



Fawn Williams, Chair  
Planning Commission  
City of Clearlake  
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**RE: SCH 2024121089  
Gas Station, Store & Car Wash Project**

January 22, 2025

Dear Commissioner Williams:

The Koi Nation of Northern California (“Koi Nation”) is a federally recognized Indian tribe that is traditionally and culturally affiliated with the land where the “Gas Station Island with Canopy, Convenience Store, and Drive through Car Wash” Project, SCH 2024121089 (“Project”) is proposed. The City of Clearlake (“City”) published the draft mitigated negative declaration (“MND”) on December 23, 2024.

City staff consulted with the Koi Nation regarding tribal cultural resources on the Project site. The Project site has recorded cultural resources and a high probability of unrecorded cultural resources that are significant to the Koi Nation. The Koi Nation appreciates the progress the City made toward respecting tribal cultural resources in the draft MND. However, there are two critical steps that the Koi Nation requested which were omitted from the draft MND’s mitigation measures.

The Koi Nation respectfully requests the Planning Commission address the remaining personnel safety and cultural concerns before approving the draft MND. Specifically, in mitigation measure TCR-4 the Koi Nation requests two minor amendments. First, that a tribal monitor be required for each piece of heavy equipment that is engaged in subsurface disturbance. Second, that the Koi Nation be entitled to have its professional monitors paid for each day of work. These issues are more fully described below.

The Koi Nation has other concerns with the sufficiency of the draft MND. However, with the requested revisions, the Koi Nation is prepared to support the Planning Commission’s approval of the draft MND. The Koi Nation intends that this collaborative approach to protecting tribal cultural resources represents a turning point in relations between the Koi Nation and the City.

**I. Amendment 1: Project Safety Requires a Revision to the Number of Tribal Monitors.**

Construction sites present inherent dangers to personnel. When heavy equipment is present those dangers increase and personnel should be focused on a single task that enables them to avoid severe injury. A worker's divided attention could be the difference between going home to their family or being permanently injured... or worse. The Planning Commission should consider personnel safety when determining whether the draft mitigation measures are adequate.

A worker that is regularly moving between two sites is exposed to unnecessary risk. Construction site risks include: (1) crushing hazards and injury from moving heavy equipment; (2) open trenches; (3) uneven ground and surface hazards; (4) tripping hazards including tools and materials; and (5) impalement hazards, among others. A worker moving between multiple locations and performing multiple tasks faces significant risk, regardless of how well trained he or she is. The California Division of Occupational Safety and Health (CalOSHA) requires employers to create workplace injury prevention plans and a code of safe practices for their employees that includes measures to mitigate against construction site injuries. An example Code of Safe Practices for CalTrans is informative. For excavations that include any "depression in an earth surface formed by earth removal" employees are first counseled to "not enter an excavation unless it is necessary to perform their work." Before entering an excavation, an employee should "verify that required protection against ground movement" is in place, and "be aware that changed soil conditions may require modifications to shoring or sloping systems" among other safety guidelines. Each movement of the worker between excavations requires affirmative steps to guard against changing safety risks.

For this reason, most tribes request that two tribal monitors be assigned to each piece of earth-moving equipment. There are two locations for each piece of heavy equipment that require monitoring. The site where earth is removed requires monitoring, because human remains, cultural items, and indicators of settlement may be revealed in side walls of the trench. The site where the earth is deposited (spoils piles) also requires monitoring, because the disturbed earth is scattered and it is easier to observe lithic and other cultural materials. Although these sites are relatively close in proximity, the open trench and uneven ground created by the heavy equipment, along with adjacent construction activity, exposes the tribal monitor to significant risk of injury.

Those risks are exponentially compounded when only one tribal monitor is required to work among two or more pieces of heavy equipment in two or more locations on the Project site. The monitor must then move between at least four locations that may no longer be in close proximity. The monitor must walk between and observe two trenches, and walk between and examine two spoils piles, all while maintaining awareness of multiple pieces of heavy equipment, other construction workers, materials and tools movements, and continuous changes in surface levels.

In defense of its tribal monitor's health and safety, the Koi Nation would prefer the draft MND require the applicant to pay two tribal monitors for each piece of earth-moving heavy equipment. However, to accommodate the City and the applicant, the Koi Nation offered a compromise position of requiring at least one paid tribal monitor for each piece of earth-moving heavy equipment. The Koi Nation's requested personnel level mitigates the exponential increase in risk from monitoring multiple pieces of heavy equipment.

The Koi Nation also notes that requiring an appropriate number of tribal monitors will help the applicant expedite the project. As noted above, each "scoop" of earth needs to be monitored at the site where the earth was removed and the site where the earth is deposited. Employing only one tribal monitor when there are several excavation locations would slow excavation. And, if human remains or cultural resources are discovered at one location, the tribal monitor's need to evaluate the discovery could delay work at another location.

The draft MND provides "only one tribal monitor need be present" at any time. Koi Nation respectfully requests that the Planning Commission ensure personnel safety by requiring at least one paid professional tribal monitor for each piece of heavy equipment that is engaged in subsurface disturbance. Following is the recommended amendment:

TCR-4: At least seven days in advance of ground disturbing activities, the applicant shall coordinate with the affiliated consulting tribe(s) in relations to having a Tribal Monitor onsite during ground disturbing activities that disturb ground below the existing ground surface. To the extent that more than one affiliated consulting tribe(s) desires to monitor such activities, the affiliated consulting Tribe(s) shall rotate monitoring shifts, such that only one tribal monitor need be present. If there is more than one piece of heavy ground disturbing equipment in operation at one time, there shall be one Tribal Monitor for each piece of equipment. When rotated, the non-required monitor may continue monitoring on a voluntary basis. Should the Tribal monitor choose not to monitor, or if the monitor is not present at the project location at the scheduled time, work may proceed without a monitor as long as the notification was made and documented.

## **II. Amendment 2: Koi Nation's Tribal Monitors Should be Paid for their Work.**

The draft MND requires the applicant to pay for professional tribal monitoring. The Koi Nation appreciates the City's recognition that its tribal monitors have extensive training and professional expertise which should be compensated.

Koi Nation understands that at least one other tribe consulted on this Project. In an apparent attempt to accommodate tribal monitors from both tribes, the City created a novel concept in the draft MND where the tribes are supposed to "rotate monitoring shifts."



This approach is not normal, does not respect individual tribes and their confidential cultural information, and is unworkable. Normally, each tribe is entitled to employ their own paid tribal monitors at a project site.

CEQA requires the City to consult with each tribe as an independent sovereign government. The City cannot require tribes to consult with each other, or to coordinate or collaborate, in violation of their sovereignty. CEQA also requires the City to protect the confidentiality of the Koi Nation's cultural information.

The novel rotating shifts between tribes concept is not consistent with CEQA's requirements that the City respect tribal sovereignty and protect confidential cultural information. The cultural information one tribe obtains during a day of monitoring is held confidential to that tribe. So each tribe would have one half of the information obtained – the mitigation measure mitigates, at best, half of the issue. In addition, cultural knowledge of one tribe is often different than cultural knowledge of another, so tribal monitors from one tribe may be looking for different aspects or signs of cultural resources and activity than tribal monitors from the other tribe.

The novel rotating shifts concept is also unworkable from an employment perspective. The Koi Nation contracts and pays its tribal monitors for their professional knowledge and expertise. A tribal monitor that is assigned to the project, under the draft MND, could only expect to be paid for every two days' work. The draft MND states: "When rotated, the non-required monitor may continue monitoring on a voluntary basis." A proposal where a worker gets paid every other day, or only gets to work every other day, is bizarre as an employment practice. The draft MND appears to be allocating half of the Project's monitoring costs to the Koi Nation.

The Koi Nation respectfully requests that the Planning Commission amend the mitigation measures to entitle the Koi Nation's tribal monitors to be paid for each day they monitor ground disturbing activities. The overall costs for tribal monitoring are de minimis, and it is only fair that the Project pay these professionals for their work assignments. Following is the recommended amendment:

TCR-4: At least seven days in advance of ground disturbing activities, the applicant shall coordinate with the affiliated consulting tribe(s) in relations to having a Tribal Monitor onsite during ground disturbing activities that disturb ground below the existing ground surface. To the extent that more than one affiliated consulting tribe(s) desires to monitor such activities, ~~the affiliated consulting Tribe(s) shall rotate monitoring shifts, such that only one tribal monitor need be present. When rotated, the non-required monitor may continue monitoring on a voluntary basis.~~ each Tribe shall be entitled to monitor. Should the Tribal monitor choose not to monitor, or if the monitor is not present at the project location at the scheduled

time, work may proceed without a monitor as long as the notification was made and documented.

The Koi Nation's two requested amendments to TCR-4 are minor and should not require recirculation of the draft MND. The cumulative amendment is as follows:

TCR-4: At least seven days in advance of ground disturbing activities, the applicant shall coordinate with the affiliated consulting tribe(s) in relations to having a Tribal Monitor onsite during ground disturbing activities that disturb ground below the existing ground surface. To the extent that more than one affiliated consulting tribe(s) desires to monitor such activities ~~the affiliated consulting Tribe(s) shall rotate monitoring shifts, such that only one tribal monitor need be present. When rotated, the non-required monitor may continue monitoring on a voluntary basis.~~ each Tribe shall be entitled to monitor. If there is more than one piece of heavy ground disturbing equipment in operation at one time, there shall be one Tribal Monitor for each piece of equipment. Should the Tribal monitor choose not to monitor, or if the monitor is not present at the project location at the scheduled time, work may proceed without a monitor as long as the notification was made and documented.

### **III. Conclusion.**

The Koi Nation has explained to the City that it is not anti-development. Rather, the Koi Nation supports respectful development in the Clearlake area which benefits all members of the community. Ensuring that the Koi Nation can monitor development activities, and identify and protect its Ancestors and cultural resources, are reasonable steps that the City can and should take consistent with CEQA's requirements, and the City's government-to-government relationship with the Koi Nation.


Although the City's archaeologist declared that there are no apparent cultural resources on the Project site, that statement is inaccurate. The Koi Nation described for the City that there is a recorded archaeological site that extends onto the Project property. The Koi Nation also described for the City the density of cultural resources in the area of the Project site, including 3,361 individual tribal cultural resources found within a quarter-mile. Notably, the City's archaeologist found poor visibility in its survey because the site was mostly paved and the unpaved areas were thick with weeds. These impediments likely contributed to the archaeological report's inaccuracy.

If the Planning Commission incorporates the Koi Nation's requested amendments into the Project's mitigation measures, it would be pleased to support approval of this Project. The requested amendments are minor revisions to protect the safety of the Koi

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Nation's tribal monitors and other construction personnel, and to provide fair wages for professional work.

Respectfully,



Chairman Darin Beltran  
Koi Nation of Northern California

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