Agency Comments

From: Alexandra Owens
To: Mark Roberts
Subject: SCH Number 2022070344
Date: Tuesday, July 19, 2022 3:40:44 PM

Hello,

Your project is published and is available for review. Please note the State/Local review 'start' and 'end' period.
You can click "Navigation" and select "Published Document" to view your project and any attachments on CEQAnet.
Closing Letters: The State Clearinghouse (SCH) will not provide a close of review period acknowledgement on your CEQA environmental document, at this time. Comments submitted by a state agency at the close of review period (and after) are available on CEQAnet.

Please visit: https://ceqanet.opr.ca.gov/Search/Advanced

- Type in the SCH# of your project
  - If filtering by "Lead Agency"
    - Select the correct project
- Only State agency comments will be available in the "attachments" section **labeled "State Comment Letters"**; the SCH does not post comments received from non-State entities.

Thank you,

Alexandra Owens
SCH Student Assistant
Governor's Office of Planning and Research
alexandra.owens@opr.ca.gov

To view your submission, use the following link.
https://ceqasubmit.opr.ca.gov/Document/Index/280258/1

From: Willie Sapeta
To: Mark Roberts
Cc: Miasha Rivas; Tiffany Franklin; Autumn Lancaster
Subject: RE: Notice of Intent to Adopt a Mitigated Negative Declaration
Date: Wednesday, July 20, 2022 12:48:07 PM
Attachments: image001.png
image003.png

In my review I concur with the documents supplied, but I would like for our new Fire Marshal to take a quick review and respond with her comments if warranted.

Thank you

Chief Sapeta

From: Mark Roberts
Sent: Tuesday, July 19, 2022 3:49 PM
Subject: Notice of Intent to Adopt a Mitigated Negative Declaration
Importance: High

Good Afternoon,

City of Clearlake –Notice of Intent to Adopt a Mitigated Negative Declaration

Notice is hereby given that the City of Clearlake has tentatively determined that the project described below will not result in a significant adverse impact on the environment and that, in accordance with the California Environmental Quality Act, the City is prepared to issue a "mitigated negative declaration" in accordance with the California Environmental Quality Act (CEQA).

Project Title: BV Sports Complex

Project Location: 14885 Burns Valley Road; Clearlake, CA 95422. Assessor Parcel Number (APN): 010-026-40.

Summary: Development of a public park (sports complex), community center, public works yard with public works building facility and combined police department office and maintenance facilities, vehicle and equipment storage areas, public access and parking facilities on approximately 26 acres. The project is proposed to be located in the Burns Valley Area, north of Olympic Drive and South of Burns Valley Drive, behind the Safeway Shopping

Center, Clearlake, CA (Accessors Parcel No. 010-026-40). The park would include one full size baseball field, two smaller little league baseball fields, two small Tee-Ball Fields, a full-size soccer field. The project would include development of an approximately 15,000 to 20,000 square foot recreation center building for use for public events and activities. This building would contain sports features, such as basketball and volleyball courts. Being located next to the baseball area, a concession building/stand would be constructed next to or as part of this larger building. These combined facilities would be located on the east side of the project site. On the west side is proposed an approximate 12,000 square foot public works building, including a Police Department investigation facility. This building would include a vehicle wash station, and sections for equipment repair. This public works yard would be used to store and maintain city public vehicles, including public works and police department cars, trucks, and heavy equipment. Access to the project would be from a number of driveways/streets including access from Olympic Drive and Burns Valley Road. Approximately 365 parking spaces would be developed along access roads through the park (including 20 for the public works/police facility). Other related improvements would include sidewalks, fencing lighting features, baseball field protective netting and restroom facilities. All play fields will include lighting to allow for night operations. Project development is envisioned to be constructed in two development phasing depending on funding availability and City priority. The first phase is to develop the sports complex components, with the recreation center building and public works hop building to come later.

This tentative determination is based on an environmental study that assesses the project's potential environmental impacts and those potential impacts have been reduced to less than significant levels with the incorporated mitigation measures. Anyone can review this study at Clearlake City Hall, 14050 Olympic Drive, Clearlake, CA 95901, during normal business hours or by downloading from the State Clearinghouse Website at: I have also attached a Complete Initial Packet above for your convenience.

- https://ceqanet.opr.ca.gov/

Final environmental determinations are made by the decision-making body, which, in this case would be the City of Clearlake, Planning Commission. The public review period for this notice will remain open for a period of at least 30 days from the publication of this **Notice (07/19/2022), until (08/19/2022).** For more information, please call (707) 994-8201 during normal business hours of City Hall (Monday through Thursday – 8am to 5pm).

During this period written comments on the project and the proposed mitigated negative declaration may be addressed. You may also submit comments via email at mroberts@clearlake.ca.us **(All comments must be received no later than August 19th, 2022, by 5pm).**

City of Clearlake
Planning Department
Attn: Mark Roberts
14050 Olympic Drive
Clearlake, CA 95422

COUNTY OF LAKE
Health Services Department
Environmental Health Division
922 Bevins Court
Lakeport, California 95453-9739
Telephone 707/263-1164
FAX 707/263-1681

Jonathan Portney
Health Services Director

Jennifer Baker
Deputy Health Services Director

Craig Wetherbee
Environmental Health Director

MEMORANDUM

DATE: July 22, 2022

TO: Mark Roberts, Senior Planner

FROM: Tina Dawn-Rubin, Environmental Health Aide

RE: BV Sports Complex
Notice of Intent

APN: 010-026-40 14885 Burns Valley Rd, Clearlake

If the applicant stores hazardous materials (defined as either virgin or waste materials) equal to or greater than 55 gallons of a liquid, 500 pounds of a solid or 200 cubic feet of compressed gas, the applicant will be required to submit a Hazardous Materials Business Plan to the Environmental Health Division via the California Electronic Reporting system (CERS) and it shall be renewed and updated annually or if quantities increase. If the amount of hazardous materials is less than the above quantities, the applicant will need to complete and submit a Hazardous Materials/Waste Declaration stating the name of the material and the quantity to be stored on site.

If the applicant increases hazardous material storage, they will need to update their Hazardous Materials Business Plan.

All wells shall be located an adequate horizontal distance from potential sources of contamination and pollution. The storage of hazardous materials shall be located a safe distance from any water well to prevent contamination. The applicant is required to implement measures to prevent contamination of the well(s).

Hazardous materials shall not be allowed to leak onto the ground or contaminate surface waters. Any release of a hazardous material must immediately be reported to Lake County Environmental Health (LCEH).

Collected hazardous or toxic materials shall be recycled or disposed of through a registered waste hauler to an approved site authorized to accept such materials.

Industrial Waste shall not be disposed of on-site without review or permit from the Environmental Health Division or the Regional Water Quality Control Board.

Hazardous Waste must be handled according to all Hazardous Waste Control Laws. Any generation of a hazardous waste must be reported to Lake County Environmental Health (LCEH) within thirty (30) days.

If applicable, the applicant must comply with the California Health and Safety Code 25280 et seq. Underground Storage Tank Laws. The applicant will need to apply and pay for an Underground Storage Tank System installation permit and submit three (3) sets of full plans to the Environmental Health Division for review and approval.

The applicant shall comply with all Above Ground Petroleum Storage Tank Regulations if applicable.

The applicant must comply with the California Retail Food Code Regulations and applicant must have a potable water supply.

The applicant must apply and pay for plan check application: submit three sets of complete plans and supporting documents for review of any proposed retail food facility and must obtain approval from the Division of Environmental Health for construction before obtaining any building permits. Food facilities must be permitted and inspected prior to opening to the public.

If in the future the applicant proposes to install a public pool, spa or water feature such as a water slide, the applicant must comply with the California Health and Safety Code for the construction and operation of a public swimming pool and/or spa or water features. The applicant must submit complete sets of plans to this Division for approval, before obtaining any building permits. The pool/spa/water feature must be permitted and inspected by this Division.

From: Lori Baca
To: Mark Roberts
Subject: RE: Notice of Intent to Adopt a Mitigated Negative Declaration
Date: Tuesday, August 9, 2022 11:01:38 AM
Attachments: image004.png
image001.png

Mark,

I see they listed Clearlake Waste Solutions as waste management but I do not see Lake County Sanitation District listed for public sewer.

Lori A. Baca
Customer Service Supervisor
Lori.Baca@lakecountyca.gov
Office Number (707) 263-0119
Fax (707) 263-3836

From: Mark Roberts [mailto:mroberts@clearlake.ca.us]
Sent: Tuesday, July 19, 2022 3:49 PM
Subject: Notice of Intent to Adopt a Mitigated Negative Declaration
Importance: High

Good Afternoon,

City of Clearlake –Notice of Intent to Adopt a Mitigated Negative Declaration

Notice is hereby given that the City of Clearlake has tentatively determined that the project described below will not result in a significant adverse impact on the environment and that, in accordance with the California Environmental Quality Act, the City is prepared to issue a "mitigated negative declaration" in accordance with the California Environmental Quality Act (CEQA).

Project Title: BV Sports Complex

From: Rightnar, Jacob@DOT
To: Mark Roberts
Subject: RE: Notice of Intent to Adopt a Mitigated Negative Declaration
Date: Tuesday, August 2, 2022 3:27:52 PM
Attachments: image001.png
image003.png

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

Thank you for providing Caltrans D1 the opportunity to review the BV Sports Complex project. We are still in the review process, however we could not seem to locate the traffic impact report in the project documents. Does the City of Clearlake have this document available or any other information regarding the traffic impact of this project? Your help is much appreciated.

Sincerely,
Jacob Rightnar
Caltrans District 1
Transportation Planning
Cell: (707)684-6895

From: Mark Roberts <mroberts@clearlake.ca.us>
Sent: Tuesday, July 19, 2022 3:49 PM
Subject: Notice of Intent to Adopt a Mitigated Negative Declaration
Importance: High

EXTERNAL EMAIL. Links/attachments may not be safe.

Good Afternoon,

City of Clearlake –Notice of Intent to Adopt a Mitigated Negative Declaration

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Project Title: BV Sports Complex

From:	Mark Roberts
To:	Rightnar, Jacob@DOT
Subject:	FW: Notice of Intent to Adopt a Mitigated Negative Declaration
Date:	Thursday, August 4, 2022 8:59:00 AM
Attachments:	Transportation Impact Study for the Burns Valley Development (1).pdf image001.png image003.png
Importance:	High

Hi Jacob,

Quick follow up, besides the Traffic Study attached above. Due to the size of the CEQA file, we were unable to attached it to the NOI email. If you click on the link below, you can review the entire CEQA packet from the State Clearing House Website.

Mark

From: Mark Roberts
Sent: Wednesday, August 3, 2022 10:48 AM
To: Rightnar, Jacob@DOT <Jacob.Rightnar@dot.ca.gov>
Subject: RE: Notice of Intent to Adopt a Mitigated Negative Declaration
Importance: High

Hi Jacob,

Please see the above attachment.

Mark

From: Rightnar, Jacob@DOT <Jacob.Rightnar@dot.ca.gov>
Sent: Tuesday, August 2, 2022 3:28 PM
To: Mark Roberts <mroberts@clearlake.ca.us>
Subject: RE: Notice of Intent to Adopt a Mitigated Negative Declaration

Good Afternoon,

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Jacob Rightnar
Caltrans District 1
Transportation Planning
Cell: (707)684-6895

From: Mark Roberts <mroberts@clearlake.ca.us>
Sent: Tuesday, July 19, 2022 3:49 PM
Subject: Notice of Intent to Adopt a Mitigated Negative Declaration
Importance: High

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driveways/streets including access from Olympic Drive and Burns Valley Road. Approximately 365 parking spaces would be developed along access roads through the park (including 20 for the public works/police facility). Other related improvements would include sidewalks, fencing lighting features, baseball field protective netting and restroom facilities. All play fields will include lighting to allow for night operations. Project development is envisioned to be constructed in two development phasing depending on funding availability and City priority. The first phase is to develop the sports complex components, with the recreation center building and public works hop building to come later.

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During this period written comments on the project and the proposed mitigated negative declaration may be addressed. You may also submit comments via email at mroberts@clearlake.ca.us **(All comments must be received no later than August 19th, 2022, by 5pm).**

City of Clearlake
Planning Department
Attn: Mark Roberts
14050 Olympic Drive
Clearlake, CA 95422

Published Date: **July 19, 2022**

Sincerely,

Mark Roberts
Senior Planner

Mark Roberts

From: Whitman, Terri <TWhitman@kmtg.com>
Sent: Friday, September 2, 2022 3:22 PM
To: Mark Roberts
Cc: Roberson, Holly; Kn@koination.com; rgeary@hpultribe-nsn.gov
Subject: Comments of Koi Nation of Northern California to BV Sports Complex Project Mitigated Negative Declaration
Attachments: 2022-09-02 FINAL Koi Nation Comment Letter.pdf

Good afternoon ~

Please find attached the Comments of Koi Nation of Northern California to BV Sports Complex Project Mitigated Negative Declaration. Thank you.

Terri Whitman
Assistant to Daniel J. O'Hanlon, Eric N. Robinson, Holly A. Roberson and Lauren Bernadett

Kronick Moskovitz Tiedemann & Girard
1331 Garden Hwy, 2nd Floor
Sacramento, CA 95833

916.321.4500 | T
916.321.4555 | F
kmtg.com | vCard | map | twhitman@kmtg.com

Mark Roberts

From: Whitman, Terri <TWhitman@kmtg.com>
Sent: Thursday, September 1, 2022 9:38 AM
To: Mark Roberts
Cc: Roberson, Holly
Subject: RE: Question regarding Comment Letter Re: BV Sports Complex Project

Thank you!

Terri Whitman
Assistant to Daniel J. O'Hanlon, Eric N. Robinson, Holly A. Roberson and Lauren Bernadett

Kronick Moskovitz Tiedemann & Girard
1331 Garden Hwy, 2nd Floor
Sacramento, CA 95833

916.321.4500 | T
916.321.4555 | F

kmtg.com | vCard | map | twhitman@kmtg.com

From: Mark Roberts <mroberts@clearlake.ca.us>
Sent: Thursday, September 1, 2022 9:33 AM
To: Whitman, Terri <TWhitman@kmtg.com>
Cc: Roberson, Holly <hroberson@kmtg.com>
Subject: RE: Question regarding Comment Letter Re: BV Sports Complex Project

Good Morning,

Thank you for your email and I hope you are well. Yes, either format is acceptable but we prefer to receive written comments via email. If you have any questions, please let me know.

Mark

From: Whitman, Terri <TWhitman@kmtg.com>
Sent: Wednesday, August 31, 2022 3:34 PM
To: Mark Roberts <mroberts@clearlake.ca.us>
Cc: Roberson, Holly <hroberson@kmtg.com>; Whitman, Terri <TWhitman@kmtg.com>
Subject: Question regarding Comment Letter Re: BV Sports Complex Project

Good afternoon ~

Can you tell me if Comment Letters regarding BV Sports Complex Project will be accepted by email and US Mail?

Thank you for your assistance in this regard.

Terri Whitman
Assistant to Daniel J. O'Hanlon, Eric N. Robinson, Holly A. Roberson and Lauren Bernadett

Kronick Moskovitz Tiedemann & Girard
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KOI NATION OF NORTHERN CALIFORNIA

September 2, 2022

VIA E-MAIL AND U.S. MAIL

Mark Roberts
Senior Planner
City of Clearlake
14050 Olympic Drive
Clearlake, CA 95422
E-Mail: mroberts@clearlake.ca.us

Re: Comments of Koi Nation of Northern CA to BV Sports Complex Project Mitigated Negative Declaration

Dear Mr. Roberts:

Thank you for the opportunity to provide comments on the City of Clearlake's ("City") Notice of Intent ("NOI") to Adopt a Mitigated Negative Declaration ("MND") related to the proposed BV Sports Complex Project ("Project"). The Project is within the aboriginal territories of the Koi Nation of Northern California ("Koi Nation" or "Tribe"), and the Tribe has a cultural interest and authority in the proposed Project area. The Tribe offers these comments, consistent with the September 2, 2022, comment deadline, for the City's consideration, and we encourage the City to proceed with a more rigorous environmental review process than has been conducted to date.

As explained in this letter, the proposed MND is inadequate and does not adequately consider and remediate the adverse impacts of the Project on the environment. Substantial evidence provided in this letter demonstrates a fair argument exists that the Project will have substantial impacts on the environment. Therefore, the City should prepare an Environmental Impact Report ("EIR") including a meaningful consideration of project alternatives and adoption of feasible mitigation measures to reduce the impacts of the Project on the environment. (*See Protect Niles v. City of Fremont* (2016) 25 Cal.App.5th 1129, 1134 [holding that an EIR is required rather than a MND when substantial evidence supports a fair argument that there will be adverse environmental impacts from a project.].)

APPLICABLE CEQA STANDARDS

Under the California Environmental Quality Act ("CEQA"), all lead agencies must prepare an EIR for projects "which may have a significant effect on the environment." (Pub. Res. Code §§ 21151(a) & 21060.5.) *In Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, the California Supreme Court explained the role an EIR plays in the CEQA process, and instructed that: "The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.' [Citation.] The EIR is therefore the 'heart of CEQA.' [Citation]." (*Id.* at 392; *see also Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 ["At the 'heart of CEQA' [citation] is the requirement that public agencies prepare an EIR for any 'project' that 'may have a significant effect on the environment.' [Citation.]"].) "When the informational requirements of CEQA

are not complied with, an agency has failed to proceed in a manner required by law and has therefore abused its discretion." (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 118.)

CEQA "creates a low threshold requirement for an initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317). Accordingly, "'if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.'" (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1111.) When, as here, there is an argument that the lead agency, in this case the City, should have prepared an EIR rather than the proposed MND, a reviewing court reviews the administrative record to determine whether "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impacts." (*Ibid.*) Substantial evidence is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code of Regs., tit.14, § 15384(a).) "The fair argument standard thus creates a low threshold for requiring an EIR, reflecting the legislative preference for resolving doubts in favor of environmental review. [Citations.]" (*Covina Residents for Responsible Development v. City of Covina* (2018) 21 Cal.App.5th 712, 723.) As explained in this comment letter, numerous aspects of the Project present a fair argument of significant environmental effects requiring the City to prepare an EIR rather than rely on a defective and inadequate MND for the Project.

CULTURAL RESOURCES AND TRIBAL CULTURAL RESOURCES

In the proposed MND, the City purports to address the category of Cultural Resources together with the distinct category of Tribal Cultural Resources by simply cross-referencing its prior cultural resources analysis. This has been illegal since July 1, 2015, when Assembly Bill 52 ("AB 52") (2014 Stats, ch. 532.) went into effect. The City purports to rely on a Cultural Resource Investigation by Greg White, Ph.D., as attached to the MND at Attachment D. The proposed MND posted on the State's CEQA website[1] indicates Attachment D is to be attached. However, the document listed on the website at Attachment D is a Geotechnical Report. It is difficult for any interested party to provide meaningful commentary on a document that is not posted.

Based on the proposed MND, it is apparent that the information developed by and relied upon by the City for purposes of cultural resources does not satisfy requirements applicable to an adequate tribal cultural resources analysis. Archaeological information may inform a tribal cultural resources assessment as a starting point, but it is no substitute for input from the California Native American Tribal government which is traditionally and culturally affiliated with the area. Such input can include both written and oral tradition information and must also recognize the need to maintain confidentiality of relevant data. (See AB 52, § 1 ["California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated.]; *Confederated Tribes and Bands of Yakama Nation v. Klichitat County* (9th Cir. 2021) 1 F.4th 673, 682 fn. 9 [noting the importance of tribal oral history and traditions in interpreting information]; Gov. Code § 65352.4 [acknowledging the need to maintain confidentiality with respect to places that have traditional tribal cultural significance].) Although the City did initially reach out during the AB 52 process, and the City and Tribe met, this limited attempt at engagement does not satisfy the on-going and robust statutory requirements for consultation under AB 52 applicable to CEQA review for projects involving tribal lands.

1. https://ceqanet.opr.ca.gov/2022070344

The Koi Nation reached out and asked the City to continue to engage in tribal consultation on this Project, and the City Manager Alan Flora responded that the City was done consulting because the City met with the Tribe once, therefore consultation was done. Tribal consultation is not a box checking exercise. The Tribe's concerns were not given the full consideration that they deserve for this important tribal cultural resource site.

According to Public Resources Code section 21080.3.1, as enacted through AB 52,

> (a) The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.
>
> (b) Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation.

Government Code section 65352.4 provides that:

> "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

Public Resources Code section 21080.3.2(b) provides that consultation is concluded if: "(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource" or "(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached."

According to Public Resources Code section 21082.3(d),

> . . . the lead agency may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:
>
> (1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

> (2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process.
>
> (3) The lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days.

In the present case, the consultation has begun but is not complete according to the statutory criteria, and therefore adoption of a EIR or MND is premature under section 21082.3. There has certainly been no agreement on culturally appropriate mitigation measures to avoid, preserve, or mitigate impacts to tribal cultural resources for the Project. Full and complete consultation is required in order to fully understand the tribal cultural resources impacted by the Project and to develop meaningful and culturally appropriate mitigation measures. The Koi Nation wrote the City asking it to re-engage in tribal consultation on this project on August 30, 2022. The City's response was that the required AB 52 consultation occurred on March 9, 2022, no further consultation was required unless requested by the Tribe, and any obligation to consult terminated upon issuance of the draft MND. Once a MND issues, the City apparently believes that the Tribe is limited to submitting comments to the City and the time for any consultation has passed. False. The City also stated that the Tribe failed to produce substantial evidence of an impact, and it discounted and dismissed the Tribal Historic Preservation Officer Robert Geary's "verbal testimony." That is unacceptable. The City also appears focused solely on whether "intact cultural resources" were found on the site. Whether or not a resource is intact is not relevant from a tribal cultural resources perspective. That may matter for archaeology, but that is a different category of resource under CEQA. Here, the City can avoid the mistake that other public entities have made by taking these public comments and tribal consultation seriously, reaching out to the tribal government again for information, and properly analyzing the cultural and archaeological sites as tribal cultural resources prior to the adoption of an EIR or MND. (See Pub. Res. Code § 21074(a), 21082.3(b).).

Mr. Geary provided substantial evidence in consultation, including a detailed map of registered and significant tribal cultural resources in the project area. The City dismissed this evidence because the Tribe did not leave the map with the City, but the Tribe could not because of the California Historic Resource Information Center's (CHRIS) tribal access policies. The City's own archaeologist has access to the same information through the CHRIS center. Once presented with this evidence, the City's due diligence in the CEQA process should have included follow-up on these important sites. The City knew there was evidence of an environmental resource, and failed to analyze it. That is a clear CEQA violation.

Meaningful consultation will ultimately inform the local agency's CEQA determinations. According to Public Resources Code section 21082.3(b)

> If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
>
> (1) Whether the proposed project has a significant impact on an identified tribal cultural resource.
>
> (2) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.

In an attempt to address these criteria, the City retained an archaeologist who conducted an investigation, and "[the investigation resulted in the discovery of two intact, buried, archeological sites . . . Both sites can be considered significant cultural resources." (MND, at 28.) The archeologist also found moderate density artifact assemblages and noted the artifacts "suggests that the site also served as a temporary residential function." (MND, at 28) The MND concludes that no further management measures are necessary "if potential impacts to these sites can be eliminated by means of avoidance or placement of fill." (MND, at 28.)

The City may argue that the Archaeologist's report indicates that the cultural resources are not significant because, from an archaeological perspective, they lack context and would not yield information that is important to California's history. As demonstrated by the City's August 30, 2022, email, the City appears focused, for example, on whether "intact cultural resources" were discovered, but the text of AB 52 clearly indicates its protections and procedures are broadly applicable to tribal cultural concerns and are not limited simply to instances in which an intact cultural resource is discovered on a site. The lack of an archaeological finding of significance does not mean that these tribal cultural resources are insignificant to the Tribe, or to the people of California. The relevant tribal government and tribal cultural practitioners can shed more light on these tribal cultural resources beyond simply an archeological analysis. Appropriate tribal consultation would elucidate the tribal cultural landscape and specific cultural context in which the known artifacts and other tribal cultural resources on the Project site exist.

Without a doubt, the Tribe has raised a fair argument that from a tribal cultural resources perspective there is valuable information available about the tribal cultural resources landscape and specific tribal cultural resources as informed by the presence of the tribal cultural resources on the site, and present on adjacent sites. To the extent that there is a conflict in the evidence, the City should not "weigh" the conflicting evidence to determine whether an EIR should be prepared. It should simply prepare an EIR. It is the function of an EIR, not a MND, to resolve conflicting claims based on substantial evidence, as to the environmental effects of a project. (See Pub. Res. Code § 21064.5)

Even if the City were to ignore its obligation to prepare an EIR, which it should not, the MND as drafted fails to satisfy the applicable standards of the law by improperly deferring to a later date the formulation of a plan, if further resources are found, rather than proactively developing culturally appropriate mitigation measures including alternatives, avoidance, and preservation in place, or potentially tribal monitoring, as required by AB 52. This impacts analysis in the MND is inaccurate, and the mitigation measures are inadequate. The City needs to continue the consultation process and include the Tribe's reasonable and modest recommendations that will help protect these tribal cultural resources from damage during the construction process. During the consultation thus far, the Tribe has raised numerous such concerns that the City needs to address including:

> (1) Lack of appropriate inclusion and analysis of Archeological and Tribal Cultural Resources sites in and near the Project Area of Potential Effect;
>
> (2) Lack of incorporation of the Tribe's Tribal Cultural Resources Treatment Protocols into project Mitigation Measures;
>
> (3) Lack of inclusion of a Tribal Monitor for all ground disturbance activities based upon a signed tribal monitoring agreement; and
>
> (4) Absence of necessary Cultural Sensitivity Training for all project personnel on the first day of construction prior to work starting.

This MND must be revised to be adequate by including the following avoidance, preservation in place, and mitigation measures for tribal cultural resources:

> (1) Avoidance: Change the Project design to avoid sensitive areas, to the extent feasible and if avoidance is not feasible, the environmental documentation must explain what options were considered and why they were rejected;
>
> (2) Preservation in Place: Use capping with culturally appropriate materials to cover and protect Tribal Cultural Resources and leave them in place;
>
> (3) Decisions about Tribal Cultural Resources must be made by the Koi Nation Tribal Historic Preservation Officer, in consultation with the Project Archaeologist;
>
> (4) A signed Tribal Cultural Resources Treatment Protocol must be in place before construction begins, which includes a Tribal Monitoring agreement;
>
> (5) A reburial location for Tribal Cultural Resources on site must be identified in advance of project construction, in a place not subject to further disturbance; and
>
> (6) All Tribal Cultural Resources must be recorded on the appropriate DPR forms and submitted to the CHRIS center within 90 days of project completion.

Thus, the City must analyze potential impacts of the proposed Project for their significance and assess whether there may be a culturally significant impact. If there is, then robust mitigation measures are required. Fully utilizing the consultation process with the Tribe which is traditionally and culturally affiliated with the area is key to avoiding impacts to these environmental resources to the extent feasible, as CEQA requires. This will allow the City to obtain more relevant information about the impacts of the Project on Tribal Cultural Resources and allow the City to set in place culturally appropriate mitigation measures for those impacts. It is impermissible under CEQA for the City to make an impact determination without first determining the extent of the resource, and whether avoidance of the resource is feasible. (*See Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665 ("*Agoura Hills*").)

In *Agoura Hills*, just like in this project, the City of Agoura Hills failed to identify and analyze a prehistoric archaeological site which was also a tribal cultural resource, as a tribal cultural resources, despite being notified by public comments that fairly apprised the City of Agoura Hills of the concern that it had failed to adequately address project alternatives or mitigation measures that could preserve tribal cultural resources. As a result, the City was sued, and it lost. After considerable expense and a lengthy delay of the project, the City was required by the Court of Appeal to prepare an EIR. The better course for this Project is to proceed immediately with the required EIR and avoid unnecessary expense and delay.

Additionally, if this Project moves forward at this location, and the Koi Nation or the Archaeologist indicates that Native American Human remains may be present on the Project site, then a reburial and repatriation plan should be developed with the Tribe since it is traditionally and culturally affiliated with the Project prior to any ground disturbance. The Koi Nation is also concerned that there may be inadvertent discoveries of Native American Human Remains during Project construction, which would

trigger the application of both the Native American Graves Protection and Repatriation Act ("NAGPRA") and California NAGPRA. The MND for this project does address the potential for NAGPRA issues to arise on this project, but there is no viable plan in place to avoid impacts on Native American Human remains through appropriate tribal monitoring to avoid or preserve the Ancestors before they are disturbed, or worse, destroyed, during construction.

Aside from the impacts discussed above, the City is required to analyze environmental impacts which are cumulatively considerable. Impacts are cumulatively considerable if the effects of a project are significant when viewed in connection with the effect of past projects, other current projects and probable future projects. (Pub. Res. Code § 21083(b)(2).) An EIR is required if a Project will involve cumulatively significant impacts. (Pub. Res. Code § 21083(b).) The City is located within the aboriginal territory of the Tribe, and it contains numerous documented and undocumented sites used and inhabited by ancestral Tribal members. Some of these sites are the oldest in California. Lake County in general, and the City of Clearlake area in particular, are incredibly archaeologically, historically, culturally, and tribal culturally significant. Many of these sites have been, are currently, or will be subject to City projects including the present Project. These projects have resulted in, and will likely continue to result in, the discovery of human remains and a significant number of artifacts associated with the Tribe such as occurred at the recent Austin Park Splash Pad project. The City's pattern and practice of engaging in development projects without meaningful good faith tribal consultation is creating a cumulative impact to tribal cultural resources which violates CEQA, and which is unethical and disrespectful to the Ancestors of people who are part of the Clearlake community.

In enacting AB 52, the Legislature acknowledged that "a substantial adverse change to a tribal cultural resource has a significant effect on the environment," and consequently it sought to "[r]ecognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to [CEQA]." The substantial change to tribal cultural resources and need for tribal participation in the environmental review process for projects involving artifacts, remains and ancestral lands is significant as to one project and this significance is amplified when numerous projects within the relatively small municipal boundaries of the City involve the same or similar cultural impacts. The City must fully examine such cumulatively considerable cultural impacts within the context of an EIR for this Project.

More broadly, the MND's inadequate analysis and mitigation of tribal cultural concerns is part of a board pattern and practice of the City proceeding with projects without following applicable AB 52 CEQA procedures. This failure relating to tribal cultural concerns causes permanent and long-lasting impacts to the Tribe and their religious and cultural practices in a manner that the Legislature sought to avoid through its enactment of AB 52. Recent examples of this pattern and practice include the egregious situation in 2020 where, after soil containing Native American human remains was excavated, the City simply placed the soil containing the human remains in an unprotected location on the airport site. The City, to its credit, disclosed this situation to the Tribe and worked with the Tribe to come up with an appropriate plan. The Tribe appreciated that engagement. While the mutually agreed on plan was pending, the City had a duty to protect this cultural soil. It failed. The City's negligence allowed a developer to take the soil, and the Native American human remains within it, and use it as fill for a housing development. The City did not engage in meaningful consultation as to the appropriate storage and reinternment of the remains, and the Native American human remains are now interned in the housing development without the Tribe being allowed to first conduct culturally appropriate reinternment or relocation practices.

Because of terrible and traumatic experiences like that, the Koi Nation now has to forcefully advocate for having tribal cultural resources treatment protocols and a tribal monitoring agreement in place for projects on sensitive sites such as this one, to avoid a repeat of that situation. For example, the treatment protocol would require that the City not remove cultural soils from the project site, which is a standard practice throughout the state which the City ignores.

Another example is that when over 1,500 tribal cultural resources and stone artifacts were revealed during one day of trenching on a nearby park project, the City again refused to engage in meaningful consultation with the Tribe as to the culturally appropriate way to handle such artifacts and tribal cultural resources. Instead, the City deemed it appropriate to simply re-use the soil containing the artifacts as fill for project trenches without sorting them out and reburying them in a respectful way.

Most recently, a set forth in an August 30, 2022, email from the City Manager to Tribal leaders, the City appears to take the position that AB 52 imposes a mere pro forma obligation to engage in one "consultation". The City is mistaken. AB 52 expressly establishes a consultation process rather a single meet and confer session. Also, this process does not end simply because the agency issues a draft MND. Public Resources Code section 21082.3(d) mandates that consultation must occur until: (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or (2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. Certainly no agreement has been reached as to the current Project, and the City fails to explain how no agreement is possible if the parties engaged in a reasonable and good faith effort, which the Tribe is willing to do. Each of these incidents demonstrates a pattern and practice by the City of ignoring the processes mandated by the Legislature through AB 52 as part of CEQA.

Thus, before proceeding, the relevant Koi Nation should be consulted about opportunities for avoidance, preservation in place, or mitigation of tribal cultural resources if avoidance and preservation in place is infeasible. Any development in tribal culturally sensitive areas, such as this site, must be done in a way that is respectful of tribal cultural resources and seeks to avoid, protect, preserve in place, or mitigate impacts to those resources as required by CEQA and AB 52. The Tribe is willing to consult and collaborate with the City to accomplish both goals. The tribal cultural heritage of Lake County is rich and diverse. Impacting and damaging these important tribal cultural resources impacts the Tribe's cultural practices and its religious practices, as well as the cultural, archaeological, and historic heritage of the Koi Nation and California. (*See, e.g.*, American Indian Religious Freedom Act.) Such impacts are significant and the City must address them through the CEQA process including the processes of AB 52. In any event, a mitigated negative declaration is inappropriate given the significant tribal cultural impacts at stake. (*See Agoura Hills*, *supra*, 46 Cal.App.5th at 690.)

Finally, the City should keep in mind that the Koi Nation continues to support responsible development in the City. The Tribe merely asks that the City do so in a respectful manner that is cognizant of the original people of this land who have been here since time immemorial. Development to improve the community can continue, it just needs prudent mitigation measures in place so that new development does not destroy tribal cultural resources.

TURF IMPACTS

One significant aspect of the Project is the development of several sport fields which will utilize artificial turf rather than natural grass. The MND notes the use of such artificial turf in passing without analysis and simply states the Project will "reduce water use by the installation of artificial turf athletic fields." (MND, at 30.) This use of artificial turf, and the associated impacts, is an important factor with significant impacts that the MND fails to consider.

Contrary to the MND's representation, artificial turf does require irrigation as well as related drainage facilities. One commentator noted that in arid and semi-arid climate zones the surface temperature of the artificial turf fields can exceed 80°C during the summer, requiring irrigation and drainage systems to keep them cool enough for use. (Journal of Irrigation and Drainage Engineering (2020) Water Requirements for Cooling Artificial Turf.) As another commentator noted, "[s]urface temperatures of artificial grass are about 20-50°F higher than natural grass and typically reach the same temperature as asphalt pavement. . . . The Synthetic Turf Council has even published guidelines for minimizing risk of heat-related illness." (Water Use It Wisely (2022) 10 Reasons Why Artificial Turf May Not Be What You're Looking For.)[2] As the Sierra Club noted in a June 20, 2022, comment letter to a City of Burbank artificial turf project, "[s]ynthetic turf causes a heat island effect. Plastic Grass absorbs heat from the sun all day and stays hot at night for several hours after the sun sets. They radiate heat and increase the ambient temperature causing a giant heat island in the immediate area and the surrounding neighborhood."[3] Related to the heat island, the Sierra Club's letter also noted that "[t]he entire surface area of heated plastic constantly off-gasses the greenhouse gasses methane and ethylene."[4]

Water can temporarily reduce this heat impact, but one New Mexico State University study found that the amount of water required to maintain artificial turf at temperatures similar to irrigated natural turfgrass is comparable. (Journal of Irrigation and Drainage Engineering (2020) Water Requirements for Cooling Artificial Turf.) Aside from heat reduction, another commentator notes that irrigation is required "to flush contaminates such a dust, dirt, bodily fluids, etc., through the system." (Parks and Rec Business (2016) Watering Synthetic Turf – Really?)[5] The MND is completely silent as to the heat, greenhouse gas and water usage required by the artificial turf.

This necessary turf irrigation also requires drainage. The MND appears to recognize drainage is required since the Project will purportedly not increase impervious surface area impacting erosion or surface flows. (MND, at 34.) Whether not artificial turf is impervious depends upon how it is installed,

2. https://wateruseitwisely.com/saving-water-outdoors/grass-artificial-turf/10-reasons-why-artificial-turf-may-not-be-what-youre-looking-for/

3. https://drive.google.com/file/d/1bIDdJ365eyo5Nx7b6Pjo9hV62UYfXaKG/view?usp=sharing

4. In support of its comments, the Sierra Club cited an extensive list of supporting materials at: Docs.google.com/document/d/1ABYr6x7cGlhywuPmTtECm65CayAI8N9fKK4k9vIxXLM/edit?usp=sharing. These citations are incorporated by reference in support of the comments set forth in this letter.

5. https://www.parksandrecbusiness.com/articles/2016/8/watering-synthetic-turfreally-part-1

but the MND fails to delineate installation or drainage standards for the artificial turf. Assuming the Project will provide for drainage, such drainage from the artificial turf[6] may contain potentially harmful chemicals such as: toxic metals including zinc, lead, arsenic, cadmium, and chromium which have many harmful effects on humans and the environment; Carcinogens including polycyclic aromatic hydrocarbons (PAHs); Latex and other rubbers which can cause allergic reactions; and Phthalates which have adverse effects on reproductive organs, lungs, kidneys and liver. (New Jersey Work Environment Council, Be Aware of Artificial Turf Hazards.)[7] As a July 2010 Artificial Turf Study by the Connecticut Department of Environment Protection concludes: "The DEP concludes that there is a potential risk to surface waters and aquatic organisms associated with whole effluent and zinc toxicity of stormwater runoff from artificial turf fields. Zinc concentrations in the stormwater may cause exceedences of the acute aquatic toxicity criteria for receiving surface waters, especially smaller watercourses."[8] Another study noted the presence of PFAS in artificial turf of 190 to 300 parts per trillion, but the EPA advises that anything over 70 parts per trillion in drinking water can be hazardous to health, and can cause birth defects and hormonal problems. (WUSA9 (2022) DC Artificial turf fields tested as possible source of cancer-causing chemicals.)[9]

The MND fails to discuss the heat inducing impact, the water supply impacts, the drainage impacts and the toxicity impacts of the Project's use of artificial turf. It also fails to discuss the impact of these substances on wildlife, such as special status turtle species, which will face potential exposure as the toxic chemicals drain from the sports complex into surface waterways and groundwater basins. Drainage into waterways and groundwater is especially important in Clearlake given the sensitivity of the Clearlake Hitch, a rare and culturally important fish which is presently being considered by the U.S. Environmental Protection Agency for listing under the Endangered Species Act.[10] Thus, an EIR is required to fully analyze and address these significant health and safety issues with impacts on both humans and wildlife.

The Project description indicates it will include "[d]evelopment of a public park (sports complex), community center, public works yard with public works building facility and combined police department office and maintenance facilities, vehicle and equipment storage areas, public access and parking facilities . . .." (MND, at 3, emphasis added.) The traffic analysis section relies upon a Transportation Impact Study for the Burns Valley Development prepared by W Trans on June 22, 2022, and attached as Attachment E. The Study's "Project Profile" indicates: "[t]he project includes a public works corporation yard, a drive-through coffee shop, various recreational uses such as baseball, softball, and soccer fields as well as a 15,000 square-foot recreational center and a separate affordable multi-family residential project." Notably absent from the Study's project profile description is any indication that the Project includes a "police department office and maintenance facilities." Given this omission, it is unclear whether the Study includes traffic impacts arising from the

6. https://www.installitdirect.com/learn/is-artificial-grass-permeable/

7. https://njwec.org/PDF/Factsheets/fact-artificialterf.pdf

8. https://portal.ct.gov/-/media/DEEP/artificialturf/DEPArtificialTurfReportpdf.pdf

9. https://www.wusa9.com/article/news/health/health-alert/hormone-changing-chemicals-found-in-artificial-turf/65-4783ea96-f407-4c88-b0de-0887b6a74bb8

10. https://biologicaldiversity.org/w/news/press-releases/californias-clear-lake-hitch-back-on-track-for-endangered-species-protections-2022-04-14/

police station and maintenance facilities. Absent a full analysis, the accuracy of the MND's traffic impact conclusions is called into doubt especially its conclusion that access and circulation are anticipated to function acceptably which are based upon the incomplete traffic study. (MND, at 39.) Additionally, the traffic study necessarily did not consider the traffic and public service impacts of having a police facility adjacent to a sports complex which potentially impacts the ability of first responders to provide emergency services when they must first navigate in and around a potentially crowded sports complex. Thus, the MND is incomplete. It has safety and traffic issues that are unaddressed, and it does not satisfy the City's CEQA obligations.

LIGHTING

The MND acknowledges that "[o]ne building [of the Oak Valley Villas housing complex] would be impacted by lighting during nighttime use of the sport field." (MND, at 20.) AES-1 simply directs that the Project shall comply with all federal, state, and local agency requirements. (MND, at 20.) However, the MND acknowledges that the "City does not have a threshold of significance for lighting levels." (MND, at 20.) Thus, the MND acknowledges the lighting will cause an impact, and directs, in part, that the Project must mitigate such impact by following an unspecified and undefined local requirement. Such a vague and ambiguous requirement for addressing this impact is meaningless and cannot support a valid MND. Mitigation measures must be specific enough to be implemented, and not deferred.

AGRICULTURE

The introduction of the agriculture section of the MND directs that: "[i[n determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland." (MND, at 20.) However, the Lake County information on the Department's website was last updated in 2018. The Project property presently contains an orchard on at least part of site, so the Project will potentially impact farmland. In order to accurately address current impacts on agriculture, the MND should not rely on farmland classification information that is already four years old.

AIR QUALITY

The MND includes a finding that "unpaved roads were the largest source of particulate matter (PM) in the County" and "[m]ore than half of the area wide PM emissions come from travel on unpaved roads within the City." (MND, at 21.) AIR – 11 states that "[s]ignificant dust may be generated from increase vehicle traffic if driveways and parking areas are not adequately surfaced." (MND, at 24) AIR - 2 states "[d]riveways, access roads and parking areas shall be surfaced in a manner so as to minimize dust." (MND, at 23.) Based upon this mitigation, the MND concludes that "[o]nce fully operational, the proposed project would not generate volumes of criteria pollutants which may exceed thresholds of significance disclosed in the Bay Area Air Quality Management District Guidelines , , ,," (MND, at 23.) As an initial matter, the MND fails to explain why it is appropriate to rely upon BAAQMD Guidelines for Lake County, which is outside of the BAAQMD's jurisdiction and inapplicable to a rural area such as Clearlake. Instead, the environmental review for this project should focus on criteria considering the unique characteristics of the City. Additionally, while acknowledging the air quality impacts of unpaved roads, driveways and other surfaces, the MND also states that driveways and parking lots will not be paved until 2024. (MND, at 49.) To the extent this encompasses the operational rather

than the construction stage of the Project, the MND fails to address the impacts on air quality caused by these unpaved surfaces which will not be eliminated until at least 2024. The MND must address the air quality impacts of unpaved surfaces once the Project becomes operational.

WILDLIFE

The MND acknowledges that within the Project site "two special-status bats have potential or low potential to occur within the Study area" as well as "one special-status turtle." (MND, at 25.) BIO-1 simply indicates the Project will use BMP to reduce the potential for sediment or pollutants at the Project site. BIO-5 generally references a "Bat Management Plan outlining avoidance and minimization measures specific to the roost(s) potentially affected." Other mitigation measures deal with construction but not operational activities. Importantly, the Project will admittedly contains large light installations to illuminate the sports fields. As the abstract of one journal noted, "[b]eing nocturnal, bats are among the taxa most likely to be affected by light pollution" and "[l]ight pollution affects the ecological interactions across a range of taxa, and has adverse effects on behaviors such as foraging, reproduction and communication." (80 Mammalian Biology (2015) Impacts of artificial lighting on bats: a review of challenges and solutions.) The MND is silent as to the impact of the lighting on the bat population. Additionally, as discussed above, the Project's multiple playing fields with artificial turf will potentially generate toxic runoff, but the MND is silent on the impact of such toxic runoff on the special status turtle, let alone the Clearlake Hitch. The City must fully analyze these potentially catastrophic wildlife impacts within the scope of an EIR.

MIGRATION

According to the MND, "[t]he Study Area provides limited migratory opportunities for terrestrial wildlife. Project construction is likely to temporarily disturb and displace most wildlife from the Study Area. Some wildlife such as birds or nocturnal species are likely to continue to use the habitats opportunistically for the duration of construction. Once construction is complete, wildlife movements are expected to resume but will likely be more limited through the developed areas of the Study Area. The Project is not expected to substantially interfere with wildlife movement" (MND, at 27.) However, the MND also purports to show a "perimeter fencing concept" for the Project with high chain link fencing topped by barbed wire. (MND, at 14.) Surrounding the Project perimeter with high barbed wire topped fencing contradicts the statement that wildlife migration will face only minimal impacts once construction ends. The perimeter fence indicates a significant impact on terrestrial mitigation since wildlife will presumably no longer have access to a significant portion of the Project site. The City must fully explain and mitigate this impact through appropriate mitigation measures.

HAZARDS AND HAZAROUS MATERIALS

The MND focuses on materials used during construction but also admits that "[s]mall quantities of hazardous materials would likely be routinely used on the site, primarily fertilizers, herbicides and pesticides." (MND, at 32.) However, the MND indicates the Project will include "[d]evelopments of a public park (sports complex), community center, public works yard with public works building facility and combined police department office and maintenance facilities, vehicle and equipment storage areas, public access and parking facilities . . . ." (Emphasis added.) A public works yard and maintenance facilities will certainly use chemicals and potentially hazardous materials other than "fertilizers, herbicides and pesticides," and the City must analyze the use and disposal of these other potentially hazardous substances. These concerns coupled with hazardous substance concerns related to the artificial turf necessitate thorough analysis through an EIR.

NOISE

The MND attempts to limit noise impacts through NOI – 4 which restricts park operations to no later than 10 pm. (MND, at 37.) However, the noise study underlying the City's findings explains that"[a]t the time of the creation of this report and assessment the City of Clearlake has not sufficiently programmed the site nor provided the author of this report with any specific information on speaker location, mounting height, orientation, nor amplification metrics." (MND, at 81.) Lacking specific information, the Study relied upon assumptions and generalities to conclude that "[b]ased upon the anticipated duration of sporting events, e.g. summer weekends and evenings, and shoulder season (March through May) high school level sporting events, it can safely be stated that when averaged over a twenty-hour (24) hour period, the noise levels within these units would safely remain below HUD's required 45 dBA DNL standard." (MND, at 82, emphasis added.) Despite purporting to establish a mitigation measure, the City's consultant lacked concrete information on actual sound systems for the Project including speaker location, mounting height, orientation and amplification metrics. Such information is necessary to establish a meaningful analysis rather than having to rely upon guesses, estimates and assumptions as to the sound system's actual design. Additionally, listing noise based upon a 24-hour average is similarly meaningless since the noise level will be at or near zero at least during late night and early morning hours. Thus, a meaningful noise analysis requires information as to actual system design and must consider noise impacts throughout the day rather than rely on a 24-hour average.

WATER

The MND indicates summarily that the Project would be served by Highland Mutual Water Company, but it contains no indication the Water Company has the capacity to serve Project needs. (MND, at 40.) This contrasts with the MND's statement as to sewage indicting the Project "would be served by Lake County Special Districts which has sufficient wastewater treatment capacity to service the project. (MND, at 40, emphasis added.) The lack of water availability analysis renders any conclusions about water service incomplete and requires further analysis. This is especially important since the MND purports to minimize the water requirements of the artificial turf, which as discussed above, is not accurate and requires analysis through an EIR.

WILDFIRE

The MND inconsistently reports the Project fire risk based upon both "Moderate to High Fire Hazard Severity Zone" (MND, at 41) and "Low to Moderate Fire Hazard Severity Zone" (MND, at 38.) The fire hazard zone is therefore unclear, and could impact appropriate wildfire mitigation. The City must clarify this important designation.

The issues raised in this letter show that the MND's "Findings of Significance as to impact of fish and/or wildlife habitat or cultural tribal resources" are inaccurate. (MND, at 42.) One cannot reasonably conclude that the mitigation measures are sufficient due to the lack of complete analysis and tribal consultation. At a minimum, a fair argument exists that there are substantial environmental impacts which need further analysis, so the City must proceed to an EIR rather than adopt a defective MND.

Please enter this letter into the administrative record for this Project. We also request that the City notify us via email to both kn@koination.com and hroberson@kmtg.com and mail of the public hearing for this Project, so that the Tribe and its Tribal Cultural Resources Counsel can submit further comments on the record.

Thank you for your anticipated consideration of these matters. Again, we remain willing to engage in further good faith, meaningful consultations with the City.

Very truly yours,

Darin Beltran
Chairman
Koi Nation of Northern California

19 August 2022

Mark Roberts
City of Clearlake
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mroberts@clearlake.ca.us

COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, BV SPORTS COMPLEX PROJECT, SCH#2022070344, LAKE COUNTY

Pursuant to the State Clearinghouse's 19 July 2022 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the BV Sports Complex Project, located in Lake County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore, our comments will address concerns surrounding those issues.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of

Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:
https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Construction Storm Water General Permit

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits[1]

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:
http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:

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[1] Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

Limited Threat General NPDES Permit

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will

require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/help/permit/

If you have questions regarding these comments, please contact me at (916) 464-4684 or Peter.Minkel2@waterboards.ca.gov.

Peter Minkel

Peter Minkel
Engineering Geologist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

KOI NATION OF NORTHERN CALIFORNIA

August 18, 2022

VIA E-MAIL AND U.S. MAIL

Mr. Dirk Slooten
Mayor
City of Clearlake
14050 Olympic Drive
Clear Lake, CA 95422
E-Mail: dslooten@clearlake.ca.us

Re: Burns Valley Park and Public Works Yard Master Plan, Mitigated Negative Declaration

Dear Mayor Slooten:

I am the Chairman of the Koi Nation of Northern California ("Tribe"). I am writing to you with respect to the Tribe's interest in protecting tribal cultural resources that are impacted by various projects in Clearlake, including the Burns Valley Park and Public Works Yard Master Plan ("Project"). We have reviewed the Mitigated Negative Declaration ("MND") for the Project, which was circulated June 16, 2022. We have serious concerns that we would like to discuss with you before potentially filing a formal comment on the MND pursuant to the California Environmental Quality Act ("CEQA"). I understand that our Vice Chair Dino Beltran would like to meet you as soon as possible. To discuss this and other issues with the City's treatment of tribal cultural resources. I further understand that the City has extended the comment period for the MND by two weeks until Friday, September 2nd, thank you. Please include this letter in the administrative record for the Project.

First, we are appreciative of the City's efforts to reach out and consult with the Tribe pursuant to AB 52 (Gatto, 2014), hereafter "AB 52". The City met with the Tribe for government-to-government consultation on March 2, March 30, and April 11, 2022. At the March 2, 2022, consultation, seven representatives from the City met with Yolanda Tovar, leadership from the Koi Nation, and Robert Geary, our Tribal Historic Preservation Officer. (Burns Valley Development Project, Pre-Job Sign In Sheet [March 2, 2022]; see also Pre-Construction Meeting Agenda Minutes.) Unfortunately, the tribal cultural resources information shared through the consultation process is not reflected in the MND. The MND says simply that "[t]he Cultural Study documents all consultation conducted." (MND at p.4.) The Cultural Study, however, was not attached to the circulated MND. (MND at p. 76.) The MND does provide a placeholder for an Attachment D, Cultural Report, however, Attachment D uploaded to CEQANET.opr.gov is a Geotechnical Investigation Report, which contains no discussion of the consultation. (MND at p. 76; see also Attachment D, Geotechnical Engineering Investigation Report [Feb. 26, 2021].)

In any event, it is well known that the Project site includes several significant recorded archaeological and tribal cultural resources sites. The MND continues to confirm discovery of "intact, buried, archaeological sites . . . [that] can be considered significant cultural resources." (MND at pp. 27-29.)

Problematically, further description of these resources in the MND and the corresponding mitigation measures do not reflect any of the substantial evidence provided by the Tribe through the consultation process. (*Ibid.*) A confidential map of significant tribal cultural resources and archaeological sites on or near this area is attached.

We note further that pursuant to CEQA and AB 52, consultation shall only be considered concluded when either: (1) the parties agree to measures that mitigate or avoid significant effects on tribal cultural resources, or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Guidelines, § 21080.3.2(b).) Neither circumstance has occurred here, and the consultation is continuing. The City should include measures in the MND to avoid tribal cultural resources, preserve them in place, or mitigate them to the extent feasible. The current level of analysis of tribal cultural resources in the MND is inadequate because it focuses solely on archaeological resources and does not include the Tribe's perspective, which was shared in consultation. In addition, the cumulative impact analysis is sorely lacking, as there are a number of adjacent projects with impacts to significant tribal cultural resources. The Project is within a tribal cultural landscape, which is itself a tribal cultural resource.

Second, the City has requested, and the Tribe has provided, tribal monitoring at the Burns Valley I project site on at least two occasions- May 19 and June 29, 2022. Currently the Tribe's tribal monitors are working without a signed agreement, which is not appropriate, and which should be remedied immediately. A proposed agreement was provided to the City on March 1, 2022, and on August 5, 2022, the City Manager Alan Flora said that he would review it but he has not responded as of the date of this letter. (See Email from H. Roberson to R. Jones [Aug. 10, 2022], based on consultation debrief from R. Geary.) The Koi Nation's tribal monitors have already discovered intact arrowheads, stone tools, and lithics, all of which are tribal cultural resources. (See, e.g., Email from H. Roberson to R. Jones [Aug. 10, 2022] based on information received from R. Geary.) These finds confirm the fact that there are tribal cultural resources on the Burns Valley I project site and increase the likelihood of finding additional tribal cultural resources on the Burns Valley II project site. Again, this information is not reflected in the MND, and it should be included in the cumulative impacts analysis. It also appears that City has a pattern and practice of not promptly recording the discovery of tribal cultural resources and archaeological resources and thus sensitive sites so as to avoid future harm. All finds must be appropriately reported to the California Historical Resources Information Center within 90 days so that the City and other lead agencies have an opportunity to avoid tribal cultural resources in their project planning. The City is responsible for the compliance of its contractors, including archaeological consultants, with standard professional practices It is clear that, without appropriate tribal cultural resources treatment protocol and mitigation measures, the Project will have significant impacts on tribal cultural resources. In fact, we are deeply concerned that such irreversible impacts may have already occurred on the Burns Valley I project site.

As you know, CEQA requires environmental review to be completed prior to approval of a project so that environmental damage can be considered and minimized. (Guidelines §§ 15004, 15061.) An EIR, rather than a negative declaration, must be prepared if it can be fairly argued on the basis of substantial evidence in light of the whole record that the project may have significant environmental effect, even though the agency has other substantial evidence that the project will not have a significant effect. (Pub. Res. Code, §§ 21080(d), 21082.2(d); Guidelines § 15064 (g)(1); *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1139.) "A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment." (Pub. Res. Code, § 21084.2.) Public agencies must mitigate such impacts. (Pub. Res. Code, § 21084.3.)

A mitigation measure brought to the attention of the lead agency should not be omitted unless infeasible on its face; and in that case, the infeasibility must be explained. (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.)

As set forth in *Save the Agoura Cornell Knoll v. City of Agoura Hills*, where "the record contains substantial evidence supporting a fair argument that the MND's measures are inadequate to avoid or mitigate the impacts to [tribal cultural resources] 'to a point where clearly no significant effect on the environment would occur,' an EIR is required to consider the project's impacts on cultural resources." (*Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 690.) In *Save the Agoura Cornell Knoll*, there was evidence that the City of Agoura Hills ("City") did not adequately consult with relevant tribes or properly identify and analyze tribal cultural resources in the project mitigated negative declaration. (*Id.* at 684.) The City responded that mitigation measures in the project MND ensured the resources would be avoided and undisturbed. (*Id.* at 686.) The court disagreed and found that there was substantial evidence the measures improperly deferred mitigation and were insufficient to avoid or reduce impacts to less than significant. (*Id.* at 686.) More specifically, the court found that measures providing for monitoring with allowances for work stoppage for "appropriate actions" were inadequate. (*Id.* at 687.) The project MND did not completely define the boundaries of the project site or the tribal cultural resources on the project site so as to determine the feasibility of avoidance. (*Id.* at 687.) Contrastingly, there was evidence in the record that avoidance of tribal cultural resources was not feasible given the project footprint. (Id. at 688.) Accordingly, there was substantial evidence supporting a fair argument that the project MND's measures were inadequate to avoid or mitigate the impacts to tribal cultural resources to less than significant, and hence, an EIR was required. (*Id.* at 690.) Likewise, the MND here fails to reflect evidence received during the ongoing tribal consultation or provide meaningful measures to mitigate potential impacts to tribal cultural resources to less than significant. Instead, the MND's mitigation measures provide for the same work stoppage found inadequate by the Court and include further investigation by the cultural resource consultant. (See MND, pp. 28-29, CUL-1 -CUL-2.)

Based on the ongoing consultation and the tribal monitoring performed to date, there is substantial evidence in the record to support a fair argument that the Project, even with the mitigation measures currently described in the MND, will have a significant effect on tribal cultural resources, and hence the environment. Therefore, if we cannot resolve this matter voluntarily during consultation, and if the City does not take proper steps to protect, avoid, and mitigate tribal cultural resources in the MND, then the Tribe is prepared to assert in its comment letter on the MND that an EIR should be prepared for this Project. Legally, the City cannot simply ignore the information received through the government-to-government tribal consultation process and proceed with the Project without adequate environmental analysis and appropriate mitigation. Through consultation, and our work with the City on other Projects, including the Austin Park Splash Pad, the Tribe has presented a tribal cultural resources agreement and treatment protocol, which would be the building blocks for appropriate avoidance and mitigation measures. We strongly urge you to consider that information and work with the Tribe to adequately address impacts to tribal cultural resources in a revised MND.

My Tribal Council was therefore shocked and disappointed that immediately after reaching an agreement for appropriate avoidance, preservation in place, and mitigation of tribal cultural resources on the Austin Park Splash Pad project site, the City issued such an inadequate MND for another culturally significant site without proper consideration of tribal cultural resources.

Despite disappointment in the inadequacy of the MND, the Tribe remains committed to consulting with the City and working to develop a tribal cultural resources agreement and treatment protocol as well as appropriate mitigation to lessen the impacts of the Project on tribal cultural resources to less than significant. If, however, the City fails to address these issues voluntarily through the consultation process, the Tribe will be required to submit its comment on the MND, alert the Attorney General's office and the Native American Heritage Commission to the City's pattern and practice of bad faith tribal consultation, and challenge any resulting project approval on the basis that the environmental analysis is insufficient.

Respectfully,

Darin Beltran
Chairman
Koi Nation of Northern California

Cc: Koi Nation Tribal Council
Robert Geary, Director of Cultural Resources/Tribal Historic Preservation Officer
Ryan Jones, City Attorney
Alan Flora, City Manager
Holly Roberson, Tribal Cultural Resources Counsel to the Koi Nation of Northern California

Enclosures:
(1) Confidential map of tribal cultural resources associated with the Project area. Note: This map contains sensitive tribal cultural resources information. It may only be shared with the Mayor, the City Manager, the City Attorney, and the Project Manager for the Project as part of the confidential AB 52 consultation process. This map is not for distribution in the public facing MND.