

APPENDIX B

***MEMORANDUM OF UNDERSTANDING AMONG THE COUNTY OF
SACRAMENTO, CITY OF ELK GROVE, AND THE WILTON
RANCHERIA***

**MEMORANDUM OF UNDERSTANDING
AMONG THE COUNTY OF SACRAMENTO,
CITY OF ELK GROVE AND
THE WILTON RANCHERIA**

This Memorandum of Understanding (“Agreement”) is entered into this ___ day of _____ 2011, among the County of Sacramento, a political subdivision of the State of California (“County”); the City of Elk Grove, a municipal corporation located in the County of Sacramento in the State of California (“City”); and Wilton Rancheria, a federally recognized Indian tribe (“Tribe”) (each, a “Party”, and collectively referred to as the “Parties”).

RECITALS

A. The Parties recognize that each is a governmental entity with responsibility for the health and general welfare of its people.

B. The Tribe was restored to its federal recognition pursuant to a court-approved Stipulation for Entry of Judgment (“Stipulation”) on June 8, 2009, in *Wilton Miwok Rancheria, et al. v. Salazar* C-07-02681 (N.D. Cal.) and *Me-Wuk Indian Community of the Wilton Rancheria v. Salazar, et al.*, C-07-05706 (N. D. Cal., collectively the “Actions”).

C. The City and the County intervened in the Actions.

D. In this Agreement, the Parties intend to establish a cooperative and mutually respectful government-to-government relationship regarding potential off-trust impacts of development on Tribal Lands within the County of Sacramento. For purposes of this Agreement, “Tribal Lands” means lands over which the Tribe exercises sovereign jurisdiction, now or in the future, or which are proposed to be, or are taken into trust for the Tribe.

E. Because the Tribe is not required to comply with California state environmental laws and in light of the fact that the Tribe is sovereign as defined under federal law, the Parties desire and intend this Agreement to establish a process for the Parties to determine and enforce mitigation measures for proposed off-trust Tribal Land environmental, social and economic impacts and to provide a framework for future agreements between the Parties for development of specific projects on lands to be taken into trust for the Tribe.

NOW, THEREFORE, the Parties, in order to achieve these purposes, agree as follows:

1. Dismissal of Pending Motions. Upon the mutual execution and delivery of this Agreement, the City and the County shall promptly withdraw their pending motions to Re-Open and Vacate Judgment and to Dismiss for Lack of Subject Matter Jurisdiction the Actions and shall not oppose entry of final judgment as set forth in the Stipulation. City and County may file or participate in any motions or other legal actions against the Tribe should said Stipulation be otherwise modified or vacated or if the Tribe’s

authorized representative status under this Agreement is otherwise disputed, but shall not otherwise challenge the Tribe's Stipulation, federal recognition and the validity thereof, and/or any rights afforded the Tribe thereby. Should the Stipulation be modified or vacated, the Tribe shall not object to City and County's party status.

2. Scope of Agreement. This Agreement shall apply to any Tribal Lands located within the County including, but not limited to, any of the land specified in Paragraphs 7 and 8 of the Stipulation. The City and County agree not to oppose any efforts to have lands taken into trust for the Tribe provided that Tribe complies with the provisions of this Agreement. If any question arises between the Parties as to this Agreement's application of any given piece or parcel of land, or any development thereon, the dispute resolution provisions of this Agreement shall apply.

3. Consultation Process.

a. Scope.

- i. County Process. Concurrent with any application to have land taken into trust for the Tribe, the Tribe shall consult with the County, as described below, if such Tribal Land is located within the County boundaries, regardless of whether such lands may also lie within the corporate limits of any municipal corporation.
- ii. City Process. Concurrent with any application to have land taken into trust for the Tribe, the Tribe shall consult with the City, as described below, if such Tribal Land is located within the corporate limits of the City or if such Tribal Land is located within territory for which the City has filed an application to annex with the Sacramento Local Agency Formation Commission and has completed the pre-planning and pre-zoning required by California Government Code Section 56375 ("Jurisdiction of the City").
- iii. Consistency with General Plan. Prior to changing any use on Tribal Lands and concurrent with any application to have land taken into trust for the Tribe, the Tribe shall notify the County and, if applicable, the City of such application and request that the agency which would, but for the sovereignty of the Tribe, have land use jurisdiction over such lands, determine whether a proposed use is compatible with General Plan designations. Use of Tribal Lands shall be deemed to conform to, and be compatible with, General Plan designations if the category of the proposed use is the least intensive that is authorized or allowed under the least intensive use permitted by the General Plan designations for land use that are effective either at the time the Tribe submits its fee-to-trust application or at the time a change or intensification of use is proposed for Tribal Lands. Where there are multiple parcels

contiguous or not for which a use or more intensified use is proposed by the Tribe, and the General Plan designations of those parcels differ, the Tribe's proposed land use shall be deemed to conform with and be compatible to, General Plan designations if it is authorized or allowed under the least intensive use permitted by the General Plan designations of any of the parcels. The County and/or City shall make such determination within thirty (30) calendar days from the notice required by this paragraph. If no determination is made, the Tribe may proceed with the tribal project.

- iv. Inconsistency with General Plan. If the proposed use of Tribal Lands does not conform to and is not compatible with the applicable County or City General Plan category designations that are authorized or allowed under the General Plan, the County and/or City shall so notify the Tribe of such inconsistency as required by the above paragraph. In such case, the Tribe shall prepare the Tribal Project Environmental Document, described below.

b. Process.

- i. Selection of Consultant. The Tribe shall utilize an environmental consultant with significant experience with federal, state and local environmental regulation to prepare the Tribal Project Environmental Document.
- ii. Identification of Environmental Impacts.
 - 1. The Tribe shall comply with the requirements of the National Environmental Policy Act ("NEPA") or any successor statute, with respect to any proposed uses of Tribal Lands which may include mitigation of any environmental impacts that are required by the NEPA analysis related to such proposed uses. The County and/or City may be cooperating agencies for the purposes of the NEPA analysis.
 - 2. In addition, while recognizing that it is not subject to the requirements of the California Environmental Quality Act, *California Public Resources Code section 21000 et seq.*, and the CEQA Guidelines, *14 Cal. Code Reg. section 15000 et seq.*, or any successor statutes and administrative rules ("CEQA") with respect to any proposed use of Tribal Lands, the Tribe shall prepare an

environmental document for proposed tribal projects as described below.

- A. For the purposes of this Agreement, the term “Project” shall include changes to the physical environment, including any significant excavation, construction or development associated with tribal governmental, housing or economic development activities, which may cause adverse impacts to the off-Tribal Land environment, including direct and reasonably foreseeable indirect environmental impacts.

- B. The document to be prepared pursuant to this provision shall be referred to in this Agreement as the “Tribal Project Environmental Document” (“TPED”). The TPED shall include the following:
 - i. Description of proposed project, including the project scope and objectives;
 - ii. Description of environmental setting;
 - iii. Evaluation of off-reservation environmental impacts including significant off-reservation environmental effects of proposed project and environmental effects of proposed project not found to be significant;
 - iv. Description of mitigation measures proposed to avoid or minimize the significant effects;
 - v. Evaluation of cumulative impacts of proposed project;
 - vi. Description of alternatives to the proposed project;
 - vii. Description of inconsistencies with off-reservation applicable land use;
 - viii. Evaluation of growth-inducing impacts of the proposed project;
 - ix. Evaluation of economic and social impacts as defined by Title 2, CFR, section 15131; and
 - x. Evaluation of impacts on the County and/or City governmental and municipal services.

- iii. **Timing of Review.** The Tribe shall provide a draft version of the TPED to the County and City. Within 45 days of the County’s and City’s receipt of the TPED, the County and/or City shall provide written comments on same to the Tribe. Considering and responding to said comments, the Tribe shall provide a final TPED to the County and City, and within 45 days after receipt of the final

TPED, the County and the City shall commence negotiations with the Tribe to reach agreement as to the mitigation measures that will be undertaken, including but not limited to timing of mitigation and fiscal mitigation necessary to reimburse the County and/or City for any increased County and/or City services attributable to the Project. If an agreement with the County and/or City is not reached within 90 days from the date the County and/or City received the final TPED, any Party may seek resolution pursuant to the dispute resolution provisions of Sections 5 and 6 herein with respect to any dispute on which the parties cannot reach agreement.

iv. Mitigation of Adverse Impacts.

1. Tribe's Commitments, Obligations and Responsibilities. The Tribe will construct and/or finance any Project identified as requiring mitigation in full compliance with the terms of an agreement identified in Section 3(b)(iii).
2. The TPED shall describe a range of reasonable Project alternatives which would feasibly attain most of the Project objectives and which would avoid or substantially lessen any of the significant effects on the off Tribal Lands environment or County and/or City governmental and municipal services and shall also evaluate the comparative merits of the alternatives, provided that the Tribe need not address alternatives that would cause it to forego its right to engage in land use that is legally permitted on its Tribal Lands.

4. City and County Commitments, Obligations Responsibilities.

a. CEQA Compliance by City and County. City and County each acknowledge that it will comply with CEQA to the extent applicable before funding, approving, or undertaking any discretionary action described in this Agreement that affects the physical environment. Nothing in this Agreement shall be construed in any manner that constitutes funding, approving, or undertaking any particular action or otherwise limit the City's or County's full discretion to fund, approve, authorize, disapprove, or modify any proposed projects. The City and County each also acknowledges that it will promptly comply with CEQA to the extent applicable before it exercises its discretion and commits to any particular course of action that may directly or indirectly affect the physical environment so as to minimize any delay with the City's and the County's obligations to the Tribe by this Agreement. With respect to the City or County, the execution of this Agreement is not a project under CEQA because this Agreement may create a future governmental funding mechanism that can be

used for traffic or other mitigation program should the City or County undertake such actions after compliance with CEQA.

5. Voluntary Resolution; Reference to Other Means of Resolution.

a. The Parties will use their best efforts to resolve any disputes that may occur under this Agreement by good faith negotiations whenever possible. Therefore, without prejudice to the right of either Party to seek injunctive relief against the other to enforce terms and conditions of this Agreement when circumstances are deemed to require immediate relief, the Parties hereby establish a threshold requirement that disputes between the Tribe and the County and/or City first be subject to a process of meeting and conferring in good faith to foster a spirit of cooperation and efficiency in the performance and compliance with this Agreement as follows:

i. Any Party will give the others, as soon as possible after the event giving rise to the concern, a written notice setting forth, with specificity, the issues to be resolved.

ii. The Parties will meet and confer in a good faith attempt to resolve the dispute through negotiation no later than ten (10) days after receipt of the notice, unless both Parties agree in writing to an extension of time.

iii. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first meeting, then either Party may seek to have the dispute resolved by arbitration in accordance with this Agreement.

iv. Disagreements that are not otherwise resolved by arbitration or other mutually acceptable means as provided in this Section shall be resolved in the Superior Court of the State of California, County of Sacramento. The Parties agree that venue is proper in the Sacramento County Superior Court. The disputes to be submitted to the court action include, but are not limited to, claims of breach or violation of this Agreement. The Parties agree that, without prejudice to the right of either party to seek immediate injunctive relief against the other when circumstances are deemed to require immediate relief, reasonable efforts will be made to explore alternative dispute resolution avenues prior to resorting to judicial process.

6. Arbitration Rules.

a. Unless otherwise required by law, any arbitration will be conducted in accordance with the policies and procedures of JAMS, and will be held at such location as the Parties agree.

The Party demanding arbitration shall give notice thereof in writing to the other Party, naming in such notice the arbitrator choice. Within fifteen (15) days of receipt of such notice, the receiving Party shall name a second arbitrator of its choice and give notice thereof to the demanding party. The two arbitrators so named shall meet within thirty (30) days after the naming of the second arbitrator to select the services of a mutually acceptable third arbitrator. If the two arbitrators are unable to obtain a third arbitrator within thirty (30) days of their first meeting, the matter shall be referred to Sacramento County Superior Court of California for selection by said court.

Promptly after three (3) arbitrators have been selected, they shall meet to hear the positions and evidence in support thereof of each party, and shall proceed timely to render their decision, which shall be concurred in by not less than two of the three arbitrators. The third arbitrator shall be instructed that his or her decision cannot be a compromise of the decision of the first two (2) arbitrators but must be the same as at least one of such two (2) arbitrators. After such decision, each Party hereto shall promptly do all things required of it by such decision.

b. The decision of the arbitrators will be a reasoned written opinion and will be binding.

i. To the extent the arbitrators' decision relates to compliance with this Agreement, the decision shall explain the facts giving rise to noncompliance and the manner in which compliance may be achieved.

ii. To the extent the decision relates to mitigation of impacts, the decision shall provide for feasible mitigation of off Tribal Lands environmental impacts which may include reasonable compensation for public services but shall not impose environmental mitigation measures which are different in nature or scale from the type of measures that have been required to mitigate other projects of similar scale in the surrounding area.

iii. The arbitrators may consider whether the final TPED provides the data and information necessary to enable the County and/or City to determine both whether the Project may result in off Tribal Lands impacts and whether the proposed measures in mitigation are sufficient to mitigate any such effect. If the arbitrators determine the TPED is insufficient they shall remand the TPED to the Tribe so that it may be revised to

address insufficiencies. A revised TPED shall be treated, for this Agreement, as a new TPED.

iv. For purposes of determining the adequacy of the TPED, the arbitrators, shall to the extent applicable, rely on the statutory, regulatory and decisional law relating to the interpretation and scope of state and federal environmental law. .

v. Notwithstanding the foregoing, the arbitrator shall not have authority to materially modify the principal objectives of the Project or the scope of the Project as identified by the Tribe in TPED.

c. Any Party may request that the arbitrators issue a stay of construction pending a final decision which decision may include a stay of implementation.

d. Each Party will bear its own costs, attorneys' fees, and its share of the costs and expenses of the arbitration.

e. The provisions of Section 1283.05 of the California Code of Civil Procedure will apply; provided that no discovery authorized by that section may be conducted without agreement of the arbitrators or among the Parties.

f. To effectuate the Parties' consent to the foregoing arbitration procedure, the Parties agree to Sacramento County Superior Court of California, to (1) enforce the Parties' obligation to arbitrate, (2) confirm, correct, modify, or vacate the arbitration award rendered, or (3) enforce or execute judgment based upon the award.

g. No Waiver or Preclusion of Other Means of Dispute Resolution. This Section 6 may not be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual agreement any other method of dispute resolution, including, but not limited to, mediation, provided, that neither Party is under any obligation to agree to such alternate method of dispute resolution.

7. Tribal Sovereignty.

The County and the City acknowledge and agree that the Tribe:

a. is a federally recognized Indian tribe;

- b. is not generally subject to the jurisdiction of the County and/or City or its laws, rules, regulations and ordinances;
- c. has the right to have land taken into trust by the United States for the benefit of the Tribe; and
- d. has not submitted to, and nothing in this Agreement is intended to constitute, or shall be construed as constituting, a submission by the Tribe to, the jurisdiction of the County and/or City.

8. Limited Waiver of Sovereign Immunity.

- a. The Tribe expressly and irrevocably waives its sovereign immunity (and any defense based thereon) in favor of the County and City as to any dispute that arises out of this Agreement. The Tribe hereby consents only to the jurisdiction of the Sacramento County Superior Court of California (and all relevant courts of appeal), for the purpose of any dispute arising out of this Agreement. The Parties agree that jurisdiction and venue for any such dispute will be in (and the Tribe's waiver of sovereign immunity will extend to) Sacramento County Superior Court.
- b. Subject to the provisions of this Agreement defining the scope of the waiver of sovereign immunity set forth above, the Tribe's waiver of sovereign immunity from suit is specifically limited to permitting, and does permit, the following actions and judicial remedies:
 - i. The enforcement of a judgment of specific performance or injunctive relief requiring the Tribe to perform an obligation under this Agreement or enjoining the Tribe from conduct deemed by a court or an arbitrator to constitute a breach of this Agreement.
 - ii. The enforcement of a judgment awarding money and/or damages, except that such enforcement may not be levied against any Indian land or structures located thereon over which the Tribe exercise governmental control.
- c. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties.

9. Notices. Any notices required under this Agreement shall be in writing and may be personally delivered, or delivered by United States

Postal Service, first class mail, or by a reputable overnight delivery service, addressed as follows or to other such place as either Party may designate by written notice to the other.

For the County:

County Executive
700 H Street, 7th Floor
Sacramento, CA 95814

With Copies To:
County Counsel
700 H Street, Room 2650
Sacramento, CA 95814

For the City:

City Manager
8380 Laguna Palms Way, Suite 200
Elk Grove, CA 95758

With Copies To:
City Attorney
8401 Laguna Palms Way
Elk Grove, CA 95758

For the Tribe:

Wilton Rancheria
9300 W. Stockton Blvd, Ste 200
Elk Grove, CA 95758

With Copies To:
Kazhe Law Group PC
9245 Laguna Springs Drive, Ste 125
Elk Grove, CA 95758

10. Miscellaneous Provisions.

- a. Term of Agreement. This Agreement will take effect immediately upon execution by the Parties and will remain in effect until replaced by a new agreement between the Parties.

- b. No Third Party Beneficiaries. This Agreement is not intended to, and will not be construed to, confer a benefit or create any right for any person or entity that is not a Party.
- c. Amendments. This Agreement may be amended only by written instrument signed by the Parties.
- d. Waiver. The waiver by either Party or any of its officers, agents or employees or the failure of either Party or any of 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 the same, or of any terms, covenants or conditions of this Agreement.
- e. Authorized Representatives. The persons executing this Agreement on behalf of the Parties hereto affirmatively represent that each has the requisite legal authority to enter into this Agreement on behalf of their respective Party and to bind their respective party to the terms and conditions of this Agreement. The persons executing this Agreement on behalf of their respective Party understand that both Parties are relying on these representations in entering into this agreement.
- f. Successors in Interest. The terms of this Agreement will be binding on all successors in interest of each Party.
- g. Non-Severability. It is the express intent of the Parties to this Agreement that if any provision of this Agreement is held by a court of competent jurisdiction, following exhaustion of all appeals, to be invalid or unenforceable, then that provision shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect. The Parties shall enter into good faith negotiations to replace the invalid or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to the invalid or unenforceable provision.
- h. Timely Performance. The Parties acknowledge that time is of the essence in the performance of this Agreement. Each Party hereby covenants to act diligently and in good faith, and without undue delay in the performance of any of its obligations under this Agreement.
- i. Entire Agreement.

- a. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations, or other agreements, whether written or oral.
- b. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement will 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 any party to this Agreement.

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

Dated: June 14, 2011

COUNTY OF SACRAMENTO

BY: Michele Bach
Michele Bach
Supervising Deputy County Counsel

Dated:

CITY OF ELK GROVE,
a Municipal Corporation

BY: _____
Laura S. Gill
City Manager

ATTEST:

Dated:

Jason Lindgren, City Clerk

Dated:

WILTON RANCHERIA

BY: _____
Mary Tarango
Chairperson

ATTEST:

Dated:

TREAVER HODSON, Secretary

APPROVED AS TO FORM:

Dated: *June 14, 2011*

FOR COUNTY OF SACRAMENTO

BY: *Michele Bach*
MICHELE BACH, Supervising Deputy
County Counsel

Dated:

FOR CITY OF ELK GROVE

BY: _____
SUSAN COCHRAN, City Attorney

Dated:

FOR WILTON RANCHERIA

BY: _____
CHRISTINA KAZHE, Counsel For
Wilton Rancheria

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

Dated:

COUNTY OF SACRAMENTO

BY: _____

Michele Bach
Supervising Deputy County Counsel

Dated:

CITY OF ELK GROVE,
a Municipal Corporation

BY: Laura S. Gill

Laura S. Gill
City Manager

ATTEST:

Dated:

Jason Lindgren

Jason Lindgren, City Clerk

Dated: June 16, 2011



Dated:

WILTON RANCHERIA

BY: _____

Mary Tarango
Chairperson

ATTEST:

Dated:

TREAVER HODSON, Secretary

APPROVED AS TO FORM:

Dated:

FOR COUNTY OF SACRAMENTO

BY: _____
MICHELE BACH, Supervising Deputy
County Counsel

Dated:

FOR CITY OF ELK GROVE

BY:  _____
SUSAN COCHRAN, City Attorney

Dated:

FOR WILTON RANCHERIA

BY: _____
CHRISTINA KAZHE, Counsel For
Wilton Rancheria

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

Dated:

COUNTY OF SACRAMENTO

BY: _____
Michele Bach
Supervising Deputy County Counsel

Dated:

CITY OF ELK GROVE,
a Municipal Corporation

BY: _____
Laura S. Gill
City Manager

ATTEST:

Dated:

Jason Lindgren, City Clerk

Dated: 6/16/11

WILTON RANCHERIA

BY: Mary Tarango
Mary Tarango
Chairperson

ATTEST:

Dated: 6/17/11
Treaver Hodson
TREAVER HODSON, Secretary

APPROVED AS TO FORM:

Dated:

FOR COUNTY OF SACRAMENTO

BY: _____
MICHELE BACH, Supervising Deputy
County Counsel

Dated:

FOR CITY OF ELK GROVE

BY: _____
SUSAN COCHRAN, City Attorney

Dated: 4/17/11

FOR WILTON RANCHERIA

BY: Christina Kazhe
CHRISTINA KAZHE, Counsel For
Wilton Rancheria