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September 3, 2015

Mr. David Stilwell, Field Supervisor
Ms. Sandra Doran
United States Department of the Interior
Fish and Wildlife Service
3817 Luker Road
Cortland, New York 13045

**Re: Lago Resort & Casino
NYS Route 414
Town of Tyre, Seneca County, New York
USFWS Project File 14TA0700**

2392A

Dear Mr. Stilwell:

We are in receipt of your letter dated August 11, 2015, addressed to Ms. Virginia Robbins, Esq. from the law firm of Bond, Schoeneck and King regarding the above reference project. On August 25, 2015, we contacted Ms. Sandra Doran to discuss your letter and requests for additional information concerning certain endangered species. On behalf of Lago Resort & Casino, the project applicant, we would like to provide you further information in response to the comments outlined in your letter.

Included as attachments to this letter are the following documents;

- Barton Loguidice Memorandum dated May 22, 2014
- Bat Acoustic Survey Report prepared by BAT Conservation and Management dated August 20, 2015
- Letter Report prepared by Kevin McGowan, Ph.D dated August 25, 2015
- Wildlife Evaluation prepared by EcolSciences, Inc. dated August 27, 2015

In addition, we offer the following analysis with respect to the comments outlined in your letter:

Review of Applicable Federal and New York State Databases

In connection with the preparation of Part 1 of the Full Environmental Assessment Form for the project, we consulted the New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper. The mapper highlights areas of concern around documented location of protected species. As confirmed by the NYSDEC Environmental Resource Mapper, the Project Site is not known to contain any species of plant or animal that is listed by New York State as rare, or a species of special concern.

In addition, we along with the Engineer for the Town of Tyre consulted the US Fish and Wildlife Service Information, Planning and Conservation (IPaC) Trust Resource Report for the project site. As you know, the Trust Resource Report identifies a proposed project's location and resources that may be affected, including threatened and endangered species, designated critical habitat areas, national wildlife refuges, migratory birds, wetlands conservation and invasive species list. Official species lists obtained through IPaC are considered to be the official responses of the USFWS. As directed by IPaC, these responses may be printed and kept on hand in the applicant's administrative record. (<http://www.fws.gov/ipac/faqs>).

Pursuant to the Report generated February 15, 2014, the Report identified three endangered species: the Northern Long-eared Bat (*Myotis septentrionalis*), the Indiana Bat (*Myotis sodalis*), and the Bog Turtle (*Glyptemys muhlenburgii*). Pursuant to the Report generated by the applicant on July 21, 2015, the Report only identified one endangered species: the Northern Long-eared Bat. Neither report identified the bald eagle or any other bird species as an endangered or threatened species in proximity to the project site. Neither report identified any critical habitats, or refuges within the project area.

Nevertheless, as discussed below, the project applicant, in consultation with the Town, performed numerous on site-inspections and studies confirming the absence of any endangered or threatened species at or in proximity to the project site.

Prior Project Site Investigation

In April 2014, representatives of the applicant and the Town performed an on-site inspection to determine whether the project site provided potentially suitable habitat for the Indiana bat, the Northern Long-eared Bat and the Bog Turtle. The on-site inspection determined that there was no Bog Turtle habitat and no habitat potentially suitable for the endangered bats identified. The findings of the Town were memorialized in an attached memorandum dated May 22, 2014. The memorandum also recommended as a precautionary measure that any clearing of wooded areas should be conducted between October through March to avoid any impact to potential bat species. The applicant complied with this recommendation and site clearing occurred between December 2014 and February 2015.

Bats

Prior on-site inspections confirmed the absence of any suitable habitat for the Indiana bat and the Northern Long-eared Bat. Nevertheless, the project applicant retained a consultant in 2015 to perform a Bat Acoustic Survey. The consultant performed acoustic monitoring at three locations on the project site over a period of four nights from August 6 through 10, 2015. As more fully set forth in the attached Bat Acoustic Survey Report prepared by Bat Conservation and Management, dated August 20, 2015, neither the Indiana bat nor the Northern Long-eared Bat was detected at the project site. Based on the absence of either species at the project site, the project will not impact the Indiana Bat or the Northern Long-eared Bat.

Bog Turtles

Although the February 15, 2014 IPac Report listed the Bog Turtle as an endangered species, the July 21, 2015 IPac Report removed the Bog Turtle from the list that may be affected by the project. Nevertheless, as discussed above, representatives of the Town and the applicant conducted a site investigation. The Town Engineer previously concluded that the specific groundcover necessary for Bog Turtles for breeding did not occur on the project site. In addition, in 2015, the applicant retained a consultant to conduct a comprehensive analysis of the potential existence of bog turtle habitats at the project site. As more fully set forth in the attached Wildlife Evaluation prepared by EcolSciences, Inc., dated August 27, 2015, the site and surrounding area do not provide habitat for Bog Turtles and thus there will be no adverse effects to this species as a result of the project.

Bald Eagle

As discussed above, the NYSDEC Environmental Resource Mapper and the IPac Reports did not identify the Bald Eagle as an endangered or threatened species in proximity to the project site. The nearest documented Bald Eagle nest is located at the Montezuma National Wildlife Refuge approximately 3 miles to the east of the project site. In 2015, the applicant retained two independent consultants to conduct a comprehensive analysis of the potential existence of the presence of Bald Eagle habitats at the project site, as well as any potential impact to Bald Eagles and their habitats.

Specifically, Kevin McGowan, Ph.D, conducted an on-site inspection of the project site on August 3, 2015. As more fully set forth in Dr. McGowan's attached report the project site has not been an area of attraction for eagles, and the change from farmland to the proposed use, situate along the NYS Thruway "will almost certainly have no adverse impact on bald eagle behavior, distribution, survival or reproduction." In addition, Dr. McGowan opined that there are "no features at the project site that would entice eagles to visit or linger with no feeding sites (large bodies of water with big fish) or nesting sites (large, emergent trees near water), the area will continue to be one of non-interest to Bald Eagles." Dr. McGowan also opined that pollutants will not have a significant impact on eagles or other birds, and there is little to link the project site and the Montezuma National Wildlife Refuge such that any additional traffic would not significantly increase the hazard that the existing high volume along the NYS Thruway already presents.

EcolSciences also conducted a wildlife field visit and inventory of the project site on August 12, 2015. With respect to Bald Eagles, EcolSciences reviewed, among other things, the on-site retention basins, vehicle collisions and potentially suitable habitat at the project site. EcolSciences concluded that:

[P]otential adverse impacts to Bald Eagle resulting in exposure to contaminants, habitat loss, and human activity/disturbance at or adjacent to the Site, including Montezuma NWR and Montezuma Wetlands Complex, as a result of the proposed project is anticipated to be insignificant or negligible. There is and has been no loss of eagle habitat because there is no demonstrable indication

based on review of available data and on-site field investigation that the Site or adjacent areas are critical eagle habitat. The addition of on-site retention ponds represents a negligible change to the region and the large quality of far superior habitats available at Montezuma Wetlands Complex provide assurance that there is no reason to expect any changes in eagle distribution, movements or local concentrations as a result of the Site development.

EcolSciences further indicates that with properly designed and operating stormwater basins, there will be no potential health hazard of contamination or poisoning to wildlife, unlike the broadly occurring non-point source agricultural discharges which currently exist in proximity to the project site.

Migratory Birds and Other Species

Potential impacts to migratory birds as identified in the IPaC Report were also considered by multiple consultants retained in 2015. Dr. McGowan concluded that while the wooded wetland area in the eastern portion of the project site could provide bird breeding habitat, since those wooded areas will remain undisturbed and birds will continue to breed in these areas, the project will not result in an adverse impact. Moreover, the retention ponds are too small to attract those species identified in the IPaC Report. Relative to the Atlantic Flyway, the project site has no special characteristics that would make it a particularly sensitive area regarding birds because, in fact, the entire Atlantic Flyway includes all areas of the United States east of the Appalachian Mountains.

EcolSciences similarly observed potential habitat for bird species as identified in the IPaC Report in the wooded wetland area located on the eastern portion of the project site. However, EcolSciences concluded that the preservation of these areas mitigates any significant impact that would otherwise occur. No threatened or endangered bird species or their critical habitats were observed on the project site. The project will also not significantly affect migratory bird species from direct disturbance or effects from lightings due to the fact that the project site is situated along the NYS Thruway and in the vicinity of other large developments located even closer to migratory waystations and flight paths. Ultimately, EcolSciences concluded that the project will not threaten the continued survival of any local or regional population of any species, and threatened or endangered species will not be adversely affected.

Integrated Pest Management and Green Site Design Enhancements

The project will implement an Integrated Pest Management Plan (IPM), which will significantly reduce herbicide and pesticide laden runoff from the previously associated agricultural fields. EcolSciences concluded that the utilization of the IPM approach will significantly decrease the potential harm to the environment and, as such, no impacts to any of bird species is anticipated as a result of the project. Similarly, Dr. McGowan concluded that an IPM approach will substantially decrease adverse impacts from pollutant or pesticide runoff perhaps below previously historic levels which were undoubtedly receiving application of fertilizer and pesticides for agricultural use.

As part of the project design, the applicant will preserve an approximately 10-acre area of the project site in its natural state, including its native vegetation, forever wild area, without development other than for access, stormwater flow and wetland preservation. The project will also incorporate bird friendly design criteria into its use of window glass on the portions of the improvements above the first floor. In addition, the lighting fixtures will be LED and Dark Sky compliant. The project applicant will also make available to its patrons and guests materials on the Canal Corridor, bird habitat and flyway education, and local parks, including the Seneca Meadows Wetlands Preserve and the Montezuma National Wildlife Refuge.

Wetlands and water resources

The project will not impact any regulated on-site wetland areas or regulated adjacent (buffer) areas. No dredging or excavation work will be undertaken within the regulated waters or depositing of dredge or fill material from construction activity directly into the wetlands. As a result no wetland permits are required from NYSDEC or US Army Corps of Engineers (USACE). The wetland limits reflect the jurisdictional wetland boundaries as confirmed by both the USACE and the NYSDEC. The project applicant's established construction plan completely avoids the wetland areas, which have otherwise been protected from disturbance and encroachment.

The project Stormwater Pollution Protection Plan (SWPPP) prepared and revised pursuant to NYSDEC criteria reflects the current site condition as a result of construction, and also accounts for minor design changes that have taken place since the preparation of the original SWPPP. These revisions also reflect the final wetland delineation determinations issued by the USACE and NYSDEC referenced above. These modifications did not alter the design intent of the SWPPP, the design of the project site's stormwater management facilities, or the project's compliance with the NYSDEC Stormwater Design Manual and General Permit. The SWPPP has been reviewed and accepted by NYSDEC as of August 2014.

The SWPPP provides for both the construction and post-construction practices necessary to address the stormwater runoff condition from the project site. The project will not result in an increase in the peak rate of runoff from the project site, and it will maintain existing flow paths thorough the project site. The implementation of the construction erosion control portion of the SWPPP will provide for on-site control of sediment and silt runoff and will protect waters from silt accumulation. The NYSDEC has found the project site to be in "satisfactory compliance" with the requirements of the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity. The applicant will also implement an Integrated Pest Management (IPM) Plan, which will significantly reduce the runoff of stormwater containing pesticides and herbicides.

Site Preservation

Upon completion of the project, approximately 62% of the site will be open/green space consisting of wooded areas, wetlands and green areas surrounding the buildings and parking facilities. A portion of the trees located on the project site were removed in connection with site grading activities. All clearing activity on the project site is complete and no further clearing is proposed. The clearing that did take place was performed between December 2014 and February 2015 within applicable clearing guidelines.

We believe the information above and provided in the attached documents addresses all of the comments in your August 11, 2015 letter, and that the project will not have an impact on the species discussed above. Please feel free to contact our office should you have any questions or need any additional information. Thank you.

Sincerely,
BME ASSOCIATES


Michael A. Simon

cc: Virginia Robbins, Esq.; Bond Schoeneck & King
Adam Cummings, PE; Barton & Loguidice
John Mancuso, Esq.; Harris Beach PLLC
Karanja Augustine, Esq.; Wilmorite, Inc.