

Appendix G-7

Section 7 Endangered Species Act Correspondence



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

IN REPLY REFER TO:
TR-4516-P5 J51 639T Informal Consultation Request

Memorandum

To: Michael Fris, Field Supervisor, U.S. Fish and Wildlife Service (USFWS),
Sacramento Fish and Wildlife Office, Ecological Services

From: Amy Dutschke, Regional Director

Subject: "Not likely to Adversely Affect" Determination for California Red-legged Frog,
Shiloh Resort and Casino Project, Koi Nation

The Bureau of Indian Affairs (BIA), Pacific Region, Division of Environmental, Cultural Resource Management and Safety, Endangered Species (ES) Section respectfully requests to initiate informal consultation pursuant to Section 7 of the Endangered Species Act of 1973, as amended, for the Koi Nation (Tribe) Shiloh Resort and Casino Project near the Town of Windsor in Sonoma County, California. The Proposed Action includes the conveyance of approximately 68.6 acres into federal trust status for the benefit of the Tribe.

Enclosed for your review is the Biological Assessment (BA) for the Koi Nation Shiloh Resort and Casino Project. The Proposed Project (Alternative A) consists of the acquisition of a 68.6-acre site (Project Site; Action Area) into federal trust status for the Tribe. The proposed project includes development of the site with a resort and casino facility, hotel, parking garage, and supporting infrastructure, including inter-related and interdependent actions such as off-site roadway improvements and use of recycled water for off-site irrigation.

As part of the BA, a summary of federally listed special-status species with the potential to occur within the region was obtained from USFWS, the California Natural Diversity Database and the California Native Plant Society, Inventory of Rare and Endangered Plants. The USFWS list is included as Appendix A of the BA. The Project Site does not fall within the USFWS designated or proposed Critical Habitat. The Project Site does not provide suitable habitat for federally listed plants. As discussed in detail below, the Project Site provides suitable habitat for California red-legged frog (CRLF) and, although suitable habitat for California tiger salamander (CTS) was not observed on site, an analysis and impact statement are provided in the BA due to the proximity of critical habitat and regional importance of this species.

CRLF: There are no known occurrences of CRLF within 3 miles of the Project Site. The Project Site contains a portion of Pruitt Creek, which does not provide sufficient water for breeding

habitat but does provide suitable non-breeding aquatic habitat and dispersal habitat for CRLF. However, the Project Site lacks suitable upland habitat given the lack of suitable refugia and ongoing disturbance. Given the lack of nearby occurrences, lack of breeding habitat, and ongoing disturbance on site, there is a low potential for CRLF to occur on the Project Site. Potential impacts to this species would be limited to habitat degradation should impaired waters be released into Pruitt Creek during construction, and direct mortality during work near Pruitt Creek and its associated habitat. The BA includes conservation measures including environmental awareness training for construction personnel, preconstruction surveys and groundbreaking monitoring with a halt-work for potential listed species presence, and proper trash removal. Additionally, a Stormwater Pollution Prevention Plan would be developed with wildlife-friendly Best Management Practices, and work within Pruitt Creek would be limited to the dry conditions. With implementation of conservation measures, the BA determined that the Proposed Project may affect, but is unlikely to adversely affect CRLF.

CTS: A detailed analysis of potential for CTS to occur is provided in the BA due to the presence of nearby critical habitat and the regional importance of this species. As discussed within the BA, the Project Site lacks suitable habitat for CTS, including breeding habitat, upland habitat, and dispersal habitat. Due to a lack of suitable habitat, the BA determined that CTS does not have the potential to occur on the Project Site. Therefore, the BA determined that the Proposed Project would have no effect on CTS.

The ES Section has determined that the proposed action may affect, but is not likely to adversely affect candidate, threatened, or endangered species or their critical habitat, based on the surveys conducted and the conservation measures that are proposed, and hereby requests your concurrence with this finding.

If you have any questions regarding this determination, please contact Peter DeJongh, Regional Biologist, at (916) 704-0857, or Felix Kitto, Deputy Regional Director, Indian Services at felix.kitto@bia.gov.

Attachments

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DUTSCHKE

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Jennifer Wade <jwade@acorn-env.com>

Re: Section 7 Acknowledgement for Koi Nation Shiloh Casino Project

Fris, Michael <michael_fris@fws.gov>

Wed, May 22, 2024 at 4:32 PM

To: "DeJongh, Peter C" <peter.dejongh@bia.gov>

Cc: "Freeman, Arwen L" <arwen_freeman@fws.gov>, Ryan Lee Sawyer <rsawyer@acorn-env.com>, "darinbeltran@koination.com" <darinbeltran@koination.com>, "Broussard, Chad N" <Chad.Broussard@bia.gov>, "Kitto, Felix F" <Felix.Kitto@bia.gov>, "Snyder, Jacilyn" <Jacilyn.Snyder@bia.gov>, Jennifer Wade <jwade@acorn-env.com>

Hi Peter,

We have reviewed the No Effect Determination Letter and the revised April 2024 Biological Assessment. I concur with Arwen's recommendation and technical assistance. We acknowledge your determination of No Effect to California red-legged frog and no further consultation actions are necessary.

Thanks.

Mike

Michael Fris (he/him)

Field Supervisor

Sacramento Fish and Wildlife Office

916-414-6700

C: 916-425-0099

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United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

IN REPLY REFER TO:
TR-4313 P5 J51 639T
Informal Consultation Initiation Memorandum

Memorandum

To: Lisa Van Atta, Assistant Regional Administrator, National Oceanic and Atmospheric Administration – Fisheries, West Coast Regional Office, California Coastal Office

From: Amy Dutschke, Regional Director

Subject: “Not likely to Adversely Affect” Determination for Steelhead, Coho Salmon, Chinook Salmon, and Essential Fish Habitat, Shiloh Resort and Casino Project, Koi Nation

The Bureau of Indian Affairs (BIA), Pacific Region, Division of Environmental, Cultural Resource Management and Safety, Endangered Species (ES) Section respectfully requests to initiate informal consultation pursuant to Section 7 of the Endangered Species Act of 1973, as amended, and the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, for the Koi Nation (Tribe) Shiloh Resort and Casino Project near the Town of Windsor in Sonoma County, California. The Proposed Action includes the conveyance of approximately 68.6 acres into federal trust status for the benefit of the Tribe.

Enclosed for your review is the Biological Assessment (BA) for the Koi Nation Shiloh Resort and Casino Project. The Proposed Project (Alternative A) consists of the acquisition of a 68.6-acre site (Project Site; Action Area) into federal trust status for the Tribe, and the development of the site with a resort and casino facility, hotel, parking garage, and supporting infrastructure, including inter-related and interdependent actions such as off-site roadway improvements and use of recycled water for off-site irrigation.

As part of the BA, a summary of federally listed special-status species with the potential to occur within the region was obtained from United States Fish and Wildlife Service (USFWS), the California Natural Diversity Database (CNDDDB), the CalFish website, and the National Marine Fisheries Service (NMFS) website. Critical habitat was identified in the Russian River Basin

both overlapping and within 5 miles of the Project Site. The Project Site falls within critical habitat for the steelhead Central California Coast (CCC) Distinct Population Segment (DPS). Additionally, critical habitat for coho salmon CCC Evolutionary Significant Unit (ESU) is approximately 0.85 miles northwest of the Project Site, and critical habitat for Chinook salmon California Coast (CC) ESU is approximately 4.35 miles west of the Project Site. Additionally, the Project Site falls within Essential Fish Habitat (EFH) identified for the Russian River watershed, as defined by the Magnuson-Stevens Fisheries Conservation and Management Act, for Pacific salmon, specifically for Chinook and coho salmon. A summary of species that may occur on the Project Site and subject to NMFS jurisdiction is provided below.

Steelhead CCC DPS: There are no known occurrences of this species within 3 miles of the Project Site. The Project Site contains a portion of Pruitt Creek, which is a Class I creek capable of supporting fish. Pruitt Creek generally does not have flows high enough or depth deep enough to support salmonids. Due to low flows and shallow depths, temperatures within Pruitt Creek are generally too high for salmonids. During certain parts of certain seasons, weather and environmental conditions can align to provide marginally suitable habitat for steelhead. However, suitable spawning and juvenile rearing habitat is lacking. Therefore, there is limited potential for steelhead to occur on the Project Site or immediately downstream.

Coho salmon CCC ESU: As discussed above, the Project Site contains a portion of Pruitt Creek, which can support fish species. The nearest occurrence of this species in relation to the Project Site is 0.75 miles south of the Project Site within Mark West Creek, which is hydrologically connected downstream of Pruitt Creek by approximately nine river miles. As discussed above, Pruitt Creek offers minimal salmonid habitat for limited periods of time and only during years where hydrological conditions align.

Chinook Salmon CC ESU: There are no known occurrences of this species within 3 miles of the Project Site. As discussed above, the Project Site contains a portion of Pruitt Creek, which can support fish species. Pruitt Creek offers minimal salmonid habitat for limited periods of time and only during years where hydrological conditions align.

The Proposed Project has the potential to impact these species via reduced habitat quality through removal of shady riparian vegetation, release of impaired waters into Pruitt Creek during construction, or through possible generation of soil erosion or unstable grading during construction activities. Additionally, impacts could occur during operation of the Proposed Project through wastewater discharge into Pruitt Creek. Conservation measures are included in the BA to avoid and minimize the potential for harm to these species during project related activities and include limiting ground disturbance to the dry season, implementing proper trash removal, minimizing riparian habitat impacts, demarcating avoided habitat during construction, and preparing a Stormwater Pollution Prevention Plan, erosion control plan, and a spill prevention and response plan. Additionally, wastewater discharge would require compliance with a National Pollutant Discharge Elimination System (NPDES) permit, and a water quality monitoring protocol and schedule will be established.

The ES Section has determined that with conservation measures included in the BA, the Proposed Action **May Affect, but is Not Likely to Adversely Affect** federally listed fish species, critical habitat, or EFH and hereby requests your concurrence with this finding.

Please contact Peter DeJongh, Regional Biologist, Bureau of Indian Affairs, at (916) 978–6044, or Felix Kitto, Deputy Regional Director, Indian Services at felix.kitto@bia.gov if you have any questions or need additional information for your review.

Sincerely,

AMY

DUTSCHKE

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Regional Director

Attachments:

Biological Assessment, Proposed Shiloh Resort and Casino Project. Sonoma County, California

Draft Environmental Impact Statement, Koi Nation of Northern California Shiloh Resort and Casino Project. Sonoma County, California