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November 14, 2022

Governor's Office of Planning & Research

Erica M. Pinto
 Chairwoman, Jamul Indian Village of California
 P.O. Box 612
 Jamul, CA 91935
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NOV 14 2022

STATE CLEARING HOUSE

Subject: Jamul Casino Hotel and Event Center Project (Project), Draft Tribal Environmental Impact Report (TEIR), SCH #2022050410

Dear Chairwoman Pinto:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft TEIR on the Jamul Casino Hotel and Event Center Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Natural Community Conservation Planning (NCCP) program. While we acknowledge that the Jamul Indian Village of California is not a signatory to the NCCP, the project site is located within and adjacent to the surrounding boundaries of the County of San Diego Multiple Species Conservation Program (MSCP) Subarea Plan (SAP) and CDFW seeks to not have the project result in direct or indirect impacts to conservation objectives of the MSCP, including indirect effects on habitats/species conserved on CDFW's immediately adjacent Rancho Jamul Ecological Reserve (RJER).

PROJECT DESCRIPTION SUMMARY

Proponent: Jamul Indian Village of California (JIV, Tribe)

Objective: The Project consists of the expansion of the existing Jamul Casino, adding a hotel, event center, an additional parking garage, and associated infrastructure. The additions will be located on the Jamul Indian Village of California's existing Reservation. The hotel will contain up to 225 rooms and be developed on the west side of the existing casino. Pedestrian access to the Casino will be provided by a new clear-span bridge over Willow Creek. The parking garage will provide 225 parking spaces and will be located south of the hotel building. An existing modular tribal community center and administration building currently located on the west side of the

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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property will be removed to accommodate the new hotel and parking structure. Infrastructure improvements are planned, including upgrading the existing wastewater treatment plant. Soil nails are proposed to be placed along the southern and northwestern perimeters of the Project site, which would extend below ground level into adjacent properties, including RJER. A four-acre parcel is located directly north of the Casino, and while it is not part of the Reservation, it is owned by the Tribe. Off-Reservation impacts due to the Project include this four-acre parcel, as well as RJER. Project activities on the four-acre parcel may include construction deliveries and temporary construction trailers, a new fire service water line, and the installation of a modular building.

Three Project alternatives were discussed within the TEIR: a no-project alternative; Alternative A (hotel-only alternative), which would be similar to the proposed Project but would lack an expanded event center; and, Alternative B (reduced-hotel alternative), which would consist of a smaller hotel and parking garage, while all other aspects of the proposed Project would remain the same.

Location: The Project site is located in unincorporated San Diego County approximately one mile south of the community of Jamul. The site is located on the Reservation at 14145 Campo Road, Jamul, CA 91935. The Reservation consists of six acres of federal trust land. Regional access to the site is via State Route (SR) 94, and local access to the site is provided via Daisy Drive.

Biological Setting: CDFW's RJER (approximately 5,700 acres) is located adjacent to the Reservation along the southern boundary. Hollenbeck Canyon Wildlife Area (HCWA; approximately 6,100 acres), also owned and managed by CDFW, is located east of the Reservation, on the opposite side of SR 94. Conserved land within the County's MSCP hardline preserve is located adjacent to the northern boundary of the Reservation. Willow Creek, an ephemeral stream, is located on the Reservation and bisects the Project site, and is a tributary to Jamul Creek, which is located off-Reservation.

The TEIR identifies the following vegetation communities and habitat types on or adjacent to the Reservation: ruderal/developed land on most of the Reservation and on the four-acre parcel west of Daisy Drive; annual grassland on adjacent areas north of the Reservation; coast live oak riparian habitat associated with Willow Creek, which runs north-south through the Reservation and extends into off-Reservation lands to the north and south; coastal scrub habitat to the east, south, and west of the Reservation and on the four-acre parcel east of Daisy Drive. Acreages of each of these vegetation communities are not provided.

The TEIR identifies the following special-status wildlife species with a moderate or high potential to occur in the project vicinity: Cooper's hawk (*Accipiter cooperii*; CDFW Watch List (WL)), golden eagle (*Aquila chrysaetos*; California Fully Protected species; WL), yellow warbler (*Dendroica petechia brewsteri*; CDFW Species of Special Concern (SSC)), southwestern willow flycatcher (*Empidonax traillii extimus*; Federal Endangered Species Act (ESA)-listed endangered; CESA-listed endangered), coastal California gnatcatcher (*Polioptila californica californica*; ESA-listed threatened; SSC), least Bell's vireo (*Vireo bellii pusillus*; ESA-listed endangered; CESA-listed endangered), orange-throated whiptail (*Aspidoscelis hyperythra*; WL), coastal whiptail (*Aspidoscelis tigris stejnegeri*; SSC), Baja California coachwhip (*Coluber fuliginosus*; SSC), red-diamond rattlesnake (*Crotalus ruber*; SSC), Blainville's horned lizard (*Phrynosoma blainvillii*; SSC), Coronado skink (*Plestiodon skiltonianus interparietalis*; WL), Dulzura pocket mouse (*Chaetodipus californicus femoralis*; SSC), San Diego black-tailed jackrabbit (*Lepus californicus bennettii*; SSC), and San Diego desert woodrat (*Neotoma lepida intermedia*; SSC).

RJER supports breeding and overwintering pairs of western burrowing owl (*Athene cunicularia*; SSC) and nesting colonies of tricolored blackbird (*Agelaius tricolor*, CESA listed-threatened). Critical habitat for Hermes copper butterfly (*Lycaena hermes*) is located to the south and west of the Reservation.

The TEIR identifies the following special-status plant species with a moderate or high potential to occur in the project vicinity: San Diego sagewort (*Artemisia palmeri*; California Native Plant Society Rare Plant Rank (CRPR) 4.2), Otay tarplant (*Deinandra conjugens* ESA-listed threatened; CESA-listed endangered; CRPR 1B.1), Palmer's goldenbush (*Ericameria palmeri* var. *palmeri*; CRPR 1B.1), Palmer's grappling hook (*Harpagonella palmeri*; CRPR 4.2), Ramona horkelia (*Horkelia truncata*; CRPR 1B.3), decumbent goldenbush (*Isocoma menziesii* var. *decumbens*; CRPR 1B.2), Gander's pitcher sage (*Lepechinia gander*; CRPR 1B.3), Robinson's pepper-grass (*Lepidium virginicum* var. *robinsonii*; CRPR 4.3), felt-leaved monardella (*Monardella hypoleuca* ssp. *lanata*; CRPR 1B.2), and Munz's sage (*Salvia munzii*; CRPR 2B.2).

Regional conservation goals by species and habitat types have been developed for the Metro-Lakeside-Jamul segment of the County MSCP SAP, with preserves and "hardline" areas. Several

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of the species listed above are also designated as covered species under the County's MSCP SAP.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Jamul Indian Village of California in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources

COMMENT #1: Soil Nails

As described in the TEIR, soil nail installation would extend to off-Reservation areas including RJER. In 2014, a subsurface easement was approved between JIV and CDFW to allow for the placement of soil nails in a different area of RJER; however, a new easement, subject to approval by CDFW, will be required for soil nail installation associated with the current Project. Based on discussions between JIV and CDFW staff, it is our understanding that placement of soil nails will not result in any direct impact or loss of surface habitat or wildlife species. We thank JIV for their outreach to CDFW regarding the requisite soil nail easement and look forward to continued coordination with JIV on this issue.

COMMENT #2: Wildlife Crossing

CDFW is concerned about the potential increase in wildlife mortality resulting from a Project-related increase in traffic along SR 94. To that end, CDFW is collaborating with River Partners to create a program which will facilitate the construction of wildlife over-crossings. We acknowledge that the Tribe anticipates funding, design, and construction of a wildlife crossing through the current Tribal-State Compact between the State of California and the Jamul Indian Village of California. We look forward to additional coordination on this matter as funds become available and design aspects of the crossing can be assessed.

COMMENT #3: Environmental Baseline

Impacts to biological resources within the Project, specifically habitat types, are not adequately quantified in the TIER. Without assessments of percent cover and quality of habitat, and quantification of impacts to that habitat, it cannot be determined if impacts are adequately avoided, minimized, or mitigated. A qualified biologist (e.g. expert opinion) should complete surveys of habitat and analyze potential impacts to biological resources before impacts can be concluded (Public Resources Code, § 21082.2 (C)).

CDFW strongly recommends that habitat acreages, quality, and impact assessment be incorporated into the TEIR with a discussion as to the significance of the impacts. We encourage the Tribe to consider compensatory mitigation for habitat types that is in alignment with the County's MSCP SAP for impacts to these habitats cannot be avoided. Measures that describe the mitigation should be included in the Summary of Impacts and Mitigation Measures section of the TEIR.

COMMENT #4: Fuel Modification Zones

Despite the TEIR describing CalFire's assessment of the Project site as located in a Very High Fire Hazard Severity Zone (page 3-92), fuel modification zones are not provided nor assessed in the environmental document. Fire risk in association with the Project is of great concern to CDFW, given the proximity of the Project area to HCWA and RJER. Fire is particularly dangerous to small populations of species who may lose all local viable habitat should such a fire occur. Many such species can be found at the above-mentioned conserved areas (i.e., Quino checkerspot butterfly, coastal California gnatcatcher). It is with threat of fire in proximity to biological resources, including sensitive species and habitats, that CDFW recommends that a detailed brush management plan be developed and that fuel modification zones be defined in the TEIR. The plan should include figures depicting zones to be cleared, as well as allowances for sensitive plant species, should such species be found within the Project area. All brush clearing must be done within the Project area. The State is neither responsible for, nor required to participate in, brush clearing on behalf of the JIV (Government Code, §§ 51175-51189).

COMMENT #5: Hermes Copper Critical Habitat

Per the TEIR, Hermes copper butterfly was not detected during surveys in 2011, 2012, and 2013 in the Project site and vicinity; however, no information is given on survey protocol or timing. Hermes copper is a highly endemic species with a small, vulnerable, localized population. Given that

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significant impacts to the species could occur from very small direct impacts to the species and/or indirect impacts to its habitat, and that the surveys are in some cases more than 10 years old, CDFW recommends that the Tribe conduct new, seasonally appropriate surveys following available protocol. The new survey data should be included and discussed in the TIER.

COMMENT #6: Avian Species

RJER is an important breeding and overwintering site for western burrowing owl. CDFW requests that the TEIR include an assessment of potential off-Reservation impacts to this species. Additionally, tricolored blackbird colonies nest in a nearby pond located on RJER. Disturbance of the colony during the nesting season (mid-March to July) could lead to nest abandonment, especially during early establishment. The TEIR should also include an assessment of potential off-Reservation impacts to tricolored blackbird colonies.

Additionally, CDFW acknowledges that the TEIR includes plans for nesting bird surveys when construction activities occur within 500 feet of off-Reservation lands during the avian nesting season (page 2-19). We request that the survey timing be modified from 10 calendar days prior to the start of construction to three days, to more effectively limit impacts to nesting birds.

COMMENT #7: Lighting and Noise

The TEIR includes measures which restrict construction work to 7:00am to 7:00pm (page 3-34) and direct lighting associated with the new hotel according to the County's "Lighting Pollution" ordinance (page 2-18); however, it is unclear if long-term indirect impacts to wildlife inhabiting surrounding conserved areas could occur due to structure lighting and light arrangements, even with these measures in place. An excess of lighting has potential to impact small mammal species, raptor foraging, and result in greater mortality of wildlife from predators. Additionally, night-time lighting from large sign screens, billboards, and from illumination through windows of hotel rooms can disrupt flight patterns for bats and migratory birds. Therefore, we request the TEIR describe permanent lighting adjacent to native habitat in more detail. Lighting should be of the lowest illumination necessary for human safety, selectively placed, as well as shielded/directed away from adjacent natural habitats. The indirect illumination from hotel or facility walls should also be addressed.

The TEIR also includes measures which reduce construction noise impacts and has measures which will minimize noise in adjacent areas from the established hotel and infrastructure, per the County Noise Ordinance (page 2-23); however, noise impacts to biological resources are not fully analyzed, especially with respect to the completed hotel. Generally, average noise levels above 60 decibels are considered to negatively impact nesting birds and other wildlife. CDFW requests that the long-term indirect, direct, and cumulative impacts of noise on biological resources from the established hotel be addressed in the TIER.

COMMENT #8: Fencing

CDFW requests that the TEIR include a discussion of how the Project design will ensure visiting patrons and employees shall be prevented from straying onto neighboring RJER or impacting Willow Creek. Barriers, such as fences, should be installed and maintained in a manner that does not prevent wildlife from moving through natural migration routes, but also does not allow people to stray onto neighboring properties or riparian habitats. Signage should be installed and maintained by the Tribe.

COMMENT #9: Pre-Construction Surveys

CDFW acknowledges the inclusion of a plan for a pre-construction survey of the four-acre parcel east of Daisy Drive and affected portions of the SR 94 right-of way (page 2-20). However, no timeline for this survey is described. Additionally, CDFW recommends that the pre-construction survey include the entirety of any off-Reservation Project site(s), which would include the portion of the four-acre parcel that is west of Daisy Drive. CDFW recommends that a pre-construction survey occur no more than two weeks prior to the initiation of Project Activities. If construction activities in these areas cease for more than 14 consecutive days, CDFW recommends that another pre-construction survey be conducted.

COMMENT #10: Construction Monitoring

It is highly recommended that a monitoring biologist, reviewed and approved by CDFW, be on site during construction activities to ensure compliance with all conservation measures. The Tribe should submit the biologist's name, contact information, and work schedule to CDFW at least five

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days prior to construction initiation. The biologist's duties should include but not be limited to the following:

- a. oversee installation of and subsequently inspect temporary fencing and erosion control measures within or up-slope of all restoration and/or preservation areas a minimum of once per week and daily during all rain events to ensure that any breaks in the fence, sound barrier, or erosion control devices are repaired immediately;
- b. monitor the work area weekly to ensure that work activities do not generate excessive amounts of dust or noise and to ensure noise is reduced during construction activities;
- c. train all contractors and construction personnel on the biological resources associated with the Project and ensure that training is implemented by construction personnel;
- d. halt work if sensitive species are observed and confer with CDFW to ensure the proper implementation of species and habitat protection measures. The biologist should report any deviation from conservation measures as defined in the TEIR to CDFW within 24 hours of its occurrence;
- e. submit weekly letter reports to CDFW during the clearing of habitat and/or Project construction within 300 feet of protected habitat. The weekly reports should document general compliance with all conditions. The reports should also outline the duration of species monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports should specify numbers, locations, and sex of sensitive species (if present), observed species behavior (especially in relation to construction activities), and remedial measures employed to avoid impacts to sensitive species. Raw field notes should be made available upon request by CDFW; and,
- f. submit a Final report to CDFW within 30 days of the completion of the soil nail installation process that demonstrates general compliance with all conditions was achieved.

COMMENT #11: Best Management Practices

Best management practices are described for construction of the soil nail wall (page 2-20). Similar best management practices should be implemented for other construction activities, including any off-Reservation activities, as well as areas within 300 feet of preserved habitat.

Additionally, CDFW requests that the following Best Management Practices be incorporated into the TEIR:

- a. employees should strictly limit their activities, vehicles, equipment, and construction materials to the fenced project footprint;
- b. to avoid attracting predators of sensitive species, the project site should be kept as clean of debris as possible. All food related trash items should be enclosed in sealed containers and regularly removed from the site; and,
- c. due to the presence of San Diego black-tailed jackrabbit on site or nearby, project personnel should be made aware of Rabbit Hemorrhagic disease, which can cause 70 to 100 percent mortality in members of the rabbit family. CDFW recommends that equipment and work boots be disinfected with a ten percent bleach solution to help prevent the spread of the disease.

COMMENT #12: Lake and Streambed Alteration Agreement

Project activities may have off-site impacts to aquatic features that have a bed, bank, or channel. As a Responsible Agency under CEQA, CDFW has authority over a) activities in streams and/or lakes that will divert or obstruct the natural flow; b) changes in the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; and, c) use of material from a streambed. For any such activities, an entity must provide written notification to CDFW pursuant to Fish and Game Code section 1600 et seq. We acknowledge that measures are in place to limit impacts to Willow Creek, including avoidance measures (page 2-19) and a clear-span bridge (page 2-1). If impacts to Willow Creek do occur, this could lead to off-Reservation impacts. We suggest early coordination to determine if notification to CDFW is appropriate.

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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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The types of information reported to CNDDDB can be found at the following link:
http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 TEIR to assist to assist the Jamul Indian Village of California in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brigid Moran at Brigid.Moran@wildlife.ca.gov.

Sincerely,

DocuSigned by:


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REFERENCES

California Department of Fish and Wildlife. 2020. Lake and Streambed Alteration Program.
<https://wildlife.ca.gov/Conservation/LSA>.

California Department of Fish and Wildlife. Disease and Mortality Monitoring, Rabbit Hemorrhagic Disease. <https://wildlife.ca.gov/Conservation/Laboratories/Wildlife-Health/Monitoring#55671861-rabbit-hemorrhagic-disease>.

California Environmental Quality Act (CEQA). 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.

California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, § 15097, §15126.4(2).