



PECHANGA CULTURAL RESOURCES
Temecula Band of Luiseño Mission Indians

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March 16, 2015

VIA E-MAIL and USPS

Mr. Mark Slovick
Project Planner
County of San Diego
5510 Overland Ave, Ste 310
San Diego, CA 92123

Re: Pechanga Tribe Comments on the Notice of Preparation for the Draft Environmental Impact Report and Request for Formal SB18 Consultation on the Newland Sierra, PDS2015-GPA-15-001, PDS2015-SP-15-001, PDS2015-REZ-15-001, PDS2015-TM-5597, Log #PDS2015-ER-08-001

Dear Mr. Slovick;

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 Notice of Preparation 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") and consulted with per Senate Bill 18. 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 of San Diego in developing appropriate avoidance and preservation standards for the portions of the significant Luiseño village complex and related cultural resources that the Project may impact. The Project area is located within a culturally significant area of Luiseño territory that does contain at least five Luiseño named places, including *Pavxin*, the spring located in the southern portion of the Project. This waterway, and the others on the Property, is directly associated with the previously recorded habitation areas within and adjacent to the Project boundaries.

As we are not aware of a current archaeological study, we cannot provide detailed comments on any new, non-recorded resources located within the Project boundaries other than

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the known named places. Thus, we recommend that the County require an intensive archaeological survey to be completed on the Project with participation by a Luiseño tribal monitor. Further, the Tribe recommends that the final archaeological report include an adequate analysis not only of the Project but of the region as well. This area supported a dense pre-contact population and is an excellent area for a household archaeological study and regional ethnographic analysis. The Tribe also recommends that all cultural and archaeological resources be designed around for avoidance and preservation, as is supported by CEQA.

**THE COUNTY OF SAN DIEGO 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.

**LEAD AGENCY CONSULTATION WITH THE PECHANGA TRIBE REQUIRED
PURSUANT TO CAL. GOVT. C. §§ 65351, 65352, 65352.3, AND 65352.4
(SENATE BILL 18 – TRADITIONAL TRIBAL CULTURAL PLACES LAW)**

As a General Plan Amendment and a Specific Plan will be processed on this Project, the Lead Agency is required to consult with the Pechanga Tribe pursuant to a State law entitled Traditional Tribal Cultural Places (also known as SB 18; Cal. Govt. C. § 65352.3). The purpose of consultation is to identify any Native American sacred places and any geographical areas which could potentially yield sacred places, identify proper means of treatment and management of such places, and to ensure the protection and preservation of such places through agreed upon mitigation (Cal. Govt. C. 65352.3; SB18, Chapter 905, Section 1(4)(b)(3)). Consultation must be government-to-government, meaning directly between the Tribe and the Lead Agency, seeking agreement where feasible (Cal. Govt. C. § 65352.4; SB18, Chapter 905, Section 1(4)(b)(3)). Lastly, any information conveyed to the Lead Agency concerning Native American sacred places shall be confidential in terms of the specific identity, location, character and use of those places

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.

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

and associated features and objects. This information is not subject to public disclosure pursuant the California Public Records Act (Cal. Govt. C. 6254(r)).

The Pechanga Tribe has not received a formal SB18 request notice, to date. Please accept this letter as our request to begin formal consultation with the County as this Project contains sensitive and potentially sacred resources within its boundaries. We look forward to meeting with the County and consulting further.

PECHANGA CULTURAL AFFILIATION TO PROJECT AREA

The Pechanga Tribe asserts that the Project area is part of *Payómkawichum* (Luiseño), and therefore the Tribe's, aboriginal territory as evidenced by the existence of *Payómkawichum* place names (*Pavxin*, *Páanaqri Mašá'kwila*, *'saváava'am* and *Kóomi*), *tóota yixélval* (rock art, pictographs, petroglyphs) and an extensive Luiseño artifact record in this 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 *Payómkawichum* (Luiseño) traditional territory, few have excluded the Project area in their descriptions (Sparkman 1908; Kroeber 1925; White 1963; Harvey 1974; Oxendine 1983; Smith and Freers 1994), and such territory descriptions correspond with what was communicated to the Pechanga people by our elders. While we agree that anthropological and linguistic theories as well as historic accounts 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.

Payómkawichum history originates with the creation of all things at *'éxva Teméeku*, in the present day City of Temecula, and dispersing out to all corners of creation (what is today known as Luiseño territory). 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 contemporary Riverside and San Diego Counties and finally to the hot springs at Elsinore, where he died (DuBois 1908). He was cremated at *'éxva Teméeku*. From Elsinore, the people spread out, establishing villages and marking their territories in the surrounding areas such as Fallbrook, San Marcos, Oceanside, etc. The first people also became the mountains, plants, animals and heavenly bodies.

Many traditions and stories are passed from generation to generation by songs. One of the Luiseño songs 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 *Moníivol*, are songs of the places and landmarks that were destinations of the Luiseño ancestors, several of which are located near the Project area. They describe the exact route of the *Payómkawichum* and the landmarks made by each to claim title to places in their migrations

(DuBois 1908:110). The Native American Heritage Commission (NAHC) Most Likely Descendent (MLD) files substantiate this habitation and migration record from oral tradition. These examples illustrate a direct correlation between the oral tradition and the physical place; proving the importance of songs and stories as a valid source of information outside of the published anthropological data.

Tóota yixélval (rock art) is also an important element in the determination of Luiseño territorial boundaries. *Tóota yixélval* can consist of petroglyphs (incised) elements, or pictographs (painted) elements. The science of archaeology tells us that places can be described through these elements. Riverside and Northern San Diego Counties are home to red-pigmented pictograph panels. Archaeologists have adopted the name for these pictograph-versions, as defined by Ken Hedges of the Museum of Man, as the San Luis Rey style. The San Luis Rey style incorporates elements which include chevrons, zig-zags, dot patterns, sunbursts, handprints, net/chain, anthropomorphic (human-like) and zoomorphic (animal-like) designs. Tribal historians and photographs inform us that some design elements are reminiscent of Luiseño ground paintings. A few of these design elements, particularly the flower motifs, the net/chain and zig-zags, were sometimes depicted in Luiseño basket designs and can be observed in remaining baskets and textiles today.

An additional type of *tóota yixélval*, identified by archaeologists also as rock art or petroglyphs, are cupules. Throughout Luiseño territory, there are certain types of large boulders, taking the shape of mushrooms or waves, which contain numerous small pecked and ground indentations, or cupules. Many of these cupule boulders have been identified within a few miles of the Project. Additionally, according to historian Constance DuBois:

When the people scattered from Ekvo Temeko, Temecula, they were very powerful. When they got to a place, they would sing a song to make water come there, and would call that place theirs; or they would scoop out a hollow in a rock with their hands to have that for their mark as a claim upon the land. The different parties of people had their own marks. For instance, Albañas's ancestors had theirs, and Lucario's people had theirs, and their own songs of Munival to tell how they traveled from Temecula, of the spots where they stopped and about the different places they claimed (1908:158).

Thus, our songs and stories, our indigenous place names, as well as academic works, demonstrate that the Luiseño people who occupied what we know today as the County of San Diego including unincorporated areas, San Marcos and other nearby communities, are ancestors of the present-day *Payómkawichum* people, and as such, Pechanga is culturally affiliated to this geographic area.

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.

PROJECT IMPACTS TO CULTURAL RESOURCES AND TRIBAL INVOLVEMENT

The proposed Project is located in a sensitive region of *Payómkawichum* territory and the Tribe knows that the current development will destroy sensitive and important cultural resources. 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 Pechanga Tribe is not opposed to this Project; however, we are opposed to any impacts this Project may have to tribal cultural resources. 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 *Payómkawichum* 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 requests to participate and partner with the County of San Diego in assuring that an adequate environmental assessment is completed, including all archaeological studies and analysis, and in developing all preservation, avoidance, monitoring and mitigation plans and measures for the duration of the Project. A Project-specific archaeological study should be also completed for this Project with direct participation by a Luiseño Tribe monitor if it has not been done so already.

The CEQA Guidelines state that lead agencies should make provisions for inadvertent discoveries of cultural resources (CEQA Guidelines §15064.5). The Tribe believes that adequate cultural resources assessments and management must always include a component which addresses inadvertent discoveries. Every major State and Federal law dealing with cultural resources includes provisions addressing inadvertent discoveries (See e.g.: CEQA (Cal. Pub. Resources Code §21083.2(i); 14 CCR §15065.5(f)); Section 106 (36 CFR §800.13); NAGPRA (43 CFR §10.4). Moreover, most state and federal agencies have guidelines or provisions for addressing inadvertent discoveries (See e.g.: FHWA, Section 4(f) Regulations - 771.135(g); CALTRANS, Standard Environmental Reference - 5- 10.2 and 5-10.3). Because of the extensive presence of the *Payómkawichum* ancestors within the Project area, it is not unreasonable to expect to find vestiges of that presence. Such cultural resources and artifacts are significant to the Tribe as they are reminders of their ancestors. Moreover, the Tribe is expected to protect and assure that all cultural sites of its ancestors are appropriately treated in a respectful manner. Therefore, as noted previously, it is crucial to adequately address the potential for inadvertent discoveries.

Further, the Pechanga Tribe believes that if human remains are discovered, State law would apply and the mitigation measures for the permit must account for this. According to the California Public Resources Code, § 5097.98, if Native American human remains are discovered,

the Native American Heritage Commission must name a “most likely descendant,” who shall be consulted as to the appropriate disposition of the remains.

RECOMMENDATIONS FOR DEIR ANALYSIS

The Tribe further believes that a DEIR is not complete unless all impacts to cultural resources has been thoroughly vetted and analyzed, especially concerning the auditory and visual impacts, cumulative impacts and the growth-related or long-term impacts that a Project will have to cultural resources. As discussed above, the Project area is likely located within a *Payómkawichum* village complex. The development of the proposed master planned community will directly impact not only the physical resources but the sightlines of these habitations as well, and could potentially obscure the viewsheds of sacred/ceremonial sites. The influx of thousands of people, vehicles, pets, commercial activities and other sources of noise will further affect the natural quietness of the area. Because of the size, complexity and impact the Project will have on the surrounding landscape, visual and auditory impacts to cultural resources should be thoroughly evaluated within the final document, including conducting a viewshed analysis, to determine whether line-of-sight obstructions will impact the sensitive resources in the area. The DEIR should take into account not only any cultural resources that are located within the Project boundaries (including any off-site improvements), but also the village surrounding the Project, regardless whether it exists within an arbitrary one-mile radius, that might be impacted as well.

Cumulative impacts are also a major concern for the Tribe. The destruction of any “individual” cultural resource is detrimental to the whole cultural landscape and serves to further destroy the Tribe’s traditional ancestral places. Unfortunately, most of the traditional ancestral places of the Tribe are on private and public lands which are constantly threatened by development. The Tribe is not anti-development; however, we increasingly struggle with lead agencies to protect and preserve our invaluable resources which continue to be destroyed and impacted on nearly a daily basis. Improper recordation and analysis of features within a larger community or habitation context allows for the piecemealing of sites and which can result in improper eligibility determinations which leads ultimately to damage or destruction. It is important to acknowledge in the Project documentation that these are not renewable resources and thus the impairment or destruction of any site or resource IS a cumulative impact.

Additionally, with the proposed Project, the huge influx of vehicles and will increase air pollution. The smog and other pollutants build up on adjacent boulder outcrops. Very little research has been conducted to determine the effects of air pollutants on boulder outcrops and rock art; however, the Tribe knows that the constant exposure of acidic elements in the air will erode the delicate pigments left on the rocks. This kind of indirect and cumulative impact needs to be addressed in more detail in the final document as there may be significant *tóota yixélval* within or close to the Project. As such, per CEQA the document must address these kinds of impacts to cultural resources.

Finally, the Tribe is concerned about growth-related impacts to this area and their effects on cultural resources. We know that development brings people, and if people are not educated or aware of the importance of cultural resources, the resources will suffer through vandalism, looting, graffiti or destruction. As stated above, there are numerous cultural resources that would be impacted by the proposed master planned community. Based upon the current archaeological methodology, there is a high probability that these sites will to be subjected to site-by-site analysis and not viewed in their proper context. Because the Project's archaeological reports, including all archaeological studies, will be submitted to the South Central Coastal Information Center (SCCIC) – the clearinghouse for such documents and the location archaeologists first go to for information, the Tribe requests that the County of San Diego set a precedent and require that the Project archaeologist address both the sites that will be directly impacted by the development and the regional context in the study in order to assist future archaeologists and developers with awareness, preservation and avoidance.

In addition to those rights granted to the Tribe under SB 18 including participation throughout the entire Project, 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 ahover@pechanga-nsn.gov so we can schedule a meeting and begin consultation. Thank you.

Sincerely,



Anna Hoover
Cultural Analyst

Cc Pechanga Office of the General Counsel