

**SAN LUIS REY BAND OF MISSION INDIANS**

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June 12, 2015

Van Lynch  
Planning Department  
City of Carlsbad  
1635 Faraday  
Carlsbad, CA 92008

**VIA ELECTRONIC MAIL**  
Van.Lynch@carlsbadca.gov

**RE: SLR CONCERNS REGARDING THE AGUA HEDIONDA SOUTH SHORE SPECIFIC PLAN FOR 85% OPEN SPACE AND 15% RETAIL (AH-SP) INITIATIVE AND THE IMMINENT THREAT TO LUISEÑO CULTURAL RESOURCES AND POTENTIAL ANCESTRAL BURIALS**

Dear Mr. Lynch:

The ballot initiative process has become a cornerstone of California politics. At issue with the Agua Hedionda South Shore Specific Plan for 85% Open Space and 15% Retail (AH-SP) Initiative (“initiative”) is the preservation and development of land surrounding Agua Hedionda. Agua Hedionda is sacred to the San Luis Rey Band of Mission Indians (“SLR” or “Tribe”) and the Luiseño people. For thousands of years our ancestors lived, worked, and worshiped in and around this sacred water source.

The land being discussed within the initiative is pristine coastal land. Besides the past cultural and agricultural uses, the land is as our ancestors left it. The life sources remain intact – water, fish life, native vegetation – all remain present. The places where our ancestors slept, prepared their food, created their tools, and performed their ceremonies still remain. Agua Hedionda is sacred for what it was and what it remains today to the Luiseño people.

It must first be noted that many of the Tribe’s concerns regarding this initiative could have been resolved and put to rest if the initiative’s authors would have involved the Tribe in their assessment and planning process. The Tribe would have, and is still open to, visited our sacred land with them and shared our concerns. To be afforded the opportunity to share our history, share our experiences in preserving land, and to contribute our knowledge in the respectful placement of walking trails when our sacred cultural resources may be adversely impacted, as this initiative proposes, would have been the preferred method of engagement. But, unlike what would have occurred during

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the California Environmental Quality Act (“CEQA”) process and the City of Carlsbad’s (“City’s”) current practices involving the protection and preservation of Native American cultural resources, we were not granted that opportunity.

SLR understands that the City’s responsibility regarding the initiative is to present its leadership, the City Council, with an impartial and unbiased analysis of the initiative as it relates to current City policies and regulations, as well as if the initiative is consistent with current land use provisions for similar development projects. SLR further understands that the City may either adopt the initiative as it reads, or may submit the initiative to a special election to allow the City’s voters to decide its fate. The Tribe is aware of current California case law as it relates to California initiatives and the inapplicability of CEQA review, as well as that no amendments and/or modifications may occur to the initiative’s language. The Tribe is also aware of the remedies afforded to it, and other members of the public, if the initiative is adopted either by the City or the electorate. Therefore, after long and thoughtful consideration, the Tribe opines that the City should NOT adopt the initiative as it reads and should submit the initiative to the people of Carlsbad to be voted on in accordance with California Elections Code Section 9214.

The reasons why SLR believes the City should not adopt the initiative are based on the following: (1) the initiative lacks any appreciation and/or understanding regarding the protection and preservation of Luiseño Native American cultural resources located within Carlsbad; (2) the initiative’s proposal for “active” use of the open space is counter to current City policies where wildlife and Native American cultural resources are present; and (3) the initiative’s statement of law regarding California Public Resources Code Section 5097.98 is erroneous and should not be adopted.

It is clearly evident that the initiative’s authors consulted with the agricultural stakeholders to resolve their potential concerns regarding their endeavor, and that they enlisted the guidance of professional consultants to assist them in “dealing with” Native American concerns. However, what has been completely absent from the initiative, which would be in direct conflict with current City practices and policies, is inviting the involvement and/or partnership with the Luiseño Native American community on how best to approach the preservation and development of this well-documented sacred land. The initiative’s authors are well aware that their endeavor, while providing more open space to the community and additional economic opportunity, will be devastating to at least two (2) large and densely previously populated Luiseño villages. They have been educated by their consultants that the depths of our cultural resources go beyond the soils impacted by agricultural uses, creating a situation whereby any ground disturbing activities very well could necessarily adversely impact our cultural resources. They have been told that 15 habitation areas, tool processing areas, food processing areas, and ceremonial places are within their initiative’s boundaries. They have been told that many more areas evidencing our ancestor’s existence will be found and will potentially be adversely impacted. Yes, they include “Native American monitoring,” in certain areas and yes, they include a preference for avoidance measures, but they have failed to assess what they will be negatively impacting and they have stood ignorant to the fact that

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Native American monitors need to be everywhere they will be disturbing the earth. These are our cultural resources and we must be allowed to protect them.

The initiative proponents did not ask for Native American involvement during their assessments and therefore ABSOLUTELY no Native American involvement benefited this initiative. If they had, then they truly would have done the work they said they performed – that they identified the presence of absence of significant cultural resources. A review of Appendix E proves that a valid assessment has not occurred on the land encompassing this initiative. Too many questions about the significance levels of our ancestors habitation areas are unknown, yet if the City adopts the initiative (based on the 15% of signatures received for their ballot petition), then the entire City population, native and non-native, will be party to the desecration of this sacred land. The City has evolved from their 1990's written policy on the treatment of Native American cultural resources and this initiative simply does not reflect how the City protects and preserves the Native American cultural resources within their borders today.

Moreover, the initiative's proposal for "active" use of the open space is counter to current City policies where wildlife and Native American cultural resources are present. Of course the Tribe is in favor of a developer providing the City with more open space areas. The Tribe is also in favor of walking trails, for healthier living and bringing people closer to nature purposes. What the Tribe is not in favor of, however, is when trails are within in too close of proximity to our sacred cultural resources. As the City is aware, "pot hunting" and/or "grave robbing" of our ancestors belongings are both a distressing and offensive reality for Native Americans. Therefore, without more information being provided to the City, and Tribe for that matter, regarding the placement of these trails, the Tribe is concerned that the trails contained within the initiative will have damaging and destructive impact on our sacred cultural resources. As the City is aware, but perhaps the initiative proponents are not, our cultural resources are non-renewable resources; once they are destroyed, they are gone for all time and cannot be replaced. Therefore it is essential that the assessment of this land be done correctly and with the partnership of the Luiseño Native American community.

Furthermore, while the Tribe appreciates the initiative's authors attempt to translate the laws involving the discovery of Native American ancestral remains into plain English, they have failed to accurately state the law as it relates to the respectful and dignified treatment of our Native American ancestral remains and burial goods. Hence, due to the fact that the initiative's Environmental Protection Feature ("EFP") CUL-2 misstates the law of California Public Resources Code Section 5097.98, the City should not adopt the initiative as it reads. California Public Resources Code Section 5097.98(a) reads as follows, "...The descendants may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site." Not as the initiative says in EFP CUL-2 (2)(1) that the

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descendant must make their recommendation within 24 hours after being notified by the Native American Heritage Commission. It's imperative that the law and the intent of the law be accurately reflected in the initiative, not only for legal and public policy reasons, but because this land was once heavily and densely occupied by our ancestors. They not only lived, worked and worshiped here, but they also died here. There is an extreme likelihood that with the proposed development that would be created by this initiative that our ancestor's burials will be desecrated and/or disturbed. Therefore, it is crucial that the public and the applicant landowner be given accurate meaning and language of the law as it relates to the respectful and dignified treatment of our ancestor's burials and burial goods.

More troubling to the Tribe, however, is the initiative's lack of appreciation for the laws that the State has carefully created and actively enforced for the protection and respectful treatment of our Native American cultural resources, ancestral burials and burial goods. Unlike a CEQA document, a review of the Specific Plan by City Staff, or Native American Cultural Resources Treatment and Tribal Monitoring Agreement would have accomplished, the initiative lacks any understanding about what the laws of California require of landowners if Native American cultural resources, ancestral remains and/or burial goods are unearthed. For instance, completely lacking in the initiative is any mention that the landowner shall discuss and confer with the Most Likely Descendant of the ancestral remains or burial goods all reasonable options regarding the descendant's preferences for treatment of their ancestor's remains and/or burial goods. This is a basic tenant of Native American law in California. Yet, it is completely absent from the initiative. If the City adopts the initiative as it reads, then the City will be adopting an inaccurate and misleading translation of California law.

The San Luis Rey Band of Mission Indians appreciates the City according to it the opportunity to provide our concerns during your impartial analysis of the Agua Hedionda South Shore Specific Plan for 85% Open Space and 15% Retail (AH-SP) Initiative. We are hopeful that a sound and respectful use of our sacred land will prevail.

Sincerely,



Merri Lopez-Keifer  
Chief Legal Counsel

cc: Mel Vernon, SLR Captain

Carmen Mojado, SLR Secretary of Government Relations

Terrie Robinson, General Counsel for the Native American Heritage Commission

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