



August 31, 2024

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Dan Hall
Regional Archaeologist
Bureau of Indian Affairs, Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Re: Proposed Excavation and Testing Plan

Dear Mr. Hall:

This letter responds to your August 22 email "inviting" the Yocha Dehe Wintun Nation to "observe" subsurface excavation and testing of a known and recorded historic resource you have identified as P-48-000116 (also referred to as CA-SOL-275, and hereafter as the "Site").

The excavation would take place in furtherance of the Scotts Valley Casino project ("Project"). We understand that you currently plan to carry out the excavation and testing work on September 4, 2024, pursuant to a "Subsurface Excavation Plan" (the "Excavation Plan") prepared by a consultant for the Project proponent.

You have suggested that your "invitation to observe" is motivated by an interest in being "transparent." We would submit that a genuine commitment to transparency involves conducting meaningful, confidential government-to-government consultation with culturally-affiliated Patwin tribes before committing to excavation of a known resource on their ancestral lands. Indeed, that is precisely what Section 106 of the National Historic Preservation Act ("NHPA") requires.

Accordingly, we must respectfully insist that you refrain from any excavation of the Site on September 4 and instead initiate the Section 106 process that is so clearly required here. Our reasons are set forth below.

1. Although the proposed Project is within the ancestral lands of our Patwin people, neither we nor any other Patwin tribe was consulted on the preparation of the Excavation Plan. The Project area is located between the historic Patwin 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 Vallejo and Solano County. Indeed, Yocha Dehe is party to a cultural easement agreement with the City of Vallejo to

Yocha Dehe Wintun Nation

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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 (itself named after a Patwin chief) and its surrounds. Surely, you are aware of these facts – after all, your agency’s July 2024 Environmental Assessment (“EA”) for the Project expressly states the Project area was traditionally used and occupied by Patwin people. (*See* EA Appendix I-2 at 8.) Nonetheless, neither we nor any other federally recognized Patwin tribe were consulted on the development of the Excavation Plan.

1. The Excavation Plan was developed to further a federal “undertaking” that is subject to Section 106. The Plan says so on its face. So did the EA. But you have not, in fact, initiated the Section 106 process or conducted any of the consultations Section 106 requires. Instead, you claim to be in a “pre-106 phase.” Federal law does not recognize any such thing. Instead, it requires that once a federal agency acknowledges the existence of an “undertaking” it *must* identify and initiate Section 106 consultation with the State Historic Preservation Officer (“SHPO”) and Indian tribes that may attach cultural significance to the area. (*See* 36 C.F.R. § 800.3.) This makes sense. After all, subsequent analytical steps – establishing the Area of Potential Effect, identifying potential historic properties, evaluating potential significance of and effects on those properties, and involving the public – must all be taken *in consultation with SHPO and tribal consulting parties*. (*See* 36 C.F.R. §§ 800.2(c)(2)(ii), 800.3(e)-(f), 800.4, 800.5.) Your proposed approach would stand this clear, step-wise process on its head, cutting out tribes and SHPO. We hope that was not your intent.
2. Cutting culturally-affiliated Patwin tribes out of the process is not a harmless error. Because the Excavation Plan was not the product of consultation, it is incomplete, inadequate, and includes several provisions that are fundamentally contrary to the way Patwin people honor our cultural resources. For example:
 - The Plan proposes to excavate “at least” five holes in the Site but does not specify where they will be located or how they relate to the Project’s proposed grading plans.
 - The Plan states that any and all cultural resources will be digitally photographed. This is directly contrary to our beliefs, traditions, and protocols for handling cultural items. While some photography of some items may be appropriate in some circumstances (and may even be needed to complete some forms), it is simply not appropriate to include a blanket photography allowance in an excavation plan.
 - The Plan states that “time-sensitive” items will be “collected and curated.” While the meaning of “time-sensitive” is not specified, it presumably includes human remains and funerary items. This, too, is directly contrary to our beliefs, traditions, and protocols for handling cultural items. Indeed, it is deeply inappropriate, offensive, and contrary to state law.

- The Plan suggests that if initial excavation disturbs “significant artifacts” or “identifiable midden deposit,” the excavation will be expanded. This is precisely the wrong approach. If significant items are encountered, further disturbance must stop, and culturally affiliated tribes must have an opportunity to determine appropriate treatment.
- The Plan appears to focus exclusively on the top 100 cm of soil. Our information indicates this may not be enough. Moreover, if the Site is being evaluated for significance, the investigation must be aligned with the Project’s proposed excavation and/or grading depths.
- The Plan contains no provisions for maintaining confidentiality.
- The exact purpose of the Plan is not explicitly specified. Nor is it clear who will receive or analyze any of the data generated or by what standard.
- The Plan appears to be based on several site inspections and updated site records, none of which were carried out with Patwin cultural monitors present.

These are just a few of the most obvious defects the Plan. To address all of the problems, meaningful consultation, carried out within the Section 106 process, would be required.

3. You have known about the Project for years. And you have acknowledged that the Project is an “undertaking” for months. But you did not notify us of this proposed excavation until just 13 days before it was scheduled to occur. As you likely know, this is not enough time for tribal governments to meaningfully review, comment, and consult on sensitive cultural resource matters. Indeed, we are not aware of any statute or regulation, at any level of government, that provides for 13-day comment periods. We certainly hope this is not your idea of meaningful, good-faith “transparency,” or fair process.
4. In response to direct questions from Yocha Dehe staff, you have identified no statutory, regulatory, or practical reason why it is necessary to rush ahead with the proposed excavation on September 4. Nor did you identify any deadline or other alleged time constraint that would limit tribal consultation or full Section 106 compliance.
5. It is important to understand that the Project proponent has no ancestral connection to the Project area or the Site itself. Scotts Valley is a Pomo tribe from Clear Lake. And while it has (falsely) claimed a connection to Vallejo for Indian Gaming Regulatory Act purposes, that claim is not based on any aboriginal or ancestral ties. In fact, Scotts Valley has admitted in previous litigation that “its villages were located further north, around Clear Lake, in pre-contact times, with Patwin villages located in the south near the [Site].” Instead, Scotts Valley has suggested that its people may have labored on ranchos in the region during periods of Spanish and Mexican control. But even if there were concrete evidence to support that contention (which there is not), it would remain undisputed that Yocha Dehe,

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Kletsel Dehe, and Cachil Dehe – and not Scotts Valley or other Pomo tribes – are the federally recognized tribes culturally affiliated with the Site.

In closing, we must emphasize to you just how inappropriate it is to use tribal cultural resources for gamesmanship or strategic manipulation. They are to be protected, not disputed.

Excavation of a known resource, without tribal consultation and outside of the mandatory Section 106 process, is contrary to these core values.

Please confirm, as soon as possible, that you intend to take the proposed September 4 excavation off calendar and initiate the Section 106 process, as required.

You may contact Sarah Choi at schoi@yochadehe.gov or Matthew Adams at madams@kaplankirsch.com with any questions.

Wile bo,



Anthony Roberts

cc: Hon. Charlie Wright, Chairman, Kletsel Dehe Wintun Nation
Hon. Wayne Mitchum, Chairman, Cachil Dehe Band of Wintun Indians
Amy Dutschke, Regional Director, Bureau of Indian Affairs
Julianne Polanco, State Historic Preservation Officer
Jody Brown, Deputy State Historic Preservation Officer
Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs