



PECHANGA CULTURAL RESOURCES
Temecula Band of Luiseño Mission Indians

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October 25, 2013

VIA E-MAIL and USPS

Mr. Ron Tippets
OC Public Works/OC Planning Services
300 N. Flower Street,
Santa Ana, CA 92702-4048

Re: Pechanga Tribe Comments on the Notice of Preparation for a Draft Environmental Impact Report for the Preserve at San Juan (PA130026)

Dear Mr. Tippets:

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").

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 in developing appropriate avoidance and preservation standards for the potentially significant Luiseño cultural resources that the Project could impact. The Project area is located within the footprint of a large Luiseño village complex with multiple cultural sites previously recorded immediately adjacent to and in close proximity. Significant sacred and ceremonial resources have also been recorded within less than a mile of the proposed Project. The Tribe believes that, in addition to impacting the known resources, there is a high probability that surface and subsurface cultural resources may be identified during any earthmoving activities. Therefore, the Tribe requests to work with the County and Project developer so that any cultural resources located within the Project boundaries and any off-site improvements can be properly avoided, preserved and as a matter of last resort, mitigated.

Chairperson:
Mary Bear Magee

Vice Chairperson:
Darlene Miranda

Committee Members:
Evie Gerber
Bridgett Barcello Maxwell
Richard B. Scearce, III
Gerraine Arenas

Director:
Gary DuBois

Coordinator:
Paul Macarro

Cultural Analyst:
Anna Hoover

The Tribe is further concerned that the County has not involved the Tribe in the Project, either through CEQA or SB18. We have submitted comments on this Project since 2008 and have been actively involved with the archaeologist and applicant for at least four months. CEQA mandates that Lead Agencies take into account all available information when analyzing environmental documents for projects. The Tribe has specific information about the Project area that will assist not only the Project archaeologist, but the County as well in determining the potential impacts to cultural resources. The County cannot adopt the General Plan Amendment until it completes its state-mandated consultation pursuant to SB 18.

Further, it is vital that any environmental assessments for this project analyze cumulative impacts to cultural resources as a required component of an EIR. This is outlined further below. We also request to receive an official SB18 notice from the County so that we can schedule a face-to-face consultation as soon as possible and begin information sharing.

**THE COUNTY OF ORANGE 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 Orange consult with the Tribe in order to guarantee an adequate knowledge base for an appropriate evaluation of the Project effects, avoidance, 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 will be processed for this Project, the Lead Agency is required to consult with the Pechanga Tribe, whose territory extends into eastern Orange County, 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

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

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 looks forward to receiving our SB18 notification and to begin consultation with the County.

PECHANGA CULTURAL AFFILIATION TO PROJECT AREA

The Pechanga Tribe asserts that the Project area is part of the Tribe's aboriginal territory, as evidenced by the existence of Luiseño place names, rock art, pictographs, petroglyphs, a village complex and an extensive Luiseño artifact record in the vicinity of the Project. The Tribe further asserts that this culturally sensitive area is affiliated specifically with the Pechanga Band of Luiseño Indians because of the Tribe's specific cultural ties to this area. The Tribe considers any resources located on this Project property to be Pechanga cultural resources.

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 Luiseño traditional territory, few have excluded the Project area from their descriptions (Drucker 1937; Heiser and Whipple 1957; Oxendine 1983; White 1963), and such territory descriptions correspond almost identically with what was communicated to the Pechanga people by our elders. While historic accounts, anthropological and linguistic theories 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.

The Lake [Elsinore] and its surrounding environs, including the Project which is located in eastern Orange County, is one location for noteworthy events in Luiseño culture which are related specifically to the people of Temecula or the Pechanga people. For example, it is the place where two of the *Káamalam* (first people), *Qáwqaw* and *Chixéemal*, had their first menses, which is the subject of one of the girls' coming-of-age songs (DuBois 1908). Another song recounts the travels of the people to the Elsinore area 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. They describe the exact route of the Temecula (Pechanga) people and the landmarks made by each to claim title to places in their migrations (DuBois 1908:110). Additionally, Pechanga elders state that the Temecula/Pechanga people had usage/gathering rights in an area extending from Rawson Canyon

on the east, over to Lake Mathews on the northwest, down Temescal Canyon, and back to the Temecula area. The gathering area most likely included resources located within the Santa Ana Mountains/Orange County and the Project.

Additionally, as stated above, the Project is located within the footprint of a known Luiseño village (*Taráxa*). Historic and ethnographic accounts document this village and show that it was an important place to stay overnight when traveling between the coast and the inland areas. Several traveling routes and trails pass through this area including those from Lake Elsinore, Wildomar, Santa Rosa Plateau and more northerly near Glen Ivy in Corona. It may also have been a piñon seed gathering location as piñon, or pine nuts, were an especially important winter staple.

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. 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. *Tóota Yixélval* are also located within a very close proximity to the Project, indicating that ceremonies and sacred gatherings may have occurred here.

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 *tóota yixélval* have been identified within close proximity 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, Alpañás'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).

Waterways were highly important to the Luiseño ancestors. According to our records, there are blue-line streams located on this Project, and there is a watercourse running through the

off-site improvement area. As waterways were so important to aboriginal people, a vast amount of the remaining physical features on the landscape are situated on the banks of the water sources. Our experience also shows that often human remains are buried along waterways and we are highly concerned that there are resources located both on the surface and subsurface that will be impacted by the proposed grading and improvements.

The Tribe welcomes the opportunity to meet with the County to further explain and provide documentation concerning our specific cultural affiliation to lands within this project and your jurisdiction.

PROJECT IMPACTS TO CULTURAL RESOURCES AND TRIBAL INVOLVEMENT

The proposed Project is located in a sensitive region of Luiseño territory and the Tribe believes that the possibility for recovering surface and subsurface resources during ground-disturbing activities is high. 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 surface and subsurface resources in the proposed Project area.

The Pechanga Tribe is not opposed to this Project; however, we are opposed to any direct, indirect and cumulative 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 Luiseño 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 be involved and participate with the County of Orange 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.

The Tribe has participated in a portion of the intensive field survey with the Project archaeologist; however, we understand that a portion of Forest Service land must be surveyed as well. We will continue to work with the archaeologist to assure that the Property is properly evaluated at this stage. Please note that the surface of the Project is very overgrown and contains heavy vegetation. This obscures visibility and makes observation of surface resources very difficult. Therefore, the potential for identifying cultural resources on the surface exists, even though a survey has been conducted. Because of the sensitivity of the area and the lack of visibility, the Tribe recommends that both archaeological monitoring by a qualified archaeologist and a professional Pechanga Tribe monitor be present during all earthmoving activities, including off-site improvements.

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 §15064.5(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 Tribe's 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. Given the Project's location in Pechanga territory, the Pechanga Tribe intends to assert its right pursuant to California law with regard to any remains or items discovered in the course of this Project.

RECOMMENDATIONS FOR DEIR ANALYSIS

The Tribe believes that a DEIR is not complete unless all impacts to cultural resources have been thoroughly vetted and analyzed, especially concerning any auditory and visual impacts, cumulative impacts and the growth-related or long-term impacts that a Project will have. As discussed above, the Project sits within the footprint of a Luiseño village complex which contains numerous individual habitation and activities areas (recorded as individual archaeological sites). The development of the proposed residential units and associated facilities will visually impact these resources directly. The construction of these residences will be a visual impediment to the scenic beauty of this region. Further, an increase of people into this area will affect the natural quietness. Because of the size, complexity and impact the Project will have on the surrounding landscape, visual and auditory impacts to cultural resources must be thoroughly evaluated within the final document. The DEIR should take into account not only any cultural resources that are located within the Project boundaries but those surrounding the Project, regardless whether they exist within an arbitrary archaeological 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 as the destruction of one piece of a complex destroys the integrity of the whole village complex. This type of destruction also 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. While the Tribe is aware that not all sites and cultural resources can be saved during development, it is important to acknowledge in project documentation that these are not renewable resources and thus the impairment or destruction of any site or resource IS a cumulative impact. Just as with historic resources, the continued destruction of prehistoric tribal resources makes those that do remain even more significant and precious to the Tribe as well as to the local community and the State as these resources represent California history too. Thus, the Tribe requests that the County thoroughly evaluate the cumulative effects to cultural resources that this Project could incur within the DEIR and make every effort to preserve and protect those resources within the Project boundaries.

The Tribe is further concerned about growth-related impacts to this area and their effects on cultural resources. 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 recorded physical cultural resources that would be impacted located adjacent to the proposed Project. It is disappointing to work with a Lead Agency and a Developer to preserve resources just to have them tagged or subjected to graffiti, even complete destruction by thoughtless actors. It is therefore important to provide for adequate preservation and, if necessary, develop a preservation plan with the Tribe to ensure any resources that are recovered or preserved are protected. This must be addressed in the DEIR as well.

The Tribe requests to work closely with the County to develop a long-term strategy for better preservation of cultural resources located within the Project. For example, the Tribe has worked on several projects in which prominent rock outcroppings were preserved and avoided during construction activities. However, the Lead Agency did not provide for any long term care and as families and development moved into these areas, the rock outcroppings were subject to graffiti and the *tóota yixélval* was permanently impacted. We request to work together to preserve these resources, should they be identified, by planting native species, engineering walls or fences, developing community watch groups, or other methods that deter vandals as appropriate.

As stated above, there are cultural resources that would be impacted by this Project. Because the Project's archaeological reports, including all archaeological studies, will be

submitted to the South Central Coast Information Center (SCCIC) – the clearinghouse for such documents and the location archaeologists first go to for information, the Tribe requests that the County of Orange set a precedent and require that the Project archaeologist address both Project sites and the regional context in the study in order to assist future archaeologists and developers with awareness, preservation and avoidance.

Finally, the Tribe requests that the impacts to air quality be analyzed in connection to cultural resources. Smog and other pollutants can build up on boulder outcrops and other cultural features. 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 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. We know that resources sensitive to these kinds of exposures are present within and around the Project. As such, the document must address these kinds of impacts.

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 look forward to receiving the official SB 18 Notice from the County so that we can begin discussing our concerns about this Project in a confidential government-to-government setting.

The Pechanga Tribe looks forward to working together with the County of Orange in protecting the invaluable Pechanga cultural resources found in the Project area. Please contact me at 951-770-8113 or at eozdil@pechanga-nsn.gov once you have had a chance to review these comments so that we might schedule a consultation meeting. Thank you.

Sincerely,



Tuba Ebru Ozdil
Planning Specialist

cc: Pechanga Office of the General Counsel