

Comment Letter M



PECHANGA CULTURAL RESOURCES
Temecula Band of Luiseño Mission Indians

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May 20, 2012

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 Anna Hoover

VIA E-MAIL and USPS

Mr. Carl Stiehl
 Project Planner
 County of San Diego DPLU
 5510 Overland Avenue, Ste 110
 San Diego, CA 92123

Re: Pechanga Tribe Comments on the Notice of Availability for the Draft Environmental Impact Report, Tiered Equine Ordinance, POD 11-011, Log No. 3803 11-011, SCH No. 2012011052

Dear Mr. Stiehl:

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. 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 County in developing appropriate avoidance and preservation standards as required per CEQA and as may be required by local ordinance and/or policies. The Tribe understands that as part of this environmental review process, the County believes there are specific barriers impeding its ability to perform complete archaeological surveys and studies on the lands that will be impacted by the future implementing projects anticipated from the proposed amendments to the Tiered Equine Ordinance. However, we are concerned that future development projects will damage or destroy sensitive archaeological, historic and cultural resources, including sacred and ceremonial items and places, as well as likely human burials and cremations. Additional comments and recommendations are provided below.

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M-1
 M-2

Response to Comment Letter M

Pechanga Cultural Resources
Temecula Band of Luiseño Mission Indians
Anna Hoover
May 20, 2012

M-1 The Pechanga Band of Luiseno Mission Indians has been placed on the distribution list for the Proposed Project for public notices pertaining to CEQA documents and public hearings. The comments enclosed in this letter will be included in the public record.

M-2 This comment is introductory in nature and does not raise any specific environmental issues for which a response is required.

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THE CITY OF TEMECULA 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 County of San Diego 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. The Tribe thanks the County for notifying us of this Project and including us in the public review period.

M-3

M-3 The Proposed Zoning Ordinance Amendment would continue to require regulatory measures such as consultation with local Tribal Governments and the Native American Heritage Commission (NAHC) for future equine uses under Tier Three and Tier Four. The County appreciates the willingness of Pechanga Band of Luiseno Mission Indians to work with County staff. The County is willing to consider any additional feasible mitigation measure.

PECHANGA CULTURAL AFFILIATION TO PROJECT AREA

The Pechanga Tribe asserts that there are select lands within the Project area that are part of Luiseño, and therefore the Tribe's, aboriginal territory as evidenced by the existence of Luiseño place names, *tóota yixébal* (rock art, pictographs, petroglyphs), and an extensive Luiseño artifact record in the County. As you may know, our aboriginal lands include portions of North San Diego County and our reservation extends into the County. The Pechanga Band of Luiseño Indians therefore considers these lands to be part of their aboriginal territory because of the Tribe's cultural ties to this area as well as extensive history on projects within the County of San Diego.

M-4

M-4 The County concurs with this comment and acknowledges that the Proposed Project area includes land within the Pechanga Band of Luiseno Mission Indians reservation.

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. Territory descriptions as provided by such notable anthropologists and ethnographers as Sparkman (1908); Kroeber (1925); White (1963); Harvey (1974); Oxendine (1983); Smith and Freers (1994) and others correspond almost identically with that communicated to the Pechanga people by our elders. Additionally, while historic accounts and anthropological and linguistic theories are important in determining traditional Luiseño territory, the most critical sources of information used to define our traditional territories are our songs, creation accounts, and oral traditions.

M-5

M-5 This comment does not raise environmental issues for which a response is required.

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

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Response to Comments

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The Pechanga Tribe has a specific legal and cultural interest in this Project, as lands that are eligible for the recommended zoning permits are located within this aboriginal territory. The Tribe has been named the Most Likely Descendent (Cal. Pub. Res. C. §5097.98) on Projects within their territory and has specific knowledge of cultural resources and sacred places that will be affected by the proposed changes to the Tiered Equine Ordinance. It is vital that the Tribe and other tribal communities (which includes 17 federally-recognized Tribes) located within the County be included in this Project and others like it so that the concerns of the Native American community can be included and addressed early in the planning process.

M-6

The Tribe welcomes the opportunity to meet with the County to further explain and provide documentation concerning our specific cultural affiliation to lands associated with this Project.

M-7

**PROJECT IMPACTS TO CULTURAL RESOURCES
 AND SUGGESTED MITIGATION**

The Tribe has reviewed the Draft Environmental Impact Report (DEIR) for this Project. The stated purpose for proposing the revised ordinance is to clarify, delete, revise "...an updated set of definitions, procedures and standards for review and permitting of equine uses." This ordinance will specifically address commercial horse stables. We understand that if this ordinance should be approved by the Board of Supervisors, landowners who desire to maintain commercial horse facilities on their properties will be required to obtain a Zoning Permit and, based upon which Tier they fall into, will be required to proceed with their development by receiving either a Zoning Verification Permit, an Administrative Permit or a Master Use Permit.

M-8

The Tribe is concerned that the County has determined that there appears to be no feasible mitigation measures applicable for cultural resources on this Project. The Tribe understands that, unfortunately, under CEQA, it is difficult for lead agencies to require archaeological studies and tribal consultation for zone changes, administrative actions and permits – what are considered ministerial actions. The Tribe believes, however, that it is possible to require specific archaeological actions on future projects. Section 2.5 Cultural and Paleontological Resources states: "The proposed project is not subject to the RPO [Resource Protection Ordinance] which has provisions for protection of historic resources, because the RPO does not apply to Zoning Ordinance amendments, ministerial projects, Administrative Permits for clearing, or for Grading Permits (Section 86.603(a))." However, the RPO does apply to Major Use Permits and Modifications and non-exclusionary Site Plans and Administrative Permits. Therefore, compliance with the RPO and other archaeological/cultural requirements and policies of the state and the County can be placed on this Project as mitigation measures. Additionally, we understand that Tier One properties and those landowners who request less than 2,500 CY of earth-movement and import of no more than 200 CY of soils will not be subject to the CEQA process.

M-9

M-10

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M-6 Comment noted. As noted in Response M-1, the Pechanga Band of Luiseno Mission Indians has been placed on the distribution list for the Proposed Project for public notices pertaining to CEQA documents and public hearings.

M-7 The County appreciates the willingness of Pechanga Band of Luiseno Mission Indians to work with County staff.

M-8 This comment does not raise environmental issues for which a response is required. However, for clarification purposes, as stated in Section 1.4.4 of the DEIR, equine uses under Tier One would be allowed without a ministerial or discretionary permit, Tier Two would be allowed with a Zoning Verification Permit, Tier Three would be allowed with an Administrative Permit and Tier Four would be allowed with a Major Use Permit.

M-9 The County does not agree that zone changes and administrative permits are ministerial, as the commenter suggests. They are discretionary actions and would be required to comply with regulatory measures such as tribal consultation. The County agrees with the statement quoted in this comment from Section 2.5 of the DEIR.

M-10 The County concurs with this statement.

Response to Comments

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To assist the County with identification, protection, avoidance and mitigation of known and unknown archaeological, historic and cultural resources, the Tribe requests the inclusion of the following as a mitigation measure for whichever Project Alternative the BOS ultimately approves.

- Applicants that are required to obtain a zoning permit to maintain consistency with the Tiered Equine Ordinance must complete, at a minimum, a full records search by the South Central Information Center (SCIC) through the County for their Parcel(s) when they submit a development application for a future project. Proof of the completed records search must be filed with any application being submitted under the Tiered Equine Ordinance. Based upon the recommendations of the SCIC, the landowner may be required to complete a full archaeological study and conduct consultation with the appropriate tribe(s) if cultural resources are identified within their parcel. If applicable, the County RPO and its requirements will apply. The Development Director and/or County archaeologist may require additional conditions on the future development as applicable based upon the submitted application.

We believe that the cost to the County of such a measure is minimal and the resulting burden placed on the Applicant likewise is minimal. Applicants who have identified cultural resources on their properties will incur additional costs; however, when balanced against the inevitable destruction of cultural resources without such a requirement, the additional costs are justified. Even with minimal costs, our proposed measure offers a feasible mitigation option that will potentially reduce the impacts to cultural resources – certainly more than the complete dearth of measures contained in the current DEIR. Thus, the Tribe does not agree with the DEIR in that there are absolutely no feasible mitigation measures that could be imposed for this Project.

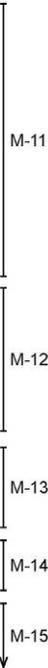
We request that the County consider our suggested language so that there is some minimal protection afforded to the great wealth of cultural sites that may be impacted or destroyed by future developments associated with this Project as proposed. Because this would be a fatal flaw under CEQA, we request that the DEIR be revised and suggest that it may need to be re-circulated for additional public comment.

The Tribe reserves the right to fully participate in the environmental review process, as well as to provide further comment on the Project's impacts to cultural resources and potential mitigation for such impacts.

The Pechanga Tribe looks forward to working together with the County of San Diego 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 so that we might further refine the mitigation language. We understand that the

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M-11 This mitigation measure has been added to the Draft Ordinance for Tier 3 and Tier 4 discretionary zoning permit projects where an Administrative Permit or Major Use Permit is required. However, this is an infeasible mitigation measure for Tier 1 and Tier 2. The project objective of streamlining and simplifying to the process for smaller stables under Tier 1 and Tier 2 would not be met if a records search were required and an archaeological report were required.

M-12 See response to M-11, there would be no cost to Tier 1 and Tier 2 stables as the measure will not apply. Agree, the costs will be minimal under Tier 3 and Tier 4 stables when considering the size and scope of such projects.

M-13 This is not a cause for recirculation. Cultural sites are protected in other ways in the County. This added mitigation measure will provide some additional protections for future large scale projects under Tier 3 or Tier 4.

M-14 Comment noted. This comment does not raise environmental issues for which a response is required.

M-15 The County appreciates the willingness of Pechanga Band of Luiseno Mission Indians to work with County staff.

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County may want to discuss out intent behind the suggested mitigation and we would be happy to discuss any concerns with you. Thank you.

↑M-15
↓Cont.

Sincerely,



Anna Hoover
Cultural Analyst

Cc Pechanga Office of the General Counsel

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