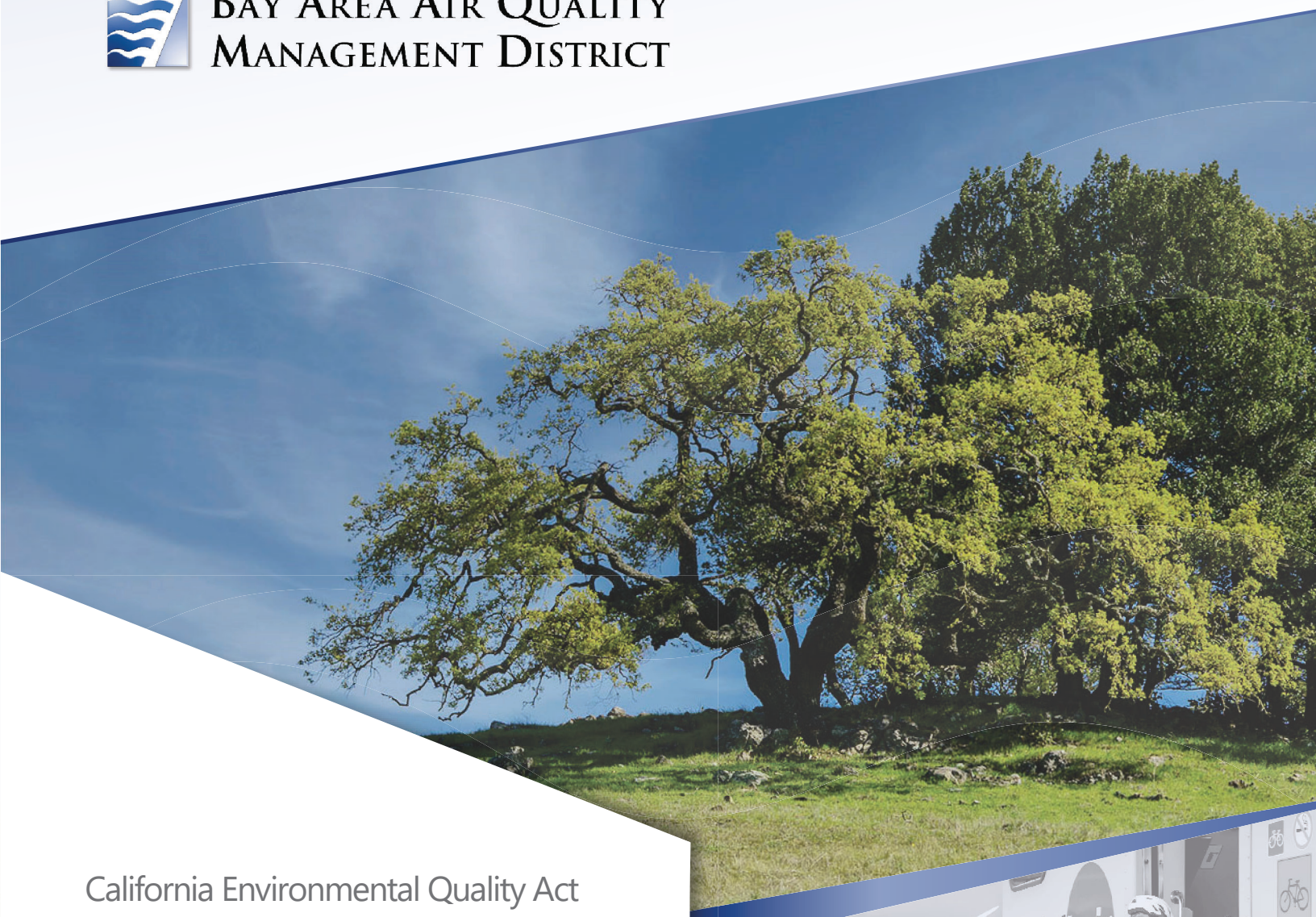
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EXHIBIT E

Bay Area Air Quality Management District

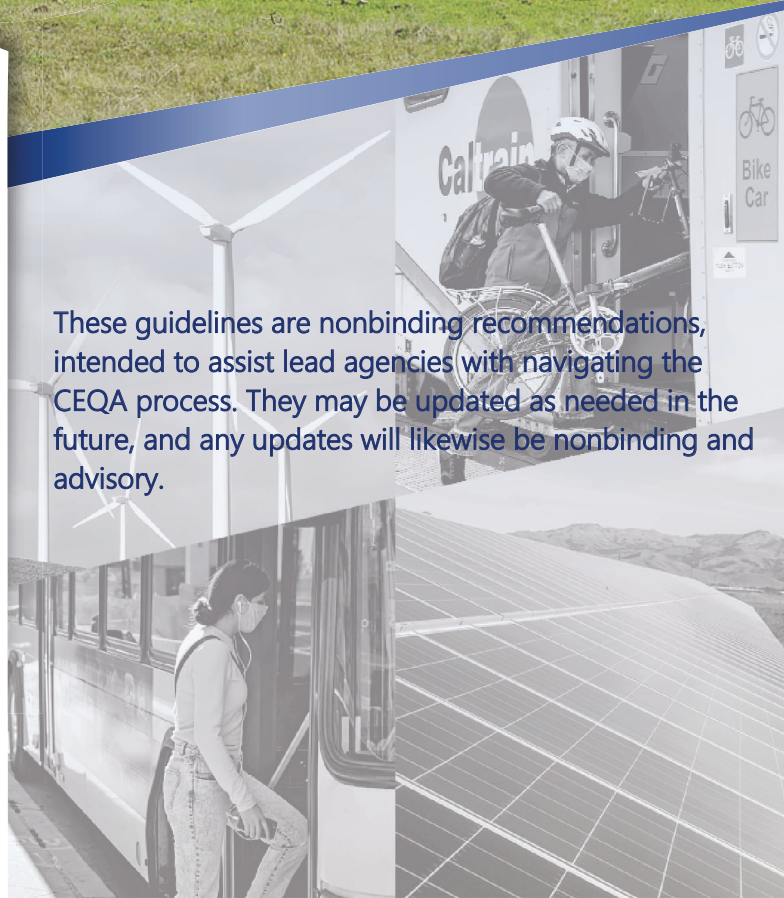


California Environmental Quality Act

Air Quality Guidelines Appendix B:

CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans

April 2022



These guidelines are nonbinding recommendations, intended to assist lead agencies with navigating the CEQA process. They may be updated as needed in the future, and any updates will likewise be nonbinding and advisory.

1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].)[1] But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

[1] The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: https://www.califaep.org/docs/CEQA_Handbook_2021.pdf.

Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California's long-term climate goal of carbon neutrality[2] by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its "fair share" of implementing the goal of carbon neutrality by 2045:

Thresholds for Land Use Projects (Must Include A or B)
A. Projects must include, at a minimum, the following project design elements: 1. Buildings a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development). b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines. 2. Transportation a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA: i. Residential projects: 15 percent below the existing VMT per capita ii. Office projects: 15 percent below the existing VMT per employee iii. Retail projects: no net increase in existing VMT b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California's long-term climate goals—its "fair share"—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California's efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

[2] "Carbon neutrality" is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.

EXHIBIT F

The County of San Diego

Planning Commission Hearing Report

Date:	July 22, 2022	**Project:**	Transportation Study Guide to Implement Vehicle Miles Traveled Analysis
Place:	County Operations Center (COC) Hearing Room 5520 Overland Avenue San Diego, CA 92123	**Case/File No.:**	N/A
Time:	9:00 a.m.	**Location:**	All Districts
Agenda Item:	#7	**General Plan:**	Various
Appeal Status:	Not applicable; Approval by the Board of Supervisors	**Zoning:**	Various
Applicant/Owner:	County of San Diego	**Communities:**	All unincorporated communities
Environmental:	Notice of Exemption; CEQA Section 15378 and 15060(c)(3)	**APNs:**	Various

A. OVERVIEW

The purpose of this staff report is to provide the Planning Commission with the information necessary to make a recommendation to the Board of Supervisors (Board) to adopt, adopt with modifications, or not adopt the proposed Transportation Study Guide (TSG). The revised TSG aligns with State guidance and establishes a threshold based on the regional average Vehicle Miles Traveled (VMT), which includes the entire San Diego region. The TSG also identifies Infill Areas where no VMT analysis or mitigation would be required for future development projects. The TSG also includes other standards and criteria that would be used to evaluate projects, including small projects, locally serving projects and public facilities. The TSG describes the process and procedures for project applicants to use when preparing transportation analyses for projects in the unincorporated area. If adopted, projects could use the TSG immediately as the basis to address the transportation effects of projects.

B. RECOMMENDATIONS

This is a request for the Planning Commission to consider the proposed Transportation Study Guide (TSG) and make recommendations to the Board. Planning & Development Services (PDS) recommends that the Planning Commission take the following actions:

1. Find that the proposed resolution complies with the CEQA and State and County CEQA Guidelines because the resolution is: (1) not a project as defined in the Public Resources Code section 21065

and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3); (2) categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and (3) subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the resolution implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

2. Recommend that the Board of Supervisors adopt the Resolution:

   RESOLUTION OF THE COUNTY OF SAN DIEGO BOARD OF SUPERVISORS ADOPTING THE TRANSPORTATION STUDY GUIDE INCLUDING TRANSPORTATION THRESHOLD OF SIGNIFICANCE FOR VEHICLE MILES TRAVELED

C. BACKGROUND

In 2013, the State of California (State) passed Senate Bill 743 (SB 743), which changes how jurisdictions, including the County of San Diego (County), are required to analyze transportation impacts from projects under the California Environmental Quality Act (CEQA). CEQA was signed into law in 1970 to provide standards for regulating pollution and preserving the natural environment. CEQA requires California's public agencies and local governments to measure the environmental impacts of development projects or other major land use decisions and to limit or avoid those impacts when possible. State CEQA Guidelines encourage lead agencies, like the County, to develop and publish guidelines to describe the level at which the environmental impacts become significant and therefore need to be reduced and/ or mitigated, or offset. These are called thresholds of significance. SB 743 required local jurisdictions to shift their environmental impact analysis for transportation from using traffic congestion or "level of service" (LOS) to Vehicle Miles Traveled (VMT) starting July 1, 2020. VMT replaces motorist delay and associated level of service (LOS) as the metric for analysis of transportation impacts under CEQA.

Although traffic congestion measured the impact on the driver, VMT is intended to balance the needs of congestion management with statewide goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation, such as walking and biking. VMT is calculated by determining the distance and number of vehicle trips generated from a home or business. When analyzing a project's impact on the environment from VMT, a lead agency can provide guidance on impacts from VMT by comparing the estimated VMT from the project to the average VMT in a defined area.

SB 743 does not require local agencies to adopt guidelines or to establish a threshold for VMT; however, agencies may adopt guidelines and thresholds after public review, and these guidelines and thresholds must be supported by substantial evidence. If an agency does not adopt guidelines or thresholds, each project must develop a specific threshold to determine whether the project's impacts will be significant under CEQA.

When analyzing a project's impact on the environment from VMT, the estimated VMT from the project is compared to the average VMT in a defined area. If a project decreases VMT from existing conditions within the defined area, it may be considered to have a less than significant impact on transportation, depending on the decrease. A project can also be considered to have a less than significant impact on VMT if it generates less than a specified number of average daily trips. Other criteria can also be used

to determine if a project has a less than significant impact from transportation on the environment, such as projects that are adjacent to existing major transit facilities.

Projects found to have a significant impact on the environment under CEQA are required to mitigate for, or offset, those impacts where feasible. Mitigation includes projects that reduce VMT like installing bike lanes and sidewalks, which reduce driving and vehicle trips. Because a project's VMT is largely based on y the location of the project, which cannot easily be changed, mitigating for significant VMT impacts can be difficult to accomplish without a defined mitigation program in place. Mitigation for transportation impacts can also be costly. Therefore, using VMT as the metric for analyzing transportation impacts under CEQA incentivizes development in higher density areas near transit with a diverse mix of uses, and disincentivizes it in lower density areas that are more distant from jobs, services, and transit.

A transportation analysis involves determining the project's VMT using nationally adopted traffic standards and modeling and comparing those to something like a regional VMT average. Then for a project to be considered efficient, it is compared to a threshold that is also adopted by a jurisdiction, such as 15 percent below the regional VMT average, which is the threshold recommended by the Governor's Office of Planning and Research (OPR). If the average VMT is below the threshold, the project does not have a significant VMT impact and can move forward, without further VMT analysis.

If the average VMT for the project exceeds the threshold, the project must propose mitigation to reduce the project's VMT to below the threshold (i.e., by providing multimodal or transit infrastructure or other measures to reduce or offset VMT). If the project cannot reduce their VMT to below the threshold, an Environmental Impact Report (EIR) is required with a statement of overriding considerations for the project's significant and unavoidable transportation impacts. VMT is one of multiple subject matter areas analyzed under CEQA. Even if a project does not have a VMT impact, the project still requires environmental review for other CEQA environmental subject matters like biology, cultural resources, and fire hazards.

OPR prepared a Technical Advisory document to assist local agencies when developing their own guidelines for the assessment of VMT, thresholds of significance, and mitigation measures. OPR stated that lead agencies have the discretion to set or apply their own thresholds of significance. Based on staff's research, jurisdictions across the state have taken different approaches to implement VMT. Of the 58 counties in the state, 16 adopted their own VMT guidelines, nine chose to rely on OPR guidance and not adopt their own guidelines, and 33 have no guidance, so projects develop their own VMT analysis on a case-by-case basis. Of the 16 counties that adopted their own VMT guidelines, eight counties adopted a threshold based on the unincorporated area average, six adopted a threshold based on the regional average, and two counties chose other alternatives.

On June 24, 2020 (6), the Board of Supervisors (Board) adopted a Transportation Study Guide (TSG) for the unincorporated area, a technical guide for analyzing transportation impacts for projects using VMT. The TSG described the process and procedures for project applicants and their consultants to use when preparing transportation analyses. The TSG also included a methodology referred to as Local Mobility Analysis (LMA) to meet the County's General Plan requirement for a Level of Service (LOS) D (which is considered a stable flow of traffic with an acceptable level of delay) or better and to ensure the safe operations of the roads for all users including bicyclists and pedestrians. In September 2020, Cleveland National Forest Foundation, Coastal Environmental Rights Foundation, and the Sierra Club filed suit against the County, alleging adoption of the TSG violated CEQA and SB 743.

On May 19, 2021 (1), the Board received an overview of how VMT implementation was progressing nearly a year after adoption of the County's TSG. Staff also requested the Board to provide direction on potential updates to the VMT thresholds used to evaluate the significance of a project's transportation impacts, including options for using an unincorporated area average, sub-areas average, or a regional average to measure existing average VMT, and the screening level threshold for "small" projects that should be exempt from performing additional transportation analysis. A project is considered "small" if it generates less than 110 Average Daily Trips (ADT). The Board was also given the option to leave the existing TSG in place.

After receiving the update, the Board provided direction to explore 13 items related to VMT:

1. Assess and explore the process by which infill development can be done in a manner to ensure no VMT mitigation is necessary.
2. Explore the potential creation of transit accessible areas and look at the intersection between VMT efficient areas or lower thresholds in accordance with the areas that do not require further analysis. Explore the potential transit corridors and look at the SANDAG Regional Transportation Plan (RTP), Metropolitan Transit System (MTS), North County Transit District (NCTD), and other possible areas and how that may impact VMT efficient areas or areas covered by the exemption.
3. Explore programmatic or plan-level mitigation opportunities for VMT, including the concept of a regional mitigation bank.
4. By-right process for development in VMT efficient areas.
5. Further exploration of exceptions to the VMT thresholds for affordable housing projects at less than 100 percent affordable, including mixed income and various components of Area Median Income (AMI), along with exploring the possibility of exceptions for middle income or workforce housing, local hire, and agriculture type projects that might have a net impact of lowering VMT.
6. Explore land use density of land that is in VMT efficient areas.
7. Continue to track guidance from the California Office of Planning and Research (OPR), along with other governing body efforts, including the SANDAG RTP.
8. Monitor the progress of other jurisdictions as it relates to their adoption, along with what unique programs, exemptions, or opportunities they may be exploring that the County may want to consider.
9. Consider a phase-in timeline to allow for a transition into a regional geography.
10. Consider compliance options for projects that have already been proposed or are in the process now.
11. Conduct an analysis of the options to remove the Local Mobility Analysis.
12. Inform the Board regarding updates on development of the Smart Growth component of the Climate Action Plan (CAP) Update and Supplemental EIR to ensure it is integrated and aligned with efforts around VMT.
13. Conduct an analysis of proposed housing projects designated for individuals under 60 percent AMI and under 80 percent AMI and the potential cost impact of switching to a regional geography.

After the May 19, 2021 Board meeting, OPR clarified that "regional" is defined as the full geography within the jurisdictional borders of a Metropolitan Planning Organization (MPO) or a Regional Transportation Planning Agency (RTPA). For San Diego County, this is the San Diego Association of Governments (SANDAG) region, which includes the entire county. Previously, in its 2018 guidance, OPR recommended that for projects in the unincorporated area, the lead agency compare a project's VMT to

a “citywide” average VMT or the “region’s” average VMT. For example, the City of San Diego could evaluate a project’s VMT compared to the citywide average or the overall region’s average. For comparison, the VMT threshold using the unincorporated average is 23.4 miles and the threshold using a regional average is 16.9 miles (average reduced by 15 percent as recommended by OPR).

Although the OPR Technical Advisory is intended to provide advice and recommendations and is not mandatory, as directed by item 7 above, staff returned to the Board on September 15, 2021 (1) with this new guidance, and the Board adopted a resolution to rescind the County’s TSG based on OPR’s updated guidance that the County should use the regional average VMT for projects in the unincorporated area.

On February 9, 2022 (7), the Board received the presentation and overview of the 13 items and provided direction on options to implement analysis of transportation impacts of proposed projects under CEQA using VMT in two phases.

Phase one included the following:

1. Prepare a revised TSG using a regional geography, circulate it for a 30-day public review, and return to the Board within six months for consideration with a cost of $100,000. The revised TSG should also include the following:
    a. Develop new VMT screening criteria for projects within Infill Areas and any surrounding “Village” as identified in the General Plan, excluding areas outside of existing or planned transit and areas mapped as High and Very High Fire Hazard Severity Zones. The screening criteria will allow projects located in Infill Areas and any surrounding “village” to move forward without VMT analysis or mitigation. This option would allow up to 5,870 homes to move forward without VMT analysis based on the General Plan (Infill Areas combined with VMT efficient areas). Projects located outside these areas will need to conduct a VMT analysis and propose mitigation to reduce their impacts.
    b. Adopt the 110 average daily trips small project screening criteria.
    c. Adopt OPR recommendation to screen out projects with 100 percent affordable housing from VMT analysis.
    d. Require an LMA. The LMA for discretionary projects would be used to evaluate road operations, traffic safety, and access. The study scope of LMA has been reduced when compared to the previous CEQA required traffic analysis based solely on Level of Service prior to the implementation of SB 743 in that the area evaluated is limited to intersections located near the project with the primary focus on traffic safety and not roadway capacity.

2. Directed staff to return with options for a sustainable land use framework (Option 6-D). Staff also recommends the Board direct staff to prepare options for further direction to inform the development of a sustainable land use framework for Board consideration and return to the Board in 120 days. Options would include the following: identification of principles for sustainable development that could inform future land use decisions; and comparison of planning mechanisms to implement Board directed principles, including zoning overlays, specific plans, community plan updates, or a general plan update and return to the Board within 120 days, including how to add a parcel-by-parcel analysis and convene stakeholder groups around the issue of addressing the additional considerations that would facilitate development in VMT exempted areas at a later date.

EXHIBIT G

Inside the fight to save Windsor from the Kincade fire

Officials were told Windsor would almost certainly lose homes to the Kincade fire, but not a single house was lost, thanks to hundreds of firefighters who braved great peril to face down a surging wildfire on Oct. 27.



SLIDE 1 OF 30

Santa Monica Fire Department firefighters Armando Reyes, left, and Andrew Klein quickly bundle their fire engine's hose to move to protect a different structure during the Kincade fire on Los Amigos Road in Windsor on Sunday, Oct. 27, 2019. (ALVIN JORNADA/ PD)

MARY CALLAHAN
THE PRESS DEMOCRAT
November 9, 2019

Flames were sweeping down the grassy slopes of Foothill Regional Park toward the near-empty town of Windsor when Sonoma County Fire District Battalion Chief Mike Elson drove up Cayetano Court and realized the moment they had all been bracing for had come.

Two-story flames and glowing firebrands whirled through the smoke-darkened skies, setting fences and trees ablaze, lighting landscaping and, soon, sparking fires at several homes in the neighborhood, as well.

The marauding Kincade fire had been bearing down on Windsor all morning, burning its way through a rural landscape across a wide area north of town, where an army of firefighting forces stood ready to face it late in the morning of Oct. 27.

But it would be northeast Windsor, in and around hundreds of homes in the Foothill Oaks Estates, where they confronted the biggest threat - a near-overwhelming battle to keep the blaze from taking the neighborhood and the town.

Scores of firefighters took part in the initial attack, making a stand amid the chaos, barely daring to hope they would prevent the fire from ripping through town, let alone sweeping across Highway 101 and burning a trail of destruction all the way to the coast.

"That fire coming off of Foothill Park, that fire was coming off that hill very quickly, and it was massive," said Elson, who was leading a nine-engine task force but eventually took command of the Foothills campaign. "It was a massive firefight. There were flames up over the tops of houses ... and those are mostly two-story houses, so they were 30, 40 feet in the air."

But in what became a pivotal juncture in the two-week effort to beat back Sonoma County's largest wildfire ever, the battle for Windsor spared every single home in the town of 27,000 people and substantially curbed the fire's spread.

Sonoma County fire officials credit 200 firefighters or more, both local and from outside the area, who jammed into the neighborhood and simply refused to give way to the flames.

They fought house-to-house, confronting the blaze so aggressively they pushed the boundaries of personal safety to the very limit - to the point Sonoma County Fire District Chief Mark Heine said he came close to ordering crews to fall back in a few cases.

"That was very dangerous firefighting in there," Heine said. "To enter someone's backyard, where everything in their backyard was on fire, meant they didn't know if they could get themselves back out. There was just that spirit of, 'We're not letting this fire come to our town.'?"

It came frighteningly close, making innumerable forays into the Foothills area, a neighborhood of several hundred homes tucked up against the hills of the regional park east of Arata and Hembree lanes in the northeast section of Windsor.

Particularly vulnerable were about 150 homes arrayed around cul-de-sacs, many of which had backyards exposed to the park or connected landscape, often separated from the parklands only by wire fencing.

But ferocious winds that sent sparks and flaming debris well ahead of the fire front that day meant anywhere in the neighborhood or even within a mile or two was at risk of blown embers and fire starts.

Were the fire to get established in even two or three homes, generating intense heat, large flames and embers, "We were likely to lose that whole neighborhood," Heine and others said.

Residents who returned to the area days later found singed trees and burned gardens, lengths of fencing turned to charcoal, ash-covered ground where the flames had spread directly from the blackened hills of Foothill park into their backyards. There were scores of places - outdoor sofa cushions, patches of grass, Halloween decorations - that had caught fire and been put out.

Firefighters had to kick down doors in a few cases to douse attic fires after embers ignited rooftops or burned fencing up to exterior walls like they did at Michelle and Brad Stibi's place on Valle Vista Court.

"We were the loop on national TV," Michelle Stibi, 50, said, her expression suggesting she was none too impressed with the celebrity brought by widely shared footage of the firefight in her yard. "This is going to be a concrete jungle when Brad gets done with it."

Fire officials say it would have been worse if it weren't for the stucco and tile or concrete roof construction that dominates the Spanish-styled Foothill Oaks Estates subdivision that makes up most of the area between Hembree Lane and Vinecrest Road, where the firefight took place.

"Some of those embers were still getting up into those eaves," Elson said, "but construction features that they built into those neighborhoods definitely helped."

A far more critical factor was the early evacuation of residents, clearing the way for firefighters to battle flames and defend property without the need to commit time and attention to rescue efforts. Saving lives and getting people out had completely consumed public safety personnel during the early phase of the 2017

Tubbs fire, which swept across Sonoma County from Calistoga by night with such speed that hundreds were trapped in their homes and neighborhoods and forced to flee through the flames.

"If people had stayed in those homes in Foothill, they would have died," Heine said starkly, "and if not, it would have created such a complex issue for us that we wouldn't have been able to fight the fire. It allowed us to focus on the fire and not life-safety and rescue."

The 77,758-acre Kincade fire, now 100% contained, started many miles north of Windsor, atop The Geysers, during extremely strong winds the night of Oct. 23. It had burned virtually unchecked for four days along a mostly southerly path before it rushed toward Windsor during a period of rapid, wind-driven growth around midday Oct. 27.

Sonoma County Sheriff Mark Essick had ordered all Windsor residents to leave home a day earlier in what would be a succession of evacuations that cleared out a huge swath of Sonoma County. More than a third of the county's population was under mandatory evacuation order, from Geyserville and Alexander Valley down to north Santa Rosa, and west to Jenner and Bodega Bay.

Hurricane-force winds coming out of the northeast and fire forecast modeling had contributed to the same terrifying prediction: that an unstoppable firestorm could burn through Windsor and jump the freeway into the thickly forested Russian River Valley, where flames fed by dense fuels unburned for decades would run all the way to the Pacific Ocean.

Public safety officials alerted the public to this "worst-case scenario" when evacuation orders were issued.

But it's not clear how many civilians appreciated the very real possibility of it coming to pass.

Most Californians are certainly aware of the increasing intensity of and destruction wrought by recent wildfires, experienced close to home in October 2017, when a series of fires rampaged through the region, killing 24 ?people in Sonoma County and destroying more than 5,300 homes.

But even Windsor Mayor Dominic Foppoli, during a celebration of the town's endurance last weekend, felt compelled to ensure his constituents understood the gravity of what they had faced a week earlier.

Foppoli, 37, said top fire brass briefed him and other town officials a short time before Essick ordered Windsor and Healdsburg to evacuate the morning of Oct. 26 and told them at least part of their community would likely be lost to fire before the flames continued westward.

"This was not an 'if,' but it was a 'when,'?" Foppoli told an estimated 4,500 who gathered in the town square to salute firefighters.

But there was positive side, too, Sonoma County Fire District Battalion Chief Marshal Cyndi Foreman said.

All the mapping, modeling and intelligence put Windsor squarely in the bull's-eye of the wildfire, Foreman said, so "we knew that we were not going to dodge this one, but we also knew it was coming."

While the Tubbs fire and last year's deadly Camp fire in Paradise continue to inform firefighters' expectations in an age of extreme fire behavior, the siege on Windsor came with the luxury of time to plan ahead.

"I'll take a disaster that we know is coming all day long, rather than something that's going to wake me up out of a dead sleep that I don't know is coming," Foreman said.

The Kincade fire was fought under the unified command of Cal Fire, the Sonoma County Sheriff's Department, the Sonoma County Fire District and several other agencies.

But the planning for Windsor was turned over largely to the Sonoma County Fire District and to Battalion Chief Mark Dunn, with the aid of Heine and other top officials, and support from many others, including fire personnel from other agencies who happen to live in northeast Windsor and offered to help.

Nothing less than the fate of the town hung in the balance, and many thought that even if the town were saved, hundreds of homes would be lost first.

Dunn, for instance, thought substantial residential losses were inevitable if the fire got established at Foothill Regional Park, as it did.

"When people have talked to me, I've been so emotional about it," Dunn said. "It's one thing to have a plan and to ask strike team leaders and strike teams and my own department, 'I need you to do this; you're going to go to this neighborhood and try to hold your ground.'

"That's one thing. But they actually did it, and they did it perfectly. So many individual engines from different agencies doing all that," he said. "It was amazing."

The firefighting force had to be ready to meet the blaze coming in from the north or the east - or both, which is how it transpired - and be prepared to hold Highway 101, whatever it might take, Dunn said.

They had to figure out where they might lose control of the fire and identify contingency plans that included lines which, once crossed, would trigger crews to fall back several blocks to preset points. There was even the potential for the fire to take successive neighborhoods, forcing the entire firefighting force to seek refuge across the freeway if it got bad enough.

Dozens of engines were moved into the area by Saturday night, Oct. 26, some staged at the Luther Burbank Center for the Arts in Santa Rosa. Three strike teams of five engines were prepositioned in Windsor, a number of them redeployed directly from the 4,615-acre Tick fire that was winding down in Southern California.

Sonoma County Fire District personnel and a fleet of bulldozers also were deployed around Windsor, many of them around Arata Lane and Highway 101/Los Amigos Road, near the command post.

As restless fire officials patrolled rural areas north of town late Sunday morning, around 11 a.m., the fire made a drive for Windsor, sweeping off the hills from Chalk Hill Road in several directions once, fire officials said. One head of the fire was veering past Hillview Road toward Limerick Lane and the highway, while another came down Hillview south toward Brooks Road and Arata Lane, and a third came down Chalk Hill Road toward the area of Vinecrest Road, though eventually the biggest threat came from edges of wildfire that merged in Foothill Park and spread swiftly through the grasses of the 211-acre open space.

Roberto Pardo, 54, and his family, meanwhile, were safely ensconced in a Napa hotel, anxiously monitoring news of the Kincade fire as they had through the night, when security cameras from his Windsor home began sending snippets of grainy footage to his cellphone.

Just before noon, he saw two fire engines pull into Miramar Court near the west side of Foothill park and observed firefighters go into his neighbors' backyards and his own - ensuring they had access in the event it was necessary, was Pardo's guess. He could see the wind whipping so fiercely it bent one of his palm trees nearly in half.

Then the six firefighters, apparently satisfied, lined up side by side in the road facing east and waited - watching, bracing, for the coming siege.

When he saw a law enforcement vehicle take a last, hasty spin around the court before speeding away - as if checking to make sure everybody was gone - he knew "that the fire was here," Pardo said.

Firefighters were frantically canvassing neighborhoods, moving propane tanks, lawn furniture, umbrellas and whatever flammable items they found away from homes, or kicking down fences to improve access or avoid creating fuses that might help ignite homes.

Sonoma County Fire District Capt. Mike Stornetta, whose own home is mere blocks away, had by then gone looking for the fire, dragging a fire hose into Foothill park with Capt. Fred Leuenberger and confronting it there amid the oak trees. They sounded the alarm in the moments before flames hit Cayetano Court and made entry into the neighborhood behind a number of homes at once.

His report marked the beginning of an epic battle, marked by what Dunn said was suddenly one report after another of the fire's arrival in neighboring cul-de-sacs and the response of dozens of fire crews into the area.

Foreman said, "It was like somebody blew the bugle and the cavalry arrived. You couldn't run 10 or 20 feet without running into another firefighter. There were so many resources that saturated that community."

Even so, it was daunting.

Elson said he thought for a second about the personal vehicle he had left at the Hembree Lane fire station more than a mile to the south and whether he would have time to move it before the fire got there.

"My gut reaction was that we were going to lose that whole neighborhood," he said.

Foreman remembers a point when the fire came down to Vinecrest Road toward the east edge of town when the whole sky went dark - "like somebody turned the lights off" - perhaps as the fire took three homes up a steep, narrow tail of Vinecrest, just outside the town limits.

In the Foothills neighborhood, the firefight lasted an hour, perhaps 90 minutes, a relentless attack in which each strike team and engine leader was authorized to exercise his or her own discretion as to what was needed to advance the cause.

Many neighborhood residents saw the battle unfold on TV or social media, including a widely watched video shared in real-time where they watched firefighters in their own yards and saw their properties in flames.

"We created a whole text group before we evacuated on Saturday, and we all talked to each other the whole time," said Beverly Madden, who retired to a home at the end of Valle Vista Court a few years ago and was alarmed by the video someone passed her way.

She now has ash across part of her backyard and new landscaping, now probably ruined. But "when we saw the video, compared to when we got here? We feel super, super great."

The fire came within yards of Mike Hoesly's home up a long drive way atop a hill at the north end of Cayetano Court, after "toasting" about two-thirds his vineyard and burning through a good deal of landscaping at the edge of his backyard just off Three Lakes Trail in the regional park.

But he's grateful that firefighters saved his heritage oak - the only thing growing on the property, when he and his wife, Kate, moved there in 1990.

"This could have been so tragic, you know?" said Hoesly, 70. "We just feel kind of like if the home construction had been different, it could have been a domino effect."

There would be more firefighting to do later that day and in the days to come, as the wildfire swept up toward Shiloh Ridge and the Mark West Creek watershed.

But for Elson and others from the district who fought the 2017 Tubbs fire and struggled fruitlessly to try to protect homes they instead watched burn, defending Windsor proved a watershed - a badly needed save, a source of redemption, he said.

"You know," said Stornetta, "with the winds that we were having and, with the experiences that we've had in this area and all over California, I was really not holding out a ton of hope that we were going to be able to save it. However, the mentality that everyone had was, 'Hey, we're not letting this happen again.'?"

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CALIFORNIA WILDFIRES

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

Kurtis Alexander, Steve Rubenstein, Alexei Koseff, Demian Bulwa

Oct. 26, 2019 | Updated: Feb. 24, 2020 4:20 p.m.

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1 of 13

Firefighters light back-fires along Pine Flat Road near Geyserville, Calif. on Saturday, October 26, 2019 to head off the Kincade Fire, which has grown to more than 25,000 acres and triggered mandatory evacuations in Windsor, Geyserville and Healdsburg.

Kurtis Alexander/Kurtis Alexander / The Chronicle

***Read the latest on the* Kincade Fire here.**

Two years after being scarred by the deadly Wine Country wildfires, Sonoma County was under siege again early Sunday as thousands of firefighters battled to keep powerful winds from pushing the massive Kincade Fire southwest through dense cities and towns toward the Pacific Ocean.

As of midnight, the county resembled a disaster zone from end to end. Some 90,000 residents has been ordered to flee their homes — including those in the touristy wine capital of Healdsburg, with its boutique hotels and tasting rooms, and the community of Larkfield-Wikiup, which saw whole subdivisions flattened by the Tubbs Fire of October 2017.

In the Santa Rosa neighborhoods of Coffey Park and Fountaingrove, meanwhile, residents in brand-new homes just rising from the ashes were warned they might be next to evacuate. Just about everyone else in the county was either under an evacuation order, an evacuation warning, or a power outage imposed by Pacific Gas and Electric Co. to keep additional blazes from sparking.

"We're kind of at the mercy of Mother Nature right now," said Jonathan Cox, spokesman for the state's Cal Fire agency. "Batten down the hatches and hope the storm passes."

As of midnight, the Kincade Fire in and around Geyserville — possibly sparked Wednesday by PG&E equipment that had been left on despite the outage — had blackened 26,000 acres and destroyed 31 homes and 46 other structures, according to Cal Fire.

The fire was just 11% contained, or surrounded. More than 2,800 firefighters and upward of 250 engines worked in rugged hills and canyons seeking to boost that figure as they prepared for winds from the northeast forecast to reach 40 mph — with gusts up to 80 mph.

No deaths had been been reported. Two civilians and one firefighter sustained non-life-threatening injuries Friday after the firefighter deployed his personal fire shelter to save himself and the two fleeing residents.

Saturday had been a day of preparation and worry. Authorities continually expanded evacuations, while opening shelters for evacuees. Fleeing residents jammed Highway 101, and lined up to fill their tanks at gas stations. Stores in Sonoma County and well beyond sold out of ice, batteries, portable generators and other supplies.

Evacuated areas included Windsor and Mark West Springs as well as Guerneville, Forestville, Occidental, Bodega Bay and other spots along the Russian River and the coast. Among those who had to move on were roughly 100 patients at Sutter Santa Rosa Regional Hospital, who were transferred to medical facilities in Novato and San Francisco. Sonoma County officials had to empty a jail as well, just in case.



A police officer leaves a home after placing an evacuation order in the mailbox on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

National Weather Service meteorologist Drew Peterson said the area was expected to see "extreme, extreme conditions." The strongest gusts were expected to pick up early Sunday in the hills and ridges and continue into Monday — a more intense and longer-lasting windstorm than the one that pushed the 2017 fires in Wine Country.

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On Saturday, in a last-ditch effort to halt the progress of the fire before the winds picked up, hundreds of firefighters aided by airplanes and helicopters pre-emptively burned vast stretches of grassland to create a fire break. The back-fires, many set along Pine Flat Road east of Geyserville as the sun went down, were designed to create a buffer zone between the fire and the many towns of the Sonoma Valley.

"We want to make sure it doesn't go down any farther," said Capt. Mike Tompkins of the Tiburon Fire Department.

His crew was part of a team using drip torches to light dry brush and grass on fire. Another team, high on a ridge above, was lighting fires back toward Tompkins' team so that the flames from both sides would merge and create one big fuel break. Asked if it would work, Tompkins raised crossed fingers and said, "We'll find out."



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Chris Markell momentarily stops his car on the 101 on ramp to photograph the Kincade Fire on Friday, Oct. 25, 2019, in Healdsburg, Calif.
Paul Kuroda / Special to The Chronicle

In Healdsburg and Windsor early Saturday, residents and businesses rushed to pack up and get out of town. Danielle Kuller, the manager at Amy's Wicked Slush ice cream store in Healdsburg, said the store shut down and sent employees home.

"We're just trying to make sure everyone's safe," Kuller said.

At KC's American Kitchen in Windsor, dozens of breakfast customers watched the sheriff's press conference on the restaurant TV and found out the town was being evacuated.

"They all paid their checks and left," said Sheryl Farmer, the restaurant manager. "The restaurant is empty now. Our staff is worried and frantic. They're all trying to get home to be with their families. It's a little stressful."

By afternoon, the only people still allowed in Windsor were law enforcement personnel putting barriers on roads, driving through neighborhoods with loudspeakers and sirens, and going door to door to reach residents.

"It was nuts," said Brian Benn, who waited 15 minutes to fill up at a gas station in north Santa Rosa, just outside the evacuation area, where he said the lines for each pump were six cars deep. "You can tell people are feeling a little panicked, and trying to get their stuff together."

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From left: Cal Fire Healdsburg's Daniel Frazee, Andrew Rush and Kassidy Harms watch as helicopters pass by and dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

About 90 people under a previous mandatory evacuation order from the Geyserville area spent Friday night at an emergency shelter at the Healdsburg Community Center, Red Cross spokeswoman Barbara Wood said. Half a dozen new arrivals joined other residents at the former elementary school. Restaurants provided meals and concerned citizens dropped off books, toothbrushes and fresh chrysanthemums for the dining hall tables. But by Saturday, the shelter was itself evacuated.

Down the road, Jorge Vazquez, 31, who works in the maintenance department at the Best Western Dry Creek Inn in Healdsburg, was tasked with going door to door telling guests to leave. Each was given 30 minutes. Many there were also evacuees from the Geyserville area, forced to make their second evacuation in three days.

"It took some convincing to get them to leave," Vazquez said. In one case, he said, he had to threaten to call the police.

New evacuation centers were opened at the veterans halls in Santa Rosa and Petaluma, and at the Petaluma Fairgrounds.



Fire-friendly weather conditions affected much of Northern California, where as many as 940,000 customers were expected to lose electricity in planned Pacific Gas & Electric Co. power outages designed to prevent the outbreak of additional fires.

With what forecasters called a "potentially historic" windstorm expected Saturday night into Sunday, PG&E began shutting off power to as many as 2.8 million people across huge swaths of the state in an attempt to avert wildfires. The utility said homes and businesses could lose power in portions of 38 counties across the Bay Area and throughout Northern and Central California.

"The next 72 hours will be challenging," Gov. Gavin Newsom said at a Napa event Saturday. "I could sugarcoat it, but I will not."



Roilene picks up last items before evacuating from her house with her husband Wolfgang on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

The planned outages were unprecedented, affecting far more people than two previous shutoffs. In the last widespread round of planned outages this month, 738,000 residences and businesses in Northern and Central California had their electricity cut off.

The first blackouts began Saturday afternoon, affecting portions of counties in Northern California and the Sierra foothills — Amador, Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Plumas, San Joaquin, Sierra, Siskiyou, Shasta, Tehama and Yuba counties. They later spread to the Bay Area, affecting Alameda, Contra Costa, Marin, Napa, Solano and Sonoma counties.

The Marin County Sheriff's Office said it expected the outages to affect 99% of the county.

"It almost feels like an apocalypse," said Armand Quintana, manager at Jackson's Hardware in San Rafael. "There are lines at the gas station, people are buying ice from grocery stores, they're out of ice. I'm looking for zombies."

The store ran out of its stock of 50 generators, which sell for $1,100 to $5,000. Just hours before the expected power outages Saturday, it ran out of flashlights, batteries, candles and other power-outage supplies.

Smoke from the blaze was wafting through the Bay Area and could be sniffed on Saturday in downtown San Francisco. Air quality experts advised that buying masks and filters is no substitute for finding clean-air spaces, such as libraries and shopping malls.



Helicopters dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

"Masks may not be the answer for a lot of people," said Dr. Jan Gurley of the San Francisco Department of Public Health. "Sometimes they make you feel a little better. But there are no substitutes for getting to where the air is clean."

Air quality throughout the Bay Area was expected to be "unhealthy for sensitive groups" and a Spare the Air Day was declared by the Bay Area Air Quality Management District. It was the 20th of 2019, compared with 13 days in all of 2018, 18 days in 2017 and 27 days in 2016. Residents were advised to limit outdoor activity and avoid driving and wood burning.

On Saturday, the Kincade Fire was burning in a southwesterly direction on the east side of Highway 128 and eastern Geyserville. Firefighters built containment lines on the edge of Geyserville, where 735 structures were under threat.

Newsom toured the fire area Friday, visiting residents, meeting local officials and praising firefighters for their "extraordinary heroism." The governor also stepped up his criticism of PG&E, as state regulators looked into whether the utility company's equipment played a role in the fire.

The company reported Thursday that equipment on one of its transmission towers broke near the origin point shortly before the Kincade Fire was reported at about 9:27 p.m. Wednesday. Power had been shut off in the area, but not on that specific transmission line, in an effort to prevent such an event.

Chronicle staff writers John King and Catherine Ho contributed to this report.

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EXHIBIT H

Brings Chickasaw's unparalleled gaming expertise and shared values to project to support Koi's economic independence on tribal lands in Sonoma

Santa Rosa, Calif. (24 January 2022)— The Koi Nation of Northern California, one of California's historic federally recognized Native American tribes, has executed a predevelopment agreement with Global Gaming Solutions (GGS), a wholly-owned business of the Chickasaw Nation of Oklahoma, to engage as the Koi's development partner for its planned Shiloh Casino & Resort in Sonoma County. GGS will also act as the manager and operator of the establishment when completed.

"We are honored to build this important business relationship with our brothers and sisters of the Chickasaw Nation, one of the most experienced Native American tribes in the gaming industry," said Darin Beltran, Koi Nation's Tribal Chair.

"Not only does the Chickasaw Nation have great expertise in gaming and resorts, but they also share the same values as the Koi Nation. Chickasaw leaders understand the importance of this project to the restoration of our economic self-reliance because they have walked the same path many times in support of their own people's future," said Dino Beltran, Koi Nation Vice Chair and Director of Development.

The Chickasaw Nation, with its tribal headquarters in Ada, Oklahoma, has an exemplary track record in developing and operating tribal gaming operations and related resort properties. It operates 23 gaming establishments around the nation, including Winstar World Casino and Resort, the largest casino in the world. The Chickasaw Nation also operates nearly 200 additional highly successful businesses, giving it a broad range of commercial expertise that makes it the ideal partner to develop and manage the Shiloh Resort & Casino.

"The Chickasaw Nation is pleased to play a role in this project, and we look forward to a successful collaboration," Chickasaw Nation Governor Bill Anoatubby said. "The prosperity of our citizens and a commitment to working together with our partners in the Koi Nation as well as local, state and

community officials are key components to our mission. We look forward to witnessing new jobs, additional businesses and increased tourism to this region."

"We are excited by the opportunity to use our expertise to help the Koi Nation realize this project and establish the economic self-sufficiency that is the inherent right of all Native American tribes," said Bill Lance, Commerce Secretary of the Chickasaw Nation. "We look forward to beginning a successful long-term economic partnership with the Koi."

About the project

The Shiloh Casino & Resort will be built on the Koi Nation's property at 222 E. Shiloh Road in unincorporated Sonoma County. The tribe purchased the 68-acre site late last year to re-establish its tribal land base more than a century after the Koi's ancestors were forced to relocate to the Santa Rosa/Sebastopol area.

The non-smoking Shiloh Casino & Resort will include a 2,500 Class III gaming machine facility, a 200-room hotel, six restaurant and food service areas, a meeting center and a spa, as well as a state-of-the-art live entertainment venue. The design for the low-rise facility integrates with the natural beauty of the region and will be energy-efficient and respectful of the environment, in keeping with the Tribe's historic relationship with the land.

The Shiloh Casino & Resort will employ more than 1,100 full-time workers when fully operational. The project also will create hundreds of jobs for workers in the construction trades and other skilled laborers. The Koi Nation anticipates that a portion of the resort's revenues will be shared with the broader community through the support of local organizations as well as collaborating with local governments to address their needs.

About the Koi Nation

The Koi Nation's mission is to empower our people to achieve a better way of life and to maintain tribal integrity and honor through responsive government. We are committed to protecting and exercising our inherent sovereign rights as a federally recognized tribe to their fullest extent,

including obtaining land to re-establish a permanent land base for our people who have lived in this region for thousands of years, and creating self-sustaining economic activity to support the tribal government and its people, and the entire community of Sonoma County. For more information visit https://www.koinationsonoma.com

About the Chickasaw Nation

With more than 73,000 citizens, the Chickasaw Nation is a democratic republic with executive, legislative and judicial departments elected by its citizens. The treaty territory of the tribe includes 7,648 square miles of south-central Oklahoma and encompasses all or parts of 13 Oklahoma counties. The Chickasaw Nation contributes billions to the Oklahoma economy annually and employs nearly 13,500 workers.

For more information, visit https://www.chickasaw.net

Attachment G
to FTT Comments

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DAVID LUSBY

April 5, 2024

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

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

VIA U.S. MAIL AND EMAIL

Dear Regional Director Dutschke:

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

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

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

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

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

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

Sincerely yours,

Verne Ball

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

Attachment

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

RE: EA Comments, Koi Nation Shiloh Resort and Casino

November 13, 2023

Dear Ms. Dutschke and Mr. Broussard:

On behalf of the County of Sonoma, thank you for considering these comments on the Environmental Assessment (EA) prepared for the Koi Nation's proposed fee-to-trust application for its Shiloh Resort and Casino Project. The County is mindful of the Bureau of Indian Affairs' (Bureau) roles in reviewing and deciding on the application made by the Koi Nation and its role as a trustee for lands already held in trust for tribes in Sonoma County. The County is respectful of tribal sovereignty and understands the need for tribal self-determination and economic development to provide for tribal members. At the same time, Sonoma County objects to any attempt on the part of the federal government to take the present 68 acres of land located east of the Town of Windsor into trust for the benefit of the tribe for gaming in a manner that violates federal law.

Given the significant impacts of the project, and the controlling law that requires an Environmental Impact Statement (EIS) on these facts, the County of Sonoma respectfully urges the Bureau to forego any attempt to use this document to support a Finding of No Significant Impact (FONSI). This is not supportable. The County of Sonoma objects to the inadequate analysis and mitigation in the EA, and the failure of the Bureau to take a "hard look" at the environmental consequences of this proposal, as required by the National Environmental Policy Act (NEPA).

The Bureau should stop, think, and prepare the EIS that NEPA requires.

I. The EA contains inadequate analysis of the significant impacts of the project and an EIS must be prepared.

The Bureau has prepared a complete EIS for other very similar casino projects within Sonoma County, as well as elsewhere in California. By way of example, in Sonoma County, the Cloverdale Rancheria Band of Pomo Indians' fee-to-trust application sought 69.77 acres of land in trust for gaming about 25 miles north of the subject site. An EIS was prepared for the Cloverdale project.[1] The Bureau's action on the Cloverdale site was for a resort casino and hotel, including a tribal government building and 3,400 parking spaces, for a total non-parking square footage of 595,600 square feet. By way of comparison, the Koi Nation's project is for a similar project without a government building, and totals 807,067 square feet for non-parking coverage, and 5,119 parking spaces in addition (1,689,380 square feet in addition). For a similarly sized proposed land area, the Koi casino square footage is 135.5% of that proposed by Cloverdale, its hotel rooms are 164% of that proposed by Cloverdale, and the number of parking spaces is 150.5% of that proposed by Cloverdale. Even if the current project were to be reduced in size to what Cloverdale proposed, common sense would dictate an EIA. While an EA may be appropriate for some projects, the Koi Nation's destination casino project is not one of them.

The EA concedes that the project will have numerous significant impacts, but then backs away from the obviously required significance findings based on regulatory requirements that do not exist, inadequate baseline information to inform analysis, inadequate environmental analysis of direct and indirect impacts, inadequate analysis of cumulative impacts, inadequate and unenforceable mitigation requirements, the strategic mischaracterization of mitigation as "part of the project" to avoid accountability, vague and unenforceable project assumptions, and in many cases, a refusal to implement all the recommendations of the consultants that the EA itself relies upon.

The decision not to prepare an EIS for this project reflects a conscious refusal to take a hard look at the impacts of the project and indicates that NEPA review is improperly being used to paper over a decision that has already been made.

II. The EA is affirmatively misleading with respect to the "regulatory setting," contains no discussion of mitigation efficacy, and no evidence that key mitigation will be effective.

The EA is filled with references to California state law and State and local regulatory standards. State law is discussed in most of the "Regulatory Setting" sections of the impact discussions, and also in Appendix E. However, the project may only be

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[1] http://www.cloverdalerancheria.com/eis/deis.htm

built if the land is in trust and hence not within the civil regulatory jurisdiction of the State of California or County of Sonoma. Each reference is misleading because the referenced State legal requirements and local regulatory requirements do not apply to the project. The EA avoids providing a description and discussion of the actual regulatory setting (and associated issues with mitigation implementation that this setting presents). Tribal sovereign immunity is not mentioned in the EA, much less in the context of mitigation measures.

There is no discussion of what mechanism will be available or used by the Bureau as the decisionmaker on the Koi Nation's fee to trust application to impose enforceable mitigation on the Tribe. It is one thing to discuss how environmental impacts are addressed by existing, enforceable requirements, but it is quite another to pretend that impacts are addressed by background regulations that do not exist.

In places, the EA's impressionistic discussion of State law and tribal requirements is about as far from a "hard look" as one can get. Section 2.1.9 states:

> The proposed facilities would conform to applicable tribal building code requirements, which would be generally consistent with the CBC and California Public Safety Code, including building, electrical, energy, mechanical, plumbing, fire protection, and safety. An indoor sprinkler system would be installed to provide fire protection.

There is no indication that the Tribe currently has tribal building codes with "applicable" requirements, but if they existed, they would apparently only be "generally" consistent with the "California Public Safety Code" – a California statute that does not exist. The analysis appears to be based on an imaginary code that is based on an imaginary code. If there are tribal codes that apply, their text should be provided in the NEPA process such that their adequacy can be commented upon and evaluated.

It is also clear on the face of the EA that cited regulatory standards are being ignored. As noted by West Yost (Exhibit A), a great deal of emphasis is placed on compliance with Title 22 of the California Code of Regulations in the EA's discussion of recycled water (EA, Appendix B, 2-16, 4-2 and 4-3), but the whole dual plumbing design (using non-potable water within a building with food facilities, 22 Cal. Code Regs. § 60313), squarely violates Title 22.[2]

[2] Assuming compliance with Title 22 and non-compliance at the same time makes the EA fundamentally unclear. A project that complies with Title 22 would require a different water balance analysis than is found in the EA.

Compounding the problem is the fact that the EA discusses critical mitigation measures as "Best Management Practices" (Table 2.1-3) raising the issue of whether these purported "practices" will actually occur absent monitoring and enforcement. The Bureau's own NEPA guidance (59 IAM 3-H) is clear that mitigation measures must be enforceable to justify a FONSI. Simultaneously, the Bureau's analysis in the EA is clear that compliance with Table 2.1-3 is critical to the impact conclusions in the EA. The analysis returns to Table 2.1-3 for these conclusions repeatedly. There must, at a minimum, be a mitigation measure that requires compliance with Table 2.1-3 or, alternatively an explanation of how these critical requirements (which are not at all part of background legal requirements for the project) will be monitored and enforced. The entirety of Table 2.1-3 must be rewritten to allow the evaluation of the efficacy of the mitigation and remove the escape clauses – by way of example, "[e]xhaust stack and vents will be positioned to limit odor exposure to sensitive receptors *to the extent feasible*." Characterizing critical "mitigation" as "practices" to avoid environmental accountability hides the ball in terms of impact analysis and subverts NEPA's basic purpose.

The failure to discuss the actual "regulatory setting," and the related failure to discuss why the "practices" and "measures" will be effective within that regulatory setting, is a fatal omission for NEPA compliance. The EA fails to provide the "reasonably complete discussion of possible mitigation measures" that is necessary to facilitate the "'action forcing' function of NEPA." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989); *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Credible information on the efficacy of "practices" or "measures" must be provided, and enforcement and monitoring must be implemented. Where "measures" or "practices" are illusory, they cannot legally provide the basis for a FONSI.

III. The EA's discussion of groundwater and water quality impacts is inaccurate and utterly inadequate.

The EA assumes that Pacific salmonids are not present in Pruitt Creek, stating "[l]isted Pacific salmonids are assumed to be absent from Pruitt Creek based on observations from the February 23, 2022, site assessment coupled with background research and lack of historic occurrences. The potential for Pacific salmonids to occur and use habitat in this far east portion of the Russian River Basin is temporally and physically limited." In reality, federally listed steelhead, *Oncorhynchus mykiss*, 79 Fed. Reg. 20802, 20807 (2014), are known to exist in Pruitt Creek, and the attached memorandum by Jeff Church, a Sonoma County Water Agency biologist, documents observations both upstream and downstream from the project location. (Exhibit B.) Steelhead use this location, and the location is designated critical habitat. 70 Fed. Reg. 52488 (2005).

It is true that the reach of Pruitt Creek at the project site is intermittent, but the Bureau reaches the exact wrong conclusion based on this fact. The Bureau should recognize that this fish habitat is exceedingly sensitive to dewatering and pollution impacts, rather than justifying a truncated investigation based on an incorrect assumption that federally listed fish species are not present. As discussed by West Yost (Exhibit A), dewatering impacts need to be evaluated based on an evaluation of the baseline conditions that is sufficient to inform the impact analysis, and the EA makes conclusions that are entirely unwarranted based on the evidence. The Bureau may not rely on its own lack of investigation into hydrologic conditions to justify discounting environmental impacts. *S. Fork Band Council of W. Shoshone*, 588 F.3d at 727. The current cursory investigation and analysis is not adequate to determine that the project will not adversely modify critical habitat[3] and result in significant impacts to salmonids. The project may well result in both significant impacts and violations of section 9 of the Endangered Species Act.

Further, the actual local flows in Pruitt Creek need to be evaluated to understand the baseline conditions; the EA's chosen proxy site 5.5 miles away on a different creek is not representative. (Exhibits A, C.) In addition, the analysis must include future projections given the changing climate. There is no evidence that the proposed wastewater discharge solution is feasible given actual streamflows, meaning that the EA's analysis of what will actually occur is dubious at very best. Robert Pennington, a Professional Geologist with the County of Sonoma, explains:

> During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species. [¶] The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge #11466800 has a contributing watershed area of 251 square miles. The

[3] The Bureau cannot take the position that taking this land into trust removes the protections of critical habitat under the applicable designation (70 Fed. Reg. 52488), because the habitat benefits from the existing designation.

> contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. (Exhibit C)

Inadequate storage will lead to environmentally harmful discharges, and there is no enforceable mitigation that requires compliance with all aspects Title 22 in California Code of Regulations, and there is no mitigation that addresses the related issues addressed by California's recently adopted Recycled Water Policy.[4] The study on which the EA is based admits that "contingency plans should be developed for low flow conditions" (EA, Appendix C, 2-21), but these have not been developed, disclosed, and analyzed. Similarly, crucial components of the recycled water system have not been disclosed, including a feasible plan to expand it. Absent trucking out of wastewater, which has significant impacts that are unanalyzed, it is foreseeable that the project will be forced to discharge recycled water at rates far above the agronomic rate of uptake for the recycled water discharge locations, leading to discharges to groundwater, and in turn, potential plant death that further exacerbates groundwater discharges.

Mitigation is necessary to avoid groundwater and surface water contamination, and a hand wave about Clean Water Act compliance is insufficient to excuse substantive analysis given emerging contaminants and the foreseeability of discharges to both groundwater and surface water. An inadequate initial design will lead to "upsets" and "bypasses," and claims that these harmful discharges are permitted. (40 CFR § 122.41(m) and (n).) In addition to nutrients, contaminants of concern that will exist in discharges to groundwater and stormwater include pharmaceuticals and related hormones, metals, microplastics, and PFAS. These contaminants will also be present in the project's biosolids.[5] In the stormwater context, given the automobile-centric nature of the project, the Bureau also must evaluate emerging contaminants like 6PPD from tires, as these chemicals have recently been identified as a major driver in

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[4] State Water Resources Control Board, Water Quality Control Policy for Recycled Water, (2019) https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/121118_7_final_amendment_oal.pdf.

[5] Pozzebon, E.A., Seifert, L. Emerging environmental health risks associated with the land application of biosolids: a scoping review. Environ Health 22, 57 (2023). https://doi.org/10.1186/s12940-023-01008-4.

salmonid extinction.[6] The required good faith analysis must be based on the fact that the project is proximate to salmonid habitat, not on convenient but incorrect factual assumptions to the contrary.

Additionally, the Bureau must evaluate the cumulative impacts of the planned groundwater pumping in light of the other existing and readily foreseeable wells in the immediate area, and also evaluate the cumulative impacts of extraction on the larger groundwater basin. The Bureau has not done so. The project would pump groundwater from the Santa Rosa Plain groundwater subbasin – a basin that requires special planning under California's Sustainable Groundwater Management Act (SGMA) to avoid adverse impacts. The groundwater in this basin is relied on for rural residential, agricultural, and municipal water supply. The EA fails to recognize – let alone analyze the impacts on – groundwater conditions and uses, and the EA lacks any analysis of long-term groundwater impacts. Mitigation measures are necessary to address groundwater impacts, and these are simply missing.

The current EA raises many more questions than it answers about whether and how the significant impacts of the project can feasibly be addressed. The current discussion only serves to document that they are not addressed. The EA cannot be used to support a FONSI for water quality and groundwater impacts. The groundwater "monitoring" mitigation measure merely documents that crucial information is missing from the EA that should have already been developed. The proposed "compensation" mitigation measure for groundwater depletion is not remotely adequate, and violates 40 CFR § 1508.20. The purported mitigation does not substitute for the environmental impacts that the EA ignores, and the EA similarly ignores the significant impacts of the mitigation itself.

In short, the EA is grossly deficient with respect to groundwater and water quality impacts.

IV. The EA fails to provide adequate analysis and mitigation for reasonably foreseeable impacts to law enforcement services.

The EA includes an analysis of Social Effects (e.g., gambling addiction, crime, drunk driving). Appendix B provides additional information on crime. The EA notes that increasing crime and calls for service to public safety are associated with any population increase, not necessarily gaming specifically, and concludes that the development, due

[6] John Ramos, "Tire additive could push California salmon to extinction, study says," CBS Bay Area, August 23, 2023, https://www.cbsnews.com/sanfrancisco/news/tire-additive-could-push-california-salmon-to-extinction-study-says/; Tian et al., "A ubiquitous tire rubber–derived chemical induces acute mortality in coho salmon," *Science* 371, 185–189 (2021).

to its large gatherings of people, may result in increased calls to law enforcement. The EA then claims that "the addition of the Proposed Project is not expected to lead to a material increase in crime rates in the area." The EA concludes the proposal would increase total calls for service by 2.2% and increase total arrests by 1.4% (1,433 calls and 33 arrests).

This discussion is misleading. Contrary to the conclusions of the EA, the causal link to crime from casinos is clear, and there is no evidence that the project would not require additional law enforcement facilities. In 2012, before the opening of the Graton Casino, the area surrounding that location (288 Golf Course Drive) was very similar to the proposed project area, and it generated two calls for service. (In the calendar year 2022, the area surrounding the proposed site generated one call for service.) However, upon the opening of Graton Casino in 2013, the location generated 1,757 calls for service, an increase of 1,755 calls. Last fiscal year (22/23), Graton Casino generated 529 of the 6,680 calls for service in Sheriff's Office Zone 5 (a very large Patrol Zone that includes the unincorporated areas surrounding Petaluma, Rohnert Park, and Cotati, stretching from the northern city limits of Rohnert Park to the Sonoma/Marin County border). The calls for service included, but were not limited to, assaults, trespassing, multiple types of theft, stolen vehicles, public intoxication, and drug activity. The decline from opening to fiscal year 22/23 in the case of the Graton Casino is not necessarily good news, as deputies are no longer specifically assigned to the casino and some crime previously reported by the assigned deputies themselves is possibly going unreported.

The proposed mitigation measure (EA, 4-7) to make "good faith efforts" to enter into a service agreement is inadequate, and provides no information regarding the contents of the agreement. The EA's attempt to discount the impacts is discouraging. The requirement that the proposed agreement be based on "quantifiable direct and indirect costs" does not adequately mitigate the impact (1) without a description of how those costs will be determined and (2) without an enforcement mechanism, which together would demonstrate that the mitigation is not illusory.

V. The EA fails to provide adequate analysis and mitigation for foreseeable environmental impacts that will result from the economic impact of this casino.

The EA concludes that the project would not result in significant impacts due to the economic effects of the project. This conclusion is unsupported by the facts and evidence. The socio-economic report (EA, Appendix B) concludes that existing Sonoma County casinos would experience a possible business loss of 11% and 24% but concedes that none of the estimates hold any water if other casinos (such as the approved Cloverdale casino) are constructed. Completely elided from the EA is a discussion of the foreseeable *environmental* impacts of very foreseeable business

failures that may well occur as a result of this approval. These impacts bear on both the Bureau's NEPA and the Bureau's federal trust obligations.

The Global Market Advisors impact study (Appendix B) estimates that 95% of the proposed project's estimated revenues ($473 million) will be diverted from existing local casinos ($449.4 million). Appendix B then dilutes this local impact by saying this is only 13.7% of a much larger, non-local gaming market. However, the analysis concedes that the existing Dry Creek Rancheria's River Rock casino will face no less than a 24.4% decline in revenue, and Global Market Advisors further concedes that this is not a conservative assumption given the fact that other casinos could also be constructed. No analysis is provided of the economic effects if this assumption is incorrect.

The over-saturation of the gaming market has physical impacts on the environment and on other tribes. The introduction of this casino to the local casino market would not only negatively impact existing gaming casinos in the area but would likely cause the total closure of more remote facilities like the Dry Creek Rancheria's River Rock casino. The Bureau stands to be the proximate cause of this closure, and the proposed action is contrary to the federal government's trust responsibilities. It is entirely foreseeable that the Bureau's proposed action will result in a closure.

The EA fails to evaluate these readily foreseeable impacts. The economic context for the Dry Creek Rancheria Band's River Rock Casino, and other tribal casinos in the area, is particularly precarious given the opening of the Graton Casino in 2013. In 2014, the Dry Creek Rancheria Band defaulted on millions in bonded indebtedness ($150 million) to its casino investors, and in contractual obligations ($50 million) to the County of Sonoma pursuant to an enforceable intergovernmental mitigation agreement. (Exhibit D.) The Graton Casino broke ground on a $1 billion expansion this year.

The EA is incomplete without a factual analysis of the continued economic viability of the proximate competitors, and an analysis of environmental impacts associated with closures of existing tribal casinos and resultant blight, deterioration, and loss of function of tribal infrastructure and services. The Bureau should conduct a good faith analysis of the economic and environmental consequences of its action, and stress test the assumptions based on all the facts that are relevant to the local context. This includes, but is not limited to, economic uncertainties and the effects of natural disasters on the gaming market.

In a context of foreseeable failures, perhaps most troubling in Global Market Advisors' analysis is the analogy to "gravity" (notably, without any disclosure of the actual math), as it strongly suggests a dynamic where the Bureau's fiduciary solution to failing casinos may be the expansion of larger and larger casinos to attract more visitors from greater distances. The Bureau must evaluate not only the foreseeable impacts of casino failures, but the growth inducing response to those failures that naturally will follow.

The current analysis of the economic and environmental consequences of the proposal is wholly inadequate for purposes of NEPA and raises serious questions about how the Bureau, as trustee, exercises its responsibilities when holding existing lands in trust for the benefit of distinct tribes, when presented with a proposed fee-to-trust application for another tribe.

VI. The EA's discussion of the project's significant greenhouse gas emissions and Vehicle Miles Travelled is inaccurate and incoherent, and the significant greenhouse gas impacts of the project are not mitigated.

The estimated greenhouse emissions from this project are extremely high, especially for this type of project. They are, disturbingly, much higher than they need to be. The estimates of operational emissions for Alternatives A, B, and C are respectively 69,862, 55,932, and 7,100 annual metric tons of CO2 equivalent (MTCO2E). (EA 3-138.) The Bay Area Air Quality Management District's (BAAQMD's) former significance threshold based on California's science-based emissions targets for 2020 was 1,100 MTCO2E. California's targets have been reduced. A straight-line reduction of the former threshold based on current science-based targets for 2030 in California results in a 40% reduction, or 660 MTCO2E.[7] Likewise, the EA discloses extraordinarily high social costs related to the greenhouse gas emissions for this project: $129,479,003 for Alternative A, $103,352,963 for Alternative B, and $13,374,218 for Alternative C. (EA 3-139.) These social costs alone indicate that the project's greenhouse gas impacts are significant. But rather than mitigating the very significant greenhouse gas emissions of the project, or finding that they are significant in a good faith analysis in an EIS, the EA attempts to hide the ball and assert that the project is compliant with BAAQMD's recently revised guidance. (EA, 3-140.) It is not.

In 2022, BAAQMD revised its threshold to be based on the absence of the build out of any new natural gas infrastructure, and on a 15% reduction in vehicle miles travelled (VMT) below the regional average per capita. (Exhibit E.) The EA purports to rely on this threshold. The threshold is an aggressive ratcheting down of the prior threshold based on the severity of the climate crisis. The goal of the threshold is to evaluate the design elements that are necessary to facilitate achieving *complete carbon neutrality* in California by 2045. (Exhibit E.) The natural gas component is based on the

[7] Under Health and Safety Code section 38566, SB 32 (2016), California's emissions reduction mandate for 2030 is 40% below its prior goal for 2020. Thus, many agencies have used 660 MTCO2E as an extrapolation of BAAQMD's 2020 threshold for this type of project (1,100 MTCO2E), as BAAQMD's threshold was based on California's 2020 targets. The alternatives in the EA are 105 times, 65 times, and 10 times this significance threshold.

judgment that global climate goals cannot be met with the expansion of natural gas infrastructure, given the need for major emissions reductions from existing infrastructure. The VMT component is based on guidance from the State's Office of Planning and Research, which the EA acknowledges.

The EA states:

> The Bay Area Air Quality Management District (BAAQMD) provided guidance in 2022 to determine the significance of climate impacts from land use projects (BAAQMD, 2022c). If a project will not include natural gas appliances, will not result in wasteful, inefficient or unnecessary energy use, will reduce project-generated vehicle miles traveled (VMT) below the regional average, and will provide EV facilities consistent with current California building standards, then a project's climate change impact is considered less than significant. The BMPs described in Table 2.1-3 provide for the use of electric boilers and appliances, avoidance of inefficient energy use, and installation of EV facilities consistent with current California building standards. As presented in Section 4 of Appendix I, Alternatives A, B and C would result in over a 15 percent reduction in VMT compared to the Sonoma County region. Therefore, with the implementation of BMPs, implementation of the project alternatives would not result in a significant adverse cumulative impact associated with climate change. (EA 3-140.)

In reality, neither of BAAQMD's referenced criteria are met. The project is not foregoing all natural gas as BAAQMD's threshold requires for a finding of "less than significant." Instead, Table 2.1-3 states: "The Tribe will use electric boilers and appliances in lieu of natural gas or propane units *to the greatest extent practicable*," whatever that means. The only thing this language clearly suggests is that the Tribe has considered the BAAQMD guidance regarding natural gas and rejected it.

Worse, the EA's statement that the project will result in "a 15 percent reduction in VMT compared to the Sonoma County region" has no basis whatsoever. Very clearly, this is not a VMT reduction project. The project's sponsors hope to draw customers from a very wide region, and have proposed no less than 5,110 parking spaces for the project. The study relied upon only looks at vehicle miles travelled associated with employees, not project visitors, which is to say that most VMT associated with the project is being ignored. This is the case even as the economic analysis in Appendix E, pages 65 and 66, describes a very large geographic market for visitors to the project, with the bulk of visitors not coming from Sonoma County. The purported "logic" of the EA is that: "The project's Home-Based VMT per employee value of 10.20 is lower than

the 85% VMT threshold for the Sonoma County region (10.53 VMT per employee). Thus, the proposed project at full buildout is expected to have a less-than-significant impact on VMT." These numbers do not elucidate the project's impacts. *Even after* improperly ignoring the visitor VMT completely, the VMT numbers cited reveal significant impacts. The EA deliberately evaluates the employee VMT average against the Sonoma County average rather than the regional average (which is significantly lower, because the region includes the metropolitan areas of the Bay Area),[8] and then, by a thin margin, finds the outcome to be less than significant. To the extent that any component of the math is credible at all, it has been subjected to outcome-oriented manipulation.

Nor do the practices in Table 2.1-3 address the greenhouse gas impacts as the EA claims. The Bureau has deliberately chosen mitigation language in Table 2.1-3 that is utterly vague and unenforceable: "Shuttle service to and from population centers will be provided *as feasible*, which would reduce CAPs and GHGs." The fleet mitigation is similarly vague and unenforceable, and has no standard through which efficacy can be evaluated. At the same time, as discussed more fully below, *all* of the recommendations of the traffic consultant concerning transit and pedestrian infrastructure have been summarily rejected without any explanation in the EA.

On top of these problems, the modeling assumptions in Appendix F do not hold up for very potent greenhouse gases like methane. Appendix F assumes "mitigation" that is not applied. While an unenforceable recycling "practice" has been proposed, no mitigation is imposed on the project requiring the source separation of organic waste such that it can be diverted from landfills. The lack of a feasible plan for organics diversion (including for biosolids), and the lack of any discussion of the project's integration with related landfill diversion processes under SB 1383 (2016), means the landfill diversion estimates are not credible. This in turn means that the assumptions about project emissions for potent gases like methane are not credible. Landfill diversion cannot be assumed if the project actively thwarts diversion.

The only way to reach the conclusion that the project's greenhouse gas impacts will be less than significant is by systematically ignoring the data, which the EA does. Perhaps the Bureau could use a different science-based analytical framework than BAAQMD and California's Office of Planning and Research have used, but it is arbitrary and capricious to manipulate data and say that cited significance criteria are met when they are not. A good faith analysis of the greenhouse gas impacts must be conducted, and if the analysis is based on an EA, the strategy of avoiding accountability by placing

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[8] In the context of similar attempts to dilute required VMT reductions, the California Office of Planning and Research (on whose guidance the EA purports to rely) has made clear that "regional average" means the average in the applicable Metropolitan Planning Organization, not the lower average within a county. (Exhibit F.)

mitigation with extensive escape clauses in the project description must be jettisoned. Given the project's high level of emissions, an EIS should be prepared. Absent an EIS, adequate and enforceable mitigation must be adopted for the project's emissions related to the project's energy sources, the project's energy consumption, transportation, and waste.

VII. The EA's traffic analysis ignores the recommendations of the underlying studies, and is based on inadequate and ineffective mitigation measures.

The EA reaches the logical conclusion that the project will have significant impacts on traffic without mitigation. However, the EA does not provide for enforceable mitigation that ensures that these impacts will be avoided.

The EA divides transportation into opening day mitigation and "cumulative" mitigation for 2040. For opening day, the mitigation measure states:

> While the timing for the off-site roadway improvements is not within the jurisdiction or ability to control of the Tribe, the Tribe shall make *good faith efforts to assist* with implementation of the opening year improvements prior to opening day. (EA 4-8, emphasis added)

The Tribe does have the ability to enter into enforceable contracts to construct the improvements (with local government assent), but the language in the EA scrupulously avoids anything concrete or enforceable. As written, the mitigation measure would allow for mere cheerleading, even as the traffic study (EA, Appendix I) assumes that the Tribe or Bureau will be responsible for the entire cost. What is needed to avoid significant impacts is the improvements, not "good faith efforts" that the Bureau declines to specify. Further, the analysis does not confirm there are no constraints for the improvements (environmental, real property, etc.), and does not analyze the improvements themselves. Ultimately, the measure does not commit the Tribe and/or Bureau to the improvements. The structural problem with the analysis is therefore that the EA provides no actual evidence that the improvements will occur, which on its own requires an EIS given the fact that impacts to be mitigated are significant.

The same issues arise for the "cumulative" improvements. The EA says:

> The Tribe shall make fair share contributions to the cumulative 2040 traffic mitigation measures. Funding shall be for design standards consistent with those required for similar facilities in the region. (EA, 4-8.)

First, the amount and timing of the payments is unspecified, and no evidence is provided that the cumulative improvements will actually be constructed on the timeline required to avoid significant cumulative impacts. There is no discussion of feasibility and constraints, and no discussion of any environmental issues that may exist with the improvements. Incredibly, the widening of Shiloh Road from 2 to 4 lanes is simply "assumed" without any substantive analysis (Appendix I, 168), and it is not required as mitigation – even as it is absolutely critical for the EA's conclusions about impacts.

Second, critical details are omitted from the mitigation measure, such as the nature of the fair share calculation (Table 33 in the traffic study is not mandated), the timing of project cost determinations, and the timing of payments. This information is crucial to evaluate the efficacy of the mitigation. Cost determinations must be based on actual facilities that meet County design standards, not hypothetically "similar" facilities, to ensure the improvements can actually be constructed. Effective mitigation measures will require enforceable agreements with the County.

Worse, without explanation, the EA inexplicably declines to impose mitigation recommended in the traffic study (EA, Appendix I) that could help address the project's transportation impacts. These recommendations include:

- "The proposed project should provide adequate pedestrian and bicycle facilities on its site (particularly at its planned driveways) to facilitate pedestrian and bicycle traffic to and from the project site." (EA, Appendix I, 6-7.)
- "Provide concrete sidewalks, and marked crosswalks at the proposed project driveways to connect with existing and planned pedestrian facilities along Shiloh Road and Old Redwood Highway." (EA, Appendix I, 6-7; section 15.4.)
- "Provide continuous, accessible pedestrian pathways between the nearby transit stops and project entrances." (EA, Appendix I, section 15.4.)
- "Provide pedestrian and bicycle facilities between the proposed project's driveways and the project's main facilities to improve on-site pedestrian and bicycle circulation" (EA, Appendix I, section15.4.)
- "The site is not proposing sidewalks along its frontages. However, pedestrian facilities should be provided at the two new traffic signals to provide a connection with the sidewalks on the north side of Shiloh and the urban features on the west side of Old Redwood Highway near the future signals at the church. TJKM also recommends constructing continuous, accessible pedestrian paths between the nearest bus stops, the project access points closest to Shiloh Road & Old Redwood Highway, and the nearest project entrances." (EA, Appendix I, section 15.2.)
- "Sonoma County Transit (SCT) serves the project area. Route 60 mostly travels along Old Redwood Highway between Cloverdale and Santa Rosa on headways varying between one to two hours. There is an existing pair of stops adjacent to the corner of Shiloh Road and Old Redwood Highway. With the addition of

accessible pedestrian pathways between the stops and the project entrances, this route has the potential to serve employees and patrons in the Old Redwood Highway corridor." (EA, Appendix I, 15.2.)

The failure to adopt these recommendations is unexplained. All of these mitigation measures would at least contribute to mitigating the very high VMT for the project. The EA's departure from these recommendations is neither explained nor justifiable.

Similarly, without the "hard look" required by NEPA, the EA does not impose the queueing mitigations that the traffic study recommends. These omissions leave significant traffic impacts, including on safety, unmitigated. The mitigation section of the EA contains no mention of the mitigations recommended in the traffic study (Appendix I) in section 4.5 (p. 42, 43), section 8.0 (p. 89), section 12.2 (p. 129-132), section 5.5 (p. 57-58), section 9.2 (p. 99, 100), section 6.5 (p. 72), section 10.2 (p. 109, 110), or section 14.2 (p. 159-162).

Finally, the EA also modifies the mitigations in the traffic study without justification or explanation. There are, for example, discrepancies between turn lane mitigations in the traffic study and in the EA, as well as lane "storage length" recommendations, where mitigation has been reduced in the EA relative to the traffic study without explanation. Whatever the reason for these changes, there is no evidence that these changes are appropriate.

In sum, the proposed traffic mitigation is not adequate, and the discussion of traffic impacts does not constitute a "reasonably complete" discussion of the direct and indirect traffic impacts of the project.

VIII. The EA's discussion of wildfire risks and mitigation is inadequate.

In the last decade, the project area has been the site of some of the worst wildfires in United States history. The project is very near to the burn areas of both the 2017 Tubbs Fire and the 2019 Kincade Fire. The EA acknowledges that the project is in a designated high fire risk area. (EA, figure 3.12-2.) The EA concedes that the elimination of fire barriers is a significant impact. Missing from the EA, however, is any recognition of the fact that the EA eliminates agricultural land that acts as a fire break (for the City of Windsor as well as for surrounding areas) and replaces it with flammable structures. This creates a potential ignition linkage from populated areas to a *very high* fire risk area. It is not as though the County has no experience with how this works. The EA contains a conclusory statement that no fire barriers will be eliminated. This is an odd mix of silly and irresponsible.

The EA cites State building standards relative to wildfire, and Former Chief Vern Losh recommends compliance with the wildfire (or "Wildland Urban Interface") provisions of the California Building Code. (EA, Appendix N1.) The EA does not

discuss the fact that these codes are inapplicable, and the EA does not require that they be imposed. The EA fails to discuss the fact that even a single ember in a poorly placed vent can defeat the protections provided by (already inapplicable) fire codes. Hurricane-force winds can transport these embers long distances at high velocities. It is understandable that, beyond the California code requirements, Former Fire Chief Losh recommends "special care" with locations where embers could intrude. No mitigation that implements and requires this care is imposed. No third-party plan checks are required. No substantive post-construction reviews are required. Indeed, no mitigation measures have been imposed to ensure that Chief Losh's generic assumptions about how projects should be built are true. Fire sprinklers are mentioned, but there is no discussion of the adequacy of water supplies and infrastructure to address firefighting. There is no discussion of the potential loss of water pressure or the frequent loss of power during fire weather, which can eliminate water supply. There is no discussion of the feasibility and impacts associated with the "back up" fire station that is proposed.

The outcome-oriented carelessness of the EA applied to very significant risks is unfortunate. Yet, the EA's failure to substantively examine evacuation risks is even more troubling. Evacuation risks are environmental risks with which Sonoma County has far too much familiarity. Evacuations have not always gone well, and timing has been crucial for the evacuations that have mitigated broader disasters. Very recent wildfires have required massive evacuations of the entire area in which the project is situated, including the complete evacuation of the adjacent Town of Windsor. The timely, total evacuation of the Town in 2019 was a key factor in allowing firefighters to save the Town and stop the further spread of the fire, as it allowed firefighters to battle flames without committing resources to rescues. (Exhibit G.) Evacuation requires sufficient infrastructure to allow occupants to leave and firefighters to enter without mutual interference. Experience has shown that the consequences of insufficient resources for evacuation can be dire.

Evacuation issues cannot be lightly treated as insignificant in Sonoma County. But that is exactly what the EA does. The CAS Safety Consulting LLC report makes numerous recommendations that have not been implemented in evacuation mitigation measures. Most problematically, these recommendations include traffic modeling that has not been completed. As the California Attorney General observes, "evacuation modeling and planning should be considered and developed at the time of project review and approval—when there is greater flexibility to modify a project's design, density, siting, and configuration to address wildfire considerations—rather than deferred to a later stage of the development process."[9] The "wait and see" approach

[9] California Attorney General, "Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act," October, 10, 2022, https://oag.ca.gov/system/files/attachments/press-docs/2022.10.10%20-%20Wildfire%20Guidance.pdf.

which might suffice in some cases is completely inappropriate in this situation. The only thing close to modelling that has been disclosed is an implausible conclusion that a 6-8 hour estimate to evacuate the casino and the Town is adequate. The basis of the estimate is not provided, but the conclusion that this is possible is based on various assumptions. The assumptions include the questionable assumption that Shiloh Road will be expanded at opening, even as no mitigation is proposed to require this expansion prior to opening. The EA does not provide a plausible basis for concluding that the estimated time required for evacuation is sufficient, it does not state the range of cases where that conclusion would be true, and it does not stress test all assumptions – in terms of infrastructure, in terms of disaster response operations, and in terms of the increasing wildfire risks presented by climate change. The lack of adequate traffic mitigation greatly exacerbates the deficient analysis. The EA does not provide evidence that the impacts are less than significant.

Finally, and unfortunately, given the location and nature of the project, mitigation should be adopted to address the cleanup of the project if it does burn. It is well understood that commercial buildings that burn in wildfires present toxic hazards to the community,[10] and the surrounding community will not be able to ensure these hazards are abated without the imposition of mitigation that addresses these risks. Federal assistance is generally not available for commercial projects. Where cleanups are not financially convenient, they do not occur without mandatory requirements. This will result in a significant impact without mitigation.

[10] California EPA, Guidance for Conducting Emergency Debris, Waste and Hazardous Material Removal Actions Pursuant to a State or Local Emergency Proclamation, October 7, 2011, https://calepa.ca.gov/wp-content/uploads/sites/6/2019/06/Disaster-Documents-2011yr-GuideRemoval.pdf

IX. The EA fails to evaluate a reasonable range of alternatives.

Part of the reason why there is insufficient infrastructure for the project is the fact that the site is within an area where this type of project would never be permitted by existing local government planning. The location is zoned for agriculture,[11] but that is far from the only issue. Sonoma County local governments have each adopted Urban Growth Boundaries to contain auto-dependent sprawl and plan for city-centered growth. The County and the cities have voter approved Urban Growth Boundaries and Community Separators to preserve open space and protect Sonoma County's environment. The Community Separator areas are voter-approved districts that were created to preserve open space, retain rural visual character, limit new development in scale and intensity, and *specifically avoid commercial development*. The project is outside the Town of Windsor's Urban Growth Boundary and inside the County's Community Separator. The existing infrastructure does not support this type of project because inter-governmental planning has sought to avoid this type of development in this area.[12] The Bureau's Scoping Memo partially acknowledges this fact in discussing the utility limitations that flow from the Town of Windsor's Urban Growth Boundary, but does not acknowledge or discuss the larger planning context.

The EA lacks a reasonable range of alternatives, and reading the Bureau's EA is torturous, like watching a fly in a bottle. Given the site constraints in terms of resources and infrastructure, it is illogical and absurd not to include off-site alternatives in the analysis. The EA asserts that the availability of other sites is economically "speculative" but this conclusory assertion flies in the face of the other casinos that have already been developed in the Tribe's territory (as the EA defines it). It also ignores the known economic resources of the Tribe's backers in this project. (Exhibit H.) It is foundational NEPA law that "[r]easonable alternatives include those that are *practical* or *feasible* from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." 46 Fed. Reg. 18026, 18027 (1981) (emphasis in original); *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (federal agency has the "duty under NEPA to exercise a degree of

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[11] Approximately 47 acres of the parcel consist of Farmland of Statewide Important; 8 acres are designated Farmland of Local Importance; and 13 acres are Prime Farmland.

[12] The relevant policies in the County's General Plan include, but are not limited to: "Objective OSRC-1.1: Preserve important open space areas in the Community Separators shown on Figures OSRC-5a through OSRC-5i of the Open Space and Resource Conservation Element"; "Objective OSRC-1.2: Retain a rural character and promote low intensities of development in Community Separators. Avoid their inclusion in City Urban Growth Boundaries or Spheres of Influence. Avoid their inclusion within Urbans Service Areas for unincorporated communities"; "Policy OSRC-1b: Avoid commercial or industrial uses in Community Separators other than those that are permitted by the agricultural or resource land use categories."

skepticism in dealing with self-serving statements from a prime beneficiary of the project" regarding alternatives). Further, constraining the analysis of reasonable alternatives (and the "purpose and need") to those that could be permitted under 25 CFR § 151.12 is contrary to longstanding Council of Environmental Quality guidance. 46 Fed. Reg. at 18027 (alternatives outside of lead agency jurisdiction must be analyzed; "A potential conflict with local or federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered.")

Picking a site for commercial development that is only available because local planning prevents commercial development of that site comes with multiple environmental and infrastructural challenges and costs. At bottom, it is hard to make this project work on this site without causing significant environmental impacts. The evaluation of off-site alternatives would allow the consideration of better sites, where the impacts could be better mitigated. If the site had better access to existing transportation (including multi-modal transportation) and utility infrastructure, the direct, indirect, and cumulative impacts would be easier to address. There is no need to site this project in a SGMA basin with water and wastewater constraints, or to site it in critical habitat for salmonids. The purpose and need and screening criteria have been engineered to screen out reasonable alternatives, and this is a completely unnecessary NEPA violation.

X. Conclusion.

The EA falls woefully short of providing "high quality" information and "accurate scientific analysis." *350 Mont. v. Haaland*, 29 F.4th 1158, 1176 (9th Cir. 2022). "An EIS is required of an agency in order that it explore, more thoroughly than an EA, the environmental consequences of a proposed action whenever substantial questions are raised as to whether a project *may* cause significant environmental degradation. That is exactly the circumstances of this case." *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (emphasis in original, citation and internal punctuation omitted). The County looks forward to reviewing an EIS for this project, and will be happy to provide additional information.

Sincerely yours,



Verne Ball
Deputy County Counsel

EXHIBIT A

WEST YOST
Water. Engineered.

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November 9, 2023

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

Verne Ball
Office of County Counsel County of Sonoma
575 Administration Drive
Santa Rosa, CA 95403
verne.ball@sonoma-county.org

SUBJECT: Koi Nation Shiloh Resort and Casino Project Environmental Assessment, Comments on Water Resources Assessment

Dear Mr. Ball:

The County of Sonoma has retained West Yost to review the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs, as Lead Agency. West Yost staff reviewed the EA evaluation of proposed water supply, stormwater, and wastewater facilities. The following documents were reviewed:

- Environmental Assessment for the Koi Nation of Northern California Shiloh Resort and Casino Project (September 2023)
- Appendix C - Water and Wastewater Feasibility Study
- Appendix D - Grading and Hydrology Study

West Yost staff prepared these comments and recommendations based on information provided in materials provided by the County and relevant documents referenced in the EA.

PROPOSED PROJECT SUMMARY

The EA analyzes the Koi Nation of Northern California (Tribe) construction of a casino, hotel, spa, conference and event center, restaurants, parking, and support infrastructure (Alternative A and referred to here as the Proposed Project), which includes construction of a drinking water supply system, as well as wastewater treatment and disposal. The EA states that the average potable water demand for the site will be 170,000 gallons per day (gpd) with a peak demand of 294,000 gpd to be provided by on-site production wells (up to 700 feet deep). The estimated average wastewater generation is 232,000 gpd with an average weekend peak estimated at 335,000 gpd. Wastewater treatment is proposed using a package immersed membrane bioreactor (MBR) producing 108,000 gpd of tertiary treated recycled water for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. Tertiary treated wastewater would be seasonally discharged on-site to Pruitt Creek.

COMMENT OVERVIEW

The project will have significant impacts related to surface and groundwater resources as described in Section 3.3.3.2 of the EA. Unless otherwise indicated, all comments are in response to "Alternative A" which is identified as the Proposed Project. Alternative A represents the most intense development considered for the site and is therefore associated with the greatest potential impacts to water resources.

While the EA provides some useful information about the Proposed Project and alternatives, the analysis presented lacks critical information that is needed to evaluate the severity of the Proposed Project's impacts. In general, the EA relies on regional rather than site specific data, its conclusions are often not supported by evidence, and the potential cumulative impacts of the Proposed Project are not considered. Additionally, some mitigation measures identified in the EA lack details needed to evaluate their feasibility and effectiveness, for example:

- **The EA lacks analysis and basic data needed to reach conclusions about likely impacts of the Proposed Project.** The potential impacts have not been fully analyzed and the EA lacks essential information needed to evaluate the project and alternatives.
- **Assumptions used in the analysis may be inappropriate and yield inaccurate results.** The water demand, wastewater production, and recycled water reuse values are based on assumptions that are not validated based on local conditions, without discussion of project-specific or site-specific conditions. For this reason, impacts appear to be underestimated.
- **The EA fails to consider the project's impacts in the context of cumulative, reasonably foreseeable future development.** Nor does the analysis consider climate change affects projected to occur over the life of the project.
- **Mitigation Measures outlined in the EA are inadequate.** Because the mitigation measures lack specifics relating to monitoring, criteria for success, and modes of enforcement, there is no certainty that mitigation measures will be effective in reducing potential environmental impacts.

Each of these topics are detailed further below and presented in the following categories as ordered in impact analysis Section 3.3.3.2 of the EA:

1. *Surface Water* – New Structures and Impervious Surfaces in Flood-Prone Areas
2. *Groundwater*– Groundwater Pumping Impacts on Neighboring Wells
3. *Groundwater*– Proposed Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act (SGMA)
4. *Wastewater Treatment and Disposal* – Effluent Discharge to Pruitt Creek
5. *Wastewater Treatment and Disposal* – Impacts to Laguna de Santa Rosa
6. *Wastewater Treatment and Disposal* – Wastewater Treatment and Recycled Water Use

SPECIFIC COMMENTS

The Water Resources Regulatory Setting identifies Federal and State Water Resource Regulations in Table 3.3-1. State regulations listed include Porter-Cologne Water Quality Act, Sustainable Groundwater Management Act, and Title 2 California Code of Regulations. However, it is unclear how these regulations and related policies would apply to the proposed project. California standards for wastewater treatment and disposal should be explicitly applied in technical assumptions, project description, impact analysis, and mitigation measure enforceability.

The EA lacks a discussion of climate change impacts and does not consider increased rainfall and higher temperatures in water and wastewater calculations. As noted in the North Bay Climate Adaptation Initiative's *Climate Ready Sonoma County*, Sonoma County is expected to experience more very hot days than in the past, and overall higher temperatures over a longer period of dry weather, even under forecasts that predict overall wetter conditions. Spring will come earlier and fall will come later, and these extended periods of hotter, drier weather will impact regional water availability. Heat will increase soil moisture deficit and reduce groundwater recharge, meaning that less water will be available even in futures with more precipitation. Heat will also increase the demand for water, exacerbating pressures on limited water resources in periods of drought (NBCAI, 2014).

1. Surface Water – New Structures and Impervious Surfaces in Flood-Prone Areas

The southwest portion of the site is within the Federal Emergency Management Agency (FEMA) regulated flood area and additional areas of the site are shown in The Town of Windsor's Storm Drainage Master Plan (2020) to be flood-prone.

Impervious Surfaces

The proposed action would increase impervious surfaces on the Project Site by up to 35.51 acres through the construction of buildings, circulation, parking, and infrastructure. Increased impervious surfaces would result in increased peak flows and increased total discharge from the Project Site during precipitation events. The Proposed Project will need to consider flood mitigations, to address potential downstream flooding and sediment transport impacts.

The EA states that the Proposed Project would limit post-development peak flow and stormwater volume to pre-development levels during a 100-year probability, 24-hour duration storm event. However, the plan to achieve this is not fully described or analyzed. Additional calculations and site planning are needed to demonstrate the feasibility of mitigating impacts from the significant addition of impervious surface area.

Floodplain Storage Capacity

Development on the site would displace agricultural land and floodplain area that currently provides floodwater storage and may exacerbate on-site and downstream flooding. Climate models forecast that the frequency and intensity of flooding will continue to increase beyond historical levels.

The environmental analysis should be expanded to consider impacts of climate change to the mapped limits of the 100-year flood and to the intensity of future flooding at the site. Additionally, the EA does not demonstrate how impacts to all floodplain functions would be mitigated to a less than significant level.

2. Groundwater – Groundwater Pumping Impacts on Neighboring Wells

The Proposed Project would pump groundwater from the Santa Rosa Plain groundwater subbasin. The Project Description estimates daily pumping of 170,000 gpd with a peak pumping of 294,000 gpd. Potable water would be sourced from on-site production wells, drilled up to 700 feet deep. Several existing wells are located in proximity to the site, including shallow residential wells at the Mobile Home Estate and two Windsor Water District municipal wells at Esposti Park, north of and in proximity to the Proposed Project site. The municipal wells are located within about 250 feet of the northwest project site boundary and about 2,200 feet from the "treatment area" as identified in Appendix C of the EA, the area tentatively designated for water and wastewater infrastructure.

The EA does not present a conceptual groundwater model of the site and limits the discussion of potential impact to the deep aquifer (300 to 600 feet deep). The geology of the Santa Rosa Plain is complex and groundwater pumping could adversely affect surface water flow and groundwater dependent ecosystems. An analysis of existing groundwater conditions and impacts of project pumping on nearby Pruitt Creek and potential cumulative impacts downstream in the Laguna de Santa Rosa is needed.

Water quality in the wells currently limits water use to irrigation. One of the wells at Esposti Park is used to irrigate the park. The other well, currently inactive, is identified in the Town of Windsor's Water Master Plan for future development of municipal drinking water and would include a water treatment process to remove contaminants.

Impacts to Neighboring Wells

The average and peak pumping of the Proposed Project could result in groundwater drawdown in neighboring wells and could significantly decrease the Esposti well output and potentially affect water quality. The Town of Windsor Water Master Plan (Woodard and Curran, 2019) estimates the sustainable yield of the municipal to be 400 gpm (0.6 million gallons per day) or 350 acre feet per year (AFY). Proposed Project pumping could significantly decrease the previously analyzed estimated yield. Groundwater pumping at the site could also result in adverse impact to domestic wells in the vicinity. This would include reducing production of neighboring wells and/or lowering groundwater levels below well pumps altogether, rendering neighboring wells unusable.

The EA cites a Town of Windsor 2017 aquifer test at the Esposti well as evidence that pumping from the aquifer deeper than 300 feet would not result in a decline in water level. However, although no drawdown occurred during that test, the test lasted only 28 hours. The aquifer test at the Esposti municipal well was over a short duration and is not an appropriate basis for assessing impacts of continuous groundwater pumping proposed as part of the Proposed Project. The EA further concludes, based on very limited data, that the Proposed Project would not affect groundwater levels or water availability in wells drilled to a depth of less than 370 feet. The EA lacks critical hydrogeologic data to reach this conclusion.

Additional groundwater monitoring is needed to confirm hydraulic separation between the upper and lower aquifers underlying the site and surrounding area. This monitoring should be conducted as part of the environmental evaluation and prior to project approval. Additional studies, including a well interference study and hydrogeologic testing, are needed to provide adequate information to allow for a reasonable evaluation of alternative development scenarios and impacts to neighboring wells.

Project wells should be located away from adjacent wells and outside the zone of influence around the existing Esposti wells. Pumping rates should be limited to amounts that avoid impacts to neighboring wells and ensure sustainable yield for the project wells and wells in the vicinity. Additional investigation and groundwater pump tests should be completed to determine the impact to nearby wells. Assessment of the impact to the municipal well, both the current use of the well for irrigation and future use as identified in the Town of Windsor Water Master Plan (2019), is needed to address cumulative impact.

Groundwater Mitigation Measure

Proposed Project groundwater pumping could adversely affect groundwater levels and well production. Mitigation measures listed in the EA include monitoring and compensation; however, the EA does not include metrics for determining when adverse impact has occurred, compensation actions that would be required should adverse impacts result, or an enforcement mechanism. The EA should clarify that both shallow and deep wells will be monitored and eligible for mitigation compensation.

The proposed mitigation measure to reimburse well owners should their well become unusable within five years of project pumping is not mitigation, let alone appropriate mitigation. The effects of environmental harm are more than monetary, and there are reasonably foreseeable indirect effects of unusable wells, such as impacts related to water hauling from traffic and associated GHG emissions, health and safety issues from lack of potable water, and impacts of extending municipal water service, that have not even been discussed.

Adequate data from both the shallow and deep aquifer should be collected prior to initiating groundwater pumping to fully evaluate the impact. Actions should be identified to avoid impacts to neighboring wells. The proposed mitigation measures further indicate that the Tribe, at its discretion and cost, could provide an alternative water supply. However, the EA does not identify the source of these alternative water supplies and it does not provide an evaluation of potential impacts associated with the buildout of alternative supplies. The buildout of alternative water supply infrastructure would likely have significant impacts that need to be analyzed.

3. Groundwater – Groundwater Pumping Impacts on Sustainability Under the Sustainable Groundwater Management Act

With the Sustainable Groundwater Management Act (SGMA), California has identified groundwater basins that require special planning to avoid adverse impacts. The project is in one of these basins. The Santa Rosa Plain Groundwater Subbasin (basin number 1-55.01) is categorized as a medium priority basin by the California Department of Water Resources (DWR) and is, therefore, subject to special regulation and planning efforts. The Santa Rosa Plain groundwater basin is regulated under SGMA because the basin is densely populated, and groundwater use is relied on for rural residential, agricultural, commercial, and municipal water supply. Groundwater management is needed to avoid adverse impacts to the groundwater basin, but there is no discussion in the EA of the unique relationship of this project to groundwater management.

DWR approved a Groundwater Sustainability Plan (GSP) for the basin in January 2023 and the Groundwater Sustainability Agency (GSA) has prepared and will continue to prepare annual reports that provide updates about current groundwater conditions. The GSP states that the groundwater stored in the shallow and deep aquifer systems is declining on average by about 2,100 AFY. The 2022 Annual Report indicated that groundwater levels and groundwater storage capacity are stable but, importantly, future declines are projected. The Annual Report further indicates that more data are needed to assess the health of groundwater to interconnected surface waters and the impact of pumping on groundwater-dependent ecosystems.

Consistency with Santa Rosa Plain Groundwater Sustainability Plan (GSP)

The EA is significantly flawed by not considering cumulative impacts of groundwater extraction. While the analysis mentions the Santa Rosa Plain GSA, it provides no analysis of the Proposed Project's compatibility with the adopted GSP. The EA should include analysis of long-term pumping of 300,000 gpd on potential undesirable results as defined in the GSP, including for water quality. Groundwater pumped from the deeper aquifer in the northern portion of the Santa Rosa Plain subbasin underlying the Project Site is documented to contain elevated concentrations of arsenic and manganese. These constituents have been a constraint for the Town of Windsor's Esposti Park wells and the effects of additional pumping on groundwater water quality is crucial information that is missing from the EA. Additional analysis should consider planned future pumping from the Esposti well, as discussed above.

Long-Term Municipal Water Supply

Proposed Project groundwater pumping may adversely impact Windsor Water District's ability to meet water demands with supplemental groundwater supply and may reduce water supply resiliency during a drought. The EA lacks an analysis of long-term groundwater supply and fails to acknowledge the current and future use of groundwater to meet water demands. The EA should include a water supply assessment that evaluates long-term water supply sustainability using a 45-year time horizon and consider future drought conditions and climate scenarios.

Current developments regarding local water supplies cannot be ignored in the analysis. The decommissioning of the Potter Valley hydroelectric facility and likely reductions in Eel River flows into the Russian River system, could result in reduction of surface water deliveries to the Town of Windsor, resulting in the need for future increased groundwater extraction from municipal wells.

Groundwater Quality

The EA indicates that wellhead treatment would be needed but does not describe the nature of waste products that would result from water treatment to attain potable water, nor is a disposal location identified. Improper disposal will result in, for example, soil and water contamination. The EA should include an analysis of the potentially significant impacts from removing contaminants from wells where groundwater does not meet drinking water standards.

4. Wastewater Treatment and Disposal – Effluent discharge to Pruitt Creek

The EA states that the project will produce and estimated average wastewater flow of 232,000 gpd and a peak weekend flow of 335,000 gpd. For the purposes of design, an average daily flow of 300,000 gpd and average weekend flow of 400,000 gpd was assumed, which is equivalent to about 110 million gallons/year. During the dry season, tertiary treated recycled water would be used onsite for toilet flushing, on-site landscape irrigation, on-site vineyard irrigation, and cooling tower makeup. An additional 11-acres of off-site vineyard could also be irrigated. Appendix C presents several options for use and storage of recycled water in ponds and tanks. During the wet season, tertiary treated wastewater would be seasonally discharged onsite to Pruitt Creek.

The information presented in the EA does not fully analyze potential environmental impacts from proposed discharge of tertiary treated wastewater to Pruitt Creek. Additional analysis is needed to evaluate water-related impacts and support the EAs conclusion that there will not be significant impacts.

Seasonal Discharge Volume Estimate

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants (WWTPs) to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. Pruitt Creek is an ephemeral drainage with highly variable flow volume. Appendix C relies on streamflow statistics from a U.S. Geological Survey (USGS) gauging station located 5.5 miles downstream of the site, which significantly overestimates the capacity for discharge to Pruitt Creek. Appropriate discharge volumes must be calculated based on local stream flow data for the analysis to be reasonable.

Streamflow statistics at the downstream gauging station indicate that discharges immediately before and after the summertime months (May and October) may be limiting for the Proposed Project, and that streamflow rates are highly variable from year to year. Appendix C indicates that for any discharge scenario developed for the Proposed Project, backup contingency plans should be developed for low-flow conditions. However, the EA does not present this contingency plan, nor does it analyze potential on-site or secondary impacts of such discharge contingency.

The EA does not demonstrate the feasibility of seasonal discharge of anticipated wastewater flows to Pruitt Creek under all climate conditions, even though extremely varied climate conditions are foreseeable. The environmental assessment for the Proposed Project should include an analysis of seasonal discharge options to ensure capacity under all foreseeable climate scenarios.

Treatment Process Vulnerability

The Proposed Project includes construction of a self-contained package (immersed MBR) treatment plant to produce tertiary treated recycled water. The volume of influent will vary with casino usage, weather conditions, and infrastructure functioning. Any WWTP may be subject to "upset conditions", when a sudden and unexpected event prevents the facility from operating properly. There is no indication that the Tribe has considered coordination or mutual aid agreement with other sanitary service providers to provide backup or support in the event of a WWTP upset. The Proposed Project should establish enforceable agreements to engage in mutual aid with one or more sanitary service areas.

Construction of Outfall in Pruitt Creek

Installation of a wastewater outfall structure in Pruitt Creek will adversely affect riparian habitat without appropriate mitigation. Operation of the outfall could alter the flow and hydrology of the Pruitt Creek, resulting in erosion and exacerbated flooding. Information is needed to evaluate the foreseeable impacts of the outfall structure on Pruitt Creek in all flow conditions.

5. Wastewater Treatment and Disposal – Impacts to Laguna de Santa Rosa

Discharge of tertiary treated effluent to Pruitt Creek, a tributary to Mark West Creek which flows into the Laguna de Santa Rosa, could have significant impacts on water quality in the Laguna de Santa Rosa. The Regional Board and the State Water Resources Control Board (State Board) have designated the Russian River and its tributaries, including the Laguna de Santa Rosa, as impaired waterbodies. The Regional Board has adopted policies and Total Maximum Daily Loads (TMDL) (some adopted and some under development) for a range of parameters, including sediment, temperature, pathogens, nutrients (nitrogen and phosphorus), dissolved oxygen, and sedimentation/siltation. The Water Quality Trading Framework for the Laguna de Santa Rosa Watershed adopted by the Regional Board in 2021 sets a "no net loading" effluent limitation for total phosphorus in National Pollutant Discharge Elimination System (NPDES) permits for WWTP discharge to the Laguna de Santa Rosa and provides a mechanism to offset total phosphorus inputs to the system. These regulatory tools recognize WWTPs as potential pollutant sources and provide the mechanisms to address water quality impairment.

The Proposed Project discharge of recycled water would add sediment, nutrients, and phosphorous to the Laguna de Santa Rosa watershed, undermining regional efforts to address existing water quality impairment. No analysis of the impact of project discharge on the Laguna de Santa Rosa watershed is provided. The Proposed Project could contribute to cumulative impacts in the Laguna de Santa Rosa that have not been analyzed. More evidence is needed to support the assertion the proposed discharge would comply with all current and reasonably foreseeable future policies, water quality trading framework, TMDLs, and implementation plans that support the Basin Plan.

The EA concludes that "surface water and groundwater resources from wastewater treatment and disposal activities associated with Alternative A would be less than significant," but fails to demonstrate ability to meet nutrient limitations for discharge to Mark West Creek and its tributaries. The environmental assessment for the Proposed Project must include an analysis demonstrating how the Proposed Project would meet the no net phosphorous discharge required under the Nutrient Trading Framework and a full analysis of the proposed discharge in the context of adopted and future TMDLs. Standards for effluent phosphorous loads and for a phosphorus offset program should be identified and mitigation measures to reduce impacts of phosphorous discharge and secondary impacts of offset projects should be evaluated.

6. Wastewater Treatment and Disposal – Wastewater Treatment and Recycled Water Use

The information presented in the EA does not fully analyze potential environmental impacts from proposed use and storage of recycled water on-site and off-site. Additional analysis is needed to demonstrate the feasibility of on-site wastewater treatment, recycled water storage and reuse, and potential use of recycled water off-site.

Storage Tank Capacity

The proposed on-site recycled water storage ponds and tanks would be located in the "Treatment Area" in the southeastern portion of the site. Several options for recycled water disposal are presented in Appendix C, including construction of 12- to 16-million gallon recycled water storage tanks. This would provide adequate storage for about 40 to 50 days. Since discharge will not occur between May 15 and September 30 (138 days) significantly more storage, on the order of 40 million gallons, would be needed. Proposed facilities are not shown on the site plan and more information is needed to ensure that there is adequate space to accommodate needed storage, applying site-specific evapotranspiration (ET) rates and discharge volumes.

Evapotranspiration Rates

The landscape and crop ET calculation used in the EA are substantially different from the recycled water applications rates set for the Windsor Water district, the nearest permitted recycled water producer to the site. Site-specific and ET rates should be used to recalculate, together, for a more realistic estimate of the volume of effluent that could be discharged to Pruitt Creek to fully evaluate impacts related to onsite recycled water use and storage.

Recycled Water Reuse

The Proposed Project relies on dry season use and disposal of recycled water, but has not demonstrated adequate opportunities to reuse the volume of wastewater projected to be produced at the site. Eleven acres of off-site vineyards are an optional component of the recycled water balance; however, the proposed irrigation sites have not been identified. The Proposed Project includes use of recycled water for dual plumbing and toilet flushing, however the State Division of Drinking Water (DDW) and applicable regulations do not permit recycled water use in food service buildings, such as restaurants and bars. The stated reliance on State standards is misleading. The recycling of water should be a concrete mitigation measure, with an analysis of the impacts of that mitigation. The analysis should include a realistic estimate of recycled water production, reasonable estimates for recycled water reuse based on acceptable ET rates, and identification of all on-site and off-site recycled water use and disposal options consistent with Title 24.

Biosolids and Brine

Proposed wastewater treatment would produce biosolids and brine that would require disposal. The EA indicates that biosolids produced by the WWTP would be dewatered on-site and periodically hauled to a Class III landfill. In the very near term, State landfill diversion targets (per SB 1383) will require the diversion of biosolids from landfills, and recent CalRecycle regulations have already clarified that biosolids cannot be exempted from diversion targets as alternative daily cover. State law requires a 75 percent reduction in the landfilling of organic wastes by 2025. In addition, biosolids from WWTPs contain constituents of concern, including PFAS (per- and polyfluoroalkyl substances), and both direct and lifecycle impacts of these contaminants should be analyzed. Pyrolysis and disposal that does not involve land application has other foreseeable impacts. Proposed disposal sites that can accept biosolids and brine may be located at great distance for the Proposed Project site so associated transport greenhouse gas emissions and secondary impacts should be evaluated.

CONCLUSION

In conclusion, the Proposed Project may have significant impacts that have not been fully analyzed and additional investigation is needed. The EA does not present adequate evidence to support the conclusion that there will not be significant water resource impacts. Potential project and secondary impacts have not been fully analyzed and the EA lacks information essential for a reasoned choice of alternative development proposals for the site. In light of these deficiencies, we recommend preparation of an Environmental Impact Statement.

Sincerely,
WEST YOST



Sandi Potter, PG, CEG
Senior Technical Specialist I

PG No. 5610
CEG No. 2170

EXHIBIT B

MEMORANDUM

DATE: October 27, 2023

TO: Verne Ball, Deputy County Counsel

FROM: **Jeff Church, Senior Environmental Specialist at Sonoma Water**

PROJECT: Koi Nation Casino Environmental Assessment

SUBJECT: Documentation of observations of steelhead salmon (Oncorhynchus mykiss) in Pruitt Creek, Windsor California.

A few notes on observations of both resident rainbow trout and anadromous steelhead salmon (*Oncorhynchus mykiss*) in Pruitt Creek near Windsor, California.

The monitoring site was located in a reach of Pruitt Creek that crosses Faught Road, southeast of Windsor California. Observations were made on the upstream and downstream sides of Faught Road, including upstream to the creek culvert at Shiloh Ridge Road (approximately 450 linear feet of stream length). Pruitt Creek is perennial in pools immediately downstream of Faught Road and upstream of Faught Road approximately 0.5 miles as observed. Pruitt Creek transitions to an intermittent and ephemeral stream approximately 100 feet downstream of Faught Road during the dry season.

Monitoring began on December 7, 2001 and continued through July 28, 2016. Monitoring began as an effort to record water temperature measurements to determine whether Pruitt Creek could serve as a potential reference stream in the Russian River Watershed. As a reference stream it could provide information on natural water temperature patterns and ranges that could be expected to occur in similar sub-watersheds within the Russian River basin. Monitoring also included observations for the presence of steelhead salmon. Positive observations of the presence of steelhead coupled with water temperature data could be used to determine if water temperature regimes in Pruitt Creek (and similar sub-watersheds) are suitable for steelhead long-term survivability.

Monitoring frequency varied, with monitoring occurring as frequently as several times a day to as little as once or twice a week or monthly.

Steelhead were observed in all years of monitoring except during the beginning of the effort in December 2001 and winter/spring 2002 due to high turbidity (and low visibility) from a failed culvert and earthen creek crossing upstream of the monitoring location. The culvert and earthen crossing were removed and the site restored in late 2002 to early 2003. The majority of observations included resident rainbow trout of several age classes including fry and young of the year. Adult anadromous steelhead were observed migrating upstream on two different

occasions. The first observation occurred on February 3, 2008 and included one adult steelhead (approximately 18-20 inches in length) in a pool upstream of Faught Road but carried downstream to a pool below the Faught Road crossing. The second observation occurred on February 13, 2008 and included one adult steelhead (approximately 24 inches in length) under the Faught Road Bridge that also moved into the pool downstream of the crossing. This observation included a second smaller fish, approximately 10 to 12 inches in length.

Adult steelhead were also observed in Pool Creek downstream of the confluence with Pruitt Creek in a pool underneath the pedestrian bridge at Windsor Golf Course. Two separate observations of individual adult steelhead were made while golfing in the late 2000s or early 2010s. Observations were not part of a monitoring effort but were happenstance while golfing and so the dates are not exact, but the time period is accurate. Time of year was spring.

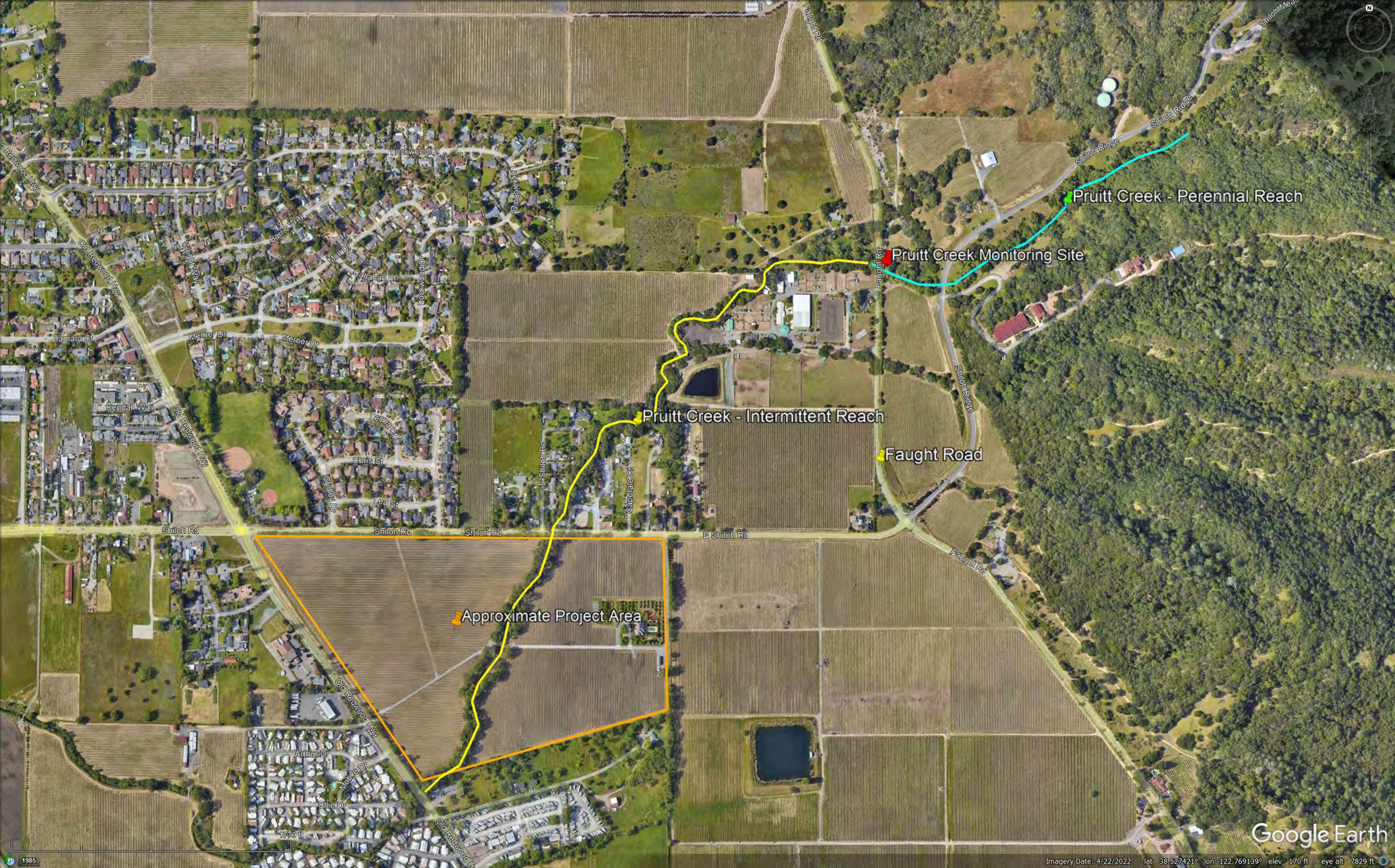

Pruitt Creek - Perennial Reach
Pruitt Creek Monitoring Site
Pruitt Creek - Intermittent Reach
Faught Road
Approximate Project Area
Lockwood Dr
Old Redwood Hwy
Merner Dr
Shiloh Rd
E Shiloh Rd
Faught Rd
Shiloh Ridge
Google Earth

EXHIBIT C

permit SONOMA

County of Sonoma
Permit & Resource Management Department

MEMORANDUM

To: Verne Ball, Deputy County Counsel
From: Robert Pennington, Professional Geologist
Date: November 07, 2023

Subject: Koi Nation Casino Environmental Assessment, Pruitt Creek Observations

---

Dear Verne,

I reviewed the Environmental Assessment (EA) for the Koi Nation of Northern California Shiloh Resort and Casino Project, Sonoma County, California, prepared by Bureau of Indian Affairs. I found the EA to be lacking in site specific analysis, particularly in regard to water supply and wastewater. This memo documents observed conditions in Pruitt Creek and discusses limitation to discharge of treated effluent to this waterway.

The National Hydrography Dataset identifies Pruitt Creek as intermittent, meaning that it has little or no flow for a substantial duration of the year. Local hydrologists and fish biologist know the Pruitt Creek near the project site to be dry for much of the year, even during the winter wet season, unless there have been substantial rains in the preceding months.

To verify stream conditions, I conducted a site visit on the morning of October 27th, 2023, and observed Pruitt Creek at the bridge crossing at Old Redwood Highway located immediately downstream of the project site. The creek was observed to be dry with no residual pools or standing water visible within 30 feet upstream or downstream of the bridge. See Figures 1 and 2. Note, the site visit was conducted on October 27, within what is considered the wet season.

The fact that Pruitt Creek in the vicinity of the project site is dry for much of the year presents a substantial limitation for the discharge of treated wastewater. The estimated average wastewater generation is 232,000 gallons per day (gpd) with an average weekend peak estimated at 335,000 gpd. During the dry season, wastewater would be used for vineyard irrigation and the remainder would be stored. During the wet season, stored and treated wastewater would be discharged to Pruitt Creek. This has the potential to impact water quality and instream habitat for listed threatened and endangered species.

The North Coast Regional Water Quality Control Board (Regional Board) Basin Plan prohibits effluent discharges from Wastewater Treatment Plants to the Russian River and its tributaries between May 15 and September 30 to ensure that these water bodies do not become effluent-dominated streams. The EA acknowledges that discharge in the wet season (October 1 to May 14) will likely be limited to 1% of flow at the proposed outfall in Pruitt Creek. The EA assumes that streamflow of Pruitt Creek at the site is consistent with a U.S. Geological Survey (USGS) gauging station #11466800 located 5.5 miles downstream. USGS gauge

#11466800 has a contributing watershed area of 251 square miles. The contributing watershed area of Pruitt Creek at the Old Redwood Highway is 2.1 square miles, approximately 120 times smaller than the watershed area of the gauge used to estimate flow. Thus, the EA's analysis significantly overestimates streamflow of the site and the capacity for Pruitt Creek to dilute discharged wastewater. Similarly, the EA's analysis using overestimated streamflow vastly underestimates the required storage for recycled water. Recycled water storage volumes must be sized for worst case drought conditions when flows if Pruitt Creek are lowest and dry or very low streamflow conditions may extend into much of the wet season.

It is recommended that multiple years of continuous streamflow data be collected at the site, including during at least one year of severe drought. These data could then be regressed with gauge records from nearby gauging stations with longer records to reconstruct a defensible streamflow hydrograph for the site on which to design wastewater disposal systems and analyze potential impacts.

In addition to streamflow, it is recommended that water quality be sampled including temperature, pH, dissolved oxygen, nitrates, and phosphates. These data are necessary to design and assess the feasibility the proposed wastewater treatment and disposal system, and to evaluate potential impacts to water quality, aquatic habitat, and beneficial uses of Pruitt Creek and the Laguna de Santa Rosa.



Figure 1. Image looking upstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.



Figure 2. Image looking downstream of Pruitt Creek at Old Redwood Highway on October 27, 2023.

EXHIBIT D

RIVER ROCK TO DEFAULT ON BONDS: TRIBE TO MISS INTEREST PAYMENT, SAYS CASINO WILL REMAIN OPEN

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
BY ROBERT DIGITALE AND CLARK MASON / THE PRESS DEMOCRAT
May 29, 2014

The business arm of the Dry Creek Rancheria Band of Pomo Indians notified investors Wednesday that it will default on millions of dollars in bonds used to build River Rock Casino near Geyserville.

The River Rock Entertainment Authority announced it will not be making the May interest payment due Saturday on two outstanding notes, automatically triggering a default on the bonds.

The tribe emphasized the Alexander Valley casino will remain open for business. But it remains to be seen how the default may impact investors and tribal members who receive payments from the casino's profits.

"Although the scheduled interest payment will not be made, we want to assure our customers, vendors and employees that we are generating sufficient funds to operate our business and provide the excellent customer service that our patrons expect," David Fendrick, the casino's CEO and general manager, said in a statement.

The default comes just six months after the opening of a rival casino adjacent to Rohnert Park, which has cut into River Rock's revenues and drawn away gamblers that once flocked to the Alexander Valley casino.

"Our immediate focus is identifying cost savings opportunities to adjust to the challenges of our new competitive environment," Fendrick said.

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The tribe also has brought in consultants to help analyze the casino's marketing efforts, Dry Creek Tribal Chairman Harvey Hopkins said Wednesday. Tribal leaders are "looking at all options," he said in a brief interview.

"We've been constantly meeting with management of the casino, attorneys and financial advisers," Hopkins said. "It's been a long road to get here."

The River Rock Entertainment Authority, an unincorporated governmental arm of the tribe, on May 1 announced that it had failed to make the scheduled interest payment for the month. The authority said it would use a 30-day grace period to reduce costs and to have what Fendrick then characterized as "significant dialogue with our bondholders."

River Rock opened in 2002 as Sonoma County's first tribal casino. To finance construction, the tribe sold $200 million in senior notes to investors at 9.75 percent interest.

In 2011, the tribe restructured the debt after two rating agencies warned that the business otherwise faced a high risk of default. About $50 million of that debt since has been repaid, Hopkins said in March.

But Hopkins also acknowledged that River Rock's revenues had declined by more than 30 percent since the Graton Resort & Casino opened in Rohnert Park in November. The new casino is closer to Bay Area gamblers and has roughly five times the space of the 61,000-square-foot River Rock facility.

As a result of the drop in revenues, the Dry Creek tribe has cut per capita payments to its 640 members over the age of 18, Hopkins said in March. In total, the tribe has nearly 1,040 members.

On Saturday, the tribe will default on two bonds: its 9 percent Series A Senior Notes and its 8 percent Series B Tax-Exempt Senior Notes, both due in 2018.

The tribe's announcement did not disclose the size of the interest payment that is due Saturday or the amount of outstanding debt it owes to bondholders.

The default will trigger a "waterfall agreement" that dictates the use of the authority's cash flow, according to the announcement.

Analysts who follow the Indian gaming market have noted that creditors of tribal casinos can't seize assets as might be done under a normal loan default. Instead, they suggested that River Rock may once more seek to restructure its debt, possibly by winning concessions from creditors in regard to the repayment of both principal and interest.

A bondholder on Wednesday seemed to take the default in stride.

"I'm not happy about it," said Mike Hudson, an Indiana man who has owned River Rock bonds for more than five years. "There are many options on the table. This is just the beginning of the next chapter. It's not gloom and doom."

Hudson said that by missing the interest payment, the tribe will be subject to having the casino revenues overseen by a trustee for the bondholders.

"Instead of a democracy, it will be more of a dictatorship," Hudson said. "A professional manager will come and manage the way they see best for the benefit of creditors, not the tribe. Essentially, they've conceded control of the casino."

"It will probably work out. Most of these things usually do," he concluded.

The River Rock Entertainment Authority has retained the law firm Holland & Knight LLP as its legal adviser and will use Stuyvesant Square Advisors Inc. as its financial adviser.

You can reach Staff Writer Robert Digitale at 521-5285 or robert.digitale@ pressdemocrat.com. You can reach Staff Writer Clark Mason at 521-5214 or clark.mason@pressdemocrat.com.

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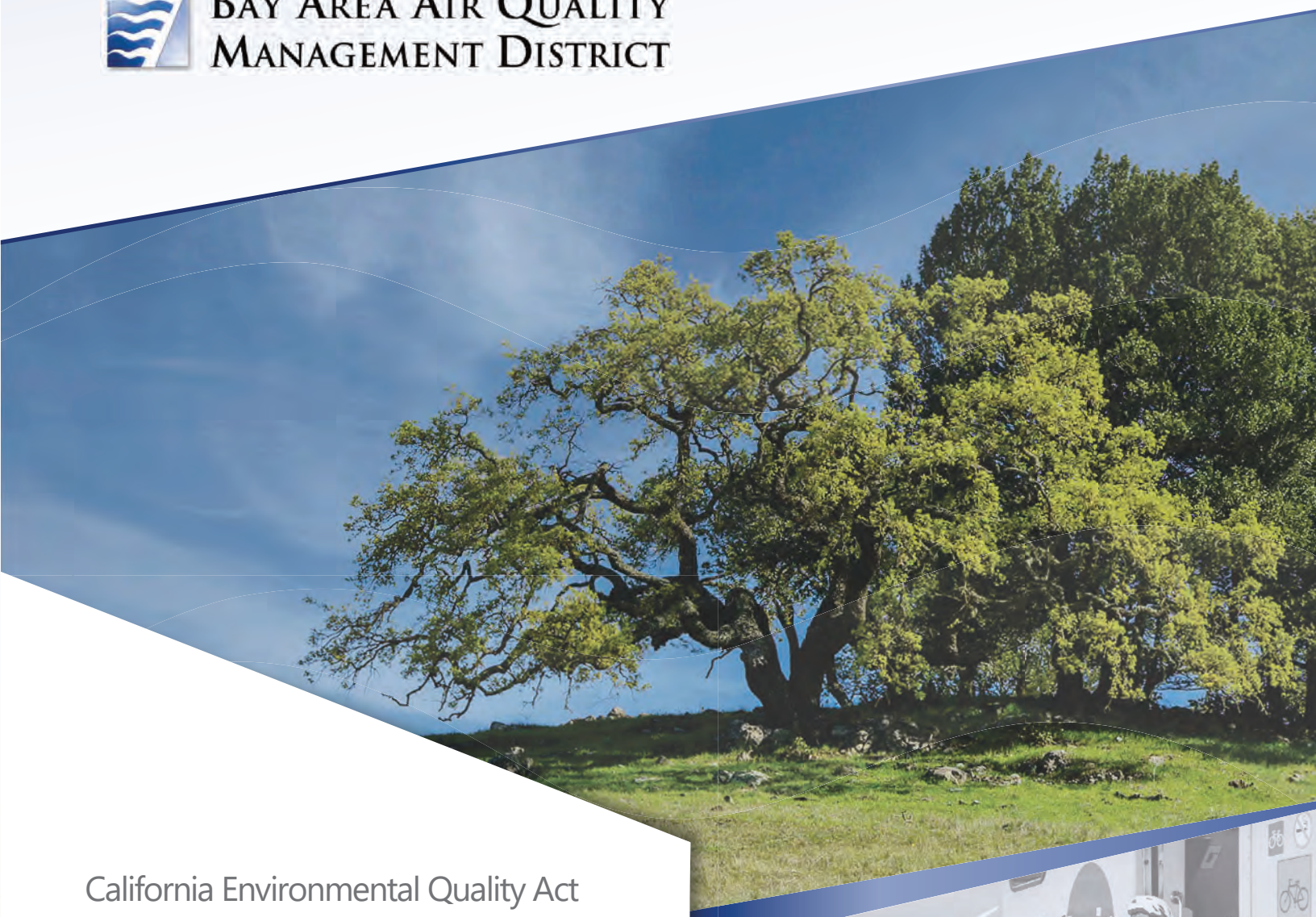
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EXHIBIT E

Bay Area Air Quality Management District

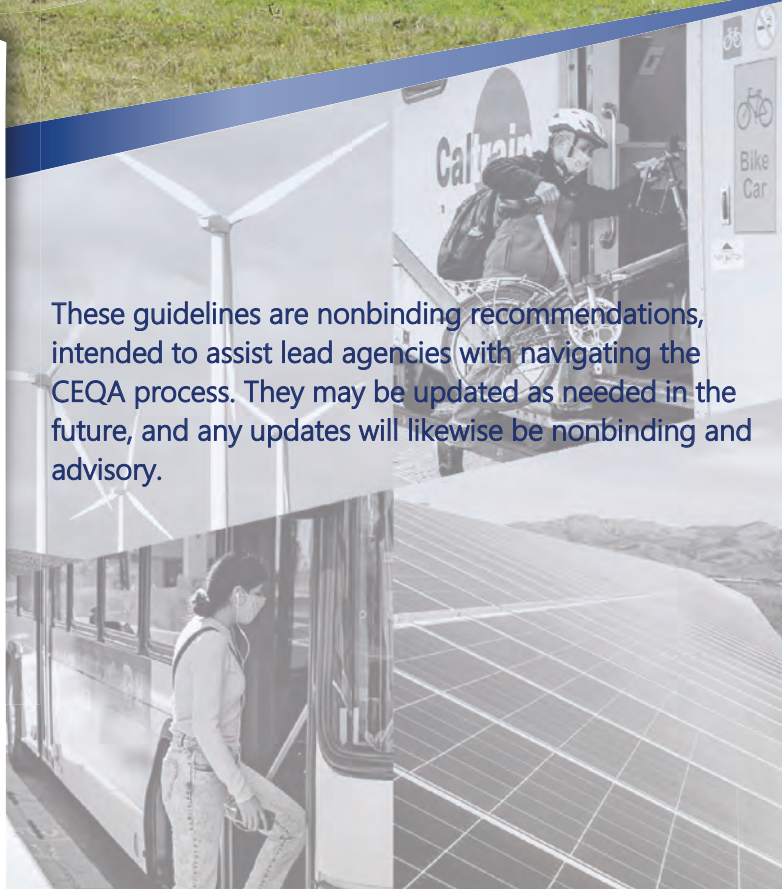


California Environmental Quality Act

Air Quality Guidelines Appendix B:

CEQA Thresholds for Evaluating the Significance of Climate Impacts From Land Use Projects and Plans

April 2022



These guidelines are nonbinding recommendations, intended to assist lead agencies with navigating the CEQA process. They may be updated as needed in the future, and any updates will likewise be nonbinding and advisory.

1 INTRODUCTION AND EXECUTIVE SUMMARY

This report presents the Bay Area Air Quality Management District's (Air District's) recommended thresholds of significance for use in determining whether a proposed project will have a significant impact on climate change. The Air District recommends that these thresholds of significance be used by public agencies to comply with the California Environmental Quality Act (CEQA).

Evaluating climate impacts under CEQA can be challenging because global climate change is inherently a cumulative problem. Climate change is not caused by any individual emissions source but by a large number of sources around the world emitting greenhouse gases (GHGs) that collectively create a significant cumulative impact. CEQA requires agencies in California to analyze such impacts by evaluating whether a proposed project would make a "cumulatively considerable" contribution to the significant cumulative impact on climate change. (See CEQA Guidelines Sections 15064[h] and 15064.4[b].)[1] But CEQA does not provide any further definition of what constitutes a cumulatively considerable contribution in this context. These thresholds of significance are intended to assist public agencies in determining whether proposed projects they are considering would make a cumulatively considerable contribution to global climate change, as required by CEQA.

The Air District's recommended thresholds of significance are summarized below, with a detailed discussion of the basis for the thresholds presented in the remainder of this report. The information provided in this report is intended to provide the substantial evidence that lead agencies will need to support their determinations about significance using these thresholds. This information also provides the substantial evidence to support adoption of these thresholds by the Air District's Board of Directors. (See CEQA Guidelines Section 15064.7 [thresholds must be adopted by the Board of Directors through a public review process and be supported by substantial evidence].)

1.1 THRESHOLDS FOR LAND USE PROJECTS

For land use development projects, the Air District recommends using the approach endorsed by the California Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), which evaluates a project based on its effect on California's efforts to meet the State's long-term climate goals. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

[1] The 2021 State CEQA Guidelines, including Appendices F and G, can be found at the following website: https://www.califaep.org/docs/CEQA_Handbook_2021.pdf.

Applying this approach, the Air District has analyzed what will be required of new land use development projects to achieve California's long-term climate goal of carbon neutrality[2] by 2045. The Air District has found, based on this analysis, that a new land use development project being built today needs to incorporate the following design elements to do its "fair share" of implementing the goal of carbon neutrality by 2045:

Thresholds for Land Use Projects (Must Include A or B)
A. Projects must include, at a minimum, the following project design elements: 1. Buildings a. The project will not include natural gas appliances or natural gas plumbing (in both residential and nonresidential development). b. The project will not result in any wasteful, inefficient, or unnecessary energy usage as determined by the analysis required under CEQA Section 21100(b)(3) and Section 15126.2(b) of the State CEQA Guidelines. 2. Transportation a. Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target, reflecting the recommendations provided in the Governor's Office of Planning and Research's Technical Advisory on Evaluating Transportation Impacts in CEQA: i. Residential projects: 15 percent below the existing VMT per capita ii. Office projects: 15 percent below the existing VMT per employee iii. Retail projects: no net increase in existing VMT b. Achieve compliance with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2.
B. Projects must be consistent with a local GHG reduction strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

If a project is designed and built to incorporate these design elements, then it will contribute its portion of what is necessary to achieve California's long-term climate goals—its "fair share"—and an agency reviewing the project under CEQA can conclude that the project will not make a cumulatively considerable contribution to global climate change. If the project does not incorporate these design elements, then it should be found to make a significant climate impact because it will hinder California's efforts to address climate change. These recommended thresholds for land use projects are discussed in more detail in Section 4.

[2] "Carbon neutrality" is defined in Executive Order B-55-18 as the point at which the removal of carbon pollution from the atmosphere meets or exceeds carbon emissions. Carbon neutrality is achieved when carbon dioxide and other GHGs generated by sources such as transportation, power plants, and industrial processes are less than or equal to the amount of carbon dioxide that is stored, both in natural sinks and mechanical sequestration.

EXHIBIT F

The County of San Diego

Planning Commission Hearing Report

Date:	July 22, 2022	Project:	Transportation Study Guide to Implement Vehicle Miles Traveled Analysis
Place:	County Operations Center (COC) Hearing Room 5520 Overland Avenue San Diego, CA 92123	Case/File No.:	N/A
Time:	9:00 a.m.	Location:	All Districts
Agenda Item:	#7	General Plan:	Various
Appeal Status:	Not applicable; Approval by the Board of Supervisors	Zoning:	Various
Applicant/Owner:	County of San Diego	Communities:	All unincorporated communities
Environmental:	Notice of Exemption; CEQA Section 15378 and 15060(c)(3)	APNs:	Various

A. OVERVIEW

The purpose of this staff report is to provide the Planning Commission with the information necessary to make a recommendation to the Board of Supervisors (Board) to adopt, adopt with modifications, or not adopt the proposed Transportation Study Guide (TSG). The revised TSG aligns with State guidance and establishes a threshold based on the regional average Vehicle Miles Traveled (VMT), which includes the entire San Diego region. The TSG also identifies Infill Areas where no VMT analysis or mitigation would be required for future development projects. The TSG also includes other standards and criteria that would be used to evaluate projects, including small projects, locally serving projects and public facilities. The TSG describes the process and procedures for project applicants to use when preparing transportation analyses for projects in the unincorporated area. If adopted, projects could use the TSG immediately as the basis to address the transportation effects of projects.

B. RECOMMENDATIONS

This is a request for the Planning Commission to consider the proposed Transportation Study Guide (TSG) and make recommendations to the Board. Planning & Development Services (PDS) recommends that the Planning Commission take the following actions:

1. Find that the proposed resolution complies with the CEQA and State and County CEQA Guidelines because the resolution is: (1) not a project as defined in the Public Resources Code section 21065

and CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3); (2) categorically exempt pursuant to section 15308 of the CEQA Guidelines because this action will enhance and protect the environment; and (3) subject to the common sense exemption, CEQA Guidelines section 15061(b)(3), because the resolution implements existing law and therefore it can be seen with certainty that there is no possibility that it may have a significant effect on the environment.

2. Recommend that the Board of Supervisors adopt the Resolution:

   RESOLUTION OF THE COUNTY OF SAN DIEGO BOARD OF SUPERVISORS ADOPTING THE TRANSPORTATION STUDY GUIDE INCLUDING TRANSPORTATION THRESHOLD OF SIGNIFICANCE FOR VEHICLE MILES TRAVELED

C. BACKGROUND

In 2013, the State of California (State) passed Senate Bill 743 (SB 743), which changes how jurisdictions, including the County of San Diego (County), are required to analyze transportation impacts from projects under the California Environmental Quality Act (CEQA). CEQA was signed into law in 1970 to provide standards for regulating pollution and preserving the natural environment. CEQA requires California's public agencies and local governments to measure the environmental impacts of development projects or other major land use decisions and to limit or avoid those impacts when possible. State CEQA Guidelines encourage lead agencies, like the County, to develop and publish guidelines to describe the level at which the environmental impacts become significant and therefore need to be reduced and/ or mitigated, or offset. These are called thresholds of significance. SB 743 required local jurisdictions to shift their environmental impact analysis for transportation from using traffic congestion or "level of service" (LOS) to Vehicle Miles Traveled (VMT) starting July 1, 2020. VMT replaces motorist delay and associated level of service (LOS) as the metric for analysis of transportation impacts under CEQA.

Although traffic congestion measured the impact on the driver, VMT is intended to balance the needs of congestion management with statewide goals to reduce greenhouse gas (GHG) emissions, encourage infill development, and improve public health through more active transportation, such as walking and biking. VMT is calculated by determining the distance and number of vehicle trips generated from a home or business. When analyzing a project's impact on the environment from VMT, a lead agency can provide guidance on impacts from VMT by comparing the estimated VMT from the project to the average VMT in a defined area.

SB 743 does not require local agencies to adopt guidelines or to establish a threshold for VMT; however, agencies may adopt guidelines and thresholds after public review, and these guidelines and thresholds must be supported by substantial evidence. If an agency does not adopt guidelines or thresholds, each project must develop a specific threshold to determine whether the project's impacts will be significant under CEQA.

When analyzing a project's impact on the environment from VMT, the estimated VMT from the project is compared to the average VMT in a defined area. If a project decreases VMT from existing conditions within the defined area, it may be considered to have a less than significant impact on transportation, depending on the decrease. A project can also be considered to have a less than significant impact on VMT if it generates less than a specified number of average daily trips. Other criteria can also be used

to determine if a project has a less than significant impact from transportation on the environment, such as projects that are adjacent to existing major transit facilities.

Projects found to have a significant impact on the environment under CEQA are required to mitigate for, or offset, those impacts where feasible. Mitigation includes projects that reduce VMT like installing bike lanes and sidewalks, which reduce driving and vehicle trips. Because a project's VMT is largely based on y the location of the project, which cannot easily be changed, mitigating for significant VMT impacts can be difficult to accomplish without a defined mitigation program in place. Mitigation for transportation impacts can also be costly. Therefore, using VMT as the metric for analyzing transportation impacts under CEQA incentivizes development in higher density areas near transit with a diverse mix of uses, and disincentivizes it in lower density areas that are more distant from jobs, services, and transit.

A transportation analysis involves determining the project's VMT using nationally adopted traffic standards and modeling and comparing those to something like a regional VMT average. Then for a project to be considered efficient, it is compared to a threshold that is also adopted by a jurisdiction, such as 15 percent below the regional VMT average, which is the threshold recommended by the Governor's Office of Planning and Research (OPR). If the average VMT is below the threshold, the project does not have a significant VMT impact and can move forward, without further VMT analysis.

If the average VMT for the project exceeds the threshold, the project must propose mitigation to reduce the project's VMT to below the threshold (i.e., by providing multimodal or transit infrastructure or other measures to reduce or offset VMT). If the project cannot reduce their VMT to below the threshold, an Environmental Impact Report (EIR) is required with a statement of overriding considerations for the project's significant and unavoidable transportation impacts. VMT is one of multiple subject matter areas analyzed under CEQA. Even if a project does not have a VMT impact, the project still requires environmental review for other CEQA environmental subject matters like biology, cultural resources, and fire hazards.

OPR prepared a Technical Advisory document to assist local agencies when developing their own guidelines for the assessment of VMT, thresholds of significance, and mitigation measures. OPR stated that lead agencies have the discretion to set or apply their own thresholds of significance. Based on staff's research, jurisdictions across the state have taken different approaches to implement VMT. Of the 58 counties in the state, 16 adopted their own VMT guidelines, nine chose to rely on OPR guidance and not adopt their own guidelines, and 33 have no guidance, so projects develop their own VMT analysis on a case-by-case basis. Of the 16 counties that adopted their own VMT guidelines, eight counties adopted a threshold based on the unincorporated area average, six adopted a threshold based on the regional average, and two counties chose other alternatives.

On June 24, 2020 (6), the Board of Supervisors (Board) adopted a Transportation Study Guide (TSG) for the unincorporated area, a technical guide for analyzing transportation impacts for projects using VMT. The TSG described the process and procedures for project applicants and their consultants to use when preparing transportation analyses. The TSG also included a methodology referred to as Local Mobility Analysis (LMA) to meet the County's General Plan requirement for a Level of Service (LOS) D (which is considered a stable flow of traffic with an acceptable level of delay) or better and to ensure the safe operations of the roads for all users including bicyclists and pedestrians. In September 2020, Cleveland National Forest Foundation, Coastal Environmental Rights Foundation, and the Sierra Club filed suit against the County, alleging adoption of the TSG violated CEQA and SB 743.

On May 19, 2021 (1), the Board received an overview of how VMT implementation was progressing nearly a year after adoption of the County's TSG. Staff also requested the Board to provide direction on potential updates to the VMT thresholds used to evaluate the significance of a project's transportation impacts, including options for using an unincorporated area average, sub-areas average, or a regional average to measure existing average VMT, and the screening level threshold for "small" projects that should be exempt from performing additional transportation analysis. A project is considered "small" if it generates less than 110 Average Daily Trips (ADT). The Board was also given the option to leave the existing TSG in place.

After receiving the update, the Board provided direction to explore 13 items related to VMT:

1. Assess and explore the process by which infill development can be done in a manner to ensure no VMT mitigation is necessary.
2. Explore the potential creation of transit accessible areas and look at the intersection between VMT efficient areas or lower thresholds in accordance with the areas that do not require further analysis. Explore the potential transit corridors and look at the SANDAG Regional Transportation Plan (RTP), Metropolitan Transit System (MTS), North County Transit District (NCTD), and other possible areas and how that may impact VMT efficient areas or areas covered by the exemption.
3. Explore programmatic or plan-level mitigation opportunities for VMT, including the concept of a regional mitigation bank.
4. By-right process for development in VMT efficient areas.
5. Further exploration of exceptions to the VMT thresholds for affordable housing projects at less than 100 percent affordable, including mixed income and various components of Area Median Income (AMI), along with exploring the possibility of exceptions for middle income or workforce housing, local hire, and agriculture type projects that might have a net impact of lowering VMT.
6. Explore land use density of land that is in VMT efficient areas.
7. Continue to track guidance from the California Office of Planning and Research (OPR), along with other governing body efforts, including the SANDAG RTP.
8. Monitor the progress of other jurisdictions as it relates to their adoption, along with what unique programs, exemptions, or opportunities they may be exploring that the County may want to consider.
9. Consider a phase-in timeline to allow for a transition into a regional geography.
10. Consider compliance options for projects that have already been proposed or are in the process now.
11. Conduct an analysis of the options to remove the Local Mobility Analysis.
12. Inform the Board regarding updates on development of the Smart Growth component of the Climate Action Plan (CAP) Update and Supplemental EIR to ensure it is integrated and aligned with efforts around VMT.
13. Conduct an analysis of proposed housing projects designated for individuals under 60 percent AMI and under 80 percent AMI and the potential cost impact of switching to a regional geography.

After the May 19, 2021 Board meeting, OPR clarified that "regional" is defined as the full geography within the jurisdictional borders of a Metropolitan Planning Organization (MPO) or a Regional Transportation Planning Agency (RTPA). For San Diego County, this is the San Diego Association of Governments (SANDAG) region, which includes the entire county. Previously, in its 2018 guidance, OPR recommended that for projects in the unincorporated area, the lead agency compare a project's VMT to

a “citywide” average VMT or the “region’s” average VMT. For example, the City of San Diego could evaluate a project’s VMT compared to the citywide average or the overall region’s average. For comparison, the VMT threshold using the unincorporated average is 23.4 miles and the threshold using a regional average is 16.9 miles (average reduced by 15 percent as recommended by OPR).

Although the OPR Technical Advisory is intended to provide advice and recommendations and is not mandatory, as directed by item 7 above, staff returned to the Board on September 15, 2021 (1) with this new guidance, and the Board adopted a resolution to rescind the County’s TSG based on OPR’s updated guidance that the County should use the regional average VMT for projects in the unincorporated area.

On February 9, 2022 (7), the Board received the presentation and overview of the 13 items and provided direction on options to implement analysis of transportation impacts of proposed projects under CEQA using VMT in two phases.

Phase one included the following:

1. Prepare a revised TSG using a regional geography, circulate it for a 30-day public review, and return to the Board within six months for consideration with a cost of $100,000. The revised TSG should also include the following:
    a. Develop new VMT screening criteria for projects within Infill Areas and any surrounding “Village” as identified in the General Plan, excluding areas outside of existing or planned transit and areas mapped as High and Very High Fire Hazard Severity Zones. The screening criteria will allow projects located in Infill Areas and any surrounding “village” to move forward without VMT analysis or mitigation. This option would allow up to 5,870 homes to move forward without VMT analysis based on the General Plan (Infill Areas combined with VMT efficient areas). Projects located outside these areas will need to conduct a VMT analysis and propose mitigation to reduce their impacts.
    b. Adopt the 110 average daily trips small project screening criteria.
    c. Adopt OPR recommendation to screen out projects with 100 percent affordable housing from VMT analysis.
    d. Require an LMA. The LMA for discretionary projects would be used to evaluate road operations, traffic safety, and access. The study scope of LMA has been reduced when compared to the previous CEQA required traffic analysis based solely on Level of Service prior to the implementation of SB 743 in that the area evaluated is limited to intersections located near the project with the primary focus on traffic safety and not roadway capacity.

2. Directed staff to return with options for a sustainable land use framework (Option 6-D). Staff also recommends the Board direct staff to prepare options for further direction to inform the development of a sustainable land use framework for Board consideration and return to the Board in 120 days. Options would include the following: identification of principles for sustainable development that could inform future land use decisions; and comparison of planning mechanisms to implement Board directed principles, including zoning overlays, specific plans, community plan updates, or a general plan update and return to the Board within 120 days, including how to add a parcel-by-parcel analysis and convene stakeholder groups around the issue of addressing the additional considerations that would facilitate development in VMT exempted areas at a later date.

EXHIBIT G

Inside the fight to save Windsor from the Kincade fire

Officials were told Windsor would almost certainly lose homes to the Kincade fire, but not a single house was lost, thanks to hundreds of firefighters who braved great peril to face down a surging wildfire on Oct. 27.



SLIDE 1 OF 30

Santa Monica Fire Department firefighters Armando Reyes, left, and Andrew Klein quickly bundle their fire engine's hose to move to protect a different structure during the Kincade fire on Los Amigos Road in Windsor on Sunday, Oct. 27, 2019. (ALVIN JORNADA/ PD)

MARY CALLAHAN
THE PRESS DEMOCRAT
November 9, 2019

Flames were sweeping down the grassy slopes of Foothill Regional Park toward the near-empty town of Windsor when Sonoma County Fire District Battalion Chief Mike Elson drove up Cayetano Court and realized the moment they had all been bracing for had come.

Two-story flames and glowing firebrands whirled through the smoke-darkened skies, setting fences and trees ablaze, lighting landscaping and, soon, sparking fires at several homes in the neighborhood, as well.

The marauding Kincade fire had been bearing down on Windsor all morning, burning its way through a rural landscape across a wide area north of town, where an army of firefighting forces stood ready to face it late in the morning of Oct. 27.

But it would be northeast Windsor, in and around hundreds of homes in the Foothill Oaks Estates, where they confronted the biggest threat - a near-overwhelming battle to keep the blaze from taking the neighborhood and the town.

Scores of firefighters took part in the initial attack, making a stand amid the chaos, barely daring to hope they would prevent the fire from ripping through town, let alone sweeping across Highway 101 and burning a trail of destruction all the way to the coast.

"That fire coming off of Foothill Park, that fire was coming off that hill very quickly, and it was massive," said Elson, who was leading a nine-engine task force but eventually took command of the Foothills campaign. "It was a massive firefight. There were flames up over the tops of houses ... and those are mostly two-story houses, so they were 30, 40 feet in the air."

But in what became a pivotal juncture in the two-week effort to beat back Sonoma County's largest wildfire ever, the battle for Windsor spared every single home in the town of 27,000 people and substantially curbed the fire's spread.

Sonoma County fire officials credit 200 firefighters or more, both local and from outside the area, who jammed into the neighborhood and simply refused to give way to the flames.

They fought house-to-house, confronting the blaze so aggressively they pushed the boundaries of personal safety to the very limit - to the point Sonoma County Fire District Chief Mark Heine said he came close to ordering crews to fall back in a few cases.

"That was very dangerous firefighting in there," Heine said. "To enter someone's backyard, where everything in their backyard was on fire, meant they didn't know if they could get themselves back out. There was just that spirit of, 'We're not letting this fire come to our town.'?"

It came frighteningly close, making innumerable forays into the Foothills area, a neighborhood of several hundred homes tucked up against the hills of the regional park east of Arata and Hembree lanes in the northeast section of Windsor.

Particularly vulnerable were about 150 homes arrayed around cul-de-sacs, many of which had backyards exposed to the park or connected landscape, often separated from the parklands only by wire fencing.

But ferocious winds that sent sparks and flaming debris well ahead of the fire front that day meant anywhere in the neighborhood or even within a mile or two was at risk of blown embers and fire starts.

Were the fire to get established in even two or three homes, generating intense heat, large flames and embers, "We were likely to lose that whole neighborhood," Heine and others said.

Residents who returned to the area days later found singed trees and burned gardens, lengths of fencing turned to charcoal, ash-covered ground where the flames had spread directly from the blackened hills of Foothill park into their backyards. There were scores of places - outdoor sofa cushions, patches of grass, Halloween decorations - that had caught fire and been put out.

Firefighters had to kick down doors in a few cases to douse attic fires after embers ignited rooftops or burned fencing up to exterior walls like they did at Michelle and Brad Stibi's place on Valle Vista Court.

"We were the loop on national TV," Michelle Stibi, 50, said, her expression suggesting she was none too impressed with the celebrity brought by widely shared footage of the firefight in her yard. "This is going to be a concrete jungle when Brad gets done with it."

Fire officials say it would have been worse if it weren't for the stucco and tile or concrete roof construction that dominates the Spanish-styled Foothill Oaks Estates subdivision that makes up most of the area between Hembree Lane and Vinecrest Road, where the firefight took place.

"Some of those embers were still getting up into those eaves," Elson said, "but construction features that they built into those neighborhoods definitely helped."

A far more critical factor was the early evacuation of residents, clearing the way for firefighters to battle flames and defend property without the need to commit time and attention to rescue efforts. Saving lives and getting people out had completely consumed public safety personnel during the early phase of the 2017

Tubbs fire, which swept across Sonoma County from Calistoga by night with such speed that hundreds were trapped in their homes and neighborhoods and forced to flee through the flames.

"If people had stayed in those homes in Foothill, they would have died," Heine said starkly, "and if not, it would have created such a complex issue for us that we wouldn't have been able to fight the fire. It allowed us to focus on the fire and not life-safety and rescue."

The 77,758-acre Kincade fire, now 100% contained, started many miles north of Windsor, atop The Geysers, during extremely strong winds the night of Oct. 23. It had burned virtually unchecked for four days along a mostly southerly path before it rushed toward Windsor during a period of rapid, wind-driven growth around midday Oct. 27.

Sonoma County Sheriff Mark Essick had ordered all Windsor residents to leave home a day earlier in what would be a succession of evacuations that cleared out a huge swath of Sonoma County. More than a third of the county's population was under mandatory evacuation order, from Geyserville and Alexander Valley down to north Santa Rosa, and west to Jenner and Bodega Bay.

Hurricane-force winds coming out of the northeast and fire forecast modeling had contributed to the same terrifying prediction: that an unstoppable firestorm could burn through Windsor and jump the freeway into the thickly forested Russian River Valley, where flames fed by dense fuels unburned for decades would run all the way to the Pacific Ocean.

Public safety officials alerted the public to this "worst-case scenario" when evacuation orders were issued.

But it's not clear how many civilians appreciated the very real possibility of it coming to pass.

Most Californians are certainly aware of the increasing intensity of and destruction wrought by recent wildfires, experienced close to home in October 2017, when a series of fires rampaged through the region, killing 24 ?people in Sonoma County and destroying more than 5,300 homes.

But even Windsor Mayor Dominic Foppoli, during a celebration of the town's endurance last weekend, felt compelled to ensure his constituents understood the gravity of what they had faced a week earlier.

Foppoli, 37, said top fire brass briefed him and other town officials a short time before Essick ordered Windsor and Healdsburg to evacuate the morning of Oct. 26 and told them at least part of their community would likely be lost to fire before the flames continued westward.

"This was not an 'if,' but it was a 'when,'?" Foppoli told an estimated 4,500 who gathered in the town square to salute firefighters.

But there was positive side, too, Sonoma County Fire District Battalion Chief Marshal Cyndi Foreman said.

All the mapping, modeling and intelligence put Windsor squarely in the bull's-eye of the wildfire, Foreman said, so "we knew that we were not going to dodge this one, but we also knew it was coming."

While the Tubbs fire and last year's deadly Camp fire in Paradise continue to inform firefighters' expectations in an age of extreme fire behavior, the siege on Windsor came with the luxury of time to plan ahead.

"I'll take a disaster that we know is coming all day long, rather than something that's going to wake me up out of a dead sleep that I don't know is coming," Foreman said.

The Kincade fire was fought under the unified command of Cal Fire, the Sonoma County Sheriff's Department, the Sonoma County Fire District and several other agencies.

But the planning for Windsor was turned over largely to the Sonoma County Fire District and to Battalion Chief Mark Dunn, with the aid of Heine and other top officials, and support from many others, including fire personnel from other agencies who happen to live in northeast Windsor and offered to help.

Nothing less than the fate of the town hung in the balance, and many thought that even if the town were saved, hundreds of homes would be lost first.

Dunn, for instance, thought substantial residential losses were inevitable if the fire got established at Foothill Regional Park, as it did.

"When people have talked to me, I've been so emotional about it," Dunn said. "It's one thing to have a plan and to ask strike team leaders and strike teams and my own department, 'I need you to do this; you're going to go to this neighborhood and try to hold your ground.'

"That's one thing. But they actually did it, and they did it perfectly. So many individual engines from different agencies doing all that," he said. "It was amazing."

The firefighting force had to be ready to meet the blaze coming in from the north or the east - or both, which is how it transpired - and be prepared to hold Highway 101, whatever it might take, Dunn said.

They had to figure out where they might lose control of the fire and identify contingency plans that included lines which, once crossed, would trigger crews to fall back several blocks to preset points. There was even the potential for the fire to take successive neighborhoods, forcing the entire firefighting force to seek refuge across the freeway if it got bad enough.

Dozens of engines were moved into the area by Saturday night, Oct. 26, some staged at the Luther Burbank Center for the Arts in Santa Rosa. Three strike teams of five engines were prepositioned in Windsor, a number of them redeployed directly from the 4,615-acre Tick fire that was winding down in Southern California.

Sonoma County Fire District personnel and a fleet of bulldozers also were deployed around Windsor, many of them around Arata Lane and Highway 101/Los Amigos Road, near the command post.

As restless fire officials patrolled rural areas north of town late Sunday morning, around 11 a.m., the fire made a drive for Windsor, sweeping off the hills from Chalk Hill Road in several directions once, fire officials said. One head of the fire was veering past Hillview Road toward Limerick Lane and the highway, while another came down Hillview south toward Brooks Road and Arata Lane, and a third came down Chalk Hill Road toward the area of Vinecrest Road, though eventually the biggest threat came from edges of wildfire that merged in Foothill Park and spread swiftly through the grasses of the 211-acre open space.

Roberto Pardo, 54, and his family, meanwhile, were safely ensconced in a Napa hotel, anxiously monitoring news of the Kincade fire as they had through the night, when security cameras from his Windsor home began sending snippets of grainy footage to his cellphone.

Just before noon, he saw two fire engines pull into Miramar Court near the west side of Foothill park and observed firefighters go into his neighbors' backyards and his own - ensuring they had access in the event it was necessary, was Pardo's guess. He could see the wind whipping so fiercely it bent one of his palm trees nearly in half.

Then the six firefighters, apparently satisfied, lined up side by side in the road facing east and waited - watching, bracing, for the coming siege.

When he saw a law enforcement vehicle take a last, hasty spin around the court before speeding away - as if checking to make sure everybody was gone - he knew "that the fire was here," Pardo said.

Firefighters were frantically canvassing neighborhoods, moving propane tanks, lawn furniture, umbrellas and whatever flammable items they found away from homes, or kicking down fences to improve access or avoid creating fuses that might help ignite homes.

Sonoma County Fire District Capt. Mike Stornetta, whose own home is mere blocks away, had by then gone looking for the fire, dragging a fire hose into Foothill park with Capt. Fred Leuenberger and confronting it there amid the oak trees. They sounded the alarm in the moments before flames hit Cayetano Court and made entry into the neighborhood behind a number of homes at once.

His report marked the beginning of an epic battle, marked by what Dunn said was suddenly one report after another of the fire's arrival in neighboring cul-de-sacs and the response of dozens of fire crews into the area.

Foreman said, "It was like somebody blew the bugle and the cavalry arrived. You couldn't run 10 or 20 feet without running into another firefighter. There were so many resources that saturated that community."

Even so, it was daunting.

Elson said he thought for a second about the personal vehicle he had left at the Hembree Lane fire station more than a mile to the south and whether he would have time to move it before the fire got there.

"My gut reaction was that we were going to lose that whole neighborhood," he said.

Foreman remembers a point when the fire came down to Vinecrest Road toward the east edge of town when the whole sky went dark - "like somebody turned the lights off" - perhaps as the fire took three homes up a steep, narrow tail of Vinecrest, just outside the town limits.

In the Foothills neighborhood, the firefight lasted an hour, perhaps 90 minutes, a relentless attack in which each strike team and engine leader was authorized to exercise his or her own discretion as to what was needed to advance the cause.

Many neighborhood residents saw the battle unfold on TV or social media, including a widely watched video shared in real-time where they watched firefighters in their own yards and saw their properties in flames.

"We created a whole text group before we evacuated on Saturday, and we all talked to each other the whole time," said Beverly Madden, who retired to a home at the end of Valle Vista Court a few years ago and was alarmed by the video someone passed her way.

She now has ash across part of her backyard and new landscaping, now probably ruined. But "when we saw the video, compared to when we got here? We feel super, super great."

The fire came within yards of Mike Hoesly's home up a long drive way atop a hill at the north end of Cayetano Court, after "toasting" about two-thirds his vineyard and burning through a good deal of landscaping at the edge of his backyard just off Three Lakes Trail in the regional park.

But he's grateful that firefighters saved his heritage oak - the only thing growing on the property, when he and his wife, Kate, moved there in 1990.

"This could have been so tragic, you know?" said Hoesly, 70. "We just feel kind of like if the home construction had been different, it could have been a domino effect."

There would be more firefighting to do later that day and in the days to come, as the wildfire swept up toward Shiloh Ridge and the Mark West Creek watershed.

But for Elson and others from the district who fought the 2017 Tubbs fire and struggled fruitlessly to try to protect homes they instead watched burn, defending Windsor proved a watershed - a badly needed save, a source of redemption, he said.

"You know," said Stornetta, "with the winds that we were having and, with the experiences that we've had in this area and all over California, I was really not holding out a ton of hope that we were going to be able to save it. However, the mentality that everyone had was, 'Hey, we're not letting this happen again.'?"

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CALIFORNIA WILDFIRES

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

Kurtis Alexander, Steve Rubenstein, Alexei Koseff, Demian Bulwa

Oct. 26, 2019 | Updated: Feb. 24, 2020 4:20 p.m.

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Firefighters light back-fires along Pine Flat Road near Geyserville, Calif. on Saturday, October 26, 2019 to head off the Kincade Fire, which has grown to more than 25,000 acres and triggered mandatory evacuations in Windsor, Geyserville and Healdsburg.

Kurtis Alexander/Kurtis Alexander / The Chronicle

***Read the latest on the* Kincade Fire here.**

Two years after being scarred by the deadly Wine Country wildfires, Sonoma County was under siege again early Sunday as thousands of firefighters battled to keep powerful winds from pushing the massive Kincade Fire southwest through dense cities and towns toward the Pacific Ocean.

As of midnight, the county resembled a disaster zone from end to end. Some 90,000 residents has been ordered to flee their homes — including those in the touristy wine capital of Healdsburg, with its boutique hotels and tasting rooms, and the community of Larkfield-Wikiup, which saw whole subdivisions flattened by the Tubbs Fire of October 2017.

In the Santa Rosa neighborhoods of Coffey Park and Fountaingrove, meanwhile, residents in brand-new homes just rising from the ashes were warned they might be next to evacuate. Just about everyone else in the county was either under an evacuation order, an evacuation warning, or a power outage imposed by Pacific Gas and Electric Co. to keep additional blazes from sparking.

"We're kind of at the mercy of Mother Nature right now," said Jonathan Cox, spokesman for the state's Cal Fire agency. "Batten down the hatches and hope the storm passes."

As of midnight, the Kincade Fire in and around Geyserville — possibly sparked Wednesday by PG&E equipment that had been left on despite the outage — had blackened 26,000 acres and destroyed 31 homes and 46 other structures, according to Cal Fire.

The fire was just 11% contained, or surrounded. More than 2,800 firefighters and upward of 250 engines worked in rugged hills and canyons seeking to boost that figure as they prepared for winds from the northeast forecast to reach 40 mph — with gusts up to 80 mph.

No deaths had been been reported. Two civilians and one firefighter sustained non-life-threatening injuries Friday after the firefighter deployed his personal fire shelter to save himself and the two fleeing residents.

Saturday had been a day of preparation and worry. Authorities continually expanded evacuations, while opening shelters for evacuees. Fleeing residents jammed Highway 101, and lined up to fill their tanks at gas stations. Stores in Sonoma County and well beyond sold out of ice, batteries, portable generators and other supplies.

Evacuated areas included Windsor and Mark West Springs as well as Guerneville, Forestville, Occidental, Bodega Bay and other spots along the Russian River and the coast. Among those who had to move on were roughly 100 patients at Sutter Santa Rosa Regional Hospital, who were transferred to medical facilities in Novato and San Francisco. Sonoma County officials had to empty a jail as well, just in case.



A police officer leaves a home after placing an evacuation order in the mailbox on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

National Weather Service meteorologist Drew Peterson said the area was expected to see "extreme, extreme conditions." The strongest gusts were expected to pick up early Sunday in the hills and ridges and continue into Monday — a more intense and longer-lasting windstorm than the one that pushed the 2017 fires in Wine Country.

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On Saturday, in a last-ditch effort to halt the progress of the fire before the winds picked up, hundreds of firefighters aided by airplanes and helicopters pre-emptively burned vast stretches of grassland to create a fire break. The back-fires, many set along Pine Flat Road east of Geyserville as the sun went down, were designed to create a buffer zone between the fire and the many towns of the Sonoma Valley.

"We want to make sure it doesn't go down any farther," said Capt. Mike Tompkins of the Tiburon Fire Department.

His crew was part of a team using drip torches to light dry brush and grass on fire. Another team, high on a ridge above, was lighting fires back toward Tompkins' team so that the flames from both sides would merge and create one big fuel break. Asked if it would work, Tompkins raised crossed fingers and said, "We'll find out."



Fifth & Mission

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Chris Markell momentarily stops his car on the 101 on ramp to photograph the Kincade Fire on Friday, Oct. 25, 2019, in Healdsburg, Calif.
Paul Kuroda / Special to The Chronicle

In Healdsburg and Windsor early Saturday, residents and businesses rushed to pack up and get out of town. Danielle Kuller, the manager at Amy's Wicked Slush ice cream store in Healdsburg, said the store shut down and sent employees home.

"We're just trying to make sure everyone's safe," Kuller said.

At KC's American Kitchen in Windsor, dozens of breakfast customers watched the sheriff's press conference on the restaurant TV and found out the town was being evacuated.

"They all paid their checks and left," said Sheryl Farmer, the restaurant manager. "The restaurant is empty now. Our staff is worried and frantic. They're all trying to get home to be with their families. It's a little stressful."

By afternoon, the only people still allowed in Windsor were law enforcement personnel putting barriers on roads, driving through neighborhoods with loudspeakers and sirens, and going door to door to reach residents.

"It was nuts," said Brian Benn, who waited 15 minutes to fill up at a gas station in north Santa Rosa, just outside the evacuation area, where he said the lines for each pump were six cars deep. "You can tell people are feeling a little panicked, and trying to get their stuff together."

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From left: Cal Fire Healdsburg's Daniel Frazee, Andrew Rush and Kassidy Harms watch as helicopters pass by and dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

About 90 people under a previous mandatory evacuation order from the Geyserville area spent Friday night at an emergency shelter at the Healdsburg Community Center, Red Cross spokeswoman Barbara Wood said. Half a dozen new arrivals joined other residents at the former elementary school. Restaurants provided meals and concerned citizens dropped off books, toothbrushes and fresh chrysanthemums for the dining hall tables. But by Saturday, the shelter was itself evacuated.

Down the road, Jorge Vazquez, 31, who works in the maintenance department at the Best Western Dry Creek Inn in Healdsburg, was tasked with going door to door telling guests to leave. Each was given 30 minutes. Many there were also evacuees from the Geyserville area, forced to make their second evacuation in three days.

"It took some convincing to get them to leave," Vazquez said. In one case, he said, he had to threaten to call the police.

New evacuation centers were opened at the veterans halls in Santa Rosa and Petaluma, and at the Petaluma Fairgrounds.



Fire-friendly weather conditions affected much of Northern California, where as many as 940,000 customers were expected to lose electricity in planned Pacific Gas & Electric Co. power outages designed to prevent the outbreak of additional fires.

With what forecasters called a "potentially historic" windstorm expected Saturday night into Sunday, PG&E began shutting off power to as many as 2.8 million people across huge swaths of the state in an attempt to avert wildfires. The utility said homes and businesses could lose power in portions of 38 counties across the Bay Area and throughout Northern and Central California.

"The next 72 hours will be challenging," Gov. Gavin Newsom said at a Napa event Saturday. "I could sugarcoat it, but I will not."



Roilene picks up last items before evacuating from her house with her husband Wolfgang on Saturday, Oct. 26, 2019, in Geyserville, Calif.
Paul Kuroda / Special to The Chronicle

The planned outages were unprecedented, affecting far more people than two previous shutoffs. In the last widespread round of planned outages this month, 738,000 residences and businesses in Northern and Central California had their electricity cut off.

The first blackouts began Saturday afternoon, affecting portions of counties in Northern California and the Sierra foothills — Amador, Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Plumas, San Joaquin, Sierra, Siskiyou, Shasta, Tehama and Yuba counties. They later spread to the Bay Area, affecting Alameda, Contra Costa, Marin, Napa, Solano and Sonoma counties.

The Marin County Sheriff's Office said it expected the outages to affect 99% of the county.

"It almost feels like an apocalypse," said Armand Quintana, manager at Jackson's Hardware in San Rafael. "There are lines at the gas station, people are buying ice from grocery stores, they're out of ice. I'm looking for zombies."

The store ran out of its stock of 50 generators, which sell for $1,100 to $5,000. Just hours before the expected power outages Saturday, it ran out of flashlights, batteries, candles and other power-outage supplies.

Smoke from the blaze was wafting through the Bay Area and could be sniffed on Saturday in downtown San Francisco. Air quality experts advised that buying masks and filters is no substitute for finding clean-air spaces, such as libraries and shopping malls.



Helicopters dump water down to the Kincade Fire off of Pine Flat Road on Friday, Oct. 25, 2019, east outside of Geyserville, Calif.
Santiago Mejia / The Chronicle

"Masks may not be the answer for a lot of people," said Dr. Jan Gurley of the San Francisco Department of Public Health. "Sometimes they make you feel a little better. But there are no substitutes for getting to where the air is clean."

Air quality throughout the Bay Area was expected to be "unhealthy for sensitive groups" and a Spare the Air Day was declared by the Bay Area Air Quality Management District. It was the 20th of 2019, compared with 13 days in all of 2018, 18 days in 2017 and 27 days in 2016. Residents were advised to limit outdoor activity and avoid driving and wood burning.

On Saturday, the Kincade Fire was burning in a southwesterly direction on the east side of Highway 128 and eastern Geyserville. Firefighters built containment lines on the edge of Geyserville, where 735 structures were under threat.

Newsom toured the fire area Friday, visiting residents, meeting local officials and praising firefighters for their "extraordinary heroism." The governor also stepped up his criticism of PG&E, as state regulators looked into whether the utility company's equipment played a role in the fire.

The company reported Thursday that equipment on one of its transmission towers broke near the origin point shortly before the Kincade Fire was reported at about 9:27 p.m. Wednesday. Power had been shut off in the area, but not on that specific transmission line, in an effort to prevent such an event.

Chronicle staff writers John King and Catherine Ho contributed to this report.

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EXHIBIT H

Brings Chickasaw's unparalleled gaming expertise and shared values to project to support Koi's economic independence on tribal lands in Sonoma

Santa Rosa, Calif. (24 January 2022)— The Koi Nation of Northern California, one of California's historic federally recognized Native American tribes, has executed a predevelopment agreement with Global Gaming Solutions (GGS), a wholly-owned business of the Chickasaw Nation of Oklahoma, to engage as the Koi's development partner for its planned Shiloh Casino & Resort in Sonoma County. GGS will also act as the manager and operator of the establishment when completed.

"We are honored to build this important business relationship with our brothers and sisters of the Chickasaw Nation, one of the most experienced Native American tribes in the gaming industry," said Darin Beltran, Koi Nation's Tribal Chair.

"Not only does the Chickasaw Nation have great expertise in gaming and resorts, but they also share the same values as the Koi Nation. Chickasaw leaders understand the importance of this project to the restoration of our economic self-reliance because they have walked the same path many times in support of their own people's future," said Dino Beltran, Koi Nation Vice Chair and Director of Development.

The Chickasaw Nation, with its tribal headquarters in Ada, Oklahoma, has an exemplary track record in developing and operating tribal gaming operations and related resort properties. It operates 23 gaming establishments around the nation, including Winstar World Casino and Resort, the largest casino in the world. The Chickasaw Nation also operates nearly 200 additional highly successful businesses, giving it a broad range of commercial expertise that makes it the ideal partner to develop and manage the Shiloh Resort & Casino.

"The Chickasaw Nation is pleased to play a role in this project, and we look forward to a successful collaboration," Chickasaw Nation Governor Bill Anoatubby said. "The prosperity of our citizens and a commitment to working together with our partners in the Koi Nation as well as local, state and

community officials are key components to our mission. We look forward to witnessing new jobs, additional businesses and increased tourism to this region."

"We are excited by the opportunity to use our expertise to help the Koi Nation realize this project and establish the economic self-sufficiency that is the inherent right of all Native American tribes," said Bill Lance, Commerce Secretary of the Chickasaw Nation. "We look forward to beginning a successful long-term economic partnership with the Koi."

About the project

The Shiloh Casino & Resort will be built on the Koi Nation's property at 222 E. Shiloh Road in unincorporated Sonoma County. The tribe purchased the 68-acre site late last year to re-establish its tribal land base more than a century after the Koi's ancestors were forced to relocate to the Santa Rosa/Sebastopol area.

The non-smoking Shiloh Casino & Resort will include a 2,500 Class III gaming machine facility, a 200-room hotel, six restaurant and food service areas, a meeting center and a spa, as well as a state-of-the-art live entertainment venue. The design for the low-rise facility integrates with the natural beauty of the region and will be energy-efficient and respectful of the environment, in keeping with the Tribe's historic relationship with the land.

The Shiloh Casino & Resort will employ more than 1,100 full-time workers when fully operational. The project also will create hundreds of jobs for workers in the construction trades and other skilled laborers. The Koi Nation anticipates that a portion of the resort's revenues will be shared with the broader community through the support of local organizations as well as collaborating with local governments to address their needs.

About the Koi Nation

The Koi Nation's mission is to empower our people to achieve a better way of life and to maintain tribal integrity and honor through responsive government. We are committed to protecting and exercising our inherent sovereign rights as a federally recognized tribe to their fullest extent,

including obtaining land to re-establish a permanent land base for our people who have lived in this region for thousands of years, and creating self-sustaining economic activity to support the tribal government and its people, and the entire community of Sonoma County. For more information visit https://www.koinationsonoma.com

About the Chickasaw Nation

With more than 73,000 citizens, the Chickasaw Nation is a democratic republic with executive, legislative and judicial departments elected by its citizens. The treaty territory of the tribe includes 7,648 square miles of south-central Oklahoma and encompasses all or parts of 13 Oklahoma counties. The Chickasaw Nation contributes billions to the Oklahoma economy annually and employs nearly 13,500 workers.

For more information, visit https://www.chickasaw.net