



November 7, 2024

City Council  
City of Clearlake  
c/o David Claffey, Chair  
1450 Olympic Drive  
Clearlake, CA 95422

RE: Measure V Project Plan  
City Council Agenda Item #18 – 11/7/2024

Dear Clearlake City Council:

The City of Clearlake's ("City") agenda for November 7, 2024 includes a staff proposal for the City Council to approve the "Measure V Project Plan" ("Plan") as Agenda Item 18. The Plan "outlines a list of roads slated for improvement" as depicted on the map on page 176 of the meeting packet. The map includes fourteen "projects," two of which were reportedly scheduled for 2024. The City did not conduct environmental review for the Plan as required by state and federal environmental laws, so the City Council should not approve the Plan. To be clear, the Koi Nation of Northern California ("Koi Nation") is not opposed to the City's street improvement activities, but the City's compliance with environmental laws is necessary to identify and protect against impacts to Koi Nation's cultural resources. The Koi Nation requested that the City Council's approval of the Measure V Project Plan be postponed pending further discussion and review, but City Manager Alan Flora responded that he does not consider the Plan to be a CEQA project.<sup>1</sup>

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<sup>1</sup> Email from A. Flora to C. Vandermolen (11/7/24: 10:08 AM): "Thanks so much for your note. I had hoped for a more basic understanding of CEQA at this point, but I can clarify this action is for the Council to approve a plan for the next seven years of proposed Measure V road projects. This is like approval of a CIP plan but is not a project under CEQA. Based on this plan City staff will initiate road improvement projects as funding is available. Each specific project will undergo the normal process, as required by local, state and federal law, which includes design, appropriate environmental review, public bidding, contract approval, etc. As you are also likely aware none of these are new road projects, simply maintenance of our existing public road system. Additionally, the projects can and will be implemented separately and operated independently and are not a foreseeable consequence of each other."

## **I. CEQA Prohibits Piecemealing.**

CEQA requires the City to consider environmental consequences “at the earliest possible stage, even though more detailed environmental review may be necessary later.” (*Environmental Protection Information Center v. Cal. Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 503.) “The requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” (*Ibid.*) “For example, where an individual project is a necessary precedent for an action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project.” (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208.) Under CEQA, a “project” is “an activity 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; see also 14 CCR § 15378.)

The Fourth District Court of Appeal summarized the caselaw on piecemealing in *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209. Piecemealing may occur “when the purpose of the reviewed project is to be the first step toward future development, or “the reviewed project legally compels or practically presumes completion of another action.” (*Id.* at 1223.) “On the other hand, two projects may properly undergo separate environmental review (i.e., no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently.” (*Ibid.*)

## **II. The Road Segments Identified in the Plan Do Not Satisfy the Independent Utility Test.**

City Manager Flora wrote the Koi Nation that each of the rehabilitation segments have independent utility. However, even if the segments could be rehabilitated with independent utility the City’s broader Plan including fourteen road segments must be considered as a whole project. In *Arviv Enterprises, Inc. v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333, Arviv separately submitted plans to develop three houses, two more houses, two additional houses, and then fourteen houses. (*Id.* at 1337-1338.) The court determined that, in fact, the original plan was a 21-house development which required the lead agency to consider the whole development as one project. (*Id.* at 1346-1347.) The court affirmed the local agency’s decision to prepare an environmental impact report that included all 21 homes. (*Id.* at 1348.) The Plan is the same, and even more obvious because the City itself proposed adding twelve rehabilitation segments to the two it already initiated in 2024. Like Arviv’s planned 21-home development, here there is no doubt that the fourteen segments are part of a whole road rehabilitation project. By contrast, the Plan is not like the independent utility highway segment analysis in *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, where there was uncertainty “whether and when the electorate will

approve” future construction. (*Id.* at 731 [distinguishing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376].)

In *Del Mar*, the court approved the use of the independent utility piecemealing test from *Daly v. Volpe* (9th Cir. 1975), 514 F.2d 1106, for determining whether unlawful piecemealing of a highway project has occurred. (*Del Mar*, 10 Cal.App.4th at 798.) Four elements must be met. First, the segment must be “of substantial length.” Second, the segment must be “between logical terminal points.” Third, the segment length must assure “adequate opportunity for consideration of alternatives.” Fourth, the segment must “fulfill important state and local needs, such as relieving particular traffic congestion.” (*Id.* at 732-733.)

The road rehabilitation segments in the Plan do not satisfy the independent utility test. They are not of substantial length. Future segments range from 0.1 miles to 3.4 miles, with five of the segments being one mile or less. The segments are not between logical terminal points such as “major crossroads, population centers, major traffic generators, or similar major highway control elements.” (*Id.* at 733.) The short segment lengths do not afford the City adequate opportunity for evaluation of environmental effects, and do not fulfill an independent important state or local need.

### **III. The Plan is the Whole Project Which Requires Environmental Review.**

Both the presentation of the Plan and the City’s past actions for road improvement demonstrate that the City is improperly piecemealing its road improvement plans. The Plan both describes a larger road improvement project and commits the City to the individual proposals within the Plan. As City Manager Flora stated, “City staff will initiate road improvement projects as funding is available” and City staff filed four prior NOEs without further City Council review.<sup>2</sup> Rather than considering the environmental consequences of the City’s whole road improvement project (the Plan), the City has instead chopped the Plan into fourteen individual components to avoid environmental review of cumulative impacts. Such piecemealing “is contrary to CEQA’s requirements.” (*Los Angeles Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1035.)

In the last year the City has posted four individual Notices of Exemption (“NOE”) for pavement improvement projects where the City also conducted no environmental review. In addition to general road resurfacing, the NOEs also include replacement and/or expansion of underground utilities within the roadway, and the City did not evaluate the cumulative environmental consequences that flow from the planned construction work spanning 37.2 miles within the City’s jurisdiction.

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<sup>2</sup> Tree Streets Road Rehabilitation Project (NOE 2023120730; 12/27/2023), South Ballpark Pavement Rehabilitation Project (NOE 202420742; 2/20/2024), Clearlake Park Pavement Rehabilitation Project (NOE 2024030293; 3/8/2024), and Arrowhead & Burns Valley Road Rehabilitation (NOE 2024050456; 5/10/2024).

The Koi Nation has requested consultation and environmental review for the City's pavement rehabilitation projects because of their location on and near significant tribal cultural resources. By using the NOE process in a piecemeal manner, the City has denied the Koi Nation's requests for consultation and environmental review. For example, on June 12, 2024, the Koi Nation asked the City to withdraw the NOE for the Arrowhead & Burns Valley Road Rehabilitation in which the proposed activities included underground work for new drainage infrastructure, and hydraulic flushing which will displace sediment and cause erosion. The activities occur on and directly adjacent to recorded ancestral Koi Nation village sites. Despite the Koi Nation's request for consultation on the scope of environmental review, the City has not consulted with the tribe.

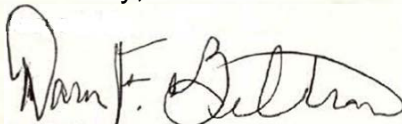
#### **IV. Conclusion.**

The City should comply with CEQA's requirement that it consider the pavement rehabilitation activities in the Plan as a whole project, and that the City conduct environmental review on the direct, indirect, and cumulative effects of the Plan on the environment. The City's recent pavement improvement projects have occurred on, over, and through highly sensitive areas of the City with known tribal cultural resources that are significant to the Koi Nation. The Plan includes twelve new segments which may have significant impacts on tribal cultural resources because of below-grade activities, vibration and compaction, water erosion, and other environmental effects. Even if these impacts are individually not significant for each of the Plan segments, the cumulative effect on tribal cultural resources is likely a significant effect on the environment.

The City should not adopt the Plan as proposed for the November 7, 2024, City Council meeting because it has not yet conducted environmental review.

The Koi Nation respectfully requests that the City postpone this agenda item and agree to meet with the Koi Nation to discuss the Plan. We have reached out to City Manager Flora with our concerns.

Sincerely,



Darin Beltran, Chairman  
Koi Nation of Northern California

cc: Alan Flora, City Manager  
Melissa Swanson, City Clerk  
Adeline Leyba, Public Works Director  
Julianne Polanco, State Historic Preservation Officer  
Jody Brown, Office of the State Historic Preservation Officer

Reginald Pagaling, Chairperson, Native American Heritage Commission  
Terrie Robinson, General Counsel, Native American Heritage Commission  
Merri Lopez-Keifer, Director of the Office of Native American Affairs  
Office of the California Attorney General  
Monica Heger, Deputy Attorney General  
Holly Roberson, CEQA Council for the Koi Nation