RESOLUTION NO. 3594-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPROVING AN AGREEMENT BETWEEN THE TOWN OF WINDSOR/WINDSOR WATER DISTRICT AND THE LYTTON RANCHERIA OF CALIFORNIA FOR THE EXTENSION AND PROVISION OF WASTEWATER SERVICES FOR RESIDENTIAL DEVELOPMENT AND ANCILLARY CULTURAL, COMMUNITY AND TRIBAL GOVERNMENT FACILITIES ON AN 177-ACRE PORTION OF LANDS TAKEN INTO FEDERAL TRUST LOCATED WEST OF WINDSOR TOWN LIMITS (APNs: 066-040-001, 066-040-008, 066-050-040, 066-050-047, 066-300-028, 066-300-033, 066-300-031, 066-300-023, 066-300-017, 066-191-016, 066-191-019, 066-191-020, 066-191-018, 066-191-017, 066-191-021, 066-191-022, 066-191-044 and 066-191-007)

WHEREAS, the Lytton Rancheria of California is a federally recognized Indian tribe that lost its homeland after its relationship to the United States was unjustly and unlawfully terminated in 1961 following passage of the Rancheria Act by Congress in 1958; and

WHEREAS, on December 20, 2019, President Donald Trump signed into law U.S. Senate Bill S.1790 taking approximately 511 acres of land in unincorporated Sonoma County owned by the Lytton Rancheria of California into Federal trust (Trust Lands); and

WHEREAS, the Lytton Rancheria of California (Tribe) seeks to develop an approximately 177.87 acre portion the Trust Lands located to the west of Windsor Town Limits (Exhibits "B" and "C") consisting of the following: (a) 361 residential units; (b) 18,809 square foot community center; (c) 2,500 square foot roundhouse; (d) 2,707 square foot retreat; and (e) 60,000 square feet of community/Tribal government buildings (Residential Project); and

WHEREAS, the Residential Project is located on Trust Lands mostly outside the boundaries of the Town as shown on Exhibit "B" of this resolution and the Town has no legal authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgement regarding the Trust Lands or the Residential Project; and

WHEREAS, the Tribe has requested that the Town allow the Tribe to connect to the Town's wastewater system to serve the Residential Project; and

WHEREAS, on-site and off-site wastewater treatment options for serving future residential development on Trust Lands have been identified by the Tribe. The on-site option involves construction of wastewater treatment and disposal systems on Trust Lands. The off-site option involves connection to the Town/District's wastewater system; and

WHEREAS, the option for the Tribe to construct and operate wastewater treatment and disposal systems on Trust Lands facility raises a number of concerns, including:

- The level of treatment of wastewater generated on site. The Tribe is not subject to the same standards the Town/District is required to meet for treatment of wastewater, and it is unknown at this time what level of treatment would be provided if the tribe were to operate its own treatment plant.

- Potential adverse impacts on drinking water quality resulting from the discharge of wastewater treated on Trust Lands into a drainage that ultimately flows to the gravel pits that are adjacent to the Town's Russian River Well Field.
- Potential adverse impacts on the Mark West Creek/Laguna De Santa Rosa watershed resulting from the discharge of wastewater treated on Trust Lands into an unnamed tributary located along the eastern boundary of the project site, which flows into Windsor Creek south of the project site that connects to Mark West Creek and ultimately the Russian River.
- Potential for objectionable odors resulting from the treatment, storage and/or disposal of wastewater (including by spray). These odors could impact nearby homes located immediately east of the Trust Lands with prevailing westerly winds blowing odors across the Town.

; and

WHEREAS, the Town believes that the option involving connection to the Town's wastewater system for conveyance and treatment of wastewater from residential and cultural uses to be developed on Trust Lands is environmentally superior to on-site treatment and disposal for the following reasons:

- Avoids land dispersal (spray) of treated effluent in close proximity to residential neighborhoods within Town limits.
- Avoids odors that could impact nearby homes located immediately east of the Trust Lands with prevailing westerly winds blowing odors across the Town.
- Ensures that conveyance and treatment of wastewater would meet Bay Area and California standards, which are among the most stringent in the nation.
- Ensures opportunities for beneficial re-use of treated wastewater.
- Provides equal or better protection of water resources, including both surface water and ground water.
- Eliminates the need to dedicate land in the area of Trust Lands to be developed with residential uses for development and operation of a wastewater treatment plant.
- Eliminates the duplication of infrastructure.

; and

WHEREAS, engineering analyses prepared by Town Staff and the professional consulting firm of GHD determined that with certain improvements to the existing wastewater treatment plant there is sufficient capacity to serve the Residential Project; and

WHEREAS, the Tribe and Town agree that connection to the Town's wastewater system is a preferable option for providing wastewater service to the Residential Project and that the Tribe should be allowed to connect to the Town's wastewater system; and

WHEREAS, Policy LU-7.10 in the Land Use and Community Design Element of the Town of Windsor 2040 General Plan allows for extension of Town wastewater services outside the UGB, subject to the Town Council making each of the following findings (*stated in italics)*:

a. *The land use to which the service would be extended or expanded is consistent with all applicable policies of the Town's General Plan; and*

Applicable Policies

Policy LU-6.1 Sustainable Land Use Pattern. The Town shall strive to provide an overall pattern of land uses that encourages sustainable development; creates a safe and attractive public realm; provides an interconnected network of streets; offers convenient alternatives to auto travel; ensures compatibility among uses; enhances livability and public health; sustains economic vitality; preserves open space and agricultural resources; and reduces air pollution, greenhouse gas emissions, and energy consumption.

FINDINGS:

- The Tribal lands are not subject to the Town's oversight and control and the Town's General Plan land use designations do not apply to Tribal lands; nevertheless, the Residential Project is compatible with the land uses and densities permitted in the Estate Residential General Plan Land Use Designation of the Town of Windsor 2040 General Plan – which is applied to lands immediately east of the project site within the Town's UGB and incorporated Town Limits.

- The Residential Project site is designated for rural residential uses by the Sonoma County General Plan 2020. Its development will not result in loss of land designated for agricultural or open space uses.

- The Residential Project is located adjacent to urbanized areas where infrastructure and services exist.

- The development plan for the Residential Project shows clustering of uses that helps to minimize impact on sensitive site resources.

- The Residential Project will be designed consistent with Sonoma County's Rural Design Guidelines to complement the existing rural residential development in the vicinity. Specifically, the project includes the development of one and two-story single-family, detached residences and single-story cottage-style homes, all of which will take advantage of the natural site topography. The higher-density, multi-family residential buildings and associated community buildings will be located toward the southern side of the project site, away from public roadways and public view. All proposed lighting will be downcast and shielded, in accordance with "dark sky" principles. As a result, the project would not interrupt or substantially alter local views or create any sources of glare or excessive nighttime illumination.

- The Residential Project site is located approximately one mile from public transit (bus and future commuter rail) and services, and, in addition to providing an internal street network, the project will include a system of multi-use paths for bicyclists and pedestrians.

Policy LU-9.2 Services to Unincorporated Areas. The Town shall not provide services directly or indirectly to unincorporated areas unless there is a mutual agreement between the Town and appropriate agencies regarding compensation for service extension and/or upgrade.

FINDINGS:

- A Joint Exercise of Powers Agreement between the Town and Tribe setting forth specific terms and conditions for the provision of wastewater services will be entered into prior to the extension of wastewater services to the project site.

- The County of Sonoma has entered into a Memorandum of Agreement with the Tribe that allows and sets forth terms for residential development of the project site.

- Tribe has entered into separate agreements with the Windsor Unified School District and the Sonoma County Fire District (formerly Windsor Fire Protection District) to address impacts to services provided by those agencies.

Policy LU-16.5 Lytton Tribe Development. If the Tribe-owned land is taken into trust, the Town shall work with the Lytton Tribe to encourage development of such lands to be consistent with the Town's land use policies and development regulations.

FINDINGS:

- The Residential Project site has been taken into Federal Trust under Senate Bill 1790 (National Defense Authorization Act). S.1790, which was signed into law by President Donald Trump on December 17, 2019.

- Though the Residential Project is not subject to the Town's General Plan standards, it is compatible with the land uses and densities permitted in the Estate Residential General Plan Land Use Designation of the Town of Windsor 2040 General Plan – which is applied to lands immediately east of the project site within the Town's UGB and incorporated Town Limits.

- Section 27.14.050 of the Town's Zoning Ordinance (PD District Standards and Procedures) allows for the establishment of site-specific development standards, which is the Zoning District that would be applied to the Residential Project site if it were within the Town limits and subject to the Town's approval authority.

Policy PFS-3.11 Cost of New Infrastructure. The Town shall require that costs of improvements to the wastewater and water reclamation system that are necessary for new development are financed by the property owner or developer, based on determination of nexus of impacts created.

FINDING:

- An Agreement between the Town and Tribe will be entered into that requires the Tribe to pay the Town a lump sum payment of twenty million dollars ($20,000,000.00). The cost of needed improvements to the Town's wastewater treatment plant will be fully covered by the lump sum payment being provided by the Tribe. The Tribe will also construct off-site infrastructure improvements needed for connection of the Residential Project site to the Town's wastewater system.

Policy ER-1.8 Potential Visual Impacts from Development in Unincorporated Areas. The Town shall continue to review development proposals within the unincorporated portion of its Planning Area that occur within the County's Scenic Landscape Units, the community separators, and along ridgelines and to request appropriate design refinements or mitigations for visual impacts triggered by the development proposal.

FINDINGS:

- The Residential Project will be designed consistent with Sonoma County's Rural Design Guidelines to complement the existing rural residential development in the vicinity. Specifically, the project includes the development of one and two-story single-family, detached residences and single-story cottage-style homes, all of which will take advantage of the natural site topography. The higher-density, multi-family residential buildings and associated community buildings will be located toward the southern side of the project site, away from public roadways and public view. All proposed lighting will be downcast and shielded, in accordance with "dark sky" principles. As a result, the project would not interrupt or substantially alter local views or create any sources of glare or excessive nighttime illumination.

- The Residential Project site is not located within a community separator area.

Policy ER-6.5 Applicant Mitigation Obligation. The Town shall ensure the protection or restoration of sensitive biological resources that is required as a condition or mitigation of a development project is closely monitored at the cost of the project applicant to determine compliance with the condition or mitigation and to evaluate the effectiveness of the measure.

FINDING:

- The Residential Project is not subject to the Town's oversight or approval authority; nevertheless, a Final Environmental Assessment (EA) addressing the first phase of the Residential Project, prepared in accordance with requirements of National Environmental Policy Act (NEPA), was released in May 2011 and was approved by the Bureau of Indian Affairs of the United States Department of Interior on June 5, 2012. Pursuant to the Memorandum of Agreement between the Tribe and the County of Sonoma (MOA), the Tribe has agreed to implement the mitigation measures identified in the EA. In addition, the MOA contains provisions requiring that the Tribe conduct future environmental review prior to construction of any development not specifically addressed in the EA.

Policy ER-9.1 Town-Designated Scenic Corridors. The Town shall continue to recognize its scenic corridors (also referred to as scenic routes), shown in Figure ER-1, which enhance the visual experience in Windsor.

FINDINGS:

- The Residential Project will be designed consistent with Sonoma County's Rural Design Guidelines to complement the existing rural residential development in the vicinity. Specifically, the project includes the development of one and two-story single-family, detached residences and single-story cottage-style homes, all of which will take advantage of the natural site topography. The higher-density, multi-family residential buildings and associated community buildings will be located toward the southern side of the project site, away from public roadways and public view. All proposed lighting will be downcast and shielded, in accordance with "dark sky" principles. As a result, the project would not interrupt or substantially alter local views or create any sources of glare or excessive nighttime illumination.

- The Memorandum of Agreement between the County of Sonoma and The Lytton Rancheria of California stipulates that the Tribe will maintain the rural nature of Windsor River Road though the use of landscape screening and open wire fencing.

Policy PHS-4.2 County Fire Hazard Reduction Programs. In areas beyond the town limits designated as a high fire hazard by Cal Fire, the Town shall encourage the County to undertake or continue programs to minimize fuel buildup around residences and other occupied structures.

FINDING:

- The Residential Project site is not located in an area designated as a high fire risk by CalFire.

Policy PHS-4.4 Fire Interjurisdictional Coordination. The Town shall encourage the County to incorporate any measures provided by the fire protection service providers as conditions of project approval for projects in unincorporated areas located within a moderate or high fire hazard area along the wildland/urban interface.

FINDING:

- The Residential Project site is located in an area designated as being in a Moderate Fire Hazard Severity Zone in the Sonoma County General Plan 2020. Section V of the Memorandum of Agreement between the County of Sonoma and The Lytton Rancheria of California stipulates that the Tribe implement all agreed to mitigation measures related to increased risk for wildfires.

b. The land use to which the sewer service would be extended or expanded is compatible with open space uses as defined in the General Plan, does not interfere with accepted agricultural practices, and does not adversely affect the stability of land use patterns in the area; and

FINDINGS:

- The Residential Project is compatible with open space uses as defined in the Town of Windsor 2040 General Plan in that:
    - The Residential Project will not interfere or inhibit the advancement of conservation of resource values or the protection of public safety from hazardous conditions (such as floodways and active landslide areas) of open space uses in the area.
    - The Residential Project will be developed at rural densities in a clustered development pattern and will not result in an urbanized aesthetic.
    - The Residential Project will not result in land use incompatibilities between agricultural and urban development, nor will it interfere with the development of outdoor recreation.
- The Residential Project will not adversely affect the stability of land use patterns in the area. The Residential Project site and surrounding lands in the unincorporated area are designated for rural residential uses by the Sonoma County General Plan 2020. Residential Project land uses and densities are compatible with the Estate Residential General Plan Land Use Designation of the Town of Windsor 2040 General Plan – which is applied to lands immediately east of the project site within the Town's UGB and incorporated Town Limits.

c. *The property to which the service would be extended or expanded is immediately adjacent to land already served by the service(s) to be extended; and*

FINDING:

- The project site is located adjacent to land already served by wastewater facilities.

d. *Specific Circumstances, unique to the property to which the service would be extended or expanded would otherwise deprive the property of privileges enjoyed by other comparable property outside the Urban Growth Boundary and in the vicinity of the property to be served; and*

FINDING:

- The request by the Tribe for extension of wastewater service to serve lands taken into trust by the Federal government is an exceptional circumstance that was not contemplated by voters when the UGB was first established in 1998. The request from the Tribe – a sovereign government not subject to local land use controls or regulations and who has the authority to proceed with construction regardless of the Town's decision – is also a unique circumstance that is unlikely to happen again within the environs of Windsor.

  While under any other circumstance a request to serve a development of this scale outside the UGB would not be allowed, the exceptional and unique circumstances of the situation combined with the environmental benefits that would be realized by allowing for the

extension of the Town's wastewater service (which are in general alignment with other policy objectives and interests of the 2040 General Plan) warrants approval of the extension request.

Last, extension of Town wastewater services to the project site is necessary to ensure that the property enjoys the same privilege of connecting to a wastewater system that meets California's high health, safety and operational standards and that provides beneficial re-use opportunities that would be enjoyed and required for comparable development on other properties outside the Urban Growth Boundary in the vicinity of the project site.

e. *In addition to payment of applicable capacity fees and connection charges, the property to which the service would be extended or expanded shall bear the cost of extending and/or expanding the Town pipes and appurtenances for water, sewer, and/or recycled water service to property, including an alignment of the service that is determined by the Town Engineer and in compliance with Town Standards; and*

FINDING:

- An Agreement between the Town and Tribe will be entered into that requires the Tribe to pay the Town a lump sum payment of twenty million dollars ($20,000,000.00). This onetime connection fee will exceed the costs for needed improvements to the wastewater and water reclamation system. The Tribe will also be required to construct off-site infrastructure improvements needed for connection of the Residential Project site to the Town's wastewater system in compliance with Town Standards.

f. *The property to which the service would be extended or expanded shall be subject to the same rules and regulations as other Town customers for water, sewer, and/or recycled water service to the property, said rules and regulations at the time of application including but not limited to water conservation measures, metering of individual residential units, pretreatment, fire service, etc.*

FINDING:

- As a condition of approval for extension of services, the Town and Tribe will enter into a "Joint Exercise of Powers Agreement" to ensure the same operational rules and requirements for construction, operation and maintenance are addressed and agreed to prior to the extension of services.

; and

WHEREAS, the Town Council conducted a duly noticed public meeting on May 20, 2020 at which time all interested persons were given an opportunity to be heard; and

WHEREAS, A Final Environmental Assessment (EA) addressing the first phase of the Residential Project, prepared in accordance with requirements of National Environmental Policy Act (NEPA), was released in May 2011 and was approved by the Bureau of Indian Affairs of the United States Department of Interior on June 5, 2012. Pursuant to the Memorandum of Agreement between the Tribe and the County of Sonoma (MOA), the Tribe has agreed to implement the mitigation measures identified in the EA (Exhibit D). In addition, the MOA contains provisions requiring that the Tribe conduct future environmental review prior to construction of any development not specifically addressed in the EA; and

WHEREAS, the portion of the Residential Project subject to the Town's environmental review authority under the California Environmental Quality Act (CEQA) is limited to work required to construct new sewer lines and/or improve existing sewer lines within existing public rights-of-way and work required to improve the existing aeration basin system at the Town's existing wastewater treatment plant, which have been determined to be exempt from CEQA pursuant to: California Public Resources Code Section 21080.21, which exempts replacement, repair and new construction of pipelines less than one mile in length in a public right-of-way; and, CEQA Guidelines Section 15301(b), which exempts minor alterations to existing publicly owned utilities where there is negligible expansion of the existing use.

NOW, THEREFORE BE IT RESOLVED that the Town Council hereby approves the Agreement between the Lytton Rancheria and Town of Windsor for connection to the Town Wastewater system and provision of wastewater services as presented in Exhibit "A" of this resolution and authorizes the Town Manager to execute the Agreement.

PASSED, APPROVED AND ADOPTED this 20th day of May 2020, by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, OKREPKIE, SALMON, VICE MAYOR LEMUS AND MAYOR FOPPOLI**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

DOMINIC FOPPOLI, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachments:

- **Exhibit A** - Agreement between the Lytton Rancheria and Town of Windsor for Connection to the Town Wastewater System and Provision of Wastewater Services
- **Exhibit B** - Map of Properties to Receive Town Wastewater Services
- **Exhibit C** - List of Properties to Receive Town Wastewater Services
- **Exhibit D** - Summary of Environmental Mitigation Measures

MEMORANDUM OF AGREEMENT BETWEEN THE TOWN OF WINDSOR, WINDSOR WATER DISTRICT AND THE LYTTON RANCHERIA OF CALIFORNIA REGARDING THE CONNECTION TO THE TOWN OF WINDSOR'S WASTEWATER SYSTEM

This Memorandum of Agreement ("Agreement") is entered into and effective as of July 1, 2020 (the "Effective Date"), by and among the Town of Windsor, a California municipal corporation ("TOWN"), the Windsor Water District, a subsidiary district of the Town of Windsor ("DISTRICT") (TOWN and DISTRICT referred to herein collectively as "TOWN") and the Lytton Rancheria of California, a federally recognized Indian tribe ("TRIBE") (referred to herein collectively as "PARTIES").

RECITALS

WHEREAS, the TOWN owns and operates a wastewater collection and treatment system, including a wastewater reclamation facility; and

WHEREAS, on December 19, 2020, President Donald Trump signed into law U.S. Senate Bill S.1790 taking approximately 511 acres of land in unincorporated Sonoma County owned by the TRIBE into Federal trust ("TRUST LANDS"); and

WHEREAS, the TRIBE seeks to develop an approximately 177.87 acre portion of the TRUST LANDS located to the west of TOWN limits, as further described herein and consisting of: (a) 361 residential units; (b) 18,809 square foot community center; (c) 2,500 square foot roundhouse; (d) 2,707 square foot retreat; and (e) 60,000 square feet of community and/or Tribal government buildings ("RESIDENTIAL PROJECT"); and

WHEREAS, the RESIDENTIAL PROJECT is located on TRUST LANDS within and outside the boundaries of the TOWN's Urban Growth Boundary; and

WHEREAS, the TOWN recognizes the sovereign right of the TRIBE to use and develop TRUST LANDS at its sole discretion and that the TOWN has no legal or regulatory authority to exercise jurisdiction over, deliberate on, approve, disapprove or otherwise exercise judgment regarding the TRUST LANDS or the RESIDENTIAL PROJECT; and

WHEREAS, the TRIBE has requested that the TOWN allow the TRIBE to connect to the TOWN's wastewater system to serve the RESIDENTIAL PROJECT; and

WHEREAS, Policy LU-7.10 in the Land Use and Community Design Element of the Town of Windsor 2040 General Plan allows for extension of TOWN wastewater services outside the Urban Growth Boundary, subject to the Town Council making the necessary findings; and

WHEREAS, on May 20, 2020, the Town Council adopted Resolution No. 3594-20, incorporated herein by reference, making the necessary findings and approving the execution of this Agreement; and

WHEREAS, a Final Environmental Assessment ("EA") addressing the first phase of the RESIDENTIAL PROJECT, was prepared in May 2011 in accordance with requirements of the National Environmental Policy Act ("NEPA") and was approved by the Bureau of Indian Affairs ("BIA") of the United States Department of Interior on June 5, 2012; and

WHEREAS, pursuant to a Memorandum of Agreement between the TRIBE and the County of Sonoma executed March 10, 2015 ("County MOA"), the TRIBE agreed to implement the mitigation measures identified in the EA; and

WHEREAS, the County MOA contains provisions requiring that the TRIBE conduct future environmental review prior to construction of any development not specifically addressed in the EA; and

WHEREAS, the County MOA also requires the TRIBE to implement and follow the mitigation measures identified in EA during construction and operation of the RESIDENTIAL PROJECT and to implement and follow any mitigation measures identified and approved as part of any future NEPA document prepared for the development of TRUST LANDS; and

WHEREAS, the portion of the RESIDENTIAL PROJECT subject to the TOWN's environmental review authority under the California Environmental Quality Act ("CEQA") is limited to work required to construct new sewer lines and/or improve existing sewer lines within existing public rights-of-way and work required to improve the existing aeration basin system at the Town's existing wastewater treatment plant, which have been determined to be exempt from CEQA pursuant to: California Public Resources Code Section 21080.21, which exempts replacement, repair and new construction of pipelines less than one mile in length in a public right-of-way; and, CEQA Guidelines Section 15301(b), which exempts minor alterations to existing publicly owned utilities where there is negligible expansion of the existing use; and

WHEREAS, engineering analyses prepared by the TOWN and the professional consulting firm of GHD determined that with certain improvements to the existing wastewater treatment plant, there is sufficient capacity to serve the RESIDENTIAL PROJECT; and

WHEREAS, the TRIBE and TOWN agree that connection to the TOWN's wastewater system is a preferable option for providing wastewater service to the RESIDENTIAL PROJECT and that the TRIBE should be allowed to connect to the TOWN's wastewater system, including for the beneficial reasons enumerated in the May 20, 2020 Town Council meeting Agenda Report, incorporated herein by reference; and

WHEREAS, pursuant to Section 2869(16) of Senate Bill 1790 (National Defense Authorization Act for Fiscal Year 2020) of the 116th Congress (2019-2020), the TRIBE cannot engage in any gaming activities, or gaming uses on the RESIDENTIAL PROJECT site and/or TRUST LANDS in perpetuity.

NOW, THEREFORE, in consideration of their mutual agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth at the beginning of this Agreement are deemed incorporated herein, and the PARTIES hereto represent they are true, accurate, and correct.

2. Purpose. The purpose of this Agreement is to memorialize the agreed upon terms for connecting the RESIDENTIAL PROJECT, as described in Section 4.A below, to the TOWN's wastewater system.

3. Term. The Effective Date of this Agreement is the first date written above. This Agreement shall remain in full force and effect until terminated by either PARTY pursuant to Section 8 below.

4. Covenants.

A. The TOWN agrees to approve the extension of, and connection to, the TOWN's wastewater system to serve development of the RESIDENTIAL PROJECT on a portion of the TRUST LANDS, as shown on Exhibit "A" attached hereto and incorporated herein by reference, and specifically consisting of the following: (a) 361 residential units; (b) 18,809 square foot community center; (c) 2,500 square foot roundhouse; (d) 2,707 square foot retreat; and (e) 60,000 square feet of community and/or Tribal government buildings.

B. The PARTIES agree that extension of, and connection to, the TOWN's wastewater system shall be contingent on execution of a Joint Exercise of Powers Agreement ("JEPA"), in accordance with Section 5 and agreed to by both the TOWN and the TRIBE.

C. The TRIBE agrees to pay the TOWN a lump sum payment of Twenty Million Dollars ($20,000,000.00) within fifteen (15) days of executing the JEPA, in accordance with Section 5, for the purpose of onetime connection fees and future community benefit project or projects.

D. The TOWN agrees that the lump sum payment of Twenty Million Dollars ($20,000,000.00) includes a one-time connection fee for the RESIDENTIAL PROJECT, and that any future increase to the Town's wastewater system connection fees will not be applicable to the RESIDENTIAL PROJECT regardless of the timing of its construction. The TRIBE agrees that expenditure of the remainder of the lump sum payment of Twenty Million Dollars ($20,000,000.00) to the TOWN is at the sole discretion of the TOWN and may be used for any purpose. The community benefit portion of the payment is expected to be used for projects such as a recreational facility or a pool.

E. The TRIBE agrees to design and construct, at its sole cost and expense, all on-site sewer infrastructure and off-site sewer line improvements necessary for connecting the RESIDENTIAL PROJECT site to the TOWN's existing wastewater system, and that these costs are in addition to the Twenty Million Dollar ($20,000,000.00) lump sum payment described herein.

F. The TRIBE agrees to pay all costs associated with any needed improvements to correct deficiencies in existing "downstream" sewer lines that directly result from development of the RESIDENTIAL PROJECT, and that these costs are in addition to the Twenty Million Dollar ($20,000,000.00) lump sum payment described herein.

G. The PARTIES agree any such needed improvements described in Sections 4(E)-4(F) above, including cost estimates substantiated by technical analysis, including but not limited to, flow estimates and construction design, shall be identified by the TOWN and presented to the TRIBE for review and acceptance prior to entering into the JEPA as described in Section 5.

5. Joint Exercise of Powers Agreement. Prior to a physical connection to the TOWN's wastewater system, the TOWN and TRIBE agree to enter into a JEPA for the provision of wastewater services and that the JEPA provisions shall include, but are not limited to, the following:

a. Capacity of wastewater service to be provided

b. Standards for construction of wastewater infrastructure

c. Inspection, operation, and maintenance of wastewater infrastructure

d. Ownership of and access to wastewater infrastructure

e. Wastewater service charges

f. Administrative provisions

g. Access and use of reclaimed water.

6. Indemnification. The TRIBE agrees to indemnify, defend and hold harmless the TOWN (with counsel reasonably acceptable to the TOWN) from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including its reasonable attorneys' fees) arising from any action or proceeding filed against the TOWN which challenges the TOWN's approval, execution or delivery of this Agreement. The PARTIES agree that this Section 6 shall constitute a separate agreement entered into concurrently and that if any other provision of this Agreement, or the Agreement as a whole, is terminated, invalidated, rendered null or set aside by a court of competent jurisdiction, the PARTIES agree to be bound by the terms of this Section 6 which shall survive such termination, invalidation, nullification, or setting aside.

7. Amendments. This Agreement, including any exhibits hereto, may only be amended by mutual written agreement executed by duly authorized representatives of both PARTIES.

8. Termination. Either Party may terminate this Agreement for any reason by giving the other Party at least fourteen (14) days' prior written notice.

9. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer any benefit or create any right on a third party, or the power or right to bring an action to enforce any of its terms.

10. No Agency, Joint Venture, or Partnership. Although this Agreement anticipates the execution of a JEPA in the future, the PARTIES hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the TOWN and TRIBE stemming from this Agreement, and the PARTIES agree that nothing contained herein shall be construed as creating any such relationship between the PARTIES.

11. Waiver. The waiver by either PARTY or any of its officers, agents or employees, or the failure of either PARTY or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement, will not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or any terms, covenants or conditions of this Agreement, unless such waiver is expressly set forth in writing in a document signed and executed by the appropriate authority of both PARTIES.

12. Severability. The provisions of this Agreement are severable, and the invalidity of any provision or portion of this Agreement shall not in and of itself affect the validity of any other provision or portion of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect. If any provisions of this Agreement were determined to be invalid or unenforceable, then the PARTIES agree to promptly use good faith efforts to amend this Agreement to reflect the original intent of the PARTIES in accordance with applicable law.

13. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the United States, and the State of California.

14. Limited Waiver of Sovereign Immunity/Dispute Resolution.

A. The PARTIES acknowledge that the TRIBE is a federally-recognized Indian tribe and, as such, it possesses sovereign immunity from suit. Nothing in this Agreement is or shall be deemed to be a waiver of the TRIBE's sovereign immunity from suit, which immunity is expressly asserted, except that the TRIBE agrees to waive its sovereign immunity from suit specifically and exclusively to the TOWN for the limited and sole purposes of compelling arbitration and of enforcing an arbitration decision rendered pursuant to the terms and conditions of this Agreement.

B. Prior to pursuing any arbitration, each PARTY shall, whenever possible, attempt to resolve any grievance, complaints, or disputes that are brought to its attention by the other PARTY. Each PARTY shall notify the other PARTY in writing of any material dissatisfaction with the other PARTY's performance at that PARTY's address of record. Within ten (10) days of such notice, unless the problem has been resolved, the PARTIES shall meet and confer in good faith to determine what remedial action, if any, is necessary.

C. In the event of any dispute between the parties hereto arising under this Agreement, such dispute shall be submitted to mandatory binding arbitration pursuant to the

Commercial Rules of American Arbitration Association. Each party shall initially pay its own arbitration costs and expenses, but the arbitrator may, in its discretion, include such costs and expenses, together with reasonable attorneys' fees, as part of the award to the prevailing party. Any award of the arbitrators may be submitted for enforcement to a court of competent jurisdiction located in Sonoma County, California.

D. Either PARTY may seek judicial enforcement of such arbitration decision. Such enforcement actions shall be brought in the United States District Court for the Northern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. If the United States District Court for the Northern District of California determines that it lacks jurisdiction, the PARTIES shall be entitled to file in Sonoma County Superior Court or the closest court with jurisdiction geographically thereto. The awards of any arbitration, if brought in Federal Court, shall be governed by the Federal Arbitration Act codified in Title 9 of the United States Code except as the same may be changed or limited by the provisions of this Agreement.

E. The appropriate Court shall have the authority not only to confirm any order or decision of the arbitrator, but to issue all orders necessary, including, but not limited to, the issuance of temporary or permanent injunctions to prohibit the PARTIES from engaging in conduct that violates the provisions of the Agreement; compelling the PARTIES to comply with the provisions of this Agreement; requiring the PARTIES to pay over any income or profits subject to attachment; or enforcing any decision or order of any arbitrator selected under this Agreement. Judicial remedies for any such arbitration agreed upon by the PARTIES are specifically limited to the following:

a. The enforcement of an award of money damages by arbitration pursuant to this Agreement.

b. The enforcement of a determination by an arbitrator pursuant to this Agreement that mandates either PARTY to specifically perform any obligation under this Agreement (other than an obligation to pay money which is provided for in Section 14(E)(a) above).

F. The TRIBE's limited waiver of its sovereign immunity as provided herein in favor of the TOWN extends only to an arbitration, action to compel arbitration and action to confirm or enforce arbitration awards by the TOWN for money damages, specific performance, injunctive relief, and/or declaratory relief for the TRIBE's breach of this Agreement.

15. Binding Agreement. This Agreement is intended to be, and shall be construed to be, binding upon the PARTIES and all successors and successors-in-interest of each PARTY, including all officers, agents and employees, and, in the case of the TOWN, future Town Councils and, in the case of the TRIBE, future Tribal Councils or General Councils.

16. Construction of Agreement. This Agreement, including all recitals, together with all Exhibits, constitutes the entire agreement between the PARTIES and supersedes all prior negotiations, representations, drafts regarding this Agreement, whether written or oral, regarding

the matters herein. Each PARTY is represented by legal counsel and has consulted with legal counsel regarding the terms of this Agreement. In the event of a dispute between the PARTIES as to the language of this Agreement or any amendment to this Agreement or the construction or meaning of any term contained in this Agreement or any amendment to this Agreement, this Agreement or any amendment to this Agreement shall be deemed to have been drafted by the PARTIES in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against, or in favor of, either PARTY based on the preparation or negotiation of this Agreement or any amendment to this Agreement. The headings contained in this Agreement are for convenience of reference only and shall not affect this Agreement's construction or interpretation.

17. Confidentiality. Other than reports prepared to comply with NEPA Guidelines, any information or documents obtained, directly or indirectly under this Agreement or preceding negotiations, shall be deemed confidential to the extent allowed under the law and shall not be shared with any third party. The TOWN shall promptly provide the TRIBE notice of any Public Records Act or Freedom of Information requests related to this Agreement and shall afford the TRIBE, within the time limits allowed under applicable law, an opportunity to seek an injunction by the Court against any such disclosure.

18. No Submission to Jurisdiction. The PARTIES acknowledge and agree that this Agreement, except as otherwise specified, is not intended to constitute, and shall not be construed as constituting, a submission by the TRIBE to the jurisdiction of (i) the TOWN or any or any of its subdivisions, departments or courts, (ii) any of its or their respective officials, employees, inspectors or contractors, or (iii) any of its or their respective laws, rules, regulations, ordinances, general plans or specific plans.

19. Duplicate Originals. At least two (2) sets of this Agreement shall be signed and exchanged by the PARTIES, each of which shall be considered an original document.

20. Obligation on Related Entities. This Agreement binds the PARTIES and their departments, affiliates, agents, representatives, successors, contractors, officials, and related entities which such Agreement shall also be reflected in a resolution of each PARTY's respective governing body approving the Agreement.

21. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing and sent to the PARTIES at their respective addresses specified below or to such other address as a PARTY may designate by written notice delivered to the other PARTIES in accordance with this Section. All such notices shall be sent by:

a. personal delivery, in which case notice is effective upon delivery;

b. certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

c. nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is

confirmed by the delivery service; or

d. facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

For the TRIBE:

Tribal Chairperson
Lytton Rancheria of California
437 Aviation Blvd.
Santa Rosa, CA 95403
Tel: (707) 575-5917

For the TOWN:

Ken MacNab
Town Manager
Town of Windsor
9291 Old Redwood Highway
Windsor, California 95492

22. Representations and Warranties. Each PARTY hereby represents, warrants, and covenants to the other PARTY as follows:

A. Authority. Such PARTY has the legal power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

B. Due Authorization. The approval, execution, and delivery of this Agreement, and the performance by such PARTY of its obligations under this Agreement, have been authorized by all requisite actions of such PARTY.

C. Due Execution and Delivery. The persons executing this Agreement on behalf of such PARTY are duly authorized to execute and deliver this Agreement in the name of and on behalf of such PARTY.

D. Enforceability. This Agreement constitutes the legal, valid, and binding obligation of each PARTY, enforceable against each PARTY in accordance with its terms, and, once executed and delivered, cannot be invalidated pursuant to any subsequent action of the respective governing bodies, as applicable.

E. No Conflict. The approval, execution, delivery, and performance of this Agreement does not conflict with any other agreement to which each PARTY is a

PARTY and does not violate or require any action which has not been taken under any law, statues, rule, regulation, ordinance, general plan, specific plan, or court order or decree applicable to such PARTY.

IN WITNESS WHEREOF, the PARTIES execute and enter into this Agreement with the intent to be bound thereby through their authorized representatives whose signatures are affixed below.

TOWN OF WINDSOR:

By: _____
Ken MacNab, Town Manager

WINDSOR WATER DISTRICT:

By: _____
Ken MacNab, General Manager

ATTEST:

By: _____
Maria De La O, Town Clerk

APPROVED AS TO FORM:

By: _____
Jose M. Sanchez, District Counsel

APPROVED AS TO FORM:

By: _____
Jose M. Sanchez, Town Attorney

TRIBE:

LYTTON RANCHERIA OF CALIFORNIA

By: _____
Margie Mejia, Tribal Chairperson

Date: 6/20/20

APPROVED AS TO FORM BY
LEGAL COUNSEL FOR THE TRIBE:

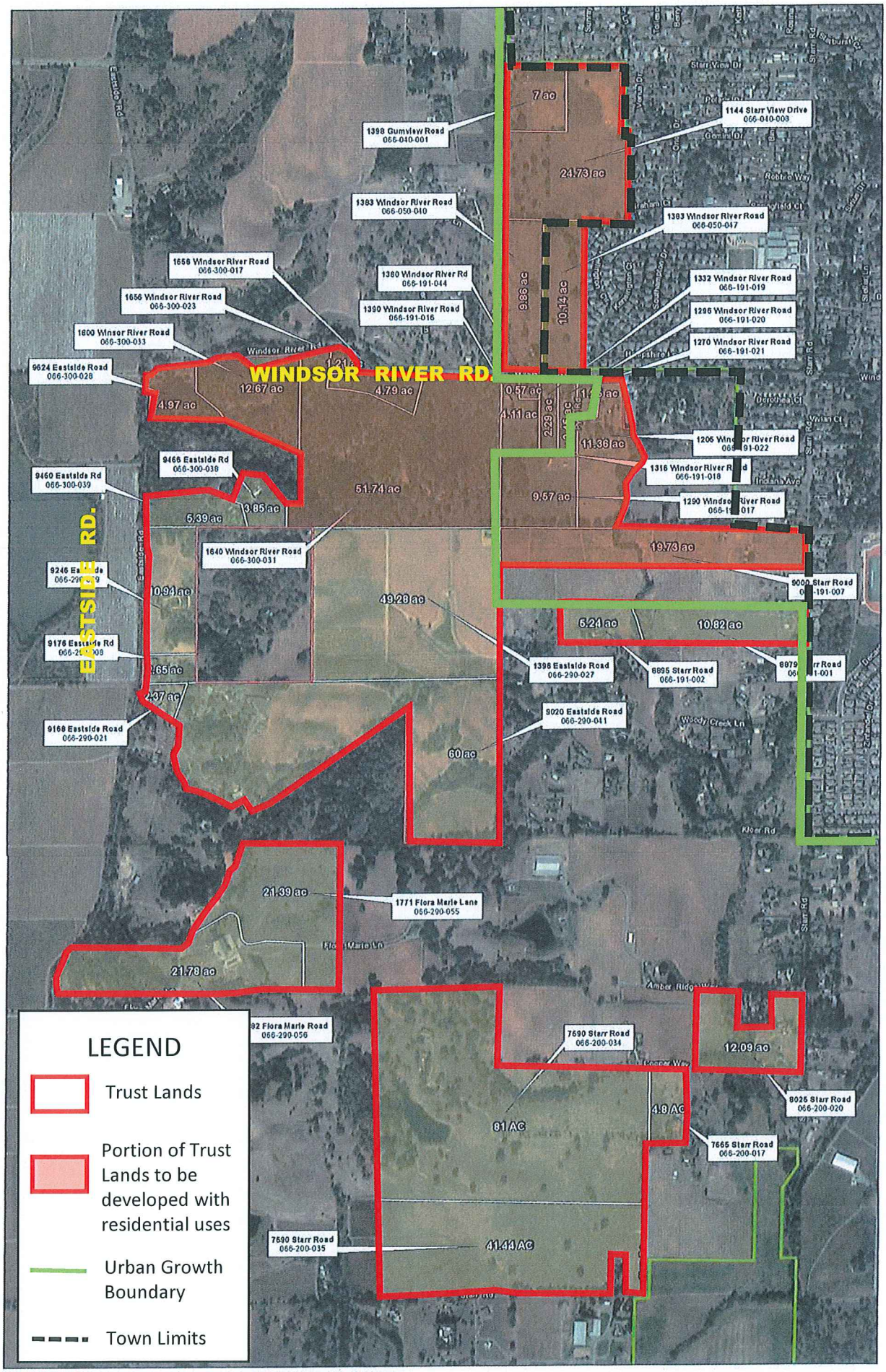
By: _____
Laurence R. Stidham

Date: 6/23/2020

EXHIBIT A

EXHIBIT B

EXHIBIT "A"- LYTTON RANCHERIA TRUST LANDS



SOURCE: Sonoma County General Plan 2020, updated 2012; USDA aerial photograph, 6/13/2010; AES, 1/18/2017

EXHIBIT C

LIST OF PROPERTIES TO BE SERVED BY TOWN OF WINDSOR WASTEWATER SYSTEM

SONOMA COUNTY ASSESSOR PARCEL NUMBER

066-040-001
066-040-008

066-050-040
066-050-047

066-300-017
066-300-023
066-300-028
066-300-031
066-300-033

066-191-007
066-191-016
066-191-017
066-191-018
066-191-019
066-191-020
066-191-021
066-191-022
066-191-044

SUMMARY OF POTENTIAL ENVIRONMENTAL IMPACTS, MITIGATION MEASURES, AND SIGNIFICANCE

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
5.1 LAND RESOURCES					
Implementation of the Proposed Project could increase the potential for soil erosion due to soil content and construction activities.	PS	A. All site preparation and earthwork construction in the field shall be performed by licensed contractors.	A, B & C	During Construction	LTS
		B. Suitability of earth and construction materials shall be determined by a licensed professional employing geotechnical/soils laboratory testing standards according to standard engineering practice.	A, B & C	Prior to Construction	LTS
		C. All grading plans, subsurface investigations, and slope stability and seismic design calculations as well as all foundation, paving, and building design parameters shall be produced under the supervision of appropriate licensed professionals.	A, B & C	Prior to and During Construction	LTS
		D. Construction on expansive soil shall be mitigated by using specialized grading techniques or designing structural foundations to withstand expansion pressures.	A, B & C	During Construction	LTS
		E. The effects of soil movement shall be mitigated by strengthening the soils during grading and/or designing and constructing satisfactory foundation support.	A, B & C	During Construction	LTS
		F. Prior to finalization of the grading and development plans for the property, design-level geotechnical specifications addressing the specific grading and development plans shall be developed. The specifications should include, but not be limited to, the following: 1. Site, building and facility-specific grading recommendations regarding site preparation, clearing and grubbing. 2. Select grading procedures, remedial grading procedures, material suitability and compaction criteria. 3. Cut and fill slope stability analyses, recommended slope configurations and inclinations. 4. Evaluation of soil expansion and corrosion potential. 5. Building-specific foundation design parameters. 6. Site-specific seismic design parameters. 7. Lateral earth pressure parameters for retaining wall design,	A, B & C	Prior to and During Construction	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		if any. 8. Pavement design specifications.			
5.2 WATER RESOURCES					
Construction of the Project would result in disturbance of the ground surface, which could lead to increased levels of erosion during storm events and a related decline in surface water quality. Operation of the Project could result in water quality impacts from the disposal of wastewater.	PS	A. The Tribe shall obtain a National Pollutant Discharge Elimination System permit (NPDES General Permit) from the USEPA for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA). A Storm Water Pollution and Prevention Plan (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with General Permit requirements. The SWPPP would detail the BMPs to be implemented during construction and post-construction operation of the Proposed Project. The BMPs may include, but are not limited to, the following: 1. Straw wattle placement on cut and fill slopes. 2. Straw wattle check dam installation within drainage swales. 3. Covering disturbed areas with plastic, hydro-seed applications, or straw. 4. Construction entrance installation to reduce off-site sediment transport. 5. Revegetation following construction activities.	A, B & C	Prior to Construction	LTS
		B. If Alternative B or C is chosen, the Tribe shall construct a tertiary wastewater treatment plant as described in Appendix B of the Final EA. Salt-based chemicals shall not be used whenever feasible in the wastewater treatment process. Water softeners that dispose of salt into the wastewater system shall be prohibited	B & C	During Construction	LTS
		C. Should Alternative B be chosen, the Tribe shall obtain a NPDES permit for surface discharge of treated effluent. An energy dissipater that does not result in any fill of waters of the U.S. shall be installed at the effluent discharge outfall.	B	Prior to Construction	LTS
		D. Should Alternative B or C be chosen, wastewater effluent discharge shall be reduced or eliminated, if possible, during the issuance of a Urban and Small Streams Flood Advisory by the National Weather Service for the receiving waters into which project effluent is discharged.	B & C	Design and Operation, Ongoing	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		E. Community Education programming will be conducted to educate residents of the importance of reducing chemical product use and disposal in the home and minimizing release of medicines and other contaminants into wastewater.	A, B & C	Ongoing	LTS
		F. Should Alternative B or C be chosen, all effluent discharge basins shall maintain a minimum vertical distance of two feet freeboard between the high water level and pond levee crowns. Storage basins will also be gated to restrict access. All basins shall also be equipped with draining systems and level monitors.	A, B & C	Design and Operation, Ongoing	LTS
		G. Should Alternative B or C be chosen, spray drift from the spray disposal irrigation areas would be monitored daily during operation by qualified personnel. Spray drift shall not be allowed to migrate outside the irrigation area. Spray irrigation would cease when winds exceed 30 miles per hour.	B &C	Ongoing	LTS
		H. Should Alternative B or C be chosen, the Tribe would adopt standards equivalent to the landscape irrigation standards contained in the State Water Resources Control Board (SWRCB) Recycled Water Policy (as referenced in Resolution No. 2009-0011.	B &C	Design and Operation, Ongoing	LTS
		I. Should Alternative B or C be chosen, a wastewater contingency plan shall be developed that ensures untreated wastewater is not discharged to the environment in the event of WTRF failure or malfunction.	B &C	Design and Operation, Ongoing	LTS
Potential drawdown of groundwater levels in the vicinity of the project site is not assumed to occur with implementation of Alternative B or Alternative C due to the current aquifer thickness and the distance to the nearest well.	LTS	J. The nested monitoring well constructed for the hydrogeologic investigation shall be maintained and used for groundwater-level monitoring.	B & C	During Construction Ongoing	LTS
5.3 AIR QUALITY					
Construction of the Proposed Project would result in the emission of criteria air	PS	A. Construction vehicles, delivery, and commercial vehicles shall not idle for more than five minutes.	A, B & C	During Construction	LTS
		B. The Tribe shall designate an onsite Air Quality Construction BMP	A, B & C	During	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
pollutants from construction machinery, construction worker automobiles, and physical land disturbance.		Manager (AQCBM) who shall be responsible for directing compliance with BMPs for the project construction heavy-duty equipment.		Construction	
		C. Heavy, diesel-powered equipment idling shall be limited to two minutes.	A, B & C	During Construction	LTS
		D. The Tribe shall use heavy duty construction equipment equipped with a diesel particulate matter filter.	A, B & C	During Construction	LTS
		E. The Tribe shall fully fund a program to encourage and facilitate the use of 'carpools' by construction workers, including providing an off-site location for construction workers to park their vehicles and meet to carpool.	A, B & C	During Construction	LTS
		F. If possible, the Tribe shall use heavy duty construction equipment, which meets California Air Resources Board's most recent certification standards.	A, B & C	During Construction	LTS
		G. The Tribe shall provide a storage area for recyclables and green waste during construction.	A, B & C	During Construction	LTS
		H. The Tribe shall recycle 50 percent or more of construction waste.	A, B & C	During Construction	LTS
		I. The Tribe shall use environmentally preferable materials to the extent practical for construction of facilities. Buildings will be designed to meet LEED or equivalent certification standards, except with respect to indoor smoking allowed in certain restricted areas.	A, B & C	During Construction	LTS
		J. The AQCBM shall be responsible for directing compliance with the following BMPs for fugitive dust control practices during project construction: 1. For any earth moving which is more than 100 feet from all property lines, conduct watering as necessary to prevent visible dust emissions from exceeding 100 feet in length in any direction. 2. For all disturbed surface areas apply dust suppression in a sufficient quantity and frequency to maintain a stabilized surface; any areas, which cannot be stabilized, as evidenced by wind driven dust, must have an application of water at least twice per day to at least 80 percent of the unstabilized area.	A, B & C	During Construction	LTS

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		3. Establish a vegetative ground cover as soon as feasible after active operations have ceased. 4. For all unpaved roads either water all roads used for any vehicular traffic as often as necessary to minimize dust; or apply chemical stabilizer to all unpaved road surfaces in sufficient quantity and frequency to maintain a stabilized surface. 5. Provide track-out control to minimize tracking of soil onto neighboring roadways. 6. For all off site haul vehicles, cover loads. 7. Grading activities shall not occur when winds exceed 25 miles per hour (mph). 8. Speed on unpaved roads shall be limited to 15 mph.			
The Proposed Project could result in an increase in GHG emissions.	PS	K. For operation of the proposed project, the Tribe shall institute and fund an on-site waste composting program. Waste composting reduces GHG emissions from landfills. This mitigation measure would reduce GHG emissions from mobile sources by one percent.	A, B & C	Design and Operation	LTS
		L. For operation of the proposed project, the Tribe shall plant trees and other carbon-sequestering vegetation (as part of the Mitigation Measure outlined for native oak trees specified in Section 5.4.2 of the Final EA). The addition of photosynthesizing plants would reduce atmospheric carbon dioxide (CO_2) because plants use CO_2 for elemental carbon and energy production. Trees planted near buildings would result in additional benefits by providing shade to the buildings, reducing heat absorption and the need for air conditioning. According to the BAAQMD, implementation of this mitigation measure would reduce the project's electricity consumption, thus lowering indirect GHG emissions in the residential air conditioning sector by up to 30 percent (per Table 5-1 of the Final EA).	A, B & C	Design and Operation	LTS
		M. The Tribe shall use solar hot water heaters where possible for all project components. The use of solar hot water heaters would reduce project's energy usage, thus lowering indirect related GHG emissions by reducing natural gas and electricity usage. According to the BAAQMD, implementation of this mitigation measure would	A, B & C	Design and Operation	LTS

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		reduce the project's indirect GHG emissions in the residential natural gas water heating sector by up to 70 percent (per Table 5-1 of the Final EA).			
		N. The Tribe shall seal all residential and other buildings heating, ventilation, and air conditioning ducts. According to the BAAQMD, implementation of this mitigation measure would reduce the project's electricity consumption, thus lowering indirect GHG emissions in the residential air conditioning sector by up to 30 percent (per Table 5-1 of the Final EA).	A, B & C	Design and Operation	LTS
		O. If necessary, purchase GHG emissions credits in the amount specified in Table 5-1 on the Final EA in order to reduce the GHG emissions to below the BAAQMD threshold.	A, B & C	During Construction	LTS
5.4 BIOLOGICAL RESOURCES					
Significant impacts could occur to aquatic habitat and jurisdictional waters of the US.	PS	A. A 50-foot setback, where possible, shall be established around each of the potentially jurisdictional wetland features within the project development and no development shall occur within the setback areas.	A, B & C	Design and Prior to Construction	LTS
		B. These wetland avoidance setbacks shall be established around jurisdictional wetland features using high-visibility fencing. A qualified biologist shall be present during construction activities that ensue within the vicinity of the wetland avoidance buffer zones. The qualified biologist shall monitor during construction to make sure that the fencing remains intact and that construction activities do not penetrate the wetland avoidance buffer zones. When project development is completed, the high-visibility fencing may be removed.	A, B & C	Prior to Construction	LTS
		C. Temporary fencing shall be installed around riparian habitats. Fencing shall be in place prior to the initiation of any construction activities and no encroachment into the fenced areas shall be permitted. Fencing shall remain in place until all construction activities have ceased.	A, B & C	Prior to Construction	LTS
		D. Any proposed construction activities that would occur within 50 feet of jurisdictional waters of the U.S. shall be conducted during the dry season (i.e., April 15 through October 15) to further reduce sedimentation within the watershed.	A, B & C	Design and Prior to Construction	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		E. If complete avoidance of waters of the U.S. is not possible and impacts to wetland features cannot be avoided, authorization from the USACE is required. A Section 404 CWA permit shall be obtained from the USACE and mitigation ratios defined within the permit conditions shall be implemented. Typical Nationwide Permits (NWP) mitigation occurs at a ratio of 1:1 acres created versus impacted and 2:1 acres preserved versus impacted. Individual permit conditions may vary. A CWA Section 401 Water Quality Certification permit from the U.S. EPA would also be required.	A, B & C	Prior to Construction	LTS
The Proposed Project is likely to result in direct and/or indirect impacts (i.e., development) to native oak trees and oak habitats onsite.	PS	F. Trees of notable size (i.e. heritage trees exceeding 33 inches in diameter at breast height) shall be preserved to the greatest extent feasible.	A, B & C	Design and Planning	LTS
		G. Impacts to valley oak trees within the Valley Oak Habitat Combining District shall be avoided to the maximum extent feasible.	A, B & C	Design and Planning, Prior to Construction	LTS
		H. Protection of tree crowns and root zones shall be required for all trees planned for retention in the vicinity of the construction footprint.	A, B & C	Prior to and During Construction	LTS
		I. Native oak trees permanently removed as a result of project construction will be mitigated through re-planting of removed trees at a 1:1 ratio as detailed below, or alternatively, preserving an equivalent area of oak woodland. 1. Replacement oak trees will be planted on Tribally owned land and/or other parcels in the vicinity of the project site. 2. Oak trees may be established by planting in replacement areas trees salvaged from construction impact zones, 15 gallon-sized trees, 24-inch boxes, 26-inch boxes, saplings, propagated seedlings, acorns, or any combination of these sizes or stages. 3. To ensure the success of planted oak trees, the trees shall be monitored annually by a qualified biologist for a period of five years, with a survival target goal of 60 percent by the third year. If it is determined after the third year of monitoring that the 60 percent survival rate is not being met, additional trees shall be planted to meet a 80 percent	A, B & C	During Construction and Ongoing	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		survival goal near the end of five years. 4. Trees removed for construction shall be assessed by a qualified biologist to see if removed trees would be suitable for relocation in replacement areas.			
The Proposed Project has the potential to result in direct impacts to special-status plant species should they occur within the project site. The Proposed Project could also result in indirect impacts to special-status plant species through loss of suitable habitat.	PS	J. The remaining floristic surveys for Sonoma sunshine, Sebastopol meadowfoam, Burke's goldfields, and many-flowered navarretia shall be conducted within the required areas of the project site in accordance with the Santa Rosa Plain Conservation Strategy protocol prior to groundbreaking on those parcels.	A, B & C	Prior to Construction	LTS
		K. If the protocol-level floristic survey results are positive, then formal consultation with USFWS must be initiated. Upon consultation, an appropriate course of action shall be established.	A, B & C	Prior to Construction	LTS
		L. Prior to the onset of construction activities, an avoidance plan must be formulated, submitted, and approved by the USFWS. It is likely to entail the following basic principles: 1. Prior to the onset of construction activities the areas where the plants occur shall be delineated with avoidance buffers via high visibility fencing. The avoidance buffers may be 50 feet in width, unless otherwise specified by USFWS. 2. A qualified botanist shall be present during construction activities that ensue within the vicinity of the special-status plant avoidance buffer zones and monitored to ensure that the fencing remains intact and that construction activities do not penetrate the special-status plant avoidance buffer zones. 3. When project development is completed, the high-visibility fencing may be removed. However, future development shall not occur within the setback buffer areas.	A, B & C	Prior to Construction	LTS
		M. If complete avoidance of the Santa Rosa Plain special-status plants is not feasible, the Tribe shall mitigate for impacts to the plants according to the mitigation ratios in **Table 5-1** of the Final EA, which are outlined in the *Programmatic Consultation for USACE 404 Permitted Projects that May Affect Four Endangered Plant Species on the Santa Rosa Plain, California* (File Number 223420N) (USFWS, 2007).	A, B & C	Prior to and During Construction	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
The Proposed Project has potential to impact migratory nesting birds if construction activities occur during the nesting season (March 1 through September 15).	PS	N. If any construction activities are scheduled to occur during the nesting season (February 15 – August 31), pre-construction bird surveys shall be conducted. Pre-construction surveys for any nesting bird species shall be conducted by a qualified wildlife biologist, throughout all areas of suitable trees and habitat that are within 500 feet of any proposed construction activity, including oak trees slated for removal. The surveys shall occur no more than 14 days prior to the scheduled onset of construction activities. If construction is delayed or halted for more than 14 days, another pre-construction survey for nesting bird species shall be conducted. If no nesting birds are detected during the pre-construction surveys no additional surveys or mitigation measures are required.	A, B & C	Prior to Construction	LTS
		O. If migratory nesting bird species are observed within 500 feet of the construction area during the surveys, appropriate avoidance setbacks shall be established by the qualified biologist. The size and scale of nesting bird avoidance setbacks is dependent upon the species of nesting bird observed and the habitat that the nest occurs. Avoidance setbacks shall be established around all active nest locations via stakes and high visibility fencing. The nesting bird setbacks shall be completely avoided during the duration of construction activities and the fencing must remain intact. The qualified biologist shall also determine an appropriate monitoring plan and shall decide if construction monitoring is necessary during the duration of construction activities. Again, monitoring requirements are dependent upon the species of nesting birds observed, the habitat in which the nests are contained, and the number of nests observed. The setback fencing may be removed when the qualified biologist confirms that the nest(s) are no longer occupied and all young have fledged.	A, B & C	Prior to and During Construction	LTS
		P. If impacts (i.e., take) to migratory nesting bird species are unavoidable, consultation with USFWS shall be initiated. Through consultation, an appropriate and acceptable course of action shall be established.	A, B & C	Ongoing	LTS
5.5 CULTURAL RESOURCES					
The Proposed Project may	PS	A. Should any buried cultural materials (archaeological or	A, B & C	During	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
adversely affect previously unknown subsurface prehistoric or historic archaeological resources, including human remains.		paleontological) be uncovered during ground-disturbing project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian or chert flaked-stone tools and waste flakes (debitage) resulting from the tool making process; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles); and locally darkened midden soils containing any of the previously listed items plus fragments of faunal bone or shell, fire-affected rocks, and/or unusual amounts of charcoal. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structural and feature remnants such as building foundations, privy pits, wells, irrigation ditches, and refuse dumps; and old trails. The Lytton Rancheria shall be notified of the discovery and a professional archeologist (or paleontologist, as appropriate) shall be retained to evaluate the find and recommend appropriate treatment measures in consultation with the Lytton Rancheria. Project-related activities shall not resume within 100 feet of the find until all mitigation measures have been approved and completed.		Construction	
		B. If suspected human remains are encountered, work should halt in the vicinity and the Sonoma County Coroner should be notified immediately. At the same time, the Lead Agency and a qualified archaeologist should be contacted to evaluate the find. If human remains are determined to be of Native American origin, the Coroner must notify the NAHC within 24 hours of this identification. Construction activities shall not resume within 100 feet of the find until the NAHC-designated Most Likely Descendant (MLD) and the Tribe approves and implements a strategy for the appropriate disposition of the remains.	A, B & C	During Construction	LTS
		C. Should paleontological resources be unearthed, a paleontological resource impact mitigation plan (PRIMP) shall be created prior to further earthmoving in the vicinity of the find. The PRIMP shall detail the procedures for collecting and preserving the discovered fossils. Any fossils discovered during construction shall be accessioned in an accredited scientific institution for future study.	A, B & C	During Construction	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
5.6 SOCIOECONOMIC CONDITIONS					
The project would not result in any significant negative impacts to school districts or environmental justice issues.	LTS	None warranted.	A, B & C	-	LTS
5.7 TRANSPORTATION AND CIRCULATION					
The Proposed Project could result in increased traffic at the intersection of Windsor River Road and Bell Road.	PS	A. The Tribe shall pay a proportionate share for necessary intersection improvements at the intersection of Windsor River Road and Bell Road (Intersection #6). The improvements shall include, but not limited to, installation of a traffic signal if and when the Town of Windsor determines a signal is warranted.	A, B & C	Ongoing	LTS
The Proposed Project could potentially result in increased traffic at the intersection of Old Redwood Highway and Northbound U.S. 101 off-ramp at Lakewood Drive.	PS	B. The Tribe shall pay a proportionate share for intersection improvements at the intersection of Old Redwood Highway and the Northbound U.S. 101 Off-Ramp at Lakewood Drive (Intersection #9). Improvements would include the construction of an additional southbound left turn lane, an additional southbound right-turn lane, and restriping the northbound approach to include a shared through-left lane. It is assumed that the project's equitable share of any planned improvements at this intersection would be calculated based on the methodology set forth in Appendix "B" of the California Department of Transportation "Guide for the Preparation of Traffic Impact Studies". It is also assumed this will be determined in consultation with Sonoma County, the Town of Windsor and the Tribe.	A, B & C	Ongoing	LTS
5.8 LAND USE AND AGRICULTURE					
The project would not result in any significant impacts to land use and agriculture.	LTS	None warranted.	A, B & C	-	LTS
5.9 PUBLIC SERVICES					
Implementation of the Proposed Project could potentially result in an increased risk for wildfires.	PS	A. To minimize the risk of fire and the need for fire protection services during construction, any construction equipment that normally includes a spark arrester shall be equipped with a spark arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws.	A, B & C	During Construction	LTS
		B. During construction, staging areas, welding areas, or areas slated	A, B & C	During	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		for development using spark-producing equipment would be cleared of dried vegetation or other material that could serve as fire fuel. To the extent feasible, the contractor would keep these areas clear of combustible materials in order to maintain a firebreak		Construction	
		C. Fire extinguishers shall be maintained onsite and inspected on a regular basis.	A, B & C	During Construction	LTS
		D. An evacuation plan shall be developed for the proposed development in the event of a fire emergency.	A, B & C	Design and Operation	LTS
		E. Fire hydrants shall be spaced no less than 500-feet apart throughout the developed portions of the site.	A, B & C	Design and Operation	LTS
		F. Fire alarm and suppression systems installed shall conform to design standards equivalent to the requirements of the California Building and Fire Codes as amended and adopted by Sonoma County.	A, B & C	Design and Operation	LTS
		G. On-site development shall be consistent with Sonoma County Fire Safe Standards Sections 13-54 through 13-59.	A, B & C	During Construction	LTS
		H. A vegetation management plan shall be prepared by a qualified professional prior to occupation of any residences. The plan shall include, at a minimum, defensible space zones, identification of vegetation types, replacement of non-native flammable vegetation with fire resistive vegetation, and a maintenance program for all vegetation. The Tribe shall approve the plan and pass a resolution that requires that it will be implemented and maintained. Prior to approving the plan, the Tribe shall submit it to the County Fire Chief for review.	A, B & C	Design and Operation, Ongoing	LTS
		I. The Tribe shall arrange and coordinate with local law enforcement and emergency services if needed to assist with large events held at the proposed Community Center.	A, B & C	Ongoing	LTS
		J. The Tribe and the Town of Windsor shall enter into a mutually agreeable binding service contract for the provision of water and sewer service to the project.	A	Design and Operation	LTS
5.10 NOISE					
Implementation of the Proposed Project could potentially result in increased	PS	A. The Tribe shall restrict construction activities to normal daytime hours (7 a.m. to 7 p.m.), Monday through Saturday, with no work performed on Sundays.	A, B & C	During Construction	LTS

Less than Significant = LTS | Potentially Significant = PS | No Impact = NI | Alternative A = A | Alternative B = B | Alternative C = C

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
levels on noise in the vicinity of the project site during construction of project components and operation of the water reclamation facility.		B. The Tribe shall ensure that construction equipment used at the project site shall be equipped with the best available noise reduction technology feasible, including the use of mufflers on motorized equipment according to the manufacturer's specifications.	A, B & C	During Construction	LTS
		C. All existing residences within 200 feet of the project site shall be notified at least one day in advance of construction that is proposed to take place within 300 feet of the residence.	A, B & C	During Construction	LTS
		D. Stationary noise-producing equipment such as compressors and generators shall be placed as far as practical from homes, and shielding shall be provided between any such equipment and homes when it is necessary to operate the equipment closer than 200 feet from a home.	A, B & C	Design and Operation, During Construction	LTS
		E. On-site water reclamation facility equipment shall be shielded or enclosed.	B & C	Design and Operation	LTS
5.11 HAZARDOUS MATERIALS					
Hazardous materials, such as gasoline, diesel fuel, and hydraulic fluid, would be brought on site during the construction phase. The storage of these hazardous materials on-site is therefore considered a potentially significant impact.	PS	A. Potentially hazardous materials, including fuels, shall be stored away from drainages and secondary containment shall be provided for all hazardous materials during construction.	A, B & C	During Construction	LTS
		B. A spill prevention and countermeasure plan shall be developed which shall identify proper storage, collection, and disposal measures for potential pollutants (such as fuel storage tanks) used onsite, as well as the proper procedures for cleaning up and reporting of any spills.	A, B & C	During Construction	LTS
		C. Vehicles and equipment used during construction shall be provided proper and timely maintenance to reduce potential for mechanical breakdowns leading to a spill of materials into water bodies. Maintenance and fueling shall be conducted in an area that meets the criteria set forth in the spill prevention plan.	A, B & C	During Construction	LTS
		D. Before the parcels are taken into trust, all items of non-hazardous debris shall be removed for the site and properly disposed of or recycled an appropriate off-site facility.	A, B & C	Prior to Construction	LTS
		E. A hazardous materials storage and disposal plan shall be prepared that contains an inventory of hazardous materials stored and used on site, maintains an emergency response plan for a release and	A, B & C	Prior to Construction	LTS

IMPACT STATEMENT	LEVEL OF SIGNIFICANCE	IDENTIFIED MITIGATION			RESIDUAL LEVEL OF SIGNIFICANCE
		MITIGATION MEASURE	APPLICABLE ALTERNATIVE(S)	TIMING	
		disposal of unused hazardous materials, and provides provisions specifying employee training in safety and emergency response procedures.			
5.12 VISUAL RESOURCES					
The project will not result in any significant impacts to visual resources.	LTS	None warranted.	A, B & C	-	LTS