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August 21, 2024

Sent by Email and Hand Delivery

Amy Dutschke
Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA 95825
Email: amy.dutschke@bia.gov

Re: County of Solano, EA Comments,
Scotts Valley Casino and Tribal Housing Project

Dear Regional Director Dutschke,

I have been made aware of a Notice of Availability ("Notice") issued by the Bureau of Indian Affairs ("BIA") concerning the Environmental Assessment ("EA") for the Scotts Valley Casino and Tribal Housing Project ("Project"), which has been referred to me for response. This correspondence is submitted on behalf of the County of Solano and each officer and Department thereof (collectively and individually herein, "County").

Executive Summary.

For the numerous reasons set forth below, the County remains opposed to this Project and requests that the BIA deny the Project in its entirety and, in the alternative, prepare a legally adequate Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act ("NEPA").

BIA should promptly deny the Project outright for the following reasons:

- ***Indian Lands Opinion Denial is Required***. BIA is required to issue an unfavorable Indian Lands Opinion, because to do otherwise would run afoul of the intent of Congress;

- ***Opening the Floodgates to Casinos Throughout the Country***. By approving this Project, BIA would impose significant adverse impacts nationwide, because the approvals for this Project necessarily include an agency action newly interpreting the "significant historical connection" requirement in a previously unprecedented way which would lower the bar for BIA approval of casinos and vastly expand the number of future casinos approved throughout the United States, and the impacts of those additional casinos (environmentally, economically, and socially) would be too costly for society at large to bear;

- ***Social Harm to the Surrounding Community***. The proposed Project would be socially harmful to the disadvantaged community in which it would be sited, due to increased crime such as thefts and violent crime, increased bankruptcy rates, increased foreclosures, increased problem gambling, decreased home values, and a range of additional adverse health and well-being impacts;

- ***A Contagious Virus Super-Spreader That Will Disregard Public Health***. The Project would be an uncontrolled, unaccountable, continuous, permanent super-spreader of contagious viruses in our community's midst; and

- ***Unlawful Explicitly-Race-Based Decisionmaking by BIA***. According to the text of BIA's EA itself, approval of the Project by BIA includes an unlawful and impermissible race-based location decision by BIA, a federal agency, to locate a predatory gambling facility as close as possible to Asian American gamblers.

If BIA does not promptly deny the Project outright, a legally adequate EIS is needed for the following reasons*:*

- **Prior EIS's**. BIA previously determined that an EIS must be prepared for this same Tribe's earlier similar proposed casino which was going to be nearby in Contra Costa County, as well as EIS's for many other similar casino proposals elsewhere;

- **Regulatory Setting**. The EA's discussion of the regulatory setting is defective throughout the document, because the Indian sovereignty doctrine does not always uniformly divest state and local governments of one hundred percent of all regulatory authority over all tribal land, and the EA's discussions of regulatory setting do not provide information regarding the degree to which Indian sovereignty will pertain to each aspect of the Project's impacts after the land is taken into trust and just prior to the time that casino construction and operation commence;

- **Emergency Medical Response.** The EA's discussion of emergency medical response is defective, because it completely ignores the existence of the Solano Emergency Medical Services Cooperative, as well as the emergency vehicle access bottleneck that the Project's traffic will create on the roadway right in front of the casino;

- **Water Supply**. The EA's discussion of water supply is defective, because it has not demonstrated a sufficient surface water supply and the idea of supplying the Project from groundwater faces great uncertainty due to low yield conditions and probable heavy metal contamination from historical mercury mining nearby;

- **Wastewater**. The EA's discussion of wastewater is defective, because the discussion does not include sufficient detail to address environmental impacts, such as energy use, physical footprint, brine discharge, sludge disposal, and other issues;

- **Wetlands and Protected Species**. The EA's discussion of wetlands and protected species is defective, because it pretends that the only "take" that will occur is that caused by the construction of buildings and parking lots, and fails to account for the reasonably foreseeable impact of the Tribe killing every member of every protected species and destroying all of their habitat within the entire boundary of the land proposed to be taken into trust by BIA, once the property is removed from regulation;

- **Stormwater and Drainage**. The EA's discussion of stormwater and drainage is defective, because the potential for increased flood risks to downstream areas and the potential for increased water quality impacts to offsite receiving water bodies and drainages are not evaluated in the EA;

- **Geotechnical Issues**. The EA's geotechnical discussion is defective due to the failure to adequately address features such as several landslides located adjacent to the proposed Project improvements, the stability of natural slopes, expansive and compressible soils, naturally occurring springs and seeps, and serpentinite bedrock that contains asbestos fibers which may become airborne during construction;

- **Zoning and Noise**. The EA's discussions of zoning and noise are defective, due to failure to consider issues covered in applicable airport land use plans;

- **Solid Waste**. The EA's discussion of solid waste is defective, due to its failure to discuss organics composting and other solid waste diversion requirements necessary to address greenhouse gas emissions;

- **Fire, Smoking, Indoor Air Pollution, and Emergency Risk**. The EA's discussion of fire risk, smoking, indoor air pollution, and overall emergency risk are defective,

because the EA fails to account for the fire risk from smokers in the parking lot and the health risk from smokers in the casino;

- **Alternatives Analysis**. The EA's alternatives analysis is defective, because it omits discussion and impact analysis of an alternative location after the Tribe argued at length to BIA and the federal District Court that the Tribe is legally allowed to put a casino anywhere within a vast swath of land encompassing not only Contra Costa County, but also all of the former ranchos north of San Francisco Bay, and all lands allegedly ceded by the Tribe's predecessors to the United States;

- **Property Tax Revenue Impacts**. The EA's forecast of impacts on property tax revenue is defective, because it artificially only considers the property as if it would remain forever undeveloped, whereas the City of Vallejo has already zoned large portions of the property as regional commercial and by the Year 2050 the lost property taxes are estimated to exceed a total to that point of approximately $245 million across all taxing entities in the county, and in excess of $12 million every year thereafter;

- **Fairgrounds and Solano 360**. The EA's discussion of the County Fairgrounds and Solano 360 is defective, because the proposed Project would directly undermine efforts already under way for the redevelopment of the Fair property;

- **Police Response**. The EA's discussion of police response is defective, because it fails to account for the severity of the City of Vallejo's existing deficiency in police capacity, as evidenced by the City having proclaimed a state of emergency with regard to police staffing and services, and the California State Legislature needing to consider Senate Bill 1379 (Dodd) in order to create a special exception within the public employee retirement system in order to try to address this crisis; and

- **Traffic**. The EA's discussion of transportation and circulation is defective, because it does not contain an adequate analysis of public transit and uses incorrect assumptions.

The points briefly summarized above, and others, are described in further detail in the numbered sections below.

1. The County exercises sovereignty within its boundaries.

Each of the County's officers is "clothed with a part of the sovereignty of the state to be exercised in the interest of the public." (*Bom v. Superior Court* (2020) 44 Cal.App.5th 1, 23 [collecting authorities].) In addition to the Board of Supervisors, who are officers by virtue of the

State Constitution, other County officers are designated by statute. (Cal. Const. art XI, § 1(b); Gov. Code, § 24000.) Solano County is a political subdivision of the State (Gov. Code, § 23000) which exercises within its boundaries the sovereignty of the state (*Griffin v. Colusa County* (1941) 44 Cal.App.2d 915, 920).

2. The County exercises police power within its boundaries subordinate to state law.

"[P]olitical subdivisions such as cities and counties are created by the State as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. [Citations.] ... The number, nature and duration of the powers conferred upon [municipal] corporations and the territory over which they shall be exercised rests in the absolute discretion of the state." (*Holt Civic Club v. City of Tuscaloosa* (1978) 439 U.S. 60, 71.)

In California, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) The reference to "police" in that section of the California Constitution is a reference to the "police power," not to the occupation of peace officers.

This constitutional language "constitutes full power and authority upon the part of the county authorities to exercise all the police power that the state might exercise, in the absence of specific legislation to the contrary. [¶] The police power may be applied whenever and wherever necessary for the protection of the morals, health, or safety of the people. Those matters which are subject to police regulation [are] ... [t]hose which are dangerous, or of such a character that they may be so conducted as to affect the health, safety, morals and general welfare of the community ...." (*Pughe v. Lyle* (N.D. Cal. 1935) 10 F.Supp. 245, 248 [internal citations and quotation marks omitted].) "Under this police power, counties ... have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limits and subordinate to state law. A county may use its police powers to do whatever will promote the peace, comfort, convenience, and prosperity of [its] citizens ...." (*San Diego County Veterinary Medical Assn. v. County of San Diego* (2004) 116 Cal.App.4th 1129, 1134–35 [internal citations and quotation marks omitted].) "[T]he police power is not static but flexible and expandable to meet changing conditions of modern life." (*Sommers v. City of Los Angeles* (1967) 254 Cal.App.2d 605, 611.)

3. The County is an interested party.

Some of the ways in which the fact that the County is an interested party might have come to BIA's attention previously may have been, for example and without limitation:

- The proposed Project would be located in the City of Vallejo, within Solano County;

- Regulations of the Council on Environmental Quality, National Environmental Policy Act Implementing Regulations, 40 C.F.R. § 1501.9, subd. (c)(1) ["Agencies shall … Invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies under § 1501.8 of this subchapter."]; 40 C.F.R. § 1501.9, subd. (c)(5)(iii)(A) ["In the case of an action with effects primarily of local concern, the notification may include distribution to or through … State, Tribal, and local governments and agencies that may be interested or affected by the proposed action."]; 40 C.F.R. § 1501.9, subd. (e) ["Agencies shall make diligent efforts to engage the public in preparing and implementing their NEPA procedures (§ 1507.3 of this subchapter)."];

- The statutory authority of tribes and tribal councils to negotiate not only with federal and state government but also with "local governments" (25 U.S.C. § 5123, subd. (e));

- Judicial decisions describing the degree to which land held by BIA in trust for a tribe is removed from state or local government regulatory authority;

- Scotts Valley Band of Pomo Indians Fee-to-Trust Application (August 2016) [mentioning Solano County at, e.g., pp. 4, 7, 23-26, 32] (See, your file);

- Letter to Lawrence Roberts, Acting Assistant Secretary for Indian Affairs, from Erin Hannigan, Chair, Solano County Board of Supervisors, August 23, 2016 (Attached);

- Letter to Lawrence Roberts, Acting Assistant Secretary for Indian Affairs, from John M. Vasquez, Solano County Supervisor, October 4, 2016 (Attached);

- Letter to Sally Jewell, Secretary, Department of the Interior, from Dianne Feinstein, U.S. Senator, Mike Thompson, Member of Congress, Doug LaMalfa, Member of Congress, and John Garamendi, Member of Congress, November 29, 2016, ["We are concerned with the manner in which the Department of the Interior is conducting its evaluation of the casino development—a process that has entirely failed to take into account the opposition and concerns of the surrounding counties and cities, not to mention tribes in the area that consider the area their aboriginal territory ... [T]he manner in which Interior is conducting the process suggests that any public input that may occur will serve only to rationalize or justify a decision already made. We expect much more of Interior ... Decisions of this nature are of vital interest to Californians, as well as the tribal,

county and local governments that may be affected. Cities and counties bear the brunt of reduced tax revenues, they often must make up for drain on public services, and they suffer the consequences of any other detrimental impacts from the project, whether environmental or otherwise."] (Attached);

- Letter to Lawrence Roberts, Principal Deputy Assistant Secretary for Indian Affairs, from Davina Smith, Deputy County Counsel, Solano County, December 23, 2016, with copies to John R. Hay, Assistant Solicitor, Division of Indian Affairs, Jennifer Turner, Acting Assistant Solicitor, Division of Indian Affairs, and Bethany Sullivan, Attorney, Division of Indian Affairs (Attached);

- Indian Lands Opinion, Letter from John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, to Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians, February 7, 2019 [discussing location throughout, and mentioning Solano County at pp. 1, 18] (Attached) ("Indian Lands Opinion");

- Memorandum Opinion, *Scotts Valley Band of Pomo Indians v. U.S. Dept. of the Interior*, September 30, 2022 [mentioning Solano County at p. 8] (Attached) ("District Court Opinion");

- Letter to Bryan Newland, Assistant Secretary-Indian Affairs, and Oliver Whaley, Director, Office of Regulatory Affairs & Collaborative Action, from Graham Knaus, Executive Director, California State Association of Counties, February 28, 2023 (Attached);

- Letter to Bryan Newland, Assistant Secretary for Indian Affairs, and Wizipan Garriott, Principal Deputy Assistant Secretary for Indian Affairs, from John M. Vasquez, Chair, Solano County Board of Supervisors, July 31, 2023 (Attached);

- Letter to Deb Haaland, Secretary, Department of the Interior, from Mitch Mashburn, Chair, Solano County Board of Supervisors, April 3, 2024 (Attached);

- Testimony of David Rabbitt, Supervisor, Sonoma County, California, before the U.S. House of Representatives House Natural Resources Subcommittee on Indian and Insular Affairs, on behalf of the National Association of Counties, June 26, 2024 ["The implications of losing jurisdiction over local lands are very significant, including the loss of tax base, loss of planning and zoning authority, and the loss of environmental and other regulatory power."] (Attached);

- Notice of Gaming Land Acquisition Application, Bureau of Indian Affairs, Real Estate Services, concerning Scotts Valley Band of Pomo Indians [distribution List

including Solano County Assessor, Treasurer-Tax Collector, and Board of Supervisors] July 5, 2024 (Attached); and

- Numerous mentions of Solano County throughout the EA itself, including those describing reasonably foreseeable impacts on the County of Solano and locations, organizations, and persons within the county, including within the City of Vallejo ("Vallejo") (See, your file).

As an interested party, the County requests notice of every future step and decision taken by any individual or office within BIA or the Department of the Interior with respect to the Project.

4. The Solano County Board of Supervisors is opposed to the Project.

In the correspondence from the County noted above, the County has repeatedly expressed its opposition to the Project. The County respectfully requests that BIA exercise its discretion to promptly deny the Project in its entirety and end the administrative process now. In the alternative, if BIA is determined to take any steps to continue with the administrative process, then by law BIA must proceed through the appropriate steps for preparation of a legally adequate EIS pursuant to NEPA.

5. The Tribe has been trying to minimize input from the surrounding community.

The decision by the Tribe to pursue a "restored lands exception" rather than a "two-part determination" is an attempt by the Tribe to minimize input and involvement by people in the communities that they are trying to move into and live and work among here in Solano County.

IGRA generally prohibits gaming on lands acquired by the federal Department of the Interior in trust for the benefit of a tribe. (25 U.S.C. § 2719, subd. (a).) However, IGRA creates an exception to this prohibition where the Department of the Interior, after consultation with the Indian tribe and appropriate state and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the state in which the gaming activity is to be conducted concurs in the Secretary of the Interior's determination. (25 U.S.C. § 2719, subd. (b)(1)(A).) That exception is referred to as the "two-part determination."

There is also another exception to the prohibition against gaming, an alternative path that gives less consideration to the surrounding community in which a casino would be located. That exception exists where lands are taken into trust as part of the restoration of lands for an Indian tribe that is restored to federal recognition. (25 U.S.C. § 2719, subd. (b)(1)(B)(iii).) That

exception is the "restored lands exception." (See Memorandum from Assistant Secretary-Indian Affairs, to All Regional Directors, regarding *September 2007 Checklist for Gaming Acquisitions, Gaming-related Acquisitions, and Two-Part Determinations Under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act* (September 21, 2007), at pp. 7-9 (Attached).)

In this matter, the Tribe has pursued the "restored lands exception" rather than the "two-part determination," which constitutes a choice by the Tribe to try to circumvent having to consult with "appropriate state and local officials, including officials of other nearby Indian tribes," and a choice by the Tribe to try to avoid having to give meaningful consideration to whether the Project would be "detrimental to the surrounding community," as well as a choice by the Tribe to try to evade the need to obtain concurrence from the Governor. The Tribe's decision to do so is unneighborly and constitutes action by the tribal government inconsistent with principles of reasonable comity.

6. BIA is required to issue an unfavorable Indian Lands Opinion.

On February 7, 2019, Interior issued a restored lands determination (i.e., an Indian Lands Opinion) concluding that the Tribe has failed to demonstrate the degree of "significant historical connection" to the land that is required by IGRA's "restored lands exception." The Tribe sued in federal District Court to challenge that determination, and in May 2023 the District Court found fault with Interior's determination and remanded that determination back to Interior. A "remand" means that the Court sends the determination back to the agency to look at it again while, this time, following the correct process and taking into account the correct considerations that the Court has described. In remanding the determination back to Interior, the Court was careful not to "substitute its judgment for that of the agency" (District Court Opinion, at p. 56), meaning that the Court did not tell Interior that the agency had to now issue an Indian Lands Opinion favorable to the Tribe.

The Court's principal concern centered around Interior's application of the Indian Canon of Construction ("Canon"). This Canon, like all canons of construction, is an interpretive rule that is used when a court, or here an agency, needs to interpret a treaty, or a statute, or perhaps some other document such as a regulation, if and only if the language of the document leaves the meaning open to more than one interpretation. As the Court explained it:

> "When we are faced with these *two possible constructions*, our choice between them must be dictated by a principle deeply rooted in this Court's Indian jurisprudence: '[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.' [Citations.]"
>
> (District Court Opinion, at p. 14 [emphasis added].)

In other words, the Canon is a tool for gap filling. If there is no gap, there is nothing for the Canon to do, nothing to fill. The Indian Canon of Construction is not a "mandatory rule" but is rather a "guide" that "need not be conclusive," "other circumstances evidencing congressional intent can overcome their force," "[n]or can one say that the pro-Indian canon is inevitably stronger [than other canons or maxims]—particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue." (*Chickasaw Nation v. U.S.* (2001) 534 U.S. 84, 93–95.) That is, the Canon yields, or does not apply, when there is another indicator of congressional intent that must be deferred to.

In adopting IGRA, Congress did not intend that the requirement for a "connection to the land" under the restored lands exception be applied in a way that resolved every doubt in favor of the tribe. We know this is true because Interior has said so, and we know this also because this conclusion is necessary to the Court's own decision in this case upholding BIA's regulations. If this were not true, the Court would have been compelled to overturn BIA's regulations on this point; since the Court did not do that, we know that it is true. As a result, there is no gap to be filled, and the intent of Congress, not the Canon, is the sole guidepost on the issue of "historical connection to the land."

In this litigation, both the Tribe and Interior agreed that "IGRA does not define a 'restoration of lands'" (District Court Opinion, at p. 20), and the Court concluded that the term was susceptible to more than one interpretation (District Court Opinion, at p. 22 ["the Court cannot find ... that Congress has 'unambiguously foreclosed the agency's statutory interpretation.'"], and p. 24 ["[O]ne cannot conclude based solely on the language of the statute, even when viewed in the context of its structure and purpose, that Congress left no room for discussion and no gap for the Secretary to fill ...."].).

Interior has filled the gap by issuing regulations in Part 292 of Title 25 of the federal Code of Regulations, and as relevant to this matter, by the provisions of 25 C.F.R. § 292.12, subdivision (b), which provides that a "tribe must demonstrate a significant historical connection to the land." The regulations define "significant historical connection" to mean "the land is located within the boundaries of the tribe's last reservation under a ratified or unratified treaty, or a tribe can demonstrate by *historical documentation* the existence of the tribe's villages, burial grounds, occupancy or subsistence use in the vicinity of the land." (25 C.F.R. § 292.2 [emphasis added].) In this present matter concerning the Project, the Tribe is attempting to meet the latter requirement, by means of "historical documentation."

Although Interior articulated the phrase "significant historical connection" in the regulation, there were, in theory, other formulations that Interior could have decided on instead. For example, Interior might have made the criterion more difficult to satisfy, raising a hurdle through inclusion of words such as "aboriginal title," "uninterrupted," or "exclusive." An "aboriginal historical connection," an "uninterrupted historical connection," and an "exclusive

historical connection," would all be more difficult for a tribe to demonstrate. Yet, Interior did not adopt that language. Instead, Interior lowered the bar and used the phrase "significant historical connection."

But why then did Interior not lower the bar still further? For example, Interior might have made the criterion even less difficult to satisfy, lowering the hurdle through inclusion of words such as "any," or "some," or "at least a de minimis." "Any historical connection," "some historical connection," or "at least a de minimis historical connection," would all be less difficult for a tribe to demonstrate. Yet, Interior did not adopt that language. Instead, Interior kept the bar where it is, at "significant historical connection." As the Court pointed out in its decision in this case, when Interior promulgated this Final Rule, Interior explained the thinking behind the "significant historical connection" language: "[T]he word ['significant'] reinforces the notion that the connection must be something more than 'any' connection." (District Court Opinion, at p. 26, quoting 73 Fed. Reg. 29354, 29366 (Attached).)

One might well ask how Interior could lawfully do that, given the Canon. The Court has described the operation of the Canon, where it applies, in a maximalist way, saying that "the canon demands that any doubt be resolved in favor of the Tribe." (District Court Opinion, at p. 52.) Given this characterization of the Canon, one might expect the Court to say that the word "significant" sets too high a bar and fails to resolve all doubt in favor of the tribes and that instead the word should be something like "any." After all, that is plainly what the Canon demands, if the Canon is all one must consider. Yet the Court did not say that. Instead the Court upheld the regulation. (District Court Opinion, at p. 34.) And plainly the Court believes the Canon applied when BIA was interpreting IGRA and inscribing that interpretation in the regulation.

What then could have held the Court back? One answer is prior case law. The Court in this case reviewed prior case law and found that *even before promulgation of the Part 292 regulations* it had been Interior's existing practice to require there to be a "significant historical connection" for purposes of the "restored lands exception" and that that requirement had been upheld by prior courts in decisions binding on this Court. (District Court Opinion, at pp. 29-30.) But no doubt the Canon applied on those occasions too, when IGRA and an array of facts were before those other courts. There was no regulation in place then, to which a court would have afforded deference. So, what could have held those courts back from lowering the bar, invoking the Canon, brushing aside the notion that the historical connection must be "significant," and instead holding that merely "some" historical connection must suffice? There can only be one answer: the intent of Congress.

Since the Court has determined that the regulation will stand, that necessarily means that the Court has also determined that the regulation comports with the intent of Congress when adopting IGRA. Otherwise, given the Court's maximalist view of the operation of the Canon, the

Court would have overturned the regulation. The conclusion that, notwithstanding the Canon, the intent of Congress stops the "historical connection" requirement from being more lenient than was applied in the original Indian Lands Opinion dated February 7, 2019, is necessarily part of the District Court Decision on September 30, 2022, and is therefore the holding of the case, res judicata, and law of the case, and BIA must abide by that on remand.

The degree of historical connection that must be demonstrated in order to satisfy the "restored lands exception" is a "significant" degree, and not some other lesser degree, because it has been established that this comports with the intent of Congress. And the only possible reason for it to not be something more lenient is because the intent of Congress has always been plain enough to Interior and to the courts that they could not give free reign to the Canon on this question. Put simply, when evaluating the degree of historical connection needed to satisfy the "restored lands exception," one is dealing solely with a question of Congressional intent, because in adopting the regulation Interior has already necessarily determined that on this question the Canon yields to the intent of Congress and in upholding the regulation the Court has done the same. It would make no difference if representatives of Interior or the Court were to abstain from expressing these conclusions now, because they are necessarily embodied in their respective *acts* of promulgating and upholding the regulation.

In other words, the "significant historical connection" criterion of the "restored lands exception" is a creature of congressional intent, and is an area where congressional intent has already squeezed out further application of the gap-filling Canon. (See *Chickasaw Nation v. U.S.* (2001) 534 U.S. 84, 93–95.) In its February 7, 2019, Indian Land Opinion, Interior has already determined that the Tribe did not meet this criterion. On remand, if Interior now moves the bar, if Interior now issues a favorable Indian Lands Opinion, it may very well be responding to the Court's directive to give free reign to the Canon, but it will then at the same time be violating the intent of Congress under IGRA, which is the thing that set the bar there in the first place. In short, while Interior can comply with the Court's order by "considering" the Canon in its Indian Lands Opinion on remand, Interior cannot change the original result concerning the "significant historical connection" criterion.

At the same time, Interior cannot be found to have ignored the Canon on remand when the same result is now found in its new Indian Lands Opinion. As noted above, the Court found that the "restored lands exception" was susceptible to more than one meaning. And, as pointed out above, it is patent that BIA might have made the "historical connection" criterion more difficult to satisfy, raising a hurdle through inclusion of words such as "aboriginal title," "uninterrupted," or "exclusive." What is it that accounts for BIA selecting the lower bar of "significant," if not the Canon? In other words, in choosing the most liberal construction it could, given the limits understood to have been imposed by the intent of Congress, by choosing the word "significant" rather than something more difficult to demonstrate, *BIA has already applied the Canon* and pushed it as far as it can go in this situation, and BIA may properly note that in its

Indian Lands Opinion on remand. In other words, the effect of the Canon had already been felt in the February 7, 2019, Indian Land Opinion, and there is nothing more that the Canon could or can do. The result of any new Indian Lands Opinion must state the same result as the previous one.

Stripped of all the legalese, the bottom line is this: in adopting IGRA it was Congress that decided that not all landless tribes would get casinos, and this is one of those situations. If not, the word "significant" is meaningless.

An analogy might make this clearer. The Canon would be like a rule that said when you are driving across the country from San Francisco to New York, you must go as far East as you can possibly go *unless* you get instructions from Congress to stop sooner. Going all the way to New York would be like if the "restored lands exception" regulation said "any trivial de minimis historical connection" is enough. The BIA regulation calling for the historical connection to be "significant" instead of merely "any" or "some" connection is like a recognition that there was an instruction from Congress to stop sooner than New York, somewhere like St. Louis. We know that is the case, because both BIA and the Court agree that St. Louis was the right place to stop on your eastward trip, and the only thing that could possibly stop you from driving further East would be the intent of Congress. You do not need to see the message from Congress, nor understand the reasoning behind it, because all you need to know is that a message from Congress is the only thing that could make you stop in St. Louis. Otherwise, there is no way you would stop in St. Louis. Not to knock St. Louis, but otherwise the Canon would force you to keep going further East, because that is the way the Canon works. The Canon only yields to the intent of Congress. So you pull into St. Louis and stop the car, which is now stopped but is still pointing eastward. The District Court then looks at this situation and says something like, hang on, everybody knows that the Canon calls on you to go as far East as you possibly can, so I am ordering that when you stop the car in St. Louis, with the car pointed East, all of the four passengers now have to climb up next to the driver and sit in the front seat and press their bodies up against the front windshield, so that every single individual in the car is as far East as they can possibly get inside the car, see this arm is not pressed against the windshield and this leg has a little slack in it, because that is just the way the Canon works, even though everyone agrees that we are good with the fact that the car itself has stopped in St. Louis.

That is the type of situation we are being forced to deal with here. The only way for BIA to avoid the absurdity of that analogy is to issue an Indian Lands Opinion on remand that does not change the result of the prior Indian Lands Opinion.

In any event, the County requests that BIA promptly send the County a copy of any Indian Lands Opinion that has been or will in the future be produced in connection with the Project.

7. The Project would impact the character of the community.

The proposed Project is massive in scale. The casino portion would operate year-round, 7-days-per-week, 24-hours-per-day. From the amount of parking that is proposed, it may be inferred that more than 4,000 patrons are expected to be continuously present at the casino at all times.

Among other aspects, the Project will feature "Class III gaming," which includes casino-style games such as slot machines, roulette, and blackjack. (25 U.S.C. § 2703(8); *United Auburn Indian Community of Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538, 546.) There is no other casino-style gaming in Solano County. Although there are other venues in the area which do attract numbers of people, such as the Solano County Fairgrounds and an amusement park, none include casino-style gambling. In fact, in the County's 2013 Plan for the Fairgrounds property, the County and the City of Vallejo adopted the principle that any gaming on the entertainment-mixed use areas of the Fairgrounds property can only be "non-casino related gaming." (Solano County & City of Vallejo, *Solano 360 Final Specific Plan* (Feb. 26, 2013), § 3.4.5, at p. 23 (Attached).) The Project's addition of casino-style gambling to the area is by itself a sufficient basis to conclude that the Project would impact the character of the community.

In addition, the Project would impact the character of the community by increasing crime, bankruptcies, problem gambling, and other adverse social and economic effects.

Vallejo, an under-resourced and disadvantaged community, has been working hard to recover from its 2008 municipal bankruptcy and the closure of the Mare Island Shipyard in the late 1990's, and continues to struggle with already high crime rates and other issues. Any further burdens posed by the Proposed Gaming Facility would further set back the City's revitalization. (See, e.g., California Office of Environmental Health Hazard Assessment, List and Map of SB 535 Disadvantaged Communities [https://oehha.ca.gov/calenviroscreen/sb535] (visited 8/13/24); Final Designation of Disadvantaged Communities Pursuant to Senate Bill 535 (May 2022) (Attached).) Given the economic condition of the city and its residents, and the almost complete lack of designated "disadvantage communities" closer to the Tribe's headquarters in Lake County, a fair argument can be made that the Tribe's choice of location for this Project was intentionally predatory.

Available figures seem to vary but there nonetheless appears to be ample evidence that the introduction of an Indian casino into an urban community increases local crime and personal bankruptcy rates. (Charlene Wear Simmons, California Research Bureau, *Gambling in the Golden State 1998 Forward* (May 2006), at p. 3 (Attached).) And it appears that "casinos in or close to urban areas create significantly more social costs than do rural casinos." (*Id.* at p. 84.) Studies that purport to show neutral or beneficial effects of new casinos tend to ignore the

distinction between rural casinos and urban casinos. Among the community concerns that can be expected to be felt acutely as a result of this Project's proposed urban mega-casino are:

- Neighborhood disadvantage has a highly significant effect on problem gambling. (Barnes, et al., *Effects of Neighborhood disadvantage on problem gambling and alcohol abuse*, Journal of Behavioral Addictions 2(2), pp. 82–89 (2013) (Attached).)

- Indian casinos in very rural areas are frequently cited as generating significant local economic benefits, largely due to the depressed nature of the local economy, but this has not generally been the case for urban casinos, and the impact of a casino on home prices in the vicinity of the casino is generally negative. For example, a study for the City of Springfield, Massachusetts, estimated that if a casino were introduced, then that would cause nearby homes to lose thousands of dollars in value, the number of people with gambling problems would double, and personal bankruptcies and foreclosures would increase. (National Association of Realtors Research, *Economic Impact of Casinos on Home Prices*, Literature Survey and Issue Analysis (2013)(Attached).)

- Modern casinos like this Project are basically just a way of extracting money from people by getting them to sit in front of electronic slot machines for as long as possible in order to make them lose as much money as possible. (*Why casinos matter: thirty-one evidence-based propositions from the health and social sciences*, Institute for American Values (Attached).)

- Higher neighborhood disadvantage is associated with gambling frequency and problems among young adult gamblers from an urban, low-income setting. (Martins, et al., *Environmental Influences Associated with Gambling in Young Adulthood*, Journal of Urban Health: Bulletin of the New York Academy of Medicine, Vol. 90, No. 1 (2012) (Attached).)

- Gambling has a number of negative public health effects, including financial impacts, labor impacts, and health and well-being impacts (Latvala et al., *Public health effects of gambling – debate on a conceptual model*, BMC Public Health (2019) 19:1077 [collecting studies and itemizing a range of negative impacts] (Attached).)

- Auto thefts, larceny, violent crime, and bankruptcies are all up by about 10 percent four or more years after a casino opens in a county. Bankruptcies also increase in counties within 50 miles of a casino. And, social costs exceed benefits by about two to one. (Evans & Topoleski, *The Social and Economic Impact of*

Native American Casinos, National Bureau of Economic Research, Working Paper 9198 (September 2002) (Attached) citing Grinols and Mustard (2001).)

As is pointed out below, BIA is required to take a "hard look" at these and other issues, and has failed to do so in the EA. Perhaps one of the commenters at the BIA virtual hearing on this Project put it well, when they said: "making money off addiction is not good for anyone."

Overall, the EA tends to pay lip service to these categories of impacts, and completely ignores its own hypocrisy. (See, EA, at p. 3-47; Appendix A to EA, at p. 72.)

On the one hand, the EA tries to make the claim that the Project would not increase the number of gamblers but would instead steal them (the word the EA uses is "cannibalize") from other casinos in the region. (EA, at p. 3-47 ["Alternative A would not substantially increase the prevalence of problem gamblers as several existing gaming facilities are already established within relatively short driving distances from the Project Site."].)

On the other hand, the EA tries to make the claim that while other casinos in the region may initially feel some financial impact from this casino those casinos will soon recover. (EA, p. 3-48.) Whether that may be true or not is a dubious question. But if it were true, as BIA says, where could those added revenues be coming from to make up for the initial loss? New gamblers, is the answer, a significant percentage of whom will be problem gamblers who experience an array of social ills as outlined above.

In short, BIA needs to pick its poison in its environmental analysis. Either the Project is adding new gamblers or it is not. If it is not adding new gamblers to the world, then it is permanently cannibalizing them from other casinos, and the portion of the analysis discussing impact on other casinos needs to reflect that.

If on the other hand the Project is adding new gamblers to the world, then the EA's analysis of social and economic impacts, including the permanent unmitigated public health impacts associated with problem gambling, needs to reflect that.

Whichever side of the dilemma BIA chooses, it cannot have it both ways.

By the same token, if BIA wants to try to make the point that the Project will have low social and economic costs for the surrounding area, that entails making the concomitant points that the Project's patrons will be drawn from outside the area, because that is the only way for the project to achieve a positive economic multiplier effect in this situation. If that is BIA's argument, then the EA's traffic analysis and its analysis of impacts on other nearby casinos needs revision: i.e., lots more people will be on the road than the EA is telling us, and they will be coming here instead of other casinos. Conversely, if nobody will be coming from far away, and

the patrons will be drawn from nearer by, then the social and economic impact on Vallejo residents and other nearby residents would be, again, to that extent, predatory.

There also appears to be an unresolved tension between the EA text and BIA's trust responsibilities. On the one hand, under BIA's regulations, a tribe needs to show BIA the tribe's "need" for the land proposed to be taken into trust. (25 CFR § 151.10, subd. (b).) And apparently there is some authority for the proposition that a tribe that is already in fairly good financial condition can demonstrate that required "need" by saying that added revenue from a casino would help. That is, a tribe need not be destitute to demonstrate need, apparently. So in that other setting, any one of the tribes that this Project is now planning to hurt might say to BIA, for example, we want to add, say, 9% to our income by taking additional land into trust for gaming, and apparently BIA might agree, in that context, that the tribe has shown "need." But, here in this current setting, BIA is publishing an EA that takes the position that hurting those same tribes by that same amount, reducing their gaming revenue by amounts ranging from 6.2% to 21.1%, is not a meaningful impact. (See, EA at p. 3-48.) It is not clear how adding and subtracting revenue from the same neighboring tribe, just on different days, could *both* be said to be consistent with BIA's trust responsibilities.

Despite the EA's attempts to blandly reassure the surrounding community that all is well and that the Project will be a net boon to the area, the facts are otherwise. Urban casinos do not create economic development. (See Jonathan Lawrence Krutz, *Do casinos create economic development? A 15-year national analysis of local retail sales and employment growth*. (May 2022) (Attached).)

8. The Project would be an uncontrolled, unaccountable, continuous, permanent super-spreader in our community's midst.

Whatever its immunity from regulation may be, the Project would not be immune from contagion, and may from time-to-time turn into a virus super-spreader that ignores both public health and the welfare of the surrounding community. We are acutely aware of this type of concern due to Solano County's unique role as home to Travis Air Force Base, which was the site for the quarantine and medical treatment of more than 100 Americans evacuated from China and Japan during "a critical time period" in the very earliest days of the COVID-19 pandemic in February 2020. (CDC Museum Covid-19 Timeline [https://www.cdc.gov/museum/timeline/covid19.html]; Steve Gorman, *Hundreds of U.S. evacuees from China placed under coronavirus quarantine at military bases*, Reuters (Feb. 5, 2020) [https://www.reuters.com/article/uk-china-health-wuhan-usa-idUKKBN1ZZ1LW] (Attached).)

Very soon after, in May 2020, during a still highly dangerous time in the COVID-19 pandemic, more than a dozen Indian casinos across California reopened notwithstanding pleas by

our Governor that they remain closed until such time as the state's public health office allowed the reopening of similar high-risk businesses where large groups gather or people are in proximity. (Thomas Fuller, *Asserting Sovereignty, Indian Casinos Defy California's Governor and Reopen*, New York Times (May 30, 2020) [https://www.nytimes.com/2020/05/28/us/california-virus-casinos.html](Attached).)

Despite the harsh impact of the virus on tribes throughout the country and despite efforts by the National Indian Gaming Commission to provide COVID-19 guidance to tribes, the Commission had to repeatedly acknowledge that decision-making remained in the hands of each local tribe. The Project might remove certain aspects of civil regulatory jurisdiction from the County and would thereby injure the County. This would be so even if the Tribe were to pledge to be a good neighbor in times of emergency or even if no emergency were ever to occur, because the removal of certain aspects of the County's civil regulatory jurisdiction would itself injure the County.

In other words, during times of pandemic, tribal casinos are known to behave anti-socially and greedily, prioritizing profits over the surrounding community's public health. Given the State's experience during the recent COVID-19 pandemic, it is beyond dispute that it is reasonably foreseeable that this Tribe too will disregard directives and requests from elected leaders and public health officials. The impact of the Project contributing to pandemic conditions in the surrounding community needs to be thoroughly analyzed, and the EA fails to do so.

9. If BIA does not prepare an EIS and properly address the reasonably foreseeable impacts of the Project, then the County along with others injured in the surrounding community may have standing to not only appeal administratively but also to sue in court.

Although it is sometimes said in a summary way that tribes are sovereign on land that BIA has taken into trust, the legal rule is actually somewhat more nuanced. The sovereignty of a tribe is limited and "exists only at the sufferance of Congress and subject to complete defeasance." (*U.S. v. Wheeler* (1978) 435 U.S. 313, 323.) The Supreme Court has held "that Indian tribes have been implicitly divested of their sovereignty in certain respects by virtue of their dependent status, that under certain circumstances a State may validly assert authority over the activities of nonmembers on a reservation, and that in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members" (*New Mexico v. Mescalero Apache Tribe* (1983) 462 U.S. 324, 331–32 [citations omitted].)

However, although it remains to be seen how the nuanced contours of the Indian sovereignty doctrine, as elaborated and adjusted by the courts over time, would apply to this Project, it may be assumed that at least some aspect of County civil regulatory authority would be usurped were the Project to go forward. Therefore, the proposed Project would in fact cause injury to the County.

Therefore, just like every other neighboring person and organization in the area who would be injured by BIA's proposed action to approve the Project, the County would have standing to file a lawsuit in federal court to challenge the Project approvals. (*Amador County v. Salazar* (D.C. Cir. 2011) 640 F.3d 373, 378.)

Similarly, the County and others adversely affected by BIA's actions may be able to appeal those administrative decisions within the agency's internal processes, before going to court. (See 25 C.F.R. §§ 2.101, 2.200) To receive timely notice of BIA decisions that may be appealed in these ways, interested individuals and organizations who feel they may be injured should write to BIA and notify BIA of their status as interested parties, should request future notices, and should provide an address to which BIA notices should be sent. (See 25 C.F.R. §§ 2.105.)

In addition to sending notices to the County at the addresses BIA currently has on file, BIA and Interior should please add to those: Office of the Solano County Counsel, 675 Texas St., Ste 6600, Fairfield CA 94533.

10. If BIA does not issue an unfavorable Indian Lands Opinion, BIA must prepare an EIS for the Project, because BIA has prepared an EIS for similar projects.

Based on the way BIA has handled other similar projects, it seems obvious that an EIS must be prepared, and one can reasonably infer that BIA has known this from the outset. BIA's decision to prepare an EA for this project, rather than to acknowledge from the outset that an EIS is required, reflects a conscious refusal by BIA to take a hard look at the impacts of the Project and implies that BIA may be attempting to improperly use NEPA review to paper over a decision that has already been made. Among the other fee-to-trust and casino projects that have warranted an EIS, and which by comparison dictate one now for this Project, are:

- EIS for the Scotts Valley Band of Pomo Indians' Trust Acquisition and Casino Project, Contra Costa County, California (69 Fed. Reg. 43431 (July 20, 2004));

- EIS for the Nisqually Indian Tribe's Fee-to-Trust and Casino Project, City of Lacey, Thurston County, Washington (89 Fed. Reg. 55975 (July 8, 2024));

- EIS for the Ho-Chunk Nation Fee-to-Trust and Casino Project, City of Beloit, Rock County, Wisconsin (84 Fed. Reg. 25302 (May 31, 2019));

- EIS for the Wilton Rancheria Fee-to-Trust and Casino Project (83 Fed. Reg. 46754 (September 14, 2018));

- EIS for the Little River Band Trust Acquisition and Casino Project, Township of Fruitport, Muskegon County, Michigan (85 Fed. Reg. 67562 (October 23, 2020));

- EIS for the Coquille Indian Tribe Fee-to-Trust and Casino Project, City of Medford, Jackson County, Oregon (80 Fed. Reg. 2120 (January 15, 2015));

- EIS for the Tejon Indian Tribe's Fee-to-Trust and Casino Project, Kern County, California (85 Fed. Reg. 67561 (October 23, 2020));

- EIS for the Confederated Tribes of the Colville Reservation's Proposed Fee-to-Trust and Casino Project, Franklin County, Washington (89 Fed. Reg. 23041 (April 3, 2024));

- EIS for the Ione Band of Miwok Indians' Trust Acquisition and Casino Project, Amador County, CA (68 Fed. Reg. 63127 (November 7, 2024));

- EIS for the Redding Rancheria Fee-to-Trust and Casino Project, Shasta County, California (81 Fed. Reg. 86001 (November 29, 2016));

- EIS for the Pokagon Band of Potawatomi Indians Fee-to-Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana (81 Fed. Reg. 47817 (July 22, 2016)); and

- EIS for the Koi Nation's Shiloh Resort and Casino Project, Sonoma County, California (89 Fed. Reg. 16782 (March 8, 2024)).

Perhaps most notable among the foregoing is the first one listed: the 2004 Notice concerning the need to prepare an EIS for a fee-to-trust acquisition and casino in Contra Costa County *by this very same Tribe for a smaller proposed project.* It is utterly galling to have to write a letter now urging BIA to undertake an EIS for the present Project when BIA itself has already previously determined that an EIS was required for a fundamentally similar proposed project nearby that would have been by the same Tribe and would have been smaller and *less* impactful. Apparently, it is not just the Tribe that has been intentionally trying to minimize input from the surrounding community, and not just the Tribe trying to see how little analysis it can get away with, but also BIA itself.

11. If BIA does not issue an unfavorable Indian Lands Opinion, BIA must prepare an EIS for the Project, because of the Project's impacts and the EA's defects.

NEPA requires that an EIS be prepared for all "major Federal actions significantly affecting the quality of the human environment." (42 U.S.C. § 4332(2)(C).) Under NEPA, an agency may first prepare an environmental assessment to make a preliminary determination

whether the proposed action may have a significant environmental effect. (*Nat. Parks & Conservation Assn. v. Babbitt* (9th Cir. 2001) 241 F.3d 722, 730; see 40 C.F.R. §§ 1501.4, 1508.9.) Under NEPA, if a significant environmental effect is anticipated, a more detailed EIS is required. (*Native Ecosystems Council v. US. Forest Service* (9th Cir. 2005) 428 F.3d 1233, 1239.) The burden remains on the agency to properly investigate the impacts of the Project. It is not the public's job to do the agency's work for it. BIA cannot rely on its own lack of investigation to justify discounting environmental impacts. (*S. Fork Band Council of W. Shoshone v. Dept. of the Interior* (9th Cir. 2009) 588 F.3d 718, 727.)

NEPA also requires that an agency such as BIA take a "hard look" at the environmental consequences of its actions and to provide a "'convincing statement of reasons to explain why a project's impacts are insignificant.'" (*Nat. Parks & Conservation Assn. v. Babbitt*, *supra*, 241 F.3d at p. 730, quoting *Metcalf v. Daley* (9th Cir. 2000) 214 F.3d 1135, 1141.) Therefore, under NEPA, BIA's task with respect to analysis of the proposed Project is to take a "hard look" at the environmental consequences of its proposed action. (*Neighbors for Rational Development, Inc. v. Albuquerque Area Director*, 33 IBIA 36, 47 (1998), citing *Robertson v. Methow Valley Citizens Council* (1989) 490 U.S. 332, 350.) The present EA fails to take the required hard look at a number of issues, and the EA is therefore substantively defective. To the extent the EA says anything, it plainly points to significant impacts requiring the preparation of an EIS. The proper fix, therefore, is for BIA to now prepare an EIS, giving the surrounding community the opportunity to more fully understand, analyze, and comment upon the Project's impacts.

The EA evaluation indicates that the proposed Project development is marginal on a conceptual level. The potential environmental risks and impacts along with the potential Project costs associated to minimize and avoid such risks has not been sufficiently evaluated in the EA. A more rigorous analysis and evaluation would be required through an EIS and associated studies in order to fully understand the Project impacts and address the numerous issues and considerations noted in the draft EA. (See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).) It is not part of BIA's trust responsibilities to approve marginal, flimsy, conceptual proposals.

Some of the further aspects of the EA pointing to the need for an EIS are briefly described below.

12. The EA's discussions of regulatory setting are defective.

The discussions of regulatory setting throughout the EA fail to describe the regulatory setting that will exist for the proposed Project at all times of implementation. The EA makes some effort to describe certain federal, state, and local regulatory requirements, but it fails to inform the public and governmental decisionmakers of what the regulatory setting will be at the time the proposed Project would be constructed and at the time the impacts of the proposed

Project would be felt. In addition to the current language in the regulatory setting portions of the EA, an EIS is required that *additionally* contains a discussion of the varying degrees to which each of the existing state and local regulatory requirements that currently apply to these parcels would be supplanted or erased once the land is taken into trust by BIA.

The EA is misleading in this way, and if this is not fixed in an EIS the discussions of regulatory setting will continue to be misleading and legally defective. By taking the land into trust, BIA would be creating a partial regulatory vacuum. Environmental regulation in the United States relies upon what might be described as a three-legged stool, a division of labor between federal, state, and local governmental entities. The Project would partially rip off one leg of that stool and replace the missing portion with nothing. But it may not leave a total vacuum. The Supreme Court has held "that Indian tribes have been implicitly divested of their sovereignty in certain respects by virtue of their dependent status, that under certain circumstances a State may validly assert authority over the activities of nonmembers on a reservation, and that in exceptional circumstances a State may assert jurisdiction over the on-reservation activities of tribal members" (*New Mexico v. Mescalero Apache Tribe* (1983) 462 U.S. 324, 331–32 [citations omitted].) The public and governmental decisionmakers are entitled to know, in advance, how far BIA and the Tribe believe the Indian sovereignty doctrine will extend, as to each and every particular aspect of regulatory control for which a regulatory setting description is needed under NEPA.

The EA ignores the fact that *first* the land will be taken into trust and *then* buildings will be built and operated. Those are distinct steps, and each will have a somewhat different regulatory setting at the time they occur. In order to be legally adequate, the EA (or now the EIS) must go point-by-point through each and every legal regime, covering each and every impact area, and describe with particularity which state and local requirements will apply and which will not: (1) in the moment before the land is taken into trust (so we can see what protections we would be losing if the land were taken into trust); and (2) in the moment before ground is broken on the casino and other structures (so we can see to what extent there will be a regulatory vacuum into which BIA is proposing to place the Project, as well as the reasonableness, feasibility, and enforceability of proposed mitigation measures within that vacuum). By the same token every mitigation measure in the EA that alludes to or relies on some form of external regulatory authority must be disregarded and treated as unreasonable and infeasible, unless the EIS demonstrates that the regulatory context concerning that issue will be wholly preserved after the land is taken into trust. You cannot defer mitigation enforcement to a regulatory regime you are escaping.

A fair argument can be made that the regulatory setting cannot be ascertained until any compact with the State is first resolved, since we cannot know until then what waivers of sovereignty the Tribe will agree to. Questions of IGRA preemption are controlled by the language of the applicable compact. (See *Confederated Tribes of Siletz Indians of Oregon v.*

State of Oregon (9th Cir. 1998) 143 F.3d 481, 485 [looking to compact].) But the EIS can at any rate say what specific topics a waiver of sovereignty would be needed on and suggest those waivers as part of the proposed mitigation. To be fair to the public, and provide accurate information concerning regulatory setting compliant with NEPA, the negotiated compact for this Project should be available for review as part of the EIS. Otherwise, how do you pretend to know what the regulatory setting will be?

By removing 160 acres from state and local regulatory control to any degree, it must be said that the impacts of the Project include creating to that same degree a large local scofflaw. It would be nonsensical for the EA (or now an EIS) to simply assume that entity's compliance with the laws, regulations, and best management practices from which the Project itself is trying to immunize that putative scofflaw.

To the extent that the EA, or now the EIS, fails to state clearly a view on the degree to which each state and local regulatory requirement will persist, then the regulatory setting sections of the environmental document are legally defective, as are the related mitigation discussions. Emphatically, it is not the public's job to guess, nor to litigate, to learn the answers to those questions.

13. The EA's discussion of emergency medical response is defective.

The EA fails to describe and take account of the manner in which emergency medical services are provided in Solano County. This involves an organization called the Solano Emergency Medical Services Cooperative (SEMSC). The failure of the EA to discuss the role of the SEMSC in providing services means that the regulatory setting discussion is defective, the impact discussion is defective, and the mitigation measure discussion is defective. (See, Correspondence from Benjamin Gammon to BIA (August 20, 2024).)

The EA fails to adequately discuss the impact on local hospitals and clinics of adding a permanent new population of 4,000 gamblers and Project employees to the area, and particularly the impact that addition will have on the community's access to care and services. (Ibid.)

The EA fails to take the required "hard look" at the potential for incidents requiring medical attention at the Project, such as accidents, fights, or health emergencies, and the strain that will place on the 911 system and related emergency medical services. (Ibid.)

The proposed dual-wide eastbound turn is insufficient to address concerns regarding emergency medical services. All vehicles merged on Auto Mall/Columbus Parkway will experience increased congestion due to the proposed Project. This congestion could significantly hinder the ability to provide timely emergency service responses. California Emergency Medical Services Authority ("EMSA"), through Assembly Bill 40, sets forth requirements related to

ambulance patient offload time statewide, with the recommended standard of 20 minutes to receive timely access to care in the event of an emergency. Further, the existing timelines in the City of Vallejo provide that the ambulance provider responding to a 911 Dispatch call for advance life support services must arrive on scene by 7:59 minutes from receipt of the call. Any delay caused by traffic congestion in the area surrounding the casino could have serious implications for public safety. As presently configured, the roadways are inadequate to handle the increased demand for emergency medical services, partly due to the need for U-turns by all vehicles that will be entering the property. This traffic, whether turning left to enter or making a U-turn to enter, will also likely interfere with emergency vehicles attempting to depart from and return to the nearby Fire Station Number 27 just up the road. (Ibid.) The EA must address whether the Project will, in essence, strand Fire Station Number 27 behind the traffic perpetually coming to and leaving from the Project, and the effect that will have on the surrounding community.

The EA fails to address whether the casino would divert existing emergency medical services from other parts of the county, or, alternately, whether the casino would require additional emergency medical services. (Ibid.)

The EA fails to address how or whether additional training and staffing for emergency medical personnel is necessary to ensure the specific needs of, and challenges associated with, the casino. (Ibid.)

Given the scale of the casino, and its potential to attract large crowds, it is crucial to have dedicated medical services available to handle any emergencies that may arise. The EA does not include provision of a dedicated on-site medical ambulance. Additionally, the EA does not outline how on-site medical needs for casino patrons will be met, the level of services to be provided and whether any outside support is required. It is essential to have clarity on this to ensure that adequate medical support is available at all times. Having a team of medical professionals on-site at the casino can help manage emergencies quickly and efficiently without relying solely on local emergency services. (Ibid.)

BIA must address these concerns in an EIS and must develop a comprehensive emergency response plan specifically for the casino to include evacuation procedures, and coordination to ensure preparedness for various scenarios. So far, BIA has not even noticed the existence of SEMSC yet. (Ibid.)

With three directions of highway traffic dumping onto the local road accessing the Project, the Project shows every sign of being a traffic quagmire, where emergency vehicle access is significantly hindered. An EIS must be prepared to assess these concerns and allow the public to consider and comment on them. (See, Correspondence from Benjamin Gammon to BIA (August 20, 2024).)

14. The EA's discussion of water supply is defective.

The EA included two options to supply water to the Project: (1) connect to the City of Vallejo ("City") municipal water system or (2) onsite groundwater wells. The impact analysis for either option is incomplete or inadequate for the following reasons. (Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

The City's 2020 Urban Water Management Plan ("UWMP") (Attached) does not include this Project as a planned development nor does it identify this as a Project to be supplied by City water service. However, the draft EA indicates that the City has sufficient supply for the proposed Project as stated on page 3-11:

> "Within the water demand projections, the Project Site fell within an area classified as 'Planned Development Commercial,' which indicates the City consider municipal water use for commercial development on the Project Site in its water demands."

The City of Vallejo's UWMP and General Plan designated only the southern portion of the proposed Project area as residential/commercial (Figure 2-3, UWMP); whereas the remaining proposed Project area is designated as "Park, Recreation, and Open Space." Based on the City's 2020 UWMP, additional demand for the planned commercial/institutional water use category is projected to increase 420 Acre Feet per year ("AFY") to a total 2,315 AFY city-wide by 2045. The estimated highest water demand for the Project is 322 AFY.

Thus, most of the planned commercial/institutional water supply projected by the City would be needed for this Project. The EA has not provided sufficient information regarding a secured commitment by the City to provide sufficient water supply for the entire Project to fully meet the Project's water demand.

The second option proposed to use on-site groundwater as the water supply for the Project. As indicated in the EA, Appendix B, HydroScience (2024), groundwater supply is not a verified or secure source of water to serve the Project (Appendix B, p. 3-1):

> "Groundwater supply wells were not located on the Project site or nearby. Previous well pump tests were not conducted on the Project site. The potential yield of the site's soil materials is uncertain. … Depths of colluvium and alluvium at the site were variable. Colluvium contains high concentrations of clay which may result in low yield conditions. Historical mercury mining operations were present at multiple locations near the site, including St. John's Mine located less than 1 mile northeast of the site. Groundwater

> contamination with heavy metals is probable due to these operations or from flow through rocks containing heavy metals."

Due to the numerous hydrogeological concerns and great uncertainty in the preliminary groundwater supply and its quality assessment, groundwater should not be considered as an alternative water supply source until it is first shown to be viable. Further hydrogeologic investigation is warranted to evaluate the viability and impacts of this option as recommended by HydroScience, Appendix B, page 6-1:

> "As discussed in Section 2.3.1 and Appendix B, there are several water supply limitations identified at the Project site that require further investigation."

Wells, borings, or other subsurface work required for the Project may require permits and approvals through US EPA, State Water Resources Control Board, and/or Solano County Environmental Health (See, Solano County Code Chapter 13.10). The Regulatory Setting Table for the Water Resource section (Table 3.3-1), should include well construction permitting authorities requirements.

(See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

The defects in the EA's consideration of hazardous chemicals and mining contamination is compounded by BIA's failure to directly notify the California Department of Toxic Substances Control concerning both this Project and the availability of the EA for review and comment. (See, your file.)

15. The EA's discussion of wastewater is defective.

Wastewater concerns on the Project site are not adequately addressed. Two options are proposed for the treatment of the Project's wastewater, including: (1) direct connection to the Vallejo Flood and Wastewater District ("VFWD") collection system; or (2) onsite treatment through a stand-alone wastewater treatment plant ("WWTP").

Based on an initial review of VFWD's 2023 Sewer Master Plan, the existing service area for the proposed wastewater connection is currently experiencing severe system deficiencies during wet weather events (Appendix B – Water and Wastewater, p. 3-2). Therefore, any new service would require significant upgrades to the existing collection system.

The EA included as an option a conceptual-level design to treat the wastewater onsite by a WWTP. This conceptual design does not include sufficient detail to adequately and fully address the environmental impacts, such as energy use, physical footprint, brine discharge,

sludge disposal, and other issues. (See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

The EA fails to discuss where or how any on-site treated wastewater will be distributed, nor any of the impacts of infrastructure needed for doing that.

16. The EA's discussion of wetlands and protected species is defective.

The Phase 1 Environmental Site Assessment included identifying potential wetlands using the U.S. Fish and Wildlife Service ("USFWS") National Wetlands Inventory ("NWI") Wetland Mapper. (See [https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/].)

Based on the map included in the Phase 1 (Appendix G) the Project site includes riverine areas that may constitute wetlands. The NWI Wetland Mapper disclaimer indicates the "Wetlands Mapper data should not be interpreted as representing the presence, absence, or extend of wetlands that may be covered under one or more federal, state, Tribal, or local laws." A more thorough environmental survey is needed to verify the presence of wetlands, Waters of the U.S., and/or special status species that would require mitigation or avoidance. (See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

Based on review by the USFWS, there are a total of 12 threatened, endangered, or candidate species in the Project's geographical area or that could be affected by the Project through drainages (Appendix H, Attachment A). The EA's Proposed Action includes establishment of an approximately 45.1-acre biological preserve within the Project site designed to protect habitat of the greatest quality and value for special-status species under an agreement ("MOU") and management plan with the USFWS.

Within the proposed biological reserve, approximately 0.3 acres of freshwater marsh is proposed along with re-routing 920 linear feet of existing drainage to replace marsh habitat. However, the entire Project site identified 3.4 acres of freshwater marsh. Furthermore, most of the identified wetlands is located near Columbus Parkway and not proposed to be included in the proposed biological preserve. (Biological Technical Memorandum; Acorn Environmental, Appendix H-4 Figure 5, page 9.) It is therefore unclear if the full 3.4 acres of freshwater marsh habitat will be fully offset or mitigated through the development. Furthermore, as identified in Appendix H, page 31, certain species were not detected on site, but may still be impacted by the site development since the area is near and drains to critical habitat identified in the vicinity (Figure 10, page 30).

The Project proposes using a Low Impact Development ("LID") treatment strategy to reduce the offsite drainage. (Biological Assessment, Appendix H-1, page 6.) While we commend the Project on incorporating LID, it is unclear that the proposed actions will adequately minimize

offsite drainage due to low permeability onsite soils. Additional mitigation may be necessary to fully offset potential impacts to listed and threatened species and respective habitat.

(See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

If the Tribe intends to assert sovereignty over the Project area to the exclusion of state and federal protected species laws, the EA (and now the EIS) must contemplate that within these parcels every square inch of potential habitat will be eliminated and every individual member of every protected species will be killed, not just on the portions of the parcels anticipated to be developed or paved.

A legal question exists regarding the extent of the Tribe's authority, and tribal members' lawful ability, to take listed species after the property is taken into trust. However, there is authority, not based on conjecture, that after the property is taken into trust it is reasonably foreseeable that the Tribe and not the State will control who kills what species. (See, *New Mexico v. Mescalero Apache Tribe* (1983) 462 U.S. 324, 333 [determinations of whether state law is preempted on tribal land does not depend on mechanical or absolute conceptions of state or tribal sovereignty, but calls for a particularized inquiry into the nature of the state, federal, and tribal interests at stake].) Therefore, unless specifically divested or disavowed, it must be assumed for purposes of environmental impact analysis that the consequence of BIA taking the property into trust will be permanent "take" of all protected and listed species and their habitat throughout the extent of all parcels, not merely within the built footprint or extent of impervious surfaces on the property. That is, for purposes of environmental impact analysis it must be assumed that once the Tribe gets the land, they will kill or allow the killing of, every listed species on the property and destroy all of the associated potential habitat. This would be a reasonably foreseeable effect of the Project (40 C.F.R. § 1508.1, subds. (i), (ii) ["Reasonably foreseeable means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision."]) which must be thoroughly and properly analyzed under NEPA in an EIS. Whether or not some individual person present on the property would have a personal motivation to do so is beside the point, since it is plainly reasonably foreseeable within the meaning of NEPA.

17. The EA's discussion of stormwater and drainage is defective.

The potential flood impacts of stormwater and drainage from the Project are not evaluated or modeled. (See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

The Project stormwater runoff would drain South and merge into a single channel that dissipates through a wetland area in the Project area before discharging into Rindler Creek, then drain into Lake Chabot. The proposed Project may result in increased stormwater runoff discharge into Rindler Creek during large storm events which would further exacerbate existing

flood impacts in the existing Rindler Creek, Fairgrounds Channel as the connector drainage into Lake Chabot.

The potential for increased flood risks to downstream areas is not evaluated in the EA. The EA only provided a narrative on how drainage water would be captured onsite through the construction of bioretention areas. However, no detailed design parameters for the bioretention facilities are provided in the EA and there is no flow model analysis nor any quantification of stormwater runoff with climate change scenarios provided. Further, no evaluation was provided to verify the onsite soils have sufficient capacity for stormwater infiltration as part of the onsite retention since the geotechnical analysis indicates that the Project site has low to moderate soil permeability (Appendix D, p. 21).

Any runoff from the Project either through construction or site development may contribute to increasing water quality degradation in Lake Chabot and Rindler Creek due to historic mercury mining activities in the Vallejo hills, upstream and adjacent to the site. Both Lake Chabot and Rindler Creek are listed as impaired water bodies due to mercury contamination. The EA has not addressed mitigation of potential increased water quality impacts to offsite receiving water bodies and drainages.

(See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

The EA uses incorrect assumptions when it says appropriate surface area sizing of bioretention is used for the anticipated impervious surfaces at page 3-11. The report states that bioretention was sized upon the 4% rule. The report defines the 4% rule as a low impact development treatment strategy where 4% of the area of impervious surfaces within a drainage management area are dedicated to landscaped bioretention without providing justification for how the development is defined as low impact. The report needs to provide calculations showing that bioretention is sized to City standards for the added impervious surfaces.

The EA does not include the water quality concerns due to the proximity of the Syar Industries Lake Herman Quarry to the project site at page 3-10 when discussing surface water impacts. Mining activities can contribute to water pollution through the release of sediments, heavy metals, and other contaminants. The report does not factor the surrounding site conditions to surface water impacts.

The EA is misleading when it asserts that drainage and flood risks associated with the Project are fully mitigated at page 3-12. The assessment does not adequately address the potential drainage issues that could arise from the Project development, particularly concerning the downstream Solano County Fairgrounds site. As the Fairgrounds are directly downstream, any alterations in drainage patterns, increased runoff, or failure in stormwater management systems could exacerbate flooding or erosion risks at the Fairgrounds. The EA underestimates

these potential impacts and fails to propose robust mitigation measures to ensure that the downstream site is protected from increased flood risks due to the development.

The EA is misleading when it says that changes to the drainages would be localized and no adverse effects to downstream surface waters are anticipated at page 3-12. The report states the City standards for post-development stormwater systems without providing a drainage report with calculations showing that stormwater discharges do not exceed pre-project rates and durations after development and altered existing drainage patterns. At least one altered existing drainage pattern is mentioned. The needed EIS must show how the different flow path can direct not only the existing runoff but added runoff from development at the same rate to the existing wetland complex.

The EA is incorrect when it states that no adverse impacts to groundwater quality would occur at page 3-13. The EA assumes compliance with the NPDES General Construction Permit and BMPs will be sufficient to prevent contamination, but it does not consider the cumulative impacts of construction activities combined with ongoing operation, especially with the use of potentially hazardous materials.

The EA is misleading when it asserts that Alternative A would not result in any adverse impacts to floodplains at page 3-12. Although the site is outside of the designated floodplains, the increased impervious surfaces and altered drainage patterns could still exacerbate downstream flooding risks, which are not fully addressed in the document.

A full environmental analysis in the form of an EIS is needed that properly looks at these issues. A more detailed assessment is essential to ensure that all potential impacts to water resources, particularly groundwater recharge, surface water quality, and downstream flooding, are thoroughly evaluated and mitigated.

(Memorandum from Pejman Mehrfar (August 21, 2024) (Attached).)

18. The EA's geotechnical discussion is defective.

The preliminary geotechnical report concluded that the area is "conditionally feasible" for development (Appendix D, page 12). However, the EA lacks adequate field analysis needed to address the many geotechnical issues on the project site. (See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

There are numerous geotechnical considerations and risks at the Project site that require further evaluation to verify that development is viable. These geotechnical risks may include; several landslides located adjacent to the proposed Project improvements and the stability of natural slopes, expansive and compressible soils, naturally occurring springs and seeps, and

serpentinite bedrock that contains asbestos fibers which may become airborne during construction. Mitigation measures to manage these potential risks can be costly including air/dust monitoring and intensive dust control measures. Due to the complexity of the geology and topography at the Project site, preliminary design-level studies should be performed to fully identify and evaluate the potential environmental risks.

(See, Memorandum from Misty Kaltreider (August 15, 2024) (Attached).)

19. The EA's discussions of zoning and noise are defective.

The EA ignores the fact that the Project area is within a land use designation under the Travis Air Force Base Land Use compatibility plan issued by the Solano County Airport Land Use Commission, and there is no acknowledgement of this in the EA nor analysis of this planned large assemblage of people from that perspective. There is no analysis of whether or not the Project would be compatible with designations and other requirements in the plans of the Solano County Airport Land Use Commission or the corresponding plans in Napa County. The EA's noise, safety, and other airport-related analysis is therefore defective. (See, EA Appendix L, at p. 23.)

20. The EA's discussion of solid waste is defective.

The EA fails to discuss the solid waste diversion requirements that apply in California pursuant to SB 1383, AB 1826, and similar legislation overseen by CalRecycle. (See, EA at p. 3-70.)

As a result, no answers are provided concerning the types of solid waste questions that in California must be addressed. How much organic waste will be generated? How much organic waste will be diverted? How much organic waste will be composted? Will edible food be recovered? What will be done with edible food that is recovered? Will the recovered food be edible, healthy, and nutritious, or will it be junk? What will the Project do to ensure food safety for recovered food? Will the Project enter into binding agreements to implement these types of measures? Will the Project generate mulch or other organic waste? What will be done with that? Will these steps be taken in a way that counts toward the City's SB 1383 obligations? Will the Project divert construction and demolition waste as provided for under California law? Will the Project comply with CalGreen construction waste management requirements?

The EA suggests vaguely that a "plan" will be developed and adopted that in some undisclosed way "addresses" certain topics in this general subject area. (EA, at p. 2-20.) But that is too vague.

First, there is no commitment to follow California law on these points. Second, no credible estimate of landfill impacts and diversion can be developed and discussed in the EA or an EIS without knowing how the Project will specifically handle these issues. As a result, the solid waste analysis is defective. And third, this in turn means that the EA's emissions-related analysis is defective with respect to methane and other greenhouse gas aspects having to do with solid waste. (See, EA, p. 3-110.) It appears that the EA does not acknowledge or address the greenhouse gas aspects of solid waste at all.

21. The EA's discussion of fire risk, smoking, indoor air pollution, and overall emergency risk are defective.

The proposed Project would replace agricultural open space with flammable structures and more than 4,000 gamblers per day smoking in the parking lot after having lost as much money as the Project can extract from them. The Project creates a fire ignition linkage to the nearby adjacent agricultural land that otherwise would not be there. (Weinberger, et al., *Cigarette smoking, problem-gambling severity, and health behaviors in high-school students*, Addict Behav, Rep. 2015 Feb 10;1:40-48 (Attached); see also, Petry NM, Oncken C. *Cigarette smoking is associated with increased severity of gambling problems in treatment-seeking gamblers*. Addiction. 2002 Jun; 97(6):745-53.)

The EA does not discuss whether the facility will allow smoking or not. On the one hand, it is reasonably foreseeable that this casino may allow smoking, as numerous tribal casinos allow smoking. (Current California Smokefree Gaming Property Status Map [https://www.gamingdirectory.com/smokefree/california/] (visited 8/12/24) (Attached).) On the other hand, it is also reasonably foreseeable that this casino may not allow smoking, as some tribal casinos do not allow smoking. (Ibid.)

If the casino is smoking-free, the smokers will still need to smoke, because that is how smoking works. So, when they are not gambling, it is reasonably foreseeable that they will be outside in the parking lot setting fire to the county — both the smokers who showed up as smokers and the mere gamblers whom the casino turned into smokers.

If the Project allows smoking, this will worsen problem gambling. (Letter from Cynthia Hallett, Americans for Nonsmokers' Rights, to Jon Ford, National Council of Legislators from Gaming States, September 14, 2022 (Attached); Letter from Keith Whyte, National Council on Problem Gaming, to Members of the New Jersey Senate, August 16, 2022 ["Research shows that there is a correlation between smoking frequency and gambling severity."] (Attached).) When casinos allow smoking, people stay in place and keep gambling, and this worsens problem gambling. (Ibid.)

The level of smoking in a casino can be especially high compared with other enclosed public places where smoking is permitted. For example, one study revealed that 50% of the casinos sampled had air pollution levels known to cause cardiovascular disease after only 2 hours of exposure. The levels of fine particle air pollution found inside a casino were four to six times that of outside air, even in a well-ventilated casino. (CDC, *State Gaming System Gaming Facilities Fact Sheet* [https://www.cdc.gov/statesystem/factsheets/gaming/Gaming.html#print] (visited 8/12/24) (Attached).)

In sum, if the casino will not allow smoking, the EIS must analyze the reasonably foreseeable impact of at least 4,000 people (plus hourly turnover) moving through the parking lot every calendar day and night around the clock until the end of time, flicking lit cigarette butts into the surrounding grasslands and repeatedly setting the greater region on fire. If the casino will allow smoking, the EIS must analyze the reasonably foreseeable impact of increased indoor air pollution, second-hand smoke health effects, and increased gambling addiction. If the Tribe is undecided whether or not to allow smoking, analyze both. (Solano County Community Wildfire Protection Plan [https://www.solanocounty.com/depts/oes/emergency_plans.asp], at p. 13 (Attached).)

In a similar vein, the EA ignores the Solano County Emergency Operations Plan and Solano County Multi-Jurisdictional Hazard Mitigation Plan [https://www.solanocounty.com/depts/oes/emergency_plans.asp] (Attached).) As explained in Figure 3.6 at page 67, of that plan, the proposed Project would be in a "high" risk area very close to an "extreme" risk area. Any fire in the Project area faces a risk of spreading. The impacts of this location need to be thoroughly analyzed in an EIS, including the need for evacuation by everyone in this area as caused by the casino's perpetual and increased wildfire risk.

As the California Attorney General has observed, "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." (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/pressdocs/2022.10.10%20-%20Wildfire%20Guidance.pdf.] (Attached).)

22. The EA's alternatives analysis is defective.

The EA fails to evaluate a legally adequate range of alternatives, because it omits consideration of an alternative location. "The alternatives section is the heart of the environmental impact statement." (40 C.F.R. § 1502.14.) "Reasonable 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); *Simmons v. U.S. Army Corps of Engineers* (7th Cir. 1997) 120 F.3d 664, 669 [federal agency has the "duty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project" regarding alternatives].)

"The purpose of the Proposed Action is to facilitate tribal self-sufficiency, self-determination, and economic development, thus satisfying both the Department of the Interior's (Department) land acquisition policy as articulated in the Department's trust land at 25 CFR Part 151, and the principal goal of IGRA as articulated in 25 USC § 2701." (EA, sec. 1.2.) In other words, the purposes of the proposed Project are to further these *general* aims, and there is nothing special about this *location* in particular other than the Tribe's assertion that it is located *somewhere* within a much larger geographic region within which *any* spot could equally well serve those same general purposes. Given that this is the purpose of the Project, the EA's failure to consider other alternatives is legally defective under NEPA.

Certainly, given where most other casinos are located in California, BIA could not make a serious argument that for some reason the Project could only be located here in this one spot in Solano County. Look, for example, at the "Regional Market Map" in Appendix A of the EA (at page 14). The distance from the proposed Project site to Lakeport, California, is roughly 86 miles by road. A circle with Lakeport at its center and a radius of 86 miles would sweep in and encompass a vast area that includes the approximately 19 casinos shown on that map, all of which are unquestionably in feasible alternative locations. BIA knows this, because those casinos exist, and BIA has approved them all. By what possible logic could BIA now ignore their existence and acquiesce to a preposterous claim by this Tribe that no similar location within that circle need be considered?

Indeed, an argument can be made that the Tribe is legally estopped (i.e., prevented) from making that argument in any forum. The Tribe is the one that has been emphasizing to BIA and to a federal District Court that the Tribe should be allowed to put a casino *anywhere* between Clear Lake and the Carquinez Strait. The Tribe has been doing so in the context of trying to argue that the Vallejo parcel meets the "restored lands exception," and that a low degree of documented historical connection suffices under that requirement. The Tribe cannot disavow that position now that they are trying to meet the requirements of NEPA. If the Tribe could put a casino anywhere for purposes of the "restored lands" analysis, then the Tribe can put it anywhere for purposes of its NEPA analysis on the same Project.

The Tribe is currently landless (just in the sense that BIA does not currently hold land in trust for it, although the Tribe itself does currently own ample land and other real estate directly in fee title in Lake County (see, records of Lake County Assessor/Recorder online [https://www.lakecountyca.gov/271/Assessor---Recorder])), and the Tribe's member population is not concentrated in Solano County, but rather "the member population is concentrated in five

counties of California (Alameda, Contra Costa, Lake, Mendocino, and Sonoma counties)." (Website of Scotts Valley Band of Pomo Indians [https://www.scottsvalley-nsn.gov/heritage][visited 8/11/24](Attached).) 79% of the Tribe's 268 members live in the following five counties: Alameda, Contra Costa, Lake, Mendocino, Sonoma, and Santa Clara. (Declaration of Patricia Franklin, August 10, 2016 (Attached).) The Tribe's governmental offices are in Lakeport in Lake County and in Concord in Contra Costa County. (Declaration of Patricia Franklin, August 10, 2016 (Attached).)

Some might argue that therefore an alternative location within those five other counties must be considered. But, those counties are where the Tribe is asserting a "modern" connection, not necessarily where it has been asserting a "historical" connection. It has been respectfully pointed out that "modern" connection and "historical" connection are separate legal issues, and they should not be confused with one another. (See, e.g., Letter from Matthew Lee, Senior Advisor for Tribal Negotiations & Deputy Legal Affairs Secretary Office of Governor Gavin Newsom, to Bryan Newland, Assistant Secretary-Indian Affairs, August 16, 2024 (Attached).)

The EA's failure to evaluate an alternative location within Contra Costa County is unlawful not because there is an asserted modern connection to Contra Costa County, but because the Tribe previously sought a "restored lands" opinion for a casino project in that county, and the Tribe is therefore now estopped from arguing that there could be anything wrong with an alternative location in that county. (See, EIS for the Scotts Valley Band of Pomo Indians' Trust Acquisition and Casino Project, Contra Costa County, California (69 Fed. Reg. 43431 (July 20, 2004).) The EA appears to argue that no place in Contra Costa County could be considered because in 2012 Interior determined that the site would not qualify as "restored lands." (EA Appendix F, at p. 3.) That argument is nonsense, however, because now the Tribe has the benefit of the recent federal District Court Opinion that it did not have in 2012. It is also nonsense because whatever Interior may have said in 2012 about that one particular site in Contra Costa County, Interior did not absolutely rule out other potential sites in Contra Costa County.

The Tribe is also estopped from arguing against alternative locations elsewhere within the totality of the area that the Tribe has argued satisfies the "significant historical connection" requirement of the "restored lands exception."

For example, in addition to Contra Costa County, which the Tribe argued in 2004 met the criteria, the Tribe's more recent application to BIA and arguments to the federal District Court have repeatedly tried to point to the geographic limits of the former Rancho Suscol and the geographic limits of "all of the ranchos 'north of the bay of San Francisco'" as all being fair game for the Tribe's current casino proposal. The Tribe has alleged that its ancestors were enslaved on Rancho Suscol, in the Town of Sonoma, and on "all of the ranchos 'north of the bay

of San Francisco.'" (Legal Analysis by Steven J. Bloxam, Scotts Valley Band of Pomo Indians Request for Indian Lands Determination, January 29, 2016, at pp. 25-26 (See, your file).)

In addition to Ranch Suscol, in applying for a "restored lands" decision, the Tribe has alleged that the Project is located within a large area allegedly ceded by the Tribe's predecessors to the United States, extending from Clear Lake in the North to San Pablo Bay and the Carquinez Straits in the South. (Legal Analysis by Steven J. Bloxam, Scotts Valley Band of Pomo Indians Request for Indian Lands Determination, January 29, 2016, at pp. 20-21 (See, your file).)

So, at a minimum, the Tribe itself has zealously argued for an area that includes but is not necessarily limited to: (1) Contra Costa County; (2) the total geographic reach of all of the former ranchos North of San Francisco Bay; plus (3) the total geographic reach of the lands allegedly ceded by the Tribe's predecessors to the United States.

The sum total of those areas, plus any other areas the Tribe has similarly pointed to, must now be considered as alternative locations within the context of BIA's NEPA alternatives analysis for this Project. Indeed, given the large extent of that area, it is evident that the EIS must seriously and thoroughly consider and analyze the impacts of more than one alternative location, probably at least four.

Yet another indicator that something is amiss in the way BIA has been handling this overall process may be gleaned from the fact that BIA has not even considered an alternative location within Lake County. The EA purports to have considered but eliminated a single 33.5-acre site in Lake County from consideration. (EA Appendix F, at p. 3.) But the EA provides no reasons to explain why it has currently eliminated that site from consideration. The EA just vaguely says that the Tribe has eliminated it from consideration "as discussed in the 2007 Final EIS." (EA Appendix F, at p. 3.) Plus, obviously, there are other parcels in Lake County that exist. If it did somehow turn out that there were something that made that one 33.5-acre site appropriate to exclude from the alternatives analysis, *nothing* excuses the EA from considering other alternative sites within Lake County.

We do not argue that the Tribe in fact must be legally allowed to put a casino anywhere within that large area described above, but merely point out that if BIA chooses to move forward with this Project in any way, both BIA and the Tribe will be legally estopped from contradicting the necessarily attendant result that the impacts of multiple alternative locations must be thoroughly analyzed in the EIS in order to comply with the requirements of NEPA.

Given the very low bar that the Tribe is trying to set with respect to the "significant historical connection" criterion, much of the greater Bay Area and Northern California region would apparently be wide open for them, by their account. If the Tribe's and BIA's position is that a relatively thin historical connection to the land is regarded as "significant," then the

geographic area they must consider for a reasonable range of alternatives opens up on a direct corresponding basis. One cannot take that sweeping position on the "historical connection" question and at the same time maintain a pinched parsimonious view of what would constitute a reasonable alternative location. The Oakland Coliseum will soon be available, I hear.

23. Does the Project reflect an impermissible race-based location decision by BIA?

The EA makes it plain that with this casino Project the Tribe is intentionally targeting Asian groups in what may possibly be a predatory manner. (Advantage Partners Consulting, *Scotts Valley Market Study, Economic Impact Study, Community and Social Impact Study* (July 2024), Appendix A of EA, at pp. 9, 10, 13, 30, 32, 33.) It may not occur to one to ask this without prompting, but, given the actual language of the EA itself, once one reads the EA it seems reasonable to at least ask: to what extent does this casino proposal constitute an, at best, unseemly predatory targeting of Asian Americans by Native Americans? (See, Colby, et al., *Unpacking the root causes of gambling in the Asian community: Contesting the myth of the Asian gambling culture*, Front Public Health. 2022 Nov 3; 10:956956 (Attached) ["Additionally, the stress, depression, and desperation associated with struggling to make a living led to a vicious cycle of gambling and worsening financial distress."].)

This Project goes beyond opening a casino on lands widely acknowledged to have been ancestral since time immemorial and then trying to market that existing tribal casino to known repeat customers or trying to make an existing casino culturally welcoming for known patrons. In this case, the Tribe is instead creating a casino from scratch and is deliberately trying to locate that new casino far from the center of its typically-acknowledged ancestral area in order to be as close as they can to as many Asian Americans as possible, and is explicitly doing so because, *in the words of the Tribe's own study in the EA*:

> "It has been proven by decades of gaming operations/research across the globe that Asians demonstrate a higher propensity to gamble and contribute a higher percentage of income to gaming compared to other racial/ethnic groups. Analysis and studies examining databases of commercial gaming corporations and large tribal gaming enterprises have consistently confirmed that Asians make 10 percent to 30 percent more trips to casinos and spend 30 percent to 70 percent more of their disposable income on gambling activities."
>
> (*Scotts Valley Market Study, Economic Impact Study, Community and Social Impact Study* (July 2024), Appendix A of EA, at p. 30.)

"70% percent more of their disposable income"? How is this not intended to be an Indian tax on Asians?

You can also see it in numbers on page 32 of the study, in the table showing "Net Gaming Revenue Summary by Market Segment." Notice how the Project revenue from the "Asian" segment in Marin, Napa, Sonoma, Sacramento, and San Joaquin counties is very small, only about $12.6 million (i.e., 7.0 plus 5.6). Maybe that is "annually," but it is hard for the reader to tell because it is a poorly labeled table, and that does not matter either way for purposes of this point. Notice next how Solano County revenue for the "Asian" segment is $25.9 million but Contra Costa revenue is almost double, at $53.2 million. Recall now that the Tribe tried to establish a casino in Contra Costa County more than ten years ago but failed. It stands to reason that this table, or something comparable, is why they started in Contra Costa before Solano. In other words, the sequence of events of first making a pass at establishing a casino in Contra Costa County (which is *farther* from the Tribe's traditionally-acknowledged center of ancestral activity than Solano County, and therefore would logically be a *more difficult* place to establish a "significant historical connection") and only later moving, so to speak, "closer to home" tends to even further substantiate the hypothesis that the rest of us in the region having to deal with this thing are simply getting pulled around in the wake of what seems to be the Tribe's try-to-build-close-to-as-many-Asians-as-possible strategy.

Without reading the EA, an ordinary observer might look at the proposed location for the Project and guess that the Tribe just wanted the Project to be close to a big highway, and that was maybe it. But, according to the Tribe itself as explained *at length* in the EA, that does not seem to be what is going on here. Is this *explicitly stated* aspect of the Project also among BIA's varied trust responsibilities?

Does BIA, a U.S. federal agency charged with an array of compulsory anti-bias responsibilities, get to ignore it? This casino is going to be a public accommodation presumably? These statements in the EA are statements about national origin or ancestry presumably? How is it that BIA, an agency of the federal government, could somehow knowingly locate a casino with the *explicitly stated* intent of extracting greater gambling losses from a particular sub-set of race/ancestry/national origin groups (what the EA very broadly refers to as "Asians") because BIA knows that group to be vulnerable to giving up 70 percent more of their disposable income? (See, e.g., *Presidential Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States* (January 26, 2021) ["Executive departments and agencies (agencies) shall take all appropriate steps to ensure that official actions, documents, and statements, including those that pertain to the COVID-19 pandemic, do not exhibit or contribute to racism, xenophobia, and intolerance against Asian Americans and Pacific Islanders."] (Attached).)

This is not a novel issue, nor one unique to this Tribe. And not surprisingly, by the same token, we are not the only ones asking this question. (See, Douglas Quan, *Is it ethical for Canadian casinos to so aggressively target Asians? It's hard to say – they're not talking*, National Post (February 21, 2017) (Attached) ["Across North America, the gambling industry's

courting of Asian high-rollers is intensifying. But when does marketing cross the line from savvy to predatory?"] (Attached).)

Given these questions and issues, and the statements in the EA itself, arguably BIA's approval of the Project would violate the full panoply of anti-bias and environmental justice protections that BIA and the rest of the federal government is charged with upholding. (See, your file.)

24. The EA's forecast of impacts on property tax revenue is defective.

Appendix A of the EA purports to "forecast" the Project's impact on property tax revenue. (See EA, Appendix A, at p. 70.) The figure stated in that section is not really a "forecast," however, but rather is more of just a crude snapshot. Rather than looking to the future, as a true forecast would, it looks solely at the present moment in time and says: today's tax revenues will vanish. That is the extent of the analysis that the EA offers to the impacted surrounding community.

The "study" in Appendix A says that total property taxes for the affected parcels were approximately $86,948 in 2023, and they will be zero (i.e., removed entirely from county property tax rolls) if the Project were approved. The "study" attempts to describe this loss as merely 0.01 percent of total property tax levies for Solano County and therefore somehow "miniscule." (Ibid.)

The EA in essence repeats this error. (EA, at pp. 3-42, 3-45, 3-46.) Except, the EA rounds up by $52 to make it an even $87,000. (So, thank you for that.)

First of all, the EA's characterization of the loss as "miniscule" is just sleight of hand, misdirection, hocus pocus, achieved by selecting as the denominator the sum of all property tax levies across the whole County. Why stop there? It is an even smaller percentage of total property tax levies in all of California, and an even smaller percentage of all property tax levies in the United States. Truly, by those measures, would it not be even more "miniscule"? In short, the EA's "study" is not objectively *reporting* that it is a small number, the study is instead blatantly trying to *make it seem* small. By picking a convenient denominator, the "study" reveals plainly that it has its thumb heavily on the scale, and its analysis can be dismissed out of hand as not bearing the necessary hallmarks of objectivity, rigor, and professionalism that BIA should insist upon in this and other analyses of this type.

Other related aspects of the EA and "study" that undermine confidence in the EA's analysis include the facts that it describes the Project as happening in Sonoma County (Section 3.7.2), cannot seem to decide what the population of the County is (compare Appendix A, p. 57

[449,218 persons], with EA, p. 3-41 [333,514 persons]), and seems oblivious to the fact that by far the largest employer in Solano County is Travis Air Force Base (see, Appendix A, p. 11).

Moreover, the "study" seems to be unaware that the Tribe has spent years and dollars making an argument to BIA and the federal District Court that "significant historical connection" can be demonstrated with a degree of documentation hitherto thought by BIA and other tribes to be too little, and the "study" therefore seems to assume that this Tribe will be the last to ever deploy that argument. Thus, the "study" just assumes without evidence that there will be no new tribal casino entrants into the regional market other than the few they have listed in the document. (Appendix A, at p. 30.) But, that is not a good assumption. If, by their account, this Tribe can build almost anywhere, so could every other tribe. To use the EA's language, if this Project moves forward, a better assumption would be that the regional market would become flooded and super-saturated with still more new casinos mutually "cannibalizing" one another and creating still more problem gamblers in an unfortunate and doomed race to the bottom. Thus, the EIS needs to analyze the reasonably foreseeable impacts of BIA taking the included action of determining that a degree of historical connection previously thought to be too little will now be sufficient, which determination would open the door to innumerable casinos throughout the region, and indeed throughout the United States. That aspect is part and parcel of this proposed overall action, not something distinct that BIA could ignore or defer analysis of.

Furthermore, the "study" appears to be misleading in its claim that surrounding casinos may catch up after an initial period of cannibalization. On page 31 of the "study" they posit a 3.1% average annual "growth" rate for casinos that they say is partly driven by "inflationary increases from 2023 to 2029." Then, on page 41, the study ignores having earlier included inflation effects in its purported "growth" figure and claims that the negative impacts due to the Project would wear off over a limited number of years to arrive back at the 2029 base level." However, in fact, from 2014 to 2024, the Consumer Price Index appears to have ranged from about 1.7 percent per year to about 5.6 percent per year, or on average between 2014 and 2023 about 3.3 percent. (US. Bureau of Labor Statistics, CPI figures [run 8/18/24] (Attached).) In other words, the average historical rate of inflation over the past ten years has been greater than the study's purported "growth" rate of revenues of 3.1% as reported in the study. This appears to mean that, rather than catching up, the injured casinos in the region will continue to fall behind by 0.2 percent each year. The cannibalization will be permanent and ever-widening, and there will be no recovery along the rosy lines imagined by the study.

Overall, the EA's socioeconomic "study" sort of feels like "hired gun" analysis, and it might very well fit that bill. In any event, it is wrong.

The fact is that the property tax loss for the parcels that are included in the proposed Project would not be miniscule but rather would be *one hundred percent* of taxes on those parcels. All of the property taxes that could otherwise be collected on those parcels will go away

if the property were taken into trust by BIA for the benefit of the Tribe. It is a complete loss for the community, within the relevant parcels.

And a permanent one. It would not be a loss of $86,948 *one time during just one year*. Rather, it would be a loss of at least that amount every year forever. So, depending on what assumptions one uses, the net present value of the monies lost to this generation and to all future generations in this community will be much more. Assuming a maximum annual increase of 2%, which compounds each year, by the year 2050 the annual loss will be at least $148,410 per year with still more compounding to come, every year to infinity. The total amount lost by 2050 would have been no less than $3,221,529. That is hardly "miniscule."

But even that $3.2 million figure would sell the County and its populace short. As explained with appropriate care, based on experience and relevant local market insight, by the County's Assessor-Recorder Office, the estimated first-year property tax revenue lost to the County is more appropriately estimated to be approximately $7,656,000 in the first year of build out, with a maximum 2% compounded increase each year after that. (Because of Proposition 13, the maximum would be 2%, but it could be less in some years.) The figure of $7,656,000 is based on a projected buildout of the Project site by a private developer constructing 419 residential multi-family units plus 730 residential homes. This is the scenario and tax figure that represents the best and most appropriate current forecast of lost property tax revenue due to the Project, not the puny number proposed by the EA. (See, Memorandum from Todd Cooper, (August 19, 2024).)

The reasons for this are pretty bland, obvious, and non-controversial.

First, it should go without saying that since the EA takes the position that the Project can be built on this site, BIA cannot now retort that the "419-plus-730 Residential project" somehow cannot be built. For purposes of this section of the analysis, BIA and the Tribe are estopped from disputing that some pragmatic constraint or site constraint bars feasibility of this scenario. (Even if it actually would, as we point out elsewhere. BIA and the Tribe are estopped, not us.)

Second, it is not a pie-in-the sky concept or mere speculative valuation, since it is based on actual comparable sales: a new multi-family project in Vallejo that recently received approval to build 429 units on 12.6 acres. (See, Memorandum from Todd Cooper, (August 19, 2024).)

Third, there is no reason to assume that a zoning change would not be granted for such a project, since: (1) zoning changes happen routinely all the time all over California; (2) the EA exhausts itself to no end trying to tout the supposedly vast economic yield from the one-time construction costs of the proposed casino Project, and the construction-related economic benefits of the "419-plus-730 Residential project" will be even bigger and even better, particularly for any tradesperson or union involved in constructing walls and electrical and the like, since the

casino would be literally just one big cavernous room and the "419-plus-730 Residential project" will instead be many hundreds of rooms; and (3) the "419-plus-730 Residential project" will help the City address housing issues for current residents (i.e., voters), help address regional housing issues, and might even bring in actual new residents to spend money within the City and contribute positively to the community in countless ways. If the proposed casino Project pencils out, so would this.

Fourth, do not lose sight of the fact that the City has already said that the current zoning of the site is something other than grass and dirt. The current zoning includes a regional commercial designation over a substantial part of the area. That is a signal from the City that we as a community want to do something on that site that is positive, forward-looking, and beneficial for the whole community. So, if regional commercial would be something we could envision, certainly this would easily be, especially since it would bring more value to the tax rolls.

This forecast of property tax revenue is patently feasible on its face – the anticipated views from the property alone make it sufficiently feasible. And, we are under no obligation to produce a living breathing developer with cash in hand who is ready, willing and able to build the "419-plus-730 Residential project" in 2024 or even in the next year or two. Actual, cash commitments are not required, in order for us to clear the bar of showing that this is a non-speculative scenario. Climb up on that hillside some time, take a look outward at sunset, and you will readily agree that there are plenty of multi-family/single-family residential developments in Northern California that have been built with far less going for them. And even if that were not true, we would nonetheless be entitled to enjoy from BIA whatever degree of if-you-build-it-they-will-come confidence the Tribe purports to claim in their various analyses elsewhere in the EA.

The proposed Project would remove the property from the tax rolls forever. Somewhere in that time frame, it is reasonable to forecast that zoning for the "419-plus-730 Residential project" could be obtained. Also, as noted elsewhere, at some point in time the Solano 360 project will be carried out on the Solano County Fairgrounds, and this will lend yet a further boost to the feasibility and near-term practicality of implementing the "419-plus-730 Residential project."

The actions the City has taken already in zoning the property as it is, and the actions the Tribe has taken already in proposing the Project as it is, are all of the evidence that one needs to dispel any weak objection that this scenario might be beyond the duty of BIA to regard as the basis for the lost property tax revenue estimation.

With a maximum of 2% increase each year, compounding annually, the annual amount of property taxes lost in Year 2050 will be $12,314,196, with more compounding to come every

year until infinity, and the total lost from 2026 through 2050 would be approximately $245,223,975 (for all taxing entities). To put that in perspective, the amount of property tax revenue that will be lost to all taxing entities in the County during that same twenty-five year period would be roughly equivalent to more than four times the current total budget of the City of Vallejo Police Department (which is approximately $59 million for FY 24-25). Put another way, the surrounding community could buy the fiscal equivalent of four whole new police departments with that same money. Again, hardly "miniscule."

25. The EA's discussion of the County Fairgrounds and Solano 360 is defective.

The EA fails to adequately discuss impacts on the Solano County Fairgrounds and Solano 360. Among the issues that the EA fails to reckon with are: (1) the catastrophic effect the proposed Project would have on the Fair's satellite wagering facility; (2) the existing nearly insurmountable traffic problems at the junction of Highway 80 and Highway 37, as well as on Fairgrounds Drive; (3) the diversion of event revenue from the Fair Association to the casino development, further depleting revenue streams used to support the County Fair; (4) impacts on the Fair's ability to attract affordable quality live entertainment acts for the Fair; (5) worsening of water pollution and sewage problems in an area already described by the state as being in "desperate need"; and (6) the fact that the proposed Project would directly undermine efforts already under way for the redevelopment of the Fair property. (Letter from Thomas B. Keaney, Sr., CEO, Solano County Fair Association (August 19, 2024) (Attached).)

26. The EA's discussion of police response is defective.

The EA fails to account for the fact that the City of Vallejo proclaimed an emergency with regard to police staffing and services. (See Staff Report, City of Vallejo, February 13, 2024 (Attached); Staff Report, City of Vallejo, July 25, 2023 (Attached); City of Vallejo, *An Emergency Proclamation of the City Council of the City of Vallejo Proclaiming a Public Safety Staffing Emergency in the Vallejo Police Department*, July 25, 2023 (Attached).)

The Vallejo Police Department is currently authorized to have 132 sworn officers but is currently down to 62, with just 36 officers assigned to the patrol division. Because of its inability to fill police staffing levels, Vallejo city leaders appealed to Solano County officials for assistance in providing police services to the City of Vallejo community. California State Senator Bill Dodd sponsored legislation, SB1379, that would create an exception for California Public Employees' Retirement System ("CalPERS") retirees hired by the Solano County Sheriff's Office to be exempt from the Public Employees' Pension Reform Act's ("PEPRA") 960-hour post-retirement earnings limit in order to free up active duty Sheriff deputies to assist in responding to emergency calls in the City of Vallejo. Such bill is currently awaiting final action in the California State Senate before being presented to Governor Newsom for approval. (See, Senate Bill 1379 (Attached); see also, Senate Floor Analysis for SB 1379 (Attached) [providing

further background on the Bill as well as discussion of some of the overall fiscal (e.g., city bankruptcy, closure of shipyard) and law enforcement challenges faced by the City].)

27. The EA's discussion of traffic is defective.

The EA's discussion of traffic and transportation impacts is defective. (EA, pp. 3-50 et seq.; EA Appendix K.)

The EA does not include a comprehensive analysis of the impact on local and regional public transit systems on page 3-53. The assessment mentions nearby transit services but fails to fully explore how increased ridership, especially during peak casino hours or events, might strain these services or necessitate additional resources.

The EA uses incorrect assumptions when it says the queuing impacts at specific intersections would not result in safety concerns on page 3-56. The report underestimates the potential safety risks associated with extended queue lengths that could affect nearby freeway interchanges, particularly at Intersection #1 (Columbus Parkway at Admiral Callaghan Lane and the Project entrance), where the EA acknowledges but downplays the risk of queuing extending into the SR 37/I-80 interchange.

The EA does not account for the Vehicle Miles Traveled ("VMT") impact caused by construction. This analysis should be included to fully assess the environmental impact of the development.

The EA uses incorrect assumptions when it says that mitigation measures such as widening Columbus Parkway will fully reduce the impact to less than significant levels at page 3-115. The EA underestimates the complexity and potential delays associated with implementing such infrastructure improvements in a densely developed area with ongoing traffic. Additional or alternative mitigation strategies should be considered, including enhanced public transit options (like shuttle services and increased bus frequency), traffic signal optimization, access management strategies (such as dedicated turn lanes and alternative access points), and parking management initiatives. Improvements to non-vehicular infrastructure, special event traffic management plans, and regional traffic coordination are also necessary to comprehensively address the potential impacts. These measures would provide a more robust approach to managing traffic, ensuring that the mitigation efforts are effective and feasible.

The EA is inaccurate when it states that bicycle and pedestrian impacts are less than significant on page 3-56 and that the project alternatives would not affect the development of bicycle, pedestrian, and transit networks on page 3-115. The EA fails to adequately consider the limited existing infrastructure and does not propose necessary improvements to ensure safe and efficient non-vehicular access to the site. Additionally, it overlooks the potential increase in

demand for these networks due to the cumulative effects of the casino project and other regional developments by 2045, which could result in safety hazards given the anticipated rise in traffic.

The EA does not include a comprehensive analysis of the long-term impacts of cumulative traffic on emergency vehicle access, particularly at Intersection #1(Columbus Parkway at Admiral Callaghan Lane and the Project entrance), at page 3-115. While the discussion acknowledges potential queuing issues, it fails to address how these could affect emergency response times, especially during traffic congestion at key intersections. Additionally, the EA is misleading in suggesting that cumulative traffic impacts will be fully mitigated by 2045. The projected traffic growth and associated queuing problems indicate that significant operational challenges may persist at this intersection, which are not fully acknowledged in the report.

A full environmental analysis in the form of an EIS is needed to properly look at these issues concerning traffic, transportation, and circulation.

(Memorandum from Pejman Mehrfar (August 21, 2024) (Attached).)

28. Incorporation by reference.

For purposes of exhaustion of administrative remedies and preservation of the right to appeal or challenge the agency's action(s) in any future administrative appeal or litigation, this paragraph incorporates by reference issues and arguments that the County may choose to adopt that are critical of and opposed to the Project, its NEPA analysis, and other Project-related determinations, and that are appropriately raised and to be raised by other commenters in connection with NEPA, IGRA, and in connection with all other aspects of the proposed Project and associated federal and state action(s). The County asserts and reserves the right to challenge the agency's action(s) on the basis of any adverse or critical issue appearing in any comment letter or elsewhere in the agency's administrative record of its action(s).

*** * ***

It is beyond our ability to fix the overall federal policy regime in which this Project is coming forward. But perhaps we may at least briefly note that we are aware of the opposition of other nearby tribes to this Project, and perhaps it can be acknowledged that there is something amiss about a federal policy regime that pits tribe against tribe while purporting to further the goal of remediating a colonial history of divide and conquer. From our limited vantage point as a county, we do not know how to correct that, but would say generally that something is obviously amiss with what you are doing, as you are no doubt aware.

We urge you to heed the spirit in which Interior has previously said it was planning to proceed in these matters, namely that "the interests of the regional and local community should be taken into account during the NEPA process." (73 Fed. Reg. 61297 (Oct. 15, 2008) [Dept. of the Interior, *Final Rule, Implementation of the National Environmental Policy Act of 1969*].)

If I may be of any assistance in this matter, please do not hesitate to contact me.

Sincerely,

Lee Axelrad, J.D., M.C.P.
Deputy County Counsel

Attachments:

- Letter to Lawrence Roberts, Acting Assistant Secretary for Indian Affairs, from Erin Hannigan, Chair, Solano County Board of Supervisors, August 23, 2016
- Letter to Lawrence Roberts, Acting Assistant Secretary for Indian Affairs, from John M. Vasquez, Solano County Supervisor, October 4, 2016
- Letter to Sally Jewell, Secretary, Department of the Interior, from Dianne Feinstein, U.S. Senator, Mike Thompson, Member of Congress, Doug LaMalfa, Member of Congress, and John Garamendi, Member of Congress, November 29, 2016
- Letter to Lawrence Roberts, Principal Deputy Assistant Secretary for Indian Affairs, from Davina Smith, Deputy County Counsel, Solano County, December 23, 2016, with copies to John R. Hay, Assistant Solicitor, Division of Indian Affairs, Jennifer Turner, Acting Assistant Solicitor, Division of Indian Affairs, and Bethany Sullivan, Attorney, Division of Indian Affairs
- Indian Lands Opinion, Letter from John Tahsuda, Principal Deputy Assistant Secretary – Indian Affairs, to Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians, February 7, 2019
- Memorandum Opinion, Scotts Valley Band of Pomo Indians v. U.S. Dept. of the Interior, Case No. 19-1544, September 30, 2022

- Letter to Bryan Newland, Assistant Secretary-Indian Affairs, and Oliver Whaley, Director, Office of Regulatory Affairs & Collaborative Action, from Graham Knaus, Executive Director, California State Association of Counties, February 28, 2023
- Letter to Bryan Newland, Assistant Secretary for Indian Affairs, and Wizipan Garriott, Principal Deputy Assistant Secretary for Indian Affairs, from John M. Vasquez, Chair, Solano County Board of Supervisors, July 31, 2023
- Letter to Deb Haaland, Secretary of the Interior, from Mitch Mashburn, Chair, Solano County Board of Supervisors, April 3, 2024
- Testimony of David Rabbitt, Supervisor, Sonoma County, California, before the U.S. House of Representatives House Natural Resources Subcommittee on Indian and Insular Affairs, on behalf of the National Association of Counties, June 26, 2024
- Notice of Gaming Land Acquisition Application, Bureau of Indian Affairs, Real Estate Services, concerning Scotts Valley Band of Pomo Indians, Distribution List including Solano County Assessor, Treasurer-Tax Collector, and Board of Supervisors, July 5, 2024
- Memorandum from Assistant Secretary-Indian Affairs, to All Regional Directors, regarding September 2007 Checklist for Gaming Acquisitions, Gaming-related Acquisitions, and Two-Part Determinations Under Section 20(b)(1)(A) of the Indian Gaming Regulatory Act, September 21, 2007
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- Final Designation of Disadvantaged Communities Pursuant to Senate Bill 535 (May 2022)
- Charlene Wear Simmons, California Research Bureau, Gambling in the Golden State 1998 Forward (May 2006)
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- CDC Museum Covid-19 Timeline [https://www.cdc.gov/museum/timeline/covid19.html]; Steve Gorman, *Hundreds of U.S. evacuees from China placed under coronavirus quarantine at military bases*, Reuters (Feb. 5, 2020) [https://www.reuters.com/article/uk-china-health-wuhan-usa-idUKKBN1ZZ1LW].
- Steve Gorman, Hundreds of U.S. evacuees from China placed under coronavirus quarantine at military bases, Reuters (Feb. 5, 2020) [https://www.reuters.com/article/uk-china-health-wuhan-usa-idUKKBN1ZZ1LW]
- Thomas Fuller, Asserting Sovereignty, Indian Casinos Defy California's Governor and Reopen, New York Times (May 30, 2020) [https://www.nytimes.com/2020/05/28/us/california-virus-casinos.html].
- Memorandum from Misty Kaltreider (August 15, 2024)
- Memorandum from Benjamin Gammon (August 20, 2024)
- City of Vallejo 2020 Urban Water Management Plan
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- Letter from Cynthia Hallett, Americans for Nonsmokers' Rights, to Jon Ford, National Council of Legislators from Gaming States, September 14, 2022
- Letter from Keith Whyte, National Council on Problem Gaming, to Members of the New Jersey Senate, August 16, 2022

- CDC, State Gaming System Gaming Facilities Fact Sheet [https://www.cdc.gov/statesystem/factsheets/gaming/Gaming.html#print] (visited 8/12/24)
- Solano County Community Wildfire Protection Plan [https://www.solanocounty.com/depts/oes/emergency_plans.asp]
- Solano County Emergency Operations Plan, Solano County Multi-Jurisdictional Hazard Mitigation Plan [https://www.solanocounty.com/depts/oes/emergency_plans.asp]
- 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/pressdocs/2022.10.10%20-%20Wildfire%20Guidance.pdf.]
- Website of Scotts Valley Band of Pomo Indians, Tribal Heritage [https://www.scottsvalley-nsn.gov/heritage] (visited 8/11/24)
- Declaration of Patricia Franklin, August 10, 2016
- Letter from Matthew Lee, Senior Advisor for Tribal Negotiations & Deputy Legal Affairs Secretary Office of Governor Gavin Newsom, to Bryan Newland, Assistant Secretary-Indian Affairs, August 16, 2024
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- Presidential Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States (January 26, 2021)
- Douglas Quan, Is it ethical for Canadian casinos to so aggressively target Asians? It's hard to say – they're not talking, National Post (February 21, 2017)
- US. Bureau of Labor Statistics, CPI figures (run 8/18/24)
- Memorandum from Todd Cooper, (August 19, 2024)
- Letter from Thomas B. Keaney, Sr., CEO, Solano County Fair Association (August 19, 2024)
- Staff Report, City of Vallejo, February 13, 2024
- Staff Report, City of Vallejo, July 25, 2023

- City of Vallejo, An Emergency Proclamation of the City Council of the City of Vallejo Proclaiming a Public Safety Staffing Emergency in the Vallejo Police Department, July 25, 2023
- Senate Bill 1379
- Senate Floor Analysis for SB 1379
- Memorandum from Pejman Mehrfar (August 21, 2024)

cc: *With attachments* -
Chad Broussard, Environmental Protection Specialist, BIA
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Attachments made available by provision of URL link to attachments document -
Laura Daniel-Davis, Acting Deputy Secretary, Department of the Interior
Bryan Newland, Assistant Secretary-Indian Affairs, Department of the Interior
Wizipan Garriott, Principal Deputy Asst. Secretary-Indian Affairs, Dept. of the Interior
Hon. Alex Padilla, United States Senator
Hon. Laphonza Butler, United States Senator
Hon. Mike Thompson, United States Representative
Hon. John Garamendi, United States Representative
Hon. Gavin Newsom, Governor
Hon. Eleni Kounalakis, Lieutenant Governor
Hon. Bill Dodd, Senator, California State Senate
Hon. Cecilia Aguiar-Curry, Majority Leader, California Assembly
Hon. Lori Wilson, Member, California Assembly
Matthew Lee, Senior Advisor for Tribal Negotiations
& Deputy Legal Affairs Secretary Office of Governor Gavin Newsom
Solano County Board of Supervisors
Bill Emlen, Solano County Administrator
Bernadette S. Curry, Solano County Counsel
Mayor Robert H. McConnell, City of Vallejo
Andrew Murray, City Manager, City of Vallejo
Veronica Nebb, City Attorney, City of Vallejo
Anthony Roberts, Tribal Chairman, Yocha Dehe Wintun Nation
Sarah Choi, Director of Legal, Yocha Dehe Wintun Nation
Matthew G. Adams, Kaplan, Kirsch, & Rockwell

County of Solano EA Comments Scotts Valley Casino Project

(Aug. 21, 2024)

Due to large file size of the attachments, a link to the attachments is provided.

https://www.solanocounty.com/depts/rm/documents/eir/scotts_valley_casino_and_tribal_housing_project/default.asp