

STAFF REPORT	
<p><b>SUBJECT:</b> Consideration of Appeal from the Koi Nation of Northern California of the Planning Commission’s decision of December 18, 2023 for the approval of the Subdivision Development, (SD 2022-01), Tentative map, (TM 2022-01), and corresponding Environmental Analysis, (CEQA IS 2022-01) for the Danco Subdivision Development located at 2890 Old Highway 53, Clearlake, CA 95422.</p>	<p><b>MEETING DATE:</b> February 1<sup>st</sup>, 2024 <b>Time:</b> 4:00 P.M</p>
<p><b>SUBMITTED BY:</b> Mark Roberts – Senior Planner</p>	
<p><b>PURPOSE OF REPORT:</b>    <input type="checkbox"/> Information only    <input checked="" type="checkbox"/> Discussion    <input checked="" type="checkbox"/> <b>Action Item</b></p>	

**WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:**

Koi Nation of Northern California is appealing the Planning Commission’s decision of December 18th, 2023, for the approval of the Subdivision Development, SD 2022-01, Tentative Map, TM 2022-01, and corresponding Environmental Analysis, CEQA IS 2022-08 for the Danco Subdivision Development located at 2890 Old Highway 53, Clearlake, CA 95422 further described as Assessor’s Parcel Number 010-048-08.

**PROJECT SUMMARY AND SITE HISTORY:**

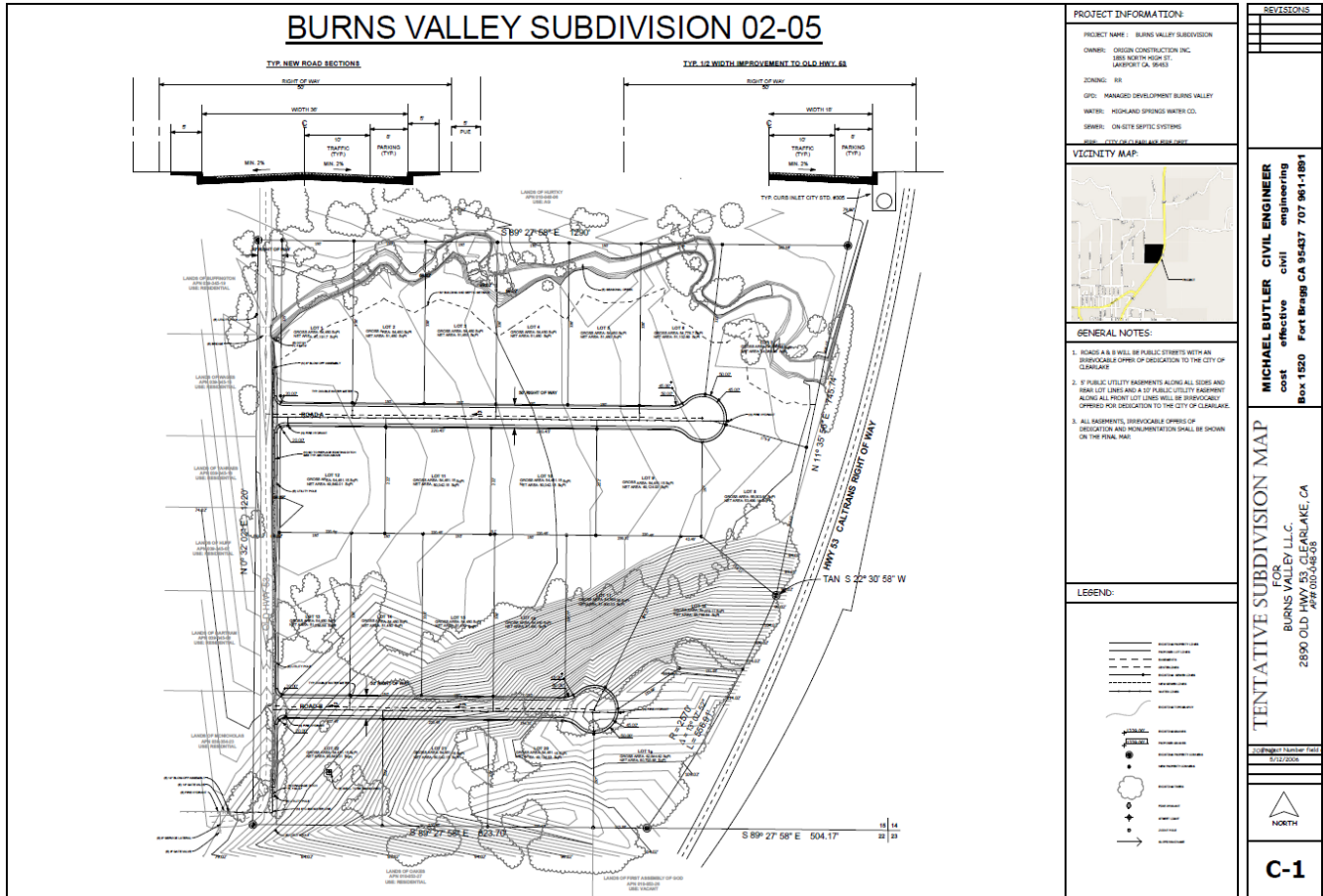
Project Summary: The Danco Subdivision Development is a market-rate residential development that has been designed to be compatible with the rural character of its surrounding neighborhood. The project consists of subdividing a 30-acre parcel into twenty-two (22) lots. The parcels will range in size from 1.25 to 2.75 acres. The subdivision map (*Exhibit D*) shows concept locations with related improvements on each lot (*i.e. anticipated building areas and septic locations*). Access to the proposed lots will be located off Old Highway 53 via two proposed roadways, indicated as Road A and B (*formal road names are to be determined*). The northern proposed roadway will be greater than 800 feet in length and the southern proposed roadway will be greater than 600 feet in length. The width of each roadway will be a minimum of 50 feet and have a turnaround/cul-da-sac. Each lot will have its own utilities, including but not limited to:

- Power through Pacific Gas and Electric (PG&E).
- Highlands Water Company will provide water.
- Each lot will have its own Onsite Waste Management System (septic).

Previous Approved Subdivision: In 2006, a Subdivision, SUB 02-05 and corresponding environmental analysis (CEQA Initial Study IS 03-05 (*Refer to Exhibit F*)) was approved to allow the subdividing of the 30-acre parcel into 22 lots (*see map below*). Each lot was approximately 1.25 acres to 2.20 acres in size. Access to the previously approved project would be from Old Highway 53 via two roads ending in a cul-

de-sac (roads would have been developed in accordance with city standards/regulations at the time). The proposed Danco Subdivision is essentially identical to the previously approved project in relation to lots size, access, utility connections, etc. However, the applicant has made minor modifications to the current proposal to adhere to today's codes/standards.

**Previous Approved Subdivision Map (2006)**



**TRIBAL CONSULTATION SUMMARY:**

On December 19<sup>th</sup>, 2022, the city sent an AB 52 Notification to Koi Nation of Northern California, and on December 20<sup>th</sup>, 2022, to Robert Geary as a representative of Habematolel. Each tribe was allocated 30 days to request consultation, in accordance with Section 21080.3.1(d) of the Public Resources Code. On January 9, 2023, the city received a comment letter from Habematolel Pomo on behalf of Koi Nation of Northern California, requesting Tribal Consultation. Although the request for consultation was received within the 30-day timeframe, the parties agreed to postpone consultation under Section 21080.3.1(e) of the California Public Resources Code until the complete Archaeological Report was received.

City representatives met with project applicants and tribal representatives of Koi Nation of Northern California and Habematolel Pomo of Upper Lake on April 6<sup>th</sup>, 2023, and on July 11<sup>th</sup>, 2023, and subsequently exchanged ideas, comments, and information through other means. Through this consultation, the city better understands that:

1. *The Koi Nation is culturally affiliated with, and has a cultural interest in, the proposed project area.*
2. *Archaeological data and tribal cultural resources need not necessarily align, as they represent*

*two different, although related, areas of expertise and must be addressed separately in the CEQA document.*

3. *Avoidance and preservation in place of sensitive areas must be incorporated into the project design where feasible.*
4. *Decisions about tribal cultural resources prior to, during, and following project construction must take into consideration information provided by tribal experts.*
5. *Developing a robust plan for addressing unanticipated discoveries during construction is critically important.*

Greg White of Sub-Terra Heritage Resource Investigations helped address tribal representative's concerns discussed during Tribal Consultation Meetings and in their letters dated January 9<sup>th</sup>, 2023, June 27<sup>th</sup>, 2023, and July 13<sup>th</sup>, 2023. An amended Archaeological Assessment (*dated April 1, 2023 & amended on July 18<sup>th</sup>, 2023*) was released addressing their concerns. The discussions during AB 52, including the Archaeological Assessments and documentation shared are confidential and restricted from public distribution under state law; however, the findings of the study were assessed by the city as part of this environmental review.

On October 16<sup>th</sup>, 2023, City representatives sent a letter to Koi Nation of Northern California and Robert Geary of Habematolel Pomo of Upper Lake concluding formal Tribal Consultation without agreement and acknowledging that the coordination with the Tribe does not end with project approval; rather, the implementation of the mitigation measures and conditions of approval will involve tribal representatives through project development.

#### **ENVIRONMENTAL DETERMINATION:**

As noted above, the City previously approved a subdivision project (Subdivision SUB 02-05) and corresponding environmental analysis (CEQA Initial Study IS 03-05 / Mitigated Negative Declaration) for this same site. The previously-approved project is essentially identical to what is currently proposed, i.e., same number of lots, same access, same utility connections, etc. The only changes being proposed are that there will now be a 50-foot setback from the creek; there will a "no disturbance" area to ensure protection of a culturally sensitive area; and, due to changes in local codes, curb, gutter, sidewalk, and bridge improvements are no longer required on Highway 53. These changes will have no new environmental effects. Indeed, the 50-foot setback from the creek and the "no disturbance" area will be *more* protective of the environment than what was previously approved.

Under 14 Cal Code Regs §15162, once a mitigated negative declaration has been adopted for a project (as is the case here), an agency *may not* require preparation of an environmental impact report (EIR) unless one of the three triggers for preparation of a subsequent or supplemental EIR exists. Namely, CEQA prohibits a further EIR unless there are:

- (1) Substantial changes in the project which will require major revisions of the mitigated negative declaration due to new or substantially more severe *significant* impacts
- (2) Substantial changes with respect to the circumstances under which the project is taken which will require major revisions of the previous mitigated negative declaration due to new or substantially more severe significant impacts
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous mitigated negative

declaration was adopted, shows new or substantially more severe significant impacts. (14 Cal. Code Regs., § 15162(a).)

Here, none of these factors are triggered. The proposed changes in the project (i.e., a 50-foot setback from the creek; a “no disturbance” area to ensure protection of sensitive area; and elimination of curb, gutter, sidewalk, and bridge improvements on Highway 53) are not substantial and do not result in new or substantially or severe significant impacts. To the contrary, they will benefit the environment.

Further, there have been no substantial changes in the circumstances under which the project is being taken that will result in new or substantially more severe significant impacts because the project site and area are largely the same as when the project was first approved.

Finally, there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of the original MND, that shows a new or substantially more severe significant impact because the project and site conditions are effectively the same as when the project was first approved; thus, all impacts could have been known with the exercise of reasonable diligence at the time of the original MND (and, in any event, there are no new or substantially more severe significant impacts).

It is also important to note that, under CEQA, only the *incremental* differences between the effects of the originally approved project and the proposed modifications are at issue. (See *Temecula Band of Luiseno Mission Indians v. Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425, 437 [agency authorized to limit its consideration of the later project to effects not considered in connection with the earlier project]; *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1073 [aspects of a project that were known at the time of the original environmental review document are not subject to judicial review because the original document, even if flawed, is final and not subject to reconsideration].)

Given the nominal change being proposed, there are negligible (if any) incremental effects posed by the modified project. In fact, as noted previously, the proposed changes will likely result in a net environmental benefit due to the proposed set back from the creek and the “no disturbance” area. Thus, no changes to the original MND are needed, and the project could be approved with no further environmental documentation.

Nevertheless, in an abundance of caution and in the interest of public disclosure, an Environmental Assessment/Initial Study has been prepared for the modified project, with some new mitigation measures proposed to be consistent with current City practices and to provide further assurances that there will be no new or more severe significant impacts. As a result, a subsequent mitigated negative declaration has been proposed for adoption (*Exhibits E*).

- On November 1<sup>st</sup>, 2023, the environmental analysis/initial study and supporting documentation was uploaded to the CA State Clearinghouse and circulated via email to various Federal, State, and local agencies, including community groups for review. The document was uploaded to the City’s Website and made available upon request. Additionally, a Notice of Intent (NOI) was mailed (via USPS) to the surrounding parcels owners within 300 feet of the subject property informing them of the City’s decision to adopt a Mitigated Negative Declaration for the proposed project (*All mailing addresses are drawn from the electronic database supplied by the Lake County Assessor/Recorders Office Database*).

- The Notice of Intent (NOI) allows those notified and/or interested parties to review and comment on the project. The commenting period for the environmental document was November 4<sup>th</sup>, 2023, through December 6<sup>th</sup>, 2023. The city received comments from the agencies below (*Exhibit G*)
  - *Lake County Assessor Office*
  - *Lake County Special Districts*
  - *CA Central Valley Regional Quality Control Board*
  - *Koi Nation of Northern California*
  - *Sierra Club Lake Group*
  - *Public Comment (David Goolsbee)*

**OPTIONS:**

1. Move to Adopt Resolution 2024-03, A Resolution of the City Council of the City of Clearlake denying Appeal Application, APCC 2023-02 and upholding the Planning Commissions decisions of December 18th, 2023, approving the refenced project.
2. Move to Adopt Resolution 2024-03, A Resolution of the City Council of the City of Clearlake approving the Appeal Application, APCC 2023-02 and denying the referenced project.
3. Move to continue the item and provide alternate direction to staff.



**Exhibits:**

- A. Resolution 2024-03 with Conditions of Approval.
- B. Appeal Application Packet dated December 21st, 2023.
- C. PC Agenda Packet from Dec. 18, 2023.
- D. Danco Subdivision Map Approved.
- E. Danco PC Approved CEQA\_MND with Attachments dated 12/18/2023.
- F. Original Staff Report and Adopted MND CEQA for Sub 02-05 & IS 03\_05.
- G. Original Approved Resolution PC 26-06 from 2006 Signed.
- H. Notice of Intent Agency & Public Comments.
- I. Request for Review (RFR) initial Project Comments.
- J. Mitigation Monitoring Reporting Program (MMRP).