

Mulberry Specific Plan

Final Initial Study/Mitigated Negative Declaration



City of San Marcos
May 2014

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1.0 Introduction and Summary

1.0 INTRODUCTION AND SUMMARY

This Final Initial Study and Mitigated Negative Declaration (IS/MND) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 *et seq.*) and the *CEQA Guidelines* (California Administrative Code Section 15000 *et seq.*).

CEQA Guidelines Section 15074(b) and (d) state:

“(b) Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.”

“(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.”

In accordance with this requirement, the Mulberry Specific Plan Project IS/MND is comprised of the following:

- Draft Initial Study and Mitigated Negative Declaration April2014
- This Final IS/MND document, May 2014, that incorporates the information required by §15074 (included in this document); and
- A Mitigation Monitoring and Reporting Program (included in this document).

Format of the Final IS/MND

This document is organized as follows:

Section 1.0 Introduction and Summary

This section describes CEQA requirements and content of this Final IS/MND.

Section 2.0 Corrections and Additions

This section provides a list of those revisions made to the Draft IS/MND text as a result of comments received and/or errors and omissions discovered subsequent to release of the Draft IS/MND for public review.

1.0 Introduction and Summary

Section 3.0 Responses to Comment Letters Received on the Draft IS/MND

This section provides copies of the comment letters received and individual responses to written comments.

Section 4.0 Mitigation Monitoring and Reporting Program

This section provides a program of monitoring or reporting to ensure that the provisions or revisions are complied with during implementation of the project.

2.0 CORRECTIONS AND ADDITIONS

This section contains revisions to information included in the Draft IS/MND (April 2014) based upon additional or revised information required to prepare a response to a specific comment. Please see copies of the letters and responses in Section 3.0, Responses and Comments of this Final IS/MND, as applicable.

2.1 REFINEMENTS TO MITIGATION MEASURES

Based upon comments from the Pechanga Tribe, the following cultural resource mitigation measures were refined. These represent clarifications requested by the Tribe. No mitigation measures were removed. Changes are shown in a strike out/underline format.

MM CR-2 Prior to beginning project construction, the Project Applicant shall retain a San Diego County qualified archaeological monitor to monitor all ground-disturbing activities in an effort to identify any unknown archaeological resources. Any newly discovered cultural resource deposits shall be subject to cultural resources evaluation, which shall include archaeological documentation, analysis and report generation and take into account tribal customs and traditions.

MM-CR-3 At least 30 days prior to beginning project construction, the Project Applicant/Landowner shall enter into a Cultural Resource Treatment and Monitoring Agreement (also known as a pre-excavation agreement) with a *Luiseño* Tribe. The Agreement shall address the treatment of known cultural resources, the designation, responsibilities, and participation of professional Native American Tribal monitors during grading, excavation and ground disturbing activities; project grading and development scheduling; terms of compensation for the monitors; and treatment and final disposition of any cultural resources, sacred sites, and human remains discovered on site.

MM-CR-4 Prior to beginning project construction, the Project Archaeologist shall file a pre-grading report with the City to document the proposed methodology for grading activity observation, which will be determined in consultation with the *contracted Luiseño Tribe referenced in MM-CR-3*. Said methodology shall include the requirement for a qualified archaeological monitor to be present and to have the authority to stop and redirect grading activities. In accordance with the agreement required in MM-CR-3, the archaeological monitor's authority to stop and redirect grading will be exercised in consultation the *Luiseño Native American monitor* in order to evaluate the significance of any archaeological resources discovered on the property. Tribal and archaeological monitors shall be allowed to monitor all grading, excavation, and groundbreaking activities, and shall also have the authority to stop and redirect grading activities. The Luiseño Native American monitor shall be a participant in any pre-construction meetings that address archaeological issues.

2.0 Corrections and Additions

MM-CR-5 The landowner shall relinquish ownership of all cultural resources collected during the grading monitoring program and, if appropriate, from any previous archaeological studies or excavations on the project site to the appropriate Tribe for proper treatment and disposition per the Cultural Resources Treatment and Monitoring Agreement referenced in MM-CR-3. Such treatment may include curation at a facility that meets the criteria contained in 36 C.F.R. Part 79, including those facilities operated and maintained by a Luiseño Tribe, or if requested by the appropriate Tribe, reburial on-site. All cultural materials that are deemed by the Tribe to be associated with burial and/or funerary goods will be repatriated to the Most Likely Descendant as determined by the Native American Heritage Commission per California Public Resources Code Section 5097.98.

In the event that curation of cultural resources is required, curation shall be conducted by an approved facility and the curation shall be guided by California State Historic Resource Commissions Guidelines for the Curation of Archaeological Collections. The City of San Marcos shall provide the developer final curation language and guidance on the project grading plans prior to issuance of the grading permit, if applicable, during project construction.

MM-CR-7 If human remains are encountered, California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the San Diego 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. Suspected Native American remains shall be examined in the field the location of the find shall be kept secure, and kept in a secure location at the site. If the San Diego County Coroner determines the remains to be Native American, the Native American Heritage Commission (NAHC) must be contacted within 24 hours. The NAHC must then immediately notify the "most likely descendant(s)" of the discovery. The most likely descendants(s) shall then make recommendations within 48 hours, and engage in consultation concerning treatment of remains as provided in Public Resources Code 5097.98.

MM-CR-8 If inadvertent discoveries of subsurface archaeological/cultural resources, not including human remains or associated burial goods which is addressed in MM-CR-7, are discovered during grading, the Developer, the project archaeologist, and the Luiseño Tribe under agreement with the landowner described in MM-CR-3 shall assess the significance of such resources and shall meet and confer regarding the mitigation for such resources. Pursuant to California Public Resources Code Section 21083.2(b) avoidance is the preferred method of preservation for archaeological resources. If the Developer, the project archaeologist and the Tribe cannot agree on the significance of mitigation for such resources, these issues will be presented to the Planning Director for decision. The Planning Director shall make a determination based upon the

2.0 Corrections and Additions

provisions of the California Environmental Quality Act with respect to archaeological resources and shall take into account the religious beliefs, customs, and practices of the Tribe. Notwithstanding any other rights available under law, the decision of the Planning Director shall be appealable to the Planning Commission and/or City Council.

MM-CR-9 Fill material brought onto the project site shall be clean of cultural resource material. The fill material shall be analyzed and confirmed by an archaeologist and/or Luiseño Native American monitor.

2.2 REVISED AND SUPPLEMENTAL TEXT

The following table summarizes the changes to the Draft IS/MND. These changes were based upon public comments on the Draft IS/MND, further description of the proposed Armorlite Drive Complete Street Corridor project, which is a component of the proposed project, as well as additional clean up items due to project refinements.

Pages	IS/MND Section	Summary of Change
8	II.B – Project Description	Removed requirement to upsize sewer pipe in Mission Road based upon comments received from Vallecitos Water District. The District indicated that there is adequate capacity in the sewer pipe to serve the project.
10 (Table 1)	II.B – Project Description	Removed requirement to upsize sewer pipe in Mission Road as a design feature for the project. This was changed based upon comments received from Vallecitos Water District. The District indicated that there is adequate capacity in the sewer pipe to serve the project.
35	V.b – Cultural Resources	Summary of SB-18 coordination added to document.
36 and 37	V.b – Cultural Resources	Refinements to cultural resource mitigation measures MM-CR-2, MM-CR-3, MM-CR-4, MM-CR-5, MM-CR-7 and MM-CR-8. These refinements were made based upon comments received from the Pechanga Tribe.
79 and 80	XVI.a – Traffic	Information on Hollandia Dairy and Mission Hills Church traffic and access added to document.
86 and 87	XVII.b – Utilities and Service Systems	Revisions to the analysis on sewer pipeline capacity based upon comments received from Vallecitos Water District.
101-103	IX – Findings	Refinements to cultural resource mitigation measures MM-CR-2, MM-CR-3, MM-CR-5, MM-CR-7 and MM-CR-8. These refinements were made based upon comments received from the Pechanga Tribe.

2.0 Corrections and Additions

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3.0 Response to Written Comments

3.0 RESPONSE TO WRITTEN COMMENTS

Section 3.0 contains responses to all comment letters received on the April 2014 Draft IS/MND. A total of 13 comment letters were received during the comment period, which closed April 28, 2014 (Table 3-1). All comment letters received by April 30, 2014 were included in this response to comment document.

Table 3-1. Comment Letters – Mulberry Specific Plan

Number	Letter Preparer	Date
1	Caltrans	4/28/14
2	Vallecitos Water District	4/10/14
3	San Luis Rey Band	4/28/14
4	Pechanga Cultural Resources	4/25/14
5	Carl Clark	4/30/14
6	Jerry Griswold	4/21/14
7	Ronald Hanshew	4/28/14
8	John Harmon	4/24/14
9	Hernandez Family	4/29/14
10	Wendy Jo	4/23/14
11	Sandra Miller	4/29/14
12	Sean Mott	4/28/14
13	Lisa Roth-Dean	4/29/14

3.0 Response to Written Comments

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3.0 Response to Written Comments

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

DISTRICT 11, DIVISION OF PLANNING
4050 TAYLOR ST, M.S. 240
SAN DIEGO, CA 92110
PHONE (619) 688-6960
FAX (619) 688-4299
TTY 711
www.dot.ca.gov



*Serious drought.
Help save water!*

April 28, 2014

11-SD-78
PM 14.24
Mulberry MND-TIS

Mr. Garth Koller
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Dear Mr. Koller:

The California Department of Transportation (Caltrans) has reviewed the March 2014 Traffic Impact Study (TIS) and the Mitigated Negative Declaration (MND) for the Mulberry Specific Plan project near State Route 78 (SR-78). Caltrans has the following comments:

1-1

The Executive Summary states that the results of the existing conditions roadway segment analysis shows that Rancheros Drive from the SR-78 Westbound Ramps to Woodland Parkway is currently operating at LOS F, and the segment will continue operating at LOS E with the addition of project related traffic to existing traffic volume.

1-2

Please explain how the existing LOS F improves to LOS E with addition of project related traffic. The summary also mentions that volume-to-capacity (v/c) ratio does not exceed the significant impact threshold of 0.020 for daily roadway segment operation. However, roadway analysis was not included in the TIS. For this reason, the 'no significant impact' could not be verified. If Rancheros drive is operating at LOS F, there could potentially be significant impact at the SR-78 westbound ramps.

1-3

The Executive Summary fifth paragraph states that the existing plus cumulative analysis results show that three study intersections are forecast to operate at deficient levels of service (LOS E or F) under existing plus cumulative conditions both without and with the proposed project. It also mentions that the addition of project-related traffic does not result in an increase in delay that exceeds the significance threshold of 2.0 seconds.

However, based on the review of the TIS, the above statement could not be verified. Please provide additional supporting documents and/or back up calculations to show that the addition of project-related traffic does not result in an increase in delay that exceeds the significance threshold of 2.0 seconds.

1-4

Based on HCM Intersection Analysis Worksheets, the SR-78 East at Twin Oaks Valley Road, existing plus cumulative, shows LOS D (Base) and LOS E (Future). However, the "change in"

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to enhance California's economy and livability"*

3.0 Response to Written Comments

Mr. Garth Koller
April 28, 2014
Page 2

is listed as D/V, but this value was not defined anywhere in the document as it relates to V/C. Clarification is needed to confirm that the increase in delay does not exceed the significance threshold of 2.0 seconds.

1-4
Cont.

Please provide intersection turning movements and/or a peak hour summary for both SR-78 East and West Bound Ramps at Twin Oaks Valley Road, so Caltrans can better determine the conclusion that no significant impacts are identified at these study intersection under existing plus cumulative conditions and no mitigation measures are required.

1-5

If you have any questions, please contact Roger Sanchez of the Development Review branch at (619) 688-6494.

Sincerely,



JACOB ARMSTRONG, Branch Chief
Development Review Branch

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

3.0 Response to Written Comments

Letter 1 **Caltrans**

- 1-1 This comment provides introductory remarks and does not raise any specific environmental issues. Therefore no additional response is warranted.
- 1-2 The sentence in the Executive Summary of the Traffic Impact Analysis (TIA) report is incorrect. The LOS on Rancheros Drive is LOS F under Existing Plus Project conditions. Roadway segment analysis was conducted for all scenarios in the TIA, please refer to Table 7, Table 10, and Table 12 in the TIA for the analysis results including changes in the volume-to-capacity (v/c) ratios. The analysis results in these tables show that the addition of project-related trips does not result in a significant impact on Rancheros Drive nor on any other roadway segment.
- 1-3 Tables ES-1 and ES-2 of the TIA, as well as all tables summarizing the intersection HCM analysis results, show that the addition of project-related traffic does not result in a change in delay that exceeds 2.0 seconds at any of the intersections identified as operating at a deficient LOS. The HCM analysis worksheets are provided in Appendix C, and Appendices E through G of the TIA, which verify the AM/PM peak hour delay and LOS at each intersection.
- 1-4 In the Traffix model, the “Base” is existing conditions, which is LOS D at Twin Oaks Valley Road/SR-78 eastbound ramp. The “Future” is existing plus cumulative conditions, which is LOS E at this intersection. The existing plus cumulative conditions does not include project-related traffic, this scenario is only the existing volumes plus traffic from the cumulative projects. The “change in” is the change in delay from existing conditions to existing plus cumulative conditions. D/V refers to delay per vehicle, and we do NOT use this column to calculate change in delay associated with the addition of project trips. The best way to compare the HCM worksheets is by reviewing the individual worksheets for each scenario.

The TIA provides all intersection turning movement volumes and LOS results in the graphics and tables included in the report. Please review Table 9 and Exhibits 15-16 in the TIA for the Existing Plus Cumulative LOS analysis results and peak hour volumes. The TIA concludes that there are no significant impacts identified at the Twin Oaks Valley Road/78 ramp intersections and no mitigation measures are required.

3.0 Response to Written Comments

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APR 15 2014

CITY OF SAN MARCOS
PLANNING DIVISION



201 Vallecitos de Oro • San Marcos, California • 92069-1453 Telephone (760) 744-0460

April 10, 2014

Garth Koller
Principal Planner
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

SUBJECT: VALLECITOS WATER DISTRICT COMMENTS
NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CASE NO.: P13-0055: GPA 13-006, R 13-004, SP 13-004, MFSDP 13-002, TSM 13-003, ND 14-002
VWD: WO #130302, PROJECT #201310055

Mr. Koller:

The District has provided a Final Technical Memorandum Water and Sewer Study to D.R. Horton for the Mulberry Residential project. Based on information provided in your Notice and draft MND, as well as results of the Final Water and Sewer Study, VWD offers the following comments:

2-1

XVII. UTILITIES AND SERVICE SYSTEMS

a) **Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? Less than Significant Impact**

The statement included in the Draft MND is acceptable. The RWQCB sets the Local Limits and constituent levels for the treatment facilities. The Board also issues the treatment permits.

2-2

b) **Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which would cause significant environmental effects. Less than Significant Impact**

The Mulberry Residential project, as proposed, will generate 9,870 gpd of additional wastewater flow over what was planned for in the District's 2008 Master Plan. The additional wastewater flow will have the following impacts to District facilities:

2-3

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FAX numbers by Department: *Administration (760) 744-2738; Engineering (760) 744-3507; Finance (760) 744-5989;*
Meadowlark Water Reclamation Facility (760) 744-2435; Operations/Maintenance (760) 744-5246
e-mail: vwd@vwd.org <http://www.vwd.org>

3.0 Response to Written Comments

Mulberry Residential Development

P13-0055; GPA 13-006, R 13-004, SP 13-004, MFSDP 13-002, TSM 13-003, ND 14-002

Notice of Intent to Adopt MND

April 10, 2014

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- An increase of 9,870 gpd in solids handling, liquids handling and ocean disposal capacity at the Encina Water Pollution Control Facility.
- An increase of 9,870 gpd in the parallel land outfall's capacity.

Without mitigation, the District does not have treatment capacity available for the increased sewage generation. Additionally, without mitigation, the District's sewer conveyance system will not handle the sewer flows generated by the project. Refer to comments in Section e), below.

2-3
Cont.

c) Not applicable to VWD

2-4

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?
Less than Significant Impact

The proposed Mulberry Residential project will increase the water demand by 14,805 gpd above what was projected in the 2008 Master Plan. In order to mitigate the project's impacts to the water supply system and fire flow requirements, the development must provide the following improvements:

2-5

- An increase of 74,025 gallons of potable water storage capacity. Payment of Water Capital Facility Fees per Ordinance No. 175 mitigates the impact to the potable water storage.
- Replacement of 465 feet of existing 6-inch diameter water main with 8-inch diameter pipeline.

e) Result in a determination by the wastewater treatment provider, which serves or may serve the project, that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? Less than Significant Impact

The Mulberry Residential project, as proposed, will generate 9,870 gpd of additional wastewater flow over what was planned for in the District's 2008 Master Plan. The additional wastewater flow will have the following impacts to District facilities:

2-6

- An increase of 9,870 gpd in solids handling, liquids handling and ocean disposal capacity at the Encina Water Pollution Control Facility. Excess treatment capacity does not exist at the facility for projects which increase sewer generation. Mitigation may include, at the District's discretion, construction of additional facilities at Encina or payment of Wastewater Impact Fees per Ordinance No. 177.
- An increase of 9,870 gpd in the parallel land outfall's capacity. Improvements to the Outfall are included in the District's Master Plan. Payment of Wastewater Capital Facility Fees per Ordinance No. 176 mitigates the impact to the outfall.

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3.0 Response to Written Comments

Mulberry Residential Development
P13-0055; GPA 13-006, R 13-004, SP 13-004, MFSDP 13-002, TSM 13-003, ND 14-002
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Approximately 1,583 feet of 8-inch diameter sewer main in Mission Road will be impacted. The upstream drainage basin is essentially built out to allowable land use density. Based on that, for this particular developer and development, construction of new replacement sewer main will not be required as long as there is no additional density increases to the land use in the sewer shed.

2-6
Cont.

Please contact the District if you have any questions.

Sincerely,
VALLECITOS WATER DISTRICT



Eileen Koonce
Engineering Technician III

Cc: Ken Gerdes, Director of Engineering and Operations
James Gumpel, District Engineer

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3.0 Response to Written Comments

Letter 2

Vallecitos Water District

- 2-1 This comment provides opening remarks. This comment does not raise any specific issues related to the environmental document. Therefore no further response is warranted.
- 2-2 This comment states that the conclusion regarding wastewater treatment requirements of the applicable Regional Water Quality Control Board is acceptable. This comment does not raise any additional issues with the environmental document; therefore, no additional response is warranted.
- 2-3 This comment states that project will generate 9,870 gallons per day (gpd) of additional wastewater flow beyond that which was planned in the District's Master Plan. This results in an increase in solids handling as well as additional capacity needs at the parallel land outfall. The IS/MND disclosed this increase in Section 3.17 of the document. The project will pay Wastewater Capital Facility Fees per VWD Ordinance No. 176 and Wastewater Density Impact Fees per VWD Ordinance 177. This requirement was also noted in Table 1 of the Draft IS/MND. These fees will be used by VWD to help fund the expansion and/or construction of wastewater treatment facilities to handle increase wastewater quantities. VWD considers payment of the fees as mitigation for the increase in treatment need. Therefore, impacts are less than significant
- 2-4 This comment addresses threshold "c" under the Utilities and Services Systems analysis section of the IS/MND. It addresses stormwater facilities and is not applicable to VWD, as noted in this comment. This comment does not raise any additional issues with the environmental document; therefore no additional response is warranted.
- 2-5 This comment states that the project increases the water demand by 14,805 gpd above what was projected in the District's 2008 Master Plan. The comment identifies specific improvements and fee payments that are required to offset this increase in demand. The IS/MND disclosed this increase in Section 3.17 of the document and also identified the necessary improvements. As noted in Table 1 of the IS/MND, the project will upsize approximately 465 feet of 6-inch diameter pipe in Mulberry Drive to an 8-inch diameter pipe. Additionally, the project will pay Water Capital Facility Fees per VWD Ordinance No. 175. This requirement is also noted in Table 1. These fees will be used by VWD to expand water storage facilities, as needed, within their service area. VWD considers payment of the Water Capital Facility Fees as mitigation for the increase in water storage demand. Therefore, impacts are less than significant.
- 2-6 Please see response 2-3. The project will pay the fees identified in this comment (Wastewater Impact Fees and Capital Facility Fees). Additionally, the IS/MND has been revised to remove reference to the need to upsize the 8-inch sewer main in Mission Road, as stated in this comment.

3.0 Response to Written Comments

SAN LUIS REY BAND OF MISSION INDIANS

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April 28, 2014

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VIA ELECTRONIC MAIL
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**RE: COMMENTS ON THE NOTICE OF INTENT TO ADOPT THE
MULBERRY SPECIFIC PLAN INITIAL STUDY AND DRAFT
MITIGATED NEGATIVE DECLARATION (P13-0055, GPA 13-006,
R 13-004, MFSDP 13-002, TSM 13-003, ND 14-002)**

Dear Mr. Koller:

We, the San Luis Rey Band of Mission Indians (“Tribe” or “SLR”) thank you for the opportunity to submit the following comments regarding D.R. Horton’s Mulberry Specific Plan and Draft Mitigated Negative Declaration (“MND”) hereinafter referred to as the Mulberry Drive Project (“Project”). The Project proposes to construct a residential condominium project of 126 residential units with a mix of attached and detached style residences. Recreational components include a pool, restroom building, BBQs, tot lot, benches and a meandering paseo. The Project Location is located on the west side of Mulberry Drive within the City of San Marcos’ (“City’s”) jurisdiction.

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

3-1

The Tribe has met with representatives of the City of San Marcos (“City”) on several occasions, pursuant to Senate Bill 18¹ (“SB 18”) (California Government Code Section

¹ Pursuant to SB 18, conversations and/or discussion are to remain confidential between the government agency and the tribal government. The discussions held and information relayed by the SLR Tribal Representatives to the designated City Representatives regarding the locations of sacred sites, religious beliefs and practices, habitation practices and/or specific locations of concern for the Tribe are therefore confidential. These locations must be kept confidential to protect and preserve them for our future

Mulberry Specific Plan Initial Study/Mitigated Negative Declaration

City of San Marcos

San Luis Rey Band of Mission Indians Comment Letter

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3.0 Response to Written Comments

65352.3) to discuss our concerns about developing in this area and our expressed urgings of caution in allowing earth disturbing activities to take place without the presence of a Luiseño Native American monitor. The intent behind SB 18 is for local governments to work with tribal governments to preserve and/or to mitigate the impacts to cultural places. In each of the Tribe's confidential meetings with the City, the Tribe discussed the spiritual and historical importance of the Project Location and clearly expressed that any approvals of the project must include the incorporation of a Native American monitor to adequately reduce the potential negative impacts to our Native American cultural resources that this project may have. Yet, our Tribe's participation in this vital and necessary exchange of knowledge is absent in your environmental document. It is imperative that the record of our Tribe's SB 18 consultation be memorialized.

3-1
Cont.

It is important for the City to understand that the Tribe does not oppose the proposed development and/or improvements contemplated within the General Plan Amendment, Specific Plan and MND generally; however, we *are* passionately opposed to any plans that may damage or destroy any potentially significant cultural or sacred sites and human remains that may be located within the Project's proposed location. After the Tribe's review of the aforementioned documents, the Tribe believes that a majority² of the proposed mitigation measures will lessen the negative impact this Project may have on our Native American cultural resources. Additional mitigation measures for cultural resources, however, are necessary and justified to be in compliance with the California Environmental Quality Act ("CEQA"). Without the incorporation of these additional measures of mitigation for cultural resources, as detailed below, the Tribe firmly believes that the potential significant impacts associated with the construction and development of the Project will NOT have been completely mitigated to reduce or eliminate the significant or potentially significant effects to our sacred cultural resources.

I. THE LUISEÑO NATIVE AMERICAN MONITOR MUST BE PRESENT AT ALL PROJECT PRECONSTRUCTION MEETINGS.

Although the Tribe appreciates the City's requirement that a Luiseño Native American monitor be present during all ground disturbing activities, it has been the Tribe's experience that in order for the Luiseño Native American monitor to be the most effective in protecting our precious resources, they must first have the opportunity to discuss the project's activities at the preconstruction meeting. Just as it is essential for the Luiseño Native American monitor to be present during actual ground disturbing activities, it is also crucial for the Luiseño Native American monitor to be present at all preconstruction meetings. The Luiseño Native American monitor must be permitted to consult with relevant contractors concerning excavation schedules and safety issues, as well as consult with the archaeologist, concerning the proposed archaeological techniques and/or strategies for the Project. Therefore, an additional mitigation measure and/or prerequisite requirement to the City issuing the necessary permits for the Project, shall be

3-2

generations. Therefore, this comment letter will not provide the same detailed information regarding our ancestors' resources as were contained within the SB 18 consultation.

² MM-CR-1, MM-CR-3-8 are satisfactory to the Tribe.

Mulberry Specific Plan Initial Study/Mitigated Negative Declaration

City of San Marcos

San Luis Rey Band of Mission Indians Comment Letter

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3.0 Response to Written Comments

requiring that a Luiseño Native American monitor be present during the Project's preconstruction meeting.

3-2
Cont.

II. IF UNIQUE ARCHAEOLOGICAL RESOURCES AND/OR SACRED SITES ARE INADVERTENTLY DISCOVERED DURING GROUND DISTURBING ACTIVITIES, THEN AVOIDANCE IS THE PREFERRED MITIGATION MEASURE BY THE TRIBE AND A RE-DESIGN OF THE PROJECT SHOULD BE SERIOUSLY CONSIDERED AND WEIGHED BY THE CITY AND APPLICANT AS A VIABLE ALTERNATIVE.

Many times when a unique archaeological resource or sacred site is discovered inadvertently during ground disturbing activities, the lead agency and/or contracted archaeologist's first response and solution is to initiate a data recovery plan. A data recovery plan should not be the first and preferred mitigation measure. Instead, avoidance of the sacred resource should be the primary mitigation measure contemplated by the City and the Applicant. As such, re-design of the Project then should be seriously considered and weighed by the City and the applicant as a viable alternative to the proposed Project. Avoidance as a primary mitigation measure is supported by CEQA, the Native American Heritage Commission and the Luiseño community. Therefore, the Tribe respectfully requests that the MND reflect the City's commitment to protecting unique archaeological resources and/or sacred sites through avoidance and project re-design when feasible. The Tribe acknowledges Mitigation Measure CR-8 and the City's statements regarding California Public Resources Code Section 21083.2(b); however, it is critical to the protection and preservation of our cultural resources that the City fully supports the implementation of avoidance as the City's preferred method of preservation.

3-3

III. 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.

3-4

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

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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.

3-4
Cont.

IV. LASTLY, ONLY “CLEAN FILL” SHOULD BE UTILIZED DURING THIS PROJECT

The Tribe is opposed to any undocumented fill being used during the proposed development of 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 of the Project Site, 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.

3-5

V. CONCLUSION

In conclusion, the San Luis Rey Band of Mission Indians appreciates this opportunity to provide the City of San Marcos with our comments on the Mulberry Specific Plan Initial Study/Draft Mitigated Negative Declaration. The Tribe respectfully requests that the City adopt the additional 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 MND.

3-6

Sincerely,



Merri Lopez-Keifer
Tribal Legal Counsel

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

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Letter 3 **San Luis Rey Band**

3-1 This comment provides opening remarks and also notes that the San Luis Rey Band has met with the City for SB-18 consultation. A brief summary of the SB-18 consultation has been included on page 35 of the Final IS/MND. The City appreciates the input of the San Luis Rey Band and all Tribes in the process.

This comment also states that the Tribe is not opposed to the project but that the protection of cultural resources is important. The San Luis Rey Band requests that additional mitigation measures be added to the CEQA document to ensure that potential impacts to cultural resources can be reduced to below a level of significance. These recommend measures are further detailed in subsequent comments.

3-2 Based upon this comment, mitigation measures MM-CR-4 has been revised to note that a Luiseño Native American monitor shall be a participant in any pre-construction meetings that address archaeological issues. The revised mitigation measures (with changes in an underline format) is provided below:

MM-CR-4 Prior to beginning project construction, the Project Archaeologist shall file a pre-grading report with the City to document the proposed methodology for grading activity observation, which will be determined in consultation with the *contracted Luiseño Tribe referenced in MM-CR-3*. Said methodology shall include the requirement for a qualified archaeological monitor to be present and to have the authority to stop and redirect grading activities. In accordance with the agreement required in MM-CR-3, the archaeological monitor's authority to stop and redirect grading will be exercised in consultation the *Luiseño Native American monitor* in order to evaluate the significance of any archaeological resources discovered on the property. Tribal and archaeological monitors shall be allowed to monitor all grading, excavation, and groundbreaking activities, and shall also have the authority to stop and redirect grading activities. The Luiseño Native American monitor shall be a participant in any pre-construction meetings that address archaeological issues.

3-3 The City is committed to protection unique archaeological resources and/or sacred sites through avoidance and project re-design when feasible. The Tribe acknowledges Mitigation Measure CR-8 and the City's statements regarding California Public Resources Code Section 21083.2(b); however, it is critical to the protection and preservation of our cultural resources that the City fully supports the implementation of avoidance as the City's preferred method of preservation.

3-4 The project includes a mitigation requirement for both an archaeological and Luiseno monitor during project construction. Thus if significant or unique resources are identified on site, a Luiseño Native American monitor would be present.

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3-5 Based upon this request, mitigation measures MM-CR-9 has been added to the CEQA document. The mitigation measure is as follows:

MM-CR-9 Fill material brought onto the project site shall be clean of cultural resource material. The fill material shall be analyzed and confirmed by an archaeologist and/or Luiseño Native American monitor.

3-6 This comment provides closing remarks. The City appreciates the Tribe's comments on this project.

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PECHANGA CULTURAL RESOURCES Temecula Band of Luiseño Mission Indians

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April 25 2014

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Committee Members:
Evie Gerber
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Richard B. Segaree, III
Germaine Arenas

Director:
Gary DuBois

Coordinator:
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Cultural Analyst:
Anna Hoover

VIA E-MAIL and USPS

Mr. Garth Koller
Principal Planner
City of San Marcos Planning
1 Civic Center Drive
San Marcos, CA 92069-2918

Re: Pechanga Tribe Comments on the Notice for Public Hearing and Initial Study/Mitigated Negative Declaration for the Mulberry Drive Project, P13-0055, GPA 13-006, R 13-004, MFSDP 13-02, TSM 13-003, ND 14-002

Dear Mr. Koller:

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.

4-1

The Tribe thanks the City of San Marcos and the Developer for providing mitigation to preserve and protect the sensitive Luiseño cultural resources and traditional landscapes found in this area, which are associated with a village complex and to require both archaeological and Luiseño tribal monitoring during earthmoving activities. The State and Federal governments have mandated that cultural resources must be appropriately mitigated for within the confines of development projects. The Tribe appreciates the active role the City is taking to maintain the significant history of the Tribe and California.

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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 place names, *tóota yixéval* (rock art, pictographs, petroglyphs), traditional landscapes, cultural areas and an extensive Luiseño artifact record in the vicinity of the Project.

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. Many anthropologists and historians have presented boundaries of the Luiseño traditional territory and few have excluded the San Marcos area from their descriptions (Kroeber 1925; White 1963; Smith and Freers 1994), and such territory descriptions correspond almost identically with that communicated to the Pechanga people by our elders. While historic accounts and anthropological and linguistic theories 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.

Luiseño 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 first human *Wuyóot* lived and taught the *Káamalam* (the original 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 at Elsinore, where he died (DuBois 1908). He was cremated at 'éxva Teméeku. It is the Luiseño creation account that connects Elsinore to Temecula, and thus to the Temecula people who were evicted and moved to the Pechanga Reservation, and now known as the Pechanga Band of Luiseño Mission Indians (the Pechanga Tribe). From Elsinore, the people spread out, establishing villages and marking their territories, including areas such as San Marcos, Carlsbad, Escondido, etc. The first people also became the mountains, plants, animals and heavenly bodies.

4-2

Many of the Tribe's traditions and stories are passed from generation to generation through our 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 *Káamalam/Moniivol*, 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 Temecula (Pechanga) people 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.

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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 San Marcos are ancestors of the present-day Luiseño/Pechanga people, and as such, Pechanga is culturally affiliated to this geographic area.

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

4-2
Cont.

REQUESTED TRIBAL INVOLVEMENT AND MITIGATION

The Pechanga Band 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

4-3

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