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January 6, 2023

VIA ELECTRONIC MAIL

Supervisor James Gore
Sonoma County, District 4
Board of Supervisors
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403
(707) 565-2241

Re: Draft Amended and Restated Memorandum of Agreement between the Dry Creek Rancheria, Band of Pomo Indians and the County of Sonoma

Dear Supervisor Gore,

As you know, I represent the Alexander Valley Association (AVA). On December 28, 2022, I received an email from Marissa Montenegro informing me that the Board of Supervisors intends to consider the Amended and Restated Memorandum of Agreement between the Dry Creek Rancheria, Band of Pomo Indians and the County of Sonoma (ARMOA) at the January 24, 2023, Board of Supervisors meeting. I write to request that the Board postpone consideration of ARMOA to allow the AVA—and other community members—time to give proper consideration to the ARMOA and its potential impacts.

As you are aware, we have been asking for a copy of the ARMOA—or at least a list of its operative terms—for months to no avail. We were thus dismayed (to say the least) to receive the document for the first time during the holiday week between Christmas and New Year's, leaving us just 14 working days to review it before the proposed January 24, 2023, meeting date. This is far too little time for the community to properly review and comment on the document, which the County website accurately calls an item of "Significant Public Interest." What is more, the County's last-minute disclosure to the AVA (during a holiday week no less) is disturbingly reminiscent of, and unfortunately consistent with, the County's prior failure to timely involve the AVA in this process.

It is essential that the AVA—and other community members—be given additional time to review the ARMOA. First, the ARMOA is a lengthy, complex document that deserves careful consideration. That said, from what we gather on our first read, the ARMOA appears to drastically reduce—if not entirely eliminate—the ability for community members such as the AVA to voice their concerns about development projects in the future. Unlike the existing MOA, which allowed "Interested Persons" to receive environmental impact reports and required that the public have 30 days in which to comment on final proposals, the ARMOA allows the County alone to comment.

Moreover, the development plans contemplated in the ARMOA are concerning. The proposed 300-room resort is more than 50% larger than the one mentioned in the Board of Supervisors' August 2022 report. As you know, this massive expansion of the River Rock Casino will affect traffic, noise, public safety, and the surrounding environment. The community needs to be involved in such decisions.

The AVA has not been given adequate time to understand this important document and the effects it will have on their lives. We therefore ask that the Board postpone the hearing by three months and consider the ARMOA no sooner than April 25, 2023. Holding a hearing on the ARMOA on or after April 25 will ensure that everyone has a full opportunity to participate in this community decision-making process.

Please confirm promptly that the Board will not consider the ARMOA at its January 24 meeting.

Very truly yours,

[redacted]

BXD:

cc: Karin Warnelius-Miller (via email)
Karen Passalacqua (via email)
Clay Green (via email)
Ed Dobranski (via email)
Jennifer Klein (via email)
Marissa Montenegro (via email)
Christina Rivera (via email)
Holly Rickett (via email)

Kashia Band of Pomo Indians
of the Stewarts Point Rancheria

January 9, 2023

Board of Supervisors
575 Administration Drive
Suite 100A
Santa Rosa, CA 95403

RE: Support for Dry Creek Rancheria Amended and Restated Memorandum of Agreement

Dear Board of Supervisors,

I am writing on behalf of, Kashia Band of Pomo Indians of Stewarts Point Rancheria, in support of the Amended and Restated Memorandum of Agreement between Sonoma County and the Dry Creek Rancheria.

The revenue from the Tribe's casino directly funds the Tribal government and allows the Tribe to provide services to its members. This benefits both the Tribe as well as Sonoma County at large. The Tribe has worked to create opportunities for tribal members through community programs including scholarship assistance, job training and adult education programs, health and welfare assistance, social services, housing assistance, public donations, as well as other economic development opportunities.

Additionally, the Tribe is committed to providing clean drinking water, and has been designated as a "State" for purposes of regulating water quality on the Rancheria. That program has since grown to include the restoration of Rancheria Creek, and its flow to the Russian River, allowing Native fish species to return. The Tribe's new water recharge system, called "FloodMar", will promote water recharge into the Alexander Valley aquifer and will provide Alexander Valley vineyards with the necessary water for agriculture.

In 2008, the Tribe entered into a Memorandum of Agreement with Sonoma County in which established a framework for inter-governmental cooperation and the construction of a new casino and resort projects. Unfortunately, the Tribe was unable to build that planned project due to the Great Recession and the opening of Graton Casino, creating financial hardship for the Tribe. The 2008 MOA has since been updated three times with letter amendments as well as three formal amendments. The 2008 MOA needs to be formally amended and restated to provide the Tribe, and the County, with a singular document that can be more easily understood and implemented.

1420 Guerneville Road, Suite 1 • Santa Rosa, CA 95403
(707) 591-0580 • (707) 591-0583 Fax • www.stewartspoint.org

Ultimately, the operation and important contributions of the Dry Creek Rancheria Band of Pomo Indians. are essential to the continued well-being of the Tribe and the economic, social, and cultural benefit of Sonoma County. I ask that you join me in supporting the Amended and Restated Memorandum of Agreement.

Sincerely,

[redacted]

Reno K. Franklin
Tribal Chairman

SONOMA COUNTY INDIAN HEALTH PROJECT, INC.

January 12, 2023

Board of Supervisors
575 Administration Drive, Suite 100A
Santa Rosa, CA 95403

RE: Support for Dry Creek Rancheria Amended and Restated Memorandum of Agreement

Dear Board of Supervisors:

I am writing on behalf of Sonoma County Indian Health Project, Inc. (SCIHP), in support of the Amended and Restated Memorandum of Agreement between Sonoma County and the Dry Creek Rancheria.

The revenue from the Tribe's casino directly funds the Tribal government and allows the Tribe to provide services to its members. This benefits both the Tribe as well as Sonoma County at large. The Tribe has worked to create opportunities for tribal members through community programs including scholarship assistance, job training and adult education programs, health and welfare assistance, social services, housing assistance, public donations, as well as other economic development opportunities.

Additionally, the Tribe is committed to providing clean drinking water, and has been designated as a "State" for purposes of regulating water quality on the Rancheria. That program has since grown to include the restoration of Rancheria Creek, and its flow to the Russian River, allowing Native fish species to return. The Tribe's new water recharge system, called "FloodMar", will promote water recharge into the Alexander Valley aquifer and will provide Alexander Valley vineyards with the necessary water for agriculture.

In 2008, the Tribe entered into a Memorandum of Agreement with Sonoma County in which established a framework for inter-governmental cooperation and the construction of a new casino and resort projects. Unfortunately, the Tribe was unable to build that planned project due to the Great Recession and the opening of Graton Casino, creating financial hardship for the Tribe. The 2008 MOA has since been updated three times with letter amendments as well as three formal amendments. The 2008 MOA needs to be formally amended and restated to provide the Tribe, and the County, with a singular document that can be more easily understood and implemented.

Clinic Location: 144 Stony Point Road, Santa Rosa, California 95401 • (707) 521-4545 Main Number
521-4500 Medical • 521-4600 Dental • 521-4550 Behavioral Health • 521-4585 Pharmacy
521-4575 Nutrition/WIC • 521-4502 Healthy Traditions • 521-4686 Corporate Compliance
Satellite Clinic: 10A Mamie Laiwa Drive, Point Arena, CA 95468 • (707) 882-2877 Telephone • (707)-882-2878 Fax

Ultimately, the operation and important contributions of the Dry Creek Rancheria Band of Pomo Indians. are essential to the continued well-being of the Tribe and the economic, social, and cultural benefit of Sonoma County. I ask that you join me in supporting the Amended and Restated Memorandum of Agreement.

Sincerely,
Sonoma County Indian Health Project, Inc.

[redacted]
13AEC63849F...
Reno Franklin, Chairperson
SCIHP Board of Directors

FEDERATED INDIANS OF
GRATON
RANCHERIA

February 9, 2023

Board of Supervisors
575 Administration Drive
Suite 100A
Santa Rosa, CA 95403

RE: Qualified Support for Dry Creek Rancheria Amended and Restated Memorandum of Agreement

Dear Board of Supervisors,

I am writing on behalf of the Federated Indians of Graton Rancheria (FIGR), to express our support of the Amended and Restated Memorandum of Agreement between Sonoma County and the Dry Creek Rancheria (MOA). We respect our sister tribe's hard work in creating a mutually beneficial framework with the County to govern important economic development opportunities on lands within Dry Creek's aboriginal territory. Due to our longstanding position that tribes should not acquire trust land outside their aboriginal territory, however, our support must be conditioned on revisions to sections III(5), XIII(3) and XIII(4).

Like the Graton Resort and Casino, Dry Creek's casino directly funds its tribal government and allows the tribe to provide services to its members. This benefits both the tribe as well as Sonoma County at large. These community benefits include scholarship assistance, job training and adult education programs, health and welfare assistance, social services, housing assistance, public donations, as well as other economic development opportunities. It is vital that Indian casinos first and foremost benefit their respective tribes. Mitigation payments to local government should not exceed the costs of actual mitigation of casino impacts if such payments will prevent a tribe from achieving self-sufficiency and providing adequate services for their membership. Accordingly, FIGR writes in support of the MOA to the extent it allows for the continued operation of Dry Creek's casino by ensuring that Dry Creek's mitigation payments to the County are right-sized and provides a framework for intergovernmental collaboration regarding activities on Dry Creek's existing trust land.

FIGR also supports the MOA's prohibition against Dry Creek pursuing a fee-to-trust application for the Petaluma Property, although we believe that prohibition should extend to the entire term of the MOA. As a general principle, we support tribes in seeking the restoration of tribal homelands within their aboriginal territory. Yet the Petaluma Property is within FIGR's aboriginal Coast Miwok territory,[1] not Southern Pomo territory, and Dry Creek is solely a

[1] FIGR is comprised of both Coast Miwok and Southern Pomo people. Congress has recognized that FIGR's territory includes both Sonoma and Marin Counties. *See* OMNIBUS INDIAN ADVANCEMENT ACT, PL 106–568, December 27, 2000, 114 Stat 2868 § 1405(a).

FEDERATED INDIANS OF
GRATON
RANCHERIA

Southern Pomo tribe. Dry Creek's trust acquisition of the Petaluma Property would not only interfere with our economic lifeline, but also our ability to protect and manage tribal cultural resources located in that area. Indeed, Dry Creek and Sonoma County have both publicly opposed trust acquisitions by tribes outside of their own aboriginal territories. FIGR has worked collaboratively with all Sonoma County tribes, including Dry Creek, to oppose the Koi Nation's application to take land into trust for gaming purposes in Sonoma County in order to protect our tribal territories and ensure our businesses and communities continue to thrive.

Accordingly, FIGR strongly opposes the MOA language that would allow Dry Creek to request trust acquisition of the Petaluma Property after 2025 (MOA sections III(5) and XIII(4)) and, in the event that BIA approves Koi Nation's application to take land into trust for a casino in Sonoma County, for gaming purposes (MOA section XIII(3)). Acquiring land in trust outside a tribe's aboriginal territory—and in the aboriginal territory of another tribe—would be replicating what Koi Nation is attempting and what Dry Creek and the County have openly opposed. FIGR therefore asks the Board of Supervisors to extend the prohibition against trust acquisition of the Petaluma Property by Dry Creek for any purpose for the entire term of the MOA.

While we must as a matter of principle oppose the MOA to the extent it acquiesces to Dry Creek potentially acquiring the Petaluma Property in trust, we support the remainder of the MOA as it allows for the continued operation of Dry Creek's gaming operations by maintaining right-sized mitigation payments to the County. Ultimately, Dry Creek's ability to operate its business on land within its aboriginal territory is essential to the continued well-being of the tribe and its members and also provides important economic, social, and cultural benefits to Sonoma County. I look forward to working with Dry Creek in the future on matters of mutual importance.

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February 15, 2023

VIA ELECTRONIC MAIL

Supervisor James Gore
District 4
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403
(707) 565-2241

Re: Draft Amended and Restated Memorandum of Agreement between the Dry Creek Rancheria, Band of Pomo Indians and the County of Sonoma

Dear Supervisor Gore,

I write on behalf of the Alexander Valley Association (AVA) to follow up on our productive conversation on February 3, 2023, regarding the Dry Creek Rancheria, Band of Pomo Indians' (Tribe) most recent proposal for an Amended and Restated Memorandum of Agreement (ARMOA) with Sonoma County. Thank you for taking the time to speak with us.

As you requested, this letter covers three points. ***First***, it summarizes the terms of the current Memorandum of Agreement (MOA), with a focus on the ways in which it is stronger than the draft ARMOA in important respects that directly affect the people of Sonoma County: community participation, environmental mitigation, and assurance that County services will be unaffected. If a new agreement is not adopted, the current MOA will remain in place—an outcome far preferable to the draft ARMOA. ***Second***, it outlines the revisions to the draft ARMOA that the AVA believes are necessary if the County intends to sign a new agreement. ***Third***, it explains the AVA's understanding of the County's legal authority to negotiate a stronger agreement, consistent with the AVA's proposed revisions, with the Tribe.

I. Executive Summary

After months of negotiation, the Tribe proposed a draft ARMOA that contemplates a significant expansion to the River Rock Casino and sets forth the procedures that will govern that project and future developments. The draft ARMOA differs from the Tribe's current MOA with Sonoma County in three main respects, each of which the AVA believes should compel the Board of Supervisors to reject it. In particular, the draft ARMOA would (1) eliminate community involvement in the approval of development projects that is available under the current MOA; (2) reduce the Tribe's obligations to mitigate severe environmental impacts; and (3) weaken the County's ability to provide public services to residents, both on and off tribal land.

The AVA proposes specific revisions to strengthen any new agreement reached with the Tribe, including:

- Restoring community participation and public comment;
- Reinstating strong environmental review and obligations for the Tribe to mitigate the environmental impacts identified in its reviews; and
- Ensuring that services in the Alexander Valley are unaffected.

Importantly, because the draft ARMOA removes procedural steps for mitigating off-reservation environmental impacts that are currently required under the MOA, the County is unable to adopt the draft ARMOA without first conducting reviews required by the California Environmental Quality Act (CEQA). To avoid such a risk, the County should either retain the current MOA or ensure that any new agreement is at least as strong as the current MOA.

Indeed, the AVA believes that the County has the legal authority to negotiate terms that will protect the environment and promote a productive relationship among neighbors. Specifically, neither the Indian Gaming Regulatory Act nor Section 81 review restricts the terms to which the County and Tribe can agree.

Unless the AVA's revisions are adopted, the Board of Supervisors should reject the draft ARMOA. The current MOA, which would continue in the absence of a new agreement, would serve Sonoma County and its residents better than the draft ARMOA.

II. Protections Under the Current MOA

The existing MOA, signed in 2008, governs the relationship between the Tribe and the County. Among other things, the MOA sets forth the steps the Tribe must take before engaging in any development project—including submitting plans and environmental reviews to the County and making these documents available to the public for comment—and provides that the Tribe will make annual mitigation payments to the County to ensure that County services will be unaffected by any project. The current MOA is not set to expire until January 31, 2043. *See*

MOA 3.42 (tying expiration date to term of operative tribal-state gaming compact); Compact 14.2 (expiring 2043).

Over the last decade, parts of the MOA have been modified to, for example, delay mitigation payments or extend the Tribe's promise not to take additional land into federal trust. The core pillars of the agreement, however, have stayed the same.

- The MOA **allows county residents to participate** in making decisions about development projects that affect their communities. In particular, the MOA allows community members to become "Interested Persons" by submitting a timely request to the Tribe, and all "Interested Persons" are entitled to receive the Tribe's environmental reports. *See* MOA 3.28. "Interested Persons" then have 45 days to comment on a report, and all comments must be listed and addressed in the final report. *See* MOA 5.3.16. In addition, the MOA requires the Tribe to circulate final environmental reviews for 30 days of "public comment." *See* MOA 5.3.17.

- The MOA **requires strong environmental review** for Tribal developments.

    - Procedurally, the MOA gives the County at least four opportunities to provide input on environmental mitigation: (1) at a "scope hearing" if a project has "statewide, regional, or area wide significance," *see* MOA 5.3.15; (2) during the 45-day comment period for "Interested Parties," *see* MOA 5.3.16; (3) at separate negotiations for an Intergovernmental Mitigation Agreement, *see* MOA 5.3.18; and (4) through ongoing updates that the Tribe must provide during construction, *see* MOA 15.3.

    - Substantively, the MOA protects the off-reservation environment by requiring that all "Significant Adverse Impacts" of a development project must be addressed in the final environmental report. *See* MOA 5.3.10. If a specific mitigation measure is infeasible, the report must "demonstrate the specific economic, technological, legal, or other considerations" that make it infeasible. *See* MOA 5.3.11. The County may dispute the Tribe's findings, based on "substantial evidence," through binding arbitration. *See* MOA 5.3.19.

- The MOA **ensures that County services will be unaffected** by development projects that put a strain on County resources. In particular, the MOA requires the Tribe to pay the County amounts that vary based on the Casino's profits, which is proportionate to the Casino's reliance on municipal services. *See* MOA 16.1-12.

In sum, the current MOA allows community members to address the potential impacts of Tribal development, just as they can with other developments that will affect their region. The current MOA is a strong, fair, and workable arrangement that is slated to continue for another two decades. Unfortunately, as explained below, the Tribe's draft ARMOA would replace the current MOA and is a stark departure from the current agreement.

III. Weaknesses of the Draft ARMOA and Required Revisions

The AVA strongly believes that the County and its residents would be better served by the current MOA and urges the Board to reject the draft ARMOA. Rejecting the draft ARMOA would leave the current MOA—and its strong community protections—in place until 2043. To the extent the County intends to sign a new agreement, the new agreement should include substantial revisions. Below is a list of the AVA's primary concerns, accompanied by specific revisions[1] on which the County should insist.

Community Involvement

The draft ARMOA severely limits—if not completely eliminates—community involvement in the approval of development projects. Whereas the current MOA provides opportunities for "Interested Persons" to receive and comment on environmental reports, the ARMOA ***expressly cuts "Interested Persons" out of the process***. *See* ARMOA XXII.2 (stating agreement is "not intended to, and shall not be construed to, create any right on the part of a third party including, without limitations, no rights on any Interested Persons"). In addition, the draft ARMOA ***eliminates the "public comment" period*** for final proposals. *See* ARMOA IV.11. Thus, as drafted, the ARMOA would deprive community members and groups like the AVA of their right to raise concerns with development projects that affect their region.

Any new agreement must therefore include the following:

Revision #1: Any new agreement should ***restore rights to Interested Persons*.** In particular, the draft ARMOA should be revised such that:

(a) Section II would define "Interested Persons" as in Section 3.28 to the original MOA: "any person, group, political subdivision, or agency that submits a timely request to the Tribe in writing to receive any SES";

(b) There would be a new subsection between Section III.9 and Section III.10 concerning "Review of SES by Interested Persons," which provides that Interested Parties have 45 days in which to comment on any SES after the County's 45-day comment period;

(c) Section III.10.b would require the Tribe to "reproduce verbatim all comments received from the County or any Interested Persons," respond directly to each comment, and list all Interested Persons who commented; and

[1] In addition to these important revisions, the AVA also requests that the new agreement ***restore the limit on the number of live, outdoor entertainment events that the Tribe may hold*** to prevent a strain on the County's resources and services. In particular, the draft ARMOA should be revised to remove the qualifier "requiring payment of a separate entrance, admission, or other entertainment fee" both times it appears in Section IX.1, such that the Tribe is limited to 12 events per year.

(d) Section III.10.e would state that "responses to such comments" will be made available to not only the County but also all Interested Persons for at least ten working days prior to certifying a Final SES.

Revision #2: The Tribe's ***final environmental reviews should be subject to a public comment period***, just as in the original MOA. In particular, the draft ARMOA should be revised to add a new subsection between Section III.10 and III.11 that provides, "Before any Final SES may be approved, it must be circulated and made available to the public for comments for 30 days."

Environmental Mitigation

The draft ARMOA drastically reduces the Tribe's obligations to guard against the environmental impacts of development. Under the agreement, the Tribe is free to move forward with a project regardless of whether it causes "significant adverse impacts." *See* ARMOA III.7. Concerningly, the draft ARMOA has ***no requirement that the Tribe address those impacts***—many of which by definition have "substantial adverse affects on human beings," *see* ARMOA II—or even confer with the County. Indeed, the issuance of the Tribe's final environmental report ("Supplemental Environmental Statement") is at the sole discretion of the Tribe. The draft ARMOA states only that "[i]deally, the County will be satisfied with the Final SES and any mitigation provided for therein." *See* ARMOA IV.10. Thus, as drafted, the ARMOA would allow the Tribe to begin construction without any enforceable obligation to protect the off-reservation environment from that construction.

Any new agreement must therefore include the following:

Revision #3: Any new agreement should ***hold the Tribe accountable for thoroughly considering and addressing any Significant Adverse Impacts***. In particular, the draft ARMOA should be revised such that:

(a) Under Section III.9, if an initial SES identifies any Significant Adverse Impacts, the County would be permitted to hold a hearing to determine how the Tribe plans to mitigate those impacts;

(b) Section III.9.b would clearly define whose roles qualify as "designated staff" who may request a meeting with the Tribe to discuss mitigation efforts;

(c) Section III.5.s would clarify that any SES must "provide detailed discussion of the mitigation steps that will lessen all Significant Adverse Impacts," and if the Tribe believes a mitigation step is infeasible, it must "demonstrate the specific economic, technological, legal, or other considerations that make it infeasible," as in Section 5.3.11 to the original MOA;

(d) Section III.11 would require that if a Final SES identifies any Significant Adverse Impacts, any approval is conditioned on substantial completion of specific mitigation measures; and

(e) Section III.7 would add that if the County disagrees with the Tribe's assessment of whether a project would present Significant Adverse Impacts, it may initiate the Dispute Resolution procedures in Section XVIII.

Because the draft ARMOA would remove procedural steps for mitigating off-reservation environmental impacts that were required under the current MOA, the County's adoption of the draft ARMOA could trigger the California Environmental Quality Act (CEQA). Although the Tribe may be exempt from CEQA review, the County is not, and its discretionary actions would have significant environmental impacts. *See Cnty. of Amador v. City of Plymouth*, 149 Cal. App. 4th 1089, 1099 (2007).

CEQA was intended "to be interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 259 (1972). The statute applies to any "project," which is "[a]n activity directly undertaken by a [] public agency . . . which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Pub. Res. Code § 21065. If a county's action is "a necessary step that starts in motion a chain of events that will foreseeably result in impacts to the physical environment, the activity must be treated as a project subject to CEQA." Stephen Kostka & Michael Zischke, *Practice Under the California Environmental Quality Act* (2d ed.), § 4.20 at 151.

Here, the County's decision to sign the draft ARMOA is a "project." It is a discretionary governmental action that will, by definition, have significant adverse environmental impacts because it will eliminate the MOA's requirement to implement all feasible mitigation measures. Indeed, under the current MOA, the Tribe is required to mitigate each Significant Adverse Impact to the off-reservation environment that is identified in an environmental report. If the County adopts the draft ARMOA, the Tribe would no longer be required to take any mitigation steps. The "no project" alternative—simply retaining the current MOA—would be environmentally superior to the draft ARMOA. By agreeing to excuse environmental mitigation that was previously required, the County would "undertake[]" an ongoing relationship with the Tribe that "may cause" a "reasonably foreseeable indirect physical change in the environment." *See id.* In other words, the County may not sign the draft ARMOA unless it first conducts CEQA review because that act would strip away environmental protections required under the current arrangement.[2]

To avoid the risk of contravening CEQA, the County should ensure that any new agreement include an environmental review that is at least as strong as those in the current MOA, or simply retain the current MOA.

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[2] The ARMOA's statement that CEQA does not apply, *see* ARMOA XV.1, does not make it so. Categorical exemptions from CEQA must be "construe[d] . . . narrowly in order to afford the fullest possible environmental protection." *See Save Our Carmel River v. Monterey Peninsula Water Management Dist.*, 141 Cal. App. 4th 677, 697 (2006).

Revision #4: Any new agreement should ***reinstate required mitigation measures*** that were listed in the original MOA and ***require the Tribe to attest to the status of each measure.*** The mitigation measures listed in the ARMOA are only a subset of those included in the 2008 agreement, with no explanation of which steps have been accomplished (if any).[3] In particular:

(a) The following measures are missing and should be added:

i. Apply for Leadership in Energy and Environmental Design (LEED) certification at the hotel. *See* MOA Ex. A.1.

ii. Lessen the aesthetic impact of any temporary office trailers on the construction site by using landscaping and neutral paint colors. *See* MOA Ex. A.3.g.

iii. Use light fixtures in parking structures that minimize energy use, and if any are visible from the valley at night, they must be shielded "to the maximum extent feasible." *See* MOA Ex. A.4.b.

iv. Keep neon or internally lit signs from being visible beyond Reservation boundaries except at certain intersections. *See* MOA Ex. A.5.c.

v. Conduct water sampling using a California-certified lab, and provide County reports that are sent to the Environmental Protection Agency (EPA). *See* MOA Ex. A.9.a-b.

vi. Share waste water engineering design reports with the County. *See* MOA Ex. A.12.e.

(b) The following measures were relaxed and should be restored:

Current MOA Standard		**Draft ARMOA Standard**
Clear vegetation and create a fire-defensible space ***both during and after construction***.	→	Clear vegetation ***only during construction***.
Use shields for all light bulbs in hotel rooms that are visible from the valley floor, ***and*** use low-emissivity glazing for all windows.		Use windows with ***only*** low-emissivity glazing.

[3] Moreover, although the draft ARMOA notes that the Tribe "has agreed to mitigate the off-Reservation environmental impacts resulting from the construction of the Reduced-Size Casino Resort Project," it provides no enforceable commitment (1) on what those mitigation steps are or (2) that the Tribe so mitigate on future projects, which would also be covered by the ARMOA. *See* ARMOA XIV.6.b.

Replace any trees that are removed during the placement of utilities ***at 3:1 ratio and maintain them for three years***.		Removing trees should be "minimized," but trees ***need not be replanted.***
Meaningfully consider how the County wishes to have wastewater storage tanks hidden, including using plants and paint.	→	Reduce the aesthetic impact of wastewater storage tanks ***without an obligation to consult the County***.

Effect on County Services

The draft ARMOA provides the County far less money to serve its residents than the current MOA. Under the current MOA, the County was entitled to mitigation payments of around $5 million per year, with adjustments based on how profitable the planned 600-room hotel and casino would be. Under the draft ARMOA, the County is slated to receive ***just $750 thousand per year through 2027, and in no case more than $1.5 million per year, regardless of the casino's profitability.*** *See* ARMOA XIV.5. Most importantly, the Tribe's mitigation payments are supposed to "support an appropriate level of County services to the Reservation and affected communities," *see* ARMOA XIV.3, but Alexander Valley residents have experienced service delays—or lack of services entirely—even under the current MOA. If the draft ARMOA is adopted, the County would have even fewer resources to provide for all its residents.

Request #5: Any new agreement should ***commit a concrete portion of mitigation payments*** to fund services in the Alexander Valley, which will be the region most affected by the development projects the Tribe contemplates. In particular, rather than simply provide that the Tribe will "seek[] to ensure that payments made to the County . . . are specifically earmarked" for the Alexander Valley, the County and Tribe should agree that at least 40% of mitigation payments will be so earmarked.

IV. The County's Legal Authority to Negotiate with the Tribe

The AVA urges the Board to negotiate stronger terms with the Tribe, consistent with the revisions outlined above, and we believe the County is legally empowered to do so. Indeed, there appear to be few limits on local governments' ability to negotiate with tribes on these topics.

First, although the Indian Gaming Regulatory Act (IGRA) limits the topics on which a *state* may negotiate with tribes in reaching a tribal-state gaming compact, it imposes no such limits on local governments. Under the IGRA, a tribe may conduct Las Vegas-style gaming so long as it reaches a tribal-state gaming compact with the state that is approved by the Secretary of the Interior. *See* 25 U.S.C. § 2701(d)(1)(C), (d)(3)(B). Because of the state's inherent leverage—it could theoretically threaten to not sign any agreement unless the tribe agreed to onerous terms—the IGRA requires that the state negotiate "in good faith." *Id.* § 2710(d)(3)(A). Courts have found that the IGRA's seven categories of permissible negotiated terms—all "directly related to the operation of gaming activities"—are exclusive, and if a state insists on terms beyond those

topics, the state has *per se* violated its good-faith obligation. *See, e.g., Chicken Ranch Rancheria of Me-Wuk Indians v. California*, 42 F.4th 1024, 1034 (9th Cir. 2022) (holding California's demands for family law and tort law provisions showed a lack of good faith). The Secretary of the Interior has also rejected tribal-state gaming compacts based on their inclusion of non-gaming terms, such as in its 2022 rejection of the Middletown Rancheria's compact. The Tribe signed its operative compact in 2017.[4]

Here, because any MOA with the Tribe is not itself a tribal-state gaming compact[5]—it is negotiated with a *county*, it already covers off-reservation impacts unrelated to gaming, and it does not purport to derive its authority from any state agreement—it does not offend federalism principles or *Chicken Ranch* and its reasoning. IGRA imposes limits on *states* because tribes are *required* to negotiate with them in order to operate casinos. In contrast, tribes *may* sign agreements with *counties* and other municipalities on a voluntary basis, as the Tribe and County did in 2008 and throughout the last decade's amendments. In other words, because the Tribe is not compelled to sign an agreement, the County is not limited in the terms it may seek.

Indeed, tribes routinely enter cooperative agreements with municipalities beyond the confines of the IGRA. To name a few:

- Yolo County signed an Intergovernmental Agreement with the Rumsey Band of Wintun Indians in 2002 that, like the draft ARMOA here, contemplated that a tribe would expand its casino with a hotel and sought to define a process by which the Tribe could fund (and the County could enforce) environmental mitigation measures. Importantly, however, unlike the draft ARMOA, the Yolo County agreement prevented the tribe from beginning construction on the new hotel "until all mitigation measures . . . that are the subject of [the] Agreement have been fully addressed." *See* https://www.yolocounty.org/home/showpublisheddocument/21730/635289380535200000.

- Yolo County signed another agreement with the Yocha Dehe Wintun Nation in 2017 that, like the draft ARMOA here, replaced an earlier Memorandum of Understanding to

[4] The Tribe must comply with the compact in its future gaming-related developments. Notably, the compact's requirement that the Tribe's casino operate no more than 1,200 gaming devices, *see* Compact 4.1, is in direct conflict with the draft ARMOA's contemplation of a "Reduced-Size Casino Project" that includes up to "1,500 Class III slot machines." *See* ARMOA at 7. Thus, in addition to being detrimental to the environment, the Tribe's proposed project may violate their existing obligations to California.

[5] At one point, the draft ARMOA calls itself "*this* Compact," but this appears to be a mistake. *See* ARMOA VII.2(h)-(i). The section addresses fire safety, and it provides that certain failures to correct deficiencies "shall be deemed a violation of this Compact." *Id.* An identical provision appears in Section 6.4.2(j) of the 2017 Compact, and any new agreement should clarify that the draft ARMOA is not itself a Compact.

"mitigate the potentially significant off-reservation impacts attributable to an expanded Cache Creek Casino Resort that will feature more hotel rooms, a ball room, more restaurants, and related amenities. *See* https://www.yolocounty.org/home/showpublisheddocument/57236/636887539723570000.

- In *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618, 626 (1st Cir. 2017), the U.S. Court of Appeals for the First Circuit acknowledged an "intergovernmental agreement[]" whereby a tribe may "rely on state and local law enforcement and firefighting services" for compensation, and did not find that the agreement violated any law. Here too, the Tribe's existing MOA arranged for County services on Indian land for compensation, as should any new MOA.

In fact, this County has conducted negotiations about services unrelated to gaming before. Sonoma County signed an agreement with the Graton Rancheria in 2009 that set forth each party's responsibilities in providing welfare services on Indian land. *See* https://sonomacounty.ca.gov/a/102281.

Second, contrary to the draft ARMOA's implication, *see* ARMOA XVI.1, the terms on which the parties have been negotiating are valid without federal approval. Section 81 of the United States Code, Title 25, provides that "[n]o agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless" it is approved by the Secretary of the Interior. Because neither the current MOA nor the draft ARMOA gives anyone "any legal right or interest" in tribal land, they do not "encumber[] Indian land[]." *See*, *e.g., GasPlus LLC v. U.S. Department of Interior*, 510 F. Supp. 2d 18 (D.D.C. 2007); *Chemehuevi Indian Tribe v. Jewell*, 767 F.3d 900, 905 (9th Cir. 2014). Instead, the agreements merely set forth the services the County will provide on Indian land, financial arrangements for the provision of those services, how developments may be constructed, and—ideally—the opportunities for the County and Interested Persons to comment on those projects. Such contracts are not within the ambit of Section 81. *See* Commentary to 25 C.F.R. § 84.002, 66 FR 38918-01.

Thus, the AVA has not identified any legal basis on which the County is limited in its negotiations. The County should insist on terms in any new agreement with the Tribe that protect, to the fullest extent possible, its residents and the environment.

V. Conclusion

As discussed in our February 3 conversation, the AVA believes the County should not accept the draft ARMOA—which gut the protections of the current MOA that protected residents from harmful, closed-door development—without at least obtaining benefits for the community in return. While the AVA supports a productive relationship between the County and the Tribe, the County has not identified any other ways in which the draft ARMOA provides advantages to the County or its residents.

In particular, the notion that the County would benefit by securing agreements to forgo certain future (or larger) developments is unpersuasive. As one example, under the draft ARMOA, the Tribe promises to not seek federal trust status for its Petaluma property for gaming purposes until 2035, *see* ARMOA XIII.3, but the Tribe's construction of a second casino is speculative. ***First***, there is no guarantee that the federal government would take the property into trust. ***Second***, there is no guarantee that such a casino on the Petaluma property would be commercially viable or that the Tribe could secure funding to build one. Under the 2017 Compact, the Tribe may only operate a second casino if (1) the project has a primary purpose other than gaming and (2) it contains no more than 500 gaming devices. *See* Compact 4.2. The County should not trade protections for its residents and the environment—relating to any future development projects, not just the Tribe's planned resort at the River Rock Casino—for the speculative benefit of avoiding a second casino in Petaluma.[6]

Indeed, the proposed deal is deeply imbalanced. While the draft ARMOA paves the way for the Tribe to build a large, 300-room resort, the County stands to receive:

- *No* enforceable agreement that the Tribe will mitigate off-reservation environmental impacts from its development projects;
- *No* opportunity for community members to participate in the approval and design of tribal projects that fundamentally change their daily lives in the Alexander Valley;
- *No* requirement that the Tribe consider County or community member comments, if they could be raised at all; and
- Millions of dollars *less* in mitigation payments.

In sum, the draft ARMOA is a step backward, and unless substantial revisions are made consistent with this letter, the Board should not approve it. The current MOA, which would persist until 2043 in the absence of a new agreement, is far better for the County than the draft ARMOA.

[6] Likewise, while the AVA understands that the County believes that one advantage of the draft ARMOA is that it contemplates a smaller hotel project than was planned in the 2008 MOA, any hotel project threatens increased environmental harm. The Tribe was unable to finance and build the larger hotel project, so it is not a meaningful concession for the Tribe to plan to build a smaller hotel now. Moreover, the ARMOA does not actually prevent the Tribe from reverting to the original, larger hotel plan; in fact, it contains ***no limits*** on what size development the Tribe can build in the Alexander Valley.

Please do not hesitate to contact me regarding the AVA's position and the ways in which the organization can assist the County in reaching a fair agreement.

Very truly yours,

[redacted]
Brook Dooley

BXD:

cc: Supervisor Susan Gorin (via email)
Supervisor David Rabbitt (via email)
Supervisor Chris Coursey (via email)
Supervisor Lynda Hopkins (via email)
Karin Warnelius-Miller (via email)
Karen Passalacqua (via email)
Clay Green (via email)
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