

October 12, 2016

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Mayor Gary Davis  
and Members of the City Council  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

**Re: Wilton Rancheria Casino Project  
Objection to Amendment of Agreements Related to The Outlet Collection at Elk  
Grove.  
10/12/16 Council Hearing, Agenda Item 9.1**

Dear Councilmembers:

I submit this letter on behalf of Stand Up For California! to object to the City's proposed actions to make the Wilton Rancheria Casino project possible, without studying the project's environmental impacts. At issue before the council are amendments to both the Elk Grove Town Center, LP Development Agreement and the Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure. These amendments are apparently the third in a group of approvals the City is granting for the casino project, following the city's approval of a Memorandum of Understanding in 2011 (the "2011 MOU") and, last month, another Memorandum of Understanding (the "2016 MOU"). The decision before the Council tonight will determine whether the Elk Grove casino project is permitted to proceed or whether it is stopped.

**A. The City Is Ignoring the Previous Objections of Stand Up For California!**

Stand Up For California! submitted a letter dated September 26, 2016 objecting to these council decisions. I was surprised that my client's letter was not attached to the staff report for this matter and that the letter apparently was not presented to the council in connection with this agenda item. Stand Up For California!'s September 26 letter is attached and incorporated here by reference.<sup>1</sup>

**B. The City Is Not Considering the Environmental Consequences of its Decision.**

The amendments before the council would eliminate "Phase 2" of the regional mall project from the scope of the agreements. Like the staff report to the Planning Commission, the staff report to the City Council concedes that the amendments are being undertaken for the sole purpose of

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<sup>1</sup> Attachment A.

making a casino possible. The Planning Commission staff report acknowledges that “[t]he requested changes to the Agreements reflect the fact that the Bureau of Indian Affairs will not allow the Phase 2 property to be moved from fee to trust status unless the encumbrances such as the Development Agreement are removed from title.”<sup>2</sup> The staff report to the Council does not disavow this purpose, and instead confirms that the only purpose the amendments serve is to facilitate the development of the casino.<sup>3</sup>

These staff positions reflect federal law. Before taking land into trust for an Indian tribe, the Bureau of Indian Affairs requires the elimination of any encumbrance—such as the Development Agreement—that makes title to the land unmarketable.<sup>4</sup> In addition, if this encumbrance is not eliminated, it is not clear that the Phase 2 site would qualify as “Indian lands” for purposes of gaming under the Indian Gaming Regulatory Act.<sup>5</sup>

As the Planning Commission and City Council staff reports note, the environmental impacts of the regional mall were studied in a 2001 EIR. However, staff’s proposal that the 2001 EIR may be relied upon to evaluate the impacts of the amendments is without evidentiary support and arbitrary. There is no evidence to support staff’s conclusory statement that there have been no changes in surrounding circumstances or new information since 2001.

The City fails to recognize that loss of City jurisdiction over the site and the development of the casino are known and intended consequences of the amendments. These consequences are not merely speculative possibilities. In 2011, the City and the Winton Rancheria tribe entered into a settlement agreement, which included a process for determining and enforcing mitigation measures for any environmental, social, and economic impacts of a proposed casino facility adjacent to the Elk Grove Mall site.<sup>6</sup> In 2016, the City took the step of entering into another MOU with the tribe for the purposes of mitigating the specific impacts of the proposed casino. The City has even taken steps to provide informational websites and documents to address public concerns about impacts from the casino project.<sup>7</sup> Additionally, as acknowledged by the City

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<sup>2</sup> September 15, 2016 Planning Commission Staff Report for Agenda Item No. 5.2 (“Planning Commission Staff Report”) p. 1.

<sup>3</sup> October 12, 2016 City Council Staff Report for Agenda Item No. 9.1 (“City Council Staff Report”) p. 2.

<sup>4</sup> 25 C.F.R. § 151.13(b). The acquisition of property subject to an encumbrance that might cause losses to the United States or otherwise incur obligations in excess of appropriated funds is also prohibited by the Anti-Deficiency Act. 31 U.S.C. § 1341.

<sup>5</sup> 25 U.S.C. § 2703(4).

<sup>6</sup> See September 28, 2016 City Council Staff Report for Agenda Item No. 10.1 (the “MOU Staff Report”) pp. 1–2. The 2011 MOU is attached as Attachment B and is available for download at

[http://www.elkgrovecity.org/UserFiles/Servers/Server\\_109585/File/Departments/Planning/Projects/Casino%20Wilton%20Rancheria/MOU-COEG%20Sac%20County%20Wilton%20Rancheria%20\(06.27.11\).pdf](http://www.elkgrovecity.org/UserFiles/Servers/Server_109585/File/Departments/Planning/Projects/Casino%20Wilton%20Rancheria/MOU-COEG%20Sac%20County%20Wilton%20Rancheria%20(06.27.11).pdf). The 2016 MOU and the MOU Staff Report are attached as Attachment C.

<sup>7</sup> See *Wilton Rancheria Casino Resort Project FAQ* (available at

[http://www.elkgrovecity.org/UserFiles/Servers/Server\\_109585/File/Departments/Planning/Projects/Casino%20Wilton%20Rancheria/Casino%20Resort%20Project%20FAQ.pdf](http://www.elkgrovecity.org/UserFiles/Servers/Server_109585/File/Departments/Planning/Projects/Casino%20Wilton%20Rancheria/Casino%20Resort%20Project%20FAQ.pdf)).

Council staff report, the owner of the property and the tribe have entered into an “Option Agreement” for the site.<sup>8</sup>

The City’s decision to amend the agreements is a discretionary land use decision that is one of many approvals that will be required from several agencies to allow a casino to be developed at this site.<sup>9</sup> The fact that subsequent approvals from other agencies will be required does not relieve the city of its obligation to study the impacts of the project.

The City has acknowledged and been presented evidence that the casino may cause significant impacts. The Bureau of Indian Affairs is preparing an EIS on the casino,<sup>10</sup> and the City’s comment letter on that EIS states that the impacts of Mitigation O (Grant Line Road/Wilton Road Intersection) need to be further analyzed.<sup>11</sup> The MOU Staff Report acknowledges that the purpose of the MOU is to mitigate the impacts that would directly result from the project.<sup>12</sup> At the hearing on the 2016 MOU, a councilmember acknowledged the growth-inducing impacts of the project, claiming that the casino would “greatly alter the landscape of the city” and be a “catalyst” for development of the entire area.<sup>13</sup> The City has not studied these impacts.

Moreover, the consequences of the City’s decision are substantial. The Bureau of Indian Affairs currently has no guidance or procedures for reversing a trust acquisition, and has represented that such an action would be extraordinarily problematic, and would present significant practical challenges, including possible gaps in jurisdictional authorities governing important issues, such as law enforcement.<sup>14</sup> As a result, any decision by the City that allows the trust acquisition to proceed—even if later reversed—would be extraordinarily consequential, and could result in irreversible impacts before the environmental effects of that decision are considered under CEQA.

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[on%20Rancheria/WiltonRancheria\\_FactSheet.pdf](#) ) (attached as Attachment D); *Wilton Rancheria Casino Resort Project*, [http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/planning/current\\_development\\_projects/wilton\\_rancheria\\_casino\\_resort\\_project](http://www.elkgrovecity.org/city_hall/departments_divisions/planning/current_development_projects/wilton_rancheria_casino_resort_project).

<sup>8</sup> City Council Staff Report p. 2.

<sup>9</sup> The 2011 MOU specifically acknowledges that it will comply with CEQA “before it exercises its discretion and commits to any particular course of action that *may directly or indirectly affect* the physical environment.” 2011 MOU p. 5.

<sup>10</sup> City Council Staff Report p. 4.

<sup>11</sup> 2016 MOU Staff Report p. 49. See also *id.* at Ex. 2, p. 14 (requiring contributions for transportation impacts), p. 32 (listing roadway mitigation measures).

<sup>12</sup> 2016 MOU Staff Report p. 2.

<sup>13</sup> Elk Grove City Council Wednesday, September 28, 2016 Meeting, at 3:02:00–3:05:00 (available for download at: [http://elkgrove.granicus.com/MediaPlayer.php?clip\\_id=1414](http://elkgrove.granicus.com/MediaPlayer.php?clip_id=1414)). An excerpt of these statements during this part of the hearing is attached as Attachment E.

<sup>14</sup> See Decl. of Bruce W. Maytubby, *Littlefield v. Dep’t of the Interior*, 1:16-cv-10184-WGY (D. Mass. Jne 17, 2016), Doc. 38-1 (attached as Attachment F).

Members of the City Council  
October 12, 2016  
Page 4

Accordingly, the casino project and the city's loss of jurisdiction over the property are reasonably foreseeable consequences of the amendments. The casino must be considered either a new project or a drastic and substantial change to the regional mall project studied in the 2001 EIR, significantly altering its scope and nature. The environmental impacts of the casino project must be evaluated under CEQA.

**C. Request for Special Notice.**

I request special notice of any hearings or pending decisions related to proposed modifications of The Outlet Collection at Elk Grove project, and/or the casino project. I also request copies of all CEQA notices related to these two projects.

Very truly yours,

/s/

Christopher A. Chou

Attachments:

cc: Cheryl Schmit, Stand Up for California!  
Marie Cooper

133173680.6

**A**

*Stand Up For California!*  
“Citizens making a difference”

[www.standupca.org](http://www.standupca.org)

P. O. Box 355  
Penryn, CA. 95663

September 26, 2016

Members of the City Council  
Elk Grove City Hall  
8401 Laguna Palms Way  
Elk Grove, CA 95758

Re: Wilton Rancheria Casino Project  
Objection To Wilton Rancheria MOU, and Amendment of Development-Related  
Agreements for the Outlet Collection.

Dear Councilmembers:

We are writing to object to the City's proposed actions, which will facilitate the Wilton Rancheria Casino project, without first completing CEQA review. The City is considering two actions: entering into an MOU with the Wilton Rancheria; and amending certain development-related agreements for the Outlet Collection at Elk Grove in order to eliminate an obstacle to the casino project. We submit this letter in connection with both proposed actions, and ask that it be included in the record of proceedings for both.

We request that the Council continue its consideration of both actions to allow time for us to meet and discuss the issues of concern.

We submit this letter on behalf of Stand Up for California!, Elk Grove GRASP, and concerned citizens of Elk Grove. We will experience the environmental consequences of the City's proposed actions, which have not been studied or even acknowledged.

**A. Wilton Rancheria Casino MOU**

The council is considering a Memorandum of Understanding (MOU) between the City of Elk Grove and the Wilton Rancheria to address Wilton Rancheria's proposed casino project. We are unaware of any government agency undertaking a CEQA analysis of the casino's impacts.<sup>1</sup>

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<sup>1</sup> The impacts of the casino are being evaluated in a joint document that is both an EIS being prepared by the Bureau of Indian Affairs, and is anticipated to serve as an analysis of impacts the Wilton Rancheria agreed to prepare in a 2011 MOU between the County of Sacramento, the City of Elk Grove and the Wilton Rancheria. These documents are not being prepared in compliance with CEQA, and therefore cannot be used to establish CEQA compliance.

In a 2011 MOU between the County Of Sacramento, the City Of Elk Grove and the Wilton Rancheria, the City indicated that implementing mitigation for the casino project would likely involve physical impacts that would need to be evaluated under CEQA. The 2011 MOU states:

The City and County each also acknowledges that it will promptly comply with CEQA to the extent applicable before it exercises its discretion and commits to any particular course of action that may directly or indirectly affect the physical environment so as to minimize any delay with the City's and the County's obligations to the Tribe by this Agreement. With respect to the City or County , the execution of this Agreement is not a project under CEQA because this Agreement may create a future governmental **funding mechanism that can be used for traffic or other mitigation program should the City or County undertake such actions after compliance with CEQA.**

(2011 MOU, page 6, emphases added) The City is now considering pursuing funding the mitigation program, as mentioned in the 2011 MOU, by entering into the current MOU, but it is refusing to undertake the required CEQA analysis.

**1. CEQA Review Is Required Because The MOU Facilitates The Casino Project.**

As the staff report for the currently-proposed MOU notes, a City decision to enter into the MOU would not be sufficient to allow the casino project to proceed. However, the City has not considered that the City's actions will *facilitate* approval of the casino project. Unlike tribal casinos for which other cities have entered into MOUs, the Wilton Rancheria casino is proposed on land that is currently under the City's planning and zoning jurisdiction. As noted in the recitals of the proposed MOU approval resolution, the City loses its land use and regulatory authority over the property only "*if* placed in trust with the United States federal government for development of the [casino]." However, the City is not considering how best to exercise its authority in light of the pending trust application. It is instead considering adopting the MOU. By adopting the MOU, the City would indicate that it has no intent of exercising its land use authority to affect the casino project before that authority is lost, and has instead determined to help create governmental and financial momentum towards approval of the casino project. This discretionary decision requires CEQA review.

**2. CEQA Review Is Required To Evaluate The Impacts Of The City's Influence And Control Over The Casino Project.**

The currently-proposed MOU reveals that the City *does* have influence and control over the casino project. Section 3 of the MOU reveals that, by entering into the MOU, the City would impose an obligation on the Wilton Rancheria to comply with certain building and construction standards. It would also make the casino subject to specified operational requirements regarding security and gambling activities. The City would also be given the opportunity to provide

advisory input on the casino design. Also, the City's comment letter on the EIS notes that in the 2011 MOU, the City imposed an obligation on the Wilton Rancheria to ensure that the casino conforms to Elk Grove's General Plan.<sup>2</sup>

In light of all this control over the casino project, the City's contention that it has no role in how the casino would be built and operated is unsupported by the record. The City has not evaluated the impacts of the influence and control it proposes to exercise over the casino project, and it has not considered whether influence in other aspects of construction or operation would better protect the environment.

### **3. CEQA Review Of The Specific Items That Will Be Funded Under The MOU Is Required.**

The MOU would fund specific items, the impacts of which have not been evaluated under CEQA. The proposed findings claim that the MOU is nothing but a funding mechanism that does not involve any commitment to any specific project, but the staff report and the MOU terms negate that claim.

Fundamentally, the proposed MOU contradicts its "funding-only" statement by including the City's agreement that satisfaction of MOU obligations "will fully address and mitigate any and all direct impacts of the facility to the city . . ." (MOU, Section 6) Proposing funds for unspecified activities does not constitute mitigation. Because the City considers the funding to comprise complete mitigation, there *must* be a plan or program already in existence by which the dollars will be turned into activities or improvements that avoid, offset or reduce the physical impacts. The City has not studied the impacts of those activities or improvements.

Also, the staff report lists specific improvements the fees would fund. It acknowledges that the payments "would be used to fund acquisition of capital equipment or construction of facilities . . . including but not limited to: Kammerer Road widening and extension, Lotz Parkway, Whitelock Interchange, Grant Line Road, traffic signals, and intersection improvements." (MOU Staff report, page 3) The staff report does not indicate whether the impacts of these physical roadway improvements have been studied under CEQA. In contrast, the City's comment letter on the EIS being prepared for the casino states that the impacts of Mitigation O (Grant Line Road/Wilton Road Intersection) need to be further analyzed. (MOU Agenda Packet, page 49)

The Draft EIS prepared for the casino project also identifies the specific improvements that will be funded by the MOU. The acknowledged purpose of the MOU is to "fund the mitigation of various off-Property impacts that are a direct result of the [casino]." (MOU, page 3; see also Section I.(c)(i), referring to funding of facilities identified in Exhibit B, which references EIS mitigation measures.) Yet, the staff report does not document any CEQA review of the impacts of constructing those mitigating improvements. It instead pretends that no such facilities have

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<sup>2</sup> The staff report for the MOU, prepared for Council's September 28, 2016 hearing, has the City's comments on the EIS attached as exhibits, beginning on page 35 of that agenda packet. The statement regarding general plan conformity appears in a 1/28/16 interoffice memorandum, at page 39 of the agenda packet.



been identified. The omission is especially galling in light of the indication in the casino EIS that “off-site improvements may require obtaining approvals and permits from jurisdictional agencies, including potential California Environmental Quality Act (CEQA) compliance.” (Draft EIS, page 4.14-1)

**4. The MOU Indicates The City Has Pre-Determined To Issue Approvals Without CEQA Review.**

The MOU also indicates not only that the City has pre-determined to issue approvals needed for offsite improvements, but also that the City will do so quickly and without environmental review. The MOU states the City will “work in good faith with the Tribe to implement any necessary roadway intersection improvements related to the Facility at the earliest possible date after receipt of the first Non-Recurring Payment so as to be completed prior to Opening Day.” (MOU, Section I.(c)(i) on page 5) Section I.(c)(ii) of the MOU indicates that, before it loses land use jurisdiction over the project, the City may issue demolition permits without first considering the impacts. Because the demolition permits would be issued as part of the larger casino project, the issuance of those permits carries with it an obligation to evaluate impacts of the whole of the project.

The MOU also indicates the City will provide public services (such as police and sewer services) to the casino project, without considering whether doing so would have environmental impacts.

**B. Amendment To Development-Related Agreements for the Outlet Collection at Elk Grove**

The City is also considering amending development-related agreements for the Outlet Collection at Elk Grove for the sole purpose of making the casino project possible.<sup>3</sup>

The Planning Commission considered this request at its September 15, 2016 meeting, and the matter will presumably be before the Council soon. The proposed amendments are to the Development Agreement and the Amended and Restated Agreement Regarding Regional Mall, Fees and Infrastructure.

The amendments would eliminate “Phase 2” of the regional mall project from the scope of the agreements. In other words, “the result of these amendments is that they will only apply to the property that will continue to be owned by the Howard Hughes Corporation (HHC) and they will not apply to the Phase 2 area.” (Planning Commission staff report, page 3) The amendments will also have the apparent effect of loss of “use of the Phase 2 area for City events.” (Planning Commission staff report, page 2)

The staff report to the Planning Commission claimed that the impacts of the amendments were already studied in CEQA documents prepared for the regional mall project that is the subject of the Development Agreement. However, the stated reason for the amendments is because the

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<sup>3</sup> The applicant also requests amendments to the Amended and Restated Agreement Regarding Regional Mall, Fees and Infrastructure.

Phase 2 site is being considered for the casino, and the agreements stand in the way of the casino project. As acknowledged in the Planning Commission staff report, "The requested changes to the Agreements reflect the fact that the Bureau of Indian Affairs will not allow the Phase 2 property to be moved from fee to trust status unless the encumbrances such as the Development Agreement are removed from title." (Planning Commission Staff Report, page 1)

The staff report further explains:

In May of 2016, the [developer of the regional mall project] entered into an Option Agreement for the Phase 2 area of the project site with Wilton Rancheria and Boyd Gaming Corporation. . . . Should the Option be exercised, the BIA will not allow the Phase 2 property to be removed from fee to trust for the Wilton Rancheria unless the encumbrances such as the Development Agreement are removed from title. The BIA is in the process of finishing an Environmental Impact Statement that includes analyzing the Phase 2 property as a potential location for an entertainment center including a casino, hotel, and event center.

(Planning Commission Staff Report, page 3) In fact, the removal of an obstacle to the casino project is the *only* reason stated for the requested amendments. The decision to amend the contracts is a discretionary land use decision to make it possible for a casino to be developed at this site.

Accordingly, the casino project is a reasonably foreseeable consequence of the amendments, and the casino would obviously significantly change the scope or nature of the regional mall project and its environmental effects. As documented in the Draft EIS for the casino, this consequence would create new and more severe impacts than were studied in the EIR for the regional mall project. Regardless whether the proposal to amend the agreements is considered a change to the former regional mall project or an entirely new project, CEQA review is required for the agreement amendments. Accordingly, the City must prepare a new or subsequent EIR evaluating the environmental consequences of not building the proposed retail development on the Phase 2 site (including the loss of use of the Phase 2 area for City events), and instead making the casino project possible.

### **C. Conclusion**

We hope the City will stop its apparent rush to judgment that started even before it was made public that Alternative F in the BIA's EIS would be anointed as the preferred alternative, and the regional mall applicant entered into an option agreement with the Wilton Rancheria in May of this year. The City must take time to consider the ramifications of its actions. The conclusory statements in the staff reports that the City's actions have no consequences are unsupported in the record, and in fact negated by the facts in those reports and in related documents. The obvious consequence of the City's actions is to facilitate development of the casino. The environmental consequences of those actions must be evaluated under CEQA. The City cannot

Members of the City Council  
September 26, 2016  
Page 6

pre-determine either approval of permits or its exercise of control over the casino before that evaluation is completed.

Sincerely,



Cheryl Schmit  
Director, Stand Up for California!



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Lynn Wheat  
Elk Grove GRASP



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Joe Teixeira<sup>4</sup>

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<sup>4</sup> On behalf of over 20 concerned citizens of Elk Grove

**B**

**MEMORANDUM OF UNDERSTANDING  
AMONG THE COUNTY OF SACRAMENTO,  
CITY OF ELK GROVE AND  
THE WILTON RANCHERIA**

This Memorandum of Understanding (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_ 2011, among the County of Sacramento, a political subdivision of the State of California (“County”); the City of Elk Grove, a municipal corporation located in the County of Sacramento in the State of California (“City”); and Wilton Rancheria, a federally recognized Indian tribe (“Tribe”) (each, a “Party”, and collectively referred to as the “Parties”).

**RECITALS**

A. The Parties recognize that each is a governmental entity with responsibility for the health and general welfare of its people.

B. The Tribe was restored to its federal recognition pursuant to a court-approved Stipulation for Entry of Judgment (“Stipulation”) on June 8, 2009, in *Wilton Miwok Rancheria, et al. v. Salazar* C-07-02681 (N.D. Cal.) and *Me-Wuk Indian Community of the Wilton Rancheria v. Salazar, et al.*, C-07-05706 (N. D. Cal., collectively the “Actions”).

C. The City and the County intervened in the Actions.

D. In this Agreement, the Parties intend to establish a cooperative and mutually respectful government-to-government relationship regarding potential off-trust impacts of development on Tribal Lands within the County of Sacramento. For purposes of this Agreement, “Tribal Lands” means lands over which the Tribe exercises sovereign jurisdiction, now or in the future, or which are proposed to be, or are taken into trust for the Tribe.

E. Because the Tribe is not required to comply with California state environmental laws and in light of the fact that the Tribe is sovereign as defined under federal law, the Parties desire and intend this Agreement to establish a process for the Parties to determine and enforce mitigation measures for proposed off-trust Tribal Land environmental, social and economic impacts and to provide a framework for future agreements between the Parties for development of specific projects on lands to be taken into trust for the Tribe.

**NOW, THEREFORE**, the Parties, in order to achieve these purposes, agree as follows:

1. Dismissal of Pending Motions. Upon the mutual execution and delivery of this Agreement, the City and the County shall promptly withdraw their pending motions to Re-Open and Vacate Judgment and to Dismiss for Lack of Subject Matter Jurisdiction the Actions and shall not oppose entry of final judgment as set forth in the Stipulation. City and County may file or participate in any motions or other legal actions against the Tribe should said Stipulation be otherwise modified or vacated or if the Tribe’s

authorized representative status under this Agreement is otherwise disputed, but shall not otherwise challenge the Tribe's Stipulation, federal recognition and the validity thereof, and/or any rights afforded the Tribe thereby. Should the Stipulation be modified or vacated, the Tribe shall not object to City and County's party status.

2. Scope of Agreement. This Agreement shall apply to any Tribal Lands located within the County including, but not limited to, any of the land specified in Paragraphs 7 and 8 of the Stipulation. The City and County agree not to oppose any efforts to have lands taken into trust for the Tribe provided that Tribe complies with the provisions of this Agreement. If any question arises between the Parties as to this Agreement's application of any given piece or parcel of land, or any development thereon, the dispute resolution provisions of this Agreement shall apply.

3. Consultation Process.

a. Scope.

- i. County Process. Concurrent with any application to have land taken into trust for the Tribe, the Tribe shall consult with the County, as described below, if such Tribal Land is located within the County boundaries, regardless of whether such lands may also lie within the corporate limits of any municipal corporation.
- ii. City Process. Concurrent with any application to have land taken into trust for the Tribe, the Tribe shall consult with the City, as described below, if such Tribal Land is located within the corporate limits of the City or if such Tribal Land is located within territory for which the City has filed an application to annex with the Sacramento Local Agency Formation Commission and has completed the pre-planning and pre-zoning required by California Government Code Section 56375 ("Jurisdiction of the City").
- iii. Consistency with General Plan. Prior to changing any use on Tribal Lands and concurrent with any application to have land taken into trust for the Tribe, the Tribe shall notify the County and, if applicable, the City of such application and request that the agency which would, but for the sovereignty of the Tribe, have land use jurisdiction over such lands, determine whether a proposed use is compatible with General Plan designations. Use of Tribal Lands shall be deemed to conform to, and be compatible with, General Plan designations if the category of the proposed use is the least intensive that is authorized or allowed under the least intensive use permitted by the General Plan designations for land use that are effective either at the time the Tribe submits its fee-to-trust application or at the time a change or intensification of use is proposed for Tribal Lands. Where there are multiple parcels

contiguous or not for which a use or more intensified use is proposed by the Tribe, and the General Plan designations of those parcels differ, the Tribe's proposed land use shall be deemed to conform with and be compatible to, General Plan designations if it is authorized or allowed under the least intensive use permitted by the General Plan designations of any of the parcels. The County and/or City shall make such determination within thirty (30) calendar days from the notice required by this paragraph. If no determination is made, the Tribe may proceed with the tribal project.

- iv. Inconsistency with General Plan. If the proposed use of Tribal Lands does not conform to and is not compatible with the applicable County or City General Plan category designations that are authorized or allowed under the General Plan, the County and/or City shall so notify the Tribe of such inconsistency as required by the above paragraph. In such case, the Tribe shall prepare the Tribal Project Environmental Document, described below.

b. Process.

- i. Selection of Consultant. The Tribe shall utilize an environmental consultant with significant experience with federal, state and local environmental regulation to prepare the Tribal Project Environmental Document.
- ii. Identification of Environmental Impacts.
  - 1. The Tribe shall comply with the requirements of the National Environmental Policy Act ("NEPA") or any successor statute, with respect to any proposed uses of Tribal Lands which may include mitigation of any environmental impacts that are required by the NEPA analysis related to such proposed uses. The County and/or City may be cooperating agencies for the purposes of the NEPA analysis.
  - 2. In addition, while recognizing that it is not subject to the requirements of the California Environmental Quality Act, *California Public Resources Code section 21000 et seq.*, and the CEQA Guidelines, *14 Cal. Code Reg. section 15000 et seq.*, or any successor statutes and administrative rules ("CEQA") with respect to any proposed use of Tribal Lands, the Tribe shall prepare an

environmental document for proposed tribal projects as described below.

- A. For the purposes of this Agreement, the term “Project” shall include changes to the physical environment, including any significant excavation, construction or development associated with tribal governmental, housing or economic development activities, which may cause adverse impacts to the off-Tribal Land environment, including direct and reasonably foreseeable indirect environmental impacts.
- B. The document to be prepared pursuant to this provision shall be referred to in this Agreement as the “Tribal Project Environmental Document” (“TPED”). The TPED shall include the following:
  - i. Description of proposed project, including the project scope and objectives;
  - ii. Description of environmental setting;
  - iii. Evaluation of off-reservation environmental impacts including significant off-reservation environmental effects of proposed project and environmental effects of proposed project not found to be significant;
  - iv. Description of mitigation measures proposed to avoid or minimize the significant effects;
  - v. Evaluation of cumulative impacts of proposed project;
  - vi. Description of alternatives to the proposed project;
  - vii. Description of inconsistencies with off-reservation applicable land use;
  - viii. Evaluation of growth-inducing impacts of the proposed project;
  - ix. Evaluation of economic and social impacts as defined by Title 2, CFR, section 15131; and
  - x. Evaluation of impacts on the County and/or City governmental and municipal services.
- iii. **Timing of Review.** The Tribe shall provide a draft version of the TPED to the County and City. Within 45 days of the County’s and City’s receipt of the TPED, the County and/or City shall provide written comments on same to the Tribe. Considering and responding to said comments, the Tribe shall provide a final TPED to the County and City, and within 45 days after receipt of the final



TPED, the County and the City shall commence negotiations with the Tribe to reach agreement as to the mitigation measures that will be undertaken, including but not limited to timing of mitigation and fiscal mitigation necessary to reimburse the County and/or City for any increased County and/or City services attributable to the Project. If an agreement with the County and/or City is not reached within 90 days from the date the County and/or City received the final TPED, any Party may seek resolution pursuant to the dispute resolution provisions of Sections 5 and 6 herein with respect to any dispute on which the parties cannot reach agreement.

iv. Mitigation of Adverse Impacts.

1. Tribe's Commitments, Obligations and Responsibilities. The Tribe will construct and/or finance any Project identified as requiring mitigation in full compliance with the terms of an agreement identified in Section 3(b)(iii).
2. The TPED shall describe a range of reasonable Project alternatives which would feasibly attain most of the Project objectives and which would avoid or substantially lessen any of the significant effects on the off Tribal Lands environment or County and/or City governmental and municipal services and shall also evaluate the comparative merits of the alternatives, provided that the Tribe need not address alternatives that would cause it to forego its right to engage in land use that is legally permitted on its Tribal Lands.

4. City and County Commitments, Obligations Responsibilities.

a. CEQA Compliance by City and County. City and County each acknowledge that it will comply with CEQA to the extent applicable before funding, approving, or undertaking any discretionary action described in this Agreement that affects the physical environment. Nothing in this Agreement shall be construed in any manner that constitutes funding, approving, or undertaking any particular action or otherwise limit the City's or County's full discretion to fund, approve, authorize, disapprove, or modify any proposed projects. The City and County each also acknowledges that it will promptly comply with CEQA to the extent applicable before it exercises its discretion and commits to any particular course of action that may directly or indirectly affect the physical environment so as to minimize any delay with the City's and the County's obligations to the Tribe by this Agreement. With respect to the City or County, the execution of this Agreement is not a project under CEQA because this Agreement may create a future governmental funding mechanism that can be

used for traffic or other mitigation program should the City or County undertake such actions after compliance with CEQA.

5. Voluntary Resolution; Reference to Other Means of Resolution.

a. The Parties will use their best efforts to resolve any disputes that may occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either Party to seek injunctive relief against the other to enforce terms and conditions of this Agreement when circumstances are deemed to require immediate relief, the Parties hereby establish a threshold requirement that disputes between the Tribe and the County and/or City first be subject to a process of meeting and conferring in good faith to foster a spirit of cooperation and efficiency in the performance and compliance with this Agreement as follows:

i. Any Party will give the others, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

ii. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than ten (10) days after receipt of the notice, unless both Parties agree in writing to an extension of time.

iii. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then either Party may seek to have the dispute resolved by arbitration in accordance with this Agreement.

iv. Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in this Section shall be resolved in the Superior Court of the State of California, County of Sacramento. The Parties agree that venue is proper in the Sacramento County Superior Court. The disputes to be submitted to the court action include, but are not limited to, claims of breach or violation of this Agreement. The Parties agree that, without prejudice to the right of either party to seek immediate injunctive relief against the other when circumstances are deemed to require immediate relief, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resorting to judicial process.

6. Arbitration Rules.

a. Unless otherwise required by law, any arbitration will be conducted in accordance with the policies and procedures of JAMS, and will be held at such location as the Parties agree.

The Party demanding arbitration shall give notice thereof in writing to the other Party, naming in such notice the arbitrator choice. Within fifteen (15) days of receipt of such notice, the receiving Party shall name a second arbitrator of its choice and give notice thereof to the demanding party. The two arbitrators so named shall meet within thirty (30) days after the naming of the second arbitrator to select the services of a mutually acceptable third arbitrator. If the two arbitrators are unable to obtain a third arbitrator within thirty (30) days of their first meeting, the matter shall be referred to Sacramento County Superior Court of California for selection by said court.

Promptly after three (3) arbitrators have been selected, they shall meet to hear the positions and evidence in support thereof of each party, and shall proceed timely to render their decision, which shall be concurred in by not less than two of the three arbitrators. The third arbitrator shall be instructed that his or her decision cannot be a compromise of the decision of the first two (2) arbitrators but must be the same as at least one of such two (2) arbitrators. After such decision, each Party hereto shall promptly do all things required of it by such decision.

b. The decision of the arbitrators will be a reasoned written opinion and will be binding.

i. To the extent the arbitrators' decision relates to compliance with this Agreement, the decision shall explain the facts giving rise to noncompliance and the manner in which compliance may be achieved.

ii. To the extent the decision relates to mitigation of impacts, the decision shall provide for feasible mitigation of off Tribal Lands environmental impacts which may include reasonable compensation for public services but shall not impose environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate other projects of similar scale in the surrounding area.

iii. The arbitrators may consider whether the final TPED provides the data and information necessary to enable the County and/or City to determine both whether the Project may result in off Tribal Lands impacts and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If the arbitrators determine the TPED is insufficient they shall remand the TPED to the Tribe so that it may be revised to

address insufficiencies. A revised TPED shall be treated, for this Agreement, as a new TPED.

iv. For purposes of determining the adequacy of the TPED, the arbitrators, shall to the extent applicable, rely on the statutory, regulatory and decisional law relating to the interpretation and scope of state and federal environmental law. .

v. Notwithstanding the foregoing, the arbitrator shall not have authority to materially modify the principal objectives of the Project or the scope of the Project as identified by the Tribe in TPED.

c. Any Party may request that the arbitrators issue a stay of construction pending a final decision which decision may include a stay of implementation.

d. Each Party will bear its own costs, attorneys' fees, and its share of the costs and expenses of the arbitration.

e. The provisions of Section 1283.05 of the California Code of Civil Procedure will apply; provided that no discovery authorized by that section may be conducted without agreement of the arbitrators or among the Parties.

f. To effectuate the Parties' consent to the foregoing arbitration procedure, the Parties agree to Sacramento County Superior Court of California, to (1) enforce the Parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitration award rendered, or (3) enforce or execute judgment based upon the award.

g. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section 6 may not be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual agreement any other method of dispute resolution, including, but not limited to, mediation, provided, that neither Party is under any obligation to agree to such alternate method of dispute resolution.

## 7. Tribal Sovereignty.

The County and the City acknowledge and agree that the Tribe:

a. is a federally recognized Indian tribe;

- b. is not generally subject to the jurisdiction of the County and/or City or its laws, rules, regulations and ordinances;
- c. has the right to have land taken into trust by the United States for the benefit of the Tribe; and
- d. has not submitted to, and nothing in this Agreement is intended to constitute, or shall be construed as constituting, a submission by the Tribe to, the jurisdiction of the County and/or City.

8. Limited Waiver of Sovereign Immunity.

- a. The Tribe expressly and irrevocably waives its sovereign immunity (and any defense based thereon) in favor of the County and City as to any dispute that arises out of this Agreement. The Tribe hereby consents only to the jurisdiction of the Sacramento County Superior Court of California (and all relevant courts of appeal), for the purpose of any dispute arising out of this Agreement. The Parties agree that jurisdiction and venue for any such dispute will be in (and the Tribe's waiver of sovereign immunity will extend to) Sacramento County Superior Court.
- b. Subject to the provisions of this Agreement defining the scope of the waiver of sovereign immunity set forth above, the Tribe's waiver of sovereign immunity from suit is specifically limited to permitting, and does permit, the following actions and judicial remedies:
  - i. The enforcement of a judgment of specific performance or injunctive relief requiring the Tribe to perform an obligation under this Agreement or enjoining the Tribe from conduct deemed by a court or an arbitrator to constitute a breach of this Agreement.
  - ii. The enforcement of a judgment awarding money and/or damages, except that such enforcement may not be levied against any Indian land or structures located thereon over which the Tribe exercise governmental control.
- c. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties.

9. Notices. Any notices required under this Agreement shall be in writing and may be personally delivered, or delivered by United States

Postal Service, first class mail, or by a reputable overnight delivery service, addressed as follows or to other such place as either Party may designate by written notice to the other.

For the County:

County Executive  
700 H Street, 7<sup>th</sup> Floor  
Sacramento, CA 95814

With Copies To:  
County Counsel  
700 H Street, Room 2650  
Sacramento, CA 95814

For the City:

City Manager  
8380 Laguna Palms Way, Suite 200  
Elk Grove, CA 95758

With Copies To:  
City Attorney  
8401 Laguna Palms Way  
Elk Grove, CA 95758

For the Tribe:

Wilton Rancheria  
9300 W. Stockton Blvd, Ste 200  
Elk Grove, CA 95758

With Copies To:  
Kazhe Law Group PC  
9245 Laguna Springs Drive, Ste 125  
Elk Grove, CA 95758

10. Miscellaneous Provisions.

- a. Term of Agreement. This Agreement will take effect immediately upon execution by the Parties and will remain in effect until replaced by a new agreement between the Parties.

- b. **No Third Party Beneficiaries.** This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for any person or entity that is not a Party.
- c. **Amendments.** This Agreement may be amended only by written instrument signed by the Parties.
- d. **Waiver.** The waiver by either Party or any of its officers, agents or employees or the failure of either Party or any of its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of the same, or of any terms, covenants or conditions of this Agreement.
- e. **Authorized Representatives.** The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective Party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective Party understand that both Parties are relying on these representations in entering into this agreement.
- f. **Successors in Interest.** The terms of this Agreement will be binding on all successors in interest of each Party.
- g. **Non-Severability.** It is the express intent of the Parties to this Agreement that if any provision of this Agreement is held by a court of competent jurisdiction, following exhaustion of all appeals, to be invalid or unenforceable, then that provision shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect. The Parties shall enter into good faith negotiations to replace the invalid or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to the invalid or unenforceable provision.
- h. **Timely Performance.** The Parties acknowledge that time is of the essence in the performance of this Agreement. Each Party hereby covenants to act diligently and in good faith, and without undue delay in the performance of any of its obligations under this Agreement.
- i. **Entire Agreement.**

- a. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, or other agreements, whether written or oral.
- b. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.



IN WITNESS THEREOF, the Parties hereby execute and enter this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

Dated: *June 14, 2011*

COUNTY OF SACRAMENTO

BY: *Michele Bach*  
Michele Bach  
Supervising Deputy County Counsel

Dated:

CITY OF ELK GROVE,  
a Municipal Corporation

BY: \_\_\_\_\_  
Laura S. Gill  
City Manager

ATTEST:

Dated:

\_\_\_\_\_  
Jason Lindgren, City Clerk

Dated:

WILTON RANCHERIA

BY: \_\_\_\_\_  
Mary Tarango  
Chairperson

ATTEST:

Dated:

\_\_\_\_\_  
TREAVER HODSON, Secretary

APPROVED AS TO FORM:

Dated: *June 14, 2011*

FOR COUNTY OF SACRAMENTO

BY: *Michele Bach*  
MICHELE BACH, Supervising Deputy  
County Counsel

Dated:

FOR CITY OF ELK GROVE

BY: \_\_\_\_\_  
SUSAN COCHRAN, City Attorney

Dated:

FOR WILTON RANCHERIA

BY: \_\_\_\_\_  
CHRISTINA KAZHE, Counsel For  
Wilton Rancheria

IN WITNESS THEREOF, the Parties hereby execute and enter this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

Dated:

COUNTY OF SACRAMENTO

BY: \_\_\_\_\_

Michele Bach  
Supervising Deputy County Counsel

Dated:

CITY OF ELK GROVE,  
a Municipal Corporation

BY: \_\_\_\_\_

*Laura S. Gill*  
Laura S. Gill  
City Manager

ATTEST:

Dated:

*Jason P. Lindgren*  
Jason Lindgren, City Clerk  
Dated: June 16, 2011



Dated:

WILTON RANCHERIA

BY: \_\_\_\_\_

Mary Tarango  
Chairperson

ATTEST:

Dated:

\_\_\_\_\_  
TREAVER HODSON, Secretary

APPROVED AS TO FORM:

Dated:

FOR COUNTY OF SACRAMENTO

BY: \_\_\_\_\_

MICHELE BACH, Supervising Deputy  
County Counsel

Dated:

FOR CITY OF ELK GROVE

BY: \_\_\_\_\_

  
SUSAN COCHRAN, City Attorney

Dated:

FOR WILTON RANCHERIA

BY: \_\_\_\_\_

CHRISTINA KAZHE, Counsel For  
Wilton Rancheria

IN WITNESS THEREOF, the Parties hereby execute and enter this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

Dated:

COUNTY OF SACRAMENTO

BY: \_\_\_\_\_

Michele Bach  
Supervising Deputy County Counsel

Dated:

CITY OF ELK GROVE,  
a Municipal Corporation

BY: \_\_\_\_\_

Laura S. Gill  
City Manager

ATTEST:

Dated:

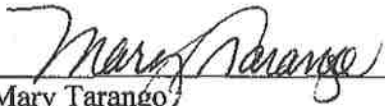
\_\_\_\_\_  
Jason Lindgren, City Clerk

Dated:

6/16/11

WILTON RANCHERIA

BY: \_\_\_\_\_

  
Mary Tarango  
Chairperson

ATTEST:

Dated:

6/17/11

  
\_\_\_\_\_  
TREAVER HODSON, Secretary

APPROVED AS TO FORM:

Dated:

FOR COUNTY OF SACRAMENTO

BY: \_\_\_\_\_

MICHELE BACH, Supervising Deputy  
County Counsel

Dated:

FOR CITY OF ELK GROVE

BY: \_\_\_\_\_

SUSAN COCHRAN, City Attorney

Dated: 4/17/11

FOR WILTON RANCHERIA

BY: Christina Kazhe  
CHRISTINA KAZHE, Counsel For  
Wilton Rancheria

**C**



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** Consider a resolution approving a Memorandum of Understanding (MOU) with the Wilton Rancheria Indian Tribe for mitigation funding related to a proposed entertainment and gaming facility, and authorizing the City Manager to execute the MOU (CEQA exempt)

**MEETING DATE:** September 28, 2016

**PREPARED BY:** Jason Behrmann, Assistant City Manager

**DEPARTMENT HEAD:** Laura Gill, City Manager

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**RECOMMENDED ACTION:**

Staff recommends that the City Council adopt a resolution finding approval of a Memorandum of Understanding (MOU) between the City of Elk Grove and the Wilton Rancheria exempt from the California Environmental Quality Act (CEQA), approving the MOU, and authorizing the City Manager to execute the MOU.

**BACKGROUND:**

In 2009, the Wilton Rancheria Tribe (Tribe) was restored to its federal recognition pursuant to a court-approved stipulated judgment. The County of Sacramento (County) and City of Elk Grove (City) intervened in the federal action challenging the judgment, which resulted in an agreement to dismiss their pending challenges upon execution of an MOU between the City, County, and Tribe in 2011 (2011 MOU). The 2011 MOU established a cooperative and mutually respectful government-to-government relationship regarding potential impacts of development on tribal lands within the County of Sacramento (County) and/or the City of Elk Grove (City), including a process for determining and enforcing mitigation measures for any environmental, social, and economic impacts of a



proposed entertainment facility (the Facility). The process specified that, concurrent with any application to have the United States Bureau of Indian Affairs (BIA) take any land into trust for the Tribe, the Tribe would consult with the City and County regarding potential impacts and appropriate mitigation measures to the City and County.

In 2015, the Tribe applied to the BIA to have land taken into trust north of the City of Galt near Mingo Road, west of Highway 99, to develop the Facility. The Facility, as currently proposed, consists of a 608,756 square foot hospitality and entertainment facility, including a 12-story 302-room hotel tower, a convention center, restaurants and bars, a gaming floor, and attendant parking for the Facility.

Two alternative sites were also studied as part of the Environmental Impact Statement (EIS): 1) a 35.9 acre parcel in the City of Elk Grove, west of Highway 99, north of Phase 1 of the Outlet Collection of Elk Grove; and 2) a location near the Tribe's historic lands in Wilton. The draft EIS was released for public review in January of 2016. The City submitted a comment letter on the Draft EIS to the BIA in February of 2016 (Attachment 2).

During the environmental review process and discussions with local agencies, including Caltrans, the City of Galt, and the County, the Tribe determined that development of the Galt site was infeasible due to the high infrastructure costs associated with the project. In June 2016, the Tribe announced its intention to withdraw its land to trust application for the Galt site and submit an application to the BIA to have land taken into trust for the development of the proposed Facility at the City of Elk Grove location. The City and Tribe then began negotiating the terms of a new MOU that would mitigate the impacts of the Facility.

The proposed entertainment, resort and casino Facility at the City of Elk Grove site is immediately adjacent to the planned retail outlet mall known as the Outlet Collection at Elk Grove, with planned vehicular and pedestrian connectivity between the two projects. The Facility is estimated to cost approximately \$400 million to construct, and it is anticipated to generate over 1,750 jobs when completed. The Facility and amenities are very similar to those previously proposed for the Galt site. A draft site plan and building elevations are shown in Attachment 3.

If the Tribe is able to obtain a transfer of the land into trust through the BIA, a compact between the Tribe and the State of California would be required before any gaming operations could commence. Further, because the Facility would be located on trust lands outside the jurisdiction of the City, the City has no legal authority to exercise land use jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the Facility, gaming or other activities conducted on the property. The City may, however, enter into a financial agreement to mitigate impacts of the Facility on the City.

## **DISCUSSION**

The proposed MOU (Exhibit A to Attachment 1) facilitates the mitigation of impacts resulting from the Facility, consistent with the 2011 MOU between the City, County and the Tribe. The County approved an MOU with the Tribe in June 2016 to address potential impacts to the County, including health and social service programs related to problem gambling, drug and alcohol abuse and domestic violence. The Tribe is currently in discussions with the Cosumnes Community Services District to mitigate impacts related to fire and emergency medical services.

### **MOU Major Provision Summary:**

#### **Non-Recurring Payments**

There are certain payments in the MOU which are essentially one-time contributions called “non-recurring payments.” These payments are payment obligations of the Tribe to mitigate the impacts of the Facility in areas such as traffic, public safety and community facilities. Payments would be made in five equal annual installments beginning with the start of construction. In most cases, these payments mirror what would be required by a private development for a project of similar size and use. In some cases, as noted below, these payments exceed what would be required by a typical private development project. These payments would be used to fund acquisition of capital equipment or construction of facilities, such as roadways, as noted below:

1. **Roadway Improvements** - \$10,469,711 for Citywide roadway improvements including but not limited to: Kammerer Road widening and extension, Lotz Parkway, Whitelock Interchange, Grant Line Road, traffic signals, and intersection improvements. This amount was calculated based on the traffic study and trip generation from the

EIS, applied to the City's existing roadway impact fee program. Fifteen percent of the total payment is considered an additional contribution above what is required to mitigate for traffic impacts of the project.

2. **Regional Roadway Contribution** - \$1,824,028 for improvements to regional or shared roadways with the County, including Kammerer Road and Grant Line Road.
3. **Police equipment** - \$250,000 for Police vehicles and equipment.
4. **Community facilities** - \$2,000,000 for the construction of other community facilities at the City's discretion. This payment is not required for mitigation of the project, but is an additional voluntary payment of the Tribe to the community. Payment of this amount is dependent on the Tribe receiving a credit from the State of California through the State Gaming Compact.

The non-recurring payments total \$14,543,739.

#### **Recurring Mitigation Payments**

Recurring mitigation payments would be made on a quarterly basis beginning one year after Facility opening, and continue in perpetuity. Recurring payments are summarized below:

1. **Police and Code Enforcement services** - \$1,500,000 annually with a 2% annual inflationary adjustment for Police, Code Enforcement and related City service impacts. These payments are meant to offset staffing and service impacts on the City associated with the Facility. Sixty percent of the total payments are considered direct mitigation to address both on-reservation and off-reservation potential crime impacts, while the remaining forty percent is considered an additional contribution made for the purpose of providing additional and improved services to the residents of the City. The total payments by the Tribe for these services over the first twenty years of the MOU are calculated to be approximately \$36,446,055.
2. **Roadway maintenance** - \$500,000 annually with a 2% inflationary adjustment for roadway maintenance purposes. The total roadway maintenance payments over twenty years are calculated to be approximately \$12,148,685.

- 3. General mitigation - City tax revenue in-lieu** - As trust land, the Facility would not be subject to any form of local taxation. The payments shown in the following table are meant to offset the loss of tax revenue and pay for any other community impacts not addressed above.

Year 1	\$2,000,000
Year 2	\$2,150,000
Year 3	\$2,350,000
Year 4	\$2,500,000
Years 5 and beyond	Increased 2% per year from the previous year.

The total value of these general mitigation payments over twenty years is approximately \$56,530,177.

- 4. Elk Grove Unified School District** - \$400,000 annually with a 2% inflationary adjustment to the Elk Grove Unified School District as property tax in-lieu.
- 5. Charitable organization** - \$100,000 annually with a 2% inflationary adjustment to a charitable organization(s) that benefits the Elk Grove community.

The combined recurring payments contained in the MOU in year one total \$4,500,000. Staff estimates that the total annual tax revenue that could be generated from a similar project within the City limits would be between \$2 million and \$2.4 million. Therefore, the proposed MOU would provide more financial resources to the community than would typically be generated by tax revenues from a similar private project. The total recurring payments over twenty years are estimated to be \$117,273,602.

#### **Additional Tribal Covenants**

The Tribe has agreed to certain provisions to further mitigate impacts of the Facility in the areas listed below:

1. To comply with current California Building Codes, including Title 24 related to energy efficiency, provided, however, that the City would not be permitted to pass or enforce a building code provision that is specifically targeted at tribal facilities. Generally applicable building code provisions would be enforceable.

2. To consult with the City regarding the final design of the facility.
3. To adopt rules prohibiting anyone under 21 years of age from gambling.
4. To adopt employee training programs and policies relating to responsible alcoholic beverage services.
5. To conduct criminal background checks of all gaming employees.
6. To provide a full and adequate complement of security personnel at the Facility at all times.
7. To coordinate with the Elk Grove Police Department regarding special event security staffing.
8. To implement single stream recycling and green waste diversion.
9. To consider reasonable requests of the City for display time for community messaging on on-site electronic signage.
10. To provide an Elk Grove resident hiring preference and annual job fairs.
11. To offer discounts or special offers to Elk Grove residents.
12. To comply with all other mitigation measures included in the Final EIS.

Agreement Does Not Approve the Entertainment Facility or Casino

As previously noted, the proposed MOU does not approve a project nor does it facilitate the construction of the Facility. However, it is a binding obligation between the Tribe and the City to provide funding for impacts related to the Facility in the event that it is ultimately approved by the United States government and the State of California.

The following steps outline the required approval process for the Project:

1. The EIS must be approved by the BIA through the Secretary of the Interior. As part of the approval process, the land would be taken into trust for the development of the Facility by the Tribe.
2. In order to offer gambling as part of the Facility, a state gaming compact must be approved by the Governor and ratified by the California State Legislature.

**ENVIRONMENTAL ANALYSIS:**

The approval of the MOU does not constitute the approval of a project under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* (CEQA), and it is otherwise exempt from CEQA pursuant to CEQA Guidelines section 15378(b)(4). The City does not have

land use or regulatory authority over the Tribe's Property if placed into trust with the United States federal government for the development of the Facility. Therefore, the approval of this MOU does not constitute the approval of a project by the City under CEQA, and it is not a decision that is subject to CEQA review. Additionally, the approval of the MOU provides for the creation of a government funding mechanism or other government fiscal activities, through mitigation payments to the City, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and this action is therefore exempt from CEQA pursuant to CEQA Guidelines section 15378(b)(4). Based on the foregoing, the approval of the MOU does not constitute the approval of a project under CEQA and is otherwise exempt from CEQA.

Although the approval of the facility is not subject to CEQA review under state law, it is subject to federal environmental review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* An Environmental Impact Statement/Tribal Project Environmental Document Wilton Rancheria Fee-to-Trust and Casino Project (EIS/TPED) is being prepared by the United States Department of the Interior, Bureau of Indian Affairs (BIA) pursuant to NEPA. The EIS/TPED analyzes the environmental impacts of the Facility, and the Facility and the Tribe will be subject to environmental mitigation measures imposed on the Tribe through the EIS process.

### **FISCAL IMPACT:**

The proposed MOU provides a stable, inflation-adjusted funding source to the City of Elk Grove and others from the Wilton Rancheria Tribe to mitigate community impacts from the proposed Facility, should it receive the required approvals noted above and proceed to construction. The MOU also provides funding for the enhancement of law enforcement and other City services and programs, as well as capital projects.

The total non-recurring revenue in the MOU is \$14,543,739. The recurring revenue to the City in year 1 of the Facility operation is \$4,000,000 with an additional \$500,000 for the school district and local non-profits. In year five, the total recurring payment to the City would be \$4.7 million and continue to escalate annually. The total revenue to the City through twenty years is approximately \$119,668,656, not adjusted for the time value of money. An additional \$9,718,978 would go to the Elk Grove Unified School District with

\$2,429,737 being distributed to local charitable organizations. This results in a cumulative revenue total of \$131,817,341 to the City and community through the first twenty years of the MOU.

**ATTACHMENTS:**

1. Resolution
  - A. Memorandum of Understanding
2. City comments to Draft EIS
3. Building elevations and site plan

## ATTACHMENT 1

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE WILTON RANCHERIA (CEQA EXEMPT)

**WHEREAS**, the Wilton Rancheria (the "Tribe") is a federally recognized Indian tribe; and

**WHEREAS**, the Tribe has identified property within the City of Elk Grove (the "City") which is approximately 35.92 acres in size, and adjacent to the proposed Elk Grove outlet mall site (the "Property") which the Tribe intends to seek to be put into trust with the United States federal government and developed into a hotel, casino, and entertainment facility (the "Facility") by the Tribe; and

**WHEREAS**, though recognizing that the City does not have land use or regulatory authority over the Property if placed in trust with the United States federal government for development of the Facility, the City and the Tribe wish to enter into a government-to-government Memorandum of Understanding ("MOU") with each other, pursuant to which the Tribe agrees to make payments to the City to mitigate the expected impacts of the Facility, should it be developed at the Property.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby finds the approval of the MOU is not subject to review under the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* ("CEQA"), and that it is otherwise exempt from CEQA.

Finding: The approval of the MOU does not constitute the approval of a project under CEQA, and it is otherwise exempt from CEQA pursuant to CEQA Guidelines section 15378(b)(4).

Evidence: The City does not have land use or regulatory authority over the Tribe's Property if placed into trust with the United States federal government for the development of the Facility. Therefore, the approval of this MOU does not constitute the approval of a project by the City under CEQA, and it is not a decision that is subject to CEQA review. Additionally, the approval of the MOU provides for the creation of a government funding mechanism or other government fiscal activities, through mitigation payments to the City, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment, and this action is therefore exempt from CEQA pursuant to CEQA Guidelines section 15378(b)(4). Based on the foregoing, the approval of the MOU does not constitute the approval of a project under CEQA and is otherwise exempt from CEQA.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove hereby approves the MOU and authorizes the City Manager to execute the MOU in substantially the form attached hereto as Exhibit A, and subject to approval as to form by the City Attorney.



**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 28<sup>th</sup> day of September 2016

\_\_\_\_\_  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

**EXHIBIT A**

**MEMORANDUM OF UNDERSTANDING**

**BY AND BETWEEN THE CITY OF ELK GROVE AND  
THE WILTON RANCHERIA**

**DATED: \_\_\_\_\_, 2016**

This Memorandum of Understanding (the "MOU") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Elk Grove, a general law city and municipal corporation organized and existing under the laws of the State of California (the "City"), and the Wilton Rancheria, a federally recognized Indian tribe (the "Tribe"). The parties may collectively be referred to herein as the "Parties," and individually as a "Party."

### RECITALS

**WHEREAS**, by virtue of a stipulated judgment filed June 8, 2009 in the case of *Wilton Miwok Rancheria v. Kenneth Salazar*, Case No. C-07-02681 (N.D. Cal. 2007) (the "Litigation"), the Tribe is a federally recognized Indian tribe; and

**WHEREAS**, in conjunction with the withdrawal of their Motion to Vacate the Judgment in the Litigation, in June of 2011, the City, County of Sacramento, and the Tribe entered into a prior Memorandum of Understanding Among the County of Sacramento, City of Elk Grove, and The Wilton Rancheria (the "2011 Agreement") under which the Tribe is to consult with the City as to any land to be taken into trust that is within the City's limits, and to negotiate with the City for mitigation of impacts to the City concerning the development of such land; and

**WHEREAS**, under the 2011 Agreement, the Parties established a process for the Parties to determine and enforce mitigation measures for proposed off-trust tribal land environmental, social and economic impacts and to provide a framework for future agreements between the Parties for development of specific projects on lands to be taken into trust for the Tribe. The 2011 Agreement requires the Tribe to have prepared a Tribal Project Environmental Document ("TPED") to evaluate "off-reservation environmental impacts including significant off-reservation environmental effects of proposed project and environmental effects of proposed project not found to be significant." Once impacts have been identified, the 2011 Agreement requires the Tribe to "construct and/or finance any Project identified as requiring mitigation in full compliance with the terms of an agreement" between the City and the Tribe; and

**WHEREAS**, one of the primary reasons for the 2011 Agreement was that officials for Sacramento County and the City of Elk Grove did not want the Tribe to build a casino on or near its former Rancheria property in Wilton due to the rural nature of that area of the County; and

**WHEREAS**, the Tribe has identified property within the City limits, and subject to the aforementioned 2011 Agreement, located near Highway 99 in the City, approximately 35.92 acres in size adjacent to the Elk Grove Mall site, currently under development, and more particularly described at Exhibit A (the "Property") which the Tribe seeks to have put into trust with the United States federal government and developed into a hotel, casino, and entertainment facility (the "Facility"); and

**WHEREAS**, the Facility is the subject of an Environmental Impact Statement/Tribal Project Environmental Document Wilton Rancheria Fee-to-Trust and Casino Project (the “EIS/TPED”) which is being prepared consistent with the National Environmental Policy Act (“NEPA”); and

**WHEREAS**, the current Facility, while subject to revision, is anticipated to include approximately 608,756 square feet of casino-resort facility, a 12-story and approximately 302 room hotel tower, including a convention center, with attendant on-site parking, all as further described in the EIS/TPED; and

**WHEREAS**, the Tribe, as a federally-recognized Indian tribe, may engage in particular types of gaming under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq* (“IGRA”) as a means to promote tribal economic development, self-sufficiency, and strong tribal government and to generally protect the welfare of its members; and

**WHEREAS**, IGRA makes Class III gaming activities lawful on lands of federally recognized Indian tribes only if: (1) authorized by a properly adopted ordinance or resolution of the Indian Tribe; (2) located in a state that permits such gaming, including the State of California (the “State”), and (3) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State. (25 U.S.C. § 2710(d)); and

**WHEREAS**, Class III gaming activities under IGRA include, without limitation, any gaming that is not Class I gaming (e.g. social games) or Class II gaming (e.g. bingo) and may include, without limitation, slot machines, electronic games of chance, blackjack, and poker (*See* 25 U.S.C. § 2703); and

**WHEREAS**, the Tribe has filed a land-into-trust application with the Bureau of Indian Affairs, United States Department of Interior (“BIA”), to place the Property into trust for the purpose of developing the Facility; and

**WHEREAS**, the Tribe is committed to entering into this voluntary contractual arrangement with the City pursuant to which the Tribe agrees to make certain financial contributions and community investments to fund the mitigation of various off-Property impacts that are a direct result of the Facility; and

**WHEREAS**, in addition to payments for the mitigation of significant off-Property impacts identified within this MOU, the City and the Tribe have agreed upon numerous provisions for additional contributions by the Tribe to the City for law enforcement, civic projects, roadway and infrastructure improvements, and community services that in part serve off-reservation needs of City residents and are not otherwise required by the Draft EIS/TPED (“Additional Contribution(s)"); and

**WHEREAS**, by this MOU, the City is not approving or disapproving the Facility, and, pursuant to the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.*, (“CEQA”) Guidelines section 15378(b), entry into this this MOU does not constitute the approval of a “project” for CEQA purposes because it involves the creation of a government funding mechanism and/or other government fiscal activity.

**NOW, THEREFORE**, in consideration of the above and of the mutual promises herein contained, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. NON-RECURRING PAYMENT

(a) Non-Recurring Payment. The Tribe shall make a non-recurring monetary contribution to the City as follows:

Roadway Contribution	\$10,469,711
Regional Roadway Contribution	\$ 1,824,028
Police Equipment Contribution	\$ 250,000
City Community Facilities Contribution	\$ 2,000,000
<b>TOTAL</b>	<b>\$14,543,739</b>

(b) Payment Schedule. Subject to the other provisions of this Section, payment of the Non-Recurring Payment shall be made in five equal annual payments with the first payment due on the date of the Start of Construction and the additional payments due on the annual anniversary of the Start of Construction until paid in full. “Start of Construction” shall be the earliest date of the commencement of the first placement of permanent construction of a structure on the Facility site, including, without limitation, the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or grading. Start of Construction shall not include, excavation, clearing, grading, demolition of existing buildings, and/or filling, nor does it include the installation of off-site streets, sidewalks, walkways or other improvements.

(c) Roadway Contribution.

i) As listed above, the Tribe’s non-recurring Roadway Contribution shall be \$10,469,711. This Roadway Contribution and the Regional Roadway Contribution set forth at Section 1(d) include the amounts that the Tribe would otherwise pay for the Facility toward the City’s roadway fee program and regional roadway improvements, but for the Tribe’s sovereignty, and include the Tribe’s fair share contributions to the roadway facilities identified at Exhibit B, which corresponds to the mitigation measures

of the Draft EIS/TPED. The City will work in good faith with the Tribe to implement any necessary roadway intersection improvements related to the Facility at the earliest possible date after receipt of the first Non-Recurring Payment so as to be completed prior to Opening Day. Of the amount paid to the City by the Tribe pursuant to this Section, eighty-five (85%) percent will be applied to reimburse the City for costs directly associated with off-reservation traffic impacts resulting from the Facility, and fifteen (15%) percent will be an Additional Contribution to the City beyond what is required to mitigate for the off-reservation traffic impacts of the Facility.

ii) There are currently four buildings at the Property, identified as Buildings A, B, D, and E (the “Buildings”), as indicated on Exhibit C, which were part of a prior development project, and which are anticipated to be demolished. The Parties agree that if the Buildings are demolished by an entity other than the Tribe or the Tribe’s contractors, and prior to the transfer of the Property into trust with the United States federal government or a transfer to the Tribe directly, the City may allow such other entity to receive roadway impact fee credits of up to \$2,274,118, and the Tribe shall have no claim to such credits, as against the City. If the Buildings remain on the Property at the time the Property is transferred into trust with the United States federal government or transferred to the Tribe directly, and if the Tribe thereafter demolishes the Buildings, or causes the Buildings to be demolished by the Tribe’s contractors, all to the reasonable satisfaction of the City, the Tribe shall receive a credit toward its \$10,469,711 Roadway Contribution in the amount of \$2,274,118. The Tribe may deduct this Roadway Contribution credit from the Roadway Contribution otherwise owed to the City pursuant to this subsection (c) prior to payment of said Roadway Contribution. In order for the Tribe to receive the Roadway Contribution credit, as provided herein, and subject to the other terms and conditions of this subsection, the Tribe shall demolish the Buildings no later than six months after the date the Property is taken into trust by the United States federal government. The time allowed for the Tribe to demolish the buildings and still receive a credit shall be tolled pending any litigation challenging the acceptance of the Property into trust by the United States federal government. For purposes of this Section, “demolish,” “demolishes,” and “demolished” means the complete removal of the entire Buildings from the Property, including the Buildings’ foundations. Nothing herein is intended to impair, limit, or impact any rights either Party has as against any person or entity not a party to this MOU.

(d) Regional Roadway Contribution. Pursuant to the 2016 Memorandum of Understanding and Intergovernmental Agreement between the County of Sacramento and Wilton Rancheria, the Tribe agreed to work with the City of Elk Grove in good faith to develop an agreement in which the Tribe will contribute sufficient payments to the City of Elk Grove so that all necessary mitigation of traffic impacts recommended within the Draft EIS/TPED related to

the Property are fully funded by the Tribe's payment. The Tribe's Regional Roadway Contribution represents payment for the mitigation of impacts on roadway facilities shared between the City and the County of Sacramento, including, without limitation, the Kammerer Road project.

(e) Police Equipment Contribution. As listed above, the Tribe shall make a Police Equipment Contribution in the amount of \$250,000. This Police Equipment Contribution shall be an Additional Contribution that shall benefit the law enforcement needs of the residents of Elk Grove and is not required pursuant to the Draft EIS/TPED.

(f) City Community Facilities Contribution. The City Community Facilities Contribution shall represent a voluntary donation by the Tribe for the purposes of improvement or construction of City community facilities. Such payment does not represent payment for mitigation of impacts of or by the Facility. Payment of the \$2,000,000 City Community Facilities Contribution shall be contingent upon the Tribe receiving a credit from the State in recognition of this amount for the above-stated purposes in the Tribe's yet to be finalized Tribal-State Compact. Should the Tribe receive credit in an amount less than \$2,000,000 from the State under the Tribal-State Compact for the above-stated purposes, the amount of the City Community Facilities Contribution to the City shall be the amount to which the Tribe receives credit from the State. The Tribe represents and warrants that it will make all reasonable efforts in negotiating the Tribal-State Compact to seek credit from the State in at least the amount of the \$2,000,000 City Community Facilities Contribution.

## 2. RECURRING MITIGATION PAYMENTS

(a) General. The Tribe shall make quarterly recurring payments as set forth in this Section 2. Quarterly payments in any given year in which payments are due and payable shall be paid quarterly pursuant to the following schedule: March 1, June 1, September 1, and December 1. Unless otherwise specified, the first quarterly recurring payment shall be due and payable on the first quarterly due date that is one year after the date the Facility is opened to the public ("Opening Day"), and payments shall be made each quarter thereafter. Payments shall be made in arrears with the first year of payments intended to cover the mitigation cost of the prior year, and so forth for each year, until all payments have been made as required by this MOU. In order to accommodate increasing costs and inflationary factors, unless otherwise specified in subsection 2(d) below, all payments due as set forth in this Section 2 shall increase at the rate of 2% per year, which inflator shall be applied at the first anniversary of the initial quarterly payment.

(b) Police and Code Enforcement. The Tribe shall make recurring annual payments to the City for Police and Code Enforcement services in the amount of \$1,500,000, paid quarterly

in equal amounts of \$375,000, in the manner set forth above in Section 2(a). Fifty percent (50%) of the annual amount paid to the City each year shall be considered direct mitigation to address both on-reservation and off-reservation potential crime impacts associated with the Facility. Fifty percent (50%) of the annual amount paid to the City shall be considered an Additional Contribution made for the purpose of providing additional and improved law enforcement services off-reservation to the residents of the City, which additional and improved law enforcement services are beyond what is required to address the impacts to law enforcement from the Facility.

(c) Roadway Maintenance. The Tribe shall make recurring annual payments to the City for Roadway Maintenance in the amount of \$500,000, paid quarterly in equal amounts of \$125,000, in the manner set forth above in Section 2(a).

(d) City Tax Revenue In-Lieu. In recognition of the fact that the City does not have the ability to directly levy taxes or assessments against the Tribe, such as property tax and assessments, sales tax and transient occupancy tax, the Tribe shall pay the City a Tax Revenue In-Lieu payment to reimburse the City as follows:

Year 1	\$2,000,000
Year 2	\$2,150,000
Year 3	\$2,350,000
Year 4	\$2,500,000
Years 5 and beyond	Increased 2% per year from the previous year.

The amounts set forth above represent annual amounts. All of the above payments shall be paid quarterly in equal amounts, in the manner set forth above in Section 2(a). Notwithstanding the 2% inflationary factor as set forth in Section 2(a) above, the Tax Revenue In-Lieu payment for Years 1 through 4 shall be a fixed number and shall not increase beyond the numbers set forth in the above table. The Tax Revenue In-Lieu payment for years 5 and beyond shall increase by 2% per year, which inflator shall be applied on the fourth year anniversary of the first quarterly payment.

(e) School/Community Contribution.

i) To reimburse the Elk Grove Unified School District (EGUSD) for the loss of tax revenues, the Tribe shall make recurring annual payments to the EGUSD in the amount of \$400,000, paid quarterly in equal amounts of \$100,000, in the manner set forth above in Section 2(a). Of the \$400,000 payment made by the Tribe to the EGUSD,



\$50,000 shall be for the EGUSD's Indian Education program.

ii) The Tribe shall make recurring annual payments of \$100,000 per year to a charitable organization(s) or other organization(s) of its sole selection, which enhances the City and the City residents' quality of life. Evidence of such payment for the prior year shall be provided to the City no later than January 31 of each calendar year.

iii) Payment of the School/Community Contribution made pursuant to this subsection (e) shall be contingent upon the Tribe receiving a credit from the State in recognition of these amounts for the above-stated purposes in the Tribe's yet to be finalized Tribal-State Compact. Should the Tribe receive credit in an amount less than \$500,000 from the State under the Tribal-State Compact for the above-stated purposes, the amount of the Tribe's School/Community Contribution shall be the amount to which the Tribe receives credit from the State. The Tribe represents and warrants that it will make all reasonable efforts in negotiating the Tribal-State Compact to seek credit from the State in at least the amount of the \$500,000 School/Community Contribution.

### 3. ADDITIONAL PUBLIC HEALTH, SAFETY, AND SECURITY PROVISIONS

(a) Building Codes. The Tribe acknowledges and agrees that the Facility shall comply with the building and construction standards of the California Building Code and California Administrative Code, as set forth in Title 24 of California Code of Regulations, and as adopted by the City pursuant to Elk Grove Municipal Code Chapters 16.02 and 16.04, as now existing or hereafter amended ("Applicable Codes"). Notwithstanding the foregoing, the Tribe need not comply with any building or construction standard that specifically applies in name or in fact only to tribal facilities. Reference to Applicable Codes herein is not intended to confer jurisdiction upon the State, its political subdivisions, or the City. For purposes of this section, the terms "building official" and "code enforcement agency" as used in Title 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other tribal government agency or official as may be designated by the Tribe's law. Nothing herein shall limit or impair the authority of any other government agency not a party to this MOU.

(b) Facility Design. The Tribe agrees to consult with the City concerning the design of the Facility and to receive the City's input as to the Facility design. Notwithstanding the foregoing, the Parties acknowledge that the City does not have any jurisdiction or regulatory authority over the design of the Facility, does not have legal authority to approve or disapprove the Facility design, and that the decision of the Tribe to accept or reject input from the City as to the Facility design shall be wholly voluntary for the Tribe and within the Tribe's sole discretion.

(c) Security. To further mitigate potential impacts of the Facility on law enforcement resources, the Tribe shall:

i) Adopt rules prohibiting anyone under 21 years of age from gambling;

ii) Adopt employee training programs and policies relating to responsible alcoholic beverage services;

iii) Conduct criminal background checks of all gaming employees;

iv) Provide a full and adequate staff of security personnel at the Facility at all times. For special events requiring additional security and/or law enforcement personnel, the Tribe shall coordinate with the City's Police Chief to ensure adequate security and law enforcement at the Facility. The Tribe shall reimburse the City and/or other law enforcement agencies for the reasonable security and/or law enforcement costs incurred by the City or other law enforcement agencies for such additional security and/or law enforcement personnel.

(d) Emergency Medical Services. To mitigate potential impacts of the Facility on City emergency medical services, the Tribe shall provide: (i) emergency medical training to members of its security staff; and (ii) emergency medical equipment, including defibrillators, at the Facility.

(e) Solid Waste Disposal. To mitigate potential impacts of the Facility on solid waste disposal resources, the Tribe shall, to the extent determined by the Tribe to be feasible and commercially reasonable, implement single stream recycling and green waste diversion.

#### 4. SIGNAGE.

The Parties contemplate that the Facility will have a large outside on-site electronic or otherwise changeable message sign (the "Facility Sign"). The Tribe shall consider reasonable requests by the City to display city-sponsored community messages on the Facility Sign to advertise city events, city information, and/or public service messages approved by the City ("City Community Messages"). Notwithstanding the foregoing, the Tribe agrees to display Amber Alert messages on the Facility Sign, provided, however, that the Tribe shall have discretion to determine the duration and frequency of such Amber Alert messages.

#### 5. LOCAL EMPLOYEE RECRUITMENT/JOB FAIR/LOCAL DISCOUNTS.

(a) Subject to applicable federal, state, or tribal law, the Tribe agrees to make reasonable and good faith efforts to recruit and employ residents of the City of Elk Grove to work at the Facility. The Tribe further agrees to hold at least one general job fair for jobs at the Facility prior to the Opening Day of the Facility.

(b) The Tribe shall institute a program, subject to the Tribe's own internal rules and eligibility requirements, for providing dining discounts to City of Elk Grove residents at its Facility.

6. ACKNOWLEDGEMENT OF TRIBE'S COMPLETE MITIGATION.

(a) Subject to the other terms and conditions of this MOU, the City agrees that the foregoing measures in Sections 1 through 5 will fully address and mitigate any and all direct impacts of the Facility to the City and City services as described in the Draft EIS/TPED prepared by the BIA. The City acknowledges that the EIS/TPED is intended to serve as the Tribal Environmental Impact Report ("TEIR") supporting a proposed compact with the State of California, and, as such, and provided the Tribe complies with this MOU, the City agrees that the foregoing measures in Sections 1 through 5 will fully address and mitigate any and all direct impacts of the Facility to the City and City services as described in that TEIR. Nothing herein shall limit or impair the authority of any other government agency not a party to this MOU.

(b) Concurrent with the execution of this MOU, the City shall sign and deliver a letter to the BIA, in substantially the form attached hereto at Exhibit D, acknowledging the Tribe's complete mitigation of impacts related to the Tribe's proposed Facility consistent with the non-opposition provisions of the 2011 Agreement that are triggered by said complete mitigation.

7. EFFECTIVE DATE, RE-NEGOTIATION, AND TERMINATION

(a) Effective Date. This MOU shall not become effective unless and until all of the following events have occurred:

(i) This MOU has been approved by the City Council of the City, executed by the City Manager, and approved as to form by the City Attorney; and

(ii) This MOU has been approved by the Tribal Council of the Tribe and executed by the Tribe's Chairperson.

(iii) The Tribe's payment obligations at Sections 1 and 2 and other obligations at Sections 3, 4, and 5 of this MOU do not become operative until the Property is taken into trust for the benefit of the Tribe by the United States federal government. In the event that the Property identified by this MOU is never taken into trust by the United States federal government or that the application for land-into-trust is abandoned or withdrawn by the Tribe, the Tribe's payment obligations at Sections 1 and 2 and other obligations at Sections 3, 4, and 5 of this MOU shall never come into effect. Notwithstanding the foregoing, all other provisions of this MOU shall be effective upon the satisfaction of the conditions at subsections (i) and (ii), above.

(b) Re-Negotiation.

Should the City provide substantial evidence of a material increase in any physical environmental impact (“Increased Environmental Impact”) as a direct result of the operations of the Facility, as compared to the operations described in the Draft EIS/TPED, the Tribe shall provide additional mitigation for those impacts in a manner to be agreed upon by the Tribe and the City. Such Increased Environmental Impact could include, without limitation, a material increase in vehicle trips, a material impact to air quality, a material impact to biological resources, material impacts to water quality or supply, material impacts to public services provided by the City, and/or any other material increased physical environmental impact of the Facility supported by substantial evidence. Notwithstanding the foregoing, the Parties agree that an increase in operations, the size of the structures on the Property, or the number of gaming machines, in and of itself, shall not be considered an Increased Environmental Impact, absent substantial evidence supporting an Increased Environmental Impact.

(c) Termination by Mutual Agreement. Notwithstanding anything to the contrary herein, the Parties may terminate this MOU by mutual written agreement.

8. MUTUAL COOPERATION/REGULAR MEETINGS

The City and the Tribe intend to advance a cooperative and mutually respectful government-to-government relationship with each other. To this end, representatives of the City and the Tribe shall meet with each other on a regular basis, but no less than every six months, to discuss any issues or concerns either or both may possess with respect to their respective communities, whether in conjunction with the Facility, impacts associated with the Facility, this MOU or otherwise.

9. ENVIRONMENTAL REVIEW/LAND USE

(a) The approval of this MOU is exempt from environmental review under CEQA pursuant to CEQA Guidelines § 15378(b)(4). The approval of this MOU does not constitute the approval of a “project” under CEQA because it provides for the creation of a government funding mechanism or other government fiscal activities, which do not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment. This MOU requires the Tribe to make mitigation payments; however, the City retains discretion to elect not to implement any or all of the specific mitigation measures and programs identified in this MOU. Further this MOU does not obligate the City to undertake a specified mitigation program or construction project nor does it set a time for development, and the approval of this MOU does not constitute the approval of any particular project at the Property, or otherwise. Notwithstanding the foregoing, the Parties acknowledge that the EIS/TPED is evaluating the environmental impacts of the Facility and provides for the mitigation

thereof, and the Tribe agrees to comply with all mitigation measures imposed on it through the EIS/TPED process.

(b) The Parties further acknowledge and agree that: (i) the Tribe is not a public agency subject to CEQA; (ii) the placement of the Property into trust with the United States federal government is not subject to CEQA or to City environmental review, design, land use or land development ordinances, plans, manuals, or standards; (iii) if the Property is placed in trust with the United States federal government, the City does not have regulatory authority over the Property to approve, disapprove, or otherwise exercise land use control regarding the development of the Property or the Facility; and (iv) the City is not approving, disapproving or otherwise exercising land use approval or discretion regarding the Facility by entering this MOU. To the extent that the City is required to further comply with CEQA with respect to any City improvements, programs or activities identified in, funded by, or related to this MOU, the City will comply with CEQA prior to approving or implementing such improvements, programs or activities. This MOU does not restrict the City's discretion to evaluate the impacts of such improvement, programs or activities, identify and adopt mitigation for such impacts, consider and approve alternatives designed to lessen such impacts, or deny approvals necessary for such improvement, programs or activities.

(c) The Parties acknowledge and agree that this MOU is not intended to be and does not constitute a development agreement for the purposes of Government Code section 65864 *et seq.* Nor does this MOU commit the City to implement any public improvement, or to take any action that may result in physical changes in the environment.

## 10. TRIBAL SOVEREIGNTY

The Parties acknowledge and agree that the Tribe:

- (a) Is a federally recognized Indian Tribe.
- (b) Is not generally subject to the jurisdiction of the City or its laws, rules, regulations and ordinances.
- (c) Has the right to have land taken into trust by the United States for the benefit of the Tribe.
- (d) Has not submitted to, and nothing in this MOU is intended to constitute or shall be construed as constituting a submission by the Tribe to, the jurisdiction of:
  - (i) the City or any of its subdivisions or departments;
  - (ii) any of its or their respective officials, employees, inspectors, or contractors; or

(iii) any of its or their respective laws, rules, regulations, ordinances, general plans, or specific plans.

## 11. LIMITED WAIVER OF SOVEREIGN IMMUNITY

(a) Notwithstanding any other provision of this MOU, the Tribe expressly and irrevocably grants a limited waiver of sovereign immunity (and any defenses based thereon) in favor of the City, but not as to any other person or entity, as to any dispute which arises under this MOU and not as to any other action, matters or disputes. The Tribe does not waive its sovereign immunity with respect to: (i) actions by third parties, except for parties acting on behalf of, under authorization from, or pursuant to a contract with, the Tribe or City; or (ii) disputes between the Tribe and the City which do not arise under this MOU.

(b) The Parties acknowledge and agree that this MOU, except as otherwise specified or provided by otherwise applicable law, is not intended to constitute, and shall not be construed as constituting, a submission by the Tribe to the general jurisdiction of: (i) the City or any or any of its departments; (ii) any of its or their respective officials, employees, inspectors or contractors; or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans, or specific plans.

## 12. REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Party represents, warrants and covenants to the other Party as follows:

(a) Authority. Such Party has the legal power and authority to execute and deliver this MOU and to perform its obligations under this MOU. Each person executing this MOU on behalf of such Party is duly authorized to execute and deliver this MOU on behalf of such Party.

(b) Enforceability/Binding Agreement. This MOU constitutes the legal, valid and binding obligation of each Party, enforceable against such Party, including all officers, agents and employees. In accordance with its terms, and, once executed and delivered, this MOU cannot be invalidated pursuant to any subsequent action of the City Council of the City or the Tribal Council or General Council of the Tribe, as applicable, except as set forth herein.

(c) No Conflict. Each Party represents and warrants that the approval, execution, delivery and performance of this MOU does not conflict with any other agreement to which such Party is a party and does not violate or require any action which has not been taken under any applicable federal, state, or tribal law, statute, rule, regulation, ordinance, general plan, specific plan or court order or decree applicable to such Party.

13. GENERAL PROVISIONS

(a) No Waivers. A waiver of any breach of any provision of this MOU shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision operate as a waiver of such provision or of any other provisions.

(b) No Third Party Beneficiary. This MOU is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. This MOU is not intended to, and shall not be construed to, create any right on the part of any third party to bring any action or otherwise enforce any of its terms.

(c) Indemnification. The Tribe agrees to defend, indemnify, and hold harmless the City (with counsel reasonably acceptable to the City) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the City which challenges the City's approval, execution, or delivery of this MOU and/or the letter to the BIA required by Section 6.

(d) Notice. All notices required by this MOU shall be deemed to have been given when made in writing and hand delivered or mailed, certified, return receipt requested, to the respective Parties and their representatives at their respective addresses as set forth below or such other addresses as they may provide, in writing as set forth above, to the other Party from time to time:

**TO CITY:**

Notice to City: City of Elk Grove  
Attn: City Manager  
8401 Laguna Palms Way  
Elk Grove, CA 95758

With copy to: City of Elk Grove  
Attn: City Attorney  
8401 Laguna Palms Way  
Elk Grove, CA 95758

**TO TRIBE:**

Notice to Tribe: Wilton Rancheria  
Attn: Chairperson  
9728 Kent St  
Elk Grove, CA 95624

With copy to:

Wilton Rancheria  
Attn: Tribal Attorney  
9728 Kent St  
Elk Grove, CA 95624

(e) Governing Law. The terms and conditions of this MOU, which are contractual in nature and not mere recitals, shall be interpreted under the laws of the State of California or, as applicable, federal law. Should any judicial proceeding be brought relating to this MOU, venue shall lie exclusively, at the option of the filing party, in the Sacramento Superior Court or the United States District Court for the Eastern District of California.

(f) Limitation on Remedies. In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation. Notwithstanding anything in this MOU to the contrary, the Tribe hereby waives any and all claims for money damages against the City for breach of this MOU. Nothing in this section is intended to, nor does it, limit the Tribe's or the City's rights to equitable remedies as permitted by law including, without limitation, injunctive or declaratory relief. Nothing herein shall limit the City's ability to seek money damages should the Tribe fail to make payments or fulfill other financial obligations under this MOU.

(g) Construction and Interpretation of MOU. This MOU, including all recitals, together with Exhibits A, B, C, and D constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, and/or drafts regarding this MOU, whether written or oral. Each Party is represented by legal counsel and has consulted with legal counsel regarding the terms of this MOU. In the event of a dispute between the Parties as to the language of this MOU or any amendment to this MOU or the construction or meaning of any term contained in this MOU or any amendment to this MOU, this MOU or any amendment to this MOU shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, either Party based on the preparation or negotiation of this MOU or any amendment to this MOU.

(h) Amendments. This MOU may be modified or amended only by mutual and written agreement of the Parties.

(i) Force Majeure. If an event beyond the reasonable control of the Tribe occurs, including, but not limited to, force majeure, war or insurrection, fires, natural calamities, riots, significant changes in law, regulation or governmental policy, the inability of the Tribe to obtain or operate under a Tribal-State compact that would allow for Class III gaming, or demands or requirements of governmental agencies other than the City, that prevents Class III gaming operations at the Facility, the Tribe's obligations under this Agreement shall be suspended as of the date of such event and until such time as such event has subsided, if ever, provided that the



Tribe provides written notice to the City within seventy-two (72) hours of the event justifying the suspension or termination of operations. The City reserves the right to contest the Tribe's determination of the event justifying the suspension of such gaming operations. Nothing in this Section shall reduce the Tribe's liability for contributions or other payments that become due or payable prior to the date such gaming operations are suspended or terminated pursuant to this Section.

(j) Severability. Notwithstanding any provision of applicable law to the contrary, if any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, this MOU shall be construed and enforced as if such void, illegal, invalid, or unenforceable provision had never comprised a part of this MOU, and the remaining provisions of this MOU shall remain in full force and effect and shall not be affected by the void, illegal, invalid, or unenforceable provision or by its severance from this MOU.

(k) Headings and Captions. Headings and captions on sections and subsections are provided for convenience of the Parties only and shall not be considered in the construction or interpretation of this MOU, nor limit, amend or affect the meaning of the provision to which they pertain.

(l) No Joint Venture or Partnership. This MOU does not create any form of joint venture, partnership or other association between the City and the Tribe, and the City and the Tribe agree that nothing in this MOU or in any document executed in connection with it shall be construed as creating any such relationship between City and the Tribe.

(m) Time is of the Essence. Time is of the essence of each and every provision of this MOU.

**IN WITNESS WHEREOF**, the Parties have executed this MOU effective as of the date first set forth above.

CITY OF ELK GROVE

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Laura Gill, City Manager  
City of Elk Grove

APPROVED AS TO FORM:

\_\_\_\_\_  
Jonathan P. Hobbs,  
City Attorney, City of Elk Grove

ATTEST:

\_\_\_\_\_  
Jason Lindgren,  
City Clerk, City of Elk Grove

WILTON RANCHERIA

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
Raymond Hitchcock, Chairperson

ATTEST:

\_\_\_\_\_  
Cameron Hodson,  
Vice-Chairperson, Wilton Rancheria

## EXHIBIT A

### LEGAL DESCRIPTION

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

Commencing at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S.6815; Thence leaving said Point of Commencement along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the true Point of Beginning. Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet; 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, long a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;

- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;
- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 2427'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the POINT OF BEGINNING.

Containing 35.92 acres, more or less.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

May 23, 2016

END OF DESCRIPTION

PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

EXHIBIT A (Cont'd)  
MAP OF PROPERTY

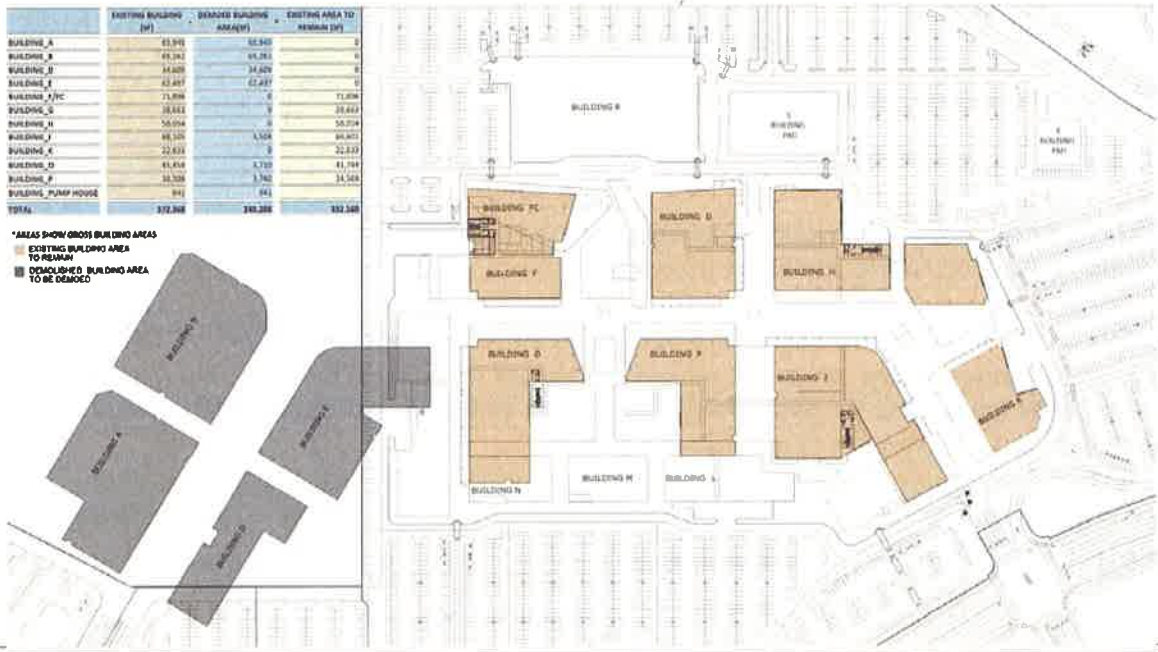


**Exhibit B**

<b>DEIS/TPED Mitigation Measure.</b>	<b>Description.</b>
5.8.2. U	<b>Promenade Parkway/Bilby Road Intersection.</b> Widening WB approach to provide three left-turn lanes, one through lane, and one right-turn lane; and a NB right-turn overlap signal phase shall be provided during the WB left-turn phase.
5.8.2. V.	<b>Grant Line Road Widening:</b> Widening Grant Line Road to four lanes from Waterman Road to Bradshaw Road.
5.8.2. W.	<b>Kammerer Road Widening:</b> Contributing 6% fair share of widening Kammerer Road from SR-99 to Bruceville Road (where it has no shoulders), as well as ultimate connection from I-5 to Hwy 99.
5.8.3. FF.	<b>Future Promenade Parkway/Kammerer Road Improvements.</b> Future optimizing signal timings at the Promenade Parkway/Kammerer Road intersection, reduction of the width of the raised median at the WB approach to provide a second left-turn lane, and a NB right-turn overlap signal phase during the WB left-turn phase.
5.8.3. GG	<b>Future Grant Line Road/East Stockton Boulevard Improvements.</b> Future re-striping the SB approach to provide one left-turn lane, one shared through/right lane, and one right-turn lane. Future converting the NB/SB signal phasing from split to protected left-turn phasing. Future implementing traffic signal coordination with adjacent signalized intersections to improve progression along Grant Line Road during weekday PM peak period.

EXHIBIT C

228



The Outlet Collection At Elk Grove

EXISTING & DEMOLISHED BUILDING DIAGRAM August 15, 2014 04



EXHIBIT D

Lawrence S. Roberts  
Assistant Secretary - Indian Affairs  
MS-3642-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

**Subject: Wilton Rancheria Fee-to-Trust and Casino Project**

Dear Assistant Secretary Roberts:

The City of Elk Grove acknowledges and respects the tribal sovereignty of Wilton Rancheria, a federally-recognized Native American tribe.

The City and the Tribe have executed a Memorandum of Understanding (MOU) regarding the complete mitigation of the proposed project's potential impacts to the City and City services. The City does not oppose the application of the Tribe to the United States to take the identified lands into trust for the benefit of the Tribe.

If we can answer any questions or provide additional clarification, please contact City Manager Laura Gill at (916) 478-2201 or [lgill@elkgrovecity.org](mailto:lgill@elkgrovecity.org).

Sincerely,

Gary Davis  
Mayor



CITY OF  
**ELK GROVE**  
PROUD HERITAGE. BRIGHT FUTURE.

Phone: 916.683.7111  
Fax: 916.627.4200

Web: [www.elkgrovecity.org](http://www.elkgrovecity.org)

8401 Laguna Palms Way  
Elk Grove, California 95758

February 18, 2016

Mr. John Rydzik  
Chief Division of Environmental, Cultural Resource Management and Safety  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, CA 95825

Sent via e-mail [john.rydzik@bia.gov](mailto:john.rydzik@bia.gov) and U.S. Mail

RE: Draft Environmental Impact Statement/Tribal Project Environmental Document Wilton Rancheria Fee-To-Trust and Casino Project

Dear Mr. Rydzik,

The City of Elk Grove (City) has reviewed the above referenced environmental document. I submit this comment letter, as well as the attached technical memorandums, for consideration in the preparation of the Final Environmental Impact Statement (EIS). Most of the comments in this letter and the attached technical memorandums are in regards to Alternative F because that is the only alternative within the City limits. While there is not an application at this time to take the Alternative F site into trust, our understanding is that this is still the appropriate time to comment on the Alternative F site.

The discussion below is in relation to fiscal impacts on the City's infrastructure and services. Further discussion of impacts will also occur in the attached technical memorandum.

**Police Services.** Page 2-28 of the Draft EIS it states that, "The City of Elk Grove Police Department EGPD in conjunction with Tribal security would provide law enforcement for the gaming facility and hotel complex." While this is an accurate statement if the facility were located within City limits, there is not a full discussion of how impacts to law enforcement would be mitigated. The EIS states the Project would generate a large volume of visitors to the City of between 8,100-9,000 on a week day and 12,900-14,200 on a weekend. Page 4.7-13 states there is an MOU with the City to provide "a framework for the Tribe to compensate" the City for public services. However, there are no further specifics. The number of law enforcement officers patrolling at this time does not take into account a facility of this size. This concern is acknowledged on page 4.7-22, where it states: "Destination casinos, by their nature, increase the volume of people in a given community." Wherever that volume of people is introduced the volume of crime but not necessarily the severity is expected to increase. In order to mitigate that volume increase the City requests that those mitigations be worked out now between the City and the Rancheria to avoid impact to the City.

**Tax Revenues.** The City is also concerned about impact to tax revenue. If Wilton Rancheria was to submit an application to put the property identified as Alternative F in trust, the property would no longer be subject to property tax, nor would the project be required to pay the City's impact or building permit fees. The property in question is currently zoned commercial, and the City would expect to receive significant sales tax from the property because it is adjacent to the approved outlet mall. In addition, any hotel on the property would not be subject to the City's uniform transient occupancy tax codified in Chapter 3.08 of the Elk Grove Municipal Code. As a former budget director, I can tell you that all of these revenue sources for the City are significant. While the EIS suggests that payments made to the local jurisdictions outweigh this lost revenue, there is not an analysis showing this to be true. Thus, the City requests working out the mitigation for lost revenues now.

**Public Facilities.** The Project will also impact public facilities located in the City of Elk Grove, which include but are not limited to libraries, trails, and parks. While the City is not the main agency that deals with parks, it does own some parks. Page 4-27 states that the Project does not anticipate patrons would visit libraries and parks, so therefore, there is no impact. This statement does not take into account all of the employees that the project would need and likely necessitate relocation to the City for at least a portion. The economic impact statement included in the Draft EIS (Volume 2, Appendix H, page 81) states that the casino would generate an estimated 2,914 jobs. It is fair to assume that a portion of those individuals filling those jobs would not be current residents; thus, the new residents would generate additional need for City facilities. The EIS assumes that 80% of the positions would go to Sacramento County residents without a basis or explanation for this percentage. Further discussion and analyses would be useful to help understand any impacts to the City.

The City acknowledges that this project is not subject to its existing codes, including the Lent Ranch Special Planning Area that currently controls the property described in Alternative F. However, a discussion of the City's Codes in relation to this Project is an objective measure by which the City can relay comments related to the casino project. Please find attached the aforementioned technical memorandum from the City's experts. Those memorandums cover aesthetics, air quality, land use, cultural resources, noise, police services, traffic, transit, water, sewer, and solid waste.

Thank you for the opportunity to comment. If you should have any questions, please feel free to contact me.

Respectfully,



Laura S. Gill  
City Manager  
City of Elk Grove

# Interoffice Memorandum



January 28, 2016

Date

Laura Gill, City Manager

To

Christopher Jordan, AICP,  
Assistant to the City Manager

From

Wilton Rancheria Draft EIS Review

Subject

The following are comments and concerns with the Draft EIS prepared for the Wilton Rancheria Fee-to-Trust and Casino Project.

## Introduction

The following are comments on Chapter 1 of the Draft EIS:

1. Figure 1-5 identifies the incorrect Assessor's Parcel Numbers (APN) for the site. The correct APN is 134-1010-001.

## Affected Environment

The following are comments on Chapter 3 of the Draft EIS:

2. Section 3.3.3 (page 3.3-15) provides incorrect information on groundwater level and supply and references a City system. The City is not a water provider. This section should be updated to reflect the actual water provider, who is Sacramento County Water Agency.
3. Section 3.4 (page 3.4-12) references sensitive air quality receptors near the Project sites. For Alternative F, the discussion does not reference the proximity to approved residential Projects, such as Sterling Meadows. This is information that should be referenced in this section and used in the analysis portion of the document.
4. Page 3.6-9 (Cultural and Paleontological Resources) identifies that Alternative F is over a half mile away from any residential concentration. The site, however, is 1,500 feet from the Hampton Oaks neighborhood. Additionally, approved residential projects are approximately 1,000 feet to the west of the site. This is information that should be referenced in this section and used in the analysis portion of the document.
5. Section 3.9.3 (Elk Grove Mall Site, Land Use discussion) – The following is a summary of the issues with this section. Please see attached track changes for more details.

- a. The governing zoning for the site is the Lent Ranch Special Planning Area, not a specific plan. The LRSPA, as applicable to the site, was last amended in October 2014.
  - b. As an SPA, the LRSPA is a part of the City's Zoning Code (Title 23 of the Municipal Code). Where the SPA is silent, the balance of the Zoning Code prevails; where there is a conflict, the SPA prevails.
  - c. The list of "zoning designations" on page 3.9-16 is actually a list of General Plan Land Use designations.
  - d. There are no airstrips near the Mall site.
  - e. In the Agricultural section, the City does not have an Urban Policy Area, nor an Urban Services Area. Rather, these are County provisions not applicable in City limits.
  - f. Figure 3.9-3 is incorrect. Land uses conform to the property limits. Specifically, the entirety of the Project Site is designated Commercial.
6. Page 3.10-10
- a. The nearest CCSD Fire Station is across SR 99 on Survey Road at the training facility. A closer station is planned at Kammerer Road and Lotz Parkway as part of the Sterling Meadows development, but has not been constructed. This should be referenced in the discussion.
  - b. The nearest trauma center is the Kaiser South Sacramento facility at Mack Road in the City of Sacramento. See [http://gis.oshpd.ca.gov/atlas/topics/tc\\_dashboard](http://gis.oshpd.ca.gov/atlas/topics/tc_dashboard).
7. Page 3.11-5 (Noise) – The Elk Grove Noise Element should be referenced in this section. It can be found online at [http://www.elkgrovecity.org/city\\_hall/departments\\_divisions/planning/land\\_use\\_regulations/general\\_plan\\_and\\_community\\_plans/](http://www.elkgrovecity.org/city_hall/departments_divisions/planning/land_use_regulations/general_plan_and_community_plans/).
8. On pages 3.13-13 & 14:
- a. See previous comments re: land use and the LRSPA.
  - b. A discussion should be added regarding Elk Grove Municipal Code Chapter 19.12 (Trees).
  - c. The Mall site has been maintained. Weeds are mowed on an annual basis and the site is patrolled by security personnel.
  - d. The viewsheds of Alternative F presented in section are all on-site of the Project, unlike the other alternatives. The analysis that follows in Chapter 4 would be stronger if viewsheds from State Route 99 (driver perspective) and the residential areas to the north and west were included. This is especially important because the hotel would be taller than any building in the City or allowed by Code (LRSPA has a maximum height allowed of 100 feet in the Regional Mall district).

#### **Environmental Consequences: Wilton Sites (Alternatives D & E)**

- 9. Impacts from these alternatives would substantially modify the character and quality of the Wilton and Sheldon communities. Particularly, the traffic volumes and requirement improvements at Grant Line and Wilton and along Wilton Road are major physical

changes. Further analysis of the necessary mitigation measures on the environment are encouraged.

10. The Transit discussion on page 4.8-40 references the Twin Cities site, which is not consistent with the intended purpose of the paragraph. This should be corrected to read "The Historic Rancheria Site."

#### **Environmental Consequences: Mall Site (Alternative F)**

11. The analysis in section 4.7 (Socioeconomic Conditions) only analyzes the primary region of impact (the City of Galt) and therefore only works with Alternatives A, B, and C. It may not adequately analyze the potential impacts on Unincorporated Sacramento County (Alternatives D and E) or Elk Grove (Alternative F). The analysis should be supplemented with a discussion of why the approach is valid/justified for Alternatives D, E, and F.
12. Section 4.9.6 (Land Use):
  - a. If the Elk Grove site is selected, a determination of General Plan conformity is required under the Memorandum of Understanding Among the County of Sacramento, City of Elk Grove, and the Wilton Rancheria (see Section 3(a)(iii)). As such, Policy LU-1 of the General Plan should be added to the analysis in Table 4.9-4.
  - b. Specific discussion of consistency with the Lent Ranch Special Planning Area (zoning) should be included in this section.
  - c. This section concludes that the Project would be consistent with the Mall project as it is a large retail facility. While this may be the case, an analysis of differences in floor-area-ratio, building height, setbacks, and other land use metrics should be included to help document the consistency.
13. As previously mentioned, Kaiser South Sacramento is the designated trauma center for this area. Section 4.10.6 should be updated to reflect this.
14. Section 4.11.6, Construction Noise:
  - a. The analysis indicates that pile-driving is not proposed for the development. Given the soil conditions in the Sacramento Valley, construction of a 12-story hotel may be more economical with pile foundation. Therefore, the analysis may not be sufficient, if pile driving is contemplated.
  - b. The operational noise analysis only compares to the NAC and Sacramento County thresholds. It does not, and should, compare the Project to the City of Elk Grove Noise standards and policies.
15. All of the viewsheds analyzed for Alternative F are internal to the property. In section 4.13.6, no analysis is presented on potential impacts from adjoining properties, including, but not limited to, the Kaiser medical offices, residential uses across Highway 99, or views from the Highway itself. Further, the analysis identifies that the Project will improve the visual character of the area in comparison to the existing conditions. More information should be provided to document the impact of a 12-story hotel building on the broader surrounding conditions. There are no similar buildings in the Elk Grove area and such a project could have impacts on the visual character of the area not unlike that described in Alternative A.
16. On Page 4.14-13 (Noise), the discussion references imposition of Elk Grove regulations regarding noise. However, in the noise impact analysis section (as discussed above),

there are no references to these regulations, nor an analysis of consistency with Elk Grove noise policies found in the General Plan. The document should be updated for consistency and to clarify what standards the Project will be following.

17. The Indirect Effects from Utility/Infrastructure Improvements discussion in Section 4.14.2 excludes an analysis on the indirect effects of connecting to the public improvements in the Mall alternative. If not addressed elsewhere in the document, impacts to the sewer lift station and downstream trunk and interceptor capacity, as well as off-site well and treatment capacity for potable water, should be addressed.
18. Table 4.15-2 lists Cumulative Development in the City of Elk Grove that is included in the cumulative impact analysis. This table is incomplete and, in some places, inaccurate. For instance:
  - a. The Lent Ranch Special Planning Area is 295 acres in size, but its development is limited to approximately 3.1 million square feet of retail and 280 multifamily dwellings. No single family residential development is approved.
  - b. The table does not include the Sterling Meadows project adjacent to Lent Ranch, which includes 976 single family units and 200 units of multifamily as proposed and approved. The Large Lot Final Map for the project has recorded and improvement plans for the phased subdivision are being reviewed.
  - c. The Southeast Policy Area is not represented on the table. This project has a maximum development potential of 4,790 dwelling units and 23,410 jobs.
  - d. The Laguna Ridge Specific Plan is 1,900 acres, not 7,762. It has a build-out potential of 7,762 dwelling units.
19. On page 4.15-49 (Land Use), reference is made to Section 4.9 and a statement that the Tribe would develop the site consistent with City land use and development regulations. No such statement is present in this section; rather, the section states "The Tribal Government desires to work cooperatively with local and State authorities on matters related to land use." This section should be clarified.
20. Page 4.15-52 (Aesthetics) states: "...the development of Alternative F would be generally consistent with the visual goals of Elk Grove land use regulations." Given that the proposed hotel component of the Project is 12 stories, it would be helpful if the analysis described in more detail how the Project would not have an aesthetic impact on the community.

## **Mitigation**

21. Section 5.4.2 identifies mitigation relative to operation and climate change. Mitigation for GHG/climate change impacts should include broader mitigation requirements to conform to Tier 1 CalGreen building efficiency standards, achieve Silver LEED standard (or better), or achieve other similar building efficiency standard as called for in the City's adopted Climate Action Plan. This approach would provide a broader range of options to achieving GHG reductions than those specifically listed.
22. In Mitigation 5.7.C on Page 5-16, is this payment consistent or similar to other mitigation payments for similar projects in the State? Additionally, shouldn't the payment be annually adjusted based upon the local Consumer Price Index?
23. I recommend that the following additional mitigation measures be explored for the Project:

- a. Require that all landscaping be designed and installed consistent with the requirements of the local agency and the State of California Model Water Efficient Landscape Ordinance in order to reduce the use of potable water for landscaping purposes.
- b. Require the extension of the "Purple Pipe" treated wastewater system from the Laguna Ridge area to the Project site to provide water for irrigation and (to the extent feasible) toilet systems within the Project. This would help reduce the overall water demand for the Project once the "Purple Pipe" system is operating with treated water from the Regional San plant after completion of the EcoWater Project.
- c. See previous comment on Section 5.4.2.



**Recommended changes to Section 3.9.3**

**3.9.3 ELK GROVE MALL SITE -ALTERNATIVE F**

**Guidance Documents and Zoning Ordinance**

Land use planning and development for the Mall site is guided by the City of Elk Grove General Plan (Elk Grove GP, 2009) and the Lent Ranch Specific Plan (2001).

***Elk Grove General Plan***

The objectives of the Elk Grove ~~GP~~ General Plan (adopted by City July 1, 2000) are to provide guidance to the development and management of land within the City of Elk Grove (Elk Grove). The Elk Grove ~~GP~~ General Plan summarizes its policies and implementation strategies as they relate to the City’s goals and objectives. The ~~GP~~ General Plan covers 16 elements, including Land Use. The Land Use Policy map describes what type of new land uses are desired or whether existing open lands will be retained for agriculture, habitat, or other uses.

In some areas, the Land Use Policy Map shows future uses which differ from the existing land uses. The Land Use Map portrays the ultimate uses of land in and around the community through land use designations (City of Elk Grove, 2009). **Table 3.9-3** depicts the City of Elk Grove’s strategies and policies applicable to the Mall site.

**TABLE  
3.9-3  
CITY OF ELK GROVE APPLICABLE GENERAL PLAN STRATEGIES AND POLICIES**

Policies	City of Elk Grove Planning Polices
LU-4	All land use approvals, including, but not limited to: <ul style="list-style-type: none"> <li>• Zoning,</li> <li>• Planning documents (such as Specific Plans and Special Planning Areas),</li> <li>• Tentative Maps,</li> <li>• Conditional Use Permits,</li> <li>• Etc.,</li> </ul> shall be required to conform with the General Plan.
LU-7	The City encourages disclosure of potential land use compatibility issues such as noise, dust, odors, etc. in order to provide potential purchasers with complete information to make informed decisions about purchasing property.
LU -9	Land uses in the vicinity of areas designated as “Heavy Industry” on the Land Use Policy Map should include transitions in intensity, buffers, or other methods to reduce potential impacts on residential uses. Buffers may include land designated for other uses, such as Light Industry, commercial, or open spaces.
LU-35	Land uses in the vicinity of areas designated as “Heavy Industry” on the Land Use Policy Map should include transitions in intensity, buffers, or other methods to reduce potential impacts on residential uses. Buffers may include land designated for other uses, such as Light Industry, commercial, or open spaces.
LU-36	Signs should be used primarily to facilitate business identification, rather than the advertisement of goods and services. Sign size limits and locations should be designated consistent with this policy.
Source: City of Elk Grove, 2009	

***Lent Ranch Marketplace Specific Plan***

The Lent Ranch Marketplace Specific Plan (SP) as approved by Elk Grove City Council on June 27,

2001, guides and controls the nature of development within the Lent Ranch project area, a portion of which is the site of the proposed development of the Mall site Alternative. The SP provides standards, guidelines, and procedures necessary to satisfy the provisions in the City Code (City of Elk Grove, 2001). The Mall site and surrounding properties are located within the Lent Ranch Special Planning Area (SPA).

This 295-acre SPA has been designated for future commercial land uses. The Mall site is divided into five land uses consisting of a regional mall, community commercial, office entertainment, visitor commercial, and multi-family residential uses and is zoned SPA-LR by the City (City of Elk Grove, 2001). The SPA is consistent with the Elk Grove GP and related regulations, policies, ordinances and programs governing zoning amendments and adoption of SPA land use plans. The various land uses permitted within the SPA are consistent with the goals, policies, and general land uses described in the General Plan.

### ***Elk Grove Zoning Code***

Title 23, Zoning, of the Elk Grove Municipal Zoning Code (Elk Grove Code) carries out the policies of the Elk Grove GP General Plan by classifying and regulating the uses and development of land and structures within Elk Grove to be consistent with the GP General Plan. The Zoning Code is adopted to protect and promote the public health, safety and convenience, prosperity, and general welfare of residence and business in Elk Grove. A description of the applicable zoning designations for the Mall site and vicinity are described below.

### ***Lent Ranch Special Planning Area***

The Lent Ranch Special Planning Area (LRSPA) is a special purpose zoning district created for the area surrounding and including the Mall site. The purpose of a special planning area district is to designate areas for unique and imaginative planning standards and regulations not provided through the application of standard zoning districts. The City established the LRSPA in June 2001 to provide the standards, design guidelines, and entitlement procedures for development within the SPA. The majority of the 295-acre LRSPA is designed for commercial uses, including the Mall site.

### ***Commercial***

The Commercial designation is generally characterized by office, professional, and retail uses in any mix. Residential uses are not permitted.

### ***Commercial/Office***

Commercial/Office designation is generally characterized by office, professional, and retail uses in any mix. Residential uses are not permitted.

### ***Commercial/Office/Multi-Family***

Commercial/Office/Multi-Family land use designation is generally characterized by office, professional, and retail uses in any mix. Also includes high density residential development.

#### *Heavy Industrial*

The Heavy Industry land use designation is generally characterized by industrial or manufacturing activities, which may occur inside or outside of an enclosed building.

#### *High Density Residential*

The High Density Residential designation may consist of apartments, condominiums, or clustered single family (City of Elk Grove, 2009).

#### *Light Industrial*

The Light Industry designation is generally characterized by industrial or manufacturing activities, which occur entirely within an enclosed building.

#### *Low Density Residential*

The Low Density Residential designation is characterized by lot sizes that vary, generally from approximately 6,000 to 10,000 square feet (SF).

### **Regional and Local Setting**

The Mall site is located in the City of Elk Grove, immediately west of Highway 99, north of Kammerer Road, and east of Promenade Parkway. The Mall site was partially developed in 2008 with parking facilities and shell commercial structures including department stores and a movie theater; however, these commercial structures are only partially constructed and are vacant. Due to the downturn in the economy, the project has remained in a state of suspension for several years. In 2014, the City issued new approvals for a portion of the site. Development of this area is pending. The partially developed Both the 2008 and 2014 projects was are consistent with the City approved Lent Ranch SP-LRSPA.

### **Site and Vicinity Land Use**

Land use on the Mall site is designated as Commercial in the Elk Grove GP (**Figure 3.9-3**). Existing land use to the immediate north of the Mall site is designated Commercial-Office and Commercial/Office. Across SR 99, and further north along Promenade Parkway land use is designated Heavy Industrial and Light Industrial.

Land use to the west is zoned Commercial, Commercial/Office/Multi-Family, Medium Density ResidencesResidential, and Low Density ResidencesResidential (City of Elk Grove, 2009). Land to the south of the Mall site is outside of Elk Grove's boundaries and designated by the County as Agricultural Croplands (Sacramento County, 2011). Existing land uses northwest and west of the

Mall site include vacant land and agricultural uses, to the east is industrial, and to the north is primarily commercial. The nearest airstrip is approximately two miles northeast of the Mall site.

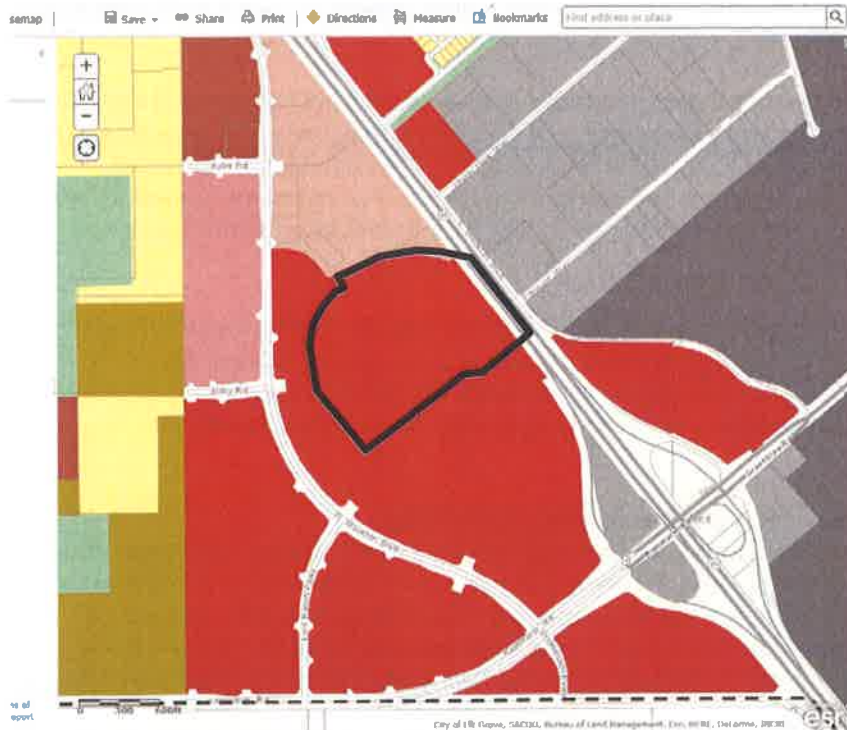
## Agriculture

Prior to the incorporation of Elk Grove, the area of the Lent Ranch SPA and the surrounding parcels were in agricultural production, but were undergoing change as the area developed. ~~As part of the City's planning process after Elk Grove was incorporated, Lent Ranch SPA was included within the City's Urban Policy Area and the Urban Service Boundary. The designation of the area for urban development and subsequent development both within and outside of the SPA has removed much of the land from agricultural use. As part of the establishment of the SPA, an Environmental Impact Report (EIR) was prepared (City of Elk Grove, 2000); this document addressed the environmental impacts to agriculture resources. These impacts were mitigated prior to construction in 2008 pursuant to the mitigation measures established in the EIR.~~

There are no farming operations on the Mall site or infrastructure that would support land cultivation. Consultation with the NRCS has determined that the Mall Site is not subject to protection under the FPPA due to the fact that it has been set aside for urban development. Furthermore, the Mall site is not under an active Williamson Act Contract (DOC, 2012).

The California FMMP classifies most of the Mall site as urban and built-up land.

### Corrected Figure 3.9-3: Elk Grove General Plan Land Use Designations



# Interoffice Memorandum



February 11, 2016

Date

Laura Gill, City Manager

To

Robert Lehner, Chief of Police

Elk Grove Police Department

From

Wilton Rancheria Draft EIS Review

Subject

The following are my comments and considerations as related to the Wilton Rancheria Draft EIS review:

**1. Section 3.10.4 Law Enforcement Services**

The Draft EIS (page 3.10-8) under the heading "Elk Grove Mall Site" states that the Elk Grove Police Department has approximately 207 staff positions, with 131 sworn police officers and 77 non-sworn management, administration and technical positions.

As of 02/07/2016, EGPD staffing consists of 207.5 staff positions, 129.5 sworn positions and 78 non-sworn positions.

Additionally in this section, the Draft EIS (page 3.10-8 and 3.10-9) states that the EGPD Communication Center answers an average of 186,000 emergency and non-emergency calls annually and that in the 2012-2013 fiscal year 97,068 calls for service were received with 52,266 resulting in a unit being dispatched. For the same period, EGPD's response time to top priority calls (from call to dispatch to arrival on scene) was five minutes and 57 seconds.

Updated statistics for the calendar year of 2015 show that the EGPD Communication Center answered 154,623 emergency and non-emergency calls. During the 2015 calendar year 98,098 calls for service were received with 43,836 resulting in a unit being dispatched. EGPD's response to top priority calls was 5.8 minutes for 2015.

**2. Section 4.7.6 Alternative F – Casino Resort at Mall Site**

The Draft EIS (page 4.7-55) under the heading "Social Effects" states that the social impacts including pathological and problem gambling, and crime, would be similar to those of Alternative A (Galt site), since Alternative F is of the same size and scope. Alternative A discusses social effects as it relates to the Galt location (page 4.7-21). The subsection "Crime" (page 4.7.22 through 4.7-27) discusses the impact that the proposed Casino might have on crime in the community of Galt.

Based on an analysis detailed in Appendix N, the Draft EIS estimates a projected annual increase of 461 law enforcement calls for service and 125 arrests. Projected direct costs of these increases were determined by both the 2014-15 Galt Police Department annual budget of \$5,667,560 (page 4.7-24 and 4.7-25) and the 2014 annual arrest records of the City of Galt which resulted in 949 arrests (page 4.7-25 and 4.7-26).

Further information would be needed to determine a projected annual increase in calls for service and arrests specific to the Elk Grove location, based on EGPD's 2014-15 annual budget of \$35,458,468 or the 2015-16 budget of \$36,582,714, and EGPD's arrest records of 2098 arrests in 2014 (CJSC) or 2500 arrests in 2015 (EGPD Records).

**3. Section 4.10.6 Alternative F – Casino Resort at Mall Site**

The Draft EIS (page 4.10-26) under the heading "Law Enforcement" states that law enforcement services would be provided by the Sacramento County Sheriff's Department and/or the City of Elk Grove Police Department. Absent an MOU between the agencies, all law enforcement services would be provided by EGPD.

**4. Section 5.10.3 Law Enforcement**

The Draft EIS (page 5.27 and 5.28) discusses the implementation of mitigation measures to minimize potential impacts related to law enforcement services. Subsection "P" states that "prior to operation, the Tribe shall enter into agreements to reimburse the City of Elk Grove Police Department for quantifiable direct and indirect costs incurred in conjunction with providing law enforcement services."

Further discussion would be needed to determine mitigation measures afforded to the City by the Tribe, prior to the construction of the casino. If additional officers need to be hired by EGPD so that the City can continue to provide its existing level of service to the community, the hiring and training process can be lengthy and EGPD would need appropriate time to accomplish this.

# Interoffice Memorandum



January 28, 2016

Date

Laura Gill, City Manager

To

Farhad Iranitalab, TE

From

Wilton Rancheria Draft EIS Review

Subject

I have reviewed the traffic study prepared for this Project. I offer the following comments and considerations:

1. Page 3.8-2 & 3 (Transportation/Circulation):
  - a. The description of Grant Line Road is not current as improvements to a 4-lane facility have been completed to Waterman Road. Additionally, the railroad overcrossing is complete.
  - b. The description of Kammerer Road is not correct. The consultant should be referred City's General Plan Circulation Element as amended March 2015. Also, distinction needs to be made between the Capital SouthEast Connector and City improvements. A follow up with Public Works and Connector staff would be appropriate.
  - c. No description of Promenade Parkway is provided. This is a major road and the primary access for Alternative F.
  - d. In the Freeway Facilities discussion, reference is made to Elk Grove Road. The correct name is Elk Grove Boulevard.
2. Table 3.8-4 provides a Level of Service ("LOS") rating for existing conditions at various intersections in and around the various project alternative locations. For the intersection at Grant Line Road and Sheldon Road, was this measurement before or after completion of the signalization project that the City recently completed? If it is before, this may impact the traffic analysis.
3. Table 3.8-5 lists LOS ratings for existing conditions along various roadway segments. Is it correct that the measurements for Grant Line Road are from prior to the City's project to grade-separate the segment from East Stockton to Waterman Road? Updated measurements may be necessary to fully understand the project impacts.
4. Section 5.8, Transportation Mitigation
  - a. Recommend that fair share traffic mitigation payments be made prior to the start of construction of the Project (including any related roadway improvements completed by the Tribe), not solely prior to the road improvements. If the improvements are not being completed by the Tribe (as described in the first paragraph), then the local agency collecting the mitigation needs the flexibility to have the funds on hand to combined with other traffic impact mitigation payments

from other projects to deliver the improvements in the most efficient manner possible.

- b. Mitigation F – this agreement should also include the City for alternatives D, E, and F.
- c. Mitigation O (Grant Line Road/Wilton Road Intersection) – Impacts from this need to be further analyzed. Some conversation has occurred through the Connector project to realign Wilton Road with Pleasant Grove School Road to create a common 4-way intersection, rather than the existing off-set.



# Interoffice Memorandum



January 28, 2016

Date

Laura Gill, City Manager

To

Darren Wilson, PE, Development Services Director

From

Wilton Rancheria Draft EIS Review

Subject

The following are my comments on this document:

1. Water Supply (Sections 2.7.2, 4.10.6, 4.15.8, 5.10.1 and Appendix I):
  - a. These sections repeat the statement that "SCWA has capacity to meet anticipated demand for domestic water use under Alternative F," however, Appendix I only provides the demand calculations for the alternative but does not actually analyze if SCWA's distribution system has the capacity or not within the service area. Therefore, it is unclear what the actual impacts to SCWA's system will be as a result of this alternative.
  - b. Section 5.10.1 provides a broad measure (i.e. service agreement) for mitigating off-site options or improvements without identifying the actual, specific impacts and associated improvements necessary to mitigate those impacts.
  - c. Appendix I (page 24) states that "(SCWA's) distribution lines are more than capable of delivering the daily water demand associated with Alternative F." However, information or analysis supporting this statement is not presented in the document.
2. Wastewater (Sections 2.7.2, 4.3.6, 4.10.6, 4.15.8, 5.10.1 and Appendix I):
  - a. These sections provide the wastewater demands for Alternative F and state that there is available capacity to meet these demands at the SRCSD WWTP without analyzing and identifying the impacts to the system in between (i.e. distribution and transmission systems, the Promenade Mall/Sterling Meadows Sewer Lift Station, and other facilities).
  - b. Section 5.10.1 provides a broad measure (i.e. service agreement) for mitigating off-site options or improvements without identifying the actual, specific impacts and associated improvements necessary to mitigate those impacts.
  - c. Appendix I addresses wastewater demands for Alternative F, but states (on page 37) that "there is insufficient information available publicly for (the engineer) to perform an independent capacity study." It continues to read that "a capacity study will be required...to confirm if upgrades will be required." This document should identify the specific impacts and associated upgrades necessary to mitigate those impacts.

# Interoffice Memorandum



January 28, 2016

Date

Laura Gill, City Manager

To

Jean Foletta, Transit Manager

From

Wilton Rancheria Draft EIS Review

Subject

The following are my comments on this document:

1. Section 3.8.3 should be updated to clarify the status of e-tran services in this area. Specifically, the EIS should acknowledge the presence of bus shelters along Promenade Parkway but that no active transit service is currently operating. The EIS should go on to state that, based upon the forthcoming Comprehensive Operational Analysis, transit service would be initiated once retail and entertainment development occurs.
2. There are no references in Section 3.8 to the planned extension of fixed transit service into the City and to the Mall site. These improvements have been identified in Regional Transit's planning and the City's General Plan for some time.
3. The Traffic Study and Section 4.8 of the EIS describe the volume of trips generated by the proposed facility. However, there is no analysis on the number of trips that could occur through transit ridership rather than conventional automobiles. It would be helpful to understand the extent of transit ridership to and from the facility (whether users or employees), so that transit service can be adequately planned and budgeted. Further, it may be more efficient for these services to be provided by e-tran, rather than a shuttle bus operated by the Project as described on page 247 of the Traffic Study.
4. There appears to be a disconnect between the Traffic Study and the mitigation measures presented in the EIS. Specifically, page 247 of the Traffic Study calls for the establishment of a shuttle service between the Project and points within the City, or the establishment of other services in cooperation with e-tran. This is not identified as a mitigation measure in Chapter 5 of the EIS and should be corrected. An additional solution that is not mentioned is the extension of fixed transit to the Project site, which would provide service north into Sacramento.

# Interoffice Memorandum

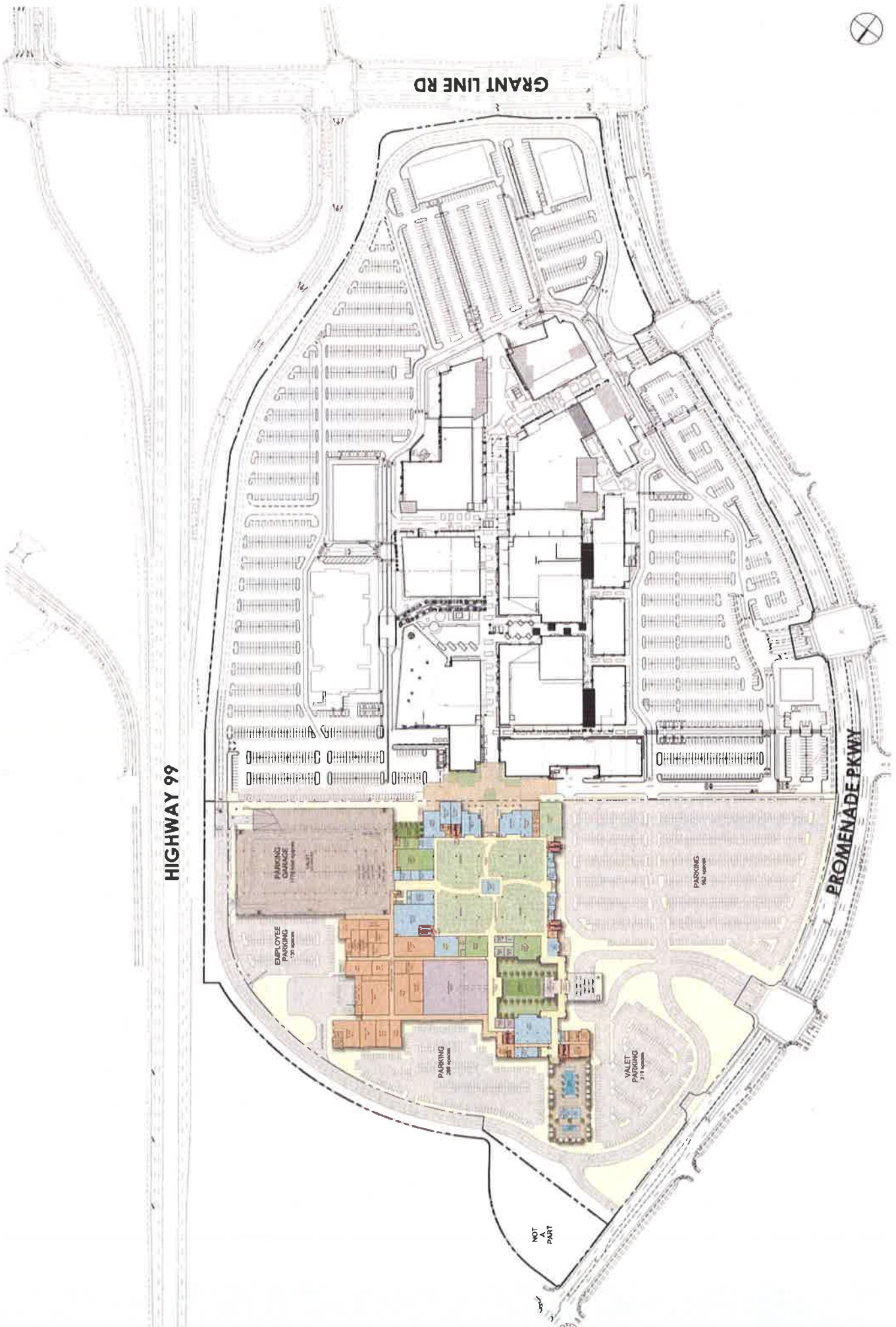


January 28, 2016  
Date  
Laura Gill, City Manager  
To  
Heather Neff, Integrated Waste Manager  
From  
Wilton Rancheria Draft EIS Review  
Subject

The following are my comments on this document:

1. Page 3.10-7 – Republic serves residential customers and the City. Commercial users may be served from Republic or one of the other approved commercial haulers. See City website for more information. The City has a contract with Forward Landfill in Stockton for residential waste. Commercial waste goes to a number of different locations depending upon which facilities the 14-registered haulers are using (it is up to them to choose). The list of facilities they use is fairly extensive.
2. Section 4.10.6, Solid Waste – The assumption that construction and demolition (C&D) and operation waste would be hauled to Kiefer Landfill is not accurate. See previous comments. Consideration in the analysis should be made for alternative locations for waste disposal.
3. Page 4.10-26 notes that the Mall site “is located within the service boundaries of the County DWMR”. The Mall site is within the City of Elk Grove and is therefore in the service boundaries of Elk Grove where service is provided to commercial customers by private hauling companies that must be registered with the City.
4. Page 4.15-50, Solid Waste – again, there is no guarantee that solid waste from the project would go solely to Kiefer. Consideration in the analysis should be made for alternative locations for waste disposal.
5. Section 5.10.2, Solid Waste - For Alternative F, the Project should be required to comply with the City’s C&D Debris Reduction, Reuse, and Recycling regulations (EGMC Chapter 30.70) and the City’s mandatory business recycling requirements (EGMC Chapter 30.60). Doing so will help to ensure that waste generated from the facility is reduced to the extent feasible, which is an improvement for the environment.















**D**



# WILTON RANCHERIA CASINO RESORT PROJECT FAQ

## PROJECT DESCRIPTION

The Federal Bureau of Indian Affairs (BIA) is preparing an Environmental Impact Statement (EIS) for Wilton Rancheria's proposed casino project. This EIS describes and analyzes six development alternatives, including a site north of Galt (Alternative A), and Alternative F, which is a 35.9-acre site located in the City of Elk Grove, just north of the approved outlet mall site at the northwest portion of the intersection of Grant Line Rd. and SR-99. On June 9, 2016 The Wilton Rancheria Tribe issued a press release that identified Alternative F, the Elk Grove site, as their preferred location for the casino resort project.

The Elk Grove alternative consists of a proposed 608,756 square foot hospitality and entertainment facility, including a 12-story 302 room hotel, a 47,634-square-foot convention center, six restaurants and bars, and a 110,260 square foot gaming floor.

More information about the project can be found on the Tribe's site at [wiltonrancheria-nsn.gov](http://wiltonrancheria-nsn.gov). The Environmental Impact Statement can be found at [www.wiltoneis.com](http://www.wiltoneis.com).



Map that shows the location of each alternative can be accessed at:

[www.wiltoneis.com](http://www.wiltoneis.com)

## FAQ FREQUENTLY ASKED QUESTIONS AND ANSWERS REGARDING THE WILTON RANCHERIA PROJECT:

**Q What role does the City of Elk Grove play in the review and approval of the Wilton Rancheria project?**

**A** The proposed casino resort project and Environmental Impact Statement (EIS) are undertakings of the Wilton Rancheria Tribe and the Bureau of Indian Affairs (BIA). The City has no land use or approval authority over the project. However, there will be impacts to the community if the Tribe receives approval to build the project. In order to mitigate those impacts, the City has negotiated an agreement with the Tribe that will provide payments to the City, Elk Grove Unified School District and local non-profits.

**Q Will there be opportunities for public comment?**

**A** As lead agency, the BIA is responsible for conducting all public outreach associated with the project and the draft EIS. An initial public hearing on the draft EIS was held on January 29, 2016 in Galt. Now that the Wilton Rancheria Tribe has named Elk Grove as its preferred site, the Tribe conducted a town-hall styled meeting in Elk Grove on July 6 at the Falls Event Center to receive community feedback and answer questions about the project. A copy of the presentation is available on the City's website. There will be an opportunity for public comment at the September 28 City Council Meeting regarding the proposed mitigation agreement with the Tribe. Once the final EIS is released by the BIA later this fall, there will be an additional 30 day public comment period.

See other side for more!



**Q What impact would the Elk Grove location have on the Outlet Collection at Elk Grove mall project?**

**A** The proposed Elk Grove casino resort location is north of the approved outlet mall site and will not impede that project from moving forward. The Howard Hughes Corporation, developer of the outlet mall continues to make progress on the development and leasing for The Outlet Collection at Elk Grove and anticipates construction in 2017. **Please note:** the outlet mall is NOT included in the trust land request; therefore, it will still be subject to all applicable state and local taxes and capital impact fees.

**Q I am concerned about the impacts of the casino on our community, including loss of future tax revenue, public safety and traffic. What is the City doing to address these concerns?**

**A** The EIS presents an evaluation of all of the alternative sites for potential impacts associated with the project including economic, social, transportation, public safety, and noise. The EIS can be found at [www.wiltoneis.com](http://www.wiltoneis.com). Prior to approval of the project from the BIA or Governor's office, the Tribe is required to negotiate agreements with affected local jurisdictions to mitigate potential impact. A Memorandum of Understanding (MOU) executed in 2011 between Wilton Rancheria, Sacramento County and the City of Elk Grove outlines the process for negotiating that agreement. Pursuant to the 2011 MOU, the City of Elk Grove and the Tribe have developed a draft mitigation MOU that provides funding to the City of Elk Grove, Elk Grove Unified School District and local non-profit organizations to pay for services such as law enforcement and traffic impacts and compensate for loss of tax revenue. The total cumulative payments from the Tribe to the community over the 20 year term of the agreement, is approximately \$132 million. This amount far exceeds that which the City would expect to receive from tax revenues associated with the mall. A copy of the staff report and MOU can be found on the City's website. Sacramento County approved a similar agreement with the Tribe in July that mitigates impacts to the court system, county roads, and social services including problem gambling, drug and alcohol and domestic violence programs.

**Q Has the City taken an official position on the location of the project?**

**A** The City has taken no official position on the project and has no vote or land use authority on where the project is located.

**Q Doesn't the MOU between the City and Tribe signify City support for the project?**

**A** The proposed MOU does not approve a project nor does it facilitate the construction of the casino. It has been developed to provide funding for impacts related to the casino, in the event that it is ultimately approved by the United States government and State of California.

**Q How can I voice my support or opposition for this project?**

**A** Due to the fact that the City has no vote or land use authority over this project, all comments should be forwarded to the BIA contact below:

**VOICE YOUR SUPPORT OR OPPOSITION**

Comments can be made to the following:

**BIA Contact Information**

John Rydzik  
Chief of the Division of Environmental,  
Cultural Resource Management and Safety  
Bureau of Indian Affairs, Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825  
(916) 978-6051

**PROJECT NEXT STEPS**

The EIS must be approved by the BIA through the Secretary of the Interior. As part of the approval process, the land would be taken into trust for the development of the project by the Tribe. The final EIS is expected to be released this fall with final approval in late 2016 or early 2017. In order to offer gambling as part of the Facility, a state gaming compact must also be approved by the Governor and ratified by the Legislature.

To learn more visit

[www.wiltoneis.com](http://www.wiltoneis.com) or [www.elkgrovecity.org](http://www.elkgrovecity.org)

**E**

## **ELK GROVE CITY COUNCIL REGULAR MEETING**

**Wednesday, September 28, 2016**

**6:00 P.M.**

**Elk Grove City Hall**

**8400 Laguna Palms Way, Elk Grove,**

3:02:01- 3:07:41 Huen: Hello. I think everyone can at least agree that, you, know, something like this would greatly alter the landscape of this city, of this community. I completely agree with Councilman Hume and Mayor Davis and respect the tribe sovereignty and their attempt to improve the livelihoods and welfare of the people. When I first heard about this, my reaction was, we don't need it, you know. A casino. Talking a casino. So, strictly that use and because if it happened down in Galt, we would have a second phase of the Mall. And so my preference had always been the second phase of the Mall. But, it's been articulated tonight and earlier by my colleagues, the importance of governance and that's just a fancy way of saying each entity has specific roles in this process. And as councilmen Hume mentioned earlier, this is a federal and state process as a city, as a local government we have a specific role and that role is mitigation of impacts determining whether we are adequately or the project would adequately mitigate those impacts. And, as a leader in this community, my responsibility is to the community, my responsibility is given that scenario, how do I ensure that we have the most mitigation for those impacts and I think the Tribe has done or has demonstrated how much they value the community of Elk Grove that they have been in before any of us and continue to want to be our partners and member of this community by investing in a community. Now, as I mentioned, I always wanted a second phase of the Mall and again that's not something in our, you know, up to us. In fact, the Mall developer, as you heard earlier tonight themselves decided they would sell or intern to a partnership or purchase sale agreement with the Tribe and I spoke personally with one of the representatives of Howard Hughes Corporation and he emphasized that a Casino would, in fact, be a catalyst, as was mentioned earlier, down in this area that they would be able to not only increase their leasing ability but also sustain that leasing in the future as tenants change over and such. And so, if you want to talk about recreational amenities, you know, the Mall has that. The Mall created jobs, but this project, if it were to be approved, and if it were to go forward and be built would also create jobs with the convention center, with the hotel, with the Spa, would also be recreational amenities. I spoke with a colleague earlier today, just coincidentally happens to live in Madera County and, you know, and this is just my attempt to research as much as I can learning about the Northfork Rancheria and the communities voter referendum at that time to defeat that they won in 2014, but then two years later they did receive approval and are moving forward and in that same community, this colleague lives, the casino that is there now, he attested that there is the best thing that's happened to that community. The amount of investment that the tribe provides, what they do for the community. It has completely turned around their community. So, as I examine that, and finally on a social issue, I have heard some testaments tonight from parents, from a gentleman talking about, you know, people's challenges in gambling and alcohol and I just want to bring it back to, one, to governance, when you, the County, our County of Sacramento has approved their MOU to offset impacts for aspects or of social impacts for alcohol and gambling and such. So, I have assurance at least

from our partners, our County that that is adequately addressed and then it gets back to as parents, as a parent myself of three children, where does my responsibility lie in terms of, you know, alcohol and gambling and things. And I think it was mentioned earlier, Sandra talked about her children, she's around gambling and she makes specific choices and that's all of us. I mean, we all have choices and so I hope that whatever happens going forward if this project does go forward, that the community of Elk Grove that includes the Wilton Rancheria can rally behind and come together as a community and move forward in whatever decision occurs. So I will say that having examined all angles of this, I believe this one will use the best thing for the community as we sit up here today. Thank you.

**F**



# EXHIBIT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID LITTLEFIELD, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
THE INTERIOR, et al.,

Defendants.

CIVIL ACTION NO.  
1:16-cv-10184-WGY

**AFFIDAVIT OF BRUCE W. MAYTUBBY IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION OF WRIT**

I, Bruce W. Maytubby, hereby declare and state as follows:

1. I am the Regional Director of the Eastern Regional Office ("Regional Office") of the Bureau of Indian Affairs ("BIA") at the United States Department of the Interior ("Department"). As Regional Director, I oversee the BIA programs and services to tribes situated within this region, including the Mashpee Wampanoag Tribe ("Tribe").
2. On September 18, 2015, the Assistant Secretary – Indian Affairs ("Assistant Secretary") issued a record of decision ("ROD") to acquire 170 acres in the Town of Mashpee and 151 acres in the City of Taunton in trust for the Tribe and to proclaim these lands to be the Tribe's initial reservation. On the same day, the Assistant Secretary sent a letter notifying me of his decision and directing the Regional Office to complete the trust transfer "[u]pon the fulfillment of the requirements of 25 C.F.R. § 151.13 and any other Departmental requirements."
3. Pursuant to the Assistant Secretary's directives, my staff completed the title work and updated the environmental documents for all 28 parcels comprising the Taunton and Mashpee

acquisitions. The environmental work consisted of updating the Environmental Compliance Review Memorandum in order to demonstrate compliance with NEPA and 602 DM 2 concerning environmental liabilities. The title work included obtaining updated title evidence from the Tribe and completing a Final Certificate of Inspection and Possession (CIP). Regional Office staff compared the Final CIP with the Preliminary Title Opinion and Initial CIP to identify and resolve any inconsistencies.

4. On November 10, 2015, and upon the Regional Office's completion of the environmental and title work, I accepted the conveyance of the Mashpee and Taunton parcels to the United States in trust and the associated trust deeds were signed. The Regional Office submitted the deeds and title documentation to the BIA Land Titles and Records Office for recordation.

5. If the United States were ordered to take the Taunton and Mashpee parcels out of trust status prior to a final court decision, the BIA would have to effectively unwind all the environmental and title work that it had completed over the course of almost three months in reliance on the September 18, 2015 ROD. This would be an extraordinary step, and there are no clear procedural steps to guide this process.

6. Reversing the trust transfer before a final decision on the merits would nullify the countless hours of labor that BIA staff have already spent on finalizing the trust transfer. It would create confusion as to the appropriate agency process for implementation, particularly given that these parcels must be re-accepted into trust if a favorable decision on the merits is later issued.

7. Moreover, divestiture of the trust title in this context will create a perplexing situation in which the ROD is still in effect and yet the subject parcels are no longer held in trust, such that the precise status of the land and BIA's responsibilities with regard to that land would be unclear. This would present BIA with a number of practical challenges. For example, BIA would need to determine whether to continue to treat the land as "Indian country" for purposes of granting the Tribe access to federal programs, services, and benefits. Any pending requests from

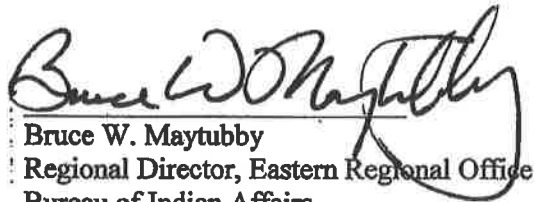
the Tribe that relate to the trust property would necessarily be delayed or denied by the BIA, in obstruction of the BIA's and the federal government's fundamental policies of tribal self-determination and tribal economic growth.

8. For example, a preliminary injunction would substantially impact BIA funding and services related to forestry and wildfire management. There are approximately 100 acres of forest land within the Tribe's trust lands. Completion of a forest inventory and development of a forest management plan covering trust land forests would be delayed, or not accomplished at all. Development of a fire management plan covering all "burnable acres" held in trust would be delayed or not accomplished at all. Development of fire cooperative agreements or contracts with local or state agencies that provide for wildland fire suppression/protection of tribal trust lands and paid for by BIA would be delayed or not accomplished at all. BIA funding can only be spent on forest inventories, forest management planning, and fire management planning for lands held in trust or restricted fee status. Moreover, BIA cannot provide funding and other assistance in regards to protection of a tribe's forest resources from wildfire, forest insect and disease problems, or forest and fire trespass when the land is not held in trust status or restricted fee status.

9. Additionally, Barstow's Pond Dam located on the Taunton properties is slated for demolition at a cost of \$1.5 million. The dam is in extremely poor condition. Funding and oversight of the proposed removal is being provided by the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Agency, with InterFluve being the project contractor. Section 404 and State of Massachusetts permits are currently in place. If the federal agencies backed out of this project due to questions over title and/or jurisdiction, regulatory authority for this dam would revert to the State of Massachusetts and the Tribe would have to bring this facility into compliance at an approximate cost of \$1-2 million depending on the level of compliance. If the properties revert to fee, it would be unlikely that BIA could provide Natural Resources trust services and contract support. Additionally, it would be very unlikely that BIA could provide contract support for any water-related project for the City of Taunton, Massachusetts.

10. BIA would also need to determine whether the land would again be subject to state/local jurisdiction, such as for law enforcement. It is possible that the State and local governments would decline to exercise regulatory and other jurisdictional authority, particularly given the potentially temporary nature of the relief. If the State and local governments declined to reassume jurisdictional authority, the BIA, along with its sister federal agencies, would need to determine whether they have the authority to step into the jurisdictional gap in order to ensure that important issues, like law enforcement, are addressed. Furthermore, it is possible that agency action taken during this jurisdictional gap could later be contested on the grounds of lack of jurisdiction. In any event, the BIA would need to work with other federal agencies, the State, and local jurisdictions to resolve all the jurisdictional confusion that is likely to result from such an action.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed this 17th day of June, 2016.



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