

## SAN LUIS REY BAND OF MISSION INDIANS

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June 15, 2015

Beth Ehsan  
Project Manager  
Department of Planning & Development Services  
County of San Diego  
5510 Overland, Ste. 310  
San Diego, CA 92123

**VIA ELECTRONIC MAIL**  
Beth.Ehsan@sdcounty.ca.gov

**RE: COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE VALIANO SPECIFIC PLAN (PDS2013-SP-13-001, PDS2013-GPA-13-001, PDS2013-REZ-13-001, PDS2013-TM-5575, PDS2014-MUP-14-019, PDS2013-STP-13-003, PDS2013-ER-13-08-002)**

Dear Ms. Ehsan:

We, the San Luis Rey Band of Mission Indians (“Tribe”), have received and reviewed the County of San Diego’s (“County’s”) Draft Environmental Impact Report (“DEIR”) and all of its supporting documentation as it pertains specifically to the protection and preservation of Native American cultural resources that may be located within the parameters of the Valiano Specific Plan’s (“Project’s”) property boundaries. While the Tribe acknowledges the County’s commitment to the preservation and protection of our Native American cultural resources, the Tribe believes that with the incorporation of additional measures of mitigation and/or modifications to the existing measures of mitigation for cultural resources as proposed in this comment letter, the Project should be allowed to proceed as proposed.

As you are aware, we are a San Diego County Tribe whose traditional territory includes Camp Pendleton, the current cities of Oceanside, Carlsbad, Vista, San Marcos and Escondido, as well as the unincorporated areas of northern San Diego County, such as the communities of Valley Center, Fallbrook and Bonsall. The Tribe is resolute in the preservation and protection of cultural, archaeological and historical sites within all these jurisdictions.

It is the Tribe’s understanding that the Project proposes a residential development of 326 homes on 238 acres. The site is located in the Eden Valley area within the San Dieguito Community Planning Area of unincorporated San Diego County, between the cities of San Marcos and Escondido (“Project Site/Area”). The Project would include 277 single-family lots and 12 detached condo lots including 49 homes. Up to 54 of the lots could accommodate second dwelling units. Proposed open space lots and easements include 36.5 acres of agricultural open space and 28.2 acres of biological open space, as well as fire clearing zones. Proposed lot sizes range from 5,630 square feet to 1.6 acres. The Project would take access from Eden Valley Lane,

Mount Whitney Road, and Country Club Drive, with emergency access to Hill Valley Drive. In addition, proposed grading is 928,000 cubic yards of balanced cut and fill. The Project would also include public multi-use trails, smaller private trails, public and private parks, and a private equestrian center open to the public. As the County is aware through the DEIR assessment and the multiple consultations with the Tribe via SB 18, this area is of great cultural importance to the Tribe and the Luiseño people.

Although the majority of the Tribe's concerns are addressed within the DEIR to SLR's satisfaction, several concerns still remain for the Tribe that the Tribe would like the County to address.

**I. SLR STRONGLY RECOMMENDS AND REQUESTS THAT ADDITIONAL MEASURES OF MITIGATION BE ADOPTED BY THE COUNTY IN ORDER TO LESSEN ANY ADDITIONAL NEGATIVE IMPACT TO OUR KNOWN NATIVE AMERICAN CULTURAL RESOURCES.**

The Tribe strongly recommends and requests that the current mitigation measures be amended and additional measures of mitigation be adopted by the County in order to lessen any additional negative impact to our known Native American cultural resources.

**A. The Tribe Must Be Consulted If A Significant Cultural Resource And/or Unique Archaeological Resource Is Discovered During Ground Disturbing Activities.**

If a significant cultural resource and/or unique archaeological resource are unearthed during ground disturbing activities for this Project, the Tribe respectfully requests that they or their represented Luiseño Native American monitor be notified and consulted with in regards to the respectful and dignified treatment of those resources. This request currently is incorporated in M-CR-2(b)(5), however it is not incorporated in M-CR-2(a)(8). Specifically, M-CR-2(b)(5) states, "The Principal Investigator in coordination with the Native American monitor(s) shall consult with the County staff archaeologist to determine the significance of the discovered resource." Whereas, M-CR-2(a)(8), does not contain the same language but rather provides that the Principal Investigator's coordinate with the Native American monitor(s) in determining the level of significance of our Native American cultural resources. SLR prefers and recommends that the County incorporate the latter mitigation language as the final mitigation language. Therefore, please amend M-CR-2(a)(8) to be reflect the same language and intent of that which is discussed and expressed in M-CR-2(b)(5).

**B. When Suspected Native American Remains Are Unearthed, Those Remains Should Remain In Situ And Protected Until The Most Likely Descendant Can Be Determined By The Native American Heritage Commission.**

The Tribe acknowledges and supports the language contained within M-CR-2(a)(9) and M-CR-2(b)(7); however, the Tribe requests that in addition to conforming to California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98, any

suspected Native American remains be kept in situ and that a forensic anthropologist perform their examination of the remains on-site in the presence of the Native American monitor(s). Any transportation of the ancestral remains would be considered by SLR to be disrespectful and undignified treatment. Therefore, the Tribe requests that in addition to the strict adherence to the protocol stated in the California Health and Safety Code Section 7050.5 and California Public Resource Code Section 5097.98, the Final EIR reflect that if Native American remains are discovered, the Native American remains shall be kept in situ, or in a secure location in close proximity to where they were found, and that the analysis of the remains occur only on-site in the presence of the Native American monitor(s).

C. Prehistoric And Historic Native American Cultural Resources Need To Be Returned To The Appropriate Tribe For Repatriation Purpose And Not Subject To Curation.

Currently, M-CR-2(a)(11)<sup>1</sup> and M-CR-2(b)(10)<sup>2</sup> state that prehistoric Native American cultural resources that have been collected during the Project may be repatriated to a Native American Tribe of appropriate affiliation. However, historical cultural resources are only to be curated. SLR respectfully requests that all Native American historical cultural resources (those cultural resources which would have been utilized and/or created post-European contact) be allowed to be repatriated to a Native American tribe of appropriate affiliation and not required to be curated at a curation facility. These resources must still be treated with the dignity and respect they deserve and the tribes must be allowed to repatriate them in accordance with their traditions and beliefs.

Moreover, SLR respectfully requests that the language in M-CR-2(a)(11) and M-CR-2(b)(10) be modified and/or amended to be consistent with one another. SLR specifically requests that the following statement be applied in the place of the existing mitigating statements: “Alternatively, the prehistoric and historic Native American cultural material collected may be repatriated to a Native American Tribe of appropriate affiliation, as determined by agreement among the interested tribes, and/or as determined by the Native American Heritage Commission if such cultural materials are deemed burial goods.”

D. Any And All Reports Created For The Benefit Of The County Shall Be Shared With The San Luis Rey Band Of Mission Indians And Any Other Interested Tribe.

M-CR-2(a)(13) and M-CR-2(b)(10) require a report to be created by the Project Archaeologist and submitted to the County regarding the discovery of Native American cultural resources. SLR respectfully requests that such report(s) be made provided to SLR and any other interested tribe(s) for tribal purposes.

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<sup>1</sup> M-CR-2(a)(11) states, “Alternatively, the prehistoric cultural material collected may be repatriated to a Native American Tribe of appropriate affiliation.”

<sup>2</sup> M-CR-2(b)(10) states, “Alternatively, the prehistoric cultural material collected may be repatriated to a Native American Tribe(s) of appropriate affiliation, as determined by agreement among the Tribes, the Principal Investigator, and County staff.”

E. Data Recovery Should Only Be Deemed Appropriate If The Negative Impact To The Cultural Resource(s) Are Not Feasibly Avoidable And/Or They Cannot Be Relocated To Another Location For Their Protection And Preservation.

As a mitigation measure, issuance of a data recovery should only be deemed appropriate if the negative impact to the cultural resource(s) cannot be avoided, they cannot be relocated to another location for their protection and preservation, and/or an appropriate and respectful “capping” of the sacred site cannot occur. Currently, M-CR-2(a)(8) and M-CR-2(b)(5) state that a Research Design and Data Recovery Program shall be prepared to mitigate impacts to significant cultural resources, including but not limited to, unique cultural resources, non-unique cultural resources and Sacred Sites if avoidance measures are not feasible. Within those mitigation measures it further states that,

The Research Design and Data Recovery Program shall include (1) reasonable efforts to preserve (avoidance) unique cultural resources pursuant to CEQA §21083.2(g) or for Sacred Sites as the preferred option (2) the capping of identified Sacred Sites or unique cultural resources and placement of development over the cap, if avoidance is infeasible, and (3) data recovery for non-unique cultural resources.

To make this portion of the aforementioned mitigation measures more clearly reflect when a Research Design and Data Recovery Program should be permitted, SLR proposes the following modifications to M-CR-2(a)(8) and M-CR-2(b)(5): (1) remove the above-quoted language from the mitigation measure; and (2) insert in its place the following:

If the cultural resource is deemed to be significant in accordance with the previously provided mitigation measures and (1) the cultural resource, whether a unique cultural resource, non-unique cultural resource or Sacred Site, cannot be feasibly avoided pursuant to CEQA §21083.2(g) from being negatively impacted, and/or (2) the cultural resource cannot be relocated to another location within the property whereby it will be protected from negative impacts and preserved in perpetuity and/or (3) the cultural resource cannot be “capped” in an appropriate and respectful manner as determined through consultation with the Principal Investigator, Native American monitor(s) and the County Archaeologist, then a Research Design and Data Recovery Program shall be prepared by the Principal Investigator to mitigate those impacts, in coordination with the Native American monitor(s), and approved by the County Archaeologist. Avoidance is the preferred mitigation measure of the County.

SLR is very concerned that without modifying the current language contained within both mitigation measures, a lack of clarity will prevail. Moreover, the Tribe is concerned about any language allowing for development over an area that has been “capped” for cultural resource protection and preservation purposes. Allowing development above a “capped” area must be done on a case by case situation. SLR is opposed to the allowance of development over capped cultural resources if those

resources are of spiritual and/or cultural importance, such as, but not limited to, burials and/or ceremonial sites. Therefore, SLR requests that no language be placed within the mitigation measure allowing for development on areas that have been “capped.” SLR is supportive, however, of the County requiring a data recovery for CEQA non-unique cultural resources if avoidance, resource relocation and/or capping are not feasible options to the resources destruction.

F. Only “Clean Fill” Should Be Utilized During This Project

Lastly, the Tribe is opposed to any undocumented fill being used during the proposed development. In the event the “fill” will be imported into the Project area, the Tribe requests that any proposed use of fill be clean of cultural resources and documented as such. It has been a practice of many in the construction profession to utilize fill materials that contained cultural resources from other “unknown” areas thereby contaminating the potential cultural landscape of the area being filled. This type of fill material is unacceptable. Moreover, if fill material are to be utilized from areas within the Project boundaries, then we ask that that fill be analyzed and confirmed by an archeologist and/or Native American monitor that such fill material does not contain cultural resources. A requirement that fill material be absent of any and all cultural resources should therefore be included as an additional mitigation measure of the Final EIR.

## II. CONCLUSION

The San Luis Rey Band of Mission Indians appreciates this opportunity to provide the County of San Diego with our comments and recommendations on the Valiano Specific Plan. The Tribe hopes the County will adopt the mitigation measures for Cultural Resources as herein requested and that they will appear in the Final EIR. As always, we look forward to working with the County to guarantee that the requirements of the CEQA are rigorously applied to this Project and all projects. We thank you for your continuing assistance in protecting our invaluable Luiseño cultural resources.

Sincerely,



Merri Lopez-Keifer  
Chief Legal Counsel

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