

## Resolution #2021-01

### LAFCO Application – Latent Power Activation Wastewater

**WHEREAS**, the **ELK COMMUNITY SERVICES DISTRICT** (the “**District**”) is legally organized under California Government Code (§61000 et seq.) for the purpose of providing public fire protection, ambulance and emergency services within the boundaries of the District located in Mendocino County California; and,

**WHEREAS**, the District is currently working with the Mendocino Land Trust (a 501(c)(3) organization) to obtain and preserve the scenic open space and character of the property overlooking the village of Elk that has existing deeded easements and infrastructure in place for ongoing leach field disposal of septic wastewater delivered to the site independently by users; and

**WHEREAS**, the Board of Directors of the **District** desires to initiate proceedings pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 Division 3, for the activation of wastewater powers necessary to take over operation of existing privately provided and legally permitted wastewater disposal services on the scenic property located within **District** boundaries; and

**WHEREAS**, the requested wastewater latent power activation will add a service function to the **District**; and

**WHEREAS**, no changes to existing **District** jurisdictional boundaries or area are proposed; and

**WHEREAS**, the existing private septic wastewater disposal system is entirely self-supporting funded by user participation fees with users responsible for all installation, maintenance, operating and repair costs, and no changes to these responsibilities are proposed in conjunction with the change in ownership; and,

**WHEREAS**, the **District**, as property owner, will develop a plan for service to incorporate revised and clarified methods for allocation of operational costs, establishment of operating and capital reserves, delineation of user and provider responsibilities, and that details remedial steps/consequences should non-compliance issues arise; and,

**WHEREAS**, the **District**, as property owner, will cyclically bill each participant/user for their portion of system operational costs plus provisions for reserves; and

**WHEREAS**, consistent with the reasons for its formation, the **District** shall ensure wastewater related funds are maintained separately (not co-mingled) from funds received for Fire and EMS functions, and that voter-approved special taxes shall not be utilized for the operation or maintenance of proposed wastewater functions (short term advances with full repayment shall be permissible); and,

**WHEREAS**, the **District** believes the request to activate the latent wastewater power to allow for the transfer of the existing County Department of Health permitted wastewater disposal services from private to public ownership will not change the manner nor extent to which services are or will be provided and therefore should be exempt from a CEQA analysis/determination; and,

**THEREFORE**, be it resolved as follows:

- 1) The above recitals are true and correct; and,
- 2) This resolution of application to request activation of the latent power to provide wastewater disposal services through the Local Area Formation Commission (LAFCO) and to proceed with this process is hereby approved/adopted, including the authorization to pay the initial \$2,500 deposit and subsequent fees; and
- 3) An application with supporting documentation and payment will be submitted to LAFCO to initiate the formal process to activate the latent wastewater power.

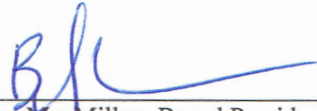
The foregoing resolution was duly passed and adopted, at a regular meeting of the Board of Directors, held on the 9<sup>th</sup> day of September 2021, at Elk, California, by the following vote:

AYES: Babbe, Oliveira, Powers, Stemler, MacMillan

NAYS: -0-

Absent: -0-

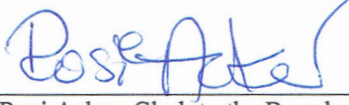
Abstaining: -0-

  
\_\_\_\_\_  
Ben MacMillan, Board President  
Elk Community Services District

**ATTEST:**

I, Rosi Acker, Clerk to the Board of Directors of the Elk Community Services District, County of Mendocino, State of California, do hereby certify that this is a true and correct copy of the original Resolution Number 2021-01.

WITNESS MY HAND and THE SEAL of the Elk Community Services District

  
\_\_\_\_\_  
Rosi Acker, Clerk to the Board of Directors



# MENDOCINO

## Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482  
Telephone: (707) 463-4470 | E-mail: [eo@mendolafco.org](mailto:eo@mendolafco.org) | Web: [www.mendolafco.org](http://www.mendolafco.org)

### JUSTIFICATION OF PROPOSAL

Please complete the following information to process an application under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (indicate N/A if Not Applicable).

**SHORT TITLE OF THE PROPOSAL:** Elk & Li Foo Wastewater Powers

#### TYPE OF PROPOSAL

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> City Incorporation          | <input type="checkbox"/> Sphere of Influence Amendment                              | <input type="checkbox"/> District Formation   |
| <input type="checkbox"/> Annexation                  | <input type="checkbox"/> Sphere of Influence Update                                 | <input type="checkbox"/> District Dissolution |
| <input type="checkbox"/> Detachment                  | <input type="checkbox"/> Out-of-Agency Service                                      | <input type="checkbox"/> Consolidation        |
| <input checked="" type="checkbox"/> Add Latent Power | <input type="checkbox"/> Reorganization (involving an Annexation and Detachment(s)) |   |

#### AGENCY CHANGES RESULTING FROM THIS PROPOSAL

Agency or Agencies gaining territory: (n/a)

Agency or Agencies losing territory: (n/a)

#### NOTIFICATION

Please indicate the names, addresses and telephone numbers of all Applicants, Applicant's Agents, and all affected Agencies who are to receive the hearing notice and the Executive Officer's Report:

Name	Mailing Address	Telephone/Email Address
Elk Community Services District	PO Box 1, Elk, CA 95432	707-877-1776
Elk County Water District	PO Box 54, Elk, CA 95432	707-877-1800

(Attach a separate sheet if necessary.)

**PROJECT INFORMATION**

Please provide project-related information for the following questions:

- 1. Do the proposed boundaries create an island of non-agency territory?  Yes  No (n/a)
- 2. Do the proposed boundaries split lines of assessment or ownership?  Yes  No (n/a)
- 3. Does the proposal involve public rights-of-way or easements?  Yes  No
- 4. Does the proposal involve public land or land assessed by the State?  Yes  No
- 5. Does any part of the proposal involve land under a Williamson Act Contract or Farmland Security Zone?  Yes  No
- 6. Does any part of the proposal involve land with a Wildlife/Habitat Easement or Agricultural Land Conservation Easement?  Yes  No  
 Freshwater emergent wetlands exist on the 2 Li Foo parcels as outlined in green on attachment #12 "Wetlands". These wetlands are separated from, and do not affect, the wastewater services on the property. They are another important reason to conserve the property for public benefit.  
 List the affected Assessor Parcel Numbers, Owners of Record and Parcel Sizes (attach separate sheet if necessary):

Assessor's Parcel Number (APN)	Owner of Record	Parcel Size (Acres)
(see attached #8 "List of Users")		

- 7. Physical Location of Proposal: 5915 and 5921 S Highway 1, Elk, CA (approx 1/2 mi north of Philo-Greenwood Rd)  
(Street/Road, distance from and name of Cross Street, quadrant of City)
- 8. Has an application been filed for an underlying project (such as Development Plan, Conditional Use Permit, or Tentative Subdivision Map)?  Yes  No  
 If Yes, please attach a Project Site Plan or Tentative Subdivision Map.  
 If No, please provide an estimate of when development will occur: (n/a).
- 9. List those public services or facilities which will be provided to the affected territory as a result of the proposed action: Facilitated by the Mendocino Land Trust using donated funding, the Elk CSD will take ownership of 20 +/- acres of highly scenic open space land currently listed for sale. This land has existing wastewater disposal easements and operating systems in place. The change from private to public ownership requires activation of latent wastewater powers. Once activated, wastewater services will be ensured and open space land will be conserved for public benefit.
- 10. Indicate which of these services or facilities will require main line extensions or facility up-grades in order to serve the affected territory: No extensions of service or facility upgrades are needed to transfer and assume the existing wastewater disposal functions.
- 11. Has the affected agency negotiated a tax share agreement or made a determination that the proposal is revenue neutral (§99 of the California Revenue & Taxation Code)? Please include documentation or explanation. (n/a)
- 12. Provide any other justification that will assist the Commission in reviewing the merits of this request. (Attach separate sheets as necessary) See attachment #9 "Narrative" included with the application packet.

## SUBMITTALS

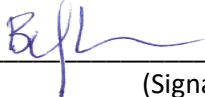
In order for this application to be processed, the following information needs to be provided:

- Two copies of this Justification of Proposal, completed and signed with original signature(s) [attachment #2](#)
- Agreement to Pay form, completed and signed with original signature(s) [attachment #5](#)
- (n/a)  Five prints of a full-scale proposal map showing the affected territory and its relationship to the affected jurisdiction (and prepared to State Board of Equalization specifications) – include an electronic version if available
- (n/a)  Five copies of an 8.5" x 11" or 11" x 17" reduction of the proposal map, include an electronic version if available
- (n/a)  Three copies of a metes and bounds description of the affected territory, include an electronic version if available
- One certified copy of the City Council and/or Special District Board of Directors Resolution of Application; or a petition making application to LAFCo (as appropriate) [See attachment #4 "RESOLUTION"](#)
- (n/a)  Written permission from each affected property owner (or signature form) [permanent easements for service exist](#)
- (n/a)  One copy of the project environmental document (One Compact Disc if more than 25 pages)
- (n/a)  One copy of the project Notice of Determination
- Three 8.5" x 11" copies of the Vicinity Map (if not included on the proposal map); [See attachment #7 "Map of User parcels"](#)
- One copy of the plan for providing services along with a schematic diagram of water, sewer and storm drainage systems (refer to Government Code (GC) §56653); [See attachment #10 "Plan for Services"](#)
- (n/a)  One copy of the Tax Share Agreement (Revenue & Tax Code §99), if completed;
- (n/a)  One copy of the Pre-Zoning map or description (as required by GC §56375);
- (n/a)  One copy of the Statement of Open Space (Ag) Land Conversion (refer to GC §56377);
- (n/a)  One Copy of the Statement of Timely Availability of Water Supplies (refer to GC §56668(l));
- (n/a)  One copy of the Statement of Fair Share Housing Needs (if residential land uses are included in the proposal) (refer to GC §56668(m));
- (n/a)  One copy of the project design (site plan, development plan, or subdivision map);
- (n/a)  One copy of the Residential Entitlement matrix form (if residential land uses are included in the proposal); and
- Filing and processing fees in accordance with the LAFCo Fee Schedule and the State Board of Equalization Fee Schedule.

Note: Additional information may be required during staff review of the proposal.

## CERTIFICATION

The undersigned hereby certifies that all LAFCo filing requirements will be met and that the statements made in this application are complete and accurate to the best of my knowledge.

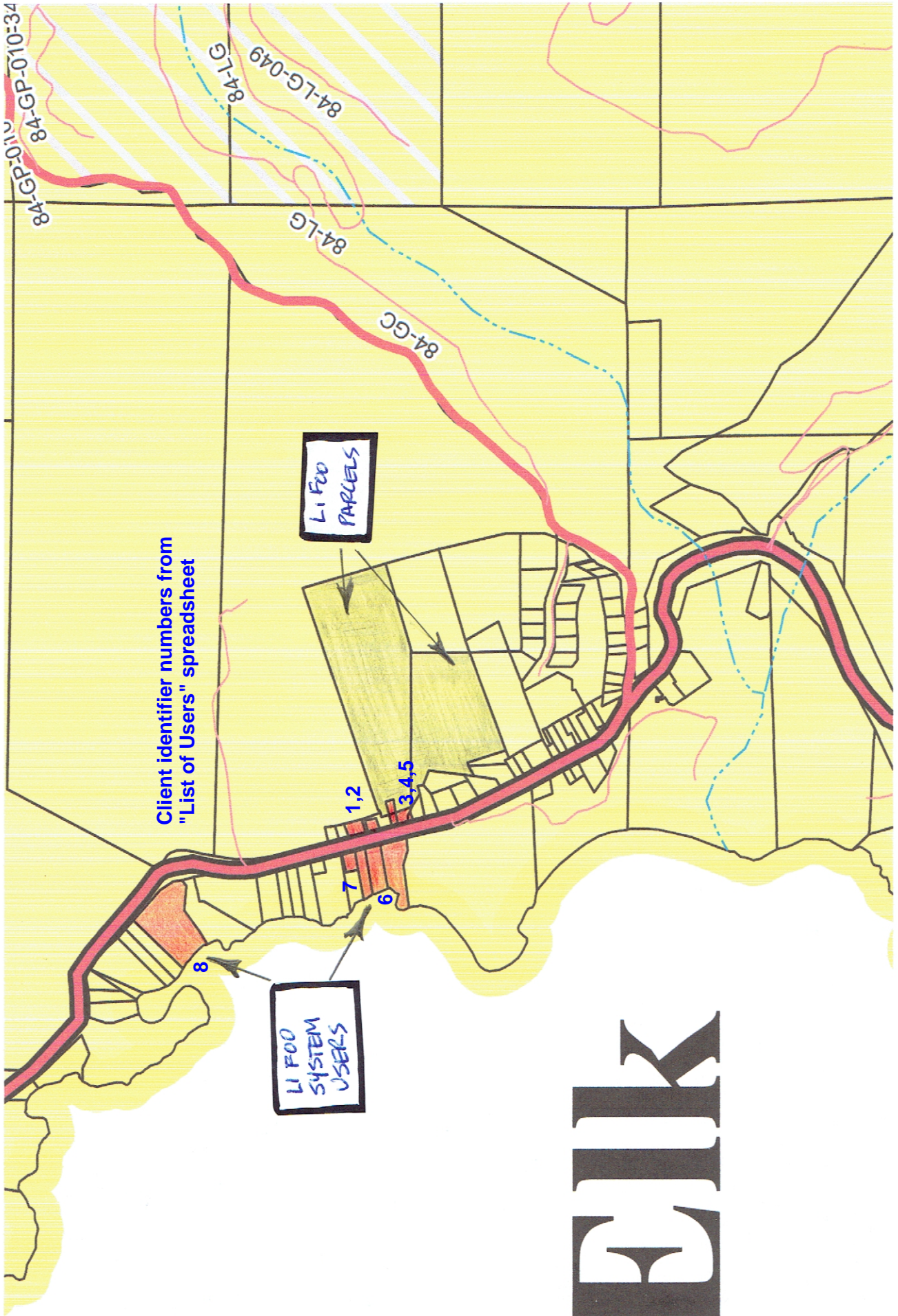
  
\_\_\_\_\_  
(Signature)

[February 27, 2022](#)  
\_\_\_\_\_  
(Date)

Print or Type Name: [Ben MacMillan, Board President](#)

Daytime Telephone: [707-877-1776](#)

Email: [elkcsd@mcn.org](mailto:elkcsd@mcn.org)



# ELK

**ECSD & Li Foo**

**Li Foo Wastewater Clients** (system users) 2/21/22

Li Foo parcel addresses & APNs - 5915 & 5921 S Hwy 1 - 1272100300 & 1272200500

**Existing Clients, Classifications, Addresses, APN's**

Client #	Description	Residential	Commercial	Rooms	Restaurant	Situs (South Hwy 1, Elk)	APN's

**Residential & Church Properties**

1	<b>Handley</b> residence	x				5911	1271820300
2	<b>Community Church</b>	x				5925	1271820400
-	residence	x				"	
3	<b>Wolfe</b> residence #1	x				5941	1271821900
-	residence #2	x				"	
4	<b>Hospital House</b> residence	x				5945	1271821500
5	<b>Wilcox</b> residence	x				5951	1271820900

**Commercial & Visitor Serving Facilites**

6	<b>Harbor House Inn &amp; restaurant</b>		x	x		5600	1271700800
-	residence	x	x			"	
7	<b>Sacred Rock</b> - (Griffin House Inn)		x			5910	1271810600
-	Bridget Dolan's Pub		x	x		"	
-	residence	x				5900	1271810500
8	<b>Sacred Rock</b> - (Greenwood Pier Inn)		x			5914, 5918, 5926, 5928, 5930	1271811200 &
-	Greenwood Pier Restaurant		x	x		"	1271811400
-	Garden Shop		x			"	
-	Store		x			"	
-	residence	x	x			"	

POTENTIAL? (maybe promised in 2018-2020ish)

	Rancheria (deVall 2 residences)	x				5975	1271900900
	Rancheria (vacant lot)	x				5981	1271900400

## Elk & Li Foo Wastewater Powers

### Plan for Providing Services –

In 2021, the Elk Community Services District Board of Directors joined a conservation effort with the Mendocino Land Trust to acquire approximately 20 acres of scenic open space land listed for sale. Owned by the Li Foo Alliance, this property lies on a hillside overlooking the village of Elk and includes deeded septic wastewater disposal obligations and underground services. Following successful fundraising efforts, the Mendocino Land Trust is facilitating acquisition of the property for the Elk CSD at essentially no cost to taxpayers. For its part, the District's Board agreed to initiate the legal process to activate latent wastewater powers necessary to take over and operate the wastewater disposal services.

#### Description of Existing Services: (Code 56653(b)(1) and (2))

- 1) Currently, filtered liquid effluent is pumped from separate privately-owned septic systems situated on 10 property parcels (billed to 8 property owners) in the village of Elk adjacent to Highway 1.
- 2) Utilizing privately owned and maintained piping systems, this wastewater is delivered to collection tanks located on the Li Foo Alliance property (20 +/- acres).
- 3) Following additional filtration to remove solids, liquid effluent is pumped uphill to septic wastewater disposal leach fields.
- 4) Participation/use of these septic wastewater systems is based upon purchased easement rights on the Li Foo property and shared payment of all operating costs for system operation. These Li Foo disposal easements document disposal usage rights and participant responsibilities for payment of all costs associated with the installation, operation, and maintenance of all pipes, tanks, and leach fields used by their properties.
- 5) To ensure proper operation, the Li Foo septic disposal system is overseen, monitored, and maintained by licensed wastewater system operators under contract.
- 6) The Li Foo Alliance acts as a system owner-manager with all costs allocated to the participants. User fees are billed/paid on a quarterly basis. Different specified calculation methods are referenced in recorded easements to cover costs for operating, maintenance, property taxes, insurance, office charges, plus a small reserve.
- 7) Current billing is performed by one of the Li Foo Alliance partners who is also an owner/user of the land and disposal system
- 8) The most recent financial information available shows the following total annual system costs charged to and paid by system users:

	<u>2019</u>	<u>2020</u>
Insurance	\$ 987	\$ 987
Prop Tax	3,169	3,206
Inspect/Maintenance	<u>1,540</u>	<u>1,540</u>
Totals	<b>\$ 5,606</b>	<b>\$ 5,643</b>
Fee revenues	<u>6,805</u>	<u>6,805</u>
Net Surplus	<b>\$ 1,199</b>	<b>\$ 1,162</b>

- 9) The Li Foo Alliance partners are to furnish operational/maintenance and billing information relating to the Harbor House Inn, a relatively recent participant-user of disposal services on the property.



- 10) Unrelated to the wastewater disposal services associated with the property, several other uses and conditions exist on the property. A portion is used for a community baseball field and the remainder is open for public access including use as landing site for emergency medical helicopters. Environmentally important, the property includes designated freshwater emergent wetlands.

**Extension of Services:** (Code 56653(b)(3))

- 1) The Li Foo Alliance and septic wastewater disposal system came into being by necessity. A number of properties were found to be illegally discharging sewage effluent into ocean. Because their properties were incapable of on-site disposal of liquid effluent, an alternate disposal site and system were needed to prevent condemnation.
- 2) While the Li Foo property does have area available for limited expansion of services to other property parcels, there are many serious and costly barriers to this actually happening.
- 3) Each current participant in the Li Foo system has been required to obtain and pay for all permitting, easements, access crossing private and/or State roadways, and construction costs associated with their becoming users of the system. Li Foo Alliance is only responsible for oversight and management of the infrastructure and piping once filtered liquid effluent is delivered to collection tanks on site. All costs for operating, maintenance, repairs, and prudent reserve are billed to and paid by users.
- 4) Given these almost prohibitive costs and obstacles to participate, the likelihood that services will be extended to other properties is extremely small, but not quite zero.
- 5) That said, a professional billing analysis resulting in a codified rate structure is needed. As part of this activation process, the Elk CSD has reached out to several engineering firms with applicable expertise. Requests for assistance have been declined either based on the small size of the Li Foo system or firms are too busy to take on new clients.

**System Upgrades:** (Code 56653(b)(4))

- 1) All current wastewater handling infrastructure and components superficially appear to be in generally good condition. The seller is obligated to provide a professional evaluation and confirmation that existing systems are in good order.
- 2) The existing system design allows for higher usage than currently exists. With the exception of electrical service and electronic monitoring system control boxes, all equipment and infrastructure is underground. No buildings or developed roads exist on the property. Any subsequent upgrade or replacement costs would be paid for by the users of the system, not the taxpayers within the District.

**Future Financing of Operations:** (Code 56653(b)(5))

- 1) Until a professionally designed fee and rate structure have been obtained, the existing rate structure paradigm will continue to be used.
- 2) Good system management practices and compliance with Department of Health regulations will require the District to contract with licensed wastewater service providers to oversee, monitor, and maintain the system.
- 3) All operating costs, establishment of a reserve fund, and upgrades will continue to be paid for by system users.
- 4) Residents of the District will have no changes to their property taxes as a result of the operational transfer of wastewater disposal functions and activation of the latent wastewater power by the Elk CSD.

- 5) Billing functions may either be performed by the District or handled under contract by the licensed system operator with existing billing and accounting capabilities or similar billing service.
- 6) As a government entity the Elk CSD will be exempt from property tax assessments once it takes ownership of the Li Foo Alliance properties. Until a new rate structure is in place, billing will continue to be based on the existing framework that includes property taxes. Funds received from system users will be allocated to:
  - a) reimburse taxpayer funds used for ownership transfer, acquisition costs, LAFCO process to activate latent power; then
  - b) operating costs including maintenance of the property; and
  - c) reserves (with desired levels to be determined)
- 7) All wastewater system accounting records, reporting, and funds will be kept separate from existing Elk CSD fire protection accounting and funds.
- 8) No changes in District management or staffing will result from the assumption and provision of these wastewater services.
- 9) Assumption and provision of these wastewater services by the Elk CSD will have no effect on any adjacent public or private service providers.

## Elk & Li Foo Wastewater Powers

### Li Foo Alliance Narrative

#### History

In 1996, CalTrans repaved Highway 1 through the village of Elk. During this paving process, sewage effluent was observed discharging into Li Foo Gulch west of the Highway near the ocean. It was traced to several properties adjacent to Hwy 1. Once identified, this illegal discharge would render the respective properties unusable unless corrected. To avoid condemnation, a small group of property owners formed a partnership to address the problem (the “Li Foo Alliance”). These property owners banded together because their separate properties and soils would not allow individual septic systems to be installed.

A plan for a private septic wastewater disposal system to service 7 properties was prepared. Two nearby open space parcels were acquired (the “Li Foo” property). Engineered plans were developed and approved by the County Health Department. New wastewater collection, filtration and pumping systems were installed in septic tanks on each property. Piping for the pumped liquid effluent was installed and connected to a newly constructed disposal system on the Li Foo property. Once delivered and filtered again to remove any solids, the liquids were then pumped uphill to large spreader fields and leached disposal into the ground.

In compliance with Health Department requirements, operation of this new system began in 1998 utilizing a licensed wastewater professional to oversee and maintain the system. Two additional commercial properties were added to the system following their separate “buy-in” purchases of wastewater disposal easements on the property from the Li Foo Alliance. This small Li Foo Alliance disposal system has functioned reliably since 1998.

By design, participants (system users) are responsible for the collection, filtration, pumping and delivery of their liquid effluent to the Li Foo property. The Li Foo Alliance is not responsible for any of the infrastructure or piping that delivers the effluent to the site. Each property owner-user of the Li Foo disposal system has a recorded easement to dispose of their liquid effluent in perpetuity in designated areas on the Li Foo property. Based upon easement language, participants each pay a share of the total annual operating costs for the Li Foo systems plus a small surplus via quarterly billings. The system is self-supporting with no property taxes involved. The Li Foo Alliance owns only the equipment and piping located on the Li Foo property itself and is responsible only to provide on-site wastewater disposal services with all costs allocated to the system users.

Services of a licensed wastewater system operator are contracted for by the Li Foo Alliance. Current on-site system maintenance consists of scheduled periodic inspections and servicing of tanks, pumps, filters, piping, and electronic monitoring/alarm systems situated on the Li Foo property. Off-site maintenance includes inspection and servicing of each participant’s separate system to ensure proper functioning and filtration to prevent solids from being pumped to the Li Foo site. Li Foo system operating and maintenance costs are included in the quarterly billings. Problems found with participant’s separate systems are to be separately billed and corrected at participant’s expense.

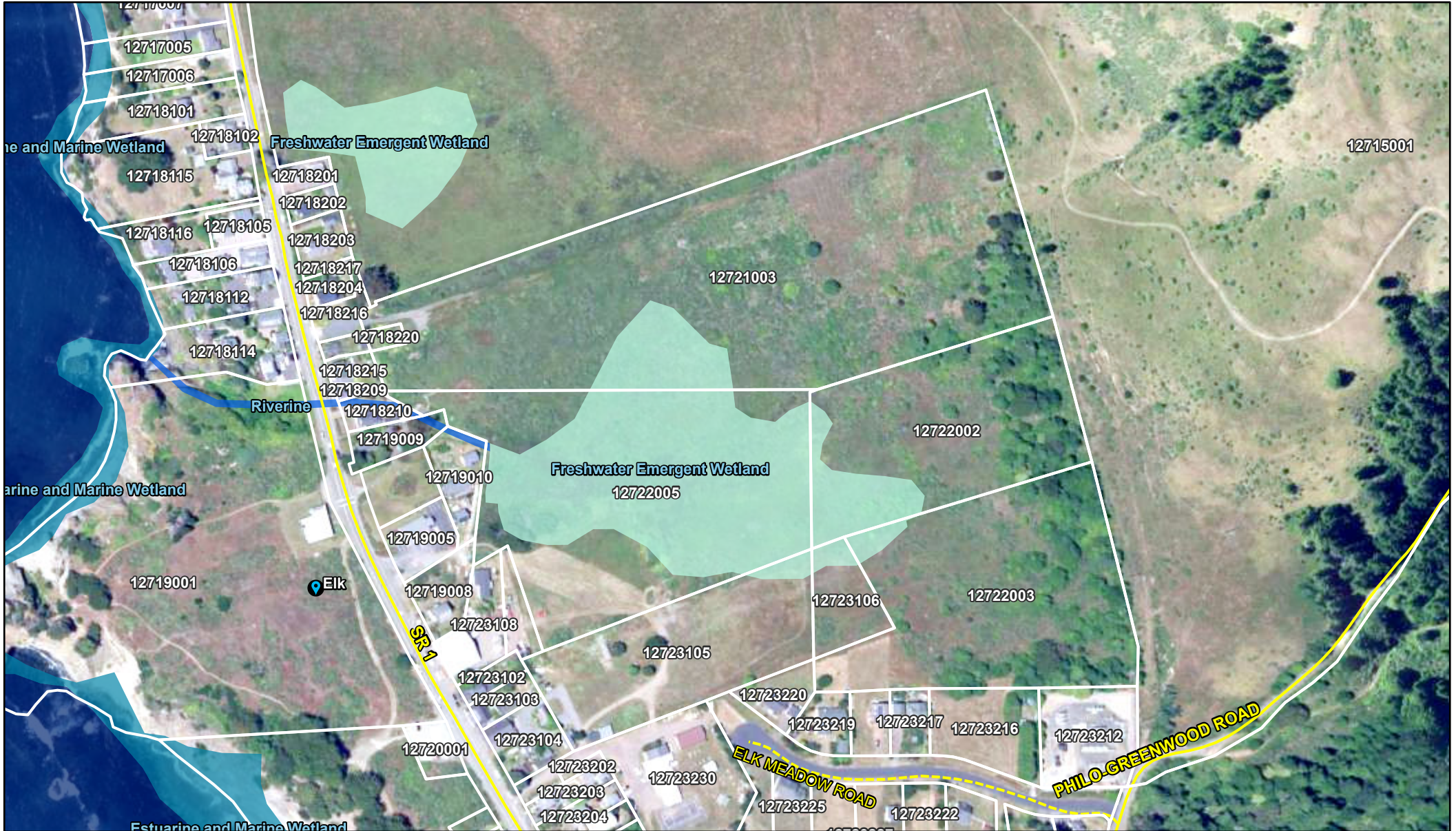
### **Current Property Sale and Ownership Transfer**

In 2020, the Li Foo Alliance partnership placed the property (2 parcels totaling approximately 20 acres) for sale. Because of its premier scenic location directly behind and overlooking the village of Elk, the Board of Directors of the Elk Community Services District (ECSD) began researching the possibility of conserving this property for public benefit. Because the ECSD lacked both funds and a legal basis to purchase the property, anonymous local citizens engaged the Mendocino Land Trust (MLT) to investigate and assist with the preservation effort. The MLT and ECSD subsequently signed a Memorandum of Agreement (MOA) under which the MLT agreed to obtain funds needed for ECSD's acquisition of the property and to perform required analysis, reports, surveys, and transactional aspects of property purchase on behalf of the ECSD.

The ECSD, in turn, is responsible for the activation of latent powers needed to takeover and then perform the wastewater disposal functions already in existence on the Li Foo property. In essence, under this MOA, when the purchase of the Li Foo property is complete, ownership will pass directly to the ECSD without significant cost to the taxpayers of the District. The ECSD would gain title to the property and full responsibility to provide and maintain the existing septic wastewater services moving forward. Under public ownership, the property would be conserved as open space.

Because the existing and any potential new services include no off-site easements, ownership, or public right-of-ways, the ECSD responsibility will be limited to services provided on-site. Recorded easements document system users' responsibilities for all costs to provide the services. The ECSD has no plans or expectations to expand existing wastewater disposal services beyond those properties already being serviced or promised service. However, it seems unwise to close the door on any possible future expansion of the service area.

# ArcGIS Web Map



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Assessor's Parcels

Wetlands

Riverine

Freshwater Emergent Wetland

Estuarine and Marine Wetland  
 Estuarine and Marine Deepwater



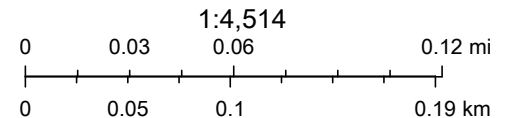
Major Towns & Places

Public Roads  
 Private Roads

NAIP 2020 Imagery

Red: Band\_1

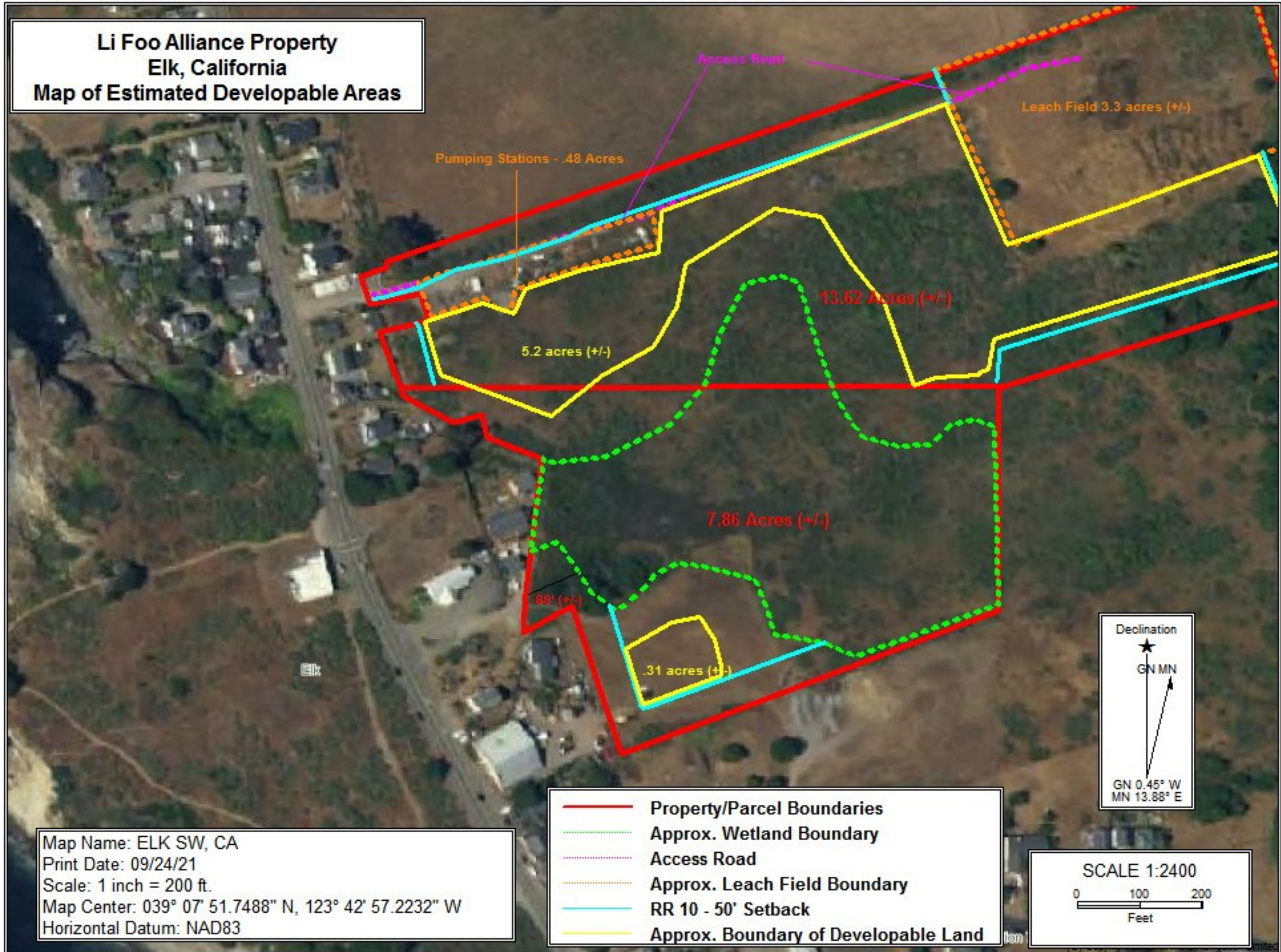
Green: Band\_2  
 Blue: Band\_3



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Esri Community Maps Contributors, BuildingFootprintUSA, Esri, HERE, Garmin, SafeGraph, METI/NASA, USGS,

ArcGIS Web AppBuilder

**Li Foo Alliance Property  
Elk, California  
Map of Estimated Developable Areas**



Map Name: ELK SW, CA  
 Print Date: 09/24/21  
 Scale: 1 inch = 200 ft.  
 Map Center: 039° 07' 51.7488" N, 123° 42' 57.2232" W  
 Horizontal Datum: NAD83

- Property/Parcel Boundaries
- - - Approx. Wetland Boundary
- - - Access Road
- - - Approx. Leach Field Boundary
- RR 10 - 50' Setback
- Approx. Boundary of Developable Land

