

Comment Letter P

SAN LUIS REY BAND OF MISSION INDIANS

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March 20, 2013

Carl Stiehl
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 Planning & Development Services
 County of San Diego
 5510 Overland Ave., Suite 110
 San Diego, CA 92123

VIA ELECTRONIC MAIL
 Carl.Stiehl@sdcounty.ca.gov

RE: COMMENT LETTER ON DRAFT ENVIRONMENTAL IMPACT
 REPORT FOR THE TIERED EQUINE ORDINANCE (POD 11-011;
 SCH NO. 2012011052)

Dear Mr. Stiehl:

Thank you for the opportunity to submit the following comments regarding the Tiered Equine Ordinance ("Ordinance").

We, the San Luis Rey Band of Mission Indians ("SLR" or "Tribe") are a San Diego County tribe whose traditional territory encompasses the cities of Oceanside, Carlsbad, Vista, San Marcos and Escondido, as well as the unincorporated communities of the County of San Diego ("County") such as Fallbrook and Bonsall. SLR is resolute in the protection and preservation of our cultural resources within our traditional territory.

The Tribe has reviewed the proposed Ordinance and acknowledges the County's primary objectives of streamlining the equine operating permits and creating a tiered permitting process for commercial horse stables. It is important for the County to realize that the Tribe does not oppose the Ordinance in general, but that we are passionately opposed to any plans that may damage or destroy any potentially significant cultural or sacred sites and human remains that may be located within the Ordinances' proposed Area of Potential Effect, which in this case would be hundreds of acres in the unincorporated areas of the County.

The Tribe is extremely concerned that by implementing these "streamlining" and "tiered" processes for commercial equine purposes, that our Native American cultural

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- P-1** This comment is introductory in nature and does not raise an environmental issue for which a response is required.
- P-2** This comment does not raise an environmental issue for which a response is required.
- P-3** This comment does not raise an environmental issue for which a response is required.
- P-4** The County does not agree with this comment. As stated in Section 2.5.4, the Administrative Permit required for Tier Three equine uses and the MUP required for Tier Four equine uses is subject to the County's RPO and further CEQA review. The RPO requires that cultural resources be evaluated as part of the County's discretionary environmental review process and that projects apply the maximum feasible mitigation, as necessary. Therefore, future equine uses under Tier Three and Tier Four would be required to mitigate any significant impact to the greatest extent possible. However, because the analysis is program level and the County cannot determine at this time with certainty that all impacts from future Tier Three and Tier Four equine uses would mitigate all impacts

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resources will be virtually unprotected and therefore not preserved for the future generations knowledge and appreciation. To “loosen” the permitting process at the cost of eliminating evidence of our Native American pre-history is neither rational nor justified. No mitigation measures are being offered by the County to lessen the negative impact that such development may cause. And worse yet is that the ones that were considered were immediately dismissed because requiring any archaeological assessment of the area would be too cumbersome on the applicant and County.

The type of feasibility assessment conducted by the County for this Ordinance, as it relates to the protection and preservation of Native American cultural resources, is in direct conflict with the spirit and intent of the County’s own Resource Protection Ordinance (“RPO”). The RPO’s purpose is to protect our Native American cultural resources because they are precious and their protection and preservation is vital to both tribal and non-tribal communities. By eliminating the need to provide an environmental review prior to the development of large acres of land our resources are in danger of being desecrated and forever destroyed.

It is not infeasible for the County to perform a records check for known archaeological sites when an equine applicant proposes to develop their land. It is not infeasible to require Native American monitors on projects that would qualify under Tier 3 and 4. Administrative Permits and Major Use Permits should require the presence of Native American monitors whenever the project is within a one (1) mile to a five (5) mile radius of a known archaeological site.

It is unacceptable that the impact after mitigation of the Ordinance will be “significant and unavoidable.” It is not unavoidable and should be amended to allow for tribal consultation, the presence of Native American monitors and a preference for avoidance and not destruction. It will be unconscionable of the County to adopt this Ordinance knowing that it has done nothing and will do nothing to protect Native American cultural resources all so it could be easier for landowners to house horses.

IX. CONCLUSION

In conclusion, SLR demands that the County institute mitigation measures that will actually lessen the impact to Native American cultural resources and not simply make the determination that it is infeasible and that negative impact is unavoidable. The County’s prehistory is our history. It is imperative that our histories be protected and preserved. It is important that today’s desires for more easily acquired equine areas does not outweigh the critical importance of protecting and preserving our Native American culture and history.

SLR looks forward to working with the County of San Diego to guarantee that the requirements of CEQA are rigorously applied to this Project and all projects. We thank you for your continuing assistance in protecting our invaluable Luiseño cultural resources and sacred sites.

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to a level less than significant, the conclusion remains significant and unavoidable.

Tier One equine uses, boarding up to three horses not owned by property owner, would be allowed with no ministerial or discretionary permit. Tier Two equine uses would be allowed with a Zoning Verification Permit, which is a ministerial decision. A ministerial decision involves only the use of fixed standards or objective measurements. And once the ministerial permit is issued, there are no on-going or follow-up actions between the County and the applicant. As such, many of the measures that would reduce potential impacts, such as site-specific surveys or on-going monitoring, would not be feasible. However, the Zoning Verification Permit requires the applicant to go through a checklist of clearances for permit approval at the zoning counter. The applicant will be required to provide information such as project location, usable area, and a site plan illustrating the proposed location of and access to the horse stables. Potential impacts to cultural resources would be minimized by the zoning verification process with setbacks and usable area limits required under Tier Two, and the regulations intended to conserve and protect on-site resources for the “H” and “J” historical/archaeological area land use designations. In addition those projects subject to a grading permit under Tier 1 and Tier 2 could have additional CEQA review whereby an archaeological

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Sincerely,



Merri Lopez-Keifer
Tribal Legal Counsel

cc: Mel Vernon, SLR Captain
Carmen Mojado, SLR Secretary of Government Relations and President of
Saving Sacred Sites

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assessment may be necessary as part of a project. It is correct that Tier One and Tier Two equine uses would be allowed without a discretionary permit therefore they would not be subject to the County's RPO. However, mitigation measure MM-CUL-1 would help to reduce impacts to historical resources; refer to Section as stated in Section 2.5.6 of the DEIR. The infeasible mitigation measures provided in Section 2.5.6 of the DEIR were not dismissed because they would be too cumbersome on the applicant of the County; rather, there were deemed infeasible because the County (1) does not have access to all of the potential future sites for development of equine uses, (2) the County does not have the legal right to survey all potential historic sites in the unincorporated area, and (3) surveying or grading monitoring would directly conflict with the streamline permit process (Project Objective 1) because, as stated above, once the ministerial permit is issued there are no on-going or follow-up actions between the County and the applicant. The County is willing to consider any additional feasible mitigation.

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See response to P-4. The County agreed with the RPO's purpose. As stated in Section 2.5.3, Tier Three and Tier Four equine uses are subject to the RPO and "if cultural resources are found to be significant pursuant to the RPO, they must be preserved" (County of San Diego 2007a). The Proposed Zoning Ordinance

	<p>Amendment would not eliminate the need for Tier Three and Tier Four equine uses to comply with RPO.</p> <p>P-6 The County agrees that it is not infeasible to require Native American monitoring for Tier Three and Tier Four projects. Pursuant to existing regulations, Native American monitoring will be required for Tier Three and Tier Four Projects. Section 2.5.2 of the DEIR addresses Section 87.430 of the Grading Ordinance, which provides for the requirement of a paleontological monitor. Section 2.5.2 the DEIR describes the procedures pursuant to Section 15064.5e of the CEQA Guidelines, Section 5097.98 of the Public Resources Code, and Section 87.429 of the Grading Ordinance in the event of the discovery of human remains. The Proposed Zoning Ordinance Amendment would not eliminate the need to provide such monitoring and environmental review for Tier Three and Tier Four equine uses.</p> <p>P-7 The Zoning Ordinance Amendment would not eliminate regulatory measures such as tribal consultation and Native American monitoring. The DEIR includes measures such as these to reduce impacts to cultural resources to the greatest extent possible. Because the analysis is programmatic in nature, it cannot be determined at this time with certainty that all future equine uses would reduce</p>
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	<p>impacts to a level less than significant. Please see Responses P-4, P-5 and P-6 for further details.</p> <p>P-8 The County agrees that is important to protect and preserve cultural resources within the County of San Diego to the greatest extent possible. The DEIR includes a number of regulatory measures that would reduce impacts to cultural resources; please refer to Responses P-4, P-5 and P-6 for further details. The County is willing to consider any additional feasible mitigation.</p> <p>P-9 The County appreciates the willingness of San Luis Rey Band of Mission Indians to work with County staff. The County is willing to consider any additional feasible mitigation.</p>
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