August 22, 2024

Chad Broussard
Environmental Protection Specialist
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Re: Comments on Environmental Assessment for Scotts Valley Casino and Tribal Housing Project

Dear Mr. Broussard:

This letter and its attachments and enclosures provide comments from the Yocha Dehe Wintun Nation on the Environmental Assessment ("EA") prepared for the Scotts Valley Casino and Tribal Housing Project ("Project").

As you should know by now, the proposed Project site is within the ancestral lands of our Patwin people, between the historic villages of *Aguasto* and *Suskol*. The California Native American Heritage Commission has identified Yocha Dehe as the most likely descendant of Native American human remains found in the City of Vallejo and Solano County. Indeed, Yocha Dehe is party to a cultural easement agreement with the City to protect Patwin cultural sites in Vallejo parks. Over the years, Yocha Dehe has worked with property owners, developers, and regulatory agencies to protect Patwin cultural resources at hundreds of sites throughout Solano County and its surrounds.

Truly, nothing is more important to us than our Patwin ancestral lands, their ecology, and the cultural resources found there.

You can imagine our concern, then, upon reviewing the EA. It is a sorry excuse for an environmental analysis – less a good-faith attempt to identify and avoid environmental harm than a rushed effort to reach a pre-determined outcome.

In their haste to justify Scotts Valley's Project, the document's preparers have glossed over, dismissed, or entirely failed to address obviously significant impacts to cultural resources, protected species, wetlands, water, air quality, traffic, and environmental justice, among others. And, more fundamentally, they have ignored

clear evidence, in Scotts Valley's own grading plans, that the Project simply cannot be constructed as proposed.

To date, the BIA's process has been equally pitiful. Beginning in November 2023, we twice asked the Department of the Interior to establish a clear, transparent process for addressing any proposal Scotts Valley might advance; we never received any response. Seeking clarity, we contacted your office to formally request notice and consultation in connection with any Scotts Valley environmental review; once again, we received no response. Then you released the EA over a holiday weekend, without any advance notice to affected tribes, local governments, or other interested parties, ignoring mandatory agency procedures specifying that "[w]hen BIA determines that Tribal governments could be affected by a proposed action, Tribal governments are to be consulted during the preparation of environmental documents…" 516 DM 10.5, § 10.3.

The pages that follow, and the expert materials attached, address in detail many of the BIA's substantive and procedural errors. But it is also important not to lose sight of the big picture. Here, the BIA has published thousands of pages of "analysis" without ever confronting one of the fundamental issues at stake:

You are proposing to permit another tribe from another part of California, without any ancestral connection to this area, to bulldoze a Patwin cultural site in order to build its own government headquarters and casino.

Worse, you are proposing to greenlight this land grab without preparing the comprehensive Environmental Impact Statement ("EIS") clearly called for by the National Environmental Policy Act, by the BIA's own procedures, and by more than two decades of consistent agency precedent for environmental review of Northern California tribal casino projects.

It is long past time to restore some integrity to this environmental review process. We must respectfully insist that you re-consider the proposed action and prepare a comprehensive, unbiased EIS evaluating other, less damaging alternatives, in full consultation with affected tribes and local governments.

If BIA fails to take these steps, it will not have a legally adequate basis for reaching a decision in this matter.

Wile bo,

Anthony Roberts
Tribal Chairman

cc: Amy Dutschke, Regional Director, Bureau of Indian Affairs

Yocha Dehe Wintun Nation Comments on Draft Environmental Assessment

The Draft EA prepared for the Scotts Valley Casino and Tribal Housing Fee-to-Trust Project fails to meet even the most basic requirements of the NEPA.

- An EA must evaluate the environmental consequences of each aspect of a proposed project; here, the EA fails to disclose a substantial mixed-use development proposed for three of the project's four parcels.

- An EA must use reliable, high-quality information to fairly assess the significance of the proposed action's environmental consequences; here, the EA uses outdated, unreliable data and ignores clearly significant environmental issues.

- An EA must develop and study alternatives to the proposed action whenever there are unresolved conflicts concerning environmental resources; here, the EA fails to consider in detail a single alternative location, despite the existence of significant, indisputable conflicts concerning the ecological and cultural features of the proposed Project site.

- In preparing an EA, the lead federal agency must include relevant Indigenous Knowledge; here the BIA excluded indigenous Patwin tribes from the EA's preparation.

- In preparing an EA, the lead federal agency must integrate its NEPA compliance with other planning and environmental requirements; here the BIA has impermissibly deferred its Endangered Species Act and National Historic Preservation Act obligations, leaving interested parties without essential information.

We elaborate further in the detailed comments below, which confirm that the EA must be withdrawn and the Project should be reconsidered.

I. Global Issues

Three fundamental flaws infect the entirety of the EA.

A. Unstable and Misleading Scope

Where, as here, NEPA is triggered by a fee-to-trust application, the environmental analysis must identify, disclose, and evaluate any and all reasonably foreseeable activities planned or proposed for the trust properties. The EA is woefully inadequate in this regard.

First, the document fails to account for – or even to mention – the Solano Ranch project, a mixed-use development consisting of 264 multi-family residential units and 32,725 square feet of commercial space, that is proposed to be built on three of the four parcels that would be placed into trust for Scotts Valley. That's right: Scotts Valley's proposed trust parcels include a large mixed-use development *that is nowhere mentioned in the EA*. How could this have happened? After all, the Solano Ranch project has been the subject of years of public notices – in fact, a California Environmental Quality Act notice for Solano Ranch was just issued on May 1, 2024. Perhaps Scotts Valley never disclosed Solano Ranch to the BIA. Or perhaps the preparers of the EA neglected to do any diligence. Or perhaps the BIA was so focused on rushing toward its pre-determined outcome that it simply disregarded the facts on the ground. Whatever the reason, the result is clear – the EA must be withdrawn.

Second, the EA does not match Scotts Valley's own statements about its plans for the trust property. On January 29, 2016, Scotts Valley Tribal Secretary Patricia Franklin executed a sworn declaration, under penalty of perjury, stating that the band planned to develop both a "gaming facility" and a "hotel resort," along with "homes to house most, if not all, of [Scotts Valley's] members." On November 29, 2017, Scotts Valley Tribal Secretary Gabriel Ray executed a sworn declaration, under penalty of perjury, stating that the band proposed to build "a minimum of 100 tribal homesites" and, again, both a casino and a resort. On that same day, Scotts Valley Chairman Shawn Davis executed a sworn declaration stating, among other things, that the development would include a 5-story hotel. Each of these declarations is part of the fee-to-trust application that triggered this NEPA review. They are reasonably foreseeable consequences of approving the proposed fee-to-trust transfer. But the EA does not address the possibility of building 100 homes or a 5-story hotel. If those are part of Scotts Valley's plans for the trust parcels, they must be disclosed, explained, and evaluated in the BIA's environmental document. Or, if they will not be built, BIA must obtain an enforceable commitment to that effect.

B. High-Quality Information and Indigenous Knowledge

Fundamental to NEPA is the mandate that "[i]n preparing environmental documents, agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge." 40 C.F.R. § 1506.6(b).

The EA falls well short of meeting this basic requirement. Cramped, rushed, and seemingly prepared for the purpose of justifying a pre-determined outcome, the document relies on out-of-date information, fails to consider contrary data and evidence, leaves significant information gaps, and, in both its preparation and its contents, has excluded Patwin tribes indigenous to the Project area.

First, the EA is riddled with examples of outdated, low-quality, or otherwise reliable data. A few (of the many) examples include:

- Relying on surveys for California Red-Legged Frog (a protected species) that were conducted in 2007.

- Relying on trip generation counts taken from rural casinos in 2005 and 2006. *See* Part III.

- Incomplete, missing, and absurdly inaccurate site plans, some of which purport to show water flowing uphill. *See* Part VI.

- Dismissal of Project alternatives based on a 2008 study. *See* Part XV.

- Failure to consider evidence submitted by Yocha Dehe in 2016-2019 proceedings before the Department of the Interior, while simultaneously relying on material submitted by Scotts Valley in those same proceedings. *See* Part II.

Second, Patwin tribes indigenous to the Project area were excluded from the EA's preparation and, as a result, the document fails to incorporate Indigenous Knowledge. *See* 40 C.F.R. § 1506.6(b); 516 DM 10.5, § 10.3. Concerned about Scotts Valley's efforts to appropriate our ancestral lands, we asked the Department of the Interior on three separate occasions to set a fair and transparent process in which we could meaningfully participate. We received no response to any of those requests. Kept in the dark, without any way to know whether a decision-making process was under way, on June 11, 2024, we wrote to your office formally requesting to be consulted on the preparation of any environmental review document that might be under preparation. You did not respond either. Instead, without advance notice to affected Patwin tribes (or other local

stakeholders), you released the EA over a holiday weekend. In process and in content, the EA is the very antithesis NEPA's commitment to incorporate Indigenous Knowledge in environmental documents.

It makes no difference that the Project proponent is itself a tribal government. Although Scotts Valley (falsely) claims a connection to Vallejo, that claim is not based on any aboriginal or ancestral tie; rather, Scotts Valley asserts that its Pomo people may have been forced to labor on Sonoma County ranchos during the mid-1800s. In fact, in previous litigation, Scotts Valley has conceded that "its villages were located further north, around Clear Lake, in pre-contact times, with Patwin villages located in the south near the [Project site]." By its own admission, Scotts Valley is not indigenous to the Project area. And its knowledge, whatever it may be worth, cannot substitute for the expertise and wisdom of those whose Patwin ancestors actually used and occupied the lands at issue in pre-contact times.

C. Page Limits

NEPA requires that EAs "shall not exceed 75 pages, not including any citations or appendices." 42 U.S.C. § 4336a(e)(2); 40 C.F.R. § 1501.5(g). This is not just a clerical requirement – it helps agencies distinguish between straightforward actions with limited environmental consequences (*i.e.,* those suitable for an EA), which can readily be addressed within that page limit, and more complex and impactful actions (*i.e.,* those for which an EIS is needed), which cannot.

For NEPA's purposes, "page" is defined as "500 words," not including "citations, explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information." 40 C.F.R. § 1508.1(bb). But, to prevent agencies from gaming EA page restrictions, CEQ has directed agencies to "limit the visual elements in the body of the document to those that enhance comprehensibility. . . ." 89 Fed. Reg. 35,442, 35,549 (May 1, 2024). There is no waiver or exception to the page limits on EAs. *See* U.S. Department of the Interior, Environmental Statement Memorandum No. ESM 13-14 at 1.

The EA violates these clear directions. On its face, the main body of the EA is 191 pages. (The appendices – many of which contain material normally found in the body of a NEPA document – include more than 2,000 additional pages.) After excluding the cover, table of contents, maps, photos, other graphics, and references, the main body is 136 pages, nearly 80% overlength.

In apparent recognition of their inability to stay within the 75-page limit, the EA's preparers have tried to game the requirement by dressing up much of their narrative and analysis as "tables" and "charts." The result is an indecipherable mess which undermines NEPA's fundamental informational purposes. *See Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 996 (9th Cir. 2004); 89 Fed. Reg. 35,442, 35,549 (May 1, 2024). And it *still* doesn't fit within the page limit – even if the EA's transparent efforts to game the requirements are allowed (and they should not be), the document would be roughly 39,000 words, clearly over the limit.

To properly inform decision-makers, interested parties, and the public at large of the Project's significant environmental consequences, an EIS (providing far more room for analysis) must be prepared.

II. Cultural Resources

As noted above, the proposed Project site is within the ancestral lands of our Patwin people, between the historic villages of *Aguasto* and *Suskol*. The California Native American Heritage Commission ("NAHC") has identified Yocha Dehe as the most likely descendant of Native American human remains found in Vallejo and Solano County. Yocha Dehe is party to a cultural easement agreement with the City of Vallejo to protect Patwin cultural sites in Vallejo parks. And, over the years, Yocha Dehe has worked with property owners, developers, and regulatory agencies to protect Patwin cultural resources at hundreds of sites throughout Solano County and its surrounds.

Indeed, the Project contains a known and recorded Patwin cultural site and is surrounded by several other sites as well. Scotts Valley is proposing to bulldoze one of these – a site known as CA-SOL-275 – as part of Project construction.

In other words, approval of the Project would allow a Pomo tribe from a very different part of California, without any ancestral connection to this area, to destroy a Patwin cultural site in order to build its own government headquarters and casino.

Given the importance and sensitivity of this issue, we would have expected the BIA to approach it seriously, thoughtfully, respectfully, and with a commitment to fair, unbiased analysis. Just the opposite has occurred. The preparers of the EA systematically excluded Yocha Dehe and other Patwin tribes from the document's preparation, ignoring our specific requests, the NAHC's direction, and the clear requirements of NEPA. And the EA is anything but fair and unbiased. Instead, it presents an incomplete, misleading – and in many cases flat wrong – account of the relevant facts and cultural issues.

The EA falsely suggests Scotts Valley has a historic connection to the Vallejo area, relying on reports submitted by Scotts Valley in a 2016-2019 Department of the Interior proceeding denying Scotts Valley's request for a restored lands determination. In contrast, the EA does not cite to, reference, or describe any of the 1,000-plus pages of expert reports, historical documents, and other evidence submitted by Yocha Dehe in that same proceeding, which clearly demonstrate Scotts Valley lacks a significant historical connection to Vallejo. Indeed, in 2019 *the Department of the Interior found Yocha Dehe's material more persuasive*. The preparers of the EA do not even seem to have reviewed Yocha Dehe's evidence, even though it has been in BIA's (and Scotts Valley's) files since at least 2019. Refusal to consider Yocha Dehe's evidence in the context of the EA's cultural resources analysis – while simultaneously relying on documents submitted by Scotts Valley in the very same proceeding – is the essence of arbitrary and capricious decision-making.

The EA lists Yocha Dehe as one of the entities "consulted during preparation of the EA." BIA should know better. On June 11, 2024, Yocha Dehe requested to be consulted in the preparation of any environmental review document that might be prepared for Scotts Valley's proposal. Your office never responded. In mid-June, we received a mass mailing from a company called "Natural Investigations," asking us to disclose any information we might have about cultural resources at the Project site. In response, we explained that we were aware of cultural resources at the site, but (obviously) needed information about the Project (which had not yet been published) and assurances of confidentiality in order to provide detailed substantive input. We also asked whether consultation was anticipated. Natural Investigations replied that it could not provide any information about the proposed project and promised that consultation with BIA would occur at some point in the future. As if to avoid any ambiguity on that latter point, the reply clearly states that the company's outreach was "in no way intended to be the government-to-government consultation that will take place between BIA and sovereign tribal governments." BIA never did convene a government-to-government consultation. Instead, it simply issued the EA. Under no circumstances can this disrespectful sham of a process be reasonably considered "consultation" on the EA's preparation.

Compounding these errors, the BIA has failed to align the NEPA process with its consultation obligations under section 106 of the National Historic Preservation Act ("NHPA"). NEPA directs that these processes be coordinated to the fullest extent possible. And Yocha Dehe is clearly among the parties entitled to participate in the Section 106 process. But, to our knowledge, no such process has been initiated.

By failing to consider evidence already on file, failing consult with Yocha Dehe on the preparation of the EA, and (apparently) failing to initiate a Section 106 process, BIA has

also failed to meet its obligation to incorporate relevant Indigenous Knowledge into environmental documents. *See* Part I; *see also* 40 C.F.R. §§ 1500.2(d), 1506.6. And that failure, in turn, has led BIA even farther astray:

- Without the benefit of Patwin Indigenous Knowledge, the EA does not account for the significant cultural impact the Project would have on Yocha Dehe. Connection to ancestral lands is an important part of our Patwin spirituality and identity – for example, to explain where we are "from" in our language, we say that we are "of" (or sometimes "part of") that place. Places and territories have meanings and identities. And land-based ethic is the way we pass down Patwin culture and values to future generations. Much more could be said within a consultation process – a more appropriate setting, which you have so far denied us. But for purposes of this public comment, the bottom line is that giving Patwin ancestral lands to another tribe will cause us, as Patwin people, significant, irreparable cultural and spiritual harm.

- BIA's failure to incorporate Patwin Indigenous Knowledge also leads it to mistakenly suggest CA-SOL-275 is ineligible for listing in the National Register. The EA suggests the site is insignificant because few chert blanks were found there. It does not account for Patwin stoneworking processes. It does not properly value the site as a source of steatite, one of the materials from which ceremonial beads were made. And, most fundamentally, the document does not seem to place CA-SOL-275 within the broader context of the network of Patwin sites located in the same range of hills.

- In a similar vein, the EA mistakenly suggests the Project site has only a "moderate" potential to contain other culturally important resources. As descendants of the Patwin people who once used and occupied the area, that is certainly not our understanding. But the EA's preparers never consulted us. And it's not entirely clear what, if any, evidence the document relies on for its conclusions.

These errors can only be corrected through genuine, good-faith government-to-government consultation, consistent with the principles in Executive Order 13175, White House Standards for Tribal Consultation, 512 DM 4, and 512 DM 5 (among other authorities).

The EA's proposed cultural resources mitigation measures are likewise deficient. As drafted, they would give Scotts Valley the right to develop and implement a cultural monitoring program at a Patwin site. This would intensify the Project's impact, not alleviate it.

More fundamentally, approval of the Project threatens to strip Yocha Dehe of its current rights under state laws governing appropriate treatment of tribal cultural resources. The Project site is currently subject to state laws which effectively provide that when Native American human remains and associated cultural resources are found within Patwin ancestral territory, Patwin tribes like Yocha Dehe are entitled to play a primary role in determining the most appropriate treatment. *See* Cal. Health & Safety Code §§ 5097.9-5097.98, 7050.5. Approving the Project would place the land into trust, at which point the Native American Graves and Repatriation Act ("NAGPRA") would apply. Unlike state law, NAGPRA prioritizes proximity over ancestral affiliation. 43 C.F.R. § 10.7. As a result, Yocha Dehe would be deprived of its current right to determine proper treatment of its Patwin ancestors. This, too, is a significant, unmitigable impact.

Additional information on deficiencies in the EA's cultural resource analysis can be found in Exhibit A.

III. Traffic

The EA does not provide anything approaching a hard look at traffic and transportation issues. Among other things, the document fails to provide any analysis of weekend conditions, when traffic is likely to peak; it uses outdated traffic generation estimates developed in unrelated and inapplicable purposes; it misrepresents the limited data collection undertaken by the EA's preparers; it fails to address freeway congestion; it does not provide any analysis of local roadway operations; it fails to address critical safety issues, including freeway ramps, emergency access, and wildfire evacuation; it applies thresholds of significance that are inconsistent with the City of Vallejo's traffic impact analysis guidelines; and its cumulative forecasts fail to account for the City's modeling requirements, omit major traffic generators, and are contradicted by recent studies performed for nearby projects. The EA's most glaring deficiencies include the following:

- The EA does not evaluate weekend traffic conditions or impacts. This is not a small omission – both the Scotts Valley project (casino and event venue uses) and the surrounding area (large retail establishments like Costco, Home Depot, and movie theaters; a major theme park; the Solano County fairgrounds; regional transportation links to wine country destinations) involve land uses that generate peak traffic on weekends. Moreover:

    - Traffic studies for nearby non-casino projects have determined that traffic conditions in the surrounding area peak on weekends.

- The Institute of Transportation Engineers *Trip Generation Manual, 11th Edition* – the national industry standard for traffic analysis – shows that casino trip generation is approximately 30% higher on weekends than on weekdays.

- The EA relies on trip generation rates pulled from the Traffic Impact Analysis of the 2019 Tejon Casino Project. The Tejon analysis found casino trip generation peaks on Saturdays – in fact, it showed that weekend traffic would be roughly 45% higher than weekday traffic.

- Weekend traffic analysis is standard practice. Other current or recently-completed BIA NEPA documents for California gaming projects (Redding, Coquille, Koi) all include detailed analysis of weekend traffic scenarios. There is no sound basis – and BIA has not even attempted to suggest a basis, sound or otherwise – for omitting a weekend analysis here.

- The EA does not assess the proposed action's potentially significant effects on interchange safety. The California Department of Transportation directs that "[i]f [a] Project adds two of more car lengths to the ramp queue that would extend into the freeway mainline, then the location must be reviewed for traffic safety impacts." *See Caltrans Local Development Review Safety Review Practitioners Guide* [Caltrans Division of Safety Programs, 2024]. This review "must evaluate speed differential between the off-ramp queue and mainline of the freeway during the same period." *Id*. The EA provides no such analysis. This omission is especially problematic given: (i) the complex geometry of the I-80 / SR 37 / Auto Mall Parkway interchange, which includes an I-80 off-ramp terminating in a stop sign; (ii) the overall traffic volumes involved in the proposed action; and (iii) Scotts Valley's proposal to develop a large event venue, which would attract significant peaks around event start and end times. A full safety analysis should be performed for all potentially affected area interchanges.

- The EA confirms the Vallejo site is in a High Fire Hazard Severity Zone. In addition, the United States Forest Service's 2020 Geospatial Data Discovery Map shows the project site in the Wildland Urban Interface. After the 2018 Camp Fire, evaluating wildfire risks and evacuation near the Wildland Urban Interface has become industry standard in California. After all, lives are at stake. In 2020, the California Attorney General's Office published guidance for analyzing and mitigating wildfire impacts of development projects. These guidelines are normally followed in both CEQA and NEPA documents. In fact, BIA references and applies the Attorney General's guidance in its current NEPA review of the Koi

Nation's proposed gaming project. But in its apparent effort to rush through the Scotts Valley environmental review, Scotts Valley and BIA omitted the entire topic from the EA. Given the nature and location of the Scotts Valley project – and the potentially deadly consequences of failing to properly account for wildfire risks – this omission is inexcusable.

- The project does not provide adequate emergency vehicle access. The EA shows a single roadway connection to the Auto Mall Parkway / Admiral Callaghan Lane intersection. Apparently recognizing that a second access point is needed for safety in this location, it also states that "a secondary emergency access would be provided by a dirt road connection to the existing bike path." This is inadequate, for multiple reasons:

    - This dirt road connection is not shown on any of the EA's site plans, and the document does not explain how, exactly, emergency vehicles would use the connection or the bike path. These are major omissions. Although the EA provides very limited (and insufficient) information, the proposed casino location appears to be separated from the bike path by third-party easements, steep slopes, large retaining walls, water and wastewater infrastructure, and a proposed biological preserve. The EA does not disclose where or under what authority the bike path could be accessed. Nor does the document explain how the bike path would be used – north to the Hiddenbrooke Parkway interchange or south to Auto Mall Parkway? The former is miles away from the Vallejo site and is outside the scope of the EA's traffic analysis. The latter may not provide a true second access route.

    - Moreover, California Fire Code Title 24, Part 9, Section 104.2 states *"Buildings or facilities having a gross building area of more than 62,000 square feet shall be provided with two separate and approved fire apparatus access roads."* Section 102 and 103 of the code states that fire apparatus roads shall be a minimum of 20 feet in width and be constructed of *"asphalt, concrete, or another approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds."* The proposed second emergency vehicle access point provided via a "dirt road connection to the existing bike path" is not adequate. It is not wide enough and would not structurally support the design fire vehicle. Given the size and nature of the project, two fully fire code compliant emergency vehicle access roadways are necessary.

The proposed action's lack of appropriate emergency access is a significant, unmitigated impact.

- The EA's traffic analysis is based on a *fundamentally flawed* approach to trip generation:

    - The EA fails to account for thousands of additional trips that will be required during the construction process, as explained in Part IV.

    - The EA fails to account for all trips and impacts associated with the various water and wastewater options, including the trips and impacts associated with operation of water and wastewater facilities and the trips and impacts associated with buildout of wastewater Option 2.

    - As noted above, the EA *purports* to rely on trip generation rates used for the Tejon casino project (and later adopted for another casino expansion project). Presumably the preparers of the Scotts Valley EA believe the Tejon rates are appropriate. But the EA *actually* uses trip generation rates that are considerably lower than those used for the Tejon project:

Project	**Avg. Daily Weekday Trips**	**Avg. PM Peak Hour Trips**
Tejon	98.2 trips per 1,000 sf	6.74 trips per 1,000 sf
Scotts Valley	38.31 trips per 1,000 sf	3.45 trips per 1,000 sf

    This is a significant, unexplained discrepancy. Applying the Tejon trip generation rates to the Scotts Valley project (which, again, appears to have been the intent of the EA's preparers) would yield several thousand additional trips per day – and almost certainly reveal additional significant, unmitigated impacts.

    - Moreover, the Tejon trip generation rates are themselves unreasonably low. The Tejon rates were based on trip counts taken at Harrah's Rincon (in January 2006), Chuckchansi Gold (in August 2005), and Black Oak Casino (in February 2006). Whatever the appropriateness of relying on those counts for the Tejon project (a topic on which we express no opinion), it is arbitrary and capricious to rely on the data here. First, the counts are almost 20 years old. Second, all three casinos are (and certainly were, at the time of the counts) in rural areas accessible only by two-lane roads. In contrast,

the Scotts Valley project would be located in close proximity to multiple major freeways, just off an interchange, in a major metropolitan area. As a result, trip generation rates (and resulting traffic) will be much greater. In fact, Scotts Valley appears to have selected the Vallejo site – and refused to consider alternatives – precisely because it is located adjacent to major freeways and can therefore generate more trips than rural gaming facilities.

- The EA claims that its trip generation rates were developed using the Institute of Transportation Engineers *Trip Generation Manual, 11th Edition.* EA at 3-53. The assertion is deeply misleading. The *Manual* recommends using an average weekday trip generation rate for casino land uses of 388.18 trips per 1,000 square feet. As noted above, the trip generation rates used in the EA were barely one-tenth of that.

- The 2008 BIA EIS prepared for Scotts Valley's proposed project in Richmond, CA further highlights the cartoonish absurdity of the 2024 EA's trip generation rates. Scotts Valley's Richmond property, like the Vallejo site (but unlike the Rincon, Chuckchansi Gold, and Black Oak casinos referenced above), is within the urbanized Bay Area, close to freeways and major arterial streets. In Richmond, Scotts Valley proposed to build a 225,000 square-foot casino with 79,320 square feet of gaming floor, which the BIA (using the same traffic engineer and environmental consultant responsible for the EA) estimated would generate 14,000 average daily weekday trips. In Vallejo, the EA estimates that Scotts Valley's 614,959 square-foot casino, with 238,266 square feet of gaming floor, will generate just 8,215 average daily weekday trips – 60% of the trips for a gaming floor 3 times larger.

- The EA states that its background weekday traffic counts were conducted in 2023 "when local schools [were] in session," consistent with industry standards. This appears to be a significant misrepresentation. The last day of the 2023 school year in Vallejo public schools was June 8, 2023. EA's morning background counts were conducted on June 7, 2023, when many local schools were on a minimum day bell schedule and background trips were artificially depressed. And the afternoon background counts were conducted on June 14, 2023, a week after the end of school. As a result, the EA does not account for school-based traffic and underestimates traffic impacts.

- Details of traffic data collection are normally provided as part of a standard transportation impact analysis. Scotts Valley's transportation impact analysis omits the relevant data. This is highly unusual.

- The EA and its transportation impact analysis are drafted as if they follow the City of Vallejo's *Traffic Impact Analysis Guidelines*. But whereas the Guidelines identify a Level of Service standard of D at all intersections within City boundaries, the EA uses a Level of Service of E for all study intersections. If the published standard (*i.e.,* Level of Service D) had been used, additional impacts would have been identified.

- The EA's cumulative traffic impact analysis is inadequate in multiple respects:

    - The EA's traffic study says its cumulative forecasts were developed "*based on existing turning movements plus incremental 1% growth per year in background traffic based on the Solano Napa Activity Based Model and consistent with the most recent traffic study in the area (Fairview at Northgate Transportation Impact Analysis, Fehr & Peers, Walnut Creek, CA December 2019).*" But the study's cumulative analysis did not use the Solano-Napa Activity Model; instead, it applied a simplistic 1% per year non-compounding growth factor. There were no new model runs, nor any cumulative forecasts reflecting actual land use growth. Where, as here, the Solano-Napa Activity Model is not used, the City of Vallejo's traffic impact analysis/study guidelines require that cumulative traffic impacts be analysis using an annual growth factor of 3% per year. The EA failed to do so.

    - The EA's traffic study also claims to be consistent with the cumulative traffic forecasts presented in recent nearby traffic studies – including, in particular, the traffic impact analysis for the Fairview at Northgate project. This, too, is inaccurate. The Fairview at Northgate traffic analysis includes additional scenarios (weekends, midday peaks) not evaluated in the Scotts Valley EA. And it found significant cumulative traffic impacts at four intersections where the Scotts Valley EA claims no impacts will occur.

    - The EA does not appear to account for cumulative traffic impacts caused by the Scotts Valley project together with the Solano 360 project, the Solano Ranch project, and other reasonably foreseeable future actions. *See also* Parts I and XIV.

- The Vallejo site is located immediately adjacent to I-80, at the I-80/SR-37/Columbus Parkway interchange. The EA identifies I-80 as the primary regional access to the Vallejo site and admits that "[t]rip distribution assumptions were developed based on the [site]'s proximity to freeway access." But the document fails to provide any analysis of potential impacts on freeway operations, congestion, or level of service. There is no sound reason for this omission. Recent development projects in the Vallejo region (including, but not limited to, those referenced in the transportation impact analysis for the Fairview at Northgate project) evaluate and address freeway impacts. Recent BIA NEPA reviews for tribal gaming facilities (including, for example, Redding and Koi) study impacts on nearby freeways. And BIA's 2008 EIS for Scotts Valley's Richmond proposal included an assessment of freeway impacts. Clearly, such an analysis is both feasible and necessary. Moreover, a review of publicly available peak hour speeds on freeways near the Vallejo site shows the potential for substantial problems on portions of I-80, State Route 37, State Route 29, and the I-680/I-80 interchange. A reasonable analysis would find significant traffic impacts in these areas.

- The EA's discussion of impacts to transit and pedestrians is short, dismissive, and inadequate. The design for the proposed action does not accommodate or make provisions for alternative modes of travel. There do not appear to be any provisions for transit or commitments to improving pedestrian facilities – notable omissions given Scotts Valley's stated interest in creating a community and local employment. Moreover, the EA's failure to meaningfully address transit and pedestrian infrastructure renders the document's significant under-estimation of trip generation and traffic impacts even more egregious.

Additional information on deficiencies in the EA's traffic analysis can be found in Exhibit B.

IV. Air Quality

Construction and operation of the Project will introduce a massive source of air emissions into a community that is identified by regulators as being particularly vulnerable to air pollution. Rather than taking a hard look at this issue, the EA attempts to wave it aside, relying on indefensible (and heavily manipulated) modeling assumptions and strategic omissions to systematically understate the Project's air quality impacts:

- The EA's project description suggests 135,000 cubic yards of fill material would need to be imported during the grading phase of the construction period, requiring 1,350 heavy haul truck deliveries. If that were accurate (and, as

explained below, it is not), 1,350 heavy haul truck deliveries would require 2,700 total heavy haul truck trips – a full load delivered to the Project site and an empty load on return. But the EA only modeled a total of 375 one-way trips. In other words, even if the EA's estimate of heavy haul truck deliveries were accurate, the document would significantly under-estimate construction emissions.

- Moreover, the EA's estimate of 1,350 heavy haul trip deliveries during the grading phase is wildly off-base. Heavy haul trucks cannot – and do not – carry 1,000 cubic yards of fill (or soil) in a single trip. The weight and bulk involved simply cannot be accommodated. In fact, guidance for the relevant emissions model (known as "CalEEMod," developed by the California Air Pollution Officers Association in collaboration with the State's local air quality districts) explicitly states that a single haul truck can accommodate a maximum of 16 cubic yards of material in one trip. Applying that guideline to the Project's need for delivery of 135,000 cubic yards of fill material yields at least 8,438 heavy haul truck deliveries and 16,876 total trips. Again, the EA accounts for just 375 heavy haul truck trips for fill deliveries – roughly 2% of the proper total. This does not appear to have been an innocent mistake. The modeling output files show that the above-referenced model guideline was deliberately manipulated.

- The EA's estimate of construction emissions also fails to account for on-site grading (as distinguished from delivery of imported fill). The EA claims that Project grading will require 692,000 cubic yards of cut and 767,000 cubic yards of fill, with 135,000 cubic yards imported. But the EA fails to account for the substantial emissions associated with moving the 692,000 cubic yards of cut – a truly staggering amount of dirt, equivalent to at least 43,250 heavy haul truck loads per CalEEMod guidelines – around the Project site.

- The EA's estimate of construction emissions also fails to account for notable features of the Project site. For example:

    - The EA appears to assume that all cut material can readily be reused on site. Given the steep, rocky site conditions, it is almost certain that the cut material will include large boulders and other material that would either need to be processed on site (if it is to be reused) or hauled elsewhere (if not). The EA does not account for emissions associated with on-site processing of this material or off-site hauling.

    - A Project of this magnitude, on a site of this size and complexity, would require a very considerable laydown area. The EA does not address this

issue at all. But site conditions suggest the only area that could accommodate this function is a portion of APN 182020020, on the east side of the wetlands area. That, in turn, would require significant truck trips to shuttle employees, equipment, and material from the laydown area back and forth to the casino and housing sites. The EA does not account for these emissions.

- More fundamentally, the EA appears to have significantly underrepresented the equipment needed to complete construction within the timeframes specified, thus underrepresenting construction emissions as well. Once again, this appears due to intentional manipulation of the CalEEMod model rather than innocent mistake. A review of CalEEMod output files shows that the preparers of the EA changed the model from a 2-year construction schedule to an 18-month construction schedule. But construction equipment needs were set *as if* the 2-year schedule remained in effect, resulting in a significant underestimation of necessary equipment – and its emissions.

- The EA also appears to underestimate the Project's operational emissions:

    - The EA estimates operational emissions of 97.41 tons per year of Carbon Monoxide – just 2.6 tons per year below the threshold for a formal conformity determination under the Clean Air Act. But a review of the modeling output files shows the Project's Carbon Monoxide emissions are premised on a scenario in which all landscaping equipment will be zero-emission – at the casino, at infrastructure facilities, on the 32 acres of non-casino properties, at the tribal administration building, and even at individual tribal residences. The EA provides no information about whether this is feasible or how it could be enforced. Indeed, it is vanishingly unlikely that all landscaping could be maintained in perpetuity without any emissions whatsoever. Without the "zero emissions" assumption, the Project would exceed Clean Air Act thresholds and require a conformity determination. An honest accounting of operational emissions would reveal the Project's significant impacts.

    - As explained in Part III, the EA appears to have significantly underestimated casino trip generation – and therefore emissions – by a significant margin.

    - The EA does not appear to account for emissions associated with construction and operation of water option 2 and wastewater option 2, each

of which involves a treatment plant that would generate substantial numbers of trips and emissions. Wastewater option 2 would also involve significant construction activities and induced emissions associated with off-site transmission and use of recycled water.

- Nor does the EA account for emissions associated with indirect effects of water option 1 and wastewater option 1, both of which appear to require construction of significant infrastructure upgrades and/or relocation.

- Page 3-19 of the EA provides a very short reference to Hazardous Air Pollutants ("HAPs") and directs to Appendix E for complete information. Appendix E does not appear to contain any further information about HAPs or Project-related HAP emissions and impacts. This is a material omission. The Project is proposing to locate residences immediately adjacent to a busy interstate with hundreds of thousands of daily vehicle trips (including thousands of heavy diesel truck trips). Moreover, it would introduce thousands of additional trips – including heavy diesel haul trucks – into a community identified by the Bay Area Air Quality Management District as vulnerable to air pollution.

- Furthermore, the EA's approach to Diesel Particulate Matter ("DPM") is fundamentally flawed. Page 3-19 of the EA states that DPM is "quantified with PM2.5 emission estimates for construction and operation." But the document does not appear to provide any *analysis* of DPM emissions or their significance. Moreover PM2.5 is not the proper surrogate for quantifying DPM; instead, PM10 is the relevant metric.

A fair and unbiased analysis, based on accurate assumptions and complete information, would demonstrate that the Project will exceed applicable *de minimis* thresholds and relevant significance thresholds. Before the Project can proceed, the emissions modeling must be redone, a Clean Air Act conformity determination must be prepared (with appropriate notices to interested parties), the significance of HAPs and DPM must be reassessed, and the BIA's revised environmental analysis must be recirculated for review and comment, consistent with Clean Air Act, NEPA, and related requirements.

Additional information on deficiencies in the EA's air quality analysis and emissions modeling can be found in Exhibit A, Exhibit B, and Exhibit C.

V. Biological Resources

The Project site and its surroundings are home to numerous special-status species, wetlands, and sensitive habitats. The EA gives these resources short shrift, failing to confront the significance of the Project's impacts. Among other things, the document improperly dismisses clear "take" of threatened and endangered species and their habitat; fails to address numerous protected plant and animal species known to exist at and around the Project site; relies on undefined, speculative, and unenforceable mitigation measures; applies improper thresholds of significance; neglects to conduct a proper Migratory Bird Treaty Act ("MBTA") analysis; and ignores significant impacts on sensitive wetland habitats. Each of these flaws is discussed in more detail below.

A. Federal Special Status Species

Adverse effects to "an endangered or threatened species or its habitat" are an indicator of significant environmental impacts requiring preparation of an EIS. 40 C.F.R. § 1501.3(d)(2)(vi); *see also* 89 Fed. Reg. 35,442, 35,468 (May 1, 2024) (confirming significance criterion is not limited to formally designated critical habitat); *Envtl. Def. Ctr. v. Bureau of Ocean Energy Mgmt.* ("*EDC v. BOEM*"), 36 F.4th 850, 879 (9th Cir. 2022) (adverse effects to threatened and endangered species "readily met" requirement to prepare EIS); *Klamath-Siskiyou Wildlands Ctr. v. United States Forest Serv.*, 373 F. Supp. 2d 1069, 1076, 1080-82 (E.D. Cal. 2004) (impacts to individual members of an endangered species required preparation of an EIS); *Center for Biological Diversity v. Ross*, No. 4:19-cv-03135-KAW, 2019 U.S. Dist. LEXIS 220065, at *17-20 (N.D. Cal. Dec. 20, 2019) (potential for death of endangered animals is a significant impact under NEPA).

Deferral of ESA Section 7 Process and Improper Threshold of Significance

BIA has improperly deferred its ESA Section 7 obligations, suggesting that compliance with Section 7 is a form of mitigation rather than a mandatory tool for gathering necessary information *in coordination with* the NEPA review process. EA at 3-31 to 3-32. This approach is fundamentally flawed.

- NEPA's implementing regulations require lead agencies to prepare environmental review documents "concurrent and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws" such as "the Endangered Species Act of 1973." 40 C.F.R. § 1502.24(a).

- BIA's own NEPA Guidebook says that "compliance with Section 7 of the ESA . . . should be accomplished during EA development" with any formal consultation letters referenced or included in the EA to document compliance. NEPA Guidebook at 22. Furthermore, it says a "FONSI must not be issued before consultation under . . . Section 7 of the Endangered Species Act has been completed. . . ." *Id.* at 23; *see also EDC v. BOEM*, 36 F.4th at 883 ("The ESA's implementing regulations require agencies to review proposed actions 'at the earliest possible time.'") (quoting 50 C.F.R. § 402.14(a)).

The EA also appears to conflate the "jeopardy" analysis conducted pursuant to ESA Section 7 with the significance determination required by NEPA. For each federally listed species addressed in the EA, the document states that: (i) mitigation includes completion of the Section 7 process with USFWS (see above); (ii) Project impacts will be mitigated by incorporating any actions USFWS may identify as necessary to ensure no jeopardy to the continued existence of the species; and therefore (iii) the Project's impacts will be less than significant. In essence, the EA assumes the Project will have less-than-significant impacts so long as it does not jeopardize the survival of the entire species.

This approach is contrary to both law and sound common sense. An action that places the survival of a species in jeopardy will, of course, have a significant effect on the environment. But it does not follow that all other federal actions have less-than-significant impacts. Compliance with measures that prevent a species from going extinct are not enough to ensure Project impacts are insignificant.

Indeed, the courts have made it very clear that the ESA's "jeopardy" threshold and NEPA's "significance" threshold are distinct. *See, e.g., Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1012 (9th Cir. 2006). Several courts have required preparation of an EIS for projects that received "no jeopardy" determinations because "for purposes of NEPA, a project need not jeopardize the continued existence of a threatened or endangered species to have a 'significant' effect on the environment." *See, e.g., Klamath-Siskiyou Wildlands Ctr. v. United States Forest Serv.*, 373 F. Supp. 2d 1069, 1080 (E.D. Cal. 2004) (citing *Greater Yellowstone Coalition v. Flowers*, 359 F.3d 1257, 1275-76 (10th Cir. 2004)); *Greater Hells Canyon Council v. Wilkes*, No. 2:22-cv-00859-HL, 2023 U.S. Dist. LEXIS 178671, at *40-42 (D. Or. Aug. 31, 2023); *Cascadia Wildlands v. U.S. Forest Serv.*, 937 F. Supp. 2d 1271, 1282 (D. Or. 2013); *Forest Serv. Emples. v. United States Forest Serv.*, 726 F. Supp. 2d 1195, 1217-18 (D. Mont. 2010).

The difference between the two standards also highlights the seriousness of BIA's failure to coordinate its NEPA review with its Section 7 consultation responsibilities (see above). For example, in *EDC v. BOEM*, the Ninth Circuit took issue with the failure of the

government to engage in ESA Section 7 consultation before issuing the EA for offshore well stimulation. 36 F.4th at 883-84. Belatedly commenced consultation revealed likely adverse effects to federally listed species, such that the Ninth Circuit determined that the "finding of adverse effects, especially *after* the EA was published, is prima facie evidence that an EIS should have been prepared." 36 F.4th at 879 (emphasis in original).

BIA cannot hide behind its delayed ESA consultation to obscure the significance of impacts to federally protected species. In *Center for Biological Diversity v. Ross*, the District Court for the Northern District of California struck down the government's reliance on an EA even when faced with the likely death of endangered animals, reasoning that "[w]here the agency's own finding is that an activity may adversely affect endangered species, it has, by its own terms ma[de] clear that the [activity] may 'significantly affect the environment,' likely requiring an EIS. 2019 U.S. Dist. LEXIS 220065 at *17-18, *20. The same principle applies here.

"Biological Preserve"

Here, it is beyond reasonable dispute that the Project will adversely affect several endangered and threatened species and their habitats. The EA claims these impacts can be mitigated to insignificance, and its centerpiece mitigation proposal is the establishment of a 45-acre "biological preserve" on the northern portion of the Project site.

- The "biological preserve" area and surrounding acreage are already protected as open space and park land. The Project would <u>*remove*</u> those protections. Creating a "preserve" on a portion of the acreage does not mitigate or compensate for developing the remainder – there is no additionality.

- The EA does not explain the specific management conditions and levels of legal protection associated with the "biological preserve." Without this information it is not possible to conclude the "preserve" would provide definite, effective, and enforceable ecological value. Labeling land a "preserve" does not make it so.

- The EA fails to honestly confront the fact that substantial portions of the "preserve" are located immediately adjacent to areas where there will be extensive grading, development, light, noise, vehicle traffic, and human activity. The housing component of the Project will be inserted into the very habitat area Scotts Valley is purporting to "preserve." As for the casino, its fundamental purpose is to generate vehicle traffic and human activity – and it will feature a 4,000-space elevated parking structure with open air lots directly facing the

majority of the "preserve." Furthermore, the "preserve" area is traversed by a transmission line easement that gives third parties the right to enter. These factors (among others) clearly undermine the habitat value of the "preserve" and render its but are not meaningfully or candidly addressed in the EA.

Callippe Silverspot Butterfly

The Callippe silverspot butterfly ("CSB") is an endangered species listed under the ESA. It relies on the California golden violet (*Viola pedunculata*) as a larval host plant, but also forages more broadly. The United States Fish & Wildlife Service has found that primary threats to CSB include habitat degradation and fragmentation; habitat modification by invasive plants exacerbated by atmospheric nitrogen deposition from vehicle exhaust; and the inability to restore larval host plants if removed. *See* Exhibit A. Silverspot butterflies are a species of cultural importance to Yocha Dehe.

Although once prevalent across the Bay Area, CSB's remaining habitat is limited to three small areas, the most substantial of which includes the Project site.
The EA reports that numerous CSB individuals have been observed on the Project site and, further, that the site contains both larval host plants and suitable adult foraging nectar resources. *See* EA at 3-27; EA Appendix H-1 at 24-26.

The Project would bulldoze 2.9 acres of host plant habitat and 50.3 acres of foraging habitat during the Project's construction phase. Moreover, the EA admits the Project is "likely to result in unavoidable take [i.e., mortality] of individuals of this species during grading activities."

The EA does not expressly address CSB impacts during Project operations. *See* EA at 3-32. But it is clear that operations would pose an ongoing likelihood of take and adverse habitat modification. After all, Project operations would introduce extensive human activity and vehicle traffic immediately adjacent to remaining CSB habitat – and it is inevitable that individual butterflies will cross into those high-traffic areas, with fatal consequences. Moreover, Project operations will exacerbate many of the very threats identified by USFWS as most significant, including ongoing habitat fragmentation, habitat modification resulting from vehicle exhaust, and the inability to restore larval host plants if removed or damaged. The EA does not meaningfully address these issues, leaving unanswered questions about whether and to what extent the CSB population at and around the Project site will survive at all. *See* 40 C.F.R. § 1501.3(d)(2)(iv).

Although it fails to provide a "hard look" at Project impacts on CSB, the EA seems to concede the impacts would be significant by proposing a series of mitigation measures. But the proposed mitigation is incomplete, ineffective, and unenforceable:

- The EA proposes no mitigation for the (admitted) direct mortality of individual CSB during grading activities. This remains a significant, unmitigated impact.

- The EA proposes no mitigation for the (ignored) direct mortality of CSB during Project activities.

- The EA proposes to mitigate CSB habitat loss through the establishment of the "biological preserve." That proposal is fundamentally flawed for the reasons set forth above. In addition, reliance on the "biological preserve" ignores the fact that Project operations will continue to degrade nearby CSB habitat (through fragmentation and increased vehicle exhaust, for example) even if the "preserve" area is not directly disturbed. Moreover, acreage in the "preserve" is insufficient to satisfy the mitigation measures as drafted. And the EA provides no substantial evidence that any of the options for making up the difference (preservation of unspecified areas of the Project site, which may or may not be suitable; purchase of mitigation credits, which do not appear to be available; establishment of an off-site preserve, which is entirely speculative) will actually be implemented, effective, or enforceable.

Unmitigated impacts to the CSB individuals and CSB habitat are independently significant impacts under NEPA that demand further analysis in an EIS. 40 C.F.R. § 1501.3(d)(2)(vi). Moreover, as explained above, BIA's apparent failure to consult with USFWS highlights the inadequacy of the EA.

California Red-Legged Frog

The California red-legged frog ("CRLF") is a federally threatened species with designated critical habitat on the Project site. EA at 3-29. It also disperses throughout the Project site. EA at 3-27. The EA admits the Project would destroy at least 53 acres of CRLF habitat. EA at 3-31. The EA's analysis of CRLF is arbitrary and capricious in multiple respects:

- The EA admits the Project could cause direct mortality of CRLF during the construction phase and proposes to mitigate that impact by installing special fencing that would exclude all CRLF from the development area. But the document fails to address the inevitable consequence of this – namely, that CRLF

would also be excluded from more than 50 acres of its existing dispersal habitat. This is a significant impact for which no mitigation has been proposed.

- The EA acknowledges the Project will destroy CRLF aestivation habitat. It relies in part on the "biological preserve" for mitigation; for the reasons explained above that reliance is arbitrary and capricious. The EA lists several ways in which the remainder of the impact *might* be addressed. But the document fails to provide specific evidence that any of these mechanisms will mitigate the impact in a definite, enforceable fashion.

- The EA states that CRLF could be struck by vehicular traffic during Project operations and proposes to use paved barriers to exclude CRLF from developed areas. Again, the document fails to confront the inevitable result – CRLF will be permanently excluded from large portions of their existing dispersal habitat. This is a significant impact for which no mitigation appears to have been proposed.

- The EA suggests CRLF (and other species) will continue to be able to disperse throughout the Project site, even after the Project is built, thanks to wildlife undercrossings. This appears to be based on wishful thinking rather than any credible environmental or design analysis. No undercrossing locations or designs are proposed in the site plans. A close look at the EA's grading plans shows that existing drainages and topography will be irreparably altered, leaving extremely steep slopes, relocated and channelized (and, in some locations, piped) drainages, and impassible obstacles to species' free movement between the small remaining habitat areas on the Project site. Absent a serious analysis of how and where special status species will be able to continue dispersing on the Project site, this must be considered a significant unmitigated impact.

- The EA assumes the "biological preserve" will ensure designated CRLF critical habitat remains unaffected. As explained above, that assumption does not withstand scrutiny.

Northwestern Pond Turtle

The USFWS has proposed the northwestern pond turtle ("NPT") for listing under the ESA as a threatened species. EA Appendix H-1 at 9; 88 Fed. Reg. 68,370, 68,370 (Oct. 3, 2023). The EA admits the Project would destroy roughly 54 acres of NPT dispersal habitat. This species is of considerable cultural importance to Yocha Dehe and other Patwin people, who hold a special place for the turtle in many of their stories.

The EA's analysis of NPT suffers many of the same defects identified above:

- Most notably, the EA admits that Project construction and operations may cause direct NPT mortality and proposes to mitigate those impacts through exclusionary fencing (for construction) and paved exclusion features (for operations). But, yet again, the document fails to address the fact that such measures will effectively exclude the species from more than 50 acres of its current dispersal area. No specific mitigation is identified for this impact.

- The EA assumes NPT (and other species) will continue to be able to disperse throughout the Project site, even after the Project is built, thanks to wildlife undercrossings. For the same reasons, explained above, that assumption is arbitrary and capricious.

The Project impacts NPT because of potential take during construction and operation and because of impacts to 53.6 acres of dispersal habitat. EA at 3-31. The EA concedes that take of NPT during construction or operation would constitute an adverse effect and therefore could serve as a basis for a finding of significant impacts under NEPA. *Id.* The EA's conclusions about loss of dispersal habitat not adversely impacting NPT and mitigation measures offsetting the adverse impacts of potential take are erroneous.

Valley Elderberry Longhorn Beetle

The Valley elderberry longhorn beetle ("VELB") is a federally threatened species not discussed in the EA. However, it has potential to occur on the Project site due to the presence of suitable habitat in the form of an elderberry shrub that the EA's Biological Assessment indicated had been observed during field surveys. *See* EA, Appendix H-1, Attachment C (listing blue elderberry as a plant observed during surveys of the Project site). The EA's failure to discuss impacts to the VELB amounts to an omission of potentially significant impact such that BIA must update its biological resources analysis to evaluate and seek to mitigate impacts. In the absence of substantiated conclusions of less than significant impacts, the foreseeable, but uncertain, adverse effects to a threatened species like the VELB constitute significant impacts under NEPA demanding preparation of an EIS. 40 C.F.R. § 1501.3(d)(2)(iv), (vi).

Federally Endangered Plant Species

There are also several federally endangered plant species that are likely to appear at the Project site that the EA fails to address. ECORP explained that a proper search of the California Natural Diversity Database and use of the California Native Plant Society Rare

Plant Inventory Advanced Search revealed the following plants listed as endangered under the ESA: (1) Soft salty bird's beak; (2) Suisun thistle; and (3) Contra Costa goldfields. The EA's failure to explain the absence of these species from its analysis in the face of readily available evidence of their likely occurrence casts serious doubt on the reliability of the document's analysis of biological resources and highlights the importance of preparing a comprehensive EIS. *See* 40 C.F.R. § 1501.3(d)(2)(iv), (vi).

B. Other Special Status Species

Indicators of a significant impact – and therefore the need to prepare an EIS – include (i) violations of relevant state law and inconsistency with state policies designed for the protection of the environment. 40 C.F.R. § 1501.3(d)(2)(iii). California has adopted a strong policy of protection for sensitive species and their habitats, and has codified that policy in the California Endangered Species Act ("CESA"), CESA's implementing regulations, and relevant guidance. Thus, the EA recognizes – as it must – that BIA is required to take a hard look at species with special status under state law. EA at 3-30; *see also* 89 Fed. Reg. 35442, 35467 (May 1, 2024). Unfortunately, the document falls well short of that requirement.

Bee Species

The EA recognized that the crotch bumble bee and western bumble bee are CESA candidate species with the potential to forage over the Project site. EA at 3-29. But the document provides no analysis of impacts to these species. Nor does it consider actions to reduce the risk of adverse effects, instead reasoning that most of the high-quality nectar resources would be within the "biological preserve." EA at 3-34.

This approach is in violation of direction issued by the California Department of Fish and Wildlife ("CDFW") on June 6, 2023 regarding surveys for CESA candidate bumble bee species (including the crotch bumble bee and western bumble bee). *See* CDFW, Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (June 6, 2023) ("CDFW Bee Survey Guidance") at 1. The CDFW Bee Survey Guidance requires consultation with CDFW to determine strategies to avoid take or to determine the need for incidental take permits. *Id.* at 1-8. Failure to adhere to the CDFW Bee Survey Guidance amounts to a violation of state law and policy.

Burrowing Owl

The EA also gives potential impacts to burrowing owls short shrift. The EA acknowledges that the Project site could serve as foraging habitat for burrowing owls and notes that,

although no active burrows were discovered during surveys, such burrows could be established later. EA at 3-29; EA Appendix H-4 at 12; *see also* EA Appendix H-4, Attachment C. However, the EA fails to disclose whether burrowing owls have nested nearby. This is important because breeding pairs nesting on adjacent properties may use the Project site as foraging habitat. *See* Exhibit A. The EA relies on generic preconstruction nesting bird surveys, even though such mitigation is likely insufficient to detect active burrows.

CDFW has guidance for evaluating and mitigating impacts to burrowing owls that the EA does not mention or follow. *See* California Department of Fish and Game, Staff Report on Burrowing Owl Mitigation (Mar. 7, 2012) ("Burrowing Owl Report").[1] This guidance sets long-term conservation goals for burrowing owls in California to maintain the size and distribution of extant burrowing owl populations, protect ecosystems which can support burrowing owls at a landscape scale, and minimize unnatural causes of burrowing owl population decline such as destruction of burrows and foraging habitat. Burrowing Owl Report at 4. It also identifies activities, like those contemplated as part of the Project in the EA such as grading and earthmoving, as activities with the potential to take or impact burrowing owls through destruction, conversion, or degradation of nesting, foraging, over-wintering, or other habitats. *Id.* at 4-5; *see, e.g.,* EA at 2-9 (describing need for extensive grading and stabilization on the Project site, requiring 767,000 cubic yards of fill). CDFW recommends survey protocols for detecting burrowing owls and their burrows and for assessing potentially significant impacts to the species. Burrowing Owl Report at 5-8.

There is no evidence the EA followed any of these procedures or will do so in the runup to work done on the Project site. Finally, the Burrowing Owl Report recommends best practices to avoid and mitigate impacts such as seasonally avoiding burrows, conducting take avoidance surveys before construction, providing ongoing surveillance to detect efforts by burrowing owls to colonize the Project site, establishing buffer zones and setbacks from any nesting sites discovered, eliminating actions that reduce burrowing owl forage and burrowing surrogates such as the ground squirrel or that introduce predators, and offsetting impacts to destroyed habitat, among others. *Id.* at 8-14.

The EA's general mitigation measure for preconstruction surveys and avoidance of bird nests is not tailored to these species-specific best practices for burrowing owls and therefore potentially significant impacts to this state special-status species remain. EA at

[1] The California Department of Fish and Game is now known as the California Department of Fish and Wildlife.

4-5; *see* Exhibit A. An EIS should be prepared to study and address these impacts using the guidance of the Burrowing Owl Report.

Swainson's Hawk

The EA also identifies Swainson's hawk, a California state threatened species, as a species that may use the Project site for foraging. But the document fails to engage with the species beyond acknowledging its potential to use the Project site. The document does not provide any specific information on the nearest known occurrence. Nor does it propose any mitigation measures addressing habitat loss. EA at 3-29; EA Appendix H-4, Attachment C (identifying grasslands on Project site as potential foraging habitat for Swainson's hawk).

Additional Bird and Bat Species

Similarly, the EA acknowledges that several other special-status birds and special-status bats may use the Project site but fails to provide any meaningful analysis. EA at 3-34. Instead, it suggests any potential impacts would be offset by the "biological preserve." Many of the errors in that assumption are described above. In the case of birds and bats, it should also be noted that the "biological preserve" would be located immediately adjacent to housing, roadways, and administrative buildings, and quite close to the casino and its parking structure. All this development will result in significant noise, light, and human activity – hardly an environment conducive to high-quality bird and bat habitat.

Merely listing the existence of these species, without more discussion of species-specific impacts, results in "fundamentally flawed" NEPA analysis. *Washington v. United States Dep't of the Navy*, No. 2:19-cv-01059-RAJ-JRC, 2021 U.S. Dist. LEXIS 258195, *25-27 (W.D. Wash. Dec. 10, 2021) (EIS discussion of impacts to birds, including state-listed tufted puffin, was "fundamentally flawed" because it merely noted the existence of species in affected areas without discussing species-specific impacts).

Jepson's Leptosiphon

Finally, the EA finds that Jepson's leptosiphon, a rare plant ranked 1B.2 by the California Native Plant Society, is present on the Project site. Here, again, the EA simply assumes that including known examples within the "biological preserve" will be enough to avoid adverse effects. As noted above, that assumption is arbitrary and capricious.

C. Wetlands

NEPA's implementing regulations provide that adverse effects to wetlands are an indication of significant impacts requiring preparation of an EIS. 40 C.F.R. § 1501.3(d)(2)(ii). The EA admits the Project would fill wetlands and other ecologically sensitive habitats. EA at 3-30 to 3-31. But it nonetheless concludes the Project's impacts would be less than significant. That conclusion is arbitrary and capricious in multiple respects:

- The EA lacks meaningful detail about the activities proposed to occur at and around the "estimated wetlands" area on the southern portion of the Project site.

    - Among other things, the EA does not provide relevant information about the road that is planned to traverse the wetlands area. Preliminary engineering suggests the road geometry presented on the Project's site plans would not be passable for trucks, buses, and heavy equipment. Will the curves shown on the site plan be flattened out such that additional wetlands impacts would occur? Will the road cross the wetlands on a bridge? If so, will that bridge be built prior to casino construction? Or will casino construction equipment cross the wetlands at grade?

    - The EA suggests several bridges or culverts would be necessary along the internal roadway network to allow vehicles to cross stream channels and wetlands on the Project site. EA at 2-14. But the document fails to specifically explain how these bridges or culverts will be constructed or used in such a way to reduce impacts to wetland features.

    - The EA also lacks information on how surrounding the wetlands and surrounding parcels would be managed in the future. In fact, the EA is completely silent with respect to anticipated future land uses on APN 182020080 and APN 182020010.

    - The EA contains no definite, enforceable commitment to or standards for maintaining the wetlands in the future.

- The EA claims the Project will mitigate anticipated impacts to wetlands and other waters of the United States. But the Project's Aquatic Resources Delineation has not yet been verified by the U.S. Army Corps of Engineers. *See* EA Appendix H-2, at 20, 22 (explaining that the EA's maps are "unofficial" representations). Without this verification, there is no way to be sure whether estimated impacts are accurate

and whether the proposed mitigation is sufficient to reduce the effects to less than significant levels. This, in turn, casts further doubt on the EA's conclusions about impacts to listed species that rely on the wetlands. The document does not contain high-quality evidence confirming its assessment of the environmental baseline or the Project's impacts. *See Or. Natural Desert Ass'n v. Jewell ("ONDA")*, 840 F.3d 562, 570-71 (9th Cir. 2016) (reliance on mitigation measures "are not a panacea for inadequate data collection and analysis" and cannot remedy detrimental impacts on "informed decisionmaking and public participation"); *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101-04 (9th Cir. 2016) (holding that "[e]stablishing an appropriate baseline is critical to any NEPA analysis"); *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1084-85 (9th Cir. 2011) (striking down "use of mitigation measures as a proxy for baseline data").

- The "estimated wetlands" area supports CRLF and NPT, among other species, including as crucial aestivation habitat for CRLF, where the species undergoes hibernation like dormancy for an extended period. In addition to the direct harm to the listed species and their habitat posed by Project activities, the risks to these wetlands threatens indirect impacts to CRLF critical habitat north of the proposed development area by altering its connection to the wetlands' aestivation habitat. Again, the EA does not identify the estimated wetlands area as part of the "biological preserve" and expresses no other plan or prospect for protecting it. Project's wetlands impacts will not be limited to the wetlands themselves but will also be felt by linked species and habitats. *See* 40 C.F.R. § 1501.3(d)(2)(ii), (vi).

- In a similar vein, the EA also errs in suggesting impacts will be limited because the "estimated wetlands area" will be "avoided." The analysis fails to address the fact that the Project would nonetheless compromise the integrity and ecological function of the wetlands by leaving them isolated from nearby habitat, surrounding them with development, and changing the area's flow regime – a potentially significant impact.

- The EA lacks meaningful detail on proposed drainage facilities. The information provided seems to ignore significant run-on from tributary areas – there does not appear to be any provision for safely conveying this run-on through or around the development. Moreover, the EA does not contain any hydraulic modeling. Taken together, these points strongly suggest the Project will substantially increase stormwater detention in the wetlands, fundamentally altering their ecology. The EA completely ignores this significant impact.

D. Migratory Bird Treaty Act

The Migratory Bird Treaty Act ("MBTA") prohibits intentional or incidental take of migratory birds. 16 U.S.C. § 703. Take is only authorized under limited circumstances established by regulation by USFWS. 16 U.S.C. § 704(a); *see, e.g.*, 50 C.F.R. § 21.95 (special purpose permits). The MBTA establishes strict liability for take of migratory birds. *Turtle Island Restoration Network v. United States DOC*, 878 F.3d 725, 733 (9th Cir. 2017). USFWS guidance indicates that relevant impacts to migratory birds under the MBTA include "vegetation alteration, vegetation removal, ground disturbance, structures, noise, light, chemicals, and human presence."[2]

The EA fails to engage in any real analysis of impacts to migratory birds. It notes that the breeding season for raptors and other migratory birds occurs during February 1 to August 31 and, during at least one survey of the Project site, a migratory bird nest was observed. EA at 3-29. The document also notes that other birds may nest in the project area due to suitable nesting habitat. *Id.* But the EA dismisses the possibility of any significant impact on migratory birds, relying on several BMPs and mitigation measures. *Id.* at 3-33. For construction, this includes pre-construction surveys; for operation, this includes "the incorporation of design features in Section 2.1.11" to mitigate risk of collisions with buildings due to increased lighting. *Id.*

There are numerous problems with this analysis.

- The EA's analysis of operational issues is limited to a single sentence noting widely accepted principle that increased lighting can increase bird collisions with structures. *Id.* This general statement fails to engage with the specific impacts on this Project's operations on migratory birds.

- The EA states that BMPs limiting operational impacts can be found in Section 2.1.11. *Id.* *There is no Section 2.1.11 in the EA*. Adverse impacts are not limited by any BMP, and remain potentially significant.

- The EA does not identify the potential migratory bird species that might use the project area for nesting or otherwise (for example, hunting), particularly species of concern.

[2] USFWS, Avoiding and Minimizing Incidental Take of Migratory Birds, https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds (last visited Aug. 22, 2024).

- Although the EA notes some of the activities that USFWS identifies as potentially impactful to migratory birds (including vegetation removal and construction), it does not analyze impacts from other potentially relevant categories, including vegetation alteration, ground disturbance, noise, and human presence. *Id.*

- The EA identifies a breeding window of February 1 to August 31, but it is not clear if this covers the breeding season of all potentially impacted migratory birds, particularly because the document fails to identify specific species. *Id.* at 3-29.

These deficiencies reveal potentially significant, unmitigated impacts that remain require preparation of an EIS. *See* 40 C.F.R. § 1501.3(d)(2)(iii) (significance factor for "[w]hether the action may violate relevant Federal . . . laws or other requirements or be inconsistent with Federal . . . policies designed for the protection of the environment").

E. Essential Fish Habitat

The Magnuson-Stevens Act requires agencies to consult with the National Marine Fisheries Service ("NMFS") with respect to actions "that may adversely affect any essential fish habitat" ("EFH") and to receive recommendations from NMFS of measures that can be taken to conserve EFH. 16 U.S.C. § 1855(b)(2), (4)(A).

The EA states that the totality of the Project site is designated as EFH for Coho salmon and Chinook salmon. EA at 3-29. But the document declines to engage in any Magnuson-Stevens Act analysis and does not reflect any input from – or even any outreach to – NMFS. *Id.*; *see also* EA at 5-1 to 5-3.

BIA appears to have concluded that it need not comply with the law because it found no salmon at the property. Not so. The fact that the Project site does not include large bodies of water does not absolve BIA of its legal responsibilities. *See* Pacific Fishery Management Council, Pacific Coast Salmon Fishery Management Plan at 47 (December 2022) (calling for permitted activities within EFH to employ best management practices to protect salmon and their habitat from adverse effects of contamination from waste, pesticides, and dredged material). And given the Project's clear potential to alter existing drainages, runoff, and wetlands, this can hardly be excused as harmless error. Rather, it appears to be yet another example of the agency cutting corners to speed toward a predetermined outcome.

Absent consultation with NMFS and preparation of an assessment of potential impacts to EFH, the EA lacks crucial information about potentially significant impacts to listed Coho and Chinook salmon. 40 C.F.R. § 1501.3(d)(2)(iv), (vi).

VI. Grading, Drainage, and Stormwater

The Project would require massive amounts of cut and fill on an extremely sensitive site containing rare and protected plant and animal species, wetlands, springs, tribal cultural resources, landslides, and steep, fragile slopes. With that in mind, we would have expected responsible environmental professionals and fair-minded federal officials to take a close look at the grading, drainage, and stormwater plans. Sadly, the EA reveals just the opposite. Rather than serious, thoughtful analysis, the document offers cartoonish plans and vague, unsubstantiated assurances – nothing like the "hard look" NEPA requires.

Perhaps these materials were not reviewed before the EA's publication – we doubt that a competent, unbiased environmental professional could reasonably believe the Project can be constructed as proposed, with the impacts predicted. Or perhaps, in a rush to reach a pre-determined outcome, the Department of the Interior was hoping no one would notice. Indeed, the comment period provided is simply not sufficient to identify each and every one of the deficiencies. BIA's refusal to grant our request for a 30-day extension has materially impacted our ability to comment.

Nevertheless, some of the EA's flaws are so clearly apparent that they can be identified right away, as noted in the detailed review conducted by Laugenour & Miekle (Exhibit C), incorporated by reference herein. Below, we have highlighted a few aspects of the EA's treatment of grading, drainage, and stormwater that show serious safety risks, undermine purported environmental commitments, reveal significant information gaps, and demonstrate that *if* the Project is to move forward, a thorough redesign will be needed and a comprehensive EIS must be prepared.

As an initial matter, the EA contains numerous absurdities that seem to confirm the absence of any serious analysis by the Project proponent, the document's preparers, or the BIA:

- The Project would significantly affect – and in several cases relocate – sensitive drainages linking upland endangered species habitats with the wetland complex on the southern edge of the Project site. The grading plan shows some of the resulting flowlines being flat and others going *uphill* – obvious impossibilities.

- The EA's appendices show another flowline crossing a roadway at six feet above the road elevation. Another impossibility.

- Both of the Project's water supply options require construction of a 1.5-million-gallon potable water tank (with a 112-foot diameter) within the 3.5-acre "utility area" in the southwest corner of the Project site. But the grading plan does not provide any flat area where such a tank could be located. Indeed, the utility area appears to have just 1.7 acres that are not within a 3:1 slope.

- In addition to massive water tanks, the EA contemplates that the utility area would contain backup generators and control equipment – and may also accommodate a potable water treatment plant, a wastewater treatment plant, large recycled water tanks, a police station, a fire station, and/or drinking water wells (depending on different water, wastewater, and public safety options). No reasonable person would believe all of this could be accommodated in a single 3.5-acre site (where, again, just 1.7 acres has less than 3:1 slope). Moreover, the grading plan suggests the "utility area" would be roughly 10 feet below the access road – with no clear provision for a connection between the two. How, specifically, does Scotts Valley plan for vehicles to enter or exit a utility area that is 10 feet beneath the access road?

- The eastern side of the casino does not appear to have any clear drainage outlet.

- The EA acknowledges that the Project would require 1.4 million cubic yards of cut and fill – a truly astounding volume – but nonetheless claims impacts to topography would be insignificant.

The EA's grading, drainage, and stormwater material also reveal several serious safety concerns:

- The Project calls for construction of a 600,000 square-foot casino structure immediately abutting existing high-voltage transmission lines mounted on 80-foot steel towers.

    - To build the casino (and its adjacent access road), the grading plan calls for a 1.8:1 fill slope (substandard for engineering purposes) that would encroach on the transmission line easement and bury one of the transmission towers to a depth of more than 20 feet.

    - The grading plan also reduces the horizontal (to the casino structure) and vertical (to the adjacent access road) clearances between the Project and the transmission lines to dangerous levels.

- Although nowhere disclosed in the EA, the alternative to the above arrangements (*i.e.*, a massive retaining wall) would make matters worse, as it would require extensive foundation work *beneath* the footings for the transmission tower. Otherwise, the casino would need to be relocated.

- On the eastern edge of the Project site, the grading plan shows transition grading of more than 30 feet in close proximity to the City of Vallejo's water storage tank. The EA provides no slope stability design nor any information about a retaining wall, raising very significant safety concerns. Needless to say, destabilizing the City's water tank would have serious consequences.

- The Project fails to provide California Fire Code-compliant secondary emergency access.

- As a more general matter, sound engineering practice dictates that 2:1 is the steepest permissible fill slope. The grading plan shows dozens of slopes far steeper, with no provisions for retaining walls.

The Project's grading, drainage, and stormwater plans also demonstrate that the environmental "commitments" made elsewhere in the EA cannot actually be met:

- The body of the EA suggests the "northern" (or western) drainage crossing the Project site would be maintained in its current location and condition. The grading plan clearly shows this is impossible – the drainage will need to be piped for a material portion of its length.

- The body of the EA suggests the "southern" (or eastern) drainage crossing the Project site would need to be relocated but promises that it would be maintained in a vegetated earthen swale and would discharge into the wetlands at the southern edge of the Project site "as under existing conditions." The grading plan shows this, too, is impossible.

- In suggesting that drainages will be maintained in a natural, vegetated condition, the EA ignores the actual Project design. The swale shown flowing under the access road near the northwest end of the casino structure is too deep to construct; the drainage would need to be placed in a culvert. More generally, earthen swales cannot be constructed at the depths suggested while maintaining the width shown on Project plans – they are not constructable, and they would be too steep and too deep to serve their intended purposes. To maintain structural and environmental

integrity, the swales would need to be flattened and widened, neither of which is possible under existing plans.

- The body of the EA promises special status species like CRLF and NPT will continue to be able to disperse throughout the Project site, even after construction. The grading plan shows slopes far too steep (and the need for retaining walls far too large) for these species to navigate.

- The EA claims impacts to special status species could be mitigated by the Project's bioretention areas. The Project's grading, drainage, and design materials show proposed bioretention areas that would be impossible for these species to use – for example, one bioretention area is approximately 20 feet higher than existing grade, while another is shown on a slope with one end of the basin 7 feet below road level and the other end 3 feet above road level.

- The EA claims impacts to wetlands will be limited to the direct effects of roughly 1 acre of fill for an access road. The Project's grading, drainage, and stormwater materials show the wetland area on the southern portion of the site will receive large volumes of runoff from paved areas, significantly impacting both flows and water quality. Moreover, it appears the access road alignment would not be workable for large trucks and heavy equipment; the "S" curve proposed for this area would need to be straightened out, requiring additional encroachment into the wetland area.

The Project's grading, drainage, and stormwater plans also reveal significant information gaps:

- The EA does not contain any information showing that wastewater option 1 is feasible given downstream conveyance capacity.

- The EA does not provide any information about how recycled wastewater would be conveyed to reuse areas under wastewater option 2.

- The EA provides no hydraulic modeling addressing stormwater flows, contrary to regulatory requirements.

- The EA does not identify where or how significant stormwater volumes from tributary areas will be managed.

- The EA does not address Scotts Valley's (apparent) plan to store significant stormwater volumes in the wetlands area along the southern side of the Project site.

- The EA does not specify how the drainage system would interconnect with bioretention areas so that flows could eventually be discharged from the site.

- The EA provides no specific analysis of 15-year or 100-year storm events, as required by regulators. The EA does not disclose shrink-swell assumptions for grading activities.

- The EA does not provide any information about where or how the Project's laydown area and construction parking will be sited and maintained.

- The EA does not provide specific cut and fill locations or sequences.

- The EA fails to disclose how power would be delivered to the site and whether off-site upgrades to distribution and/or substation equipment would be needed.

Taken together, the above (and the supporting material in Exhibit C) demonstrates the Project *cannot be built as proposed*. This is not just a matter of adding mitigation (though there is certainly a need for that) or fine-tuning existing analyses; rather, the documents provided show the Project is simply not constructable in its current form. A comprehensive redesign – and a new round of environmental review – would be needed to move forward.

- The utility area cannot accommodate even the smallest configuration of equipment and infrastructure required to be sited therein (water supply option 1, wastewater option 1, and off-site police and fire stations) while also providing necessary vehicular access.

- Other utility area configurations (water supply option 2, wastewater option 2, on-site police and fire stations) presented as options in the EA are still farther removed from feasibility.

- The siting of the Project centerpiece – Scotts Valley's massive 600,000 square-foot casino – conflicts with an existing high-voltage transmission power line and encroaches into a transmission line easement.

- There is insufficient cover for the culvert identified as the main discharge point for stormwater flows leaving the Project site.

- As proposed, the Project requires transition grading that is impermissibly steep. This cannot be remedied by deferring analysis to a future "project-level" study. It simply cannot be built as proposed.

Put simply, this steep, sensitive mountainside site is not developable for a large commercial project – which may be one of the reasons it has remained undeveloped for decades, notwithstanding its freeway-adjacent location.

VII. Water Resources

Water is one of the most critical environmental issues in California today – so much so, in fact, that the State has adopted strict laws and policies requiring that all major development projects expressly identify firm water supplies and assess their reliability. No such hard look has been taken here. In fact, BIA appears to have turned a blind eye to obvious – and, and in some cases, acknowledged – significant water issues. Among other things, the EA provides no substantial evidence or justification for its estimate of Project water demand; proposes to rely on water supply options that are speculative and illusory; fails to address potentially significant water quality issues; and ignores cumulative projects and impacts.

- Proper assessment of water impacts depends, first and foremost, on a well-supported estimate of Project water demand. But the EA provides no real justification, documentation, or substantial evidence to support its estimated demand numbers.

- Given regional and statewide challenges regarding water supplies and availability, it is highly irresponsible – and contrary to California law and policy – to undertake a major development project without first identifying a firm and reliable water source. But the Project water supplies proposed in the EA are purely speculative:

    - EA water supply option 1 involves a direct connection to "an existing 24-inch transition main that crosses the Project site from the City's 6 million-gallon Columbus Parkway Tank…" This would require construction of a 1.5-million-gallon steel storage tank, a pump station and a "pump station and hydropneumatics tank," all of which are proposed to be built in the

"utility area" in the southwest corner of the Project site. Water supply option 1 is speculative in multiple respects.

- The EA references the City of Vallejo's Urban Water Management Plan ("UWMP"), which suggests that, on a gross annual basis, the City may have surplus water that could be supplied to the Project. But the Project is *not* included in the UWMP's future demand estimates for commercial and residential projects, and there are numerous other potential projects that may utilize City water. The EA does not account for these potential cumulative demands.

- In addition, the UWMP states that even where the City has annual water surpluses, constraints on its water assets "make them less reliable on a monthly basis, especially under drought conditions." The EA does not address monthly availability or the potential impacts of drought conditions – a major omission, given that California was subject to severe drought conditions in seven of the ten years between 2012 and 2022.

- Use of City water would involve preparation of a detailed Water Supply Assessment meeting the specific requirements of the California Water Code – including, among many other things, an analysis of the monthly uncertainty and drought reliability issues raised in the UWMP. The EA does not provide anything remotely close to meeting those requirements. Approving the Project (with water option 1 authorized) in the absence of the information required in a full Water Supply Assessment would be contrary to State law and policy enacted for the protection of the environment. *See* 40 C.F.R. § 1501.3(d)(2)(iii).

- Even if City water were available, it is not clear – and the EA does not explain – where or how it could be feasibly delivered to the Project. EA section 2.1.3 mentions directly connecting to an existing 24-inch water main crossing the Project site. But the document does not explain whether or how that existing main can be maintained during the extensive cut and fill required for Project construction. In addition, direct end-user connections raise significant maintenance and system integrity issues, and they are not recommended practice. Indeed, those issues are likely to be especially problematic here, for the new casino structure would be built atop the existing line (and

its maintenance easement). Finally, no specific location for relocation of the water main is proposed or evaluated in the EA – the document is silent as to where a replacement main might be located, whether and or how service might be maintained, and what the environmental consequences might be.

- EA water supply option 2 involves "an onsite groundwater supply system, installing multiple wells to depths of 500 to 1,000 feet below ground surface." EA at 2-7. The EA disclaims further specifics on the wells, claiming that "[a]ctual well capacity, location, and operating strategy" would be developed during a future "design phase." *Id.* The document's "water and wastewater feasibility" appendix offers a similarly dismissive shrug, explaining (to the extent it can be considered an explanation) that "the potential yield of a new well on site is uncertain" but "historical mercury mining operations were present near the site which may contaminate any groundwater…" EA Appendix B at 4-1. Water supply option 2 is illusory.

    - There is no evidence that substantial groundwater resources exist beneath the Project site. As noted above, the EA's technical appendices admit as much. Indeed, there do not appear to be any municipal or public water supply wells drilled within the Jurassic and Cretaceous bedrock units underlying the Vallejo site within 20 miles of the Project.

    - The preparers of the EA did not bother to drill any test wells or perform aquifer yield tests. Both are standard practice. The EA simply does not provide any substantial evidence demonstrating the feasibility or potential environmental consequences of water supply option 2.

    - Indeed, there is good reason to conclude the Project's proposal to drill a series of wells to between 500 and 1,000 is unworkable. The only groundwater production in the area appears to come from wells at much shallower depths. In fractured bedrock formations like the one beneath the Project site, groundwater production decreases – and water quality concerns increase – with depth. As explained in the attached hydrogeologist report (Exhibit D), the proposal to drill water supply wells to depths of 500 to 1,000 feet "is unprecedented in this type of geology, is unsupported by the publicly available data,

and…highlights the lack of sound planning and rigorous analysis in the EA."

- The California Department of Water Resources Well Completion Report ("WCR") Database contains records for two water wells within approximately one mile of the Project site that were drilled into bedrock formations similar to those identified in the EA. One was drilled in 1966 (to a depth of 250 feet) north of Hunter Hill and produced 50 gallons per minute ("gpm") for 24 hours. The other was drilled in 1977 (to a depth of 305 feet) along St. John's Mine Road and was unable to sustain pumping at 35 gpm for more than 2 hours. Other wells drilled in the region produced little or no water. Even if every well at the Project site performs at a "best case" (*i.e.,* 50 gpm) level, at least 7 or 8 wells, running continuously would be needed to meet projected demand. As noted above, the EA's site plans do not account for those wells or their mandatory setbacks.

- The EA and its technical appendices admit that groundwater at the Project site "may be contaminated with heavy metals due to [] historical mining operations and possible flow of water through rocks containing heavy metals" (May 2024 Engeo Hydrogeologic Assessment, page 4). "Heavy metals" include up to 17 different metals, many of which pose significant environmental and human health risks – for example, mercury, arsenic, chromium, copper, lead, manganese, among others. But the EA assumes groundwater would only need to be treated for mercury. This is a significant error because the treatment needed to address other heavy metals is normally much more extensive than the treatment used to address mercury.

- In addition, because the Great Valley Sequence rock present beneath the Project site was deposited in a marine environment it often contains groundwater with elevated levels of salts that would likewise require extensive treatment to meet potable water standards – an issue not fully addressed in the EA.

- As proposed in the EA, water supply option 2 would involve construction of a 1.5-million-gallon water storage tank, a hydropneumatics tank, and a water treatment plant within the utility area in the southwest corner of the Project site. These items

must be sited on flat ground. The utility area is roughly 3.5 acres, with the useable area much smaller due to steep slopes, grading, and the need to account for truck access and turning movements. When combined with other programmed requirements (e.g., emergency generators, required setbacks) there does not appear to be sufficient space for water supply option 2 in the utility area. This is particularly true if wastewater option 2 – which involves still more tanks and treatment facilities – is authorized as a possibility (*see* below)

- The likely need for additional potable water treatment is not merely a matter of additional equipment and facilities; it also requires greater volumes of groundwater and requires disposal of far larger (and more toxic) waste streams than accounted for in the EA. For example, the need to use a membrane filtration process such as reverse osmosis can result in a concentrated reject fraction equivalent in volume to up to 50% of the groundwater produced, depending on concentrations in native groundwater (a piece of information not addressed in the EA). That, in turn, would require significantly more groundwater wells and pumping, as well as disposal of a substantial waste stream containing heavy metals.

- The potential use and/or generation of hazardous substances in connection with potable water treatment (water option 2) is not addressed in the EA. There is no analysis of whether expected volumes of waste, including heavy metals and other hazardous materials, could simply be pumped into VFWD's wastewater connection (wastewater option 1). Nor does the document evaluate whether or how they could be otherwise transported offsite for disposal – or the potentially significant emissions and traffic impacts of doing so.

- Wastewater option 1 would require connection to the VFWD system. But it is not clear whether the Project site is actually within VFWD's service area. Moreover, although the EA acknowledges the Project has the potential to worsen conveyance issues in the VFWD system it provides no real detail on whether, how, when, or with what environmental consequences these problems would be addressed (aside from payment arrangements).

- Wastewater option 2 is not physically feasible as presented in the EA and, even if it could be installed, it would have environmental consequences that are not accounted for in the document.

    - The EA states that wastewater option 2 would generate 136 acre-feet per year of recycled water *in excess of* what could be re-used on site and would therefore require up to 21 million gallons (approximately 64.5 acre-feet) of recycled water storage within the utility area in the southwest corner of the Project site. A recycled water pump station and hydropneumatics tank would also be needed (in addition to the wastewater treatment facility itself). These items must be sited on flat ground. The utility area is roughly 3.5 acres, with the useable area much smaller due to steep slopes, grading, and the need to account for truck access and turning movements. For wastewater option 2, the tanks alone would cover 2-3 acres. There is simply not enough room – particularly when other proposed uses of the utility area space (e.g., generators, potable water storage, potential potable water treatment facility) are taken into account. The EA fails to address this issue.

    - The EA admits that wastewater option 2 would generate cooling tower brine, biosolids, and coarse screenings. But it does not explain how much would be generated or where, specifically, it would be disposed of. Nor does the document account for the emissions and traffic impacts associated with disposal.

    - Wastewater option 2 assumes that 136 acre-feet (a staggering 44 million gallons) per year of recycled water would be provided to off-site recycled water users. The EA includes a figure purporting to show "potential recycled water users" identified in prior VFWD planning documents. But those users are located far from the Project site, there is no recycled water infrastructure linking them to the Project site, and the EA fails to evaluate the environmental consequences of building such infrastructure. This is a major omission – the impacts of installing an entirely new system of wastewater pipes beneath the City of Vallejo are likely to be quite significant.

- The EA fails to account for the cumulative water and wastewater impacts of the Project together with other relevant, reasonably foreseeable actions. For example, a Notice of Preparation for a large mixed-use project (32,725 square feet of retail and restaurant uses, with up to 264 multi-family residences) known as "Solano Ranch" on three of the parcels proposed to be placed in trust for Scotts Valley. The

uses proposed as part of Solano Ranch would represent substantial water and wastewater demand. But neither the EA nor the Notice of Preparation considers Solano Ranch and the casino/housing development cumulatively.

- Although far from clear, the EA and its appendices suggest stormwater from the Project site will be gathered into a pipe and pass under Columbus Parkway before being discharged into Rindler Creek and Lake Chabot. The EA also acknowledges that the soil at the Project site is both prone to high levels of runoff and affected by mercury contamination from legacy mining operations. But the EA fails to take a hard look – or any look at all – at the consequences of discharging stormwater from the Project site into Rindler Creek and Lake Chabot. This is a major concern because Lake Chabot has been designated "impaired" for mercury under Section 303(d) of the Clean Water Act. The EA has simply ignored a significant, unmitigated impact.

Additional information on deficiencies in the EA's water and wastewater analyses can be found in Exhibit D, Exhibit A, and Exhibit C.

VIII. Land Use

Scotts Valley has proposed to develop housing, a 600,000 square-foot casino, and a 1.6 million square-foot parking lot on land currently set aside for "Parks, Recreation and Open Space" (sometimes referred to as "PROS") in both the Vallejo General Plan and the City's Zoning Code. The EA admits this fundamental inconsistency but dismisses it as insignificant on the ground that tribal trust land is not subject to local zoning. This conclusion does not withstand scrutiny.

NEPA's implementing regulations establish the criteria for determining the significance of environmental impacts. One of those criteria is "[w]hether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or would be inconsistent with Federal, State, Tribal, or local policies designed for protection of the environment." 40 C.F.R. § 1501.3(d)(2)(iii).

Here, the City's General Plan establishes a clear policy that Scotts Valley's proposed development area should instead be preserved as Parks, Recreation and Open Space. Among other things, it calls for "no net loss" of sensitive habitats and establishes policies to "[p]rotect and enhance hillsides, waterways, wetlands, occurrences of special-status species and sensitive natural communities, and aquatic and important wildlife habitat." *See* City of Vallejo General Plan Update Draft Environmental Impact Report (2016)

("General Plan EIR"), at 4.3-33 to 4.3-34. These policies were expressly intended for the protection of the environment. *Id*.

Similarly, the City's Zoning Code, codified in municipal law, prohibits commercial, entertainment, and housing development at the location of Scotts Valley's proposed casino, parking lot, and housing development. The Initial Study/Mitigated Negative Declaration for the City's 2021 Zoning Code revision explains that this prohibition was enacted for the protection of the environment, noting the potential for special-status species in "undeveloped natural habitat along the hillsides to the north and east" and the intent of the PROS zoning designation to "limit the type and extent of development in open areas and wetlands." *See* City of Vallejo Zoning Code Update Initial Study – Mitigated Negative Declaration (2021), at 49-52.

In short, Scotts Valley's proposed development would be fundamentally and irreconcilably "inconsistent with…local policies designed for the protection of the environment." 40 C.F.R. § 1501.3(d)(2)(iii). This is a significant, unmitigated impact.

It makes no difference that local zoning is normally inapplicable to tribal trust lands. The Project site is not currently held in trust. The Project's approval is the action that would place the land in trust and create "inconsisten[cy] with…local policies designed for the protection of the environment." And therefore, pursuant to the plain language of 40 C.F.R. § 1501.3(d)(2)(iii), the Project's approval would have a significant effect on the environment.

At the virtual public meeting on July 23, preparers of the EA sought to muddy the waters by suggesting the Project site is zoned for regional commercial. The EA makes a similar suggestion. This is misleading and should be clarified. The portion of the 128-acre parcel where Scotts Valley proposes to develop a casino and housing is squarely within an area set aside for PROS, not for commercial development. While a portion of APNs 182020010 and 182020020 may be designated for commercial development, the EA does not identify any such in on those properties. NEPA requires unbiased analysis and high-quality information. To be consistent with these principles, the EA must be revised to clarify relevant land use and zoning information.

Additional information on deficiencies in the EA's land use analysis can be found in Exhibit A.

IX. Socioeconomics

The EA's analysis of socioeconomic impacts – in particular, socioeconomic impacts to other tribal governments – fails to acknowledge obviously significant impacts, misleadingly suggests those impacts can be dismissed as "temporary," presents a flawed economic impact study, and appears to confirm the EA does not address the full scope of the Project.

On its face, the EA acknowledges the Project will significantly impact other tribes.

- The EA estimates the Project will reduce gaming revenue at existing tribal casinos by $355.5 million per year. Accepting that figure at face value, this is a significant impact to other tribes for which no mitigation has been proposed.

- The EA estimates the competitive impact on Yocha Dehe's Cache Creek Casino Resort alone to be a 15.5% loss in gaming revenue. Accepting that figure at face value, this is a reduction that would directly translate to a loss of Yocha Dehe governmental revenue substantially impacting Tribal programs and services. This, too, is a significant impact for which no mitigation has been proposed.

Moreover, a close look at the EA's market and competitive impact analyses shows the document's preparers have in fact significantly underestimated impacts to other tribes. Among other things, the EA fails to account for the local market's advanced maturity level; overestimates unmet demand; does not recognize high levels of market penetration by existing tribal casinos; inappropriately excludes numerous competitors from the analysis; overestimates revenues from table games; includes hypothetical competitors in its analysis, contrary to accepted practice; fails to include outer market revenue in competitive impact analysis; and does not account for Scotts Valley's sworn (under penalty of perjury) intent to develop a hotel.

The EA compounds these errors by misleadingly suggesting competitive impacts are "only" temporary:

- As an initial matter, it is important to note that the scale (or intensity) of the Project's impacts on Yocha Dehe and the length of the "temporary" impact period (5.6 years) are such that the impacts would be significant *even if* they were only temporary.

- Moreover, the EA's suggestion of a "temporary" impact is unsound and unsupported. The preparers of the EA seem to be under the impression that

impacts will naturally dissipate due to market growth. But "natural growth" in the market (population, income, inflation, etc.) is a separate phenomenon that would occur with or without the Project. At most, it would only return Yocha Dehe to the position it was in years earlier – and only after many years of significant, unmitigated impacts.

The EA also presents a flawed economic impact study that overstates the asserted benefits of the Project by inaccurately describing the geographic scope of economic benefits; arbitrarily and capriciously accounting for tax impacts; mis-categorizing development costs and failing to account for competitive effects.

Moreover, the EA's economic analyses appear to confirm that Scotts Valley is withholding information about its true plans for the Project site. Scotts Valley's current proposal does not include a hotel or resort component, and the EA does not identify or evaluate the environmental consequences thereof. But, as noted above, Scotts Valley leadership has previously stated, in sworn declarations, that it would develop a hotel once the Project site is taken into trust. And the socioeconomic analysis confirms the Project appears to be infeasible in the absence of such a hotel. On the current record, then, Scotts Valley's construction and operation of a hotel is a reasonably foreseeable consequence of the Project. To comply with NEPA, BIA must either address the environmental consequences of hotel development or obtain a clear, enforceable commitment that no such development will occur.

Additional information on deficiencies in the EA's socioeconomic analysis can be found in Exhibit A and Exhibit E.

X. Environmental Justice

Pursuant to Executive Order No. 14096 (April 21, 2023), all agencies (including BIA) are required to include in their NEPA reviews an analysis of effects on communities with environmental justice concerns, to consider best available information on any disparate health effects, and to provide opportunities for early and meaningful involvement in the environmental review process by environmental justice communities. *Id.* § 3. Adverse environmental justice effects are an indicator of significant impacts requiring preparation of an EIS. 40 C.F.R. § 1501.3(d)(2)(vii).

Here, the EA's analysis of environmental justice impacts is flawed in multiple respects:

- The EA inaccurately assumes that there will be no environmental justice impacts because there are no significant environmental impacts in other resource areas. EA at 3-49.

    - As shown throughout these comments, the EA fails to account for several significant impacts, including, but not limited to, environmental justice flashpoints like air quality, water resources, hazardous materials, wildfire hazards, noise, traffic, land use, and public services.

    - Moreover, the courts have squarely rejected the EA's analytical approach. Taking a hard look at environmental justice requires more than just a reference to other impact areas. *See, e.g., Hausrath v. United States Dep't of the Air Force*, 491 F. Supp. 3d 770, 795-96 (D. Idaho 2020) (invalidating environmental justice analysis for similar failure).

- The EA fails to fully evaluate environmental justice impacts on other tribal governments, claiming that such impacts would "occur outside the immediate vicinity of the Project Site." EA at 3-47 to 3-49. This, too, is arbitrary and capricious.

    - There is no "distance limitation" on environmental justice analysis. *See Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330-31 (D.C. Cir. 2021) (agency decision to limit environmental justice analysis to within two miles of the project was arbitrary and capricious).

    - Tribes are minority populations subject to NEPA's environmental justice analysis. EA at 3-49. And the BIA NEPA Guidebook requires the agency to "specifically address in the environmental analysis *any* such communities that *might* be affected by a proposed action." BIA NEPA Guidebook at 26 (emphasis added).

    - Yocha Dehe (and other tribes) will, in fact, be impacted in close proximity to the Project. The historic resource proposed to be bulldozed on the Project site is a Patwin cultural site. Moreover, Yocha Dehe maintains government programs and services – including a mobile food pharmacy and support for a scholarship, among other things – in Solano County and Vallejo itself.

- As described in Part I, Yocha Dehe, was not adequately consulted or given an opportunity for meaningful involvement in this NEPA process. This runs afoul Executive Order No. 14096 and is itself a significant violation of NEPA.

XI. Greenhouse Gas Emissions and Climate Change

A. The EA Fails to Comply with Federal Requirements

The EA's greenhouse gas ("GHG") and climate change analysis fails to satisfy the NEPA's requisite hard look. NEPA requires agencies to analyze the cumulative effects of climate change resulting from GHG emissions. *See* 40 C.F.R. §§ 1501.5(c)(2)(iii) (requiring EAs to discuss environmental effects of the proposed action), 1508.1(i)(3) (defining "effects" to include "[c]umulative effects"), 1508.1(i)(4) (defining "effects" to include "climate change-related effects"). CEQ's interim guidance titled "CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change" directs agencies to quantify GHG emissions impacts through carbon dioxide equivalent and using the social cost of GHG emissions ("SC-GHG") to put a dollar number to the impacts. 88 Fed. Reg. 1196 (Jan. 9, 2023). The Department of the Interior has also adopted use of SC-GHG in evaluating proposed actions. Secretary of the Interior, Secretarial Order No. 3399: Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to Decision-Making Process (Apr. 16, 2021). The SC-GHG is intended to facilitate comparisons to "other monetized values" to help evaluate the significance of climate change impacts from GHG emissions. 88 Fed. Reg. 1196, 1202-03 (Jan. 9, 2023). The guidance also states that agencies should contextualize the SC-GHG value with the lead agency's own climate goals. *Id.* at 1203.

The EA tabulates GHG emissions and the SC-GHG but otherwise fails to comply with the CEQ guidance and NEPA requirements. The EA indicates that the Project will yield 3,422 metric tons of carbon dioxide equivalent ("MT CO_2e") for construction emissions and 36,528 MT CO_2e for annual operational emissions and then uses emissions of carbon dioxide, methane, and nitrous oxide to calculate $74,517,513 of climate impacts using SC-GHG. EA at 3-111 to 3-112. As explained in Exhibit A, the SC-GHG calculation used by the EA excessively discounts the future climate change impacts and as such the SC-GHG number should actually be recalculated to adequately reflect these impacts.

Moreover, despite vague references to federal and State measures to reduce GHG emissions from mobile sources that lead to an assumed 15 percent carbon dioxide emissions reduction in the SC-GHG calculation, the EA fails to contextualize what these emissions numbers or the SC-GHG dollar figure actually mean for the climate impacts of this Project or its significance for purposes of NEPA. EA at 3-110 to 3-112. The EA gestures towards standard (and in some cases legally required) BMPs as mitigation that would avoid significant adverse cumulative impacts associated with climate change, but the BMPs do not make any meaningful dent in these impacts. *See also* EA at 3-112. While the CEQ guidance does not establish any numerical threshold of GHG emissions for

determination of significant impacts under NEPA, the over $74 million in climate change-related costs is objectively large and lacks any contextualization to suggest that it is rightfully considered less than significant. 88 Fed. Reg. 1196, 1200-01 (Jan. 9, 2023). Indeed, even where an EA adequately calculates GHG emissions attributable to a project, the failure to cite any scientific evidence to support the characterization of emissions as insignificant can render the EA deficient as not complying with NEPA's requirement to provide a "convincing statement of reasons." *350 Montana v. Haaland*, 50 F.4th 1254, 1265-70 (9th Cir. 2022).

Furthermore, as explained in Part IV, the EA relies on a variety of erroneous assumptions and inaccurate information about the Project in modeling the GHG emissions for the Project. The EA underestimates the number of haul truck trips needed to transport the 135,000 cubic yards of fill identified by the EA as necessary for grading operations. The emissions modeling assumes only 375 one-way haul truck trips when the volume of fill and the capacity of a haul truck identified in the CalEEMod User's Guide show that 8,438 haul truck deliveries would be needed. The value is then appropriately doubled to account for empty-load return trips for each of the trucks. The EA fails to provide any explanation for why it found it acceptable to reduce the number of haul truck trips so drastically. As a result, the GHG emissions associated with hauling of fill is grossly underestimated and the significance determination for GHG impacts is unsubstantiated.

In addition, the CalEEMod modeling fails to account for movement of 632,000 cubic yards of cut material around the 54-acre Project site during grading and also does not account for the amount of construction equipment needed to meet the 18-month construction schedule specified by the EA. EA at 2-9, 3-111; EA Appendix G; Exhibit A. Making matters worse, the EA fails to explain how construction equipment staging on the Project site will work. As explained in Exhibit C, extensive grading around the main build area of the Project site will necessarily mean that construction equipment must be staged across the wetlands on a different parcel. Consequently, construction equipment will need to be moved back and forth from the staging area and the main work area, further increasing emissions. These deficiencies in the analysis total up to mean that there are hugely significant GHG emissions for which the EA entirely fails to account.

Thus, in addition to the EA failing to contextualize the SC-GHG number with any meaningful explanation, the EA obfuscates other emissions that mean that the dollar figure should be even higher than the already substantial over $74 million acknowledged. The clear deficiencies in the tabulation of emissions reflect a failure to take the hard look at environmental effects NEPA requires. An EIS must be prepared to thoroughly evaluate the significant GHG emissions impacts of the Project.

B. The EA Is Inconsistent With State and Local Requirements and Policies

The Bay Area Air Quality Management District ("BAAQMD") has California Environmental Quality Act ("CEQA") guidelines that measure significance for climate impacts based on whether one of two compliance pathways is followed. BAAQMD, CEQA Air Quality Guidelines (2022) ("BAAQMD CEQA Guidelines"). The first involves inclusion specific project design elements to make building energy use and transportation associated with operation of a project more sustainable. *Id.* at 3-6. Among the required design elements for this option is a commitment to not include any natural gas appliances or natural gas plumbing in the buildings for the project. *Id.* The second compliance pathway relates to CEQA Guidelines section 15183.5(b), which is a part of the California Code of Regulations that elaborates on CEQA's legal requirements. *Id.*; 14 Cal. Code. Regs. § 15183.5(b). CEQA Guidelines section 15183.5(b) sets out the criteria for a local climate plan, compliance with which will make a development project less than significant for GHG emissions impacts for CEQA purposes. 14 Cal. Code. Regs. § 15183.5(b). The City of Vallejo's Climate Action Plan ("CAP") is a plan that fits within CEQA Guidelines section 15183.5(b) and includes a Compliance Checklist for how new development projects can conform to the CAP. City of Vallejo, Climate Action Plan (March 2012) ("Vallejo CAP"), at 2-15 to 2-16, Appendix D. However, the EA fails to adhere to either of these compliance pathways.

The EA does not claim to comply with BAAQMD's required project design elements for a less than significant finding for climate change impacts. This is because the Project as proposed does not require the requisite design features. While the EA adopts a BMP for use of electric boilers, the EA also specifies that Pacific Gas & Electric natural gas services will be used and the EA assumes for emissions modeling "in the event that natural gas is utilized, . . . combustion of natural gas in stoves, heating units, and other equipment." EA at 3-21, 3-69. This completely undermines any potential claim that this Project contains the required project design elements to satisfy BAAQMD's requirements for less than significant GHG emissions impacts.

The compliance with a local climate plan approach would also fail as the EA does not even mention the Vallejo CAP in its Climate Change impacts discussion. EA at 3-110 to 3-113. Moreover, the Vallejo CAP includes a Compliance Checklist for New Development with several project requirements that the EA currently does not require for this Project. Vallejo CAP, Appendix D.

The EA fails to comply with CEQA, BAAQMD's guidelines, and Vallejo's CAP. Thus, these analytical deficiencies and violations of state and local law and policy are further

evidence of significant climate change impacts that are not addressed in the EA such that an EIS must be prepared. 40 C.F.R. § 1501.3(d)(2)(iii).

Additional information on the deficiencies in the EA's GHG emissions analysis can be found in Exhibit A and Exhibit C.

XII. Hazardous Materials and Hazards

The EA fails to adequately analyze hazardous materials and wildfire hazard issues posed by the Project. These deficiencies flow from a lack of complete or thorough analysis of hazardous materials contamination on the Project site as well as a failure to accurately assess the wildfire and emergency evacuation issues of siting this Project in a high wildfire risk zone. The EA fails to take a hard look and evaluate several aspects of the Project's significant hazardous materials and hazards impacts:

- The EA identifies a prior serpentine mine that existed in the center of the Project site, a PFAS monitoring well on the Project site, and a mercury mine that was active until 1923 about one mile northeast of the Project site. EA at 3-85. Yet, the EA's hazardous materials studies fail to fully delineate the mining tailings area on the Project site. Given the sparse information on past uses and known nearby mining operations – as well as extensive grading proposed as part of the Project – robust sampling throughout the site should have been conducted to identify soil contamination. Without a more thorough study, it remains likely that contamination could exist elsewhere on the Project site.

- The EA and its appendices repeatedly reference the historical mercury mining operations and the existence of at least some legacy contamination on the Project site. *See, e.g.,* EA at 2-7 (acknowledging potential need to treat groundwater for mercury contamination), 3-4 (identifying mining tailings from nearby defunct mercury mine near the center of the Project site); EA Appendix B at 2-12, 3-1, 4-1 (Water and Wastewater Feasibility Study discussing mercury issues on site); EA Appendix D at 4 (Preliminary Geotechnical Exploration discussing same); EA Appendix E at 63 (Expanded Regulatory and Environmental Setting summarizing Phase 1 ESA finding that mercury mine is approximately one mile northeast of the property); EA Appendix M-1 at i, 18 (Phase 1 ESA discussing same); EA Appendix M-2 (Soil Testing Memo 2023 with soil samples and mining tailings showing mercury); EA Appendix M-4 at 2 (Soil Testing Memo 2024 with same). The proximity of the mercury mine to the Project site and the evidence of some presence of mercury contamination necessitates sampling of soil at greater depths rather than just surface sampling.

- PFAS is an emerging contaminant and the presence of a PFAS monitoring well on the Project site suggests a possibility that contamination may be present and could be encountered during soil excavation. EA at 3-85. The EA fails to account for this possibility as it does not survey for PFAS soil contamination or assess what such contamination could mean for the Project. *See, e.g.*, EA Appendix M-1 at 1 ("Per- and Polyfluoroalkyl Substances (PFAS) are not considered as part of this assessment."). Nor does it provide monitoring results from the well.

- It is unclear whether the presence of lead in Tailings C pile noted in the EA means that lead contamination extends into the subsurface and potentially the groundwater. EA at 3-85. As a result, the soil underneath the tailings pile should be sampled in addition to the groundwater to determine if additional significant hazardous materials impacts exist.

- The Phase 1 ESA specifically has several deficiencies. First, it only studies 101 acres of the full 160-acre Project site, leaving 59 acres unevaluated. *See* EA at 1-1 (explaining that Project site is 160 acres); EA Appendix M-1 at 1 (describing scope of Phase 1 ESA as 101 acres of the Project). Second, the Phase 1 ESA contains no evidence of a title search that would shed light on past uses of the Project site and potential contamination that could have stemmed from those uses. EA Appendix M-1 at 2 (discussing only vague efforts to research "[p]revious land uses and the history of the Subject Property"). Finally, although BIA eventually provided the ESA Phase 1's attachments – well after the EA's original publication – they were not included with the EA when published and the comment period began. Belated provision of this material does not cure the failure to provide complete information as required under NEPA – particularly where the BIA has refused to grant reasonable requests (from multiple parties) for a 30-day extension.

- Stormwater runoff protective measures and infrastructure mentioned in the EA are inadequately described and the EA fails to account for potential mercury contamination in the soil from past mining activities. As discussed in Part VII, this mercury runoff poses risks to nearby impaired water bodies with significant water resource and biological resource impacts – particularly in light of the extensive grading and drainage alterations proposed.

- The EA acknowledges that the Project Site sits in a High Fire Hazard Severity Zone in the Local Responsibility Area and is surrounded by High Fire Hazard Severity Zones within the State Responsibility Area. EA at 3-86 to 3-87. In addition, Solano County Community Wildfire Protection Plan identifies the Project Site and nearby

areas as having high wildfire risk due to topography, fuels, weather influences, and proximity to fire stations. *Id.* at 3-86, 3-88. Notably, the Vallejo General Plan EIR concluded that impacts of fire risk would be less than significant throughout Vallejo because the General Plan did not directly result in new development and because new development approved consistent with the General Plan would occur in low fire risk areas that are already urbanized or developed. General Plan EIR at 4.7-30 to 4.7-31. As a result, the decision to build this project in this fire prone open space area violates local law, poses substantial risks to the health and safety of the intended residents, employees, and customers, and constitutes a significant impact under NEPA. 40 C.F.R. § 1501.3(d)(2)(iii).

- The significant traffic congestion impacts discussed in Part III also have severe implications for emergency evacuation in the event of a wildfire. The EA concludes that with an emergency evacuation plan and traffic mitigation, impacts would be less than significant. EA at 3-91 to 3-93. However, the EA improperly defers mitigation by indicating that Scotts Valley will coordinate with experts without providing any clear criteria for what the resulting plan should look like. Moreover, traffic mitigation remains inadequate such that significant impacts remain for wildfire evacuation risks. Without a clear emergency evacuation plan for this massive project in a high fire hazard area, the EA fails to adequately address serious safety concerns or mitigate significant impacts under NEPA.

- The Project proposes to locate Scotts Valley housing and tribal facilities within a landslide zone.

XIII. Noise

Scotts Valley's Project would situate housing in an inhospitably loud environment, replace open space with a large, bustling casino that would further intensify noise effects across the Project site, and exacerbate existing freeway noise to the detriment the Project's residential neighbors. The EA's shortcomings with respect to evaluating the Project's noise impacts amount to failure to take the hard look at adverse effects required by NEPA:

- The EA fails to provide any Noise/Land Use Compatibility Analysis, despite the fact that the Project would locate noise-sensitive residences between the already-noisy Interstate 80 and the Interstate 80/Highway 37 Interchange and the new casino.

- The EA claims that there are no federal noise regulations applicable to the proposed Project. EA at 3-75. But regulations promulgated by the U.S. Department of Housing and Urban Development ("HUD") establish minimum national standards "to protect citizens against excessive noise in their communities and places of residence" particularly to ensure compatible land use planning in relation to "highways and other sources of high noise." 24 C.F.R. § 51.101(a)(1)(i). HUD's standard for "Normally Unacceptable" noise is 65 to 75 decibels ("dB") with noise levels above 75 dB deemed "Unacceptable." 24 C.F.R. § 51.103. As explained in Exhibit A and 24 C.F.R. § 51.103, developments in the "Normally Unacceptable" noise zone must have "a minimum of 5 dB of additional sound attenuation for buildings that have noise-sensitive uses if the day-night average sound level is greater than 65 dB but does not exceed 70 dB, or a minimum of 10 dB of additional sound attenuation if the day-night average sound is greater than 70 dB but does not exceed 75 dB." The EA's measurements of existing noise shows that noise levels currently experienced at the location of the proposed housing may exceed these HUD standards – and would be particularly likely to do so once casino noise is added to the noise environment.

- The EA fails to analyze the Project's operational noise impacts in combination with existing ambient noise. While the EA did estimate Project on-site operational noise, this analysis is divorced from reality as it does not evaluate the impact of how this noise will combine with the existing baseline to heighten the noise experienced on the Project site. EA at 3-78. This divergence from actual conditions on the ground is contrary to NEPA and fails to capture how noise could further negatively impact the residences on site as well as adversely affect the biological resources meant to be protected in the on-site biological preserve. *See Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1101-04 (9th Cir. 2016) (holding that "[e]stablishing an appropriate baseline is critical to any NEPA analysis").

- Although the EA evaluates off-site traffic noise impacts on local roadways, the EA does not analyze noise impacts from increased traffic on Interstate 80 or Highway 37. EA at 3-77. The Project will increase traffic on those freeways, making louder noise that will impact several noise-sensitive residences located along the freeways.

- The EA also fails to evaluate potential impacts of Project noise on the habitat value of the proposed "preserve" area addressed in Part V, above.

Additional information on the deficiencies in the EA's noise analysis can be found in Exhibit A.

XIV. Indirect and Cumulative Impacts

NEPA requires federal agencies to consider the indirect impacts of proposed projects. 40 C.F.R. § 1508.1(i)(2). Here, each of the Project's various water and wastewater configurations requires extensive off-site work with the potential to cause significant indirect impacts. *See* Part VII. Although the EA includes a cluttered chart (*see* Part 1) purporting to address indirect impacts, the consequences of these extensive water and wastewater improvements are not specifically disclosed or evaluated.

Agencies must also consider cumulative impacts, defined to include the effects of the proposed action together with the impacts of other past, present and reasonably foreseeable future actions. 40 C.F.R. §§ 1501.5(c)(2)(iii), 1508.1(i)(3),(4). The EA's cumulative impacts analysis if flawed in multiple fundamental respects:

- The EA arbitrarily and capriciously restricts its analysis to projects located in close proximity to the Project site and within the City of Vallejo. Neither restriction has any sound basis in fact or law. *See* BIA NEPA Guidebook at 25; *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 943 (9th Cir. 2014); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 901-02 (9th Cir. 2002). The Project is a large development that will have a regional impact; its cumulative impacts on cultural resources, biological resources, air quality, traffic, public services and utilities, and more will likewise be felt regionally.

- Rather than identifying and evaluating the Project's impacts *together with* other past, present, and reasonably foreseeable future actions, the EA simply recounts, in a cursory way, the rationale for its direct impact conclusions. *See* EA at 3-109 to 3-116.

XV. Alternatives

NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(H); *see also* 40 C.F.R. §§ 1501.2(b)(3), 1501.5(c)(2).

This requirement is not a "check-the-box" exercise in paperwork (40 C.F.R. § 1500.1(c)) or a matter of justifying a project proponent's pre-existing preferences. 40 C.F.R. § 1501.2. Rather, alternatives analysis is an action-forcing requirement whereby the lead federal agency must "identify and assess [] reasonable alternatives to proposed actions <u>*that will*</u>

avoid or minimize adverse effects of those actions on the quality of the human environment." 40 C.F.R. § 1500.2(e) (emphasis added).

The EA falls miserably short of meeting these fundamental requirements:

- It is beyond reasonable dispute that the proposed action involves "unresolved conflicts" concerning important ecological and cultural resources at and around the Project site. But the EA does not evaluate in detail a single alternative site. *See* EA Chapter 2.

- Perhaps recognizing that the scope of the alternatives analysis is facially inadequate, the preparers of the EA have included in an Appendix (but not the document itself [*see* Part I]), a series of notes repeating conclusions from the 2008 EIS regarding sites then under consideration. But there is no evidence that the 2024 EA's preparers undertook any independent, current analysis of alternative sites that may be available *now*.

- Given the circumstances presented by the proposed action – in particular, the absence of any concrete, positive evidence that Scotts Valley has a historical connection to the Vallejo site and the significant, irreparable damage that would be caused by the federal government giving Patwin ancestral lands to a Pomo tribe for commercial development – it is particularly notable that the EA fails to evaluate in detail any alternative sites in the area of Scotts Valley's own Clear Lake homeland. Such sites would resolve the areas of greatest controversy and impact (ecological and cultural) surrounding the proposed action.

- Because the preparers of the EA appear to have been unable or unwilling to take so much as a cursory look at potential alternative sites in Scotts Valley's Clear Lake homeland, Yocha Dehe undertook an initial search. *See* Exhibit F. That analysis revealed numerous facially reasonable options, including (but not limited to) the following:

    - Valley Oaks Site. This alternative site consists of approximately 18 net acres along State Highway 29 at a new roundabout near the entrance to Hidden Valley Lake, CA, south of Clear Lake. It is roughly 25 miles from Scotts Valley's historic Sugar Bowl Rancheria. This site provides a good opportunity to combine commercial and residential uses, and such a mixture would be consistent with planning, zoning, and entitlements. Significant roadway and utility improvements, as well as site work, have

already been completed. Multiple available lots are currently available and could be combined.

- North State Street Interchange Site. This alternative site consists of approximately 36 acres on the east side of North State Street at US-101 (and next to the North State Street freeway interchange) in Ukiah, CA. It is approximately 16 miles from Scotts Valley's historic Sugar Bowl Rancheria. The property is currently zoned for industrial use, utilities are in place, and roughly half the site has already been graded and compacted. The property is on the market.

- Cinemas and Lakeshore Boulevard Sites. This alternative site consists of a combination of approximately 26 acres of commercial land (currently home to the Lakeport Cinemas & Drive-In) and approximately 103 acres of nearby residential land (currently undeveloped) along the lakeshore in Lakeport, CA, together allowing Scotts Valley to realize both its economic development objectives and its housing objectives. The Cinemas property is at the intersection of State Highway 29 and State Highway 175. The residential property is off State Highway 29. Both properties are within 4 miles of Scotts Valley's historic Sugar Bowl Rancheria. The Cinemas property contains an existing entertainment business, is zoned for commercial use, is already served by utilities, and has been graded. The residential property is zoned for residential, has already been granted more than 70 water connections, and (in the context of prior entitlement efforts) was deemed able to be served by existing wastewater systems. The properties are on the market.

- Alexander Valley Resort & Residences Site. This alternative site consists of 200+ acres in Cloverdale, CA, near US-101. The property is already fully entitled for hospitality, commercial, and residential uses. There are three existing water wells, with the ability to drill two more. The property is also served by a sewer line, and the City of Cloverdale has agreed to make sufficient treatment capacity available. The land is relatively flat. The property is on the market.

These (and other) alternative sites appear to be available, suited for development, and capable of avoiding or minimizing some or all of the environmental effects of developing the Vallejo site. They must be fully considered in the EA.

- The BIA has drafted EA *as if* the document evaluates the possibility of reduced-intensity development at the Vallejo site. But there appear to be few, if any, meaningful environmental differences between the Scotts Valley's proposed action and the EA's so-called "Reduced Intensity Alternative." The latter eliminates 24 units of tribal housing but leaves Scotts Valley's proposed casino development – the source of the vast majority of the Project's environmental impacts – unchanged. Such an approach is fundamentally contrary to the very purpose of alternatives analysis – namely, to identify options "that will avoid or minimize adverse effects." *See* 40 C.F.R. § 1500.2(e). It also arbitrarily and capriciously differs from the BIA's NEPA analyses of other recent Northern California casino proposals (e.g., Redding, Koi, Coquille) all of which evaluate a reduced intensity *casino* development as a reasonable alternative.

- The EA's stated basis for failing to evaluate a reduced-intensity casino development does not withstand even minimal scrutiny:

    - The 2008 EIS identified both a 225,000 square-foot casino (79,320 square feet of casino floor space) and a 95,000 square-foot casino (41,440 square feet of casino floor space) as reasonable alternatives. The EA evaluates only a 614,959 square-foot casino (238,266 square feet of casino floor space), without specifically addressing the other two options.

    - In an appendix, BIA suggests there was no need to consider a smaller casino because any economically viable casino at the Vallejo site would have the same footprint. Neither the EA nor its appendices provide any evidence whatsoever for that proposition. Moreover, the footprint of a casino is not the only determinant of its environmental consequences. For example, air emissions and traffic, both of which would be significant for the proposed action, can be minimized by reducing the size of a casino's gaming floor (independent of its footprint).

    - Citing EA Appendix A, a "gaming market study," the BIA vaguely suggests "the size of the gaming component is consistent with regional market factors." But that is not the relevant issue. For NEPA purposes, the question is whether a reduced *casino* alternative might feasibly help minimize or avoid the proposed action's adverse environmental effects. The referenced study does not evaluate – or even purport to evaluate – that subject; instead, it (unsuccessfully) attempts to evaluate the socioeconomic consequences of other alternatives.

Additional information on the deficiencies in the EA's alternatives analysis can be found in Exhibit F and Exhibit E.

EXHIBIT A

August 22, 2024

Matthew Adams
Attorney at Law
Kaplan Kirsch LLP
One Sansome Street, Suite 2910
San Francisco, CA 94104

RE: Peer Review of the July 2024 Environmental Assessment for the Scotts Valley Band of Pomo Indians' Casino and Tribal Housing Fee-to-Trust Project

Greetings:

ECORP Consulting, Inc. was retained by the Yocha Dehe Wintun Nation (YDWN) to review the July 2024 Environmental Assessment (EA) for the Scotts Valley Band of Pomo Indians' Casino and Tribal Housing Fee-to-Trust Project in Solano County, California. The EA was prepared by Acorn Environmental on behalf of the federal lead agency, the Bureau of Indian Affairs (BIA).

ECORP has provided full-service environmental consulting services for clients across California and adjoining states for more than 30 years. We have prepared hundreds of environmental analysis and compliance documents, including National Environmental Policy Act (NEPA) documents and supporting technical studies, as well as peer review of environmental compliance documents at the request of lead agencies, resources agencies, and other interested parties. NEPA's implementing regulations require that agencies "identify, consider, and disclose to the public relevant environmental information early in the process…The information shall be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA" (40 CFR 1500.1(b)). If an agency determines, based on the EA, that the Proposed Action will have significant effects, the agency must prepare an Environmental Impact Statement (40 CFR 1504.6).

Our evaluation of the subject EA has identified several issues that preclude meaningful disclosure of environmental impacts to the public and decision makers, including missing analysis, inconsistent conclusions, and downplay of the potentially significant effects of the Proposed Action. The Project is proposed on a steeply sloped site with no clear developable area and containing sensitive natural and cultural resources. The EA relies on a conceptual design that does not include details on project facilities, access, grading, operations, or infrastructure but asserts that avoidance of sensitive resources would make levels of impact less-than-significant. The EA does not accurately disclose potential significant environmental effects that could occur from construction or operation of the Proposed Action because significance conclusions are based on insufficient, inconsistent, or misleading information that downplays the potentially significant effects of the Proposed Action. Due to the potential for significant effects on the environment, an EIS must be prepared that accurately discloses all impacts to public and decision makers.

FIRM OVERVIEW

ECORP was established in 1987 as a full-service environmental consulting firm assisting government agencies and private clients with a wide range of environmental services, including technical expertise in land use planning; biological, cultural, paleontological, and water resources; and regulatory compliance with the California Environmental Quality Act (CEQA) and with NEPA, the Clean Water Act, the federal and state Endangered Species Acts, the National Historic Preservation Act (NHPA), and other laws and regulations. ECORP has well-established working relationships with the resources agencies, including the U.S. Army Corps of Engineers (USACE), California Department of Fish and Wildlife (CDFW), Regional Water Quality Control Board (RWQCB), and the U.S. Fish and Wildlife Service (USFWS).

ECORP provides support over the life of a project, from initial baseline studies; to environmental planning, documentation, and review; permit negotiation, liaison with resource agencies, and mitigation design; and through to construction monitoring and compliance reporting. ECORP brings an experienced team of more than 150 CEQA and NEPA specialists, environmental permitting specialists, environmental analysts, terrestrial and aquatic biologists, wetland specialists, paleontologists, archaeologists/cultural resources specialists, air quality/noise analysis specialists, Geographic Information Systems (GIS) specialists, and unmanned aerial systems specialists.

PROFESSIONAL QUALIFICATIONS

NEPA, Land Resources, Visual Resources, Socioeconomics/Environmental Justice, Indirect and Growth Inducing Effects, and Cumulative Effects

Anne Surdzial is an environmental analyst with more than 30 years of experience in the planning field. She has prepared and managed the preparation of IS/EAs and Environmental Impact Reports (EIRs)/ Environmental Impact Statements for a variety of projects subject to review under CEQA and NEPA. As Director of CEQA/NEPA Services for ECORP, she is responsible for ensuring consistency and quality of all CEQA and NEPA products companywide. Her expertise includes management of large, on-call environmental programs for public agencies that require the completion of multiple, simultaneous task orders, in addition to management of large internal project teams and subcontractors. Much of her experience focuses on the environmental analysis of water, wastewater, transportation, and energy infrastructure projects for private clients and a variety of federal, state, regional, and local agencies. She is also experienced in land use planning and historic preservation issues and has worked for public planning departments. She has provided technical expertise to local chapters of the American Planning Association and Association of Environmental Professionals and at the State AEP Conference by sitting as a panel member for professional training sessions on various subjects related to CEQA and NEPA. She has also been a member of the State AEP Awards Jury nine times.

Cultural Resources

Lisa Westwood is a Registered Professional Archaeologist with 30 years of cultural resources management experience. She exceeds the Secretary of the Interior's Professional Qualifications Standards for prehistoric and historical archaeologist and serves as principal investigator for cultural resources services required for

compliance with Section 106 of the National Historic Preservation Act, NEPA, and CEQA. Her technical areas of expertise include advanced Section 106 compliance and consultation, cultural resources laws and regulations, preparation and negotiation of compliance agreements, and archaeology. She is the President of the Register of Professional Archaeologists and a member of the departments of Anthropology at California State University and Butte College.

Air Quality and Noise

Seth Myers is an environmental planner and air quality/noise analyst with more than 18 years of experience. Mr. Myers is involved in the preparation of the full range of CEQA and NEPA environmental compliance and review documents, including environmental impact reports. He has extensive expertise conducting air quality, greenhouse gas emissions, and noise analyses and has a comprehensive working knowledge of the associated regulatory environment. He is proficient in the use of CalEEMod, EMFAC, AERMOD, SoundPLAN, the Roadway Construction Model, the Federal Highway Administration Highway Traffic Noise Prediction Model, and other industry standard emissions and noise modeling tools.

Biological Resources

Molly Enloe is a biological resources professional with more than 30 years of experience. She specializes in endangered species and wetland compliance, biological assessments, CEQA/NEPA documentation, and environmental permitting. Ms. Enloe has prepared biological resources evaluations and impact assessments for a wide variety of projects, from general plans/specific plans to commercial and residential developments, transportation and infrastructure projects, and recreational facilities. She has performed biological surveys, implemented mitigation and monitoring programs, and performed environmental data collection and analysis for projects throughout California and parts of Nevada. Her species experience includes western burrowing owl, California spotted owl, Swainson's hawk, San Joaquin kit fox, blunt-nosed leopard lizard, desert tortoise, California tiger salamander, valley elderberry longhorn beetle, and vernal pool crustaceans. Ms. Enloe is experienced in meeting the requirements of multiple agencies, including state and federal resource agencies as well as the USACE, RWQCB, California Department of Transportation (Caltrans), and Tahoe Regional Planning Agency. She is also familiar with all phases of environmental remediation as a result of her experience leading the cleanup of several contaminated ecological sites for the U.S. Air Force.

Paleontological Resources

Niranjala Kottachchi is a geologist with more than 15 years of experience in paleontology. She specializes in conducting field surveys, construction monitoring, and fossil preservation and identification in both field and lab environments. Her skills include preparation of plans and reports that identify, evaluate, and mitigate paleontological resources impacts in compliance with CEQA/NEPA and Society of Vertebrate Paleontology (SVP) standards, as well as in compliance with various state and local agency standards. Her project experience is wide ranging and includes urban development, transportation and energy infrastructure, renewable energy, communication, and waste management projects throughout California. Her most substantial work has been for Fresno State University, monitoring and supervising excavation and recovery of Pleistocene vertebrates at the Fairmead Landfill Fossil Site north of Madera, California. She

has published scientific papers in paleontology and teaches geology part-time at two local community colleges.

GENERAL COMMENTS

1. General: Development of Assessor's Parcel Numbers (APNs) 182-020-010, 182-020-020, and 182-020-080 is not discussed at all; however, there is a proposal for development of these parcels in process at the City of Vallejo.

2. Section 2.1.3, On-Site Water Supply (Option 2): This section does not include details regarding the location, number, or capacity of wells.

3. Section 2.1.4, Recycled Water Disposal: This section states on Page 2-8 that "Augmenting the water supply of these users with recycled water would offset the use of raw water provided by the City". Will the recycled water generated on the site with Alternative A be used off-site? Will additional off-site infrastructure be needed to convey this recycled water to other users?

4. Section 2.1.5, Grading and Drainage: Two of the slow-moving landslides extend outside of the Project Area. Will development of the site affect/destabilize the remaining landslides on outside parcels?

5. Section 2.1.5, Grading and Drainage: This section states that implementation of the grading plan and stabilization techniques would require a total of 767,000 cubic yards of fill—165,000 from the southwestern portion of Project Area, and 496,000 from elsewhere on the site (including excavated material from cut). For Alternative A, where would the import of 135,000 cubic yards of fill originate?

6. Figures 2.1-1 and 2.2-1 and Sections 2.1.6 and 2.2-6: The site plan does not show the secondary emergency access road that is described in the text.

7. Figure 2.1-7: This figure does not map the entire Project Area.

8. General: No description of the operation of the casino, other than it will be open 24 hours per day, 7 days per week, 365 days per year. The Project Description should describe how many employees, what kind of shifts, how many patrons, and how many/what type of events in the ballroom and how often.

9. Table 2.1-1: This table does not provide a description regarding how the parking was calculated or if it is sufficient for the proposed development.

10. General: The proposed action (Alternatives A, B, and C) would remove the property from the list of taxable properties in the City and could therefore potentially result in a decrease in taxable revenue (which could be a conflict with the City's Development Impact Fee program and Capital Improvement Plan).

11. The Solano Habitat Conservation Plan (SHCP) identifies the site as having *Valley Floor Grassland and Vernal Pool* habitats. The EA should determine if the site was used in the calculation of Plan acreages and costs.

LAND RESOURCES

1. Alternative A – Topography: The grading plan includes changes in topography, including 632,000 cubic yards of cut and 767,000 cubic yards of fill, which requires the import of 135,000 cubic yards of soil. The grading plan also requires a 20-foot-high retaining wall upslope of the proposed tribal housing area. According to Section 2.1.5, specialized grading and stabilization techniques are required to stabilize the site. Appendix C states that roadway final grade will be up to 40 feet above existing elevation and that fill will be required under all building foundations. This section initially states that grading of a significant portion of the site is required, but then concludes that the grading activities would largely preserve existing site topography, resulting in less than significant impacts. This conclusion does not match the evidence provided in the EA and Appendix C.

2. Assessment Criteria: Impacts to land resources would be significant if the alternative substantially alters the topography of a site or causes an adverse effect, such as landslides. However, this section does not discuss if development of the Project Area will affect/destabilize the portions of the two landslides that are offsite.

AIR QUALITY

1. Page 2-15, Table 3.4-4, and Appendix G: The construction emissions modeling is inconsistent with the Project Description in Section 2. Specifically, Page 2-15 of the EA identifies the need for 1,350 haul truck deliveries to accommodate the import of 135,000 cubic yards of fill material. Because each haul truck delivery of fill material would require an empty-load return trip, 1,350 haul truck deliveries would equate to 2,700 total haul truck trips. However, a review of the California Emissions Estimator Model (CalEEMod) output files shows only 375 one-way haul truck trips are accounted for over the course of the grading phase.

2. Page 2-15, Table 3.4-4, and Appendix G: The identified number of 1,350 haul truck trips to deliver 135,000 cubic yards of fill material appears to be significantly understated. As noted above, Page 2-15 of the EA identifies the need for 1,350 haul truck deliveries to accommodate the import of 135,000 cubic yards of fill material. This equates to each haul truck carrying 100 cubic yards of material per delivery. However, according to the CalEEMod User's Guide, a single haul truck can accommodate up to 16 cubic yards of material per delivery; therefore, Project construction would require ***at least*** 8,438 haul truck deliveries to import 135,000 cubic yards of fill material (135,000 ÷ 16 = 8,437.5). Because each haul truck delivery of fill material would require an empty-load return trip, ***at least*** 16,876 haul truck trips would be required; Table 3.4-4 only accounts for 375 haul truck trips.

It is further noted that a review of the CalEEMod output files shows that the CalEEMod haul truck default was intentionally altered with a Justification Comment of "See Project Description." This does not explain or justify the regulatory model default change.

3. Page 2-9, Page 3-6, and Appendix G: The construction emissions modeling is inconsistent with the stated amount of soil material movement. Pages 2-9 and 3-6 of the EA state that approximately 632,000 cubic yards of cut would be generated from the 54-acre construction site and that 767,000 cubic yards of fill would be required, for a net import of 135,000 cubic yards. However, a review of the CalEEMod output files shows that the movement of the 632,000 cubic yards of cut material is not accounted for. Although the construction emissions modeling attempts to account for emissions associated with the import of 135,000 cubic yards of fill material from offsite (see the previous two Air Quality Comments), the movement of 632,000 cubic yards around the 54-acre Project Area still needs to be accounted for in order to provide an accurate representation of Project construction emissions. This movement of soil would require additional offroad equipment and most likely additional haul trucks, resulting in substantial additional emissions.

4. Page 2-9, Page 2-15, Appendix G. The construction emissions modeling fails to account for relevant site conditions. First, the EA improperly assumes that all cut material can readily be reused on site. Given steep, rocky soil conditions, it is almost certain that the cut material will include large rocks and other materials that would either need to be processed on site (if they are to be reused) or hauled elsewhere (if not). The EA does not account for emissions associated with on-site processing or off-site export. Second, the EA does not identify any construction laydown area. Given site conditions, it appears the only area that could potentially accommodate these functions is the 32-acre space on the east side of the wetlands. That, in turn, would require significant numbers of truck trips to shuttle personnel and material from the laydown area back and forth to the casino and housing construction sites. Emissions from these activities were not accounted for either.

5. Appendix G: Construction emissions modeling appears to significantly underrepresent the amount of equipment needed to complete construction within the timeframes specified, thus underrepresenting construction emissions as well. A review of the CalEEMod output files shows that the regulatory model defaults were adjusted to account for an 18-month construction schedule. However, construction equipment model defaults were not adjusted accordingly. When the length of construction is reduced compared to regulatory model defaults, the amount of equipment must be increased to account for the reduced timespan. This is a significant omission – particularly when combined with the EA's failure to account for all construction activities (see above).

6. Table 2.1-4, Table 3.4-5, and Appendix G: Project operational emissions appear to have been significantly understated. First, Table 3.4-5 on Page 3-21 of the EA identifies the Project as generating 97.41 tons of carbon monoxide annually. A review of the CalEEMod output files shows that this carbon monoxide value is based on a mitigated scenario in which all operational landscape equipment would be zero-emission. Table 2.1-4 on page 2-19 of the EA states that, "Landscape maintenance equipment (i.e., mowers, trimmers) used on the Project Site will be

electric. No equipment with gasoline engines will be used," but the EA does not provide any other description of this measure. There is no information confirming whether zero-emission landscaping is feasible or how it could be enforced – including at private housing units. Second, it appears that the EA may underestimate casino trip generation – and therefore emissions – by a significant margin. Third, the EA does not appear to fully account for emissions associated with operation of water option 2 and wastewater option 2, each of which involves a treatment plant that would generate project trips and emissions. Once these issues are addressed, emissions would almost certainly surpass *de minimis* level thresholds.

7. Page 3-18, Page 3-19, and Appendix E: The last paragraph of Page 3-19 provides a brief description of Hazardous Air Pollutants (HAPs) and states, "For more information on HAPs, see Appendix E". However, a review of Appendix E shows no further discussion of HAPs or related Project effects.

   One of NEPA's fundamental purposes is to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." (NEPA § 102 [42 United States Code [USC] § 4321]). Furthermore, NEPA is intended to "…assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings." (42 USC § 4331), and finally to "…attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences." (42 USC § 4331). The Project is proposing to locate residences with proximity to Interstate 80, which, according to the latest Caltrans data, accommodates between 120,000 and 129,000 automobile trips daily, including between 6,084 and 6,669 heavy-duty diesel-powered trucks daily. However, the EA does not include an analysis of the potential health risk effects of locating residences near this transportation facility. Additionally, the Project proposes the use of backup diesel-powered generators in proximity to residences and at least one school; however, the EA does not contain an analysis of the potential health risk effects on these sensitive receptors.

   Page 3-18 of the EA notes that the Project Area is near an area identified by the local air district's Community Air Risk Evaluation Program as vulnerable to air pollution. It is noted that Executive Order 12898 instructs agencies to "…make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." Similarly, Executive Order 13045 states that agencies must "…make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and … shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks."

   In conclusion, the analysis is misleading in that it directs readers to information concerning HAPs that does not exist. Furthermore, in order to fulfill a fundamental purpose of NEPA, a health risk assessment needs to be prepared that addresses the potential effects of locating residences in proximity to a major freeway as well as locating several backup diesel-powered generators in proximity to residences and at least one school.

8. Page 3-19: The last paragraph of Page 3-19 states that "[Diesel Particulate Matter] emissions are quantified with PM2.5 emission estimates for construction and operation"; however, the EA's impact analysis does not provide further discussion of the potential effects of Project-related Diesel Particulate Matter (DPM). Furthermore, PM2.5 is the incorrect surrogate for quantifying DPM. Instead, PM10 exhaust is considered a surrogate for DPM because all diesel exhaust is considered to be DPM, and PM10 exhaust contains PM2.5 exhaust as a subset.

BIOLOGICAL RESOURCES

1. The Project proposes to establish a 45-acre Biological Preserve via a Tribal ordinance and Memorandum of Understanding (MOU) between the Tribe, BIA, and USFWS. The EA does not present specific conditions and the level of legal protection offered by the MOU. Absent a conservation easement that restricts uses in perpetuity, the Biological Preserve would not adequately mitigate impacts to habitat and listed species impacted by the Project. The EA also does not specify how the Biological Preserve will be managed for the long-term conservation of the protected species, or how maintenance and management activities will be funded. Without this information, it is not possible to conclude impacts will be less than significant.

2. The EA does not offer any discussion of what activities are planned for the area of the "Estimated Wetlands" to the east and north of the proposed entry road, as shown in Alternative A Site Plan. It does not include the wetlands in the proposed Biological Preserve, nor does it evaluate potential impacts to these wetlands. The EA also errs by suggesting impacts will be limited because much of the "Estimated Wetlands" area will be "avoided"; the analysis fails to address the fact that the Project would nonetheless compromise the integrity and ecological function of the wetland by leaving it isolated from nearby habitat, surrounding it with development, and changing the site's drainage and flow regime, a potentially significant impact.

3. The Project Description states that landscaping will be limited to native trees and plants along access roads and in the immediate vicinity of the casino facility, Tribal housing and administration area, and utility area. It is unclear how this will be enforced through the operational lifetime of the Project.

4. The Biological Resources section of the EA states that critical habitat for California red-legged frog is contained entirely within the proposed Biological Preserve and would not be impacted. Critical habitat will be protected only to the extent that it is provided sufficient legal protection and long-term maintenance and management of the Biological Preserve occurs. The EA does not provide detailed information or confirmation of these issues; therefore it is not possible to conclude that impacts will be less than significant.

5. The EA states that no burrowing owl burrows were observed within the Project Area, but acknowledges that it is possible that they could become established there over time. The mitigation measures in Section 4 rely purely on a preconstruction nesting bird survey within 7 days prior to the start of construction, which may not be adequate to prevent impacts to burrows used during the non-breeding season. The EA does not provide guidance as to appropriate

mitigation for burrowing owls if they are found onsite, including protection and/or compensation for impacts to nesting habitat and foraging habitat. CDFW's Staff Report on Burrowing Owl Mitigation (2012) contains best practices for detecting and reducing adverse impacts to burrowing owls, foraging habitat, and their burrows and nesting sites, yet the EA does not mention this document. The EA also does not discuss the nearest known occurrences of nesting burrowing owls to identify whether the Project could result in a loss of foraging habitat for breeding pairs nesting on adjacent properties. As a result, the EA fails to take necessary steps to evaluate potentially significant impacts to burrowing owls.

6. The EA identifies that the state-listed Swainson's hawk could forage over the Project Area. It does not provide specific information as to the nearest known occurrences of the species, which is needed to provide an assessment of the impact of the permanent loss of foraging habitat. The EA also does not provide mitigation measures for loss of Swainson's hawk foraging habitat. This is contrary to CDFW recommendations to mitigate for loss of Swainson's hawk foraging habitat. California Department of Fish & Game, Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California (1994).

7. The EA states that crotch bumble bee and western bumble bee could forage over the site. It does not discuss the potential for nesting to occur onsite, nor does it discuss the potential for *take* of these species, which are candidates for listing under the California Endangered Species Act (CESA). Direct impacts, including take, could occur if bumble bee nests or individuals are present onsite at the time of construction. CDFW's June 2023 guidance for CESA Candidate Bumble Bee Species requires consultation with CDFW to establish measures to avoid take or establish whether incidental take permits are necessary. CDFW, Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (June 6, 2023). Without evaluating the presence of these species and providing measures to avoid take, the EA cannot conclude the potential impact is less than significant. Further, the EA relies on the onsite Biological Preserve to mitigate potential impacts to foraging habitat but does not provide details about how the Biological Preserve will be managed for the long-term conservation of the protected species, or how maintenance and management activities will be funded.

8. The EA identifies several types of special-status wildlife species as potentially occurring within the Project Area, including numerous bat and bird species. Oak woodlands in the Biological Preserve area represent potential nesting bird and roosting bat habitat. The Project proposes housing, roadways, and administrative buildings immediately adjacent to the Biological Preserve, which would result in indirect impacts from night lighting, noise, and human activity. As noted above, the EA does not provide detailed information or analysis regarding the Biological Preserve. But given the proximity of the Biological Preserve to development and human activity, the Preserve would likely be affected. These impacts would be especially significant for nocturnal species and species that are sensitive to human disturbances. The EA identifies several special-status nocturnal species as potentially occurring onsite, including pallid bat, Townsend's big-eared bat, hoary bat, big free-tailed bat, and short-eared owl. Night-lighting can cause bats to abandon their roosts and disrupt or deter bat foraging, resulting in a loss of foraging grounds (Bat Conservation Trust,

2024; Lighting - Threats to bats - Bat Conservation Trust). Short-eared owls are known to be sensitive to human disturbance near a nest (Partners in Flight, 2024; Short-eared Owl - Partners in Flight). The presence of human activity and disturbance, noise, and night lighting immediately adjacent to the proposed Preserve would impact habitat quality and functions in these areas and effectively reduce the total Preserve value.

9. The EA states that one rare plant was found within the Project Area: Jepson's leptosiphon (*Leptosiphon jepsonii*), which is ranked by the California Native Plant Society (CNPS) as 1B.2. The EA states all occurrences of the species are contained in the Biological Preserve; however, this rare plant species will be protected only if the Biological Preserve is provided sufficient legal protection and long-term maintenance and management occurs. As explained above, the EA does not address or confirm the effectiveness of this mitigation. Further, the presence of annual plants can vary from year to year, and the plant could occur in the portion of the annual grassland proposed for development even if it was not encountered during the 2024 surveys. It is recommended that an additional year of surveys be completed to confirm the plant is not present in the proposed development area. In addition, the presence of proposed buildings and roads immediately adjacent to the Preserve could have indirect impacts on occurrences of this special-status plant. During construction plants could be impacted by inadvertent encroachments, dust, and introduction of non-native species. Long-term operational effects could include human encroachment, trampling, displacement by invasive non-native plants, exposure to urban pollutants (herbicides, pesticides, fertilizers, hazardous materials), and wind-born trash.

10. The EA states that the Project will include a permanent exclusionary border, such as a concrete curb, around the built environment and the placement of wildlife undercrossings, such as freespan bridges or culverts over drainages, to allow for continued access to dispersal habitat. This is true only if adequate crossings are provided, which cannot be determined without crossing design criteria or requirements. The EA does not provide this information – a major omission, given the extensive grading, extremely steep slopes, large retaining walls, and dense development that would be part of the Project. Without the provision of adequate wildlife passage corridors, the Project will result in fragmentation of habitats to the north of the Project Area with those located to the south and east, including the large marsh area in the south-central portion of the Project Area. The loss of dispersal habitat for northwestern pond turtle and California red-legged frog through the Project Area would be a significant impact. See also comments 1 and 2.

11. The EA states that take of California red-legged frog could occur during construction if it disperses through the Project Area during construction or if individuals aestivate within the impacted freshwater marsh habitat. The pre-construction survey and installation of exclusionary fencing would occur during the wet season when California red-legged frogs are active. These measures are generally consistent with standard practices for minimizing construction impacts. However, the document concludes that the impact is less than significant after mitigation. Even with the implementation of avoidance measures, there remains a potential for take. This is a significant impact.

12. The EA states that Alternative A is likely to result in unavoidable take of individuals of callippe silverspot butterfly during grading activities within the 2.9 acres of host plant habitat. The mitigation measures in Section 4 do not provide any requirements for avoiding take of the species during construction. Even with implementation of avoidance measures, there remains a potential for take. This is a significant impact. The Project will also bring increased population, urban land uses, and substantial vehicle traffic to the area, which may have indirect effects on the species. Callippe silverspot butterfly could be impacted by human encroachment into the Preserve and trampling of larvae and host plants by hikers. Increased vehicle use may result in nitrogen deposition from vehicle exhaust, leading to habitat modification by non-native invasive plants more tolerant of these conditions (Callippe Silverspot Butterfly (Speyeria callippe callippe) | U.S. Fish & Wildlife Service (fws.gov)). Habitat modifications may also occur as a result of encroachment by invasive, non-native shrub and plants spreading from the adjacent developed area. The potential for indirect impacts are not discussed.

13. Mitigation Measure B states "Mitigation for loss of waters of the U.S. shall occur at a minimum 1:1 ratio through habitat creation, restoration, or purchase of USACE-approved credits. This may occur along the alignment of the re-routed drainage or within bioretention areas." Pursuant to the USACE mitigation rule, compensatory mitigation should be *in-kind*, which means a resource of similar structural and functional type to the impacted resource. The re-routed drainage channel would be partially concrete lined. The bioretention areas appear to be surrounded by steep slopes and retaining walls. Both the re-routed channel and bioretention areas would be surrounded by developed uses rather than open space and would capture storm flow from asphalt or concrete surfaces. As such, these features are subject to an influx of phosphorus, nitrogen, petroleum hydrocarbons, heavy metals, and other pollutants. This mitigation measure is not sufficient to reduce the impact to less than significant.

14. Mitigation Measure G states "Bioretention areas and areas of terrestrial habitat are available and could be utilized to make new pond habitat." It further states "If the bioretention areas are utilized for California red-legged frog, they shall be designed such that the water quality is not degraded and compromises amphibian population viability." The same concerns described in the comment above regarding the function and value of the bioretention areas apply to the use of these facilities as compensatory habitat for California red-legged frog. Although the EA's discussion of bioretention areas lacks detail (a significant problem in and of itself), available information suggests several of the bioretention areas could not feasibly be used by relevant species due to extensive grading, steep slopes, walls, and nearby roads. Also it does not appear that the bioretention areas can feasibly "be designed such that the water quality is not degraded and compromises amphibian population viability." This mitigation measure is not sufficient to reduce the impact to less than significant.

15. The EA does not identify mitigation measures for construction-related impacts to callippe silverspot butterfly. Construction activities could result in direct take of individuals. This is a significant impact.

16. The EA identifies several mitigation measures to address operational impacts to callippe silverspot butterfly, such as pre-activity surveys, timing of vegetation management, prohibiting insecticide use, requiring native plants in landscaped areas, and avoiding use of herbicides on blooming plants. The EA does not describe how these requirements will be enforced during the operational life of the Project. Without long-term enforcement of these requirements, the Project could have a significant impact on callippe silverspot butterfly.

17. Mitigation Measure R states that preconstruction nesting bird surveys are required only during the period of February 1 to August 31. This may not be sufficient to protect nesting birds that are active earlier or later in the season. For example, great-horned owls are known to begin nesting in January, and some birds such as American robin may lay multiple clutches in one breeding season with active nests extending into September or later. In addition, seasonal shifts brought on by climate change have upended conventional expectations of when bird species are likely to nest; indeed, CDFW now recommends that nesting bird surveys be conducted year-round. In addition, the survey buffer of 100 feet is not adequate to protect nesting raptors. The typical survey buffer recommended by CDFW for raptors is 500 feet and up to a quarter mile for Swainson's hawk nests. Although the EA's Biological Technical Memorandum concludes that no nesting habitat is present on the Project site for several raptor species, the presence of Oak woodland and large trees within the riparian corridor onsite indicate that the site could serve as nesting habitat, necessitating an adequate buffer.

18. Mitigation Measure U states "Least cost dispersal pathways for California red-legged frog (CRLF) and northwestern pond turtle shall be identified in consultation with USFWS. In addition to wildlife crossings at drainage roadway crossings, additional wildlife crossing points shall be identified. Wildlife crossing elements shall be designed in consultation with USFWS." It is unclear what "least cost dispersal pathways" means in this context. The proper criterion should be impact, not cost. The requirement for consultation with USFWS impermissibly defers evaluation of whether crossings will be adequate for continued wildlife passage and dispersal through the Project Area. The impact remains significant.

19. The Biological Assessment (BA) in Appendix H of the EA states that the aquatic resources delineation has not yet been submitted to the USACE for verification. Without this verification, the estimates of impacts and required mitigation cannot be verified as sufficient.

20. The BA states that protocol surveys for California red-legged frog were conducted in 2007. The surveys are therefore almost 20 years old and may not be a reliable indicator of the presence of California red-legged frog.

21. The effects analysis for northwestern pond turtle in the BA assumes, without evidence, that the wetland in the southern portion of the Action Area would be unaffected. It also estimates that 66.5 percent of the Action Area would remain undeveloped. However, the EA does not express a commitment to preserve this wetland area, does not identify it as being part of the Biological Preserve, and does not provide sufficient evidence to conclude that northwestern pond turtle

habitat will remain sufficient. The EA's conclusion that the Project may affect, but is not likely to adversely affect, northwestern pond turtle is not properly supported.

22. The BA's conclusion that the Project "may affect but is not likely to adversely affect" northwestern pond turtle will likely not be valid if the species is listed prior to initiation of Project construction because any potential for take would be considered a significant adverse effect.

23. The assessment of impacts to California red-legged frog in the BA is also based on the assumption that the wetland in the southern portion of the Action Area would remain unimpacted. As explained above, that assumption is not valid. Impacts to the wetland would result in additional loss of aestivation habitat for California red-legged frog, which is not addressed in the EA and would therefore require additional mitigation (also not addressed). The loss of aestivation habitat may also result in an indirect impact to critical habitat located to the north of the proposed development area due to the habitat fragmentation issues discussed above.

24. The BA states "The re-routed drainage would be designed to mimic the existing drainage and would be expected to hold the same volume of water across a similar area as the existing drainage. Therefore, permanent loss of aestivation habitat would largely be offset." This is inaccurate because the EA states that portions of the re-routed drainage would be concrete lined. Furthermore, the EA describes the re-routed channel as a "vegetated earthen swale" but does not state that the swale would be restored freshwater marsh habitat. These are important distinctions indicating that the EA's proposed mitigation measures will not be sufficient to avoid significant impacts.

25. The cumulative effects analysis in the BA does not consider the adjacent proposed Solano Ranch project. Without consideration of this future project, the EA or does not adequately evaluate direct, indirect, and cumulative habitat losses and other potential effects to listed species.

26. The Biological Technical Memorandum in Appendix H of the EA states that tricolored blackbird, a State-listed threatened species, does not have suitable within the Project Area because there is no open water. Although open water is typically associated with nesting sites, it is possible that tricolored blackbird could nest in nearby suitable habitat and forage within the Project Area. Tricolored blackbird are known to forage over pastures and marsh areas, both of which are found within the Project Area. The EA does not provide an analysis of the potential loss of foraging habitat for this species.

27. It is not clear how the species list in the Biological Technical Memorandum was generated. It does not appear that a standard 9-quad search was performed because some of the species from the California Natural Diversity Database and CNPS 9-quad searches are not addressed in the BA or Memorandum. Those species include the following:

    - American badger (*Taxidea taxus*); California Species of Special Concern (SSC)
    - Yellow-headed blackbird (*Xanthocephalus xanthocephalus*); SSC

- California giant salamander (*Dicamptodon ensatus*); SSC
- Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*); Federally endangered
- Soft salty bird's beak (*Chloropyron molle* ssp. *molle*); Federally endangered, State rare, 1B.2
- Suisun thistle (*Cirsium hydrophilum* var. *hydrophilum*); Federally endangered, 1B.1
- Contra Costa goldfields (*Lasthenia conjugens*); Federally endangered, 1B.1

Because none of these species are included in the species table, no analysis is provided to determine whether these species may be impacted by Project activities. Without that analysis, it is not possible to conclude Project impacts will remain less than significant.

28. Valley elderberry longhorn beetle is a federally threatened species, is known to occur in the same U.S. Geological Survey quadrangle as the Project, and has suitable habitat (elderberry shrubs) within the Project Area (as found in the list of plants observed in the Project Area). Although habitat is present, neither the EA nor the BA addresses this species. Project construction and operation could result in take of this species, if present. This would be a significant impact and a violation of the Endangered Species Act.

CULTURAL RESOURCES

1. The EA section on cultural resources focuses only on archaeology and does not reflect traditional cultural values or input from any Native American tribes. One paragraph on Page 29 of Appendix E summarizes the consultant's outreach to tribes named on the Native American Heritage Commission (NAHC) list; however, the EA does not provide documentation that a tribal representative participated in the pedestrian field survey or subsurface archaeological testing in 2020. We understand Yocha Dehe was not invited to participate. Furthermore, the EA does not indicate if government-to-government consultation has been conducted as part of the effort to identify cultural resources as defined by NEPA. The EA does not provide any acknowledgement that the BIA is required to consult with Native American tribes to help inform the NEPA document.
2. The EA uses the term *prehistoric* to describe ancestral Native American occupation of the Project Area. Although regulations use *prehistoric*, the use of this term is considered offensive to many culturally affiliated tribes. The term *precontact* would be more appropriate.
3. This EA has been prepared for with NEPA purposes. The EA acknowledges on Pages 1-7 and 3-37 that Section 106 consultation is required but does not provide evidence that the BIA has initiated consultation under Section 106 of the National Historic Preservation Act of 1966, as amended. Section 106 and NEPA are separate statutory requirements; unless the BIA elected to perform NEPA in lieu of Section 106 with approval of the Advisory Council on Historic Preservation in advance, the BIA must complete a separate Section 106 consultation. It is not correct that only Section 106 compliance applies to other federal agencies like the USACE. Section 106 consultation must be completed prior to a record of decision on the NEPA document. Best practices dictate that the two processes should proceed in parallel.

4. YDWN is aware of cultural resources in the immediate vicinity of the Project Area, including, but not limited to, the resource recorded as CA-SOL-275. That resource has been evaluated, without tribal input, as being not significant. Culturally affiliated tribes like YDWN have not been consulted on the significance of the resource relative to tribal values as a traditional cultural property. Chert quarries are relatively uncommon resources and are important to YDWN because they represent ancestral traditional ecological knowledge and use of the broader landscape. Because all three alternatives considered in the EA will result in the complete removal of CA-SOL-275, consultation with culturally affiliated tribes on these decisions is critical and required by federal law.

   Site CA-SOL-275 was first recorded in 1980 as a precontact Franciscan chert quarry and lithic scatter composed of primary reduction flakes and blanks adjacent to a historic serpentine (later reclassified by archaeologists as part of the site record update as steatite) quarry. In 2016, Analytical Environmental Services (AES) recommended formal evaluation of the site and correctly stated that "a Native American consultation program would also be required as there is also a prehistoric quarry component to CA-SOL-275, and the National Register of Historic Places (NRHP)/California Register of Historical Resources eligibility assessment of CA-SOL-275 must take this site into account as well" (AES 2016:12). The EA and its supporting technical study prepared later by AES-Montrose (2023, as cited in Acorn 2024), however, evaluated the site as not eligible for inclusion in the NRHP due to a lack of subsurface archaeological deposits (Acorn 2024); this was done without information from, or consultation with, culturally affiliated tribes and apparently outside of any NHPA process.

   Cultural affiliation, and, therefore, expert knowledge about this site, is needed to evaluate its significance, as verified by the NAHC. As part of the 2016 study, AES (2016) contacted the NAHC to request a search of the Sacred Lands File and list of culturally affiliated tribes. Of the four contacts provided by the NAHC (2015), all are Wintun/Patwin; three of the four contacts are from the YDWN (which was not consulted) and the fourth contact is from the Cortina Band of Indians. The Scotts Valley Band of Pomo Indians was not listed by the NAHC as being culturally affiliated with this location. Following is a re-evaluation of site CA-SOL-275 using tribal knowledge and expertise from the YDWN, a descendant community of ancestral Patwin, which is culturally affiliated with Solano County and site CA-SOL-275.

NRHP Criterion A

NRHP Criterion A pertains to association with events that have made a significant contribution to the broad patterns of history.

As stewards of the land, Ancestral Patwin peoples occupied an approximately 3,600-square-mile area that spanned from present-day Princeton on the north to the Suisun Bay on the south. From east to west, Patwin occupied the area generally between the Sacramento River and just east of Clear Lake (Johnson 1978). Within this area, there are at least 35 documented ethnographic village sites, including *Suskol*, *Aguasto*, and *Yulyul*. The sphere of influence of each ancestral village included a combination of resource procurement areas, trade routes and ethnographic trails, and ancillary activity areas. Site CA-SOL-275 was a source of Franciscan chert toolstone and

a source of steatite or serpentine for ceremonial artifacts for Ancestral Patwin, important ceremonial, and burial sites, including nearby site CA-SOL-236, have been recorded to include flanged tubular steatite objects (Peak & Associates 1988). Like serpentine, steatite is a known source of material for precontact vessels, pipes, beads, pendants, ornaments, charmstones, and arrow straighteners because its soft, easily worked stone had heat-tolerant qualities (Heizer and Treganza 1944). There is also some undocumented knowledge of powdered steatite being used as talcum on babies to prevent chafing. Steatite was an important toolstone for objects of ceremonial use at nearby sacred sites, and CA-SOL-275 was used by Ancestral Patwin regularly to obtain both chert and steatite raw materials. These materials were an important part of Ancestral Patwin traditional ecological knowledge that contributed to the economic patterns and exchange systems that existed prior to the arrival of Spanish, Mexicans, and Europeans.

Steatite, also known as soaprock, is a talc-schist, which is composed largely of the magnesium-rich mineral talc and sought after by European-Americans starting around the turn of the 20th century for the manufacturing of talcum powder. Invented by Dr. Frederick B. Kilmer in the 1890s, talcum powder was in high demand around the turn of the century. The documented mining of steatite at CA-SOL-275 between 1900 and 1930 in the 1980 site record is consistent with a high demand for talc. Talcum powder grew to become one of the most important personal and infant products of the 20th century before being identified as a carcinogen and subsequently banned. The mining of steatite for talc was a contributor to the early economy of the Vallejo area.

Because site CA-SOL-275 is associated with long-term and multicultural exploitation of natural resources that contributed to the economic growth and subsistence of humans in the area, the site is eligible for inclusion in the NRHP under Criterion A.

NRHP Criterion B

NRHP Criterion B pertains to association with the lives of persons significant in our past.

Solano County was named for Patwin leader Francisco Solano (or Sam-Yeto), born near Suisun Bay around 1798. The Suisunes were a Patwin tribe of Wintun people and originated in the Suisun Bay and Suisun Marsh regions of Solano County. Their traditional homelands stretched between present-day Suisun City and Vacaville. The Suisunes' main village, *Yulyul*, is located near present-day Rockville. The sphere of influence of *Yulyul* extended southward, through the area of CA-SOL-275, to Suisun Bay.

Sem-Yeto was baptized at the San Francsico Mission, where he lived until adulthood. In the 1820s, he became known as the leader Sem-Yeto or *Chief Solano*. He befriended Mexican Commandante General Mariano Guadalupe Vallejo, who requested that the county be named for him. He helped build and populate the Mission San Francisco del Solano, was one of only two indigenous people to receive a land grant rancho from the Mexican government. Chief Solano's grant, known as Rancho Suisun was located immediately adjacent to Rancho Suskol, where the Project site is located. He was one of few indigenous people to be vaccinated for smallpox and, therefore, survived the 1837 epidemic.

Site CA-SOL-275 is located midway between *Yulyul* and Suisuin Bay and is squarely within the sphere of influence of this important village site. Because site CA-SOL-275 is associated with Chief Sem-Yeto—an important person both in indigenous and American history—it is eligible for inclusion in the NRHP under Criterion B.

NRHP Criterion C

NRHP Criterion C pertains to resources that embody the distinctive characteristics of a type, period or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction.

Site CA-SOL-275 is a unique archaeological and ethnohistorical site that is composed of two sequential and multicultural uses of the same natural resource. Although individual precontact quarry sites and historic-era mining complexes have been recorded individually elsewhere in the county, CA-SOL-275 represents a single and *true* multicomponent site. This differs from most *multicomponent* sites, which are actually composed of two separate horizons of occupational deposits that are unrelated and separated in time. Site CA-SOL-275, however, is one natural resource that was exploited by two sequential cultures and retains sufficient integrity of materials, location, setting, and association. This single resource has two components that, together, raise the level of significance such that it represents a significant and distinguishable entity whose components lack individual distinction. Site CA-SOL-275 is eligible for inclusion in the NRHP under Criterion C.

NRHP Criterion D

NRHP Criterion D pertains to resources that have yielded, or may be likely to yield, information important in history or prehistory.

Exploitation of natural resources like naturally occurring chert and steatite requires traditional ecological knowledge that was developed over many generations of Ancestral Patwin. The ability to locate, test, and manufacture ceremonial and more utilitarian artifacts out of toolstone required a well-honed knowledge of material properties. This is further evidenced by reports of excavations by Peak & Associates at CA-SOL-323, which revealed local Franciscan chert that was heat-treated to produce a waxy texture more suitable for stone tool manufacturing (Peak & Associates 1988).

Unlike CA-SOL-323, site CA-SOL-275 does not possess subsurface archaeological deposits; however, the site is composed of a natural outcropping of lithic raw materials that would have been visited by practitioners for brief periods of time to collect—and remove, not deposit—materials for stone tool and artifact manufacturing at or closer to village sites. Cultural specialists from villages such as *Suskol*, *Aguasto*, and *Yulyul* would have traveled to CA-SOL-275 to gather materials necessary to conduct ceremonies at nearby sacred sites, like CA-SOL-236. In addition, many of the sacred and village sites in the vicinity, including, but not limited to, CA-SOL-322 and

CA-SOL-323, include chert in their artifact assemblages. Although no description of the color or source of chert was included in early recordings, cherts are readily distinguishable by color and texture: the local Franciscan Formation cherts are red and green opaque cherts. This, for example, differs from the dark brown or taffy-colored Monterey cherts from the coastal region (Peak & Associates 1988). Analysis of collections from neighboring archaeological sites may result in the sourcing of artifact toolstone to local sources such as CA-SOL-275, thereby demonstrating the association that is known through tribal knowledge. It may also yield information about precontact trade routes.

Recorded toolstone and quarry sources in Ancestral Patwin territory are uncommon. Ethnographic literature notes that Patwin people obtained toolstone through trade with neighboring tribes. They obtained obsidian by traveling to obsidian sources such as Mount Konocti, Borax Lake, Napa Valley, and Annadel. Ethnographic trade routes are documented with the YDWN that parallel the present-day highway corridor.

Overall, site CA-SOL-275 contributes information about precontact toolstone procurement, economy, and potential trade networks. Examination of red Franciscan chert artifacts from nearby occupation sites or along known precontact trade routes can help answer questions about lithic tool production, including the use or absence of thermal alteration, which was a common practice for thousands of years. Therefore, because site CA-SOL-275 has the potential to yield important information in history and prehistory through archaeology and ethnography, and it retains sufficient integrity of location, materials, setting, and association. Site CA-SOL-275 is eligible for inclusion in the NRHP under Criterion D.

6. NEPA considers a broader field of cultural resources rather than just those that are eligible for the NRHP. More specifically, NEPA requires that federal agencies assess the environmental impacts, including "significant scientific, cultural, or historical resources". Under NEPA, the term *cultural resources* covers a wider range of resources than just *historic properties*. It includes resources like sacred sites, archaeological sites, and artifact collections that are not otherwise eligible for inclusion in the NRHP (Council on Environmental Quality [CEQ] and Advisory Council on Historic Preservation 2013). Accordingly, the NEPA process must take into account potential effects to a full range of resources in the cultural environment prior to making a decision on a major federal action, including new and continuing activities, project, and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies (40 Code of Federal Regulations § 1508.18). Therefore, NEPA requires consideration of a broader field of cultural resources than Section 106.

7. Mitigation measures presented in the EA were drafted without any consideration of tribal values and prior to consultation on the Area of Potential Effects, identification and evaluation of historic properties, and a finding of effect. Moreover, Mitigation Measure A on Page 4-5 focuses Native American monitoring only within 150 feet of the previously recorded resource. More importantly, it would allow Scotts Valley, rather than culturally affiliated Patwin tribes, to control the monitoring program. Given the proximity of tribal resources in the vicinity, Native American

monitoring of the entire Project Area is necessary, and that requirement does not replace the need to consult first.

8. The cultural resources (archaeological) inventory appears to only address the parcels that compose the Project Area. But many of the proposed elements for water, wastewater, and traffic include off-site elements. These have not been included in any cultural resource impact analysis or consultation. A finding of less than significant with mitigation cannot be made until tribal consultation has been conducted.

PALEONTOLOGY

1. Significant paleontological resources are fossils and fossiliferous deposits, including vertebrate fossils, invertebrate, plant, and trace fossils, and other data. Paleontological resources are considered to be older than recorded human history and/or older than the middle Holocene epoch (i.e., older than about 5,000 radiocarbon years). Body fossils include bones, teeth, shells, leaves, and wood, whereas trace fossils include trails, trackways, footprints, burrows, coprolites, and eggshells. The fossil record is the only evidence that life on earth has existed for more than 3.6 billion years. Fossils are important scientific and educational resources. California law mandates efforts to mitigate adverse impacts to paleontological resources because fossils are considered to be nonrenewable resources.

   The SVP (2010) has adopted criteria for evaluating paleontological potential, which has been used as a resource management tool to assess geologic units based on their likelihood to contain paleontological resources. Rock units are described as having "…(a) high, (b) undetermined, (c) low, or (d) no potential for containing significant paleontological resources" (SVP 2010). Geologic units that are known to contain paleontological localities with rare, well-preserved, critical fossil materials, in addition to fossils that provide important information about the paleobiology and evolutionary history of animal and plant groups, are considered highly sensitive. Geologic units that, based on their relative youthful age and/or high-energy depositional history, are determined to be unlikely to produce important fossil remains and are considered to have low sensitivity. Undetermined sensitivity is assigned to geologic units that exhibit geologic features and preservation conditions that suggest significant fossils could be present, but little information about the geology and/or paleontological resources of the unit or the area is known.

   Based on geotechnical studies conducted by ENGEO, the geologic units within the Study Area have been determined using the SVP criteria (high, undetermined, low, not potential) for determining potential of those geologic units within the Study Area to produce fossils. For example, the Great Valley Sequence (Cretaceous in age) is known to produce fossils and therefore would have a high potential according to SVP (2010) standards. As such, this geologic unit should be monitored in case of any unanticipated discoveries.

   Prior to ground disturbance within the Study Area, a pedestrian survey should be conducted to determine whether there may be any surface finds or exposure containing fossils. In addition, a paleontological record search should be conducted through Pat Holroyd of the University of

California Museum of Paleontology (UCMP) for the Study Area specifically. ECORP accessed the UCMP database and reviewed it for any paleontological resources within the same setting as the Project Area. According to the database, 226 paleontological resources have been identified within Solano County. These results, however, are for Solano County and not specifically for the Study Area. A literature search should also be conducted to understand the geology and paleontology of the area. Upon completion of the pedestrian survey, record search, and literature search, a paleontological memorandum should be drafted along with mitigation measures to follow before, during, and after Project construction.

SOCIOECONOMIC CONDITIONS AND ENVIRONMENTAL JUSTICE

1. The EA's Environmental Justice discussion is minimal and relies on the assumption that the Project would not have significant effects and, therefore, would not have disproportionate adverse effects. As discussed in other comments, there are potentially significant adverse effects to water, wastewater, air quality, and possibly other resources.

LAND USE

1. As noted in EA, the Proposed Project is not consistent with the City of Vallejo's General Plan Land Use Plan (EA Page 3-58 and the City of Vallejo's General Plan Land Use Plan). The EA does not evaluate the potential impacts of developing a more intensive project on the site than anticipated by the General Plan.

2. As noted in the EA, the Proposed Project is not consistent with the existing zoning of the Project Area by the City of Vallejo (EA Page 3-58 and City of Vallejo Zoning Map). The EA does not evaluate the potential impacts of developing a more intensive project on the site than anticipated by the Zoning Code.

3. The City of Vallejo General Plan Policy CP-3.4A requires that the City maintain a standard of 4.25 acres of parkland per thousand residents. The EA does not provide any mention of acreage used in the calculation. Therefore, it is not clear if the loss of the portion of the property designated as Open Space would affect this standard (General Plan Map CP-2).

4. General Plan Map NBE-4 identifies the Project Area as a "High" wildfire risk area in the Local Responsibility Area. The EA mentions a secondary, non-paved, emergency access road near the bike path, but this road is not shown on the site plan or further described. The EA's Hazards and Hazardous Materials section acknowledges this and describes the travel delay on I-80 and Columbus Parkway during an evacuation scenario as potentially significant. However, the EA does not evaluate evacuation of casino patrons and housing residents from the site itself using one paved road and one unpaved road of unknown specifications.

NOISE

1. Section 3.11.3: The EA fails to provide a Noise/Land Use Compatibility Analysis. The Project proposes to locate noise-sensitive residential receptors within proximity to Interstate 80 and the

Interstate 80/Highway 37 Interchange, yet the EA fails to prepare a noise/land use compatibility analysis. According to the Department of Housing and Urban Development, the "Normally Unacceptable" noise zone includes community noise levels from above 65 to 75 decibels (dB). Approvals in this noise zone require a minimum of 5 dB additional sound attenuation for buildings that have noise-sensitive uses if the day-night average sound level is greater than 65 dB but does not exceed 70 dB, or a minimum of 10 dB of additional sound attenuation if the day-night average sound level is greater than 70 dB but does not exceed 75 dB. Locations with day-night average noise levels above 75 dB have "Unacceptable" noise exposure. A review of the baseline noise measurements conducted as part of the EA, though not located in the area of proposed residences, shows the potential that noise levels currently experienced at the location of the proposed residences could exceed these noise levels.

2. Page 3-77: The EA fails to provide an analysis of offsite traffic noise on Interstate 80 or Highway 37. Although the EA analyzes the effect of Project traffic noise over existing conditions on several local roadways, it fails to provide an analysis of the Project's contribution to increased traffic noise on Interstate 80 or Highway 37, both of which traverse noise-sensitive residential receptors.

3. Page 3-78: The EA fails to provide an analysis of Project onsite operational noise in combination with existing ambient noise. Although the EA provides an estimate of Project onsite operational noise, it fails to identify its contributing effect to the existing ambient noise environment. Analyzing onsite operational noise *in a vacuum* effectively divorces the analysis results from reality in that the actual noise levels that would be experienced at nearby receptors are not identified.

VISUAL RESOURCES

1. The analysis acknowledges that the development would introduce new sources of light and glare into the existing setting and states that the impacts would not be significant because the Project would incorporate BMPs as stated in Table 2.1-4. These BMPs include general provisions regarding the type of light fixtures, use of "less reflective materials," and compliance with local ordinances. However, the EA does not provide a lighting plan or analysis to show that these BMPs will be effective in reducing the effects to a less than significant level.

2. Additionally, the EA does not address the effect of lighting on the proposed tribal housing or the proposed Solano Ranch multifamily housing.

INDIRECT AND GROWTH-INDUCING EFFECTS

1. This section assumes that offsite infrastructure improvements related to the Project are indirect effects because they are "later in time or further removed in distance" (CEQ); however, this is a warped definition of indirect effects. Regardless, the analysis of offsite improvements is brief, insufficient, and does not constitute a *hard look* at these impacts. This is likely because the exact locations of these improvements are not sufficiently defined by the Project proponent.

CUMULATIVE EFFECTS

1. This analysis relies on the City of Vallejo and Solano County General Plans' growth and development assumptions. The City's General Plan land use designation for the Project Area is Business/Limited Residential and Parks, Recreation, and Open Space. The majority of the parcel proposed for development is designated as Parks, Recreation, and Open Space with a small portion (approximately 12 acres) directly adjacent to Columbus Parkway designated as Business/Limited Residential. Alternative A proposes a much more intense development across the entire parcel; it plans to grade approximately 54 acres of the Project Area and construct an 8-story casino, housing, and office space. This change in intensity of development for the Project Area is substantially different from what was assumed by the City of Vallejo when it prepared its General Plan and EIR; therefore, the EA must analyze if the addition of this more intense development will cause adverse effects.

2. The analysis also relies on a list of potential projects within 1 mile of the Project Area. A 1-mile radius is insufficient to encompass the cumulative effects from a casino, which is a regional destination.

3. Page 2-15, Table 3.15-2 on Page 3-111, & Appendix G: As with the modeling of criteria air pollutants, the construction greenhouse gas (GHG) emissions modeling is inconsistent with the Project Description in Section 2. Specifically, Page 2-15 of the EA identifies the need for 1,350 haul truck deliveries to accommodate the import of 135,000 cubic yards of fill material. Since each haul truck delivery of fill material would require an empty-load return trip, 1,350 haul truck deliveries would equate to 2,700 total haul truck trips. However, a review of the CalEEMod output files shows that only 375 one-way haul truck trips are accounted for over the course of the grading phase.

4. Page 2-15, Table 3.15-2 on Page 3-111, & Appendix G: As with the modeling of criteria air pollutants, the identified number of 1,350 haul truck trips to deliver 135,000 cubic yards of fill material appears to be significantly understated. As noted above, Page 2-15 of the EA identifies the need for 1,350 haul truck deliveries to accommodate the import of 135,000 cubic yards of fill material. This equates to each haul truck carrying 100 cubic yards of material per delivery. However, according to the CalEEMod User's Guide, a single haul truck can accommodate up to 16 cubic yards of material per delivery, thus Project construction would require at least 8,438 haul truck deliveries to import 135,000 cubic yards of fill material (135,000 ÷ 16 = 8,437.5). Since each haul truck delivery of fill material would require an empty-load return trip, at least 16,876 haul truck trips would be required, while Table 3.15-2 only accounts for 375 haul truck trips.

   It is further noted that a review of the CalEEMod output files shows that the CalEEMod haul truck default was altered with a Justification Comment of "See Project Description." This does not explain or justify the regulatory model default change.

5. Page 2-9, Table 3.15-2 on Page 3-111, & Appendix G: The construction GHG emissions modeling is inconsistent with the stated amount of soil material movement. Page 2-9 and 3-6 of the EA state that approximately 632,000 cubic yards of cut would be generated from the 54-acre

construction site and 767,000 cubic yards of fill would be required, for a net import of 135,000 cubic yards. However, a review of the CalEEMod output files shows that the movement of the 632,000 cubic yards of cut material is not accounted for. While the construction GHG emissions modeling attempts to account for GHG emissions associated with the import of 135,000 cubic yards of fill material from offsite (see the previous two Comments), the movement of 632,000 cubic yards around the 54-acre Project Site still needs to be accounted for in order to provide an accurate representation of Project construction GHG emissions. This movement of soil would require additional offroad equipment and most likely additional haul trucks, resulting in substantial additional emissions.

6. Appendix G: Construction GHG emissions modeling appears to significantly underrepresent the amount of equipment needed to complete construction within the timeframes specified, thus underrepresenting construction GHG emissions as well. A review of the CalEEMod output files shows that the regulatory model defaults are adjusted to account for an 18-month construction schedule. However, construction equipment model defaults were not adjusted accordingly. When the length of construction is reduced compared to regulatory model defaults, the amount of equipment needs to be increased to account for the reduced time span. This is a significant omission – particularly when combined with the EA's failure to account for all construction activities (see above).

7. Appendix G: Construction GHG emissions modeling appears to underrepresent the amount of construction equipment needed, thus underrepresenting construction GHG emissions. A review of the CalEEMod output files shows that the regulatory model defaults are adjusted to account for an 18-month construction schedule. However, construction equipment model defaults were not adjusted accordingly. When the length of construction is reduced compared to regulatory model defaults, the amount of equipment needs to be increased to account for the reduced time span. Also see the previous Comment. As noted in that Comment, the movement of 632,000 cubic yards of soil material around the 54-acre site is not accounted for in the Project GHG emissions modeling.

8. Page 3-111 & Table 3.15-3 on page 3-112: The second paragraph on page 3-111 states that, "operational CO_2 emissions of the alternatives would be reduced by approximately 15% by 2045." A review of Table 3.15-3 shows a GHG emission reduction of 14.5% in 2045 compared with the year 2029 and cites Appendix G of the EA. However, a review of Appendix G shows no quantification of Project emissions in the year 2045. Therefore, it is unclear where the identified year 2045 Project GHG emissions are derived.

9. Page 3-111 & Table 3.15-3: The first paragraph on page 3-111 states that, "The cost estimates for carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O) used in this analysis are based on the 3% discount rates provided by IWG [The Interagency Working Group on Social Cost of Greenhouse Gas Emissions, United States Government] (2021)." This referenced document, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, actually recommends a discount rate of 2.5% in order to ensure that the social cost of GHG emissions reflect the interests of future generations, the latest scientific

and economic understanding of discount rates, and the recommendation from the Office of Management and Budget's Circular A-4 to include sensitivity analysis with lower discount rates when a rule has important intergenerational benefits or costs. As stated on page 27 of the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990*, GHG emissions today continue to impact society far out into the future, so with a higher discount rate, costs that accrue to future generations are weighted less, resulting in a lower estimate. As further stated, new data and evidence strongly suggest that the consumption interest rate is likely to be less than 3%, near 2% or lower. Therefore, the Project's social cost from its GHG emissions contained in Table 3.15-3 of the EA should be recalculated using the 2.5% discount rate recommended by the Interagency Working Group on Social Cost of Greenhouse Gas Emissions. As currently drafted, Table 3.15-3 understates the social cost of Project GHG emissions by incorrectly applying a greater than recommended discount rate.

10. Page 3-112: The Council on Environmental Quality recommends that agencies explain how the proposed action and alternatives would help meet or detract from achieving relevant climate action goals and commitments, including federal goals, international agreements, state or regional goals, Tribal goals, agency-specific goals, or others as appropriate. The analysis of climate change in the EA fails to do this. Instead, the EA erroneously states that, "On-site heating and air conditioning will lessen the effects of increasing temperatures and frequency of extreme heat days or extreme weather conditions." While the Project on-site heating and air conditioning would require the consumption of energy supplies derived from fossil fuel, an indirect source of GHG emissions, and would thus actually exacerbate the effects increasing temperatures and frequency of extreme heat days by contributing more global warming emissions, it is further noted that the Project would contribute a total of 36,528 metric tons of GHG emissions annually, 6,947 of which would be sourced from the energy sector. Therefore, a discussion on how the Project detracts from achieving relevant climate action goals is warranted.

If you have any questions, we can be reached via the contact information below.

Sincerely,
ECORP Consulting, Inc.

Lisa Westwood, RPA
Vice President & Director of Cultural Resources
lwestwood@ecorpconsulting.com

Anne Surdzial, AICP
Vice President & Director of CEQA/NEPA Services
asurdzial@ecorpconsulting.com

REFERENCES

Acorn Environmental. 2024. Environmental Assessment, Scotts Valley Band of Pomo Indians Casing and Tribal Housing Fee-to-Trust Project, Solano County, California. July 2024. Prepared for the Bureau of Indian Affairs, Sacramento.

Analytical Environmental Services (AES). 2016. Draft Technical Memorandum to the Scotts Valley Band of Pomo Indians from Charlane Gross Regarding the Cultural Resources Survey for the Vallejo Property, APN 0182-010-010. January 29.

AES-Montrose. 2023. Cultural Resources Survey Report.

Council on Environmental Quality (CEQ) and Advisory Council on Historic Preservation. 2013. NEPA and NHPA: A Handbook for Integrating NEPA and Section 106.

Elliott, Evan B. 2011. Trails, Tribelets, and Territories: The Ethnographic, Prehistoric, Archaeological, and Management Contexts of the Indian Valley/Walker Ridge Recreation Area. Master's Thesis. Sonoma State University. https://scholarworks.calstate.edu/downloads/8s45q9658, Accessed July 15, 2024.

Heizer, Robert F. and Adan E. Treganza. Mines and Quarries of the Indians of California. California Division of Mines, Vol. 40, No. 3, July 1944, pp. 342 and 343

Johnson, Patti J. 1978. Patwin. In Handbook of North American Indians, Vol. 8: California, edited by R.F. Heizer, pp. 350-360. Smithsonian Institution, Washington, D.C.

NAHC. 2015. Letter from Debbie Pilas-Treadway to Charlane Gross Regarding the Scotts Valley Constraints Analysis Project, Solano County, December 15, 2015.

Peak & Associates. 1988. A Report on Test Excavations for Evaluation of Significance for CA-SOL-323 in Sky Valley, Solano County, California. NWIC report no. 9867.

EXHIBIT B

FEHR PEERS

Memorandum

Date: August 20, 2024

To: Anne Surdzial, ECORP Consulting
Lisa Westwood, ECORP Consulting

From: Bill Burton, Fehr & Peers

Subject: Peer Review – Transportation Impact Assessment – Scotts Valley Band of Pomo Indians Casino and Tribal Housing Fee-to-Trust Project, Solano County, CA

WC24-4109.00

This memorandum presents the results of our technical peer review of the traffic and transportation analysis, including relevant appendices, in the July 2024 Bureau of Indian Affairs (BIA) Environmental Assessment (EA) for the Scotts Valley Band of Pomo Indians Casino and Tribal Housing Fee-to-Trust Project (Project). Our general findings and specific comments are summarized below.

- **General Findings** – In general we found the traffic and transportation analysis in the Scotts Valley EA lacks the technical depth and analytical rigor required for a development of the proposed size and scope. We also found that it falls short of the transportation impact assessment prepared for the Koi Nation of Northern California Shiloh Resort and Casino Project Draft Environmental Impact Statement, currently available for review at https://www.shilohresortenvironmental.com/, which addresses a similar (but smaller) project located in a similar environment. The Koi Draft Environmental Impact Statement also confirms that the traffic analyses and information omitted from the Scotts Valley EA are relevant, reasonable, and feasible to provide.

- **Lack of a Weekend Analysis** – The Scott's Valley EA does not include an analysis of conditions during the weekend, when casino traffic is at its highest. In addition, the study area in Vallejo is populated by retail establishments (Costco, Home Depot, a movie theater and others), 6 Flags Discovery Kingdom and regional roadways feeding traffic to and from destinations such as the wine country. Traffic in the study area peaks on weekends. Traffic studies for other development projects in the area have included weekend peak analysis and concluded that this period represents the time when volumes are at their peak.

The Scotts Valley EA's Transportation Impact Study states that it uses trip generation rates developed as part of the *Transportation Impact Analysis of the Tejon Casino* (Linscott, Law, & Greenspan Engineers, San Diego, CA October 30, 2019) (which was also used in a later study performed for an expansion of the Graton Resort and Casino). As indicated in the Tejon study, traffic at Native American casinos peaks on Saturdays. Rates from the Tejon study are as follows:

- Weekday Daily – 98.2 trips/1,000 s.f.
- Weekday PM Peak – 6.74 trips/1,000 s.f.
- Weekend Daily – 142.5 trips/1,000 s.f.
- Weekend Peak – 9.80 trips/1,000 s.f.

Based on the data from the Tejon study – again, the stated basis for the Scotts Valley EA – weekend casino traffic is roughly **45 percent higher than weekday traffic.** However, the Scotts Valley EA does not include an analysis of weekend conditions. In contrast, the Tejon study includes a weekend analysis, as do other assessments of Native American casino projects in California.

It should also be noted that the national industry standard for the evaluation of the traffic generation (Institute of Transportation Engineers, *Trip Generation Manual, 11th Edition*) at casinos also finds that their traffic peaks on weekends. Rates from the ITE *Trip Generation Manual, 11th Edition* for the casino land use are as follows:

- Weekday Daily – 388.18 trips/1,000 s.f.
- Weekday PM Peak – 22.61 trips/1,000 s.f.
- Weekend Daily – 506.21 trips/1,000 s.f.
- Weekend Peak – 30.98 trips/1,000 s.f.

Rates from the ITE manual show that traffic at similar facilities is approximately 30 percent higher on the weekend. Traffic in the study area peaks during the weekend and the amount of traffic that would be generated by the proposed project would peak on the weekend. Other transportation studies performed for other Native American casinos in California have included weekend evaluations (including those referenced in the Scotts Valley EA). The EA should be revised to include detailed studies of weekend conditions as additional impacts would likely be identified.

- **Safety Analysis** – The EA and TIA do not include an assessment of the project's potential effects on vehicle queuing and speed differential at area interchanges. The governing standard of practice in this area is the *Caltrans Local Development Review Safety Review Practitioners Guide* (Caltrans Division of Safety Programs, February 2024). That document directs that *"If the Project adds two or more car lengths to the ramp queue that would*

extend into the freeway mainline, then the location must be reviewed for traffic safety impacts. This review must evaluate speed differential between the off-ramp queue and mainline of the freeway during the same period." This assessment should be performed for all potentially affected area interchanges, particularly (but not only) the I-80 westbound off-ramp to SR 37/Auto Mall Parkway, which terminates at a stop sign. Based on the size, facilities (including an event center), location, and operation of the Project, such analysis may reveal potentially significant impacts.

- **Wildfire Evacuation Effects** – As indicated in the EA, the project site is in a High Fire Hazard Severity Zone (Figure 3.12–1). Per the United States Forest Service's 2020 Geospatial Data Discovery 2020 Map, the project is located on the Wildland Urban Interface. After the 2018 Camp Fire, the analysis of the potential effects of new development on evacuation times in High Fire Hazard Severity Zones near the Wildland Urban Interface has become required and common in California. In 2020 the State of California's Attorney General published *"Best Practices for Analyzing and Mitigating Wildfire Impacts of Development Projects Under the California Environmental Quality Act*". These guidelines are required under CEQA, but they are also followed under NEPA – including in the BIA's Koi Nation Draft Environmental Impact Statement, referenced above. The Koi project site is in an area like that of the proposed Scotts Valley project (a high fire hazard severity zone near the wildland urban interface), and the Koi Draft EIS identifies a potentially significant environmental effect. Given the proposed Scotts Valley project's location and potential to negatively affect evacuation, an analysis of this issue should be included in the environmental document.

- **Emergency Vehicle Access** – The project does not provide adequate emergency vehicle access. The project site plan presented in the EA shows one roadway connection to the entire project via a new fourth (northern) leg to the existing Auto Mall Parkway/Admiral Callaghan Lane intersection. Section 3.8-2 of the EA states that "*In addition to the main entrance at Intersection #1, a secondary emergency access would be provided by a dirt road connection to the existing bike path*." The dirt road connection to the existing bike path is not shown on any of the EA's site plan drawings.

  The California Fire Code Title 24, Part 9, Section 104.2 states *"Buildings or facilities having a gross building area of more than 62,000 square feet shall be provided with two separate and approved fire apparatus access roads."* Section 102 and 103 of the code states that fire apparatus roads shall be a minimum of 20 feet in width and be constructed of *"asphalt, concrete, or another approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds."* The proposed second emergency vehicle access point provided via a "dirt road connection to the existing bike path" is not adequate. It is not wide enough and would not structurally support the design fire vehicle. Given the size and nature of the project, two fully fire code compliant emergency

vehicle access roadways are necessary. The lack of an adequate second emergency vehicle access road constitutes a significant adverse environmental effect.

- **Trip Generation** – As noted above, the EA's Transportation Impact Study purports to use trip generation rates developed as part of the *Transportation Impact Analysis of the Tejon Casino* (Linscott, Law, & Greenspan Engineers, San Diego, CA October 30, 2019) (and later used in a later study performed for an expansion of the Graton Resort and Casino). Rates from the Tejon study are as follows:

  - Weekday Daily – 98.2 trips/1,000 s.f.
  - Weekday PM Peak – 6.74 trips/1,000 s.f.
  - Weekend Daily – 142.5 trips/1,000 s.f.
  - Weekend Peak – 9.80 trips/1,000 s.f.

  The national industry standard for the evaluation of the traffic generation is the Institute of Transportation Engineers, *Trip Generation Manual, 11th Edition*. Rates from the ITE *Trip Generation Manual, 11th Edition* for the casino land use are as follows:

  - Weekday Daily – 388.18 trips/1,000 s.f.
  - Weekday PM Peak – 22.61 trips/1,000 s.f.
  - Weekend Daily – 506.21 trips/1,000 s.f.
  - Weekend Peak – 30.98 trips/1,000 s.f.

  The nationally published rates are substantially higher than those used in the EA. The rates used in the EA, as documented in the *Transportation Impact Analysis of the Tejon Casino,* are based on counts at the following three casinos:

  - Harrah's Rincon Casino
  - Chukchansi Gold, Madera County
  - Black Oak Casino, Tuolumne County

  The counts were conducted in January 2006, August 2005 and February 2006 respectively. All three casinos are in rural areas accessed by a single two-lane rural roadway. Given the project's proposed location in suburban Vallejo, near large population centers (25 miles to Oakland, 30 miles to San Francisco) and adjacent to a freeway, the use of 20-year-old counts at rurally isolated locations is not appropriate. Data collected at these locations (two in the winter season) cannot be reasonably expected to be analogous to what is expected at the proposed project.

  Overall, the EA underestimates the Scotts Valley Project's trip generation.

Moreover, assumed trip generation for the "Casino" line item is below any reasonable and accepted rate. The Scotts Valley EA assumptions are 38.31 average weekday daily trips, 2.07 AM weekday peak hour trips, and 3.45 PM weekday peak hour trips, in each case per 1,000 square feet of gaming floor space. In contrast, the Koi EIS (referenced above) uses implied per-1,000 square-foot rates of 61.5 for average weekday daily trips, 3.85 for AM weekday peak hour trips, and 5.83 for PM weekday peak hour trips – much higher than the Scotts Valley estimate. The Tejon traffic study, on which the Scotts Valley EA purports to rely (as discussed above), used even higher per-1,000 square-foot rates of 98.2 average weekday daily trips and 6.74 PM weekday peak hour trips. And the *ITE Manual* per-1,000 square-foot rates are 388.18 average weekday daily trips and 22.61 PM weekday peak hour trips. The Scotts Valley rates are significant, unexplained outliers.

Applying accepted trip generation rates to the Scotts Valley project would add several thousand additional average weekday trips (and even more in a weekend scenario), revealing additional potentially significant impacts.

- **Traffic Counts** – The EA states that its weekday AM and PM peak hour counts were collected "when local schools are in session". As school traffic represents a substantial portion of normal weekday peak traffic it is industry standard practice to collect traffic counts on days when area schools are in normal session. Suburban traffic conditions tend to be considerably lower in periods when schools are out of session.

  The last day of the school year in 2023 for Vallejo public schools was Thursday June 8, 2023. The EA's morning traffic counts were conducted on Wednesday June 7, 2023, which would not be considered a normal school day. Many local schools were on a minimum day bell schedule and area high schools were in non-normal bell schedules consistent with finals or the last week of school. It is likely that the traffic counts used in the EA do not properly consider the full impact of area school-based traffic.

  The EA's transportation study notes that its Friday evening counts were conducted on the afternoon of Friday June 14, 2023. Local schools were not in session on this day and these counts would not be considered representative of typical Friday evening conditions on the local area roadway network.

  Finally, the transportation study and its appendices do not include the traffic count worksheets that would show the details of the data collection and results. These would typically be provided as part of a standard transportation impact analysis.

- **Intersection Level of Service Standards** – The *City of Vallejo's Traffic Impact Analysis Guidelines* identify a level of service standard of LOS D at intersections within the City's boundaries. The EA's transportation impact analysis uses a level of service standard of

LOS E for all study intersections. If the published LOS D standard were used, additional impacts would have been identified in the document. The *Guidelines* can be found at the following link -TRAFFIC IMPACT Analysis/Study GUIDELINESCity of Vallejohttps://www.cityofvallejo.net › pages › DisplayFile

- **Cumulative Forecasts** – The Scotts Valley TIA suggests that its cumulative forecasts were developed "*based on existing turning movements plus incremental 1% growth per year in background traffic based on the Solano Napa Activity Based Model and consistent with the most recent traffic study in the area (Fairview at Northgate Transportation Impact Analysis, Fehr & Peers, Walnut Creek, CA December 2019).*" But our review of the study's forecasts and volumes found the TIA's cumulative turning movements were developed by applying a simplistic one percent per year non-compounding growth factor. New model runs or cumulative forecasts reflecting actual land use growth were not performed. The project's TIA also does not appear to consider a number of substantial development projects proposed within the study area, including the current Solano 360 project proposal and the Solano Ranch project, among others.

  The City of Vallejo's Traffic Impact Analysis/Study Guidelines states that where the Solano Napa Activity Based Model is not used - *"the future build-out year base traffic volumes shall be estimated using an annual growth factor of 3 percent per year"*. The Scotts Valley TIA states that it is consistent with the cumulative forecasts of the most recent traffic study in the area. Not so. **Table 1** presents a comparison of the cumulative LOS results at several locations as presented in the EA's transportation study and the Fairview at Northgate TIA, which was referenced as a source of cumulative forecasts for the EA.

Table 1
Cumulative Level of Service Comparison

Intersection	Peak Hour	Scotts Valley Development Project TIA[1]	Fairview at Northgate TIA[1]
Admiral Callaghan/Turner Parkway	AM	A (7.8)	B (15.3)
	Midday	Not performed	**E (41.8)**
	PM	C (20.9)	C (27.9)
	Saturday	Not performed	**F (117.4)**
Redwood Parkway/Admiral Callaghan	AM	B (10.0)	**F (149.2)**
	Midday	Not performed	**F (125.6)**
	PM	B (15.2)	**F (154.1)**
	Saturday	Not performed	**F (>180)**
Admiral Callaghan/I-80 Off-Ramp & Redwood	AM	C (26.4)	**F (152.0)**
	Midday	Not performed	**F (103.0)**
	PM	C (34.1)	**F (123.8)**
	Saturday	Not performed	**F (155.4)**
	AM	C (31.2)	D (41.6)

	Midday	Not performed	**E (59.9)**
Fairgrounds/I-80 Off-Ramp & Redwood	PM	C (31.0)	**E (68.1)**
	Saturday	Not performed	**E (74.2)**

[1] Level of Service (Average Vehicle Delay seconds per vehicle)

As presented in Table 1, the cumulative forecasts in the EA's transportation impact study are very different than those presented in the most recently approved TIA in the area. In addition, the Scotts Valley TIA does not include analyses in the weekday midday or Saturday peaks as has historically been performed for other projects in the study area.

The EA's cumulative forecasts must be updated to include actual model runs from the SNABM or a 3 percent growth rate, per the *City of Vallejo's Traffic Impact Study Guidelines*. In addition, analyses of weekday midday conditions and Saturday peak conditions should be included.

Transit and Pedestrians – The EA's transportation study presents an extremely brief and dismissive assessment of pedestrians and transit, and the project as designed does not accommodate or make provisions for alternative modes of travel. The nearest existing stops are a half mile to three-quarters of a mile from the site and are largely inaccessible due to a lack of sidewalk and pedestrian infrastructure. They also lack basic infrastructure such as shelters and benches. The lack of safe and adequate pedestrian infrastructure to access existing transit facilities should be identified as a significant adverse effect in the document and appropriate mitigation commitments must be made.

- **Freeway Analysis** – The EA identifies I-80 as providing regional access to the Project site and states that trip distribution assumptions were developed based on the site's proximity to freeway access. But the document does not evaluate potentially significant freeway traffic impacts. It should be noted that other recent development projects in the area have evaluated their impacts on freeways. This includes studies referenced within the TIA. For example, the *Fairview at Northgate Transportation Impact Analysis (Fehr & Peers, Walnut Creek, CA December 2019)* found LOS F and substantial delays on freeways within the study area. The EA and TIA for the project should include an assessment of freeway congestion and delay, including on I-80, State Route 37, State Route 29, and the I-680/I-80 interchange. Potentially significant impacts are likely.

EXHIBIT C

TO: MATTHEW ADAMS, KAPLAN KIRSCH, LLP

FROM: TODD C. TOMMERAASON, PRINCIPAL, P.E.
LAUGENOUR AND MEIKLE

DATE: AUGUST 20, 2024

SUBJECT: **ENVIRONMENTAL ASSESSMENT – SCOTTS VALLEY BAND OF POMO INDIANS – CASINO AND TRIBAL HOUSING FEE-TO-TRUST PROJECT, SOLANO COUNTY, CALIFORNIA**

Please find below Laugenour and Meikle's review comments on the following items from the Report mentioned above: water, wastewater, stormwater, grading, construction, electrical and access.

WATER INFRASTRUCTURE

➢ OFFSITE WATER SUPPLY (OPTION 1):

- With this option the Project would connect to the City of Vallejo's 24-inch transmission main for the project's water supply. This would still require a 1.5-million-gallon tank along with a pump station to supply adequate pressure and fire flow. There are several significant problems with this option, as presented in the Environmental Assessment (EA), which render it infeasible:

  → Water Supply Option 1 would essentially create an individual service connection for the casino development. Best Practices dictate that individual service connections to large transmission water main lines are not allowed, due to concerns about maintenance and system integrity. In fact, such connections are banned in many jurisdictions.

  → The existing 24-inch trunk main is located directly below the proposed casino structure. The EA does not provide sufficient information to determine whether the water main could remain in place during casino construction. Even if it could remain in place during construction, the water line would be covered by the casino structure, rendering full access (e.g., for maintenance or replacement) infeasible.

  → The current placement of the casino structure appears to infringe on the City of Vallejo's waterline easement. The Project could not be built and connected to the waterline as shown in the EA.

  → The EA does not identify a location for or evaluate the environmental impacts of relocating the existing waterline.

  → The EA also lacks information confirming that relocation of the existing waterline is feasible, given the design constraints on the Project site and surrounding area. Among other things, it would need to be verified that the City has sufficient water storage and

conveyance facilities that could accommodate a pipeline relocation, and the necessary service interruptions contemplated with the proposed relocation design.

- **Exhibit "A"** shows the layout of the 1.5-million-gallon tank specified in the EA, along with four 3,250 kilowatt generators that would be needed for backup power. Figure 4.3 of Appendix B of the EA shows a 112-foot diameter for the 1.5-million-gallon tank and that dimension was used to plot this tank. The footprint of the generators along with secondary containment was taken from standard sizing for this equipment and experience with the recent installation of a 3,000-kilowatt generator. As can be seen the utility area as designed is not large enough for both utilities. Once the grades are flattened in the utility area the useable area will more than likely get even smaller to accommodate transition grading. Retaining walls or 2:1 slopes may be required in order to obtain the usable area necessary. Another consideration for the utility area is the turning movements of the large vehicles that will be needed to construct these facilities as well as maintain them – particularly given the difference in grade between the access road and the utility area that is shown in the EA. Once these turning movements are factored in, the useable area will be dramatically reduced.

➢ ONSITE WATER SUPPLY (OPTION 2):

- For this option domestic and fire water would be supplied by groundwater wells. To meet the average daily demand of 287,000 gallons/day one well would need to be capable of 200 gallons/minute, running 24 hours a day; to meet the peak day demand of 431,000 gallons/day one well would need to be capable of 300 gallons/minute. Being able to get this type of production from this area is highly uncertain, as no test wells have been completed. Another potential environmental problem is that there may be water quality issues due to historical mercury mining operations in this area and inherent characteristics of the bedrock. Even if sufficient water was available from onsite wells, it is not clear whether or how it could be treated to an acceptable level for human consumption.

- **Exhibit "B"** shows the layout of the 1.5-million-gallon tank, the four 3,250-kilowatt generators, the water treatment plant and 4 well sites. Figure 4.3 of Appendix B of the EA shows a 112-foot diameter for the 1.5-million-gallon tank and that dimension was used to plot this tank. The footprint of the generators along with secondary containment was taken from standard sizing for this equipment and experience with the recent installation of a 3,000-kilowatt generator. The water treatment plant was plotted with a 0.5-acre footprint per Figure 5-11 of Appendix B. The well sites were shown as 20 feet x 30 feet per Section 4.1.1 of Appendix B of the EA at 100 feet spacing. For this layout the utility area would need to be at least two times the area shown in the EA to contain all these improvements. After factoring in the turning movements for the large vehicles necessary to install and maintain these facilities, the footprint for the utility area would need to expand still further beyond what is shown. The design of these facilities as shown is not feasible.

WASTEWATER INFRASTRUCTURE

➢ OFFSITE WASTEWATER TREATMENT (OPTION 1):

- With this option the Project would connect to a 12-inch main within Columbus Parkway and send its wastewater to a Vallejo Flood and Wastewater District (VFWD) Treatment Plant. Reports indicate that there are conveyance issues downstream of the Project and there may be offsite improvements needed in order to serve the Project. However, the EA does not provide modeling of conveyance capacity or necessary improvements. The proposed sewer flows from this Project should be input into the City's model of their conveyance system so that the downstream improvements needed can be identified. The scope of these improvements should be included in the analysis of this Project. Without this information, it is not possible to determine whether the downstream conveyance facilities have adequate capacity to serve the Project or fully evaluate the Project's environmental consequences.

➢ ONSITE WASTEWATER TREATMENT (OPTION 2):

- With this option, a wastewater treatment plant will be needed to treat the wastewater on site to a tertiary level. The recycled water will be stored on site and used for toilet and urinal flushing, cooling tower makeup water and the landscaping in the summer months. Substantial additional treated wastewater would remain, even after these uses, and would require storage and offsite use/disposal.

- Figure 2.1-5 from the EA is a map of potential offsite recycled water users. These properties are long distances away from the proposed project; some are on the western side of Interstate 80 and at least one is on Mare Island. This would be very expensive to construct a conveyance system for these properties and may be cost prohibitive. The scope of the required improvements to implement this concept is not included in the EA. Without that information it is not possible to conclude Wastewater Option 2 is feasible or to identify and evaluate its environmental consequences. .

- **Exhibit "C"** shows the utility layout with onsite water and wastewater treatment. Figure 4.3 of Appendix B of the EA shows a 112-foot diameter for the 1.5-million-gallon water storage tank and that dimension was used to plot this tank. The footprint of the generators along with secondary containment was taken from standard sizing for this equipment and experience with the recent installation of a 3,000-kilowatt generator. The water treatment plant was plotted with a 0.5-acre footprint per Figure 5-11 of Appendix B of the EA. The well sites were shown as 20 feet x 30 feet per Section 4.1.1 of Appendix B of the EA at 100 feet spacing. The wastewater treatment plant was plotted with a 1.0-acre footprint per Figure 5-11. The 100,000-gallon recycled water tank is shown with a 32-foot diameter per Table 5-6 and the 7-million-gallon tanks are shown with a 173-foot diameter per Table 5-9. For this layout the utility area would need to be substantially larger, about five times the area shown in the EA to contain all these improvements. After factoring in turning movements for the large vehicles are established to install and maintain these facilities, the footprint for the utility area would need to expand still further from what is shown. It does not appear that this would be a viable option based on the available space shown in the Exhibit for Alternative A.

DRAINAGE/STORMWATER QUALITY

In the short time provided for comment on the EA, we identified numerous significant problems with the drainage and stormwater elements of the document. Additional time would likely reveal other major issues. Please see **Exhibit "D"** for the location and numbering of the comments listed in the table below. Comments in the table below relate to drainage/stormwater quality and are denoted by letters "A" through "H".

- **PRELIMINARY GRADING AND STORMWATER PLAN, JUNE 2024:**

  As a general matter, this Plan does not include the drainage study elements required to evaluate project impacts – including several elements required by the VFWD to determine whether development will cause an increase in surface flow runoff crossing property lines. Missing information includes hydrologic and hydraulic modeling of existing and proposed conditions. Also, more planning-level detail is needed to determine how this Plan works. For example, there appears to be no information about a storm drain system for development.

  - **Page 5:**

    Proposed impervious surfaces will result in increases in runoff volumes for the Project site. Contrary to best practices, the EA does not provide modeling and other information needed to address this issue. It is worth noting that the VFWD requires a drainage study to include hydrologic and hydraulic modeling that shows that "the development shall not cause an increase in surface flow runoff crossing the property lines". This modeling would likely show that additional storage volume is needed in the wetland area to mitigate project flows down to existing, and/or flow control/restriction at the downstream end of the wetlands to limit flow discharging from the Project. This is not accounted for in the EA's analysis of stormwater or wetlands issues.

    There does not appear to be any detail about the onsite drainage system, such as storm drains or points of discharge.

    There appears to be other significant tributary areas from which offsite runoff would run on to the Project improvements (including, for example, uphill of the retaining wall at the northeastern side of the housing). Onsite drainage facilities do not appear to have been provided to safely convey this run-on through or around the development. The lack of drainage facilities to accommodate these flows calls into question the adequacy of the proposed design for drainage/stormwater.

    VFWD requires the drainage study to include maps of watersheds and sub-sheds for all tributary areas draining to or through the proposed development; table(s) summarizing the pre-development and post-development land uses, hydrologic data, and resulting peak runoff rates and total runoff volumes for each watershed and sub-watershed; table(s) summarizing the pre-development and post-development hydraulic system data, peak flow rates, flow velocities, and maximum water surface elevations (WSEs). Also, include the drain inlet/gutter flow line and maintenance hole rim elevations and the freeboard and/or flooding depths. The VFWD requires a drainage study that analyzes the 15-year and 100-year events that show that the development shall not cause an increase in surface flow runoff crossing the property lines. Since the Project is relying on the storage of the wetlands, hydrology and

hydraulic models such as HEC-HMS and SWMM or HEC-HMS need to be used for the study. These should be considered minimum requirements for modeling necessary to evaluate the Project. This modeling will likely show that additional storage volume is needed in the wetland area to mitigate project flows down to existing, and/or flow control/restriction at the downstream end of the wetlands.

Detention storage facilities must be designed to safely store the flow from the 10-day, 100-year storm event. The minimum freeboard during the 100-year design storm must be one foot if the design water level is below the surrounding ground surface. Leveed detention basins are not allowed (see Notes 5, 13 & 37 in **Exhibit "D"**).

- **Page 7:**

  Vallejo's Hydromod Applicability map shows that this area requires hydromod flow controls (in addition to treatment). The hydromodification standard for the City of Vallejo is to ensure that post-project stormwater discharge rates and durations match pre-project discharges rates and durations from 10% of the pre-project 2-year peak flow from the Project site up to the pre-project 10-year peak flow. This flow regulation typically requires additional storage volume and outlet flow control features, such as outlet orifices (compared to treatment only).

➢ EXHIBIT B:

- **South End of Project:**

  The cover does not appear to be enough for a culvert. This culvert appears that it will be a key control of the discharge from the project site.

- **Wetlands Area:**

  Proposed impervious surfaces will result in increases in runoff volumes for the Project site. As noted above, the EA does not provide modeling and other information needed to understand runoff volumes and their potential flow in and impact to the wetlands area in southern portion of the Project site. The VFWD requires the drainage study to include hydrologic and hydraulic modeling that shows that "the development shall not cause an increase in surface flow runoff crossing the property lines". This modeling will likely show that additional storage volume is needed in the wetland area to mitigate/attenuate project flows down to existing, and/or flow control/restriction at the downstream end of the wetlands. The EA does not account for potential stormwater storage in the wetlands area.

- **Proposed Eastern Channel:**

  Significant run-on would come into the proposed channel here. Erosion protection and flow transition would likely be needed in order to prevent erosion and associated water quality issues.

- **Eastern Side of Casino:**

  Runoff from this area appears to have no outlet.

- **Roadway Between Housing and Casino:**

  One of the four identified springs appears to be directly under the roadway embankment.

Significant run-on or streamflow appears to enter here. Culvert alignment, inverts, and sizes should be shown, and at other locations throughout the development.

- **General:**

  There did not appear to be any mention of a storm drain system for the onsite drainage, or a description of how runoff would drain to the surface of the bioretention facilities and how runoff would discharge from the bioretention facilities. If no storm drains are proposed, runoff will be conveyed only by streets, and street flooding criteria may not be met.

- **Northeastern Side of Housing:**

  Significant uphill runoff would be entering the Project site from the adjacent property. It did not appear that there was a surface drainage system included in the design to convey the run-on flows into the onsite drainage system or around the proposed housing.

- **Western Side of Project Site:**

  Drainage leaves the property and then reenters. VFWD requires the drainage study to include hydrologic and hydraulic modeling that shows that "the development shall not cause an increase in surface flow runoff crossing the property lines". A drainage easement and additional mitigation appear to be needed in the offsite riparian area.

- **Utility Area:**

  Drainage/stormwater quality plan in utility area needs detail. A planning-level layout and sizing of the storm drain and culvert systems in this area is needed to identify any potential conflicts with other utilities in this area, and to determine whether the culvert crossing the road could have proper cover and whether it could discharge by gravity to the surface reservoir of the bioretention facility (on the other side of the road) for treatment. Also, it appears that neither the underdrain nor the overflow storm drain required for the bioretention facility would be able to drain by gravity to the wetlands area, which may result in ponding issues in this bioretention facility and additional changes in the wetland areas.

➢ EXHIBIT E:

- **General:**

  Vallejo's Hydromodification Applicability map shows that the Project area requires hydromodification flow controls (in addition to treatment). Up to the 10-year event runoff would need to be controlled, and additional detention volume may be needed to decrease runoff discharges down to existing discharge flow rates.

  The roadway embankment side slopes seem to not drain to the stormwater quality treatment facilities (bioretention facilities). If runoff from these areas does not reach the bioretention facilities, the runoff won't be treated by the bioretention facilities prior to discharge.

➢ ENVIRONMENTAL ASSESSMENT, JULY 2024:

- **Page 2-14, Second Paragraph:**

  There does not appear to be any detail about the onsite drainage system, such as storm drains or points of discharge.

  Hydromodification Applicability map shows that this area requires hydromod flow controls (in addition to treatment).

- **Page 2-14, Third Paragraph:**

  There appears to be other significant tributary areas from which offsite runoff would run on to the Project improvements. Onsite facilities do not appear to have been provided to accommodate these run-on flows.

  Proposed impervious surfaces will result in increases in runoff volumes for the Project site. As noted above, the EA does not provide modeling and other information needed to understand runoff volumes and their potential flows in and impact to the wetlands area in southern portion of the Project site. VFWD requires the drainage study to include hydrologic and hydraulic modeling that shows that "the development shall not cause an increase in surface flow runoff crossing the property lines". This modeling will likely show that additional storage volume is needed in the wetland area to mitigate project flows (discharges from the project site) down to existing levels. The EA does not account for potential stormwater storage in the wetlands area.

- **Page 3-10, Assessment Criteria:**

  Assessment criteria should include, among other things, VFWD method for determining impacts: The development shall not cause an increase in surface flow runoff crossing the property lines. The 15-year and 100-year events should be evaluated using methods specified by VFWD. For water quality, hydromodification should also have assessment criteria which did not appear to be included.

- **Page 3-12, First Paragraph:**

  This statement does not seem to account for increases in runoff due to increases in imperviousness (but only for changes in routing), and it has not been demonstrated quantitatively that there will be no increases in discharges from the Project site. See comment below.

  LID/hydromodification requirements are based on smaller storm events, up to a 10-year storm event (for hydromod). The Bay Area Hydrologic Model (BAHM) is to be used for this analysis. Up to the 10-year event runoff would need to be controlled, and additional detention volume may be needed to decrease runoff discharges down to existing discharge flow rates.

  The VFWD requires the drainage study to include analyses of the 15-year and 100-year events that show that the development shall not cause an increase in surface flow runoff crossing the property lines. Since the Project may result in stormwater storage in the wetlands (the impacts of which are not addressed in the EA), hydrology and hydraulic models such as HEC-HMS and SWMM or HEC-HMS need to be used for the study. This

modeling will likely show that additional storage volume is needed to mitigate/attenuate project flows down to existing conditions, and/or flow control/restriction at the downstream end of the wetlands. The EA does not account for the use of wetland features for stormwater detention.

There appears to be significant tributary areas from which offsite runoff would run on to the project improvements (such as uphill of the retaining wall at the northeastern side of the housing). Onsite drainage facilities do not appear to have been provided to safely convey this run-on through or around the development.

GRADING

- There are many areas where the transition grading appears too steep, and the transition grading area would need to be increased. This would result in additional space being required to accommodate the proposed design. It does not appear this would be feasible given the topography of the site improvements proposed.
- There does not appear to be sufficient area shown on the site plan to accommodate the needed facilities in the area designated for utilities, see Detail A in **Appendix A** and **Exhibits A, B and C.**
- There is no mention of retaining walls (except the one shown above the housing) on the exhibit for Alternative A in the EA Appendix C, "Preliminary Grading and Stormwater Plan". However, there are many areas that appear that will need substantial retaining walls to accommodate grade transitions. One of these areas is along the eastern property line in the vicinity of the existing 6-million-gallon water tank. The flowline grades in this area are approximately 25 feet below the existing grade while the length for transition grading measures about 30 feet (see Detail C in **Appendix A**). A slope stability study is needed for any wall that has any type of backfill or soil nail design that ends up within structural influence area beneath the existing water tank; no such study is provided in the EA. Every precaution must be taken in this area to avoid any complications with the existing water tank facility. It is not clear from the information provided that the proposed improvements will withstand the surcharge of the existing water tank. The is a very significant issue that could require substantial changes to the site plan; otherwise, the structural integrity of the water tank may be at risk.
- The drainage that is diverted around the north side of the proposed casino shows a flowline elevation that is about 5 feet above the proposed road surface (see Detail D in **Appendix A**), and it appears that significant grade adjustments will be needed in this area. This drainage then leaves the property and continues south until it enters the property again near the southwest corner of the proposed casino at an elevation of 194.7± feet. The report in Appendix C of the EA states that this flow is then conveyed to the existing wetland, however, the preliminary grades show the flowline elevation rising from 194.7± feet to 205.0 feet, about 360 feet south of where these flows enter the property again (see Detail E in **Appendix A**). If the grade of the flowline is lowered to provide positive drainage to the wetland large retaining walls, or the addition of storm drain piping will be needed to accommodate the large grade difference between the proposed access road and the flowline needed to drain to the wetland.

- There is a high voltage transmission line tower directly west of the proposed casino that is approximately 80 feet tall and 35 feet wide within a power line easement. The preliminary grades on the site plan show the proposed road surface approximately 30 feet above the existing grade (see Detail B in **Appendix A**). This is a potentially significant safety issue that is not addressed in the EA. Further, the EA does not address whether a 30-foot retaining wall in such close proximity to this transmission line tower is feasible. It is not clear from the information provided if PG&E has even been consulted on this matter.
- There appears to be significant tributary areas from which offsite runoff would run on to the project improvements (such as uphill of the retaining wall at the northeastern side of the housing). Onsite drainage facilities do not appear to have been provided to safely convey this run-on through or around the development.
- Please see **Exhibit "D"** for the location and numbering/lettering of the grading and drainage comments listed in the table below.

GRADING COMMENTS TO EXHIBIT "D"

COMMENT #	COMMENT
1	WITH THE QUANTITY OF FILL ESTIMATED FOR THIS PROJECT TYPICAL SHRINK ASSOCIATED WITH ENGINEERED FILL WILL MORE THAN LIKELY ADD A SIGNIFICANT NUMBER OF TRUCK DELIVERIES TO THE SITE.
2	PAVING SECTIONS WERE INCLUDED IN THE GEOTECHNICAL REPORT IN SECTION 4.11.
3	THIS IS THE ONLY RETAINING WALL SHOWN ON THIS EXHIBIT BUT IT APPEARS THAT MANY MORE ARE NEEDED THROUGHOUT THE PROJECT SITE.
4	EXISTING TRANSMISSION LINE TOWER FOR HIGH VOLTAGE TRANSMISSION LINES APPEARS TO BE LOCATED WITHIN THE LANDSLIDE AREA, RAISING SAFETY CONCERNS FOR THE PLANNED RESIDENTIAL HOUSING IN CLOSE PROXIMITY.
5	IF THIS BIO-RETENTION AREA IS FLAT IT WILL BE MORE THAN 3 FEET ABOVE THE ELEVATION OF THE ADJACENT ROAD AT THE NW CORNER AND ABOUT 7 FEET BELOW THE ROAD AT THE SOUTHEAST CORNER.
6	FLOWLINE IS 23+/- FEET ABOVE THE MATCH GRADE AND THE GRADING TRANSITION IS ONLY 24+/- FEET THIS IS NEARLY A 1:1 SLOPE.
7	TRANSITION SLOPE WITH A 39-FOOT DROP IN 48 FEET IS ROUGHLY A 1.2:1 SLOPE WITHOUT A 5-FOOT SHOULDER ADJACENT TO THE ROAD.
8	THE PROPOSED STORMWATER RUNOFF SECTION OF THE PRELIMINARY GRADING AND STORMWATER PLAN SAYS THAT THIS SWALE IS DESIGNED TO CAPTURE OFFSITE RUNOFF. THIS SEEMS INFEASIBLE GIVEN THE LARGE GRADE DIFFERENCE BETWEEN THE FLOWLINE ELEVATION AND THE EXISTING CONTOUR ELEVATIONS.
9	FLOWLINE IS APPROXIMATELY 268 FEET. THIS WOULD BE ABOUT A 32-FOOT GRADE TRANSITION IN 19 FEET ±, WHICH IS ROUGHLY A 0.6:1 SLOPE; 2:1 IS TYPICALLY THE STEEPEST SLOPE ALLOWED. THIS WILL NOT BE PERMITTED BECAUSE IT RAISES

GRADING COMMENTS TO EXHIBIT "D"	
COMMENT #	**COMMENT**
	SIGNIFICANT SAFETY AND STABILITY ISSUES, PARTICULARLY IN SUCH CLOSE PROXIMITY TO THE EXISTING 6-MILLION GALLON TANK.
10	THIS WOULD BE ABOUT A 25-FOOT RETAINING WALL. IF THIS IS A SOIL NAIL WALL HOW FAR WILL THE NAILS EXTEND EAST FROM THE WALL? THE EA DOES NOT CONFIRM WHETHER THEY WOULD REMAIN WITHIN THE PROPERTY LINE
11	THERE WOULD BE APPROXIMATELY A 12% CROSS SLOPE AT THE MAIN ENTRANCE.
12	BIO RETENTION AREA IS ABOUT 7.7 FEET BELOW THE ADJACENT ROAD AREA.
13	BIORETENTION AREA IS 30 FEET ABOVE THE ADJACENT FLOWLINE. WILL THERE BE A 30-FOOT RETAINING WALL IN THIS LOCATION? THE EA DOES NOT PROVIDE ANY INFORMATION.
14	AREA FOR UTILITY YARD NOT WITHIN 3:1 SLOPE IS APPROXIMATELY 1.7 ACRES. UTILITY YARD AREA WILL NEED TO HAVE FAIRLY FLAT SLOPES WHICH WILL SHRINK THIS AREA EVEN MORE TO ACCOMMODATE TRANSITION GRADING.
15	ACCESS TO THE UTILITY AREA NEEDS TO BE DEFINED AS WELL AS TRANSITION AREAS FROM UTILITY AREAS TO THE ACCESS ROAD. AS LARGE EQUIPMENT WILL NEED TO BE ABLE TO ACCESS AND MANEUVER IN THIS AREA TO MAINTAIN AND INSTALL FACILITIES.
16	THE ROAD SURFACE IS MORE THAN 20 FEET ABOVE THE ADJACENT BIO RETENTION AREA.
17	BOTTOM OF 3:1 SLOPE =145.3+/- FEET.
18	5.8% SLOPE WITHIN UTILITY AREA IS VERY STEEP; THIS AREA WILL NEED TO BE RELATIVELY FLAT TO SERVE ITS STATED PURPOSES.
19	8.5% SLOPE WITHIN UTILITY AREA IS VERY STEEP; THIS AREA WILL NEED TO BE RELATIVELY FLAT TO SERVE ITS STATED PURPOSE.
20	MATCH GRADE LOOKS CLOSER TO 196 FEET.
21	UTILITY AREAS PAD GRADE APPEARS TO BE ABOUT 9 FEET LOWER THAN THE ACCESS ROAD IN THIS LOCATION. EA PROVIDES NO INFORMATION REGARDING HOW LARGE EQUIPMENT COULD ENTER THIS AREA, TURN AROUND, AND GET BACK OUT.
22	THE WIDTH OF THE UTILITY AREA IS LESS THAN 80 FEET IN THIS AREA AND A LARGE TRUCK WOULD NEED MORE THAN THIS TO TURN AROUND. ACCESS TO THE UTILITY AREA WOULD LIKELY BE LIMITED TO THE SOUTHERN END.
23	THIS GRADE APPEARS TO BE CLOSER TO 5:1 IF THERE IS A 3:1 TRANSITION SLOPE AS SHOWN.
24	60 FEET OF DROP ACROSS UTILITY AREA THAT WILL NEED TO BE RELATIVELY FLAT FOR ALL THE UTILITIES THAT NEED TO BE INSTALLED HERE.

GRADING COMMENTS TO EXHIBIT "D"	
COMMENT #	**COMMENT**
25	BOTTOM OF 3:1 SLOPE =178.3+/- FEET.
26	ACCESS ROAD APPEARS TO BE ABOUT 12 FEET HIGHER THAN UTILITY AREA. THIS WOULD BE ABOUT 2.6:1 GRADING TRANSITION WITH NO SHOULDER FOR THE ROAD.
27	IF THERE IS A 3:1 SLOPE AS SHOWN THIS TRANSITION FROM THE CONCRETE SWALE WOULD BE APPROXIMATELY 1.5:1.
28	FLOWLINE AT MATCH GRADE IS 194.73 FEET AND FLOWLINE TO THE SOUTH OF THIS LOCATION IS SHOWN TO BE 205 FEET (APPROXIMATELY 10 FEET HIGHER) BUT FLOW ARROWS INDICATE DRAINAGE IS FLOWING SOUTH TO THE EXISTING WETLAND? THE ALIGNMENT OF THE EXISTING DRAINAGE TO THE WETLAND HAS BEEN SHIFTED SOUTH TO AN AREA WITH A MUCH HIGHER EXISTING GRADE. THE EXISTING GRADE MUST BE LOWERED IN ORDER TO MAINTAIN POSITIVE DRAINAGE TO THE EXISTING WETLAND. SEE GRADING COMMENT 43.
29	NOT SURE HOW YOU INSTALL A 30-FOOT RETAINING WALL NEXT TO A HIGH VOLTAGE TRANSMISSION TOWER. EA DOES NOT EXPLAIN WHETHER THESE POWER LINES NEED TO BE RAISED TO ACCOMMODATE THE CASINO PROJECT AND WHAT TYPE OF HORIZONTAL AND VERTICAL CLEARANCES ARE REQUIRED FOR THE PROPOSED IMPROVEMENTS
30	A 5-FOOT SHOULDER WILL LIKELY BE NEEDED FOR SAFETY ALONG THE ACCESS ROAD. GRADING LIMITS WILL NEED TO BE SHIFTED WEST OR A RETAINING WALL WILL BE NEEDED ALONG THIS PROPERTY LINE.
31	254.5+/- FEET FS AT THE ROAD WOULD REQUIRE ABOUT A 1:1 GRADING TRANSITION TO THE MATCH LINE SHOWN
32	APPEARS THAT THIS SWALE WILL NEED TO BE PIPED AS THE FLOWLINE IS ABOUT 13 FEET BELOW THE ROADWAY SURFACE.
33	THE PROPOSED FLOWLINE IS MORE THAN 6 FEET ABOVE THE PROPOSED PAVING ELEVATION OF THE ROADWAY
34	FLOWLINE HAS A 25-FOOT DROP IN LESS THAN 200 FEET?
35	PLAN IS CALLING FOR AN EARTHEN SWALE WITH AN ELEVATION DROP OF 20 FEET IN ABOUT 220 FEET - THIS WILL HAVE TO BE HEAVILY ARMORED.
36	THIS IS ABOUT A 30-FOOT GRADE TRANSITION IN ABOUT 20 FEET?
37	BIO RETENTION AREA IS ABOUT 20 FEET HIGHER THAN EXISTING GRADE
38	BIO RETENTION AREA IS ABOUT 15 FEET BELOW THE ROAD SURFACE ON ONE END AND 10 FEET ABOVE THE ROAD SURFACE ON THE OTHER END.
39	THIS 295+/- - FOOT FLOWLINE APPEARS TO BE NEAR THE 310-FOOT CONTOUR WHICH WOULD MAKE THIS AN EARTHEN SWALE THAT IS 15 FEET DEEP?

GRADING COMMENTS TO EXHIBIT "D"	
COMMENT #	**COMMENT**
40	IS THE SECONDARY ACCESS FOR EMERGENCY VEHICLES MEANT TO BE ALONG THE ALIGNMENT OF THE BIKE PATH HEADING NORTH TO McGARY ROAD? THE CONNECTION TO THE ONSITE ROADWAYS NEEDS TO BE DEFINED.
41	SLOPES GREATER THAN 30 FEET IN HEIGHT REQUIRE DRAINAGE TERRACING PER APPENDIX J OF THE CALIFORNIA BUILDING CODE.
42	THERE APPEARS TO BE SIGNIFICANT TRIBUTARY AREAS FROM WHICH OFFSITE RUNOFF WOULD RUN ONTO THE PROJECT IMPROVEMENTS (SUCH AS UPHILL OF THE RETAINING WALL AT THE NORTHEASTERN SIDE OF THE HOUSING). ONSITE DRAINAGE FACILITIES DO NOT APPEAR TO HAVE BEEN PROVIDED TO SAFELY CONVEY THIS RUN-ON THROUGH OR AROUND THE DEVELOPMENT.
43	APPROXIMATE ALIGNMENT OF EXISTING DRAINAGE TO WETLAND

DRAINAGE COMMENTS TO EXHIBIT "D"	
COMMENT #	**COMMENT**
A	DRAINAGE/STORMWATER QUALITY PLAN IN UTILITY AREA NEEDS DETAIL.
B	THE COVER DOES NOT APPEAR TO BE ENOUGH FOR A CULVERT. THIS CULVERT APPEARS THAT IT WILL BE A KEY CONTROL OF THE DISCHARGE FROM THE PROJECT SITE.
C	PROPOSED IMPERVIOUS SURFACES WILL RESULT IN INCREASES IN RUNOFF VOLUMES FOR THE PROJECT SITE. VALLEJO FLOOD AND WASTEWATER DISTRICT REQUIRES THE DRAINAGE STUDY TO INCLUDE HYDROLOGIC AND HYDRAULIC MODELING THAT SHOWS THAT "THE DEVELOPMENT SHALL NOT CAUSE AN INCREASE IN SURFACE FLOW RUNOFF CROSSING THE PROPERTY LINES". THIS MODELING WILL LIKELY SHOW THAT ADDITIONAL STORAGE VOLUME IS NEEDED IN THE WETLAND AREA TO MITIGATE PROJECT FLOWS DOWN TO EXISTING, AND/OR FLOW CONTROL/RESTRICTION AT THE DOWNSTREAM END OF THE WETLANDS TO LIMIT FLOW DISCHARGING FROM THE PROJECT.
D	SIGNIFICANT RUN-ON WOULD COME INTO THE CHANNEL HERE. EROSION PROTECTION AND FLOW TRANSITION MAY BE NEEDED.
E	RUNOFF FROM THIS AREA APPEARS TO HAVE NO OUTLET.
F	ONE OF THE FOUR IDENTIFIED SPRINGS APPEARS TO BE DIRECTLY UNDER THE ROADWAY EMBANKMENT.
G	THERE APPEARS TO BE SIGNIFICANT TRIBUTARY AREAS FROM WHICH OFFSITE RUNOFF WOULD RUN ONTO THE PROJECT IMPROVEMENTS (SUCH AS UPHILL OF THE RETAINING WALL AT THE NORTHEASTERN SIDE OF THE HOUSING). ONSITE DRAINAGE FACILITIES DO NOT APPEAR TO HAVE BEEN PROVIDED TO SAFELY CONVEY THIS RUN-ON THROUGH OR AROUND THE DEVELOPMENT.
H	DRAINAGE LEAVES PROPERTY AND THEN REENTERS. VALLEJO FLOOD AND WASTEWATER DISTRICT REQUIRES THE DRAINAGE STUDY TO INCLUDE HYDROLOGIC AND HYDRAULIC MODELING THAT SHOWS THAT "THE DEVELOPMENT SHALL NOT CAUSE AN INCREASE IN SURFACE FLOW RUNOFF CROSSING THE PROPERTY LINES". A DRAINAGE EASEMENT MAY BE NEEDED IN THE OFFSITE RIPARIAN AREA.

CONSTRUCTION

- During construction the contractor will need a very large area for employee parking and materials storage. It appears that there will need to be grading on (at least) Assessor's Parcel Number: 0182-020-020 to create the largest flat area possible to accommodate this. See **Exhibit "E"** that shows an area of approximately 8 acres that will need to be graded and surfaced with aggregate base to make this area all weather during construction. This issue is not addressed in the EA.

DRY UTILITIES

- The EA details information about contracting with PG&E for electrical service. The adjacent utility lines are all high voltage, and it is not clear how the project would be served from the existing PG&E distribution system. It is also unclear if there is sufficient capacity to serve the Project. Additional dry utility information is needed to determine if offsite improvements are required in order to bring electrical service to the site. Without this information, it is not possible to evaluate the Project or its environmental consequences.

ACCESS

- Section 2.1.6 of the EA refers to an emergency access point involving a dirt road connection to the existing bike path. This is not shown on the Alternative A graphic. If this route is to be the secondary access for emergency vehicles it will need to be a minimum width of 20 feet with an all-weather surface and a structural section capable of supporting emergency vehicles, per Section 503 of the California Fire Code. If the secondary access was meant to be on the bike path that goes north to McGary Road this would be a length of approximately 1.5 miles. It appears that the bike path is approximately 10 feet wide from measurements taken on Google Earth. The structural section for the existing bike path is more than likely inadequate to support emergency vehicles and would need to be removed and replaced to a minimum width of 20 feet. This work all appears to be within the Caltrans right-of-way and would require an encroachment permit from Caltrans. Drainage impacts to stormwater entering their right-of- way would also need to be addressed.

- The access road shown on Figures 2.1-1 and 2.1-6 involves an "S" curve near the Admiral Callahan/Columbus Parkway intersection. This geometry does not appear to be workable for large trucks and heavy equipment; the curves in this area would need to be flattened out, likely requiring additional encroachment into the wetlands area.

EXHIBITS

LEGEND

- PROPERTY LINE
- EASEMENT LINE
- LIMITS OF GRADING
- PROPOSED BUILDING WALL AND OVERHANG
- 100 — EXISTING GROUND CONTOUR
- FS:(100.00) — EXISTING SPOT ELEVATION
- FS:100.00 — PROPOSED SPOT ELEVATION
- (1.0%) — EXISTING GROUND SLOPE
- 1.0% — PROPOSED GROUND SLOPE
- ASPHALT CONCRETE
- WETLAND AREA
- BIORETENTION AREA

PRELIMINARY EARTHWORK

CUT: 774,000 CY
OVER-EX: (63,000 CY)

FILL: 659,000 CY

NET: 115,000 CY (FILL)

NOTE: THE EARTHWORK QUANTITIES ABOVE ARE FOR PERMIT PURPOSES ONLY. THE CONTRACTOR IS NOT AUTHORIZED TO USE THE ESTIMATES HEREIN FOR BIDDING AND CONSTRUCTION PURPOSES WITHOUT THE EXPLICIT WRITTEN PERMISSION OF THE ENGINEER OF RECORD. NO REPRESENTATIONS OF SUCH QUANTITIES OR A BALANCED SITE CONDITION ARE MADE BY THE ENGINEER OF RECORD.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE QUANTITIES ARE APPROXIMATE. IN PLACE VOLUMES CALCULATED FROM THE EXISTING GROUND TO THE PROPOSED FINISHED GRADE. EXISTING GROUND IS DEFINED BY THE CONTOURS AND SPOT GRADES ON THE AVAILABLE USGS TOPOGRAPHIC INFORMATION. PROPOSED FINISHED GRADE IS DEFINED AS THE FINAL GRADE AS INDICATED ON THE GRADING PLAN(S) AS FINISHED GROUND, FINISHED SURFACE, AND FINISHED FLOOR ELEVATIONS.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE GRADING QUANTITIES HAVE NOT BEEN FACTORED TO ACCOUNT FOR CHANGES IN VOLUME DUE TO BULKING, CLEARING AND GRUBBING, SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION AND RE-COMPACTION, AND CONSTRUCTION METHODS. NOR DO THEY ACCOUNT FOR THE THICKNESS OF PAVEMENT SECTIONS, STORMWATER QUALITY MEDIA SECTIONS, UTILITY PIPES, TRENCHING AND BEDDING MATERIALS, BUILDING OR WALL FOOTINGS, BUILDING SLAB THICKNESSES AND UNDERLYING BASE OR SAND LAYERS, REUSE OF PULVERIZED MATERIALS THAT WILL UNDERLIE NEW PAVEMENTS, ETC.

ANY OVEREXCAVATION AND RECOMPACTION DEPTHS AND VOLUMES, SHRINKAGE FACTORS, PAVEMENT SECTIONS, BUILDING PAD SECTIONS, AND BULKING FACTORS ARE BASED ON A SEPARATE GEOTECHNICAL REPORT. ANY BUILDING SLAB THICKNESSES ARE BASED ON THE SEPARATE BUILDING STRUCTURAL ENGINEERING PLANS. ANY UTILITY, STORMWATER MITIGATION, AND FOOTING SPOILS ARE BASED ON ESTIMATES PROVIDED BY THE OWNER OR CONTRACTOR.

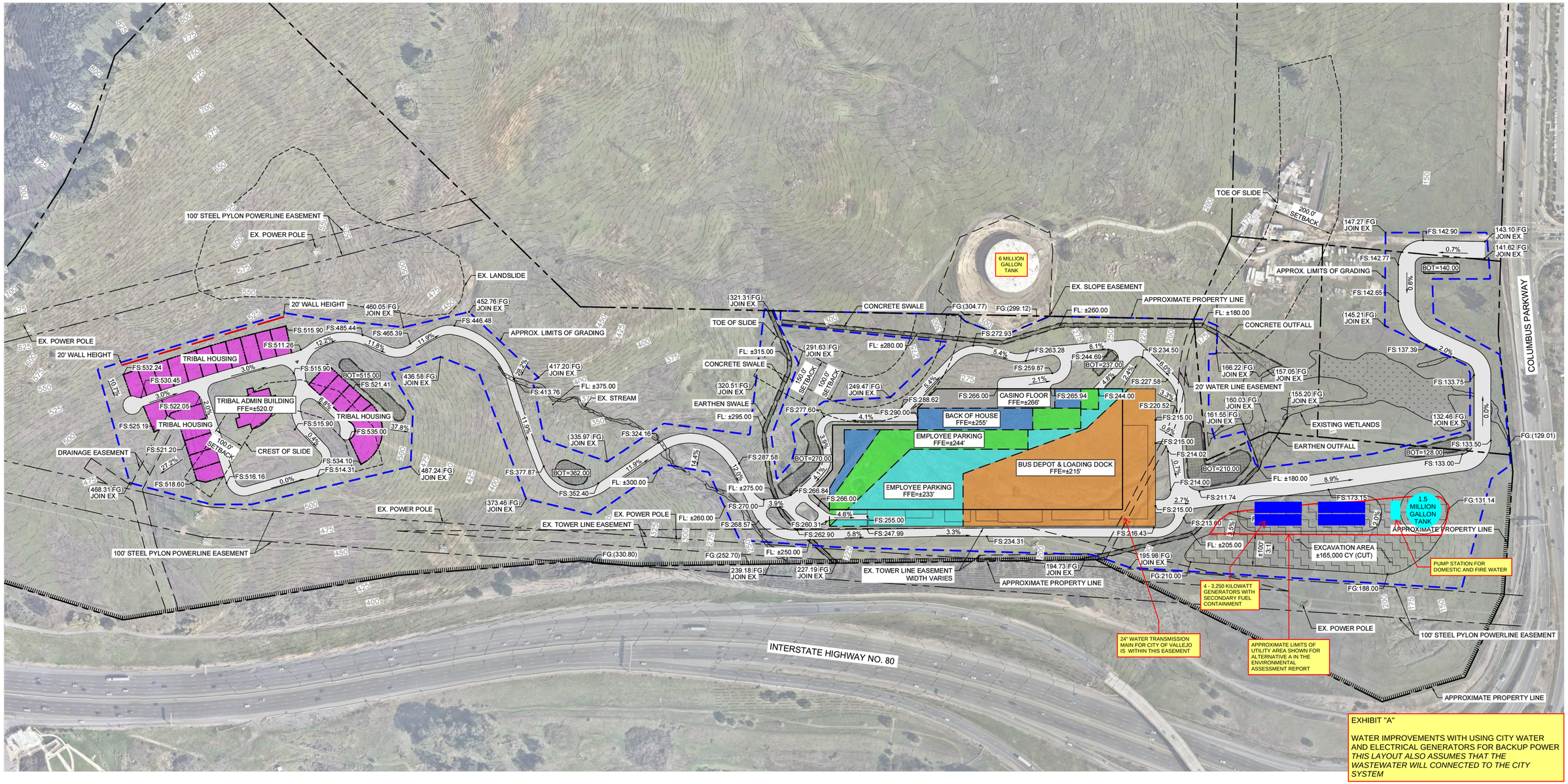


EXHIBIT "A"

WATER IMPROVEMENTS WITH USING CITY WATER AND ELECTRICAL GENERATORS FOR BACKUP POWER
THIS LAYOUT ALSO ASSUMES THAT THE WASTEWATER WILL CONNECTED TO THE CITY SYSTEM

Kimley»Horn

Scotts Valley

Alternative A - Proposed Project - Schematic Grading

June 28, 2024

0 75 150 300 450 NORTH

LEGEND

— — — —	PROPERTY LINE
— — — —	EASEMENT LINE
— — — —	LIMITS OF GRADING
——⋈——	PROPOSED BUILDING WALL AND OVERHANG
— — 100 — —	EXISTING GROUND CONTOUR
FS:(100.00)	EXISTING SPOT ELEVATION
FS:100.00	PROPOSED SPOT ELEVATION
(1.0%)	EXISTING GROUND SLOPE
1.0%	PROPOSED GROUND SLOPE
	ASPHALT CONCRETE
	WETLAND AREA
	BIORETENTION AREA

PRELIMINARY EARTHWORK

CUT: 774,000 CY
OVER-EX: (63,000 CY)

FILL: 659,000 CY

NET: 115,000 CY (FILL)

NOTE: THE EARTHWORK QUANTITIES ABOVE ARE FOR PERMIT PURPOSES ONLY. THE CONTRACTOR IS NOT AUTHORIZED TO USE THE ESTIMATES HEREIN FOR BIDDING AND CONSTRUCTION PURPOSES WITHOUT THE EXPLICIT WRITTEN PERMISSION OF THE ENGINEER OF RECORD. NO REPRESENTATIONS OF SUCH QUANTITIES OR A BALANCED SITE CONDITION ARE MADE BY THE ENGINEER OF RECORD.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE QUANTITIES ARE APPROXIMATE, IN PLACE VOLUMES CALCULATED FROM THE EXISTING GROUND TO THE PROPOSED FINISHED GRADE. EXISTING GROUND IS DEFINED BY THE CONTOURS AND SPOT GRADES ON THE AVAILABLE USGS TOPOGRAPHIC INFORMATION. PROPOSED FINISHED GRADE IS DEFINED AS THE FINAL GRADE AS INDICATED ON THE GRADING PLAN(S) AS FINISHED GROUND, FINISHED SURFACE, AND FINISHED FLOOR ELEVATIONS.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE GRADING QUANTITIES HAVE NOT BEEN FACTORED TO ACCOUNT FOR CHANGES IN VOLUME DUE TO BULKING, CLEARING AND GRUBBING, SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION AND RE-COMPACTION, AND CONSTRUCTION METHODS. NOR DO THEY ACCOUNT FOR THE THICKNESS OF PAVEMENT SECTIONS, STORMWATER QUALITY MEDIA SECTIONS, UTILITY PIPES, TRENCHING AND BEDDING MATERIALS, BUILDING OR WALL FOOTINGS, BUILDING SLAB THICKNESSES AND UNDERLYING BASE OR SAND LAYERS, REUSE OF PULVERIZED MATERIALS THAT WILL UNDERLIE NEW PAVEMENTS, ETC.

ANY OVEREXCAVATION AND RECOMPACTION DEPTHS AND VOLUMES, SHRINKAGE FACTORS, PAVEMENT SECTIONS, BUILDING PAD SECTIONS, AND BULKING FACTORS ARE BASED ON A SEPARATE GEOTECHNICAL REPORT. ANY BUILDING SLAB THICKNESSES ARE BASED ON THE SEPARATE BUILDING STRUCTURAL ENGINEERING PLANS. ANY UTILITY, STORMWATER MITIGATION, AND FOOTING SPOILS ARE BASED ON ESTIMATES PROVIDED BY THE OWNER OR CONTRACTOR.

EXHIBIT "B"

WATER IMPROVEMENTS WITH USING ONSITE GROUNDWATER AND ELECTRICAL GENERATORS FOR BACKUP POWER
THIS LAYOUT ALSO ASSUMES THAT THE WASTEWATER WILL CONNECTED TO THE CITY SYSTEM

Kimley»Horn

Scotts Valley

Alternative A - Proposed Project - Schematic Grading

June 28, 2024

LEGEND

- PROPERTY LINE
- EASEMENT LINE
- LIMITS OF GRADING
- PROPOSED BUILDING WALL AND OVERHANG
- 100 — EXISTING GROUND CONTOUR
- FS:(100.00) — EXISTING SPOT ELEVATION
- FS:100.00 — PROPOSED SPOT ELEVATION
- (1.0%) — EXISTING GROUND SLOPE
- 1.0% — PROPOSED GROUND SLOPE
- ASPHALT CONCRETE
- WETLAND AREA
- BIORETENTION AREA

PRELIMINARY EARTHWORK

CUT: 774,000 CY
OVER-EX: (63,000 CY)

FILL: 659,000 CY

NET: 115,000 CY (FILL)

NOTE: THE EARTHWORK QUANTITIES ABOVE ARE FOR PERMIT PURPOSES ONLY. THE CONTRACTOR IS NOT AUTHORIZED TO USE THE ESTIMATES HEREIN FOR BIDDING AND CONSTRUCTION PURPOSES WITHOUT THE EXPLICIT WRITTEN PERMISSION OF THE ENGINEER OF RECORD. NO REPRESENTATIONS OF SUCH QUANTITIES OR A BALANCED SITE CONDITION ARE MADE BY THE ENGINEER OF RECORD.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE QUANTITIES ARE APPROXIMATE. IN PLACE VOLUMES CALCULATED FROM THE EXISTING GROUND TO THE PROPOSED FINISHED GRADE. EXISTING GROUND IS DEFINED BY THE CONTOURS AND SPOT GRADES ON THE AVAILABLE USGS TOPOGRAPHIC INFORMATION. PROPOSED FINISHED GRADE IS DEFINED AS THE FINAL GRADE AS INDICATED ON THE GRADING PLAN(S) AS FINISHED GROUND, FINISHED SURFACE, AND FINISHED FLOOR ELEVATIONS.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE GRADING QUANTITIES HAVE NOT BEEN FACTORED TO ACCOUNT FOR CHANGES IN VOLUME DUE TO BULKING, CLEARING AND GRUBBING, SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION AND RE-COMPACTION, AND CONSTRUCTION METHODS. NOR DO THEY ACCOUNT FOR THE THICKNESS OF PAVEMENT SECTIONS, STORMWATER QUALITY MEDIA SECTIONS, UTILITY PIPES, TRENCHING AND BEDDING MATERIALS, BUILDING OR WALL FOOTINGS, BUILDING SLAB THICKNESSES AND UNDERLYING BASE OR SAND LAYERS, REUSE OF PULVERIZED MATERIALS THAT WILL UNDERLIE NEW PAVEMENTS, ETC.

ANY OVEREXCAVATION AND RECOMPACTION DEPTHS AND VOLUMES, SHRINKAGE FACTORS, PAVEMENT SECTIONS, BUILDING PAD SECTIONS, AND BULKING FACTORS ARE BASED ON A SEPARATE GEOTECHNICAL REPORT. ANY BUILDING SLAB THICKNESSES ARE BASED ON THE SEPARATE BUILDING STRUCTURAL ENGINEERING PLANS. ANY UTILITY, STORMWATER MITIGATION, AND FOOTING SPOILS ARE BASED ON ESTIMATES PROVIDED BY THE OWNER OR CONTRACTOR.

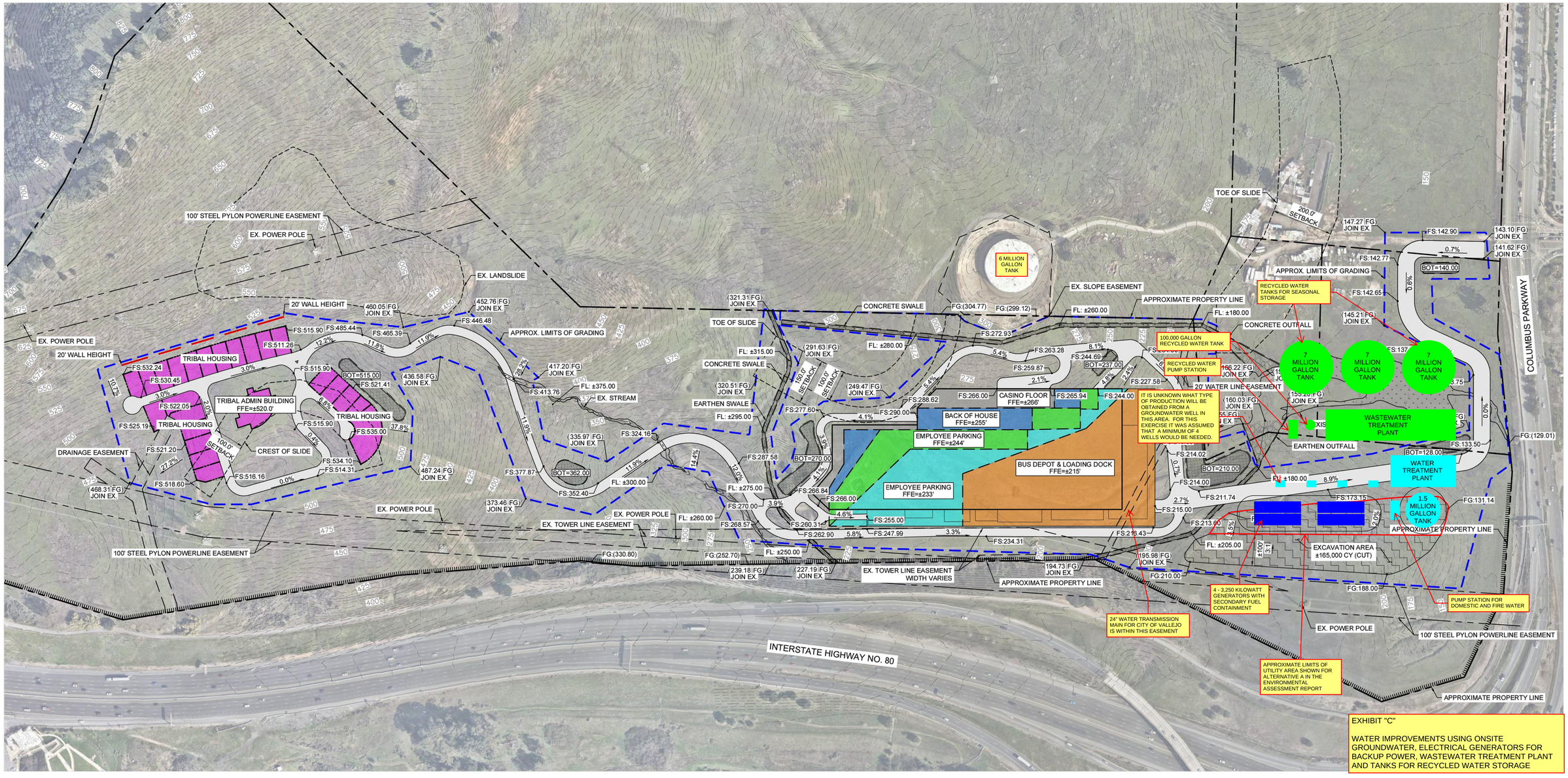


EXHIBIT "C"

WATER IMPROVEMENTS USING ONSITE GROUNDWATER, ELECTRICAL GENERATORS FOR BACKUP POWER, WASTEWATER TREATMENT PLANT AND TANKS FOR RECYCLED WATER STORAGE

Kimley»Horn

Scotts Valley

Alternative A - Proposed Project - Schematic Grading

June 28, 2024

0 75 150 300 450 NORTH

LEGEND

- PROPERTY LINE
- EASEMENT LINE
- LIMITS OF GRADING
- PROPOSED BUILDING WALL AND OVERHANG
- 100 — EXISTING GROUND CONTOUR
- FS:(100.00) — EXISTING SPOT ELEVATION
- FS:100.00 — PROPOSED SPOT ELEVATION
- (1.0%) — EXISTING GROUND SLOPE
- 1.0% — PROPOSED GROUND SLOPE
- ASPHALT CONCRETE
- WETLAND AREA
- BIORETENTION AREA

PRELIMINARY EARTHWORK

CUT: 774,000 CY
OVER-EX: (63,000 CY)

FILL: 659,000 CY

NET: 115,000 CY (FILL)

NOTE: THE EARTHWORK QUANTITIES ABOVE ARE FOR PERMIT PURPOSES ONLY. THE CONTRACTOR IS NOT AUTHORIZED TO USE THE ESTIMATES HEREIN FOR BIDDING AND CONSTRUCTION PURPOSES WITHOUT THE EXPLICIT WRITTEN PERMISSION OF THE ENGINEER OF RECORD. NO REPRESENTATIONS OF SUCH QUANTITIES OR A BALANCED SITE CONDITION ARE MADE BY THE ENGINEER OF RECORD.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE QUANTITIES ARE APPROXIMATE, IN PLACE VOLUMES CALCULATED FROM THE EXISTING GROUND TO THE PROPOSED FINISHED GRADE. EXISTING GROUND IS DEFINED BY THE CONTOURS AND SPOT GRADES ON THE AVAILABLE USGS TOPOGRAPHIC INFORMATION. PROPOSED FINISHED GRADE IS DEFINED AS THE FINAL GRADE AS INDICATED ON THE GRADING PLAN(S) AS FINISHED GROUND, FINISHED SURFACE, AND FINISHED FLOOR ELEVATIONS.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE GRADING QUANTITIES HAVE NOT BEEN FACTORED TO ACCOUNT FOR CHANGES IN VOLUME DUE TO BULKING, CLEARING AND GRUBBING, SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION AND RE-COMPACTION, AND CONSTRUCTION METHODS. NOR DO THEY ACCOUNT FOR THE THICKNESS OF PAVEMENT SECTIONS, STORMWATER QUALITY MEDIA SECTIONS, UTILITY PIPES, TRENCHING AND BEDDING MATERIALS, BUILDING OR WALL FOOTINGS, BUILDING SLAB THICKNESSES AND UNDERLYING BASE OR SAND LAYERS, REUSE OF PULVERIZED MATERIALS THAT WILL UNDERLIE NEW PAVEMENTS, ETC.

ANY OVEREXCAVATION AND RECOMPACTION DEPTHS AND VOLUMES, SHRINKAGE FACTORS, PAVEMENT SECTIONS, BUILDING PAD SECTIONS, AND BULKING FACTORS ARE BASED ON A SEPARATE GEOTECHNICAL REPORT. ANY BUILDING SLAB THICKNESSES ARE BASED ON THE SEPARATE BUILDING STRUCTURAL ENGINEERING PLANS. ANY UTILITY, STORMWATER MITIGATION, AND FOOTING SPOILS ARE BASED ON ESTIMATES PROVIDED BY THE OWNER OR CONTRACTOR.

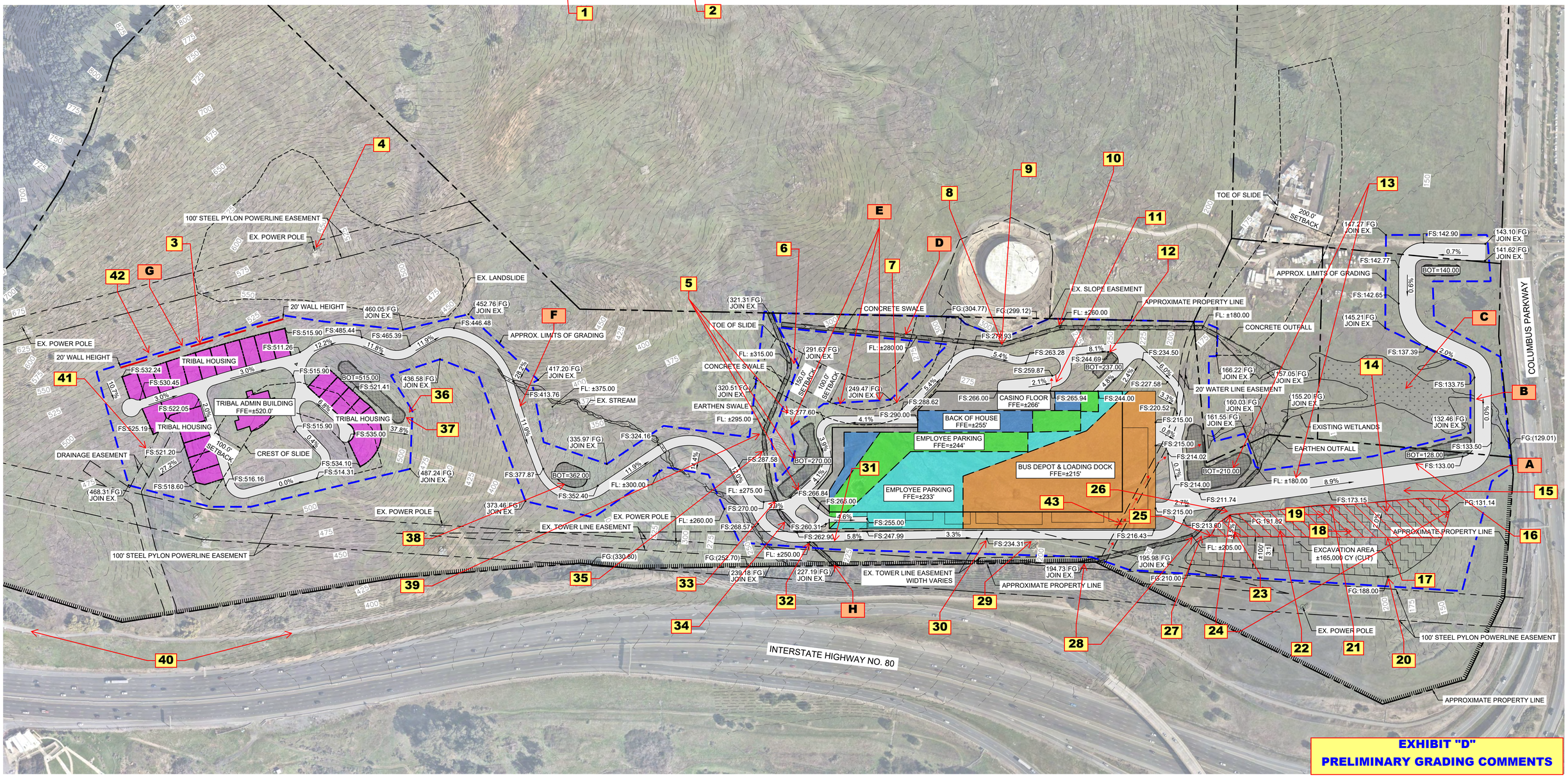


EXHIBIT "D"
PRELIMINARY GRADING COMMENTS

Kimley»Horn

Scotts Valley

Alternative A - Proposed Project - Schematic Grading

June 28, 2024

0 75 150 300 450

NORTH

LEGEND

- PROPERTY LINE
- EASEMENT LINE
- LIMITS OF GRADING
- PROPOSED BUILDING WALL AND OVERHANG
- 100 — EXISTING GROUND CONTOUR
- FS:(100.00) — EXISTING SPOT ELEVATION
- FS:100.00 — PROPOSED SPOT ELEVATION
- (1.0%) — EXISTING GROUND SLOPE
- 1.0% — PROPOSED GROUND SLOPE
- ASPHALT CONCRETE
- WETLAND AREA
- BIORETENTION AREA

PRELIMINARY EARTHWORK

CUT: 774,000 CY
OVER-EX: (63,000 CY)

FILL: 659,000 CY

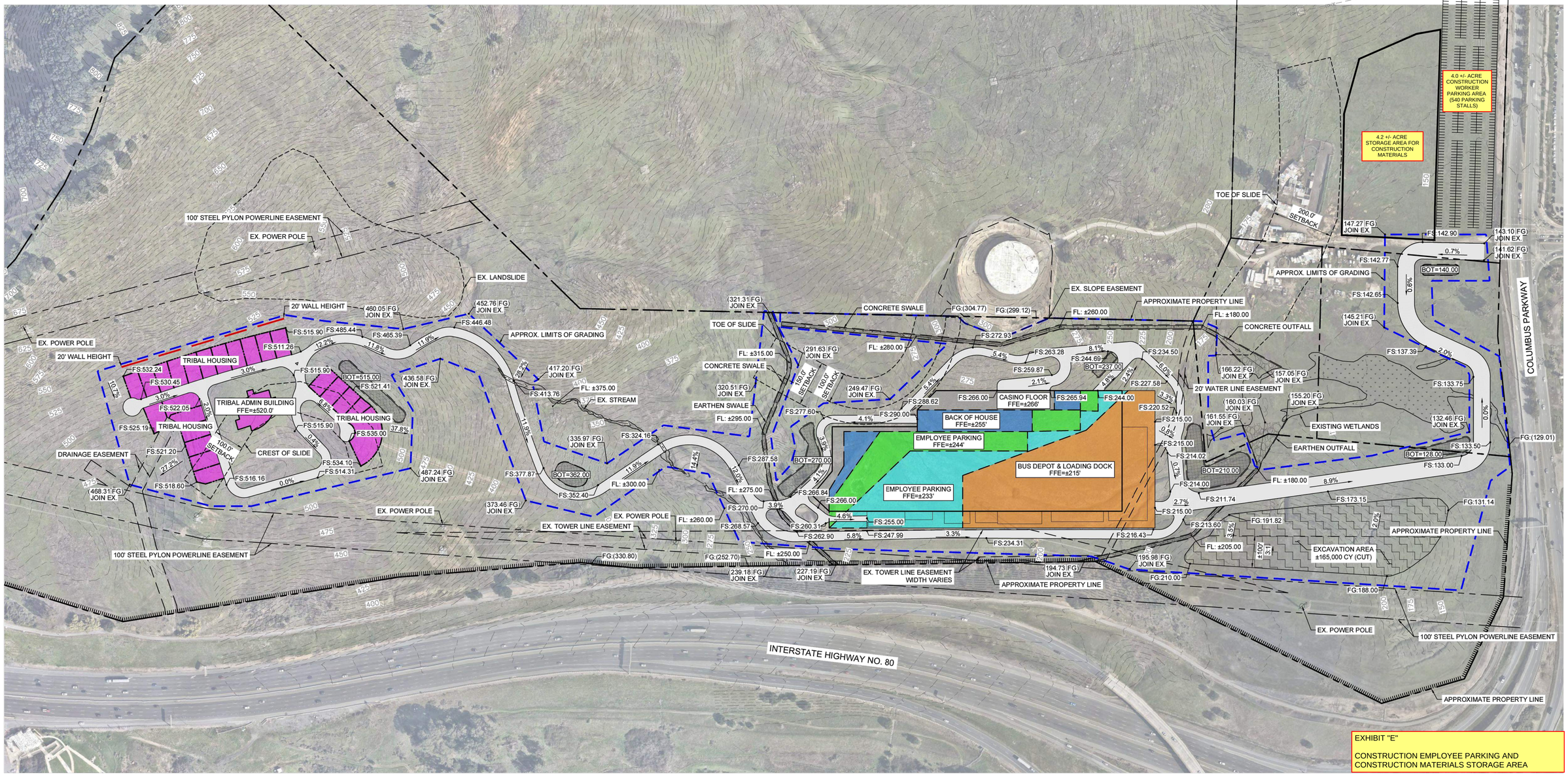
NET: 115,000 CY (FILL)

NOTE: THE EARTHWORK QUANTITIES ABOVE ARE FOR PERMIT PURPOSES ONLY. THE CONTRACTOR IS NOT AUTHORIZED TO USE THE ESTIMATES HEREIN FOR BIDDING AND CONSTRUCTION PURPOSES WITHOUT THE EXPLICIT WRITTEN PERMISSION OF THE ENGINEER OF RECORD. NO REPRESENTATIONS OF SUCH QUANTITIES OR A BALANCED SITE CONDITION ARE MADE BY THE ENGINEER OF RECORD.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE QUANTITIES ARE APPROXIMATE. IN PLACE VOLUMES CALCULATED FROM THE EXISTING GROUND TO THE PROPOSED FINISHED GRADE. EXISTING GROUND IS DEFINED BY THE CONTOURS AND SPOT GRADES ON THE AVAILABLE USGS TOPOGRAPHIC INFORMATION. PROPOSED FINISHED GRADE IS DEFINED AS THE FINAL GRADE AS INDICATED ON THE GRADING PLAN(S) AS FINISHED GROUND, FINISHED SURFACE, AND FINISHED FLOOR ELEVATIONS.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE GRADING QUANTITIES HAVE NOT BEEN FACTORED TO ACCOUNT FOR CHANGES IN VOLUME DUE TO BULKING, CLEARING AND GRUBBING, SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION AND RE-COMPACTION, AND CONSTRUCTION METHODS. NOR DO THEY ACCOUNT FOR THE THICKNESS OF PAVEMENT SECTIONS, STORMWATER QUALITY MEDIA SECTIONS, UTILITY PIPES, TRENCHING AND BEDDING MATERIALS, BUILDING OR WALL FOOTINGS, BUILDING SLAB THICKNESSES AND UNDERLYING BASE OR SAND LAYERS, REUSE OF PULVERIZED MATERIALS THAT WILL UNDERLIE NEW PAVEMENTS, ETC.

ANY OVEREXCAVATION AND RECOMPACTION DEPTHS AND VOLUMES, SHRINKAGE FACTORS, PAVEMENT SECTIONS, BUILDING PAD SECTIONS, AND BULKING FACTORS ARE BASED ON A SEPARATE GEOTECHNICAL REPORT. ANY BUILDING SLAB THICKNESSES ARE BASED ON THE SEPARATE BUILDING STRUCTURAL ENGINEERING PLANS. ANY UTILITY, STORMWATER MITIGATION, AND FOOTING SPOILS ARE BASED ON ESTIMATES PROVIDED BY THE OWNER OR CONTRACTOR.



Kimley»Horn

Scotts Valley

Alternative A - Proposed Project - Schematic Grading

June 28, 2024

0 75 150 300 450

NORTH

APPENDIX A

LEGEND

- PROPERTY LINE
- EASEMENT LINE
- LIMITS OF GRADING
- PROPOSED BUILDING WALL AND OVERHANG
- 100 — EXISTING GROUND CONTOUR
- FS:(100.00) — EXISTING SPOT ELEVATION
- FS:100.00 — PROPOSED SPOT ELEVATION
- (1.0%) — EXISTING GROUND SLOPE
- 1.0% — PROPOSED GROUND SLOPE
- ASPHALT CONCRETE
- WETLAND AREA
- BIORETENTION AREA

PRELIMINARY EARTHWORK

CUT: 774,000 CY
OVER-EX: (63,000 CY)

FILL: 659,000 CY

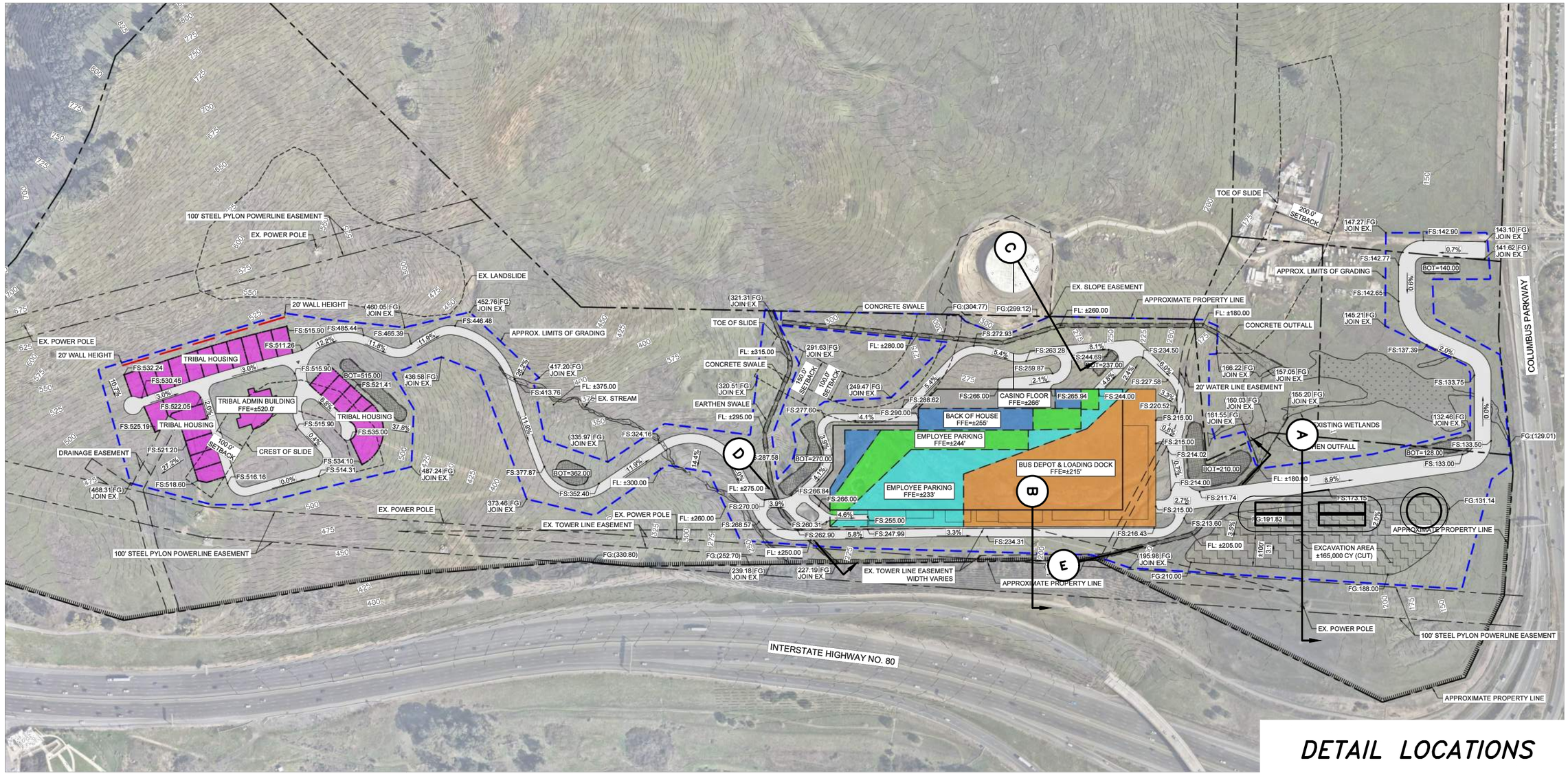
NET: 115,000 CY (FILL)

NOTE: THE EARTHWORK QUANTITIES ABOVE ARE FOR PERMIT PURPOSES ONLY. THE CONTRACTOR IS NOT AUTHORIZED TO USE THE ESTIMATES HEREIN FOR BIDDING AND CONSTRUCTION PURPOSES WITHOUT THE EXPLICIT WRITTEN PERMISSION OF THE ENGINEER OF RECORD. NO REPRESENTATIONS OF SUCH QUANTITIES OR A BALANCED SITE CONDITION ARE MADE BY THE ENGINEER OF RECORD.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE QUANTITIES ARE APPROXIMATE. IN PLACE VOLUMES CALCULATED FROM THE EXISTING GROUND TO THE PROPOSED FINISHED GRADE. EXISTING GROUND IS DEFINED BY THE CONTOURS AND SPOT GRADES ON THE AVAILABLE USGS TOPOGRAPHIC INFORMATION. PROPOSED FINISHED GRADE IS DEFINED AS THE FINAL GRADE AS INDICATED ON THE GRADING PLAN(S) AS FINISHED GROUND, FINISHED SURFACE, AND FINISHED FLOOR ELEVATIONS.

UNLESS EXPLICITLY STATED OTHERWISE HEREIN, THE ABOVE GRADING QUANTITIES HAVE NOT BEEN FACTORED TO ACCOUNT FOR CHANGES IN VOLUME DUE TO BULKING, CLEARING AND GRUBBING, SHRINKAGE, SUBSIDENCE, OVER-EXCAVATION AND RE-COMPACTION, AND CONSTRUCTION METHODS. NOR DO THEY ACCOUNT FOR THE THICKNESS OF PAVEMENT SECTIONS, STORMWATER QUALITY MEDIA SECTIONS, UTILITY PIPES, TRENCHING AND BEDDING MATERIALS, BUILDING OR WALL FOOTINGS, BUILDING SLAB THICKNESSES AND UNDERLYING BASE OR SAND LAYERS, REUSE OF PULVERIZED MATERIALS THAT WILL UNDERLIE NEW PAVEMENTS, ETC.

ANY OVEREXCAVATION AND RECOMPACTION DEPTHS AND VOLUMES, SHRINKAGE FACTORS, PAVEMENT SECTIONS, BUILDING PAD SECTIONS, AND BULKING FACTORS ARE BASED ON A SEPARATE GEOTECHNICAL REPORT. ANY BUILDING SLAB THICKNESSES ARE BASED ON THE SEPARATE BUILDING STRUCTURAL ENGINEERING PLANS. ANY UTILITY, STORMWATER MITIGATION, AND FOOTING SPOILS ARE BASED ON ESTIMATES PROVIDED BY THE OWNER OR CONTRACTOR.



DETAIL LOCATIONS

Kimley»Horn

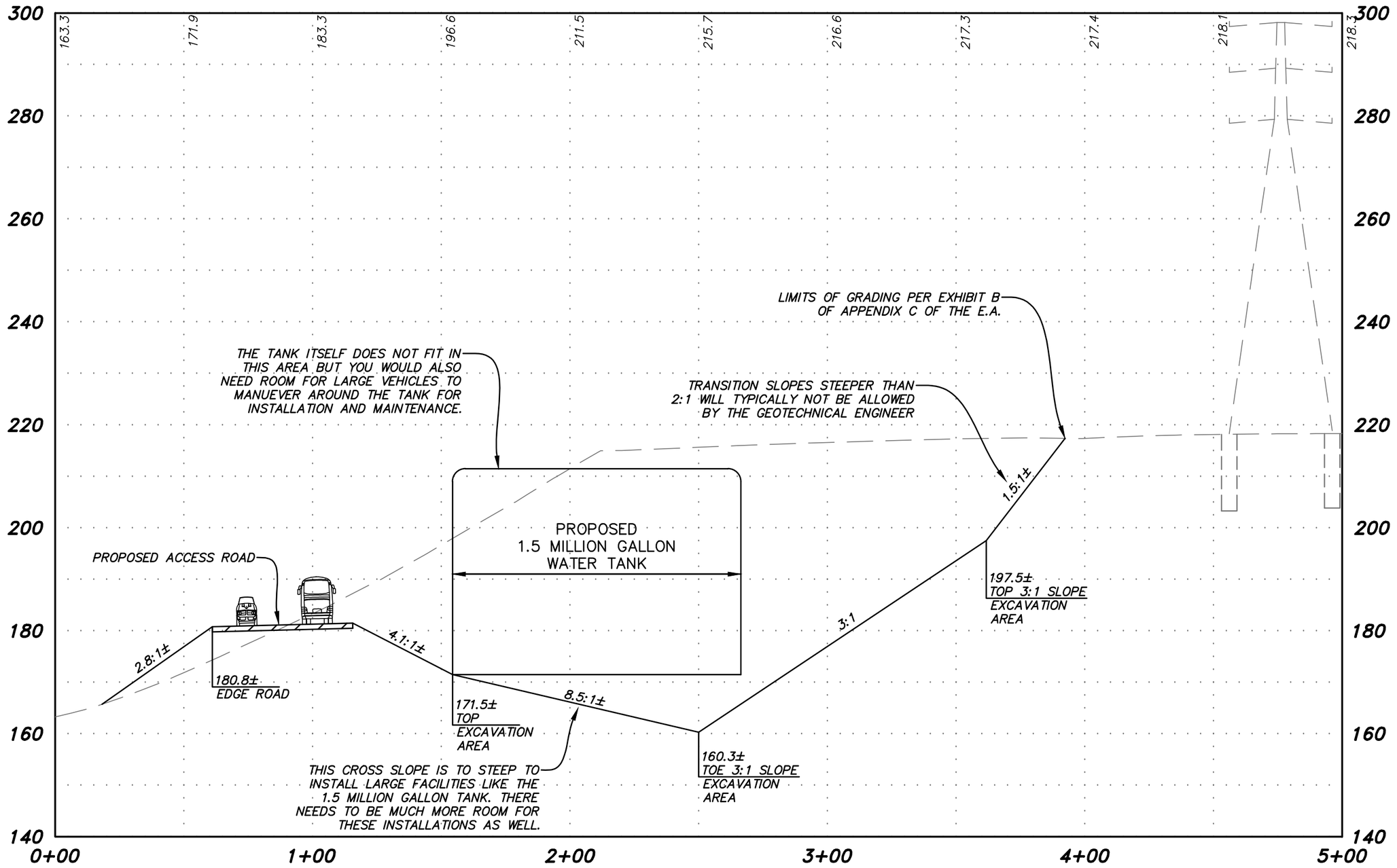
Scotts Valley

Alternative A - Proposed Project - Schematic Grading

June 28, 2024

0 75 150 300 450

NORTH



DETAIL A

WEST–EAST CROSS SECTION THRU PROPOSED UTILITY YARD

FOR

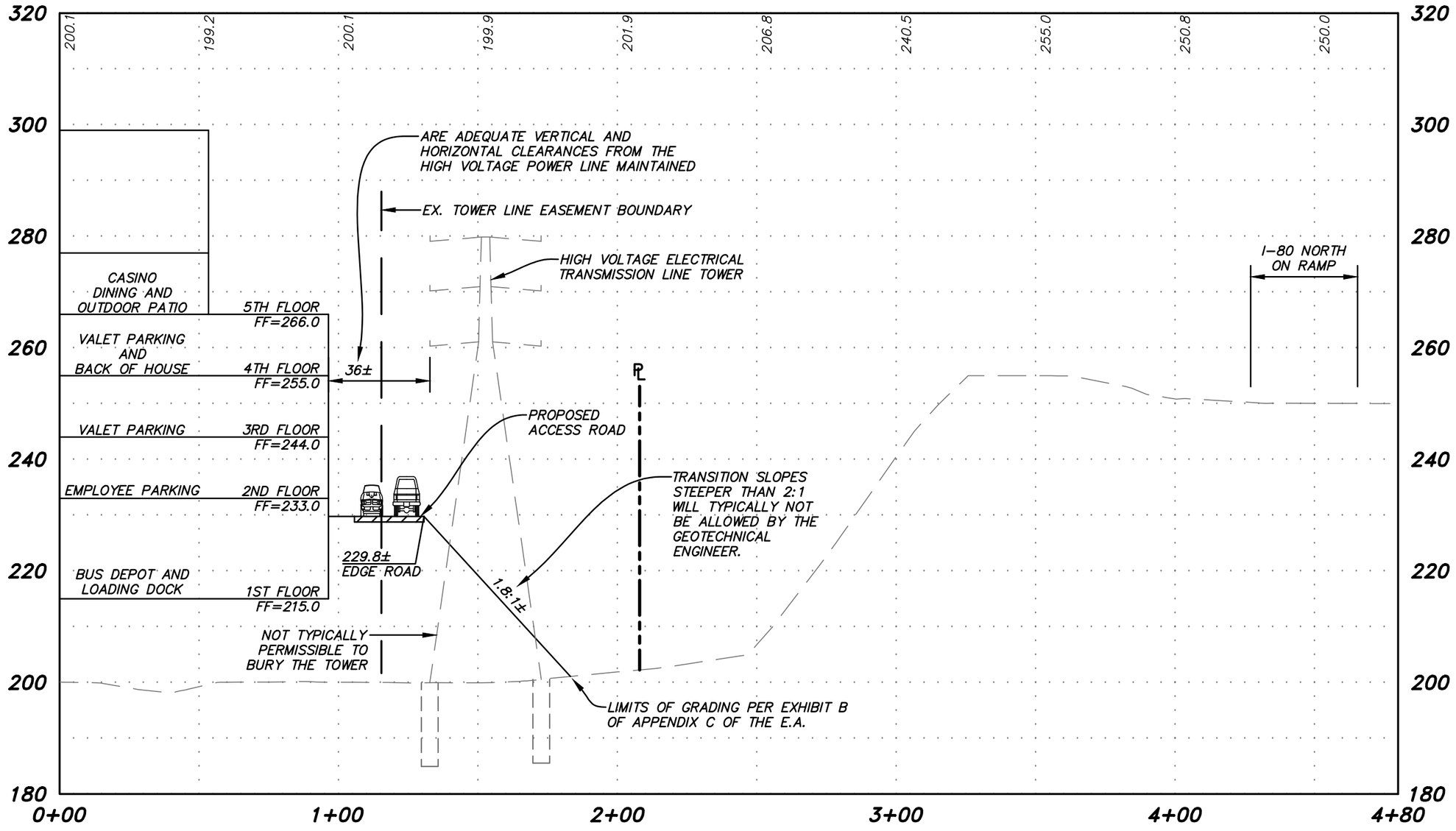
SCOTTS VALLEY

H: 1" = 40'
V: 1" = 20'

SHEET 1 OF 1 08/16/2024

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

#2303-865\1_SECTIONS



DETAIL B

WEST–EAST CROSS SECTION THRU LOADING DOCK AT PG&E TOWER

FOR

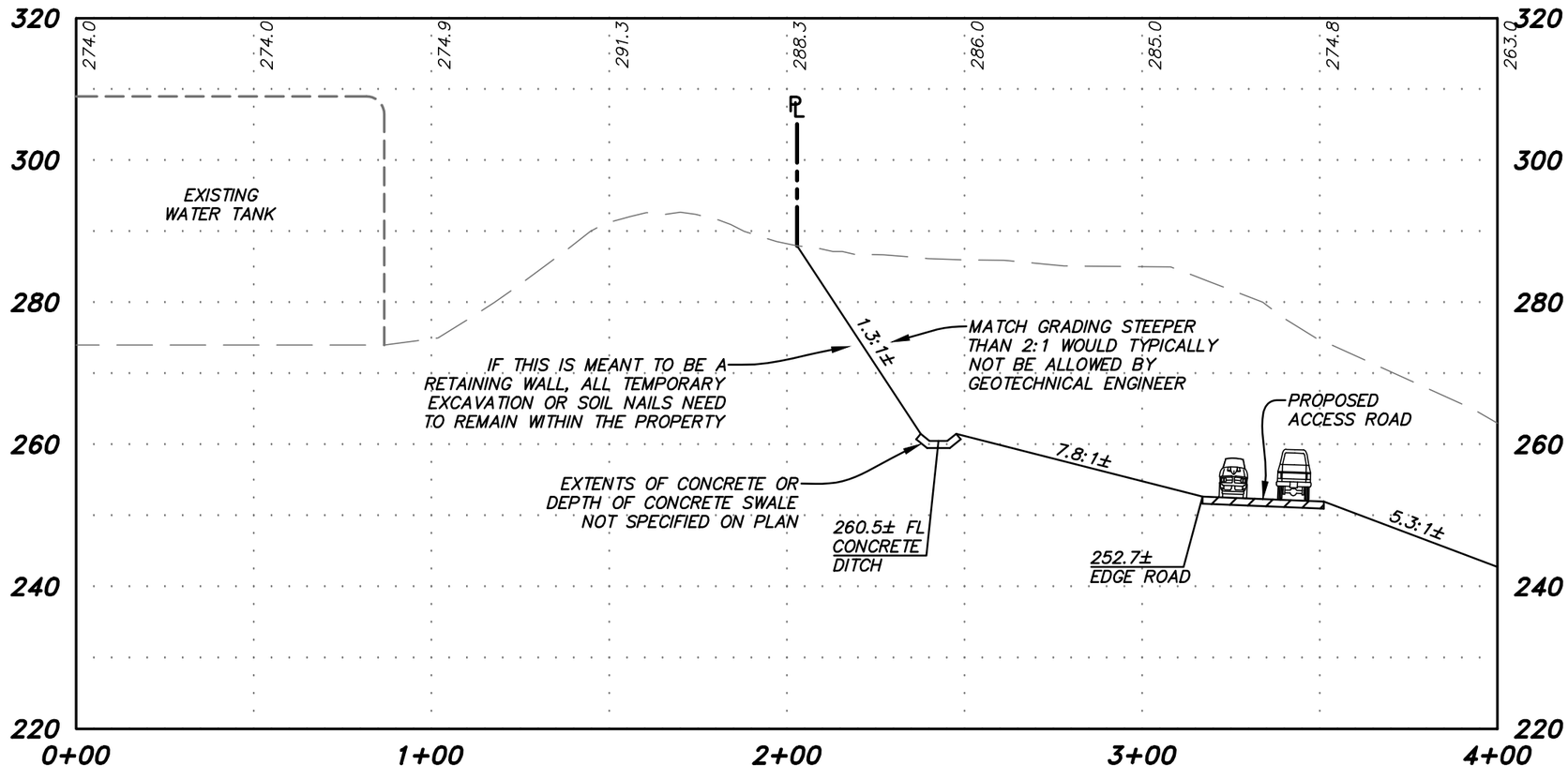
SCOTTS VALLEY

H: 1" = 40'
V: 1" = 20'

SHEET 1 OF 1 08/16/2024

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

#2303-865\1_SECTIONS



DETAIL C

CROSS SECTION THRU EXISTING WATER TANK

FOR

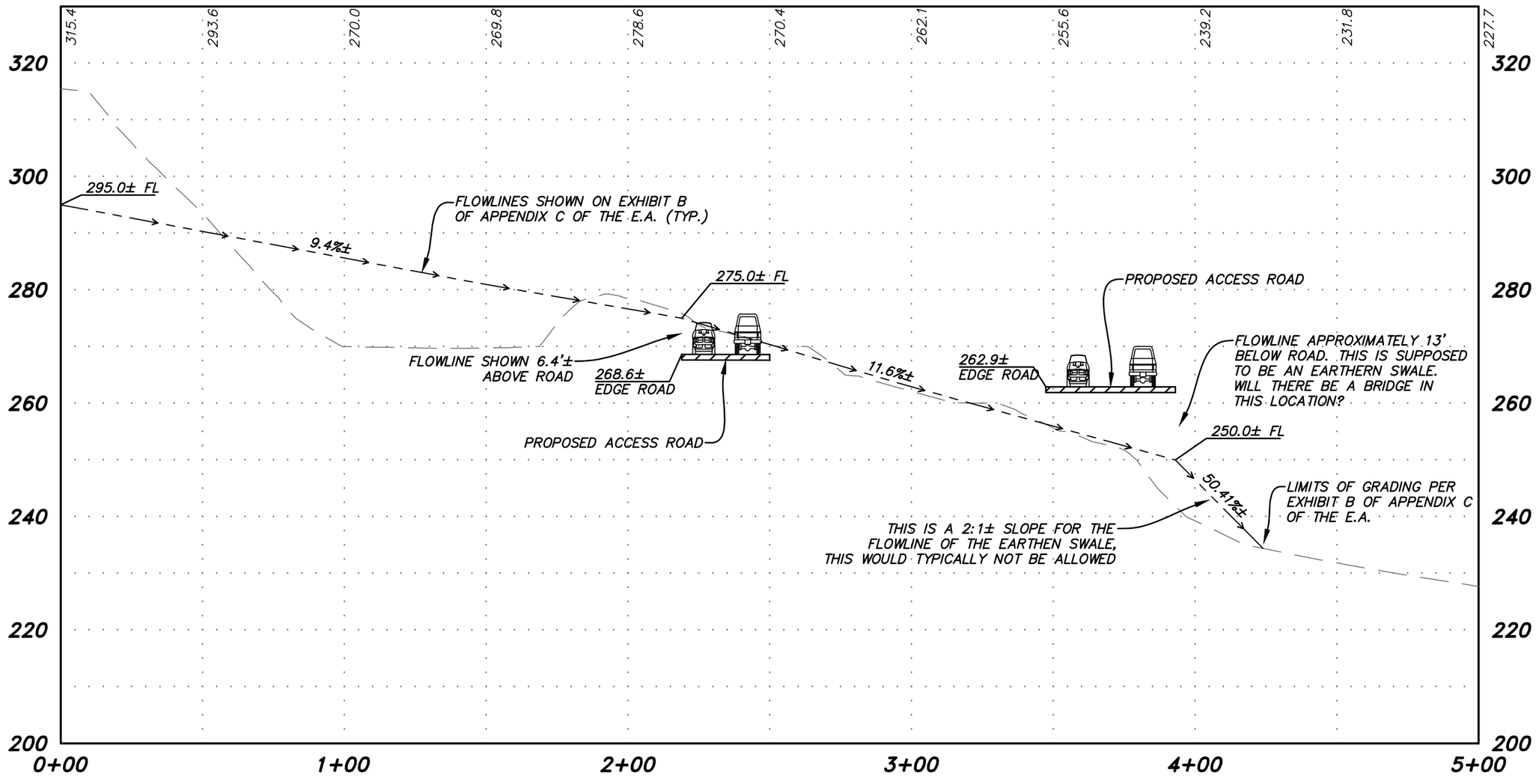
SCOTTS VALLEY

H: 1" = 40'
V: 1" = 20'

SHEET 1 OF 1 08/16/2024

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

#2303-865\7_SECTIONS



DETAIL D

EARTHERN SWALE PROFILE (ADJACENT TO NORTHWEST CORNER PROPOSED BUILDING)

FOR

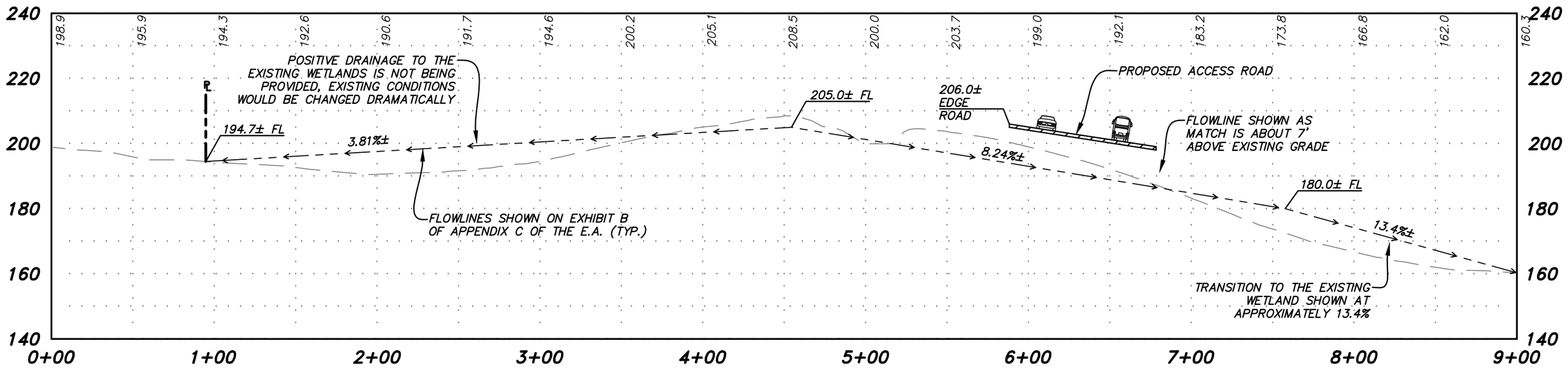
SCOTTS VALLEY

H: 1" = 40'
V: 1" = 20'

SHEET 1 OF 1 08/16/2024

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

#2303-865\1_SECTIONS



DETAIL E

EARTHERN SWALE PROFILE (ADJACENT TO SOUTHWEST CORNER PROPOSED BUILDING)

FOR

SCOTTS VALLEY

H: 1" = 60'
V: 1" = 30'

SHEET 1 OF 1 08/16/2024

LM LAUGENOUR AND MEIKLE
CIVIL ENGINEERING · LAND SURVEYING · PLANNING
608 COURT STREET, WOODLAND, CALIFORNIA 95695 · PHONE: (530) 662-1755
P.O. BOX 828, WOODLAND, CALIFORNIA 95776 · FAX: (530) 662-4602

#2303-865\1_SECTIONS

EXHIBIT D

EMKO Environmental, Inc.
551 Lakecrest Dr.
El Dorado Hills, CA 95762-3772
(916)718-5511
akopania@sbcglobal.net

TECHNICAL MEMORANDUM

August 19, 2024

To: Matthew Adams, Kaplan Kirsch LLP

Cc: Anne Surdzial, ECORP Consulting, Inc.
Lisa Westwood, ECORP Consulting, Inc.

From: Dr. Andrew Kopania
California Professional Geologist No. 4711
California Certified Hydrogeologist No. HG31

Subject: Evaluation of Critical Water Issues
Environmental Assessment for the
Scotts Valley Band of Pomo Indians
Casino and Tribal Housing Fee-to-Trust Project

At your direction, I have prepared this evaluation of critical water issues based on review of the Environmental Assessment (EA) and its appendices for the proposed Casino and Tribal Housing Fee-to-Trust Project (project), along with other related documents including the City of Vallejo's 2020 Urban Water Management Plan and state and federal online databases of groundwater and water quality data. My evaluation has identified critical project components for which no supporting documentation or justification has been provided in the EA and its supporting appendices, inadequate consideration of the feasibility of critical components of the project, inconsistencies between technical consultant analyses in the appendices that support the EA, and a lack of consideration of standard data sources needed to fully inform decision-makers and the public.

As described below, there is a substantial amount of speculation and missing facts related to the water supply and wastewater management for the project. Since many of the aspects of these systems are not well thought out for the project, there is an appreciable range of potential impacts that could occur but that are not identified or addressed. As

a result, there is a high level of uncertainty relative to the impacts in the EA. These findings are described in more detail below.

1. Lack of Documentation and Justification for Project Water Demand

Appendix B of the EA (Water and Wastewater Feasibility Study) includes comprehensive tables (Tables 2-2 through 2-4) estimating wastewater flows generated by the three project alternatives. The wastewater flow estimate tables provide details for each area of the project, based on factors such as number of employees, dwelling units, square feet, and available seating. In contrast, the estimated potable water demand is provided ad hoc, in Table 2-7 of Appendix B of the EA, as a total amount for each alternative. There is no reference to supporting documentation or citations upon which the water demand estimates are based.

As discussed further below, the water supply source for the project is very uncertain at this time. Due to the lack of any information in the EA and its supporting appendices regarding the basis for the water use estimates, there is no way that an interested party can evaluate the reliability or reasonableness of the water demand estimates. Significant additional detail is required to demonstrate the basis for and assumptions used to generate the project water demand estimates. Without such information, there is no way that the potential environmental effects related to the development and use of the proposed water supplies can be accurately assessed.

2. The Proposed Project Water Supplies are Completely Speculative

Two options are presented for potential project water supply. However, as discussed in some detail below, there is a significant amount of uncertainty regarding the availability and feasibility of both potential water supplies. Given the challenges occurring regionally and statewide related to water availability and groundwater sustainability, it seems irresponsible to propose a project of this magnitude without first identifying a firm and reliable water source. Accepted standards for environmental review call for an assessment of water supplies at least as rigorous as those performed under California SB 610. Approval of a project of this magnitude, in California, without performing a rigorous water supply assessment would be contrary to current standards of practice and conflict with State environmental laws.

The first water supply option is to develop a potable connection to the City of Vallejo's municipal water system. Review of the City's 2020 Urban Water Management Plan (UWMP) indicates that, on an annual basis, the City may have adequate supplies available to serve the project. However, the project is not specifically included in the UWMP's future demands for commercial and residential projects. In addition, there are numerous other potential projects that may utilize water from the City and the EA does not consider the availability of water given these potential cumulative demands on the City's available supply.

Furthermore, Section 3.11 of the UWMP states that even though the City has "significant water assets that can be made available on an annual basis," constraints on those water assets "make them less reliable on a monthly basis, especially in drought conditions." As noted above, a Water Supply Assessment (WSA) for the project, consistent with Sections 10910 through 10915 of the California Water Code, would normally be required. Among other things, the WSA would further evaluate and address the uncertainty and potential lack of reliability of the water supply as identified in the UWMP in the context of the proposed project and other proposed projects. The EA's analysis of the available water supply from the City should be expanded to be consistent with the types of evaluations that would otherwise be provided through a WSA to address the monthly uncertainties noted by the City in its UWMP, especially during drought periods. Without analysis comparable to what is described in Sections 10910 through 10915 of the California Water Code, the availability of a water supply connection with the City to meet the project's demand is nothing more than speculation.

The second water supply option is to develop an onsite groundwater supply system by installing multiple wells to depths of 500 to 1,000 feet below ground surface (ft bgs). Review of available state and federal databases indicate that there are no municipal or public water supply wells drilled within the Cretaceous and Jurassic bedrock units that underlie the project site within at least 20 miles of the project. The May 2024 Hydrogeologic Assessment prepared by ENGEO for the project (which is included as Appendix C of Appendix B of the EA and Appendix D of Appendix D of the EA) concludes that it is "not known whether fractures throughout the Great Valley rock and silica-carbonate rock will provide sufficient flow to develop groundwater supply wells." Thus, the project consultant's own evaluation demonstrates that the ability to develop a groundwater supply system for the project is unknown at this time, due to the lack of data and information.

Standard practice in this situation would typically involve the drilling and installation of at least one test well onsite and the performance of detailed aquifer yield tests to help support both the environmental analysis and project design. Without such data, it is not possible to adequately assess the feasibility and potential environmental impacts of an onsite groundwater supply system for the project. Put another way, the ability of such a system to meet project needs, and the potential impacts of installing and operating such a system, is completely speculative at this time. Waiting until the design phase of the project to install test wells prevents a hard look at environmental impacts and is not sound practice.

Due to the lack of any data whatsoever in the EA and its appendices regarding potential groundwater supply and well yield, I reviewed a range of databases to search for relevant information. Such a review of typical public databases would be considered standard practice in evaluating the availability of groundwater supplies for a project, but no such review is provided in the EA and its supporting appendices.

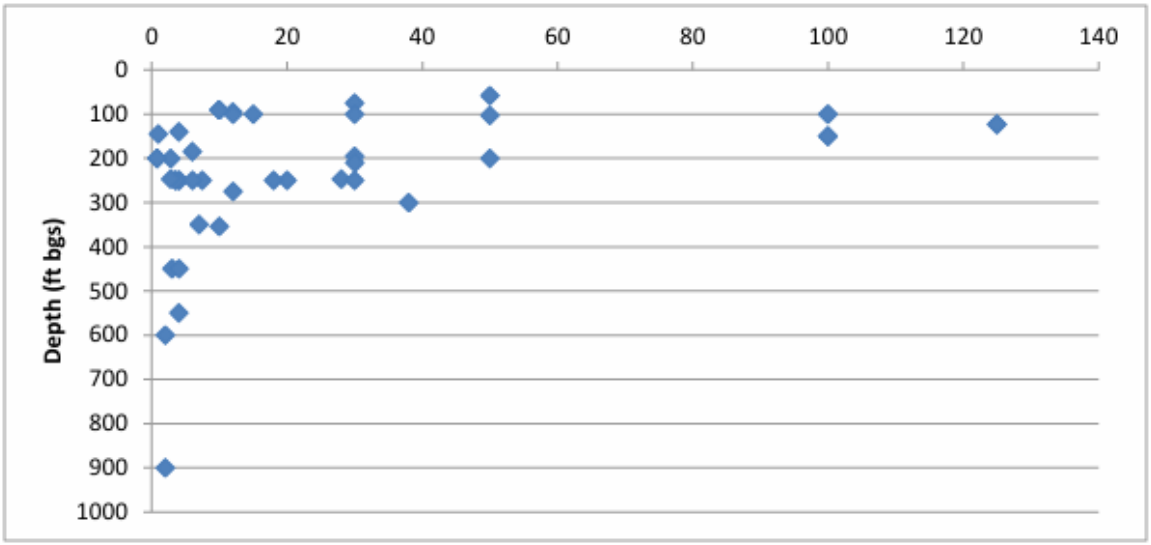
Within the California Department of Water Resources Well Completion Report (WCR) database there are records for two wells within approximately one mile of the proposed casino location that were drilled into similar bedrock formations for individual domestic and irrigation purposes. One of these wells was drilled in 1966 north of Hunter Hill and produced 50 gallons per minute (gpm) for 24 hours with minimal drawdown[1]. The second well was drilled in 1977 along St. John's Mine Road and was unable to sustain pumping at 35 gpm for more than 2 hours[2]. The WCR database indicates that there are other wells drilled in the region that produced little to no water. Thus, under best case conditions, it appears that a project supply well would produce no more than 50 gpm. To meet peak day demand and have the required redundancy, a minimum of 7 to 8 wells would need to be drilled on the project site, assuming each well could sustain 50 gpm on a continuous basis. As discussed further below, depending on the quality of the groundwater encountered and the treatment method needed to meet potable water standards, the actual number of wells required could be double these minimum numbers.

The well north of Hunter Hill, which produced 50 gpm for 24 hours, was drilled to a depth of 250 feet. The well along St. John's Mine Road, that could not sustain 35 gpm after 2 hours, was drilled to a depth of 305 feet. The EA proposes drilling water supply wells to depths of 500 feet to 1,000 feet below ground surface. From a technical perspective, there is no basis for concluding that wells should be drilled to those depths. The only groundwater production identified in the area occurs from wells at much shallower depths. Within alluvial aquifers, where groundwater occurs within the interstitial spaces between mineral grains (e.g., the void spaces within an unconsolidated sand deposit), the volume of groundwater that can be produced may be related to the depth of the well and the length of the well screen within the aquifer. In contrast, within fractured bedrock formations, groundwater production is typically related to the number and size of open fractures encountered by the borehole. As the depth increases, the pressure of the overlying rock (referred to as the lithostatic pressure) increases significantly and tends to keep any fractures closed. It is well documented throughout bedrock areas of California, such as the Coast Ranges and the Sierra Nevada foothills, that groundwater production generally decreases with depth. The figure below, from Nevada County, California, provides a clear and simple representation of this behavior. The plan to drill water supply wells to depths of 500 feet to 1,000 feet is unprecedented in this type of geology, is unsupported by the publicly-available data, and does not consider potential water quality issues at depth (see discussion below). It highlights the lack of sound planning and rigorous analysis in the EA. The information and analysis in the EA and its supporting appendices does not provide any support that such deep wells would be capable of meeting the project water demand and ignores any potential impacts (e.g., water quality) related to drilling such deep wells.

1 https://cadwr.app.box.com/v/WellCompletionReports/file/466229771018

2 https://cadwr.app.box.com/v/WellCompletionReports/file/466211540109

Figure 3-8 Pumping Rate (GPM) VS Depth



Source: Nevada County Planning Department, Idaho-Maryland Mine Draft EIR, Appendix K.2
https://www.nevadacountyca.gov/DocumentCenter/View/41645/Appendix-K2_Groundwater-Hydrology-and-Water-Quality-Analysis

The EA is unclear as to whether the groundwater supply wells would be located in the "Utility Area" shown on Figures 2.1-1 and 2.1-6. The Utility Area appears to be approximately 750 feet by 200 feet, or about 3.5 acres, based on the area outlined on Figures 2.1-1 and 2.1-6. Significant portions of that area may be unusable due to steep slopes and access needs. According to Section 4.1.1 of Appendix B of the EA, each well site would require an area of 20 feet by 30 feet to accommodate "the pump, well, piping, and miscellaneous equipment." The same section of Appendix B also states that each well would need to be setback from any recycled water use areas or impoundment per California Code of Regulations (CCR) Title 22 criteria. In addition, Section 4.1.1 of Appendix B of the EA indicates that each well would need a 50-foot control zone surrounding the well location, per DWR requirements. Based on the criteria and requirements described in Section 4.1.1 of Appendix B, if 8 to 12 wells were required to supply the project, then they would require an unencumbered area of approximately 2.75 acres. This area does not include the space needed for any potential groundwater treatment system components. It appears highly unlikely that the "Utility Area" could accommodate the groundwater infrastructure, water treatment, and recycled water components that are included as potential options for the project (see additional discussion below).

Due to the limited space, it is a reasonably foreseeable outcome that many of the groundwater wells would need to be located outside of the Utility Area. However, due to the disturbance caused during drilling, along with typical maintenance requirements, those wells would also need to be located outside of the biological preserve and

wetland areas.

Moreover, installation of that many wells within the available area on the project site would require additional analysis to determine whether or not there would be interference between wells that might prevent full production from being achieved. Such an analysis could not be conducted until at least one test well was drilled onsite and detailed aquifer yield testing was performed to identify the parameters necessary to evaluate drawdown and well interference.

As noted above, standard practice in this situation would typically involve the drilling and installation of at least one test well onsite and the performance of detailed aquifer yield tests to help support both the environmental analysis and project design. Without such data, it is not possible to adequately assess the feasibility and potential environmental impacts of an onsite groundwater supply system for the project. Furthermore, without such an analysis and an understanding of where all of the wells might be placed, it is not possible to fully assess the potential impacts to land, biological, and visual resources at the site.

3. Incomplete and Conflicting Analysis of Water Quality and Hazardous Materials Potential Impacts Related to Groundwater Supply Option

Within the EA, it is noted that there is a single monitoring well currently located on the project site, which was installed for the purposes of monitoring for the presence of PFAS compounds. The EA also notes that the presence of historic mercury mines indicates the potential for heavy metals to be present in groundwater, which could require treatment if groundwater is used as the potable water supply for the project.

The monitoring results from the onsite well are not provided in the EA or its appendices as part of the description of the Affected Environment. Table 3.12-2 in Section 3.12 of the EA recommends that the monitoring well data should be reviewed as part of project planning. This recommendation would seem to be comparable to deferred mitigation since the data are not included or considered in the EA. Knowing the existing conditions at the project site is essential for understanding what waste streams or hazardous materials may need to be dealt with as a part of project construction and operation.

The May 2024 Hydrogeologic Assessment prepared by ENGEO for the project (which is included as Appendix C of Appendix B of the EA and Appendix D of Appendix D of the EA) concludes that “groundwater…in this area may be contaminated with heavy metals due to the historical mining operations and possible flow of water through rocks containing heavy metals” (page 4, last bullet). “Heavy metals” is a general category that may include at least 8 to 17 different metals, including not only mercury but also arsenic, chromium, copper, lead, manganese, and others. The evaluation of the potential groundwater treatment requirements presented in Section 4.1 of Appendix B of the EA, however, overlooks the conclusions of ENGEO and simply evaluates the

potential need to treat the groundwater for mercury.

Mercury has physical and chemical properties that are appreciably different from most other heavy metals, most notably that it is a liquid and can readily volatilize at normal temperatures. As a result, mercury can be removed from water using granular activated carbon (GAC) adsorption technologies, which generally are not economical or effective for other heavy metals. Section 4.1.2 of Appendix B ignores these critical differences and bases the analysis of groundwater treatment solely on the presence of mercury.

In addition, the Great Valley Sequence was deposited in a marine environment, such that groundwater present within that formation often has elevated levels of salts that would require removal to meet potable water standards.

Depending on the type and quantity of metals and salts in the groundwater, there could be the need to use hazardous materials (e.g., chlorine) or other substances to treat the water. In addition, the treatment process itself could generate potentially hazardous residuals that would require proper management, transportation, and offsite disposal. For example, the need to use a membrane filtration process such as reverse osmosis could generate a concentrated reject fraction that could be equivalent in volume to one-half of the groundwater produced, depending on the concentration levels in the native groundwater. Under such conditions, a substantial waste stream containing heavy metals and other hazardous materials would be generated and require offsite disposal. The potential use and/or generation of hazardous substances for water treatment, if groundwater is used for the project water supply, is not acknowledged or addressed in Section 3.12 of the EA. In addition, the traffic and air impacts of the offsite transportation of these waste residuals are not contemplated in the EA.

Furthermore, if the reverse osmosis reject is an appreciable fraction of the actual volume of groundwater produced, then the amount of groundwater pumped to meet the project demand would be substantially higher than the project demand. For example, if the reverse osmosis reject is 50 percent of the volume of groundwater treated, then the actual volume of groundwater that must be extracted would be twice the actual project demand.

The evaluations in Appendix B of the EA, and thus in the EA itself, assume that only mercury would be present. Limiting the analysis to mercury only is not consistent with ENGEO's conclusions that a wider array of heavy metals may be present, due to both historic mining activities and to the potential flow of water through rocks containing heavy metals. As a result, the analysis and conclusions in the EA overlook and are not consistent with the information generated by the technical consultants for the project, as reflected in the appendices to the EA.

The inadequate understanding of the affected environment, reflected in the lack of any

site-specific or even regional groundwater quality data not only renders the analysis of potential impacts to water resources and to public services and utilities as nothing more than speculation, it also precludes the analysis of potential impacts to a wide array of other resource areas.

4. Incomplete Analysis of Feasibility and Impacts Related to Onsite Wastewater Treatment Option

Appendix B of the EA provides a preliminary analysis of an onsite wastewater treatment system for the project. My review of the proposed wastewater treatment system indicates that such a system would not be physically feasible and, if installed, would create a range of impacts that are not acknowledged or evaluated in the EA.

A critical challenge related to the onsite wastewater treatment system is addressing the volume of treated wastewater that would be generated. Table 5-5 in Appendix B of the EA shows that the system would generate 136 acre-feet per year of recycled wastewater in excess of what could be used by the project for toilet and urinal flushing and for landscape irrigation.

Section 5.3.2 of Appendix B of the EA assesses potential offsite recycled water use opportunities, the most significant of which is golf course irrigation. The assessment notes that such demand would be seasonal. Section 2.1.4 of the EA (at page 2-9) states that up to 21 million gallons (MG), equivalent to 64.5 acre-feet, of recycled water would need to be stored seasonally each year within the Utility Area. The EA assumes that the seasonal excess recycled water would be stored in a tank, which would be accompanied by a recycled water pump station and a hydropneumatic tank to maintain pressure in the distribution (purple pipe) system. If the storage tank was 20 feet tall, the footprint would cover 3.23 acres. If the storage tank was 30 feet tall, the footprint would cover 2.15 acres. As noted above, the Utility Area covers approximately 3.5 acres, with usable space likely much less. As such, there would not be sufficient space for the recycled water storage tank, pump station, and pneumatic tank within the limits of the Utility Area, let alone for the actual wastewater treatment system and the groundwater supply wells discussed above. The onsite wastewater treatment option for the project appears to be illusory.

Even if installation of the necessary facilities to treat the wastewater and handle the recycled water was feasible, the EA ignores critical issues related to treatment wastes and other residuals. For example:

- Section 2.2.3 of Appendix B of the EA identifies cooling tower brine as a process residual. However, there is no assessment of the feasibility and availability of any of the disposal options listed. No information is provided regarding the volumes and concentrations of wastes in the cooling tower brine.
- Section 3.2.3 of Appendix B of the EA “anticipates” that biosolids from

wastewater treatment would be disposed of at an offsite landfill. However, there is no discussion of potential disposal site locations or whether such facilities would have adequate capacity to receive biosolid wastes from the project.

- Figure 5-3 of Appendix B of the EA shows that coarse screenings from the wastewater treatment system would be trucked to a landfill. Again, no discussion is provided regarding the locations or capacities of offsite landfills for such wastes.

Due to the lack of information in Appendix B regarding the volumes of the wastes listed above and potential offsite disposal locations, the EA does not address traffic impacts, air emissions impacts, or public service impacts related to the transportation and disposal of the cooling tower brine, biosolids, and coarse screenings waste streams. More information is necessary for an adequate assessment of the potential impacts related to the generation, transport, and disposal of these waste streams and identification of appropriate mitigation measures, if necessary.

5. Incomplete Analysis of Cumulative Projects and Impacts

The project site includes four parcels, as identified in Table 1.4-1 of the EA, all of which are proposed for fee-to-trust conversion per Figure 1.4-4. However, except for part of the access road, all development and land disturbance for the project would occur on only the largest parcel.

On May 1, 2024, the City of Vallejo Planning Division released an NOP for a Draft EIR for the proposed Solano Ranch Project. The proposed Solano Ranch Project is located on the three smaller parcels that are included in the Scotts Valley Casino and Tribal Housing Fee-to-Trust Project and includes the construction of approximately 32,725 square feet of commercial retail/restaurant uses and up to 264 multi-family residences, representing substantial water demand. It does not appear that the Solano Ranch Project has been withdrawn.

The EA for the fee-to-trust project does not mention or acknowledge the proposed Solano Ranch Project or its use of three of the four fee-to-trust parcels. Likewise, the NOP for the Solano Ranch Project does not mention or acknowledge the proposed casino and fee-to-trust project. Not only is there apparent confusion regarding the scope of each project, but the EA for the fee-to-trust project does not address the potentially significant impacts related to water resources (including increased impervious surfaces that would reduce groundwater recharge and enhance stormwater runoff) and to public services and utilities (including water supply and wastewater disposal) that would result from development of all four parcels. Without further information on this issue, the only thing that is clear is the inadequacy of the EA.

EXHIBIT E

Meister Economic Consulting, LLC
59 Promesa Avenue
Rancho Mission Viejo, CA 92694
(949) 390-0555 (p) (949) 429-7680 (f)

August 21, 2024

Anthony Roberts
Tribal Chairman
Yocha Dehe Wintun Nation
P.O. Box 18
Brooks, CA 95606

Re: Preliminary Assessment of Socioeconomic Impact Analysis in the July 2024 Environmental Assessment for the Scotts Valley Band of Pomo Indians

Dear Chairman Roberts:

Per our engagement, Meister Economic Consulting ("MEC") was commissioned by the Yocha Dehe Wintun Nation to assist with its review of the July 2024 Environmental Assessment for the Scotts Valley Band of Pomo Indians' proposed Casino and Tribal Housing Project in Vallejo, CA (the "EA") prepared by Acorn Environmental ("Acorn"). The Bureau of Indian Affairs ("BIA") serves as the Lead Agency for NEPA compliance and will use the EA to determine if the project would result in an adverse effect to the environment. MEC was tasked with assessing the Socioeconomic Analysis contained in the EA ("Socioeconomic Analysis"), particularly the July 2024 study by Advantage Partners Consulting ("APC") set forth in Appendix A ("APC Study").

WORK PERFORMED

In conducting this assessment, we reviewed the Socioeconomic Analysis, conducted independent market research, reviewed historical financial performance and players club data for Cache Creek Casino Resort, and developed preliminary market and gravity models. We highlight that our use of actual financial and players club data from one of the top performing casinos in Northern California, Cache Creek Casino Resort, provides us with unmatched data and insights into the market at hand and the potential competitive impacts on Cache Creek Casino Resort and other existing competitors. APC did not have access to such data for the Socioeconomic Analysis (if it did have such data from other previous projects for tribal casinos, it would not be able to use them due to the confidentiality of data).

CAVEATS

We note that the 45-day comment period (original 30 days plus a 15-day extension) given by the BIA is not sufficient to do a complete review, audit, and analysis of the Socioeconomic Analysis. BIA's refusal to grant requests for a longer extension has materially affected this response. Thus, we note that our assessment set forth in this document is preliminary in nature. Additional time would be required to conduct our own original analyses to further evaluate and quantify the issues we identify herein.

ASSESSMENT

Nevertheless, our review of the Socioeconomic Analysis identified a wide range of significant flaws in the assumptions, analysis, and results of the market analysis, competitive impact analysis, economic impact study, and environmental justice assessment. Set forth below is a high-level review of key flaws in these areas and the implications thereof, as best as we can identify given the time constraints imposed by the BIA.

Market and Competitive Impact Analyses

In conducting our assessment, we identified numerous flaws in the assumptions and methodology of the market and competitive impact analyses conducted by APC. These flaws have resulted in a significant understatement of the competitive impacts of the Proposed Scotts Valley Casino (Alternatives A and B) on existing casinos in the market, including Cache Creek Casino Resort. We start though with a simple acknowledgement of the key finding of the APC Study, despite all the flaws therein.

APC Identifies Significant Competitive Impacts

APC projects that the Proposed Scotts Valley Casino Alternatives A and B will generate $772.5 million in gaming revenue from the local market in its second year of operations for Alternatives A and B (which it has assumed to be a stabilized year) (pp. 32-33 of Appendix A to the EA), with $417 million (54%) attributed to "organic growth" (*id.*, p. 32). If we take these figures at face value, this means that 46% of projected gaming revenue will be cannibalized from the 19 existing tribal casinos in the market (we discuss later the various flaws that have led APC to underestimate competitive impacts). This aggregate loss to Northern California tribal casinos as computed by APC would have a profoundly detrimental effect.

The competitive impact on Cache Creek Casino Resort alone is estimated by APC to be a 15.5% loss of gaming revenue (p. 40 of Appendix A to the EA). Assuming, for the sake of argument, these figures could be taken at face value, this is a significant reduction that directly translates to a loss of Yocha Dehe Wintun Nation governmental revenue, such that it will have to substantially reduce expenditures on Tribal programs and services to its Tribal citizens (we discuss later the various flaws that have led APC to also underestimate the competitive impact on Cache Creek Casino Resort).

APC Understates Competitive Impacts

Given the market in which Alternatives A and B will operate, there is little way that it would be able to achieve the aforementioned level of organic growth, and instead the amount of the local market gaming revenue that would come at the expense of other competitive casinos within the market would be greater than 46%. In that vein, the gaming revenue loss to Cache Creek Casino Resort would likely be significantly greater than 15.5%. We discuss below a variety of factors that cause APC to underestimate the competitive impacts.

- *Failure to Properly Account for the Market's Advanced Maturity Level:* The local market where Alternatives A and B will operate is a very mature market that already consists of a large number of established casinos (APC identifies 19 existing casinos, pp. 5 and 14-27 of Appendix A to the EA). Most of these competitors have established customer bases, marketing strategies, and comprehensive loyalty programs (APC agrees on p. 15 of Appendix A). While APC does state once in its study that the area of interest is a "very mature market" (*id.*), their results make it clear they did not account for this at all. The introduction of the Proposed Scotts Valley Casino, even with its planned features and closer proximity to population bases than many of the other casinos, will not dramatically expand the market size in such a well-established and near-saturated environment, as APC erroneously asserts.
- *APC Overestimates Unmet Demand*: Despite APC admitting that the market for Alternatives A and B is very mature with many competitors, it also assumes that same market is somehow "underserved" (pp. 32 and 41 of Appendix A to the EA). While our preliminary analyses identify some pockets of unmet demand within the market area that the Proposed Scotts Valley Casino could potentially tap into, the extent of this unmet demand is not sufficient to support APC's unrealistic projection of $417 million in organic growth. Our preliminary market analysis and gravity modeling using Cache Creek Casino Resort's actual data, along with past experience in this market and other markets, indicate that while new casinos can often capture some new segments of the population and stimulate some additional visits, the overall impact on organic growth in a mature market is typically much more modest than what is represented by APC.
- *APC Fails to Recognize the High Levels of Market Penetration by Existing Tribal Casinos*: APC asserts that the growth projections for Alternatives A and B are reasonable, citing its potential to become one of the largest casinos in the North Bay area, comparable to Cache Creek Casino Resort to the north and the expanded Graton Resort & Casino to the west (pp. 40-41 of Appendix A to the EA). They argue that the current market is underserved, noting that almost all tribal casinos require an hour or more of driving from major residential areas (*id.*, p. 32). In an attempt to support this assertion, APC states that Cache Creek Casino Resort occupies more than 60 percent of its gaming positions on weekday nights (*id.*). Aside from the fact that APC does not establish a reliable basis for this level of performance and did NOT have Cache Creek Casino Resort data (i.e., casual observance on a couple random days in a casino is not a reliable method for this assertion), the weekday performance of Cache Creek Casino Resort is influenced by a multitude of factors, including the casino's marketing strategies, promotions, loyalty programs, and the overall customer experience. A high level of performance on weekday nights could simply reflect the effectiveness of these strategies, or even just the result of random factors like events rather than an indication of unmet demand in the market. Furthermore, our review of the Cache Creek Casino Resort's players club data suggests that the market is likely not underserved as the APC Study estimates. Remarkably, Cache Creek Casino Resort has in fact achieved substantial market penetration in the Bay area despite the lengthy drive times and traffic challenges (its market penetration in outer market segments is far greater given the drive times and competitive environment than one might anticipate if they did not have their players club data, moreso than almost any other casino that our consultants have analyzed over the past 25 years). Our

observations of other Northern California casinos and preliminary gravity modeling suggest others are achieving market penetration levels that are significantly higher than what APC may have assumed, further refuting APC's assertion of an underserved market.

- *APC Inappropriately Excludes Numerous Competitors from the Competitive Set in its Market Analysis*: APC's market model for estimating the potential gaming revenues for Alternatives A and B presents a significant oversight by failing to include California card rooms, as they directly compete against Northern California tribal casinos in terms of table games given the types of games they offer and their often advantageous locations closer to population centers. APC's failure to account for card rooms undermines the comprehensiveness and accuracy of its market model and it leads to miscalculations of the market potential, overstatement of achievable organic growth, understatement of competitive impacts on existing tribal casinos, including Cache Creek Casino Resort, and omission of competitive impacts on the card rooms.
- *Overestimation of the Potential for Table Games*: APC surprisingly projects that Alternatives A and B will generate 29% of its gross gaming revenues from table games (p. 34 of Appendix A to the EA). This is significantly higher than what is achieved by very large, successful, existing tribal casinos in the market (and in most tribal casinos around the country), including Cache Creek Resort Casino (nearly double its actual percentage of table game revenue). It is not clear whether APC does not realize this market reality and/or is overestimating table game revenue because as previously discussed they mistakenly left out of their market model the California card rooms. In any case, APC's overestimation of table game potential has the effect of overestimating achievable organic growth and underestimating the competitive impact percentages on existing tribal casinos, including Cache Creek Casino Resort.
- *Overestimation of Proposed Scotts Valley Casino's Penetration in Asian Customer Base*: APC repeatedly comments on how Alternatives A and B will cater to the Asian customer base in the region (pp. 9, 13, and 30 of Appendix A to the EA), almost as if it felt this was an underserved customer base. However, many of the Northern California tribal casinos already aggressively cater to the Asian customer base. The overemphasis of the Asian customer base in APC's Study seems to be one of the reasons for the unsupportable high level of estimated organic growth and understated competitive effects of the Proposed Scotts Valley Casino.
- *Inappropriate Inclusion of an Uncertain, Hypothetical Competitor in the Competitive Set of its Market Analysis*: APC includes in its market analysis for Alternatives A and B, the Koi Nation's Proposed Shiloh Resort & Casino ("Proposed Koi Nation Casino"), a project which has yet to receive the requisite approvals to move forward (pp. 26-27 and 29 of Appendix A to the EA). As merely a hypothetical casino with no certainty that it will come to fruition, it should not be included in the market analysis. In our experience with working on both sides of land-in-trust applications, it is not standard practice to include such uncertain potential competitors. In fact, in reviewing the July 2024 Draft Environmental Impact Statement for the Koi Nation of Northern California ("Koi Nation EIS"), which is concurrently before the BIA, it is notable that the same environmental firm for the Scotts Valley EA, Acorn Environmental, along with its economic consultant, Global Market Advisors ("GMA"), did

NOT include in their market analysis the Proposed Scotts Valley Casino. GMA also did NOT include other proposed casino projects when there are "uncertainties surrounding the project's future" (pp. 63-64 and 69 of Appendix B to the Koi Nation EIS). By including the Proposed Koi Nation Casino in the market set forth in the Socioeconomic Analysis of Scotts Valley EA, not only does APC not follow standard practice and create inconsistent market measurement methods across land-in-trust applications simultaneously before the BIA, but it also leads APC to understate the negative competitive impacts the Proposed Scotts Valley Casino has on existing tribal casinos in the market, including Cache Creek Casino Resort. Put another way, by including the Proposed Koi Nation Casino in the Scotts Valley EA market analysis, APC has conveniently hidden some of the negative competitive impacts of the Proposed Scotts Valley Casino by attributing them to the Proposed Koi Nation Casino, which may not even come to fruition and is not the subject of the Scotts Valley EA.

- *Failure to Include Outer Market Revenue in Competitive Impacts*: Beyond the revenues projected to be generated from within the local market, APC also projects $62.3 million in outer market revenues during its second year of operation of Alternatives A and B (p. 33 of Appendix A to the EA). Not only does the APC Study not provide any explanation at all or breakdown of the factors contributing to this figure, but it appears that this amount has been excluded from consideration in its competitive impact assessment. It is only reasonable to assume that a portion of the projected outer market revenue would come at the expense of existing casinos, just like the portion that would come from within the local market. For instance, outer market revenue includes revenue from tourists to the region, and at least a portion of their visitation to the Proposed Scotts Valley Casino would be cannibalization of existing casinos' revenues. This dynamic is especially relevant for tourists with extended stays in the area or those planning to visit multiple destinations throughout the region. By excluding outer market revenue from consideration in the competitive impact assessment, APC has underestimated the competitive impacts, including on Cache Creek Casino Resort.
- *Failure to Include a Hotel in the Scope of the Proposed Scotts Valley Casino*: Given the size and scope of the Proposed Scotts Valley Casino and the competitive landscape of the region, the absence of a hotel in the Proposed Scotts Valley Casino Alternatives A and B is a notable deviation from industry standards and brings into question whether the EA truly evaluates the full scope of planned development on the Project site. The Proposed Scotts Valley Casino aims to compete in a very mature market where the overwhelming majority of competitors, especially most of the larger competitors including Cache Creek Casino Resort, offer comprehensive amenities that include lodging. These competitors have long recognized the critical role that on-site accommodations play in attracting and retaining patrons, particularly those who travel from outside the immediate vicinity. By providing lodging, these casinos not only enhance the overall guest experience but also encourage longer stays and increased spending on gaming and non-gaming activities. In order to adequately compete, especially to the level projected by APC, the Proposed Scotts Valley Casino will need to include a hotel. The exclusion of a hotel has the effects of artificially minimizing the appearance of impacts, on not only existing gaming facilities, but also existing lodging establishments in the vicinity of the proposed casino (Acorn Environmental determined there are "negligible substitution effects or less than significant substitution

effects" for Alternatives A and B in terms of non-gaming because there is no hotel, p. 3-49 of Scotts Valley EA).

APC Falsely Claims Competitive Impacts are Only Temporary

APC asserts that the competitive gaming impact of Alternatives A and B on other casinos within the market will only be temporary, 5.6 years in the case of Cache Creek Casino Resort (p. 40 of Appendix A to the EA, and p. 3-48 of the EA). In the Scotts Valley EA, Acorn suggests that competitive impacts diminish over time as a result of both market growth and the phenomenon of some people wanting to experience the Proposed Scotts Valley Casino initially after it opens but then returning to their regular visitation patterns (i.e., going back to the casino(s) they currently frequent). However, this is inconsistent with APC's assessment and calculations, which attribute diminishing competitive impacts solely to natural market growth. APC states that this impact will be temporary due to anticipated natural market growth driven by factors such as the growth of the population and income, as well as inflation. However, this reasoning is fundamentally flawed for several reasons.

- *Competitive Impacts are Permanent*: APC's assertion that the competitive impact will dissipate within a certain number of years due to market growth is patently false. Any natural growth in the market resulting from the growth of the population and income, as well as inflation, is a separate phenomenon that would occur regardless of the opening of the Proposed Scotts Valley Casino. Therefore, this natural market growth does not "recover" the lost revenue experienced by existing tribal casinos, including Cache Creek Casino Resort, as a result of the Proposed Scotts Valley Casino.
- *Failure to Separate Baseline Growth and Competitive Impact*: APC does not adequately distinguish between baseline market growth and the competitive impact of the Proposed Scotts Valley Casino. For a more accurate analysis, it is crucial to project the baseline market growth without considering the Proposed Scotts Valley Casino and then overlay the competitive impact separately. This approach would clearly demonstrate the net effect on existing casinos, showing that the natural market growth benefits all competitors in the market and does not mitigate the initial revenue loss caused by the Proposed Scotts Valley Casino.
- *Underestimation of Long-Term Competitive Pressure*: APC's assumption that the competitive impact will be temporary does not account for the sustained pressure that a new entrant typically exerts on existing casinos. The introduction of a new casino permanently alters market share dynamics, leading to potential long-term revenue losses for existing casinos. Even with market growth, these losses represent a real and ongoing competitive impact that should be considered beyond a temporary horizon.

Some Project Components of Proposed Scotts Valley Casino Do Not Make Economic Sense

Typically, in order to right size a proposed casino, incorporate an appropriate amount of amenities, maximize potential revenue, and reduce the financial risk of overbuilding, an economic consultant such as MEC is called upon to do a feasibility study (usually included as part of the market

analysis). It is not fully clear from the Scotts Valley EA whether the anticipated components of Alternatives A and B were pre-determined in advance by the Scotts Valley Band, Acorn Environmental, or some other entity, or determined through analysis by APC. But APC admits that "[t]he Project's non-gaming amenity offering is paramount…" (p. 35 of Appendix A of the EA). In any case, several of the project components included in the Proposed Scotts Valley Casino do not make economic sense.

- *Absence of a Hotel*: Given the size and scope of the Proposed Scotts Valley Casino Alternatives A and B and the competitive landscape of the region, the absence of a hotel at the Proposed Scotts Valley Casino raises questions about the true planned scope of the facility. The exclusion of a hotel from the Scotts Valley EA seems disingenuous given that the Proposed Scotts Valley Casino will need to include it in order to adequately compete in the existing market, especially at the level projected by APC. We believe there must be a plan to add a hotel at some point after BIA approval, should it be obtained. APC even seemingly admits as much, "the Project will not feature a hotel ***in its first phase***" (p. 35 of Appendix A of the EA; emphasis added). We also understand an earlier version of Scotts Valley's proposal did include a hotel. On a side note, it is absurd that while Alternatives A and B do not include a hotel, Alternative C includes two hotels. This makes no sense … if two hotels were determined to be economically feasible in Alternative C without a casino, then a hotel would most certainly be economically feasible in Alternatives A and B with a casino.

- *Excess Meeting/Event Space*: APC recommends 80,500 square feet of banquet and meeting space at the Proposed Scotts Valley Casino (p. 10 of Appendix A to the EA). While this amount of meeting space generally aligns with industry standards for a casino of its size (square feet/gaming positions), it is not reasonable given the market conditions and the overall scope of what is being proposed in Alternatives A and B. There are several critical aspects that must be considered when evaluating the feasibility and practicality of meeting/event space. As even pointed out in the APC Study itself, "[n]ormally, meeting space is built in conjunction with lodging" (*id.*). APC notes that Vallejo currently experiences a shortage of available meeting space (*id.*) and that the "area is currently underserved" (*id.*, p. 35), and thus, this type of programming could be supported at the Proposed Scotts Valley Casino, even without a hotel. However, the lack of meeting space (i.e., supply) alone in the market does not necessarily equate to the need for such space. There must also be a demand analysis. In order to identify demand, market research would need to be conducted, including interviews with meeting and event organizers and potential user groups to determine the anticipated utilization and demand for such space. Based on the information set forth in the APC Study, it does not appear that any substantive research or outreach was conducted to determine the potential demand for meeting space. Moreover, the challenges associated with the introduction of this amount of meeting space without a hotel cannot be understated. In the casino industry, it is extremely uncommon to find a facility with such extensive meeting space that does not also offer onsite hotel accommodations (those instances with extensive meeting space and no hotel typically only work in conjunction with adjacent hotel accommodations). The absence of a hotel at or adjacent to the Proposed Scotts Valley Casino poses several challenges. First, some event

organizers are hesitant to even book events at a venue that lacks onsite accommodations. Second, the convenience of staying at the same location as the event is a significant factor in decision-making for both organizers and attendees. Third, without a hotel, meeting/event attendees would need to seek lodging elsewhere, potentially causing logistical issues and diminishing the appeal of the casino as a meeting and event destination to begin with. On a separate note, there are other significant inconsistencies in the justifications for meeting and event space at the Proposed Scotts Valley Casino. The APC report presents conflicting information regarding the availability of meeting space in the area. While it initially claims a shortage (as noted above), it later describes the planned meeting and event space as being in a "hyper-competitive market" due to the existing concert circuit among regional casinos (*id.*, p. 36).

- *Overestimation of Food and Beverage Revenue*: APC projects that Alternatives A and B will generate $80.4 million dollars of food and beverage revenue in the second year of operation (p. 36 of Appendix A to the EA). However, given the lack of a hotel and a vastly oversized meeting and event space in the planned scope of the Proposed Scotts Valley Casino, APC's projections for food and beverage revenue (approximately 10% of $834.8 million in total gaming revenue) are overly optimistic based on the performance of other large existing casinos in the region and similarly scoped casinos nationally.

APC Underestimates the Ramp-Up Period

APC assumes that the Proposed Scotts Valley Casino will reach full market absorption and stabilization within one year (p. 30 of Appendix A to the EA) and thus why it analyzes year 2 for all three development Alternatives. However, this assumption is especially overly optimistic for Alternatives A and B. In the casino industry, a typical stabilization period is around two to three years. In very mature, competitive markets like the one at hand, achieving stabilization can take even longer. Existing competitors often have well-established players club databases and loyal customer bases. They are likely to intensify their marketing efforts to retain their customers and fend off the new Proposed Scotts Valley Casino, thereby reducing the potential market share that can be achieved by the proposed casino.

APC Does Not Provide Sufficient Information to Evaluate the Results of their Analyses

Aside from not providing sufficient justification for APC's conclusions on its recommended meeting space, as noted above, APC did not provide enough detail on competitive impacts and financial projections to allow us to conduct a complete review.

- *Lack of Detail on Competitive Impacts*: In APC's study, competitive impacts are only cited in terms of percentage of lost gaming revenue (p. 40 of Appendix A to the EA). They do not provide the impacts in actual dollars. While estimating the revenue impact in terms of a percentage provides a high-level view, it falls short in delivering the specificity and clarity needed for an accurate financial impact assessment on the impacted tribal casinos and their respective tribes. Although the APC Study has estimated competitor revenues within the gravity model, the lack of disclosure of these figures limits the convincingness of the

analysis. Estimating and presenting the negative impact on existing competition in actual dollar terms, along with estimated total revenues, would provide more transparency and allow the BIA to see how dramatic the actual losses are to tribal casinos and the tribes that own/operate those casinos. In addition, any percentage of competitive impact can be a significant loss to a tribal casino and the tribe that owns/operates it. For instance, assuming the 15.5% competitive impact APC calculates for Cache Creek Casino Resort were accurate (which it is not, as noted by all the flaws noted in this assessment letter), it still means a significant reduction of many, many millions of dollars in governmental revenues for the Yocha Dehe Wintun Nation. This would create a huge negative impact on the Tribe such that it would not be able to continue to provide all of the existing Tribal programs and services that it currently does. Notably, APC claims that it did not provide dollar competitive impacts in its study "[b]ecause all the gaming revenue data are based on empirical knowledge and for the purpose of ensuring confidentiality" (*id.*, p. 39). This makes no sense. The first part of their statement means that APC does not have any of the competing tribal casinos' actual revenue figures or at least not that can be used due to confidentiality, which we already knew based on our discussions with multiple tribal casinos in the market, including Cache Creek Casino Resort. The second part of their statement is meaningless and does not justify failing to reveal dollar competitive impacts … if none of the casinos provided APC actual gaming revenue data, then there is no confidentiality that must be protected.

- *Lack of Detail on Financial Projections*: While the APC Study presents revenue projections for Alternatives A and B, it does not include forecasts of operating expenses or net income. Without this information, it cannot be determined whether the proposed casino will be profitable for the Scotts Valley Band. The fact that a business generates positive revenue does not automatically make it beneficial to its owners.

APC Fails to Adequately Justify Alternative C's Feasibility

It is difficult to assess the non-gaming development option set forth in Alternative C given the summary level data and analysis presented in the APC Study to substantiate their recommendations and projections (pp. 42-46 of Appendix A to the EA). Market studies typically include a much more robust analysis of historical performance and projected growth trends for hotels, meeting space, and commercial space within the market area in order to make any meaningful conclusions as to the projected performance and viability of the projects. Notwithstanding, the mere assertion that these projects can be easily absorbed within the market without any meaningful competitive impacts is not convincing.

Economic Impact Study

In order to show the economic effects of the Proposed Scotts Valley Casino on its surrounding community, APC conducted an economic impact study. While there is not sufficient time in the comment period to conduct our own original economic impact analysis to fully assess APC's results, we reviewed and assessed the data, assumptions, methodologies, and results of their economic impact study, identifying several key flaws below.

Scotts Valley EA is Misleading about the Geography of Economic Impacts

Multiple times in the Scotts Valley EA, Acorn Environmental incorrectly represents the geography of the construction and operations economic impacts of the Proposed Scotts Valley Casino Alternatives A and B, which are supposed to be drawn from the APC study. In fact, Acorn incorrectly references a few different geographies. First, Acorn erroneously points to the "variety of benefits to the ***regional economy***, including residents of the City and Solano County" (p. 3-44 of the EA, emphasis added). Second, Acorn erroneously refers to economic "[i]mpacts to ***California*** employment, wages and local economic output" (*id*., emphasis added). Third, Acorn erroneously states that "[t]he ***vast majority*** of the listed employment and wages would accrue to ***Solano County*** residents and most of the economic output would occur in ***Solano County***" (*id.*, emphasis added).

All these statements incorrectly imply a larger geography of the economic impacts than is actually the case. APC clearly states in its study that for the economic impact study they "defined the study area as ***Solano County*** to estimate countywide benefits" (p. 48 of Appendix A to the EA, emphasis added). The study area is not the *regional economy*, which typically implies a multi-county region or a metropolitan statistical area (MSA). The study area is not the entire *State of California*. And it is not the case that the vast majority of the listed employment and wages would occur in *Solano County*, in fact ALL of the jobs and wages are within Solano County only and nowhere else.

APC Fails to Properly Exclude Operations Tax Impacts Scotts Valley Band Would Not Pay as a Sovereign Government

APC highlights that in its operations related fiscal impact analyses it made sure to exclude all property taxes given all three development alternatives will be constructed on tribal lands for which no property taxes are collected (p. 55 of Appendix A to the EA). While APC's reasoning is correct, it is misapplied. The fact that property taxes are not collected from tribes means that Direct property taxes should be excluded, but Indirect and Induced property taxes need not be excluded.

Moreover, the aforementioned error highlights a more significant issue. APC makes no note of excluding other types of Direct Taxes that are also not collected from tribes, including income tax and sales tax. APC's inclusion of Direct Taxes other than property taxes has the erroneous effect of inflating Direct Taxes for the operation of all three Alternatives.

APC Overstates Construction Economic Impacts by Inappropriately Including Certain Construction/Development Costs

For the construction related economic impacts for Alternatives A and B, APC states that "the procurement of certain materials and equipment may be purchased through local or regional suppliers/dealers, although the good may have been manufactured outside of the study area … In these occurrences, the procurement of these goods and services are recorded as a local transaction, as is the case with slot machines and table game purchases for the Project" (p. 48 of Appendix A to the EA). We can see that APC seems to have included all $1.4 billion of construction and development related costs, including gaming equipment, in its construction economic impact model because the Direct Output for Alternative A, which represents the construction cost entered into the

model, is also $1.4 billion (*id*, p. 51). However, new gaming equipment like the slot machines and table games that would be installed at the Proposed Scotts Valley Casino would NOT be manufactured and distributed by companies in Solano County, California, but likely in Nevada. The inclusion of gaming equipment in the construction economic impact model has the effect of artificially inflating all the construction related economic and fiscal impact results, thus over-stating the project's anticipated benefits.

APC Erroneously Estimates Higher Construction Tax Impacts in Alternative B than Alternative A

We understand that in estimating the construction related economic impacts for Alternative B, APC deducted out the construction/development related costs for tribal housing and a tribal administration building. This would mean that the construction costs APC input into the Alternative B economic impact model should be lower than that input into the Alternative A economic impact model. We were able to verify this by comparing the Direct Output values in each models' results (p. 51 of Appendix A to the EA). Naturally then, all the economic and fiscal impacts for Alternative B should be lower than those for Alternative A. However, this is not the case – despite Alternative B having a lower construction cost and lower Direct Output, it incorrectly has higher Federal Taxes. This is not possible and reflects some sort of error by APC.

APC Erroneously Reports Higher Alternatives A and B Operations Tax Impacts for the County than its Own Support Documentation Shows

In the main text of the APC Study, the economic and fiscal impact results for the operation of Alternatives A and B show $16 million in County Taxes (p. 54 of Appendix A to the EA). While this matches up with the detail in Table 8 in the Appendix to the APC Study (*id.*, p. 96), Table 8 has multiple summation errors causing County Taxes to be overcounted by $15.3 million (some column totals are significantly higher than they should be). Thus, the fiscal impacts have been vastly overestimated at the local level for the operation of Alternatives A and B.

APC Erroneously Estimates the Wrong Year of Operations Economic Impacts for Alternative C

Given that APC claims the second year of operations is its first stabilized year, it uses year 2 revenues for all its operations related economic impact analyses (pp. 53 and 54 of Appendix A to the EA). However, as we can clearly see from the economic impact results, APC was inconsistent from this claim and appears to use year 3 revenue instead for the Alternative C operations economic impact model (*id.*, p. 54). The year 2 Direct Output is shown as $87 million, but the year 2 Total Revenue is $84.6 million. This error means that all the operations economic impacts for Alternative C are incorrect and overinflated.

APC Overestimates All Economic and Fiscal Impacts for Operation of Alternatives A & B by Not Accounting for Competitive Effects

As previously noted, APC estimated competitive effects on existing tribal casinos, including three in Sonoma County (Graton Resort & Casino, River Rock Casino, and Proposed Koi Nation Casino), the study area of their economic impact study (p. 40 of Appendix A to the EA). As we previously

pointed out in this assessment, these competitive effects are permanent and can never be recovered, contrary to APC's erroneous claim. With this in mind, the competitive effects should not be included in the revenue figures used as the input to the operations related economic impact model for Alternatives A and B because the competitive effect is not new economic activity to Sonoma County, but just substituting for economic activity that is already generated at existing tribal casinos in the County. It is readily apparent that APC did not exclude these competitive effects from the operations economic impact model because their total projected revenue for the Alternatives (*id.*, p. 53) equals the Direct Output in their economic impact results for the Alternatives (*id.*, p. 54). Given APC did not exclude the competitive effects from these economic impact models, it has overestimated all operations related economic and fiscal impacts of the Proposed Scotts Valley Casino (*id.*, p. 52) by the magnitude of competitive effects on Graton Resort & Casino and River Rock Casino (as noted before, the Proposed Koi Nation Casino should not be included in their analyses at all).

Environmental Justice

While the Scotts Valley EA acknowledges that tribes are considered minority populations for the purposes of assessing Environmental Justic for Minority, Low-Income, and Other Disadvantaged Populations, it concludes that for all three development Alternatives "[t]here are no adverse project impacts that would disproportionately affect minority communities" (p. 3-49 of the EA). This defies simple logic for Alternatives A and B given that APC finds gaming substitution effects with 19 tribal casinos, including Cache Creek Casino Resort, and therefore 19 tribes, including Yocha Dehe Wintun Nation, would be harmed due to lost tribal government revenue. Acorn seems to justify its conclusion given that "[t]hese effects would only occur outside of the immediate vicinity of the Project Site" (*id.*) without defining "the immediate area." Moreover, it seems illogical to ignore obvious competitive effects on other tribes when they are close enough to be harmed in the first place.

Other Notable Issues

Reduced Intensity Alternative B is Not Meaningfully Reduced

As is the case with all environmental assessments/environmental impact statements for proposed casinos, the Scotts Valley EA sets forth multiple development options for consideration, typically including the preferred Proposed Project (Alternative A), a Reduced Intensity Alternative (Alternative B), and a Non-Gaming Alternative (Alternative C). In our extensive experience, a "reduced intensity" alternative is intended to provide an option that will have a reduced impact as compared to the Proposed Project. That is not the case in the Scotts Valley EA, at least not in terms of gaming, or even the casino in general. The Reduced Intensity Alternative B is identical in nature to Alternative A in terms of the entire casino, including size, amount of gaming, and scope of amenities (*see* Tables 2.1-1 and 2.2-1 in the EA). APC further confirms this to be true: "the only difference between Alternative A and Alternative B is the elimination of Tribal housing and Tribal administration" (p. 28 of Appendix A to the EA). Furthermore, this tiny, almost inconsequential, non-casino elimination feels like a disingenuous attempt at a Reduced Intensity Alternative. Often, we see Reduced Intensity Alternatives reduce the amount of gaming and non-gaming amenities.

This was very doable given the large scope of the casino in Alternative A, but the Scotts Valley EA and the APC Study do not even attempt to do so. By not reducing the scope of the casino at all in the Reduced Intensity Alternative, the Scotts Valley EA is not really presenting a meaningful Reduced Intensity Alternative, and instead presenting two development options that are nearly identical in terms of scope, revenues, and impacts.

If you have any questions regarding this letter, please do not hesitate to contact me. Thank you for the opportunity to assist the Yocha Dehe Wintun Nation with this important matter.

Sincerely,

Alan Meister, Ph.D.

Jonathan Clough

EXHIBIT F

MEMORANDUM

TO: **Steve Sakurai, Chief Investment Officer, Yocha Dehe Wintun Nation**

FROM: **Tom Lewis, Director of Real Estate Investments, Yocha Dehe Wintun Nation**

DATE: **8-15-2024**

SUBJECT: **Alternative Sites, Scotts Valley Band of Pomo Indians**

I engaged a licensed California realtor to help evaluate potential development sites in and around the vicinity of the Scotts Valley Band of Pomo Indians' original Sugar Bowl Rancheria in Lake County. A basic search for large sites suitable for commercial and residential development yielded a substantial number of results, of which the options presented below may be of particular interest.

To be clear, additional development sites in the Clear Lake area are also available, could potentially accommodate a tribal gaming project, and can be evaluated if needed. But these four provide a reasonable cross-section of the market as of this date.

1. Valley Oaks Site (Hidden Valley Lake, CA)
± 26 miles from the original Scotts Valley Rancheria

This alternative is along Highway 29 at a new "roundabout" traffic circle that serves as the entrance to Hidden Valley Lake, California. The only existing structure in the "Valley Oaks" project is a Grocery Outlet store. However, the developer has completed roadway and utility improvements that serve the larger project, and a new project entrance from the traffic circle is planned to be completed soon.

Years of planning, entitlements, site work, and utility improvements (including sewer) have gone in to the Valley Oaks project. This site represents an ideal opportunity to combine commercial and residential approvals with extensive infrastructure improvements.

Apparently, this property has been marketed for a couple of years but has faced challenges (other than in bulk with the Grocery Outlet) due to the absence of separate legal parcels (to sell portions of the project) and requirements for completion of

additional offsite improvements. Both of these are expected to be completed by the end of 2024, such that individual commercial parcels could be conveyed. Of course, parcels could also be (or remain) aggregated if needed.

In addition to the Grocery Outlet parcel, the project includes 381 Single family residential "paper" lots on +/- 83 acres; 41 medium density units possible on +/- 2.8 acres; and a 49-bed residential care facility on +/- 2.5 acres.

There are +/- 29 gross acres of commercial land over five contemplated parcels. However, one of these parcels includes the Grocery Outlet, and additional lands will be devoted to drainage basins, roadways, and other undevelopable areas. The remaining commercial land is in the 18-acre range.

I understand the property owner would prefer to sell the commercial parcels in bulk, such that a Buyer could then decide on which pad sales to complete. It is believed that Lake County would welcome a hotel in the project.

The project is being actively marketed, and is available.

2. North State Street Interchange Site (Ukiah, CA)
± 16.6 miles from the original Scotts Valley Rancheria

This property is +/- 36 acres located along the east side of North State Street at Highway 101, at a freeway interchange.

The property is zoned industrial, all utilities are in place, and about half the site has been graded and compacted. The site slopes relatively gently downward from the road level.

The property is currently available.

3. Cinemas and Lakeshore Boulevard Sites (Lakeport, CA)
± 3.3 miles from the original Scotts Valley Rancheria (Lakeport Cinemas property)
± 2.7 miles from the original Scotts Valley Rancheria (Lakeshore Boulevard property)

This is a combination of two properties that straddle the original Scotts Valley Rancheria, both located in Lakeport, California. The Lakeport Cinemas property is at the south end of town, while the Lakeshore Boulevard property is at the north end of town.

<u>Lakeport Cinemas & Drive-In</u>

The first property would be an ideal location for casino development as it is in Lakeport, CA, right at the junction of Highway 29 and Highway 175, at an existing interchange. The property address is 52 Soda Bay Road, Lakeport, California. The property is an operating cinemas building of +/- 23,779 square feet, along with an operating drive-in theatre, on a total of +/- 25.89 acres. The cinemas have a paved parking lot, and the drive-in is graded, and graveled.

As an infill, redevelopment project it is already served by existing utilities, including wastewater treatment. In fact, the existing cinema building could likely be converted to a casino, and might serve as a basis for initial operations, and future expansion.

The property is already zoned commercial, it is available to purchase, and the asking price is $1,750,000 (August 2024).

Lakeshore Boulevard

The second property is +/- 103 with prime lakefront acres at 5880 Lakeshore Boulevard. This property has +/- 1,100 linear feet of Clear Lake frontage and a large open, and a relatively flat, area that would be ideal for residences. There is also surrounding acreage that serves as a buffer from nearby development.

The property sometime referred to as the "Boeger Property" after a previous owner. The property has been proposed for development multiple times over the years, with the most noteworthy being the "Marina at Lyons Creek" project circa 2015. Marina at Lyons Creek was a proposed mixed density residential project that included 194 single family units, 150 condos, 46 estate lots, 50 assisted living beds, a 65 room "boat club" hotel, and 278 boat slips. That project was granted 73 domestic water connections. Additionally, a master plan prepared by the Lake County Special Districts for the Northwest Regional Wastewater System identified the treatment plant that serves the property as having adequate capacity, given current and projected growth.

The property is mostly zoned for low density, single family residential development, which appears consistent with Scotts Valley's stated housing need.

The asking price is $1,480,000 (August 2024), and the property is on the market and available.

4. Alexander Valley Resort & Residences Site (Cloverdale, CA)

± 19.2 miles from the original Scotts Valley Rancheria

This would be an ideal mixed-use project for gaming, hospitality and residential development just off US-101. The project is fully entitled, with a signed development agreement, and could begin development very quickly.

There is retail land within the project site (200+ acres) that could accommodate a gaming facility. The project is currently approved for 125,000 plus square feet of commercial space, 150 hotels rooms, and 40 casitas units. Additionally, the project is approved for 130 residential units. Total approved development appears to be greater than Scotts Valley's stated needs.

The property has three existing water wells, with the ability to drill two more. The project would contribute to securing additional water stability for the City of Cloverdale (as opposed to further straining existing supplies) and is supported for that reason, among others.

A City-owned and -maintained sewer line which connects to the City sewer system is already stubbed to the property. The City of Cloverdale will make available sufficient treatment capacity to support the project via connection to a 12-inch sewer line located under Santana Drive.

The property is available and on the market. I am not aware of an official asking price.