

August 19, 2013

VIA E-MAIL and USPS

Mr. Mark Slovick
Project Planner
County of San Diego
Planning & Development Services
5510 Overland Avenue, Ste 110
San Diego, CA 92123

Re: Pechanga Tribe Comments on the Notice of Availability for a Draft Environmental Impacts Report, Draft Habitat Loss Permit, General Plan Amendment and Specific Plan for the Lilac Hills Ranch Master Planner Community

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. 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, archaeological 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 for the significant Luiseño Village that the Project will be impacting. The Tribe is in general concurrence with the proposed mitigation language as presented in Chapter 2.6; however, we do question why Data Recovery is being proposed for CA-SDI-20436. The DEIR states “...impacts to the site are possible.” It is not clear in the document why this site cannot be placed into dedicated open space, as it is considered a significant site. We would like to review the Project maps with the County to understand this mitigation better as part of our SB 18 Consultation, which is ongoing for this Project as it has not yet been approved. We are also concerned that the proposed trails could impact sites CA-SDI-18362 and CA-SDI-20436 and would like to discuss this with the County.

The Tribe also has suggested clarification revisions to the proposed mitigation measures and would like to discuss M-CR-3 in greater detail.

**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.

Additionally, 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 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 Tribe met with the County September 26, 2012 at their office in San Diego under SB18. Both the Tribe and the County understand that SB18 in an ongoing process that only terminates upon final approvals of the Project or if the Project is terminated. Thus, we request to continue consultation and meet with the County to discuss our comments presented herein.

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

PECHANGA CULTURAL AFFILIATION TO PROJECT AREA

The Pechanga Tribe asserts that the Project area is part of Luiseño, and therefore the Tribe's, aboriginal territory as evidenced by the existence of Luiseño named places, *tóota yixélval* (rock art, pictographs, petroglyphs), a village/habitation within the Project boundaries, and additional villages located within a close proximity to the Project as well as the extensive Luiseño artifact record in this area.

D. L. True, C. W. Meighan, and Harvey Crew³ stated that the California archaeologist is blessed "with the fact that the nineteenth-century Indians of the state were direct descendants of many of the Indians recovered archaeologically, living lives not unlike those of their ancestors." Similarly, the Tribe knows that their ancestors lived in this land and that the Luiseño peoples still live in their traditional lands. While we agree that anthropological and linguistic theories as well as historic accounts are important in determining traditional Luiseño territory, the Pechanga Tribe asserts that the most critical sources of information used to define our traditional territories are our songs, creation accounts and oral traditions. Luiseño history begins with the creation of all things at *'éxva Teméeku* (*EHK-vah Te-MEH-koo*), known today as Temecula, which is located less than 10 miles from the Project. The first people or *Káamalam* (*KAH-mah-lam*) were born at this location and dispersed to all corners of creation (what is today known as Luiseño territory). The last of the *Káamalam* born was *Wuyóot* (*We-YOUGHT*). He was innately gifted with *ayéلكwish* (*ah-YELL-kwish*) or knowledge, and he learned how to make the first food, *tóovish* (*TOH-vish*, white clay), to feed the *Káamalam*. It is said *Wuyóot* gave the people ceremonial songs when he lived at *'éxva Teméeku*.⁴

While the following creation account is a brief summary, it does demonstrate that the Luiseño people have knowledge of and are affiliated with the Lilac Hills Ranch Project area. According to the creation narratives, *Wuyóot* was poisoned at a location less than 2.5 miles from the Project which is identified in the archaeological study as Tom-kav (the more appropriate spelling is *Tómqav*), and in an attempt to be cured, he visited several hot springs within Luiseño territory. The First People followed *Wuyóot* throughout the territory and he named the places as they traveled. Upon *Wuyóot's* death at Lake Elsinore, he was taken to *'éxva Teméeku* and cremated. *Wuyóot's* passing was the first death of the *Káamalam* and they were frightened by the event. A traditional song recounts the travels of eagle, as he searches for a place where there was no death. His travels begin at Temecula, flying north to San Bernardino and then to the east, south, and west through Julian, Cuyamaca, and Palomar, and returning to Temecula.⁵ After a Grand Council of the *Káamalam*, they dispersed from *'éxva Teméeku*, establishing villages and marking their territory, including the area where the Project is located. The first people also

³ D. L. True, C. W. Meighan, and Harvey Crew. Archaeological Investigations at Molpa, San Diego County, California, *University of California Press* 1974 Vol. 11, 1-176

⁴ Constance DuBois 1908. The Religion of the Luiseño Indians of Southern California. *University of California Publications in American Archaeology and Ethnology* 8(3):69-186.

⁵ Ibid.

became the mountains, plants, animals and heavenly bodies. Songs called *Monívol* (*moh-NEE-vull*), speak 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 migration route of the Temecula people and the landmarks made by each to claim title to their places.⁶

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 *tóota yixélval* have been identified within the canyons and landforms surrounding 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).

Although the summary provided above is brief, it is evidence that our songs, stories and named places, which are supported by academic works, landscape analysis, physical remains (archaeological sites) and human remains, demonstrate that the Luiseño people who occupied what we know today as northern San Diego County are ancestors of the present-day Luiseño/Pechanga people, and as such, Pechanga is culturally affiliated to this geographic area.

⁶ Ibid, p.110.

PROJECT IMPACTS TO CULTURAL RESOURCES

The Tribe has reviewed Chapter 2.6 of the DEIR and the archaeological study prepared by Affinis. Based upon these documents and our internal information, there are seven cultural sites and two isolated artifacts within the Project boundaries. Of these, CA-SDI-12551 is not located within the Project area, CA-SDI-18363 has been determined to not be archaeological/cultural in nature and CA-SDI-28468 and -32243 are isolated artifacts. For the remaining four sites, CA-SDI-18362 will be preserved in open space; CA-SDI-18364 and -18365 have been determined to be not significant; and CA-SDI-20436, although determined significant, may be subject to a data recovery program. The Tribe does not understand why this CEQA significant site cannot be avoided, as there is no discussion of the infeasibility of avoidance – avoidance is the preferred alternative under CEQA when sites determined to be significant will suffer impacts. We would like to discuss this further with the County under our on-going SB 18 consultation. At this time though, the Tribe recommends that this site be placed in an open space easement and measures be taken to protect this site from further impacts in perpetuity. If, however, after additional consultation and review the site still cannot be preserved, in addition to the proposed data recovery, the Developer must follow the guidelines defined in PRC §21083.2.

The Tribe is also concerned about potential impacts to the cultural sites with the installation of the trail system. The Ranch Multi-Use Trail identified in Figure 1-4a appears to pass through or very close by sites CA-SDI-18362 and -20436. The Tribe requests to work closely with the County and the Applicant to develop a long-term preservation plan which will assure the protection that these current efforts are striving to attain. Trails not only have the potential to impact resources during their demarcation, but also with trails come people and sensitive resources become attractive to some for desecration and vandalism. The Tribe has worked closely with other jurisdictions to save cultural resources only to see them subject to graffiti or other impacts when the surrounding community is populated. It is vital not only to preserve the resources from development impacts but to also assure their preservation well into the future.

PROJECT MITIGATION MEASURES

The Tribe generally concurs with the proposed mitigation measures in Chapter 2.6 of the DEIR. However, there are measures that blatantly leave out tribal input and participation. The Tribe would also like to discuss M-CR-3 with the County. Therefore, the Tribe asks that the County include the following revised mitigation measures in its environmental assessment documents (underlines are additions; strikeouts are deletions):

M-CR-1: ~~Prior to approval of a Final Map, the applicant shall implement the data recovery program prepared by Mary Robbins Wade (Affinis 2013) for site CASDI 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.~~

The Tribe requests that this measure be temporarily deleted until additional consultation can occur as requested above. Should it be feasible to preserve CA-SDI-20436, a new measure will be crafted discussing preservation and avoidance.

M-CR-2: Prior to approval of grading or improvement plans for any phase of the project, 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 and Development Services. This program shall include, but shall not be limited to, the following actions:

- a. Provide evidence to the Department of Planning and 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 and 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 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.
 - (4) During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and Luiseño Native American monitor(s) shall be onsite ~~as determined by the Project Archaeologist~~ of to observe all 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 Project Archaeologist in consultation with the Luiseño Native American monitor. Monitoring of cutting of previously disturbed deposits will be determined by the Principal Investigator.
 - (5) Isolates and clearly non-significant deposits will be minimally documented in the field and the monitored grading can proceed.
 - (6) In the event that previously unidentified potentially significant cultural resources are discovered, the 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 Principal Investigator shall contact the County Archaeologist at the time of the discovery. The 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 archaeologist and approved by the County Archaeologist and the Luiseño Native American Tribe, then carried out using professional archaeological methods and which will take into account traditional Luiseño beliefs and practices.

Missing Items 7-8

(9) If any human ~~bones~~ remains are discovered, the Principal Investigator shall contact the County Coroner. California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin. Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. In the event that the remains are determined to be of Native American origin, the Native American Heritage Commission must be contacted within 24 hours. The Native American Heritage Commission must then immediately identify the "most likely descendant(s)" of receiving notification of the discovery. The most likely descendant(s) shall then make recommendations within 48 hours, and engage in consultations concerning the treatment of the remains as provided in Public Resources Code 5097.98. 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.

(10) Before construction activities are allowed to resume in the affected area, not including areas where human remains have been identified, the artifacts shall be recovered and features recorded using professional archaeological methods or alternative mitigation will be applied as agreed upon through consultation with the Principal Investigator, the County Archaeologist and the Luiseño Native American Tribe. The Principal Investigator shall determine the amount of material to be recovered for an adequate artifact sample for analysis.

(11) 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 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.

Or

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.

(12) 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.

(13) 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.

(14) 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.

b. Provide evidence to the Director of Public Works that the following notes have been placed on the Grading Plan:

(1) The County certified 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.

(2) The project archaeologist and the Luiseño Native American Monitor shall monitor all areas identified for development including off-site improvements.

(3) During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and Luiseño Native American monitor(s) shall be onsite ~~as determined by the Project Archaeologist~~ to observe all the excavations ground-disturbing activities. 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 Project Archaeologist, in consultation with the Luiseño Native American monitor. Monitoring of cutting of previously disturbed deposits will be determined by the Principal Investigator, in consultation with the Luiseno Native American monitor.

- (4) In the event that previously unidentified potentially significant cultural resources are discovered, the 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 Principal Investigator shall contact the County Archaeologist at the time of the discovery. The 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 archaeologist and approved by the County Archaeologist and the Luiseño Native American Tribe, then carried out using professional archaeological methods and which will take into account traditional Luiseño beliefs and practices.
- (5) The archaeological monitor(s) and Luiseño Native American monitor shall monitor all areas identified for development.
- (6) If any human ~~bones~~ remains are discovered, the Principal Investigator shall contact the County Coroner. California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin. Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. In the event that the remains are determined to be of Native American origin, the Native American Heritage Commission must be contacted within 24 hours. The Native American Heritage Commission must then immediately identify the "most likely descendant(s)" of receiving notification of the discovery. The most likely descendant(s) shall then make recommendations within 48 hours, and engage in consultations concerning the treatment of the remains as provided in Public Resources Code 5097.98. ~~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.~~
- (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.

- (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.
- (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:
 - (a) Department of Parks and Recreation Primary and Archaeological Site forms.
 - (b) Evidence that all cultural material collected during the grading monitoring program has been curated at a San Diego facility 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 will be repatriated to the appropriate Luiseño band(s), per the project's pre-excavation agreement.
Or
 - (c) 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 Principal Investigator that the grading monitoring activities have been completed.

M-CR-3: Prior to approval of off-site improvement plans, if it is determined that trenching for signalization cannot be accommodated within the existing fill layer above native soils within CA-SDI-5072, a capping plan shall be developed and implemented to preserve site deposits beneath the roadway improvements. The capping plan shall be similar to that implemented for construction of I-15 and associated facilities in the area of this site and consist of the following:

- a. Any brushing and grubbing required shall be completed by hand;
- b. The soil cap shall be at least 12 inches thick and shall consist of documented fill soil that is free of any cultural material;
- c. Fill material shall be placed by end-dumping using rubber-tired vehicles prior to any other grading operations;

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- d. All work in the vicinity of CA-SDI-5072 shall be monitored by an archaeologist and a Native American (Luiseño) monitor;
- e. There shall be no storage or staging of equipment or vehicles within the boundaries of the archaeological site, except in areas that are already paved;
- f. There shall be no encroachment into the archaeological site by workers or vehicles except in areas that are already paved or capped.

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. We additionally reserve the right to provide additional proposed mitigation language following our next SB 18 consultation with the County.

The Pechanga Tribe looks forward to working together with the County of San Diego in protecting the invaluable Luiseño 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 can schedule a SB18 meeting. Thank you.

Sincerely,

Anna Hoover
Cultural Analyst

Cc Pechanga Office of the General Counsel
Donna Beddow, Planning & Development Services