

Stand Up For California!

“Citizens making a difference”

www.standupca.org

P. O. Box 355
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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.¹

¹ 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.²

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

² 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.³

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

³ 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

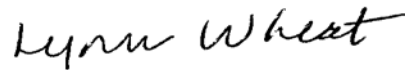
We hope the City will stop its apparent rush to judgment that started even before it was made public that Alternative F in the BIA’s EIS would be anointed as the preferred alternative, and the regional mall applicant entered into an option agreement with the Wilton Rancheria in May of this year. The 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

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

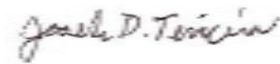
Sincerely,



Cheryl Schmit
Director, Stand Up for California!



Lynn Wheat
Elk Grove GRASP



Joe Teixeira⁴

⁴ On behalf of over 20 concerned citizens of Elk Grove