



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**



August 6, 2024

Chad Broussard  
Bureau of Indian Affairs  
2800 Cottage Way, Room W-2820  
Sacramento, CA 95825  
[Chad.Broussard@bia.gov](mailto:Chad.Broussard@bia.gov)

Subject: Scotts Valley Casino and Tribal Housing Project, Environmental Assessment,  
SCH No. 2024070295, Solano County

Dear Mr. Broussard:

California Department of Fish and Wildlife's (CDFW) Bay Delta Region has reviewed the Environmental Assessment (EA) from Bureau of Indian Affairs (BIA) for the Scotts Valley Casino and Tribal Housing Project (Project).

CDFW, as **Trustee** for fish and wildlife resources, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802).

The Project consists of the acquisition by the BIA of a 160-acre property into federal trust status for the benefit of the Scotts Valley Band of Pomo Indians (Tribe) for gaming purposes and the subsequent development of a casino facility, Tribal housing, Tribal administration building, and associated parking and infrastructure.

The EA includes mitigation measures for several sensitive species and nesting birds. CDFW recommends including in the EA the below mitigation measures for tricolored blackbird (*Agelaius tricolor*), state listed as threatened and burrowing owl (*Athene cunicularia*), a California Species of Special Concern, both of which are documented within five miles of the Project site by the California Natural Diversity Database. The EA also indicates burrowing owl may become established on the Project site. Additionally, CDFW recommends including the below mitigation measures for more effectively avoiding impacts to nesting birds and protecting sensitive stream and associated riparian habitat.

1. Tricolored Blackbird Avoidance: If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately, and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. If take of tricolored blackbird cannot be avoided, the Project shall consult with CDFW.

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2. Burrowing Owl Surveys and Avoidance: A qualified biologist shall conduct a habitat assessment and surveys for wintering burrowing owl prior to construction if construction starts during the burrowing wintering season (September 1 to January 31) (the Project site is not within the known range of nesting owls). The habitat assessment and surveys shall follow the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) methodology (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) and the qualified biologist shall prepare a report documenting the habitat assessment and survey results, and obtain CDFW's written approval of the assessment and results prior to Project construction. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW.
3. Burrowing Owl Foraging Habitat Mitigation: Impacts to burrowing owl foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Prior to Project construction, the Project shall provide burrowing owl foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of burrowing owl foraging habitat credits at a CDFW-approved mitigation bank in Solano County, unless otherwise approved in writing by CDFW.
4. Burrowing Owl Burrow Mitigation: If the Project would impact an occupied burrow where a non-nesting owl would be evicted as described below, the following habitat mitigation shall be implemented prior to Project construction.

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Impacts to each burrowing owl site shall be mitigated by permanent preservation of one burrowing owl occupied non-nesting (i.e., wintering) sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

Please be advised that CDFW does not consider exclusion of burrowing owl (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owl are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.” Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW’s written acceptance of the eviction plan.

5. Cap Pipe and Hose: To prevent burrowing owl from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each workday and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.
6. Nesting Bird Surveys and Avoidance: If construction, grading, vegetation removal, or other Project activities are scheduled during the nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project activities. The survey shall include the entire Project site and a minimum 500-foot buffer. If a lapse in Project-related work of 7 days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird’s normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal Migratory Bird Treaty Act. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the

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nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.


The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.

7. Stream Protection: For Project activities that may substantially alter the bed, bank, or channel of any streams (including ephemeral or intermittent streams), the Project shall consult with CDFW prior to Project construction. 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. The Project shall prepare a restoration plan and obtain CDFW's written approval of the plan. The plan shall include success criteria and a minimum of five years of monitoring and maintenance.

CDFW appreciates the opportunity to comment on the EA to assist BIA in identifying and mitigating Project impacts on biological resources, and is committed to working collaboratively to resolve any concerns through open communication with BIA and the Tribe under its Tribal Communication and Consultation Policy, which is available through CDFW's Tribal Affairs webpage at <https://wildlife.ca.gov/Tribal-Affairs>. We also believe this opportunity would allow us to build meaningful relations between BIA, the Tribe, and the CDFW Bay Delta Region.

Questions regarding this letter or further coordination should be directed to Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or [Nicholas.Magnuson@wildlife.ca.gov](mailto:Nicholas.Magnuson@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

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ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024070295)  
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