



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 8, 2023

Chad Broussard, Environmental Protection Specialist
Department of Interior, Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95852
Chad.Broussard@bia.gov

Subject: Koi Nation of Northern California Shiloh Resort and Casino Project,
Environmental Assessment, SCH No. 2022050599, Sonoma County

Dear Mr. Broussard:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Environmental Assessment (EA) from the Department of Interior, Bureau of Indian Affairs (BIA) 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 previously submitted a letter in response to the Notice of Preparation (NOP) of an Environmental Assessment/Tribal Draft Environmental Impact Report for the project.

CDFW is submitting comments on the EA to inform the BIA, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) 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), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

If the property becomes held by the United States in trust for the Tribe, state protections may be significantly reduced.

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

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PROJECT DESCRIPTION SUMMARY

Proponent: Koi Nation of Northern California

Objective: The project would include: (1) transfer of the 68.6-acre project site into federal trust status for the benefit of the Koi Nation of Northern California for gaming purposes; and (2) the subsequent development by the Koi Nation of Northern California of a resort facility that includes a casino, hotel, ballroom/meeting space, event center, spa, and associated parking and infrastructure.

Location: The project site consists of one parcel owned in fee by the Koi Nation of Northern California (Assessor's Parcel Number 059-300-003) and is located in Section 20, Township 8 North, Range 8 West as depicted on the Mount Diablo Meridian U.S. Geological Survey 7.5' quadrangle map, at approximately Latitude 38.523663°N, Longitude -122.773514°W. The project site is located outside of, but contiguous to, the Town of Windsor.

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. **As indicated in CDFW's NOP response letter, the project has the potential to result in take of Sebastopol meadowfoam (*Limnathes vinculans*) and Burke's goldfields (*Lasthenia burkei*), which are CESA listed as endangered species, as further described below.** Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA ITP.

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 CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for project activities affecting lakes or streams and associated riparian habitat.

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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, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **The project would fill four seasonal drainages, remove riparian vegetation, and construct a pedestrian bridge over Pruitt Creek, therefore an LSA Notification would likely be required, as further described below.** CDFW will consider the CEQA document for the project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the BIA in adequately identifying and/or mitigating the project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below CDFW concludes that an EA is appropriate for the project. **Attachment 1** includes a Draft Mitigation Monitoring and Reporting Program for CDFW's recommended mitigation measures.

I. Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Comment 1: Page 3-40, Environmental Setting and Related Impact Shortcoming

Issue: CDFW's previously submitted letter in response to the NOP described the potential for Sebastopol meadowfoam and Burke's goldfields to occur within the roadside drainage on the east side of Old Redwood Highway. These species have been documented to occur in wetlands within ditches. Burke's goldfields has been documented 0.3-mile southwest of the project site (California Natural Diversity Database [CNDDB] Occurrence Number 31). The EA indicates that Sebastopol meadowfoam and Burke's goldfields have no potential to occur on-site but does not adequately support this conclusion.

Specific impacts and why they may occur and be significant: If CESA and federally listed plants that may be impacted by the project go undetected, the project may result in mortality of individuals from direct impacts or degradation of habitat adjacent to ground disturbance. CESA and federally listed plants mentioned above are considered endangered under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if CESA and federally listed plants are present on or adjacent to the project site where they may be directly or indirectly impacted, the project may

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substantially reduce the number or restrict the range of these species, which would be a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to Sebastopol meadowfoam and Burke's goldfields to less-than-significant, CDFW recommends including the following mitigation measure in the MND:

MM-BIO-1: A qualified biologist shall conduct a habitat assessment to determine if the roadside drainage on the east side of Old Redwood Highway or any other habitat affected by the project is suitable to support Sebastopol meadowfoam or Burke's goldfields, and the project shall obtain CDFW's written approval of the assessment prior to project construction. If suitable habitat for these species is present, the project shall submit to CDFW two years of completed botanical survey results and obtain CDFW's written approval of the results or may assume presence of Burke's goldfields and Sebastopol meadowfoam. The botanical survey results shall follow CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (<https://wildlife.ca.gov/Conservation/Survey-Protocols#la-377281280-plants>) and the *Santa Rosa Plain Conservation Strategy*, Appendix D: *Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain*. If CDFW is unable to accept the survey results, the project applicant shall conduct additional surveys prior to initiation of project activities or may assume presence of Burke's goldfields and Sebastopol meadowfoam. Please be advised that for CDFW to accept the results, they should be completed in conformance with the above survey protocols, including, but not limited to, conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts such as altering off-site hydrological conditions where the above species may be present. Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of the above CESA listed plants that may be impacted by the project, or the presence of these species is assumed, the project applicant shall provide habitat compensation at a minimum 3:1 mitigation to impact ratio based on acreage of habitat impacted, and obtain CDFW's written approval of the habitat compensation, prior to the start of project construction, unless otherwise approved in writing by CDFW. Habitat compensation shall include purchasing credits from a CDFW-approved conservation bank or placing a conservation easement over habitat where the species occurs and funding and implementing a long-term management plan in perpetuity. If impacts to Burke's goldfields and Sebastopol meadowfoam may occur, the project shall also obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP.

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II. Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service?

Comment 2: Pages 3-46, Mitigation Measure and Related Impact Shortcoming

Issue: As noted above, the project would permanently impact Pruitt Creek and several unnamed drainages which may constitute streams under Fish and Game Code section 1600 et seq. These drainages may fall within CDFW jurisdiction, which would require the Project to submit an LSA Notification. While the EA requires a Clean Water Act Section 404 Permit from the U.S. Army Corps of Engineers, it does not require an LSA Notification.

Specific impacts and why they may occur and be potentially significant: The project proposes to permanently impact Pruitt Creek and several unnamed drainages which may be considered streams. This may entail substantial alteration of the bed, bank, and channel of Pruitt Creek and the unnamed drainages. Stream habitat including connected wetlands is of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. When stream habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. Removing connected wetland habitat may also result in the degradation of stream habitat. Therefore, if the above impacts to stream habitat occur, project impacts to stream habitat would be *potentially significant*.

Recommended Mitigation Measure: To comply with Fish and Game Code section 1600 et seq. and reduce impacts to stream habitat to less-than-significant, CDFW recommends that the EA: 1) identify that CDFW may be a Responsible Agency for the project if impacts to any stream would occur, and 2) incorporate the following mitigation measure:

MM-BIO-2: For project activities that may substantially alter the bed, bank, or channel of any streams (including ephemeral or intermittent streams), the project shall submit an LSA Notification to CDFW prior to project construction (see: <https://epims.wildlife.ca.gov/index.do>). If CDFW determines that an LSA Agreement is warranted, the project shall comply with all required measures in the LSA Agreement, including, but not limited to, requirements to mitigate impacts to the streams and riparian habitat. Permanent impacts to the stream and associated riparian habitat shall be mitigated by restoration of riparian habitat at a 3:1 mitigation to impact ratio based on acreage and linear distance as close to the project area as possible and within the same watershed and year as the impact, unless otherwise approved in writing by CDFW. Temporary impacts shall be restored on-site in the same year as the impact.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports 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 field survey form can be filled out and submitted online 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. 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. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the EA to assist BIA in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nick Wagner, Senior Environmental Scientist (Specialist) at (707) 428-2075 or Nicholas.Wagner@wildlife.ca.gov or Melanie Day, Senior Environmental Scientist (Supervisory) at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023060782)
Peter McHugh, Bay Delta Region Tribal Liaison, Peter.Mchugh@wildlife.ca.gov

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p>MM-BIO-1: A qualified biologist shall conduct a habitat assessment to determine if the roadside drainage on the east side of Old Redwood Highway or any other habitat affected by the project is suitable to support Sebastopol meadowfoam or Burke's goldfields, and the project shall obtain CDFW's written approval of the assessment prior to project construction. If suitable habitat for these species is present, the project shall submit to CDFW two years of completed botanical survey results and obtain CDFW's written approval of the results or may assume presence of Burke's goldfields and Sebastopol meadowfoam. The botanical survey results shall follow CDFW's 2018 <i>Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities</i> (see: https://wildlife.ca.gov/Conservation/Survey-Protocols#la-377281280-plants) and the <i>Santa Rosa Plain Conservation Strategy, Appendix D: Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed Plants on the Santa Rosa Plain</i>. If CDFW is unable to accept the survey results, the project applicant shall conduct additional surveys prior to initiation of project activities or may assume presence of Burke's goldfields and Sebastopol meadowfoam. Please be advised that for CDFW to accept the results, they should be completed in conformance with the above survey protocols, including, but not limited to, conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts such as altering off-site hydrological conditions where the above species may be present. Surveys conducted during drought conditions may not be acceptable. If the botanical surveys result in the detection of the above CESA listed plants that may be impacted by the project, or the presence of these species is assumed, the project applicant shall provide habitat compensation at a minimum 3:1 mitigation to</p>	<p>Prior to ground disturbance</p>	<p>Project Applicant</p>

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<p>impact ratio based on acreage of habitat impacted, and obtain CDFW's written approval of the habitat compensation, prior to the start of project construction, unless otherwise approved in writing by CDFW. Habitat compensation shall include purchasing credits from a CDFW-approved conservation bank or placing a conservation easement over habitat where the species occurs and funding and implementing a long-term management plan in perpetuity. If impacts to Burke's goldfields and Sebastopol meadowfoam may occur, the project shall also obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP.</p>		
<p>MM-BIO-2: For project activities that may substantially alter the bed, bank, or channel of any streams (including ephemeral or intermittent streams), the project shall submit an LSA Notification to CDFW prior to project construction (see: https://epims.wildlife.ca.gov/index.do). If CDFW determines that an LSA Agreement is warranted, the project shall comply with all required measures in the LSA Agreement, including, but not limited to, requirements to mitigate impacts to the streams and riparian habitat. Permanent impacts to the stream and associated riparian habitat shall be mitigated by restoration of riparian habitat at a 3:1 mitigation to impact ratio based on acreage and linear distance as close to the project area as possible and within the same watershed and year as the impact, unless otherwise approved in writing by CDFW. Temporary impacts shall be restored on-site in the same year as the impact.</p>	<p>Prior to ground disturbance and continuing over the course of the project</p>	<p>Project Applicant</p>