

Letter O7



San Diego County Archaeological Society, Inc.
Environmental Review Committee

27 July 2014

To: Mr. Mark Slovick
Department of Planning and Development Services
County of San Diego
5510 Overland Avenue, Suite 310
San Diego, California 92123

Subject: Revised Draft Environmental Impact Report
Lilac Hills Ranch Project
PDS2012-3800-12-001, PDS2012-3810-12-001, PDS2012-3600-12-003,
PDS2012-3100-5571, PDS2012-3100-5572, PDA2012-3300-12-005,
PDS2012-3500-12-018, Log No. 3910-12-02-003

Dear Mr. Slovick:

I have reviewed the cultural resources portions of the subject Draft Revised EIR on behalf of this committee of the San Diego County Archaeological Society.

Based on the information contained in the Revised DEIR, including its Appendices H-1 and H-2, we have the following comments:

On page S-36, the line above "The letter shall include..." should be removed.

In Table 1-3, on page 1-59 of the Revised DEIR, the last bullet says "...if human remains or artifacts are unearthed..." It should only refer to human remains, as the coroner and Native American Heritage Commission are not notified of the discovery of artifacts.

Regarding site SDI-20436, we appreciate the additional information in the Revised DEIR (M-CR-1, page 2.6-19) that the location recorded as SDI-20436 is very important to the Luiseño people. Given that information, we would urge ceasing orchard operations on the entire site, not just the eastern portion. Given the reported site size of 60 by 65 meters and a tree spacing of 30 feet, the entire area, including that in the proposed open space and assuming a rectangular site area, would only support 47 trees. Removing it from future agricultural use would thus prevent any further impacts to the important site, avoid the costs of the Phase 2 testing program, prevent the loss of both the cultural and scientific values of the site, and also avoid any future and ongoing management issues of that portion of SDI-20436, at the cost of a few dozen trees.

In mitigation measure M-CR-2, the words "or other agreed upon mitigation", have been inserted in a.(6). As an alternative to a research design and data recovery program is proposed to be
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O7-1

O7-2

O7-3

O7-4

O7-5

O7-1 This comment is an introduction to comments that follow. No further response is required.

O7-2 The table is revised in the FEIR to remove the line.

O7-3 FEIR Table 1-3 is revised as suggested.

O7-4 As noted in the cultural resources report (FEIR Appendix H-1), while CA-SDI-20436 as a whole is important archaeologically and culturally, the eastern portion contains a deep and rich cultural deposit, while the western portion (where pre-existing agricultural activity occurs) has limited and localized pockets of cultural material. In response to the comment regarding the importance of site CA-SDI-20436 to the Luiseño people, the applicant has elected to place site CA-SDI-20436 within the designated open space easement, precluding any existing or ongoing agricultural activity in the western portion of the site. The applicant's decision will result in the following revisions to mitigation measure M-CR-1:

M-CR-1: Prior to approval of the first a Final Map, an open space easement shall be dedicated over site CA-SDI-20436. The open space easement shall allow for the continued agricultural use of the western portion of site CA-SDI-20436. The open space easement shall include a requirement for a Phase 2 archaeological testing program for the western portion of CA-SDI-20436 prior to any proposed planting to determine whether there is a subsurface deposit present and to assess CEQA significance. The Phase 2 archaeological testing plan shall be designed and completed by an approved County archaeologist in coordination with the Lilac Hills Ranch grove manager and Luiseño Native American monitor, subject to the approval of the County. The archaeological testing program shall be implemented at the time of planting. The significance of any

	<p>O7-4 (cont.)</p> <hr/> <p>resources encountered during the Phase 2 testing shall be determined by the County approved archaeologist in consultation with the County archaeologist and the Luiseño Native American Monitor. If the Phase 2 testing determines that the western portion of the site does not meet the CEQA significance criteria, then the ongoing agricultural use (i.e., citrus grove with a drip irrigation system) shall be allowed under the open space easement. The open space easement shall also specify that (1) ongoing orchard uses shall limit ground disturbance to tree plantings and orchard maintenance; (2) the interval between tree plantings will have a radius of 30 feet from one another, (3) no additional subsurface irrigation shall be installed and/or implemented throughout the entire archaeological site in perpetuity, and (4) no trails shall be permitted within the site. The eastern portion of s Site CA-SDI-20436 shall remain undisturbed and will be preserved through avoidance and surrounded by natural barriers, as addressed in the Resource Management Plan (Appendix G, Attachment 17).</p> <hr/> <p>If the western portion of site CA-SDI-20436 is determined to contain a CEQA significant deposit, (1) existing agricultural operations shall not expand, and (2) existing agricultural operations shall be limited in a manner to avoid impacts to the resources (e.g., no additional planting, no tree removal, no ground disturbance), as determined appropriate by the County approved archaeologist in consultation with the County archaeologist and the Luiseño Native American Monitor.</p> <hr/> <p>There shall be no public access to this site. Access shall be granted only to the site property owner, agents and/or employees, County of San Diego, Easement Manager, and the Bands of the Luiseño Nation upon request.</p> <hr/> <p>the applicant shall implement the data recovery program prepared by Mary Robbins-Wade (Affinis 2013) for site CA-SDI-20436. The data recovery program shall be implemented prior to the commencement of any grading and/or improvements. All data recovery shall include a Luiseño Native American monitor.</p>
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	<p>O7-4 (cont.)</p> <p>Because the above redline revisions are extensive, mitigation measure M-CR-1 is recommended to read as follows:</p> <p>M-CR-1: Prior to approval of the first Final Map, an open space easement shall be dedicated over site CA-SDI-20436. Site CA-SDI-20436 shall remain undisturbed and will be preserved through avoidance and surrounded by natural barriers, as addressed in the Resource Management Plan (Appendix G, Attachment 17).</p> <p>There shall be no public access to this site. Access shall be granted only to the site property owner, agents and/or employees, County of San Diego, Easement Manager, and the Bands of the Luiseño Nation upon request.</p> <p>The above revisions to mitigation M-CR-1 will be reflected in the FEIR, Executive Summary, Table S-1; subchapter 2.6, Cultural Resources, subchapter 2.6.5, Mitigation; and Confidential Appendix E for Site CA-SDI-20436. The mitigation revision also is intended to be reflected in both the CEQA findings and the County's mitigation monitoring and reporting plan for the project.</p>
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allowed for mitigation for significant cultural resources, mitigation for which is required by CEQA, such measures need to be publicly disclosed. Also, a statement of overriding considerations would be necessary if the recommended mitigation is not to be (or may not be) required.

O7-5
cont.

Also in mitigation measure M-CR-2, in a.(9), we agree with the addition of "or a culturally affiliated Tribal curation facility", though that may require some leeway for the requirement for it to be located in the county, so that the 36 CFR 79 facility at Pechanga could be used. That would make unnecessary the "Or" clause that permits simply turning over the collection to "the appropriate Luiseño tribe", including avoiding any disputes over which tribe is the "appropriate" one. But it also avoids the loss of the scientific information contained in the artifacts and associated records, only a portion of which is captured by the analysis.

O7-6

SDCAS fully supports the respectful treatment and repatriation of any Native American human remains or associated burial material. Other recovered material should be properly curated, as the County has been requiring for nearly 15 years. This honors the cultural values while also providing for preservation of the scientific values for current and future generations of all Californians. And note that that collections are not only of value archaeologically. They can provide important data for important climate change investigations, wildlife studies, and more.

O7-7

Beyond even that, the Register of Professional Archaeologists' Standards of Research Performance (see <http://rpanet.org/displaycommon.cfm?an=1&subarticlenbr=4>) requires that "Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law." And the organization's Code of Conduct (see <http://rpanet.org/displaycommon.cfm?an=1&subarticlenbr=3>) says that "an archaeologist shall...Refuse to comply with any request or demand of an employer or client which conflicts with the Code and Standards". The current provisions of this EIR would require the principal investigator to violate both the RPA Code and Standards. That would, presumably, also be the case for a jurisdiction's archaeologist.

O7-8

Simple changes (putting all of SDI-20436 in open space and requiring curation, potentially at a culturally affiliated tribal curation facility meeting 36 CFR 79) are readily available to resolve the above serious problems in the Revised DEIR. We urge the DEIR to be modified accordingly.

O7-9

Thank you for the opportunity to review and comment upon this project's environmental documents.

Sincerely,


James W. Royle, Jr., Chairperson
Environmental Review Committee

cc: Affinis
SDCAS President
File

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O7-5 In response to the comment concerning mitigation measure M-CR-2, the words "or other agreed upon mitigation" have been deleted from the measure. This change is reflected in the following revised mitigation measure M-CR-2:

M-CR-2: Prior to approval of grading or improvement plans for any phase of the project (on- or off-site) or associated with improvements to the Miller ~~Fire~~ Station site, the applicant shall implement a grading monitoring and data recovery program to mitigate potential impacts to undiscovered buried archaeological resources ~~on the project site,~~ to the satisfaction of the Director of Planning & Development Services. This program shall include, but shall not be limited to, the following actions:

a. Provide evidence to the Department of Planning & Development Services that a County-approved archaeologist has been contracted to implement a grading monitoring and data recovery program to the satisfaction of the Director of Planning & Development Services. ~~A letter from the Principal Investigator shall be submitted to the Director of Planning and Development Services.~~ The letter shall include the following guidelines:

- (1) The project archaeologist shall contract with a Luiseño Native American monitor to be involved with the grading monitoring program as outlined in the County of San Diego Report Format and Content Guidelines (2007d).
- (2) The County-approved ~~certified~~ archaeologist ~~Historian~~ and Luiseño Native American monitor shall attend the pre-grading meeting with the contractors to explain and coordinate the requirements of the monitoring program as outlined in the County of San Diego Report Format and Content Guidelines (2007d).
- (3) The project archaeologist and the Luiseño Native American Monitor shall monitor all areas identified for development including off-site improvements.

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	<p>(4) During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and Luiseño Native American monitor(s) shall be on-site as determined by the pProject aArchaeologist of the excavations. Inspections will vary based on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections will be determined by the pProject aArchaeologist in consultation with the Luiseño Native American monitor. Monitoring of cutting of previously disturbed deposits will be determined by the project archaeologist-Principal Investigator.</p> <p>(5) Isolates and clearly non-significant deposits will be minimally documented in the field and the monitored grading can proceed.</p> <p>(6) In the event that previously unidentified potentially significant cultural resources are discovered, the project archaeologist archaeological monitor(s) and/or the Luiseño Native American Monitor shall have the authority to divert or temporarily halt ground disturbance operations in the area of the discovery to allow evaluation of potentially significant cultural resources. The project archaeologist Principal Investigator shall contact the County Archaeologist at the time of the discovery. The project archaeologist-Principal Investigator, in consultation with the County staff archaeologist and the Luiseño Native American Monitor, shall determine the significance of the discovered resources. The County Archaeologist must concur with the evaluation before construction activities will be allowed to resume in the affected area. For significant cultural resources, a Research Design and Data Recovery Program or other agreed upon mitigation to mitigate impacts shall be prepared by the consulting project archaeologist and approved by the County Archaeologist, then carried out using professional archaeological methods. If the</p>
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	<p>resources is determined to be Native American in origin, the Research Design and Data Recovery Program or other agreed upon mitigation shall be prepared by the consulting archaeologist in coordination with the LuisenoLuiseño Native American Monitor and approved by the County Archaeologist, then carried out using professional archaeological methods that take into account traditional Luiseño beliefs and practices.</p> <p>(79) If any human bones<u>remains</u> are discovered, <u>Health & Safety Code Section 7050.5 and Public Resources Code Section 5097.98 shall be followed. If any human remains are discovered, the project archaeologist</u> Principal Investigator shall halt activities that could potentially disturb the <u>remains and contact the County Coroner.</u> In the event that the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted by the <u>project archaeologist</u> Principal Investigator in order to determine proper treatment and disposition of the remains.</p> <p>(840) Before construction activities are allowed to resume in the affected area, the artifacts shall be recovered and features recorded using professional archaeological methods <u>or, if artifacts are determined to be of Native American origin, alternative mitigation may be applied as agreed upon through consultation with the project archaeologist</u> Principal Investigator, the County Archaeologist, and the Luiseño Native American monitor. The <u>project archaeologist</u> Principal Investigator shall determine the amount of material to be recovered for an adequate artifact sample for analysis.</p>
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	<p>(944) In the event that previously unidentified cultural resources are discovered, all cultural material collected during the grading monitoring program shall be processed and curated at a San Diego facility <i>or a culturally affiliated Tribal curation facility</i> that meets federal standards per 36 CFR Part 79, and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within San Diego County, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid.</p> <p>Or</p> <p>Alternatively, cultural material collected may be repatriated to the appropriate Luiseño tribe. Evidence shall be in the form of a letter from the tribe that archaeological materials have been received.</p> <p>(1042) Monthly status reports shall be submitted to the Director of Planning &and Development Services starting from the date of the notice to proceed to termination of implementation of the grading monitoring program. The reports shall briefly summarize all activities during the period and the status of progress on overall plan implementation. Upon completion of the implementation phase, a final report shall be submitted describing the plan compliance procedures and site conditions before and after construction.</p>
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	<p>(1143) In the event that previously unidentified cultural resources are discovered, a report documenting the field and analysis results and interpreting the artifacts and research data within the research context shall be completed and submitted to the satisfaction of the Director of Planning and Development Services prior to the issuance of any building permits. The report shall include Department of Parks and Recreation Primary and Archaeological Site forms.</p> <p>(1244) In the event that no cultural resources are discovered, a brief letter to that effect shall be sent to the Director of Planning and Development Services by the consulting archaeologist that the grading monitoring activities have been completed.</p> <p>b. Provide evidence to the Director of Public Works that the following notes have been placed on the Grading Plan:</p> <p>(1) The County approved <u>certified</u> archaeologist historian and Luiseño Native American monitor shall attend the pre-construction meeting with the contractors to explain and coordinate the requirements of the monitoring program.</p> <p>(2) The project archaeologist <u>and the Luiseño Native American Monitor</u> shall monitor all areas identified for development including off-site improvements.</p>
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	<p>(3) During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and Luiseño Native American monitor(s) shall be on-site as determined by the <u>project archaeologist</u> Principal Investigator of the excavations. Inspections will vary based on the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The frequency and location of inspections will be determined by the <u>pProject aArchaeologist</u> in consultation with the Luiseño Native American monitor. Monitoring of cutting of previously disturbed deposits will be determined by the Principal Investigator <u>project archaeologist, in consultation with the Luiseño Native American monitor.</u></p> <p>(4) In the event that previously unidentified potentially significant cultural resources are discovered, the archaeological monitor(s) <u>and/or the Luiseño Native American Monitor</u> shall have the authority to divert or temporarily halt ground disturbance operations in the area of the discovery to allow evaluation of potentially significant cultural resources. The Principal Investigator <u>project archaeologist</u> shall contact the County Archaeologist at the time of the discovery. The Principal Investigator <u>project archaeologist</u>, in consultation with the County staff <u>archaeologist and the Luiseño Native American Monitor</u>, shall determine the significance of the discovered resources. The County Archaeologist must concur with the evaluation before construction activities will be allowed to resume in the affected area. For significant cultural resources, a Research Design and Data Recovery Program or other agreed upon mitigation to mitigate impacts shall be prepared by the <u>consulting archaeologist in coordination with the Luiseño Native American Monitor</u> and approved by the County Archaeologist, then carried out using professional archaeological methods <u>that will take into account traditional Luiseño beliefs and practices.</u></p>
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	<p>(5) The archaeological monitor(s) and Luiseño Native American monitor shall monitor all areas identified for development.</p> <p>(6) <u>If any human remains are discovered, Health & Safety Code Section 7050.5 and Public Resources Code Section 5097.98 shall be followed. If any human remains are discovered, the project archaeologist shall halt activities that could potentially disturb the remains and contact the County Coroner. If any human bones are discovered, the Principal Investigator shall contact the County Coroner.</u> In the event that the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted by the Principal Investigator order to determine proper treatment and disposition of the remains.</p> <p>(7) The Principal Investigator shall submit monthly status reports to the Director of Planning &and Development Services starting from the date of the notice to proceed to termination of implementation of the grading monitoring program. The reports shall briefly summarize all activities during the period and the status of progress on overall plan implementation. Upon completion of the implementation phase, a final report shall be submitted describing the plan compliance procedures and site conditions before and after construction.</p> <p>(8) Prior to rough grading inspection sign-off, provide evidence that the field grading monitoring activities have been completed to the satisfaction of the Director of Planning &and Development Services. Evidence shall be in the form of a letter from the Project Investigator.</p>
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	<p>(9) Prior to Final Grading Release, submit to the satisfaction of the Director of Planning &and Development Services, a final report that documents the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program. The report shall also include the following:</p> <p>(a) Department of Parks and Recreation Primary and Archaeological Site forms.</p> <p>(b) Evidence that all cultural material collected during the grading monitoring program has been curated at a San Diego facility <u>or a culturally affiliated Tribal curation facility</u> that meets federal standards per 36 CFR Part 79, and therefore would be professionally curated and made available to other archaeologists/ researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within San Diego County, to be accompanied by payment of the fees necessary for permanent curation. Evidence shall be in the form of a letter from the curation facility identifying that archaeological materials have been received and that all fees have been paid. Alternatively, cultural material collected may <u>will</u> be repatriated to the appropriate Luiseño band(s), per the project's pre-excavation agreement.</p> <p>Or</p> <p>In the event that no cultural resources are discovered, a brief letter to that effect shall be sent to the Director of Planning & Development Services by the Principal Investigator that the grading monitoring activities have been completed.</p> <p>O7-6 While the curatorial facility at Pechanga is outside San Diego County, it is culturally affiliated with this project area and the sites within it. Thus, it may be used pursuant to the mitigation measure M-CR-2. Also see response to comment O7-7.</p>
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	<p>O7-7 The mitigation measures related to the disposition of prehistoric artifacts includes curating artifacts at the San Diego Archaeological Center or at a culturally affiliated Tribal curation center that meets federal standards (36 CFR Part 79). Alternatively, the prehistoric artifacts may be repatriated (returned) to a culturally affiliated Tribe. Historic artifacts may only be curated at a San Diego curation facility and may not be repatriated or curated at a Tribal curation facility. The term “repatriation” as used in the context of the conditions of approval means “to return” all prehistoric artifacts and not just human remains and associated grave goods as required under NAGPRA. CEQA identifies that curation (§15126.4b) may be an appropriate mitigation measure should data recovery be implemented but does not require curation.</p> <p>The concern of the commenter related to the loss of scientific value for current and future generations is addressed through the requirement to provide the cultural studies to a repository for archival purposes. The scientific value is retained through the information provided in the cultural study. Specifically, the study provides detailed information related to the identified artifacts such as artifact type, location, weight, material, features, composition, context, and chronological and cultural placement. This information is provided in the study text, tables, and graphics. In addition, any information provided by the Native American monitor related to the cultural perspective of the affiliated Tribe is also included in the study.</p> <p>According to the Native American community, cultural values are specific to the individual group. As such, it cannot be assumed that curation is the culturally sensitive method for the disposition of prehistoric artifacts. As discussed in this comment, mitigation in the form of repatriation and curation are permitted so that if one method of prehistoric artifact disposition is not available, an alternative is provided. No changes were made to CEQA documentation as a result of this comment.</p>
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	<p>O7-8 The Register of Professional Archaeologists (RPA) does provide standards which research archaeologists should follow. RPA certification is not a requirement for archaeologists who are on the County's CEQA Consultant List or are employed by the County as staff archaeologists. Listed archaeological consultants are the professionals who prepare technical studies. As such, they provide an evaluation of resources and the study is revised with input from County staff. The County's Guidelines for Determining Significance and Report Format and Content Guidelines – Cultural Resources (Guidelines) do include guidance regarding curation. The Guidelines are a guidance document and are not the absolute authority on how a project should be conditioned. Mitigation outside of those identified in the Guidelines may be applied to projects and are typically based on consultations with the Native American community and comments received during public review. The comment does not raise an issue related to the adequacy of the environmental document.</p> <p>O7-9 See responses to comments above.</p>
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