

PLANNING COMMISSION

ADDITIONAL ITEM ADDED AFTER
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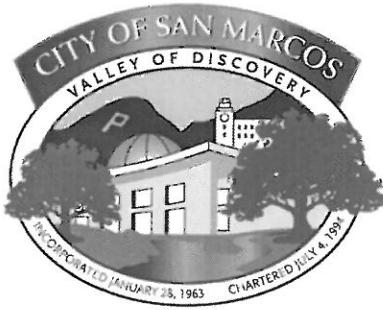
Agenda # 2

High Tech Elementary N.C.

Memo, Errata, Letter

Date 6/3/13

Time 11:40 AM



Memorandum

TO: Planning Commission
FROM: Karen Brindley, Planning Division
DATE: June 3, 2013
SUBJECT: Agenda Item #2, Mitigated Negative Declaration 13-002 Errata Sheet

The City received a comment letter (attached) from the San Luis Rey Band of Mission Indians (SLR) to the Notice of Intent to adopt a Mitigated Negative Declaration (MND) 13-002 for the High Tech High Elementary North County Project on May 31, 2013, which resulted from the initiation of the Tribal Consultation with City staff in accordance with Government Code Section 65352.3. In the letter, SLR requests modification to the Cultural Resources Section V mitigation measures in the draft MND 13-002. The modification to the mitigation measures to reflect these modifications will not change the finding of Section V of MND 13-002, which determined that impacts to archeological, paleontological and human remains are *Potentially Significant Unless Mitigated*. The Final MND will include the following changes to address the modified mitigation measures in MND 13-002 prior to adoption by the City Council. Resolution 13-4351, CUP 13-004, P13-0011, condition 5.xx, serves to broadly address the mitigation measures in the MND Errata Sheet (attached).

Attachments (2): San Luis Rey Band of Mission Indians Letter 5/30/13
MND 13-002 Errata Sheet

SAN LUIS REY BAND OF MISSION INDIANS

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May 30, 2013

Karen Brindley
Associate Planner
Planning Division
City of San Marcos
1Civic Center Drive
San Marcos, CA 92069-2918

VIA ELECTRONIC MAIL
kbrindley@san-marcos.net

**RE: COMMENTS ON THE NOTICE OF INTENT TO ADOPT A MITIGATED
NEGATIVE DECLARATION FOR THE HIGH TECH HIGH
ELEMENTARY NORTH COUNTY PROJECT (GPA 13-002; RZ 13-00;
CUP-13-004; MND 13-002)**

Dear Ms. Brindley:

We, the San Luis Rey Band of Mission Indians (“Tribe” or “SLR Band”), have received and reviewed the City of San Marcos’ (“City’s”) Notice of Intent to Adopt a Mitigated Negative Declaration (“MND”) 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 High Tech High Elementary North County Project’s (“Project’s”) property boundaries. After our review, the Tribe believes that with the incorporation of additional and/or revised measures of mitigation for cultural resources as proposed in this comment letter and discussed in our consultation pursuant to SB18 today, the Project should be allowed to proceed as proposed.

As you are aware, we are a San Diego County Tribe whose traditional territory includes the current cities of Oceanside, Carlsbad, Vista, San Marcos and Escondido, as well as unincorporated areas in northern San Diego County, such as the communities of 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 will consist of two (2) phases of development: Phase 5a, with the erection of temporary buildings and Phase 5, with the construction of a permanent campus consisting of buildings, installation of sewer and water facilities, outdoor recreation areas and parking lots. The Tribe further understands that the Project’s 5.12 acres are

located on the north side of San Marcos Blvd. at the intersection of Discovery Street, north of 1420 W. San Marcos Blvd. (“Project Site”). As the City is aware through extensive consultation, this area within the City’s jurisdiction is of cultural importance to the Tribe and the Luiseño people.

I. THE MITIGATION MEASURES CURRENTLY PROPOSED IN THE MND DO NOT ADEQUATELY ADDRESS THE CONCERNS OF THE SLR BAND AND THEREFORE MUST BE REVISED AND/OR AMENDED IN ORDER TO SATISFACTORILY MINIMIZE THE POTENTIAL NEGATIVE IMPACT THIS PROJECT MAY HAVE UPON OUR CULTURAL RESOURCES

The Tribe has reviewed the associated environmental documents for this Project, including but not limited to the MND and the MND Initial Study Environmental Checklist for Cultural Resources (Section V). Although the some of the Tribe’s concerns are addressed within the MND, many of our concerns are not adequately addressed, specifically the lack of requirement by the City to have a Luiseño Native American monitor and Professional Archaeologist present during this Project’s ground disturbing operations, or the lack of requirement that a pre-excavation agreement be entered into by the Applicant/Owner with a Luiseño tribe. Given these serious concerns, the SLR Band respectfully submits the following revised and/or amended mitigation measures for this Project.

A. Applicant/Owner Shall Enter Into A Pre-Excavation Agreement With The San Luis Rey Band Of Mission Indians Prior To The Issuance Of A Grading Permit.

As the City is aware, a pre-excavation agreement formalizes protocols and procedures between the Applicant/Owner and the SLR Band for the protection and treatment of, including but not limited to, Native American human remains, funerary or burial items, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, located and/or discovered through a monitoring program in conjunction with the construction of the proposed project, including additional archaeological surveys and/or studies, excavations, geotechnical investigations, grading, installation of infrastructure, and all other ground disturbing activities. In essence it provides a road map of sorts for the Applicant/Owner, the Tribe and the Lead Agency on how cultural resource issues will be resolved if discoveries are made or conflicts arise. Therefore, the following language is recommended to replace the two (2) existing mitigation measures proposed in the MND for cultural resources, not paleontological resources.

Proposed Cultural Resource Mitigation Measure 1 (“CR-MM-1”):

Prior to the issuance of a Grading Permit, the Applicant/Owner shall enter into a pre-excavation agreement with the San Luis Rey Band of Mission Indians, the local Luiseño Native American tribe. The purpose of the agreement shall be to formalize protocols and procedures between the Applicant/Owner and the SLR Band for the protection and treatment of, including but not limited to, Native American human remains, funerary or burial items, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, located and/or discovered through a monitoring program in conjunction with the construction of the proposed project,

including additional archaeological surveys and/or studies, excavations, geotechnical investigations, grading, installation of infrastructure, and all other ground disturbing activities.

B. The Presence Of A Luiseño Native American Monitor And Professional Archaeologist Is Justified And Should Be Required As A Mitigation Measure To Protect Against Any Potential Negative Impact Caused By This Project.

As the City and the Tribe have discussed on many different occasions and specifically during our SB 18 for this Project, Luiseño Native American monitors are justified to be present and must be allowed to observe the ground disturbing activities for this project. The Project Area is in a sensitive area for Luiseño cultural resources and as such the training and expertise of our Luiseño Native American monitors is necessary for the protection and preservation of our resources. Therefore, the presence of a Luiseño Native American monitor should be required. The following mitigation measures are respectfully submitted to the City for their immediate incorporation into the Final MND for this Project:

Proposed CR-MM-2:

As part of the Grading Plan Submittals for a Grading Permit, the Applicant/Owner shall provide written and signed verification stating that a Luiseño Native American monitor and a Professional Archaeologist have been retained at the Applicant/Owner's expense to implement the monitoring program, as described in the pre-excavation agreement.

Proposed CR-MM-3:

A Luiseño Native American Monitor and Professional Archaeologist shall attend all applicable preconstruction meetings with the General Contractor and/or associated Subcontractors to present the monitoring program. The Luiseño Native American Monitor and Professional Archaeologist shall be present on-site full-time during all grubbing, grading, trenching and/or any other ground disturbing activities of soils to identify any evidence of potential archaeological and/or cultural resources.

Proposed CR-MM-4:

The Professional Archaeologist or the Luiseño Native American monitor may temporarily halt or divert ground disturbing activities if unknown archaeological artifact deposits or cultural features are discovered. Ground disturbing activities shall be directed away from these deposits to allow a determination of potential importance. Isolates and clearly non-significant deposits will be minimally documented in the field, and before grading proceeds these items shall be provided to the San Luis Rey Band so that they may be repatriated at the site on a later date. If there is a determination that the unearthed artifact deposits or cultural features are considered potentially significant by the Professional Archaeologist and the Luiseño Native American monitor, then the San Luis Rey Band shall be notified and consulted with in regards to the respectful and dignified treatment of those resources. The avoidance and protection of the significant cultural resource and/or unique archaeological resource is the preferable mitigation. If however, avoidance measures are determined to be infeasible and a data recovery plan is authorized by the City as the Lead Agency under CEQA, the San Luis Rey Band shall be notified and consulted regarding the drafting and finalization of any such recovery plan.

C. If Human Remains And/or Burial Goods Are Discovered During This Project, California Health And Safety Code Section 7050.5 And California Public Resources Code Section 5097.98 Must Be Strictly Adhered To And Followed.

If Native American remains and/or associated burial goods are unearthed during the Project, and prior to a Most Likely Descendant being determined by the Native American Heritage Commission, it is the Tribe's request that the ancestral remains be kept *in situ* (in place), or in a secure location in close proximity to their discovery and that a forensic anthropologist perform their analysis of the remains on-site in the presence of a Luiseño Native American monitor. Any transportation of the ancestral remains would be considered by the Tribe as 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 MND 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 a Luiseño Native American monitor. The following mitigation measure is being respectfully submitted to the City for immediate incorporation into the Final MND for this Project:

Proposed CR-MM-5:

As specified in California Health and Safety Code Section 7050.5, if human remains are found on the project site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the County of San Diego Medical Examiner's Office by telephone. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If such discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected, and consultation and treatment could occur as prescribed by law. If Native American remains are discovered, the remains shall be kept in situ, or in a secure location in close proximity to where they were found, and the analysis of the remains shall only occur on-site in the presence of a Luiseño Native American monitor. Once the Medical Examiner identifies the remains to be Native American, he or she shall contact the Native American Heritage Commission ("NAHC") within 24 hours. The NAHC will then determine the Most Likely Descendant of the Native American remains and the protocol set forth in Public Resources Code Section 5097.98 shall occur.

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

Furthermore, the Tribe strongly recommends and requests that additional measures of mitigation be adopted by the City 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 be notified and consulted with in regards to the respectful and dignified treatment of those resources. The Tribe's preference will always be for avoidance and that the resource be protected and preserved in perpetuity. If however, a data recovery plan is authorized by the City as the Lead Agency, the Tribe respectfully requests that as a condition of any authorization, the Tribe be consulted regarding the drafting and finalization of any such recovery.

In addition, when cultural resources are discovered during the Project, if the archaeologist collects such resources, a Luiseño Native American monitor must be present during any testing or cataloging of those resources. Moreover, if the archaeologist does not collect the cultural resources that are unearthed during the ground disturbing activities, the Luiseño Native American monitor, may in their discretion, collect said resources and provide them to the Tribe for respectful and dignified treatment in accordance with the Tribe's cultural and spiritual traditions. It is the Tribe's recommendation that these "uncollected" items be given to the Tribe so that they may be repatriated at the site on a later date. This recommendation would be consistent with the language of the SLR pre-excavation agreement.

B. 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 the fill material is to be utilized from areas within the Project boundaries, then we ask that that fill be analyzed and confirmed by an archeologist and/or Luiseño 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 MND.

III. CONCLUSION

The San Luis Rey Band of Mission Indians appreciates this opportunity to provide the City of San Marcos with our comments and recommendations on the High Tech High Elementary North County Project. The Tribe hopes the City will adopt the mitigation measures for Cultural Resources as herein requested and that they will appear in the Final MND. As always, we look forward to working with the City to guarantee that the requirements of the

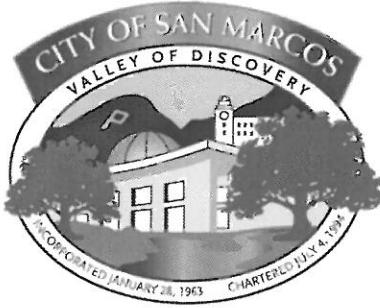
CEQA are rigorously applied to this Project and all projects. We thank you for your continuing assistance in protecting our invaluable Luiseño cultural resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Merri Lopez-Keifer".

Merri Lopez-Keifer
Tribal Legal Counsel

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



MND 13-002 Errata Sheet

High Tech Elementary North County

Delete the following on Pages 7 and 22 of MND 13-002:

- ~~Should cultural resources be encountered during construction of the project, all work in that area shall be halted and a qualified archaeologist shall be summoned and shall have the authority to halt and redirect construction until the significance of the find can be determined. Should the resource be determined significant, a recovery and catalog program shall be implemented.~~
- ~~If buried paleontological resources are discovered during any construction operations associated with future development, all work in that area shall be halted or diverted until a qualified paleontologist can evaluate the nature and significance of the finds.~~
- ~~Should tribal resources be encountered during construction of the project, all work in that area shall be halted and a qualified "Most Likely Descendent" (MLD) of the appropriate Tribe shall be summoned and shall have the authority to halt and redirect construction until the significance of the find can be determined. Should the resource be determined significant, an implementation plan shall be executed between the contractor and the MLD to agree upon the treatment of such Native American resources or human remains to immediately address the treatment of the resources.~~

Add (replace) with the following on Pages 7 and 22 of MND 13-002:

- As part of the Grading Plan Submittals for a Grading Permit, the Applicant/Owner shall provide written and signed verification stating that a Luiseño Native American monitor and a Professional Archaeologist have been retained at the Applicant/Owner's expense to implement the monitoring program, as described in the pre-excavation agreement.
- A Luiseño Native American Monitor and Professional Archaeologist shall attend all applicable preconstruction meetings with the General Contractor and/or associated Subcontractors to present the monitoring program. The Luiseño Native American Monitor and Professional Archaeologist shall be present on-site full-time during all grubbing, grading, trenching and/or any other ground disturbing activities of soils to identify any evidence of potential archaeological and/or cultural resources.
- The Professional Archaeologist or the Luiseño Native American monitor may temporarily halt or divert ground disturbing activities if unknown archaeological artifact deposits or cultural features are discovered. Ground disturbing activities shall be directed away from these deposits to allow a determination of potential importance. Isolates and clearly non-significant deposits will be minimally documented in the field, and before grading proceeds these items shall be provided to the San Luis Rey Band so that they may be repatriated at the site on a later date. If there is a determination that the unearthed artifact deposits or cultural features are considered potentially significant by the Professional Archaeologist and the Luiseño Native American monitor, then the San Luis Rey Band shall be notified and consulted with in regards to the respectful and dignified



treatment of those resources. The avoidance and protection of the significant cultural resource and/or unique archaeological resource is the preferable mitigation. If however, avoidance measures are determined to be infeasible and a data recovery plan is authorized by the City as the Lead Agency under CEQA, the San Luis Rey Band shall be notified and consulted regarding the drafting and finalization of any such recovery plan.

- As specified in California Health and Safety Code Section 7050.5, if human remains are found on the project site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the County of San Diego Medical Examiner's Office by telephone. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If such discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected, and consultation and treatment could occur as prescribed by law. If Native American remains are discovered, the remains shall be kept in situ, or in a secure location in close proximity to where they were found, and the analysis of the remains shall only occur on-site in the presence of a Luiseño Native American monitor. Once the Medical Examiner identifies the remains to be Native American, he or she shall contact the Native American Heritage Commission ("NAHC") within 24 hours. The NAHC will then determine the Most Likely Descendant of the Native American remains and the protocol set forth in Public Resources Code Section 5097.98 shall occur.