



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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Governor's Office of Planning & Research

Jun 23 2022

STATE CLEARINGHOUSE

June 22, 2022

Chad Broussard, Environmental Protection Specialist

Bureau of Indian Affairs, Department of the Interior

Pacific Regional Office

2800 Cottage Way, Room W-2820

Sacramento, CA 95825

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Subject: Koi Nation of Northern California Shiloh Resort and Casino Project, Notice of Preparation of an Environmental Assessment/Tribal Draft Environmental Impact Report, SCH No. 2022050599, Sonoma County

Dear Mr. Broussard:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of an Environmental Assessment/Tribal Draft Environmental Impact Report (EIR) from the Bureau of Indian Affairs, Department of the Interior (DOI) for the Koi Nation of Northern California Shiloh Resort and Casino Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the NOP to inform DOI, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION AND LOCATION

The Project would develop a casino, hotel, conference/event center, restaurant/bars, and supporting infrastructure, including parking, on a 68.6-acre site that is currently an operating vineyard bisected by Pruitt Creek. The Project is located just southeast of the City of Windsor in an unincorporated area of Sonoma County, immediately southeast of

¹ CEQA is codified in California Public Resources Code section 21000 et seq. The "CEQA Guidelines" are found in California Code of Regulations, title 14, section 15000 et seq.

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the Shiloh Road and Old Redwood Highway intersection, on Assessor's Parcel Number 059-300-003, and centered at approximately Latitude 38.523697°N, Longitude 122.774112°W.

The CEQA Guidelines require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description, as applicable:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take of plants or animals listed under CESA, either during construction or over the life of the Project.² If the Project will impact CESA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. **Based on a review of Google Earth imagery, it appears there is a roadside drainage on the east side of Old Redwood Highway which may include wetland habitat suitable to support Burke's goldfields (*Lasthenia burkei*) and Sebastopol meadowfoam (*Limnanthes vinculans*), both of which are CESA and federally listed as endangered species.** Both species have been observed in artificially-created depressions such as drainage ditches according to the 2016 U.S. Fish and Wildlife Service (USFWS) Recovery Plan for the Santa Rosa Plain.

Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program.

² Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also subject to notification. **According to the NOP, the Project would avoid development within Pruitt Creek and the associated riparian corridor to the extent feasible, therefore it appears impacts to Pruitt Creek may occur. Additionally, the above-mentioned roadside drainage may constitute a stream within the Project area.** CDFW, as a responsible agency under CEQA, will consider the EIR for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as the responsible agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, including any listed in Attachment 1, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting ("baseline") to understand the Project's, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

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CDFW recommends that the EIR provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the Project area and surrounding lands, including but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands, vernal pools, and/or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site. Fully protected, threatened or endangered, or other special-status species and sensitive natural communities that are known to occur, or have the potential to occur in or near the Project area, include but are not limited to, those listed in Attachment 1.³

Habitat descriptions and the potential for species occurrence should include information from multiple sources, such as aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; the USFWS' Information, Planning, and Consultation System; findings from positive occurrence databases such as the California Natural Diversity Database (CNDDDB); and sensitive natural community information available on Sonoma County fine scale vegetation and habitat map.⁴ Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available.⁵

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank must be conducted during the blooming period for all species potentially impacted by the Project within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary given environmental conditions.^{6, 7, 8}

³ For sensitive natural communities see <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>

⁴ For the Sonoma County fine scale vegetation and habitat map see <https://sonomavegmap.org/blog/category/fine-scale-vegetation-and-habitat-map/>

⁵ Survey and monitoring protocols and guidelines are available at <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

⁶ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere while Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

⁷ <http://www.cnps.org/cnps/rareplants/inventory/>

⁸ Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements at <https://wildlife.ca.gov/Conservation/Plants>

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The EIR should include an evaluation of County of Sonoma stream and riparian corridor setback requirements and require the Project to adhere to any such requirements to protect sensitive stream habitat.⁹

IMPACT ANALYSIS AND MITIGATION MEASURES

The EIR should discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts, that may occur with implementation of the Project (CEQA Guidelines, §§ 15126, 15126.2, & 15358). This includes evaluating and describing impacts such as:

- Encroachments into riparian habitats, drainage ditches, wetlands, or other sensitive areas such as stream and riparian corridor setback areas required by Sonoma County.
- Potential for impacts to special-status species or sensitive natural communities.
- Loss or modification of breeding, nesting, dispersal, and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, rock outcrops, overhanging banks).
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence.
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The EIR should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be less than significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species, should be considered cumulatively considerable.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and mitigate potentially significant impacts of the Project on the environment (CEQA

⁹ For Sonoma County stream and riparian corridor setback requirements see <https://permitsonoma.org/instructionsandforms/drn-005waterwaysetbackrequirements#:~:text=Stream%20and%20Water%20Feature%20Setbacks%20for%20Grading%20Work&text=Grading%20work%20and%20land%20disturbance,090>

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Guidelines, §§ 15021, 15063, 15071, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. Project-specific measures should be incorporated as enforceable Project conditions to reduce impacts to biological resources to less-than-significant levels.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.


FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist NOI in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov, or Craig Weightman, Environmental Program Manager, at craig.weightman@wildlife.ca.gov or (707) 339-1332.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species & Sensitive Natural Communities

ec: State Clearinghouse (SCH No. 2022050599)

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Attachment 1: Special-Status Species & Sensitive Natural Communities

Scientific Name	Common Name	Status
Birds		
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Elanus leucurus</i>	white-tailed kite	FP
Fish		
<i>Oncorhynchus mykiss</i>	central California coast winter steelhead	FT
Amphibians		
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
<i>Rana boylei</i>	foothill yellow-legged frog, northwest/north coast clade	SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
<i>Taricha rivularis</i>	Red bellied newt	SSC
Mammals		
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
<i>Antrozous pallidus</i>	pallid bat	SSC
Reptiles		
<i>Emys marmorata</i>	western pond turtle	SSC
Plants		
<i>Lasthenia burkei</i>	Burke's goldfields	SE, FE, CRPR 1B.1
<i>Limnanthes vinculans</i>	Sebastopol meadowfoam	SE, FE, CRPR 1B.1
<i>Hemizonia congesta</i> ssp. <i>congesta</i>	congested-headed hayfield tarplant	CRPR 1B.2
Additional special-status plants are documented in the Project vicinity, see CNDDDB		
Sensitive Natural Communities		
<i>Quercus lobata</i>	Valley oak riparian forest	S3

FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; SE = state listed as endangered under CESA; FP = state fully protected under Fish and Game Code; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank; S1-S3 = Natural Communities with ranks of S1-S3 are considered Sensitive Natural Communities to be addressed in the environmental review processes of CEQA and its equivalents