



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
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EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



January 9, 2013

Mr. Kirt A. Coury
City of Lake Elsinore
130 S. Main Street
Lake Elsinore, CA 92530

Subject: Initial Study/Mitigated Negative Declaration for the Wake Rider Beach Resort: Commercial Design Review (CDR 2011-03), Conditional Use Permit (CUP 2011-03) Project
State Clearinghouse No. 2012121034

Dear Mr. Coury:

The Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Initial Study/Mitigated Negative Declaration (IS/MND) for the Wake Rider Beach Resort: Commercial Design Review (CDR 2011-03), Conditional Use Permit (CUP 2011-03) Project (Project) [State Clearinghouse No. 2012121034]. The Department is responding to the IS/MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

Project Description

The Project is located within Assessor's Parcel Number (APN) 381-030-005, east of Grand Avenue, north of Serena Way, south of Hill Street, and bounded to the west by Lake Elsinore, in the City of Lake Elsinore, County of Riverside, California. The City of Lake Elsinore (City) proposes construction of five commercial mixed use buildings totaling 62,437 square feet, including hardscape and landscaping on 2.78 acres of the 5.4 acre parcel. The Project also includes a dedication of additional right-of-way for Grand Avenue, a dock with ten slips that will extend into Lake Elsinore (Lake), and the import of approximately 4,000 cubic yards of sand fill to cover 0.27 acre of beach.

Biological Resources and Impacts

The Project has the potential to impact least Bell's vireo (*Vireo bellii pusillus*), burrowing owl (*Athene cunicularia*), western snowy plover (*Charadrius nivosus*), white-faced ibis (*Plegadis chihi*), slender-horned spineflower (*Dodecahema leptoceras*), numerous other riparian bird species, submerged aquatic vegetation, and riparian vegetation.

The IS/MND identifies "Less Than Significant with Mitigation Incorporation" impacts to biological resources but fails to provide specific avoidance or mitigation measures. A subsequent CEQA document should be prepared that contains sufficient, specific, and current biological information on the existing habitat and species at the Project site; measures to minimize and avoid sensitive biological resources; and mitigation measures to offset the loss of native flora and fauna and State waters. The CEQA document should not defer impact analysis and mitigation measures to future regulatory discretionary actions, such as a Lake or Streambed Alteration Agreement. Additional analysis and possibly an Environmental Impact Report (EIR) may be required to identify mitigation measures that could reduce impacts to less than significant levels.

Furthermore, the IS/MND does not adequately quantify impacts to biological resources associated with project activities. The Department recommends that a subsequent CEQA document be prepared that quantifies potential impacts to habitats and species as per the informational requirements of CEQA including, but not limited to, impacts from: (1) construction and maintenance of the proposed dock; (2) fill of the lake with imported beach sand; (3) construction of the mixed use commercial buildings, (4) construction of hardscape, and (5) installation and maintenance of landscaping. To assist with review, an accompanying map showing the areas of impact should be included in the subsequent CEQA document.

The IS/MND should also have included an analysis of the potential impacts to biological resources, including sensitive species, surrounding the proposed dock. It is reasonably foreseeable that the proposed document will have impacts to aquatic vegetation from shading and anchor installation, impacts from contaminants related to docks, impacts from associated boating use, and impacts to sediments and substrate. The subsequent CEQA document should provide a thorough analysis of impacts related to the proposed dock.

The IS/MND does not clearly define the Project or its impacts. The IS/MND is deficient in describing project activities related to the construction of hardscape and installation of landscaping. Similarly, no dimensions or details are provided for the proposed dock and ten slips. Supporting materials included with the IS/MND illustrate additional parking and structures to the south of APN 381-030-005, but these facilities are not described in the Project description. The Project description states on-site and off-site improvements are included but the IS/MND does not specify activities or locations for off-site improvements; please clarify the Project area and scope.

Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Department is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA, and administers the Natural Community Conservation Plan Program (NCCP Program). On June 22, 2004, the Department issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) per Section 2800, *et seq.*, of the California Fish and Game Code. The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit.

The IS/MND states that the Project is not located within a criteria cell as designated by the MSHCP; however, the proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. The City is the lead agency and is signatory to the implementing agreement of MSHCP. Therefore the City is responsible for implementing the MSHCP. Specifically, Section 15125(d) of the CEQA Guidelines requires that the IS/MND discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

The following MSHCP policies and procedures will apply to this project. The proposed Project would require burrowing owl (MSHCP section 6.3.2) surveys. Other MSHCP policies and procedures also apply to the proposed Project, such as the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policy (MSHCP section 6.1.2). If riparian/riverine resources are affected by the project then a Determination of Biologically Equivalent or Superior Preservation (DBESP) should be completed.

Lake and Streambed Alteration Program

Although the proposed Project is within the MSHCP, a Notification of Lake or Streambed Alteration is still required by the Department, should the site contain jurisdictional waters. Additionally, the Department's criteria for determining the presence of jurisdictional waters are more comprehensive than the MSHCP criteria in Section 6.1.2 (Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools). The Department is responsible for assessing and evaluating impacts to jurisdictional waters; typically accomplished through reviewing jurisdictional delineation (JD) reports, supporting information, and conducting site visits. Following review of a JD, the Department may request changes to the JD. The Department may also recommend that additional project avoidance and/or minimization measures be incorporated, or request additional mitigation for project-related impacts to jurisdictional areas.

The Department recommends submitting a notification early in project planning, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <http://www.dfg.ca.gov/habcon/1600/forms.html>.

The Department opposes the elimination of ephemeral, intermittent, and perennial streams, channels, lakes, and their associated habitats. The Department recommends avoiding stream and riparian habitat to the greatest extent possible. Any unavoidable impacts need to be compensated with the creation and/or restoration of in-kind habitat either on-site or off-site at a minimum 3:1 replacement-to-impact ratio, depending on the impacts and proposed mitigation. Additional mitigation requirements through the Department's Lake and Streambed Alteration Agreement process may be required, depending on the quality of habitat impacted, proposed mitigation, project design, and other factors.

The following information will be required for the processing of a Notification of Lake or Streambed Alteration and the Department recommends incorporating this information into the IS/MND to avoid subsequent CEQA documentation and project delays:

- 1) Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);
- 2) Discussion of avoidance and minimization measures to reduce project impacts; and,
- 3) Discussion of potential mitigation measures required to reduce the project impacts to a level of insignificance.

Please refer to section 15370 of the CEQA guidelines for the definition of mitigation.

In the absence of specific mitigation measures in the CEQA document, the Department believes that it cannot fulfill its obligations as a Trustee and Responsible Agency for fish and wildlife resources. Permit negotiations conducted after and outside of the CEQA process are not CEQA-compliant because they deprive the public and agencies of their right to know what project impacts are and how they are being mitigated (CEQA Section 15002).

Impacts to and/or Use of State Lands

The project includes the import of approximately 4,000 cubic yards of sand fill. Fill is proposed with an area submerged by lake water within APN 381-030-005. The Department is concerned that import of sand fill may impact adjacent parcels, including parcels which are State-owned property. The subsequent CEQA document should clarify how impacts to State-owned property will be avoided. If the Project will impact or use State-owned property additional permitting may be required.

Hydrology and Water Quality

The Hydrology and Water Quality section of the IS/MND does not address impacts associated with the import of sand fill. The subsequent CEQA document should provide

an analysis of potential impacts to water quality, including a potential increase in sediments, and provide measures to reduce or mitigate any potential impacts.

Cumulative Impacts

The cumulative impacts of the Project, in addition to existing uses, were not addressed in the IS/MND. It is unclear to the Department if the Project has the potential to impact boat traffic. Please clarify the current level of boating traffic and how this project will influence current and future boating use. The Project has the potential to impact shoreline and riparian habitat. The subsequent CEQA document should provide an analysis of cumulative impacts to shoreline habitat surrounding Lake Elsinore and address the Project's contribution to the loss of shoreline and riparian habitat. A cumulative effects analysis should be developed as described under CEQA Guidelines, 15130.

Department Concerns

The Department has the following concerns about the Project, and requests that these concerns be addressed in the subsequent CEQA document:

1. A subsequent CEQA document should be prepared to identify mitigation measures that could reduce impacts to less than significant levels. The Department recommends that the subsequent CEQA document is an EIR;
2. The subsequent CEQA document should clearly define all aspects of the Project, including construction of hardscape, installation of landscaping, the proposed dock and any infrastructure improvements associated with the Project;
3. The subsequent CEQA document should quantify impacts to habitats and species as per the informational requirements of CEQA. An accompanying map showing the areas of impact should also be included;
4. The subsequent CEQA document should include an analysis of impacts associated with the proposed dock;
5. If riparian/riverine resources are present onsite then additional surveys will be required for the Project to be processed through the MSHCP and a Determination of Biologically Equivalent or Superior Preservation will need to be prepared;
6. The subsequent CEQA document should include a JD of State Waters, an impact analysis, and mitigation measures for the loss of streambed and riparian habitat;
7. The analysis in the subsequent CEQA document should satisfy the requirements of the Department's Lake and Streambed Alteration Program and CESA (if deemed necessary).

8. The subsequent CEQA document should address impacts to and/or any use of adjacent State-owned property;
9. The subsequent CEQA document should provide a thorough analysis of cumulative impacts, including but not limited to, the Project's contribution to current and future boat traffic, reduction of shoreline habitat, and reduction of riparian habitat.

In summary, the Department believes that the IS/MND is inadequate in describing and analyzing the full impacts of the Project scope, including but not limited to describing and analyzing impacts to sensitive species and habitats. The IS/MND also fails to adequately address whether the project will be processed through the MSHCP. If you should have any questions pertaining to these comments, please contact Daniel Orr at (909) 484-0523.

Sincerely,



Jeff Brandt
Senior Environmental Scientist

cc: State Clearinghouse, Sacramento



PECHANGA CULTURAL RESOURCES
Temecula Band of Luiseño Mission Indians

Post Office, Box 2183 • Temecula, CA 92593
Telephone (951) 308-9295 • Fax (951) 506-9491

January 9, 2013

VIA E-MAIL and USPS

Mr. Kirt Coury
Project Planner
City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530

Re: Pechanga Tribe Comments on the Initial Study for a Mitigated Negative Declaration for the Wake Rider Beach Resort Project, CDR 2011-03, CUP 2011-03, TTM 35869, ZC 2011-01, MND 2012-01

Dear Mr. Coury:

This comment letter is written on behalf of the Pechanga Band of Luiseño Indians (hereinafter, "the Tribe"), a federally recognized Indian tribe and sovereign government, in response to the December 2012 Initial Study for the MND being prepared for the above named Project. The Tribe formally requests, pursuant to Public Resources Code §21092.2, to be notified and involved in the entire CEQA environmental review process for the duration of the above referenced project (the "Project").

If you have not done so already, please add the Tribe to your distribution list(s) for public notices and circulation of all documents, including environmental review documents, archeological reports, and all documents pertaining to this Project. The Tribe further requests to be directly notified of all public hearings and scheduled approvals concerning this Project. Please also incorporate these comments into the record of approval for this Project.

The Tribe submits these comments concerning the Project's potential impacts to cultural resources in conjunction with the environmental review of the Project and to assist the City in developing appropriate avoidance and preservation standards for any cultural resources that may be impacted by the proposed Development. The Tribe has reviewed the IS/MND and thanks the City of Lake Elsinore for including the Tribe in the Project mitigation measures.

Chairperson:
Germaine Arenas

Vice Chairperson:
Mary Bear Magee

Committee Members:
Evie Gerber
Darlene Miranda
Bridgett Barcello Maxwell
Aurelia Marruffo
Richard B. Scarce, III

Director:
Gary DuBois

Coordinator:
Paul Macarro

Cultural Analyst:
Anna Hoover

**THE CITY OF LAKE ELSINORE MUST INCLUDE INVOLVEMENT OF AND
CONSULTATION WITH THE PECHANGA TRIBE IN ITS ENVIRONMENTAL
REVIEW PROCESS**

It has been the intent of the Federal Government¹ and the State of California² that Indian tribes be consulted with regard to issues which impact cultural and spiritual resources, as well as other governmental concerns. The responsibility to consult with Indian tribes stems from the unique government-to-government relationship between the United States and Indian tribes. This arises when tribal interests are affected by the actions of governmental agencies and departments. In this case, it is undisputed that the project lies within the Pechanga Tribe's traditional territory. Therefore, in order to comply with CEQA and other applicable Federal and California law, it is imperative that the City of Lake Elsinore consult with the Tribe in order to guarantee an adequate knowledge base for an appropriate evaluation of the Project effects, as well as generating adequate mitigation measures.

PECHANGA CULTURAL AFFILIATION TO PROJECT AREA

The Pechanga Tribe asserts that the Project area is part of Luiseño, and therefore the Tribe's, aboriginal territory as evidenced by the existence of Luiseño place names, *tóota yixélval* (rock art, pictographs, petroglyphs), and an extensive Luiseño artifact record in the vicinity of the Project. This culturally sensitive area is affiliated with the Pechanga Band of Luiseño Indians because of the Tribe's cultural ties to this area as well as extensive history with both this Project and other projects within the area.

The Pechanga Tribe's knowledge of our ancestral boundaries is based on reliable information passed down to us from our elders; published academic works in the areas of anthropology, history and ethno-history; and through recorded ethnographic and linguistic accounts. Of the many anthropologists and historians who have presented boundaries of the Luiseño traditional territory, none have excluded the Lake Elsinore area from their descriptions (Sparkman 1908; Kroeber 1925; White 1963; Harvey 1974; Oxendine 1983; Smith and Freers 1994), and such territory descriptions correspond almost identically with what was communicated to the Pechanga people by our elders. While historic accounts, anthropological and linguistic theories are important in determining traditional Luiseño territory; the Pechanga Tribe asserts that the most critical sources of information used to define our traditional territories are our songs, creation accounts, and oral traditions.

There is a connection between Temecula and Lake Elsinore area that stems from the beginning of time for Pechanga people. Luiseño history originates with the creation of all things

¹See e.g., Executive Memorandum of April 29, 1994 on Government-to-Government Relations with Native American Tribal Governments, Executive Order of November 6, 2000 on Consultation and Coordination with Indian Tribal Governments, Executive Memorandum of September 23, 2004 on Government-to-Government Relationships with Tribal Governments, and Executive Memorandum of November 5, 2009 on Tribal Consultation.

² See California Public Resource Code §5097.9 et seq.; California Government Code §§65351, 65352.3 and 65352.4

at *'éxva Teméeku*, known today as the City of Temecula, and dispersing out to all corners of creation (what is today known as Luiseño territory). In fact, in many of the creation songs, Temecula and Elsinore are mentioned interchangeably, intimating a relationship between Temecula and Elsinore, including the entire area in between. It was at Temecula that the Luiseño deity *Wuyóot* lived and taught the people, and here that he became sick, finally expiring at Lake Elsinore. Many of our songs relate the tale of the people taking the dying *Wuyóot* to the many hot springs in the region including Elsinore, where he ultimately died and was cremated (DuBois 1908). It is the Luiseño creation account that connects Elsinore to Temecula, and thus to the Temecula people who were evicted and moved to the Pechanga Reservation, and now known as the Pechanga Band of Luiseño Mission Indians (the Pechanga Tribe).

The area known as Lake Elsinore is considered a Traditional Cultural Property (TCP) by the Pechanga Band and is the location for many noteworthy events in Luiseño culture which are related specifically to the people of Temecula or the Pechanga people. For example, it is the place where two of the *Káamalam* (first people), *Qáwqaw* and *Chixéemal*, had their first menses, which is the subject of one of the girls' coming-of-age songs (DuBois 1908). Another song recounts the travels of the people to Elsinore after a great flood (DuBois 1908). From here, they again spread out to the north, south, east and west. Three songs, called *Monívol*, are songs of the places and landmarks that were destinations of the Luiseño ancestors. They describe the exact route of the Temecula (Pechanga) people and the landmarks made by each to claim title to places in their migrations (DuBois 1908:110). Another account involves a Temecula village leader killing the evil *Táakwish* (the Luiseño evil spirit) at Elsinore, followed by his cremation in Temescal Canyon (Kroeber 1906).

In addition, Pechanga elders state that the Temecula/Pechanga people had usage/gathering rights, what anthropologists include in their definition of a "village territory", to an area extending from Rawson Canyon on the east, over to Lake Mathews on the northwest, down Temescal Canyon, and back to the Temecula area, which includes Lake Elsinore in its boundaries. This route, and several others in the area, eventually became the Butterfield Stage Route, Old Highway 395 and modern-day Interstate 15.

Thus, our songs and stories, as well as academic works, demonstrate that the Luiseño people who occupied what we know today as Temecula, Lake Elsinore and the areas in between (*Páayaxchi*, *Nivé'wuna*, *Páa'a*, *Páašukwa*, *Pii'iv*, *Pivmay*, *We'éeva*, *Wiina* and *Temeeku*) are ancestors of the present-day Pechanga Band of Luiseño Indians, and as such, Pechanga is the appropriate culturally affiliated tribe for projects that impact this geographic area.

Lastly, the Pechanga Tribe has a long modern day history of involvement with Projects in the area known as Lake Elsinore. Not only has the Pechanga Tribe been involved, but it has been given the designation of the consulting tribe or affiliated tribe on projects located in the City of Lake Elsinore and its sphere of influence, such as Cottonwood Hills, Liberty Serenity, North Peak, Temescal Canyon, Lakeview Villas, County Sheriff's Station, Spy Glass Ranch, Meadowbrook, Oak Springs, Canyon Hills and Glen Ivy. Moreover, the Pechanga Tribe has

been the only Tribe to, and NAHC records confirm, assume the role of MLD in the Lake Elsinore area.

The Tribe would welcome to opportunity to meet with the City to further explain and provide documentation concerning our specific cultural affiliation to lands within your jurisdiction, if so desired.

PROJECT IMPACTS TO CULTURAL RESOURCES

The Tribe is in receipt of the Archaeological Survey Report and the IS/MND. The proposed Project is located in a sensitive region of Luiseño territory and the Tribe believes that the possibility for recovering subsurface resources during ground-disturbing activities is high. The Tribe has over thirty-five (35) years of experience in working with various types of construction projects throughout its territory. The combination of this knowledge and experience, along with the knowledge of the culturally-sensitive areas and oral tradition, is what the Tribe relies on to make fairly accurate predictions regarding the likelihood of subsurface resources in a particular location.

The proposed Project is on land that is within the traditional territory of the Pechanga Band of Luiseño Indians. The Pechanga Band is not opposed to this development Project. The Tribe's primary concerns stem from the Project's proposed impacts on Native American cultural resources. The Tribe is concerned about both the protection of unique and irreplaceable cultural resources, such as Luiseño village sites, sacred sites and archaeological items which would be displaced by ground disturbing work on the Project, and on the proper and lawful treatment of cultural items, Native American human remains and sacred items likely to be discovered in the course of the work.

The Tribe understands that the proposed Project is anticipated to construct five buildings – a drive through restaurant/office; a hotel and a convenience store/restaurant; associated parking and other related facilities; and a dock/beach. The Tribe thanks the City for the inclusion of the mitigation measures and conditions of approval to address the potential impacts to cultural resources, and for the inclusion of the Tribe in those measures. The region of Lake Elsinore is culturally significant to the Tribe and appreciates the opportunity to monitor earthmoving activities in the area so that we can ensure proper protection, avoidance and/or mitigation should cultural resources be encountered.

PROJECT MITIGATION MEASURES

The Tribe is in general agreement with the proposed mitigation measures for cultural resources presented in the December 2012 Initial Study for the Mitigated Negative Declaration for this Project. We request that they be incorporated (with the few suggested edits below) into the final MND and added as conditions of approval for the Project.

Pechanga Comment Letter to the City of Lake Elsinore
Re: Pechanga Tribe Comments on the IS/MND for Wake Rider Resort
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CUL-1 An archaeological monitor shall be present during all earthmoving to insure protection of any accidentally discovered potentially significant resources. All cultural resources unearthed by Project construction activities shall be evaluated by a qualified archaeologist and the Tribal monitor pursuant to CUL-6, below. Any unanticipated cultural resources that are discovered shall be evaluated as per CUL-6 and a final report prepared. The report shall include a list of the resources ~~recovered~~ collected, documentation of each site/locality, and interpretation of resources ~~recovered~~ collected and final copies shall be submitted to the Applicant/Developer, the City, the Eastern Information Center and the appropriate Tribe. The City shall designate repositories in the event the significant resources are recovered. Any identified cultural resources shall be given to the appropriate Tribe per CUL-4.³

The Pechanga Tribe looks forward to working together with the City of Lake Elsinore in protecting the invaluable Pechanga cultural resources found in the Project area. Please contact me at 951-770-8104 or at ahoover@pechanga-nsn.gov once you have had a chance to review these comments if you should have any questions or concerns. Thank you.

Sincerely,



Anna Hoover
Cultural Analyst

Cc Pechanga Office of the General Counsel

³ The Pechanga Tribe would like the City to know that it operates and maintains a curation facility that meets Federal guidelines per 36 CFR Part 79. We would be happy to provide a guided tour for City representatives if requested.

January 8, 2013

Attn: Kirt A. Coury, Planning Consultant
Community Development Department-Planning Division
City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530



Re: Wake Rider Beach Resort, Tentative Parcel Map 35869; Zone Change 2011-01

The Soboba Band of Luiseño Indians appreciates your observance of Tribal Cultural Resources and their preservation in your project. The information provided to us on said project has been assessed through our Cultural Resource Department, where it was concluded that although it is outside the existing reservation, the project area does fall within the bounds of our Tribal Traditional Use Areas. This project location is in close proximity to known village sites and is a shared use area that was used in ongoing trade between the Luiseno and Cahuilla tribes. Therefore it is regarded as highly sensitive to the people of Soboba.

Soboba Band of Luiseño Indians is requesting the following:

1. To initiate a consultation with the Project Developer and Land owner.
2. The transfer of information to the Soboba Band of Luiseno Indians regarding the progress of this project should be done as soon as new developments occur.
3. Soboba Band of Luiseño Indians continues to act as a consulting tribal entity for this project.
4. Working in and around traditional use areas intensifies the possibility of encountering cultural resources during the construction/excavation phase. For this reason the Soboba Band of Luiseño Indians requests that Native American Monitor(s) from the Soboba Band of Luiseño Indians Cultural Resource Department to be present during any ground disturbing proceedings. Including surveys and archaeological testing.
5. Request that proper procedures be taken and requests of the tribe be honored (Please see the attachment)

Sincerely,

Joseph Ontiveros
Soboba Cultural Resource Department
P.O. Box 487
San Jacinto, CA 92581
Phone (951) 654-5544 ext. 4137
Cell (951) 663-5279
jontiveros@soboba-nsn.gov

Cultural Items (Artifacts). Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer should agree to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. When appropriate and agreed upon in advance, the Developer's archeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

The Developer should waive any and all claims to ownership of Native American ceremonial and cultural artifacts that may be found on the Project site. Upon completion of authorized and mandatory archeological analysis, the Developer should return said artifacts to the Soboba Band within a reasonable time period agreed to by the Parties and not to exceed (30) days from the initial recovery of the items.

Treatment and Disposition of Remains.

- A. The Soboba Band shall be allowed, under California Public Resources Code § 5097.98 (a), to (1) inspect the site of the discovery and (2) make determinations as to how the human remains and grave goods shall be treated and disposed of with appropriate dignity.
- B. The Soboba Band, as MLD, shall complete its inspection within twenty-four (24) hours of receiving notification from either the Developer or the NAHC, as required by California Public Resources Code § 5097.98 (a). The Parties agree to discuss in good faith what constitutes "appropriate dignity" as that term is used in the applicable statutes.
- C. Reburial of human remains shall be accomplished in compliance with the California Public Resources Code § 5097.98 (a) and (b). The Soboba Band, as the MLD in consultation with the Developer, shall make the final discretionary determination regarding the appropriate disposition and treatment of human remains.
- D. All parties are aware that the Soboba Band may wish to rebury the human remains and associated ceremonial and cultural items (artifacts) on or near, the site of their discovery, in an area that shall not be subject to future subsurface disturbances. The Developer should accommodate on-site reburial in a location mutually agreed upon by the Parties.

E. The term "human remains" encompasses more than human bones because the Soboba Band's traditions periodically necessitated the ceremonial burning of human remains. Grave goods are those artifacts associated with any human remains. These items, and other funerary remnants and their ashes are to be treated in the same manner as human bone fragments or bones that remain intact.

Coordination with County Coroner's Office. The Lead Agencies and the Developer should immediately contact both the Coroner and the Soboba Band in the event that any human remains are discovered during implementation of the Project. If the Coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, the Coroner shall ensure that notification is provided to the NAHC within twenty-four (24) hours of the determination, as required by California Health and Safety Code § 7050.5 (c).

Non-Disclosure of Location Reburials. It is understood by all parties that unless otherwise required by law, the site of any reburial of Native American human remains or cultural artifacts shall not be disclosed and shall not be governed by public disclosure requirements of the California Public Records Act. The Coroner, parties, and Lead Agencies, will be asked to withhold public disclosure information related to such reburial, pursuant to the specific exemption set forth in California Government Code § 6254 (r).

Ceremonial items and items of cultural patrimony reflect traditional religious beliefs and practices of the Soboba Band. The Developer agrees to return all Native American ceremonial items and items of cultural patrimony that may be found on the project site to the Soboba Band for appropriate treatment. In addition, the Soboba Band requests the return of all other cultural items (artifacts) that are recovered during the course of archaeological investigations. Where appropriate and agreed upon in advance, Developer's archeologist may conduct analyses of certain artifact classes if required by CEQA, Section 106 of NHPA, the mitigation measures or conditions of approval for the Project. This may include but is not limited or restricted to include shell, bone, ceramic, stone or other artifacts.

From: Ronan, Noelle [mailto:noelle_ronan@fws.gov]

Sent: Monday, January 14, 2013 4:40 PM

To: Kirt Coury

Cc: Daniel Orr

Subject: Initial Study/Mitigated Negative Declaration for the Wake Rider Beach Resort Project

Dear Mr. Coury,

We have reviewed the Mitigated Negative Declaration (MND) for the above-referenced project which we received on December 17, 2012. The project is located on the east side of Grand Ave., adjacent to Lake Elsinore, in the City of Lake Elsinore. The project consists of construction of 5 commercial mixed use buildings, a dedication of additional right-of-way for Grand Ave., a dock with 10 slips that will extend into Lake Elsinore, and the discharge of 4,000 cubic yards of sand fill to cover 0.27 acres of beach. The U.S. Fish and Wildlife Service (Service) is providing the following comments as they relate to the project's consistency with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

On June 22, 2004, the Service issued a section 10(a)(1)(B) permit for the MSHCP. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. Permittees ensure covered activities are consistent with the MSHCP, its associated Implementing Agreement, and section 10(a)(1)(B) permit. The proposed project is located within the MSHCP Plan Area and the City of Lake Elsinore is an MSHCP Permittee.

The MND does not provide sufficient information regarding the project activities, effects to riparian/riverine habitat, and maintenance of the project once installed. Please provide additional information on project activities, temporary and permanent impacts, offsetting measures to compensate for unavoidable direct temporary and permanent impacts on riparian/riverine areas, and long-term maintenance activities.

Based on the information provided in the MND, it appears that the proposed project may impact riparian/riverine resources. For example, the docks that are proposed to be held in place by anchors would represent a riparian/riverine impact. If riparian/riverine resources cannot be avoided and will be affected by the project, a Determination of Biologically Equivalent or Superior Preservation (DBESP) (MSHCP, section 6.1.2, Protection of Species Associated with Riparian and Riverine Areas and Vernal Pools) is required for consistency with the MSHCP.

The MND states that the Urban/Wildlands Interface Guidelines are not necessary. Please note that the proposed project is located adjacent to and within Existing Core E (Lake Elsinore). The Guidelines Pertaining to the Urban/Wildlands Interface (MSHCP section 6.1.4) apply to the project. These guidelines are intended to address indirect effects associated with projects adjacent to MSHCP Conservation Areas and provide guidelines to avoid and minimize potential edge effects from proposed projects on biological resources during and after construction activities.

The MND does not address or specify offsetting measures to avoid or minimize impacts to birds protected by the federal Migratory Bird Treaty Act if birds are found to be present on site and construction will occur during the nesting season. Please note that the Service recommends that vegetation removal be conducted outside of the bird nesting season to avoid impacts to birds. If vegetation is to be cleared during the nesting season (February 1 through September 15) a qualified biologist should conduct a pre-construction survey to identify the locations of nests. If active nests are detected, buffers for nesting birds are recommended (e.g., 300 feet for passerines, 500 feet for raptors and listed bird species). In addition, we recommend that a biological monitor be present during construction and vegetation removal to establish and maintain buffers around active nests (if needed) and ensure that no nesting birds are impacted by construction and vegetation removal activities.

Thank you for the opportunity to comment on the MND. If you have any questions or comments please contact me.

Sincerely,

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