

LETTER NO. 14

CALIFORNIA NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814

September 17, 2003

Comment 14-1

The Native American Heritage Commission (NAHC) continues to be contacted by local Native Americans and others concerned about the impacts caused by the West Bluff Development, Westchester/Playa del Rey, a related project near the proposed Village at Playa Vista. This project impacted sensitive Native American cultural resources, National Register eligible archaeological sites CA-LAN-63 and CA-LAN-64, as well as CA-LAN-206A. Native American burials were discovered on these sites during grading for this project. The NAHC was unaware of the impacts to the sensitive sites at the West Bluff project until burials were discovered there in June 2003, and the developer was required to comply with California Health Code section 7050.5 and Public Resources Code (PRC) section 5097-98. Before grading was completed on the West Bluff Project 14 different discoveries of Native American human remains were made.

Response 14-1

This comment regarding the West Bluff Development does not address the Proposed Project; rather, it is in reference to a separate and distinct project (Related Project No. 24 – West Bluffs) which is considered in the Draft EIR as a related project for purposes of cumulative impact analysis.

This comment is noted and will be incorporated into the Final EIR for review and consideration of the decision-makers.

Comment 14-2

There is every reason to believe that the Village at Playa Vista will encounter a significant number on Native American burials, based on past discoveries at CA-LAN-62 in the 1950s. Parts of CA-LAN-62 are within the Village at Play [sic] Vista's area of potential impact (APE). Along with CA-LAN-62, three other archaeological sites, CA-LAN-21 1/H, CA-LAN-1 932H, and CA-LAN-2769, are either within or overlap a portion of the project APE. CA-LAN-62 and CA-LAN-21 1/H have been recommended to be eligible for the National Register of Historic Places. These sites are also within the Ballona Lagoon Archaeological District, which has been determined eligible for the National Register and is listed on the California Register.

Response 14-2

Potential impacts to archaeological resources, including impacts on Native American burials, associated with the Proposed Project are addressed in Section IV.P.(2), Archaeological Resources, of the Draft EIR, beginning on page 1199. The Draft EIR identifies and discusses the potential impacts on CA-LAN-62, CA-LAN-211/H, CA-LAN-1932H, and CA-LAN-2769 and concludes, on page 1224, that implementation of the Programmatic Agreement (Appendix O-1 of the Draft EIR) and mitigation measures listed in the Draft EIR would reduce impacts on archaeological resources to a less-than-significant level. The details regarding the cultural resources encountered within the Proposed Project site and treatment plans to address those resources are presented in Appendix O-3 of the Draft EIR, as well as the 1991 Research Design and Data Recovery Plan for CA-Lan-62 and CA-Lan-211, which have been included in the Appendices of the Final EIR.

As reported in the 1991 Playa Vista Archaeological and Historical Project Research Design, archaeological excavations of the western portion of Area D in the 1940s and 1950s, uncovered Native American burials. The current archaeological activities in the western portion of Area D, which have uncovered Native American burials, are part of the First Phase Project. These activities were approved by the City as part of the First Phase Project in a separate EIR (EIR No. 90-0200-SUB(C) (CUZ) (CUB), State Clearinghouse No. 90010510, certified by the City in September 1993. These activities are in compliance with the Programmatic Agreement and the requirements of California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

The exact location of burials and other archaeological resources is not easily predicted, and there are instances where human remains and artifacts are found during construction. As identified in the mitigation measures included in Subsection 4.0 of Section IV.P.(2), Archaeological Resources, of the Draft EIR on pages 1222-1223, efforts will be made to avoid human remains and other archaeological resources. In cases where human remains are encountered, the Applicant shall comply with the Programmatic Agreement and the requirements of the California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98. The Most Likely Descendant designated by the Native American Heritage Commission for Playa Vista has provided guidelines for the handling of human remains. These guidelines would be considered in connection with the handling of Native American remains discovered during construction of the Proposed Project.

Comment 14-3

A 404 permit from the Army Corp of Engineers (ACOE) has been required for this project. Consultation under Section 106 of the National Historic Preservation Act was required as part of the 404 process. It is interesting that the Programmatic Agreement created under Section 106 for this project dates from 1991. It expired in October 2001 and was extended to 2011, October 30, 2001, through a simple letter of notification. Apparently this was done without the benefit of consultation with the Native Americans that originally signed the agreement. The NAHC believes that it is inappropriate to use a 1991 agreement for a 2003 project. This assumes that

the landscape of Gabrielino/Tongva groups in Los Angeles County has remained the same for over a decade, which is not the case. This could be interpreted as circumventing the intent of the Section 106 process.

Response 14-3

The National Historic Preservation Act requires the ACOE to consult with federally recognized Indian tribes. The Gabrielinos are not a federally recognized tribe. The ACOE went above and beyond the requirements of Section 106 of the National Historic Preservation Act in consulting with non-federally recognized Native Americans in entering into and subsequently extending the Programmatic Agreement.

The Programmatic Agreement was entered into by the ACOE, the State Historic Preservation Officer and the Advisory Council on Historic Preservation in 1991. In October 2001, as part of its consultation responsibilities under the Programmatic Agreement, the ACOE made a concerted effort to identify all Gabrielino organizations that may have had an interest in the Playa Vista project. On June 7, 2001, a letter regarding the proposed extension of the Programmatic Agreement was sent to five Gabrielino groups: the Gabrielino People (Vera Rocha, Chief), the Gabrielino/Tongva Tribal Council (Anthony Morales, Chief), the Gabrielino/Tongva Indians of California (Martin Alcala, Chief), the Coastal Gabrielino/Digueno Indian Band (Jim Velasquez, Chief), and the Gabrielino/Tongva Indians of California (Robert Dorame, Chief). Vera Rocha (Chief, Gabrielino People) and the Gabrielino/Tongva Tribal Council were concurring parties to the Programmatic Agreement in 1991. No objections to the extension of the Programmatic Agreement were received. The State Historic Preservation Officer concurred with the extension of the Programmatic Agreement on September 24, 2001. The ACOE formally extended the Programmatic Agreement on October 11, 2001, to October 22, 2011.

Comment 14-4

Only archaeological sites CA-LAN-62 and CA-LAN-211/H were determined to be subject to CEQA. The Village at Playa Vista Project will impact portions of both of these sites. The project includes mitigation measures acceptable under the California Environmental Quality Act (CEQA), such as archaeological monitoring, and Native American monitoring during ground disturbing activities. Portions of both of these sites will also be preserved while other portions will be subjected to data recovery activities. It appears that a significant section of LAN-211/H will be impacted. While data recovery may be adequate under CEQA, in addressing the site's potential for scientific information, it is not adequate in terms of addressing the cultural impact to affiliated Native Americans. These sites are finite resources that are disappearing daily in the face of development. No amount of documentation can compensate for the loss of these sites, nor recreate them for the Native American Community, either physically or spiritually.

Response 14-4

The exact location of burials and other archaeological resources is not easily predicted, and there are instances where human remains and artifacts are found during construction. As identified in the mitigation measures included in Subsection 4.0 of Section IV.P.(2), Archaeological Resources, of the Draft EIR on pages 1222-1223, efforts will be made to avoid human remains and other archaeological resources. In cases where human remains are encountered, the Applicant shall comply with the Programmatic Agreement and the requirements of the California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98. The Most Likely Descendant designated by the Native American Heritage Commission for Playa Vista has provided guidelines for the handling of human remains. These guidelines would be considered in connection with the handling of Native American remains discovered during construction of the Proposed Project. As the commentor notes, these mitigation measures are in compliance with CEQA.

This comment is noted and will be incorporated into the Final EIR for review and consideration of the decision-makers.

Comment 14-5

The nearby West Bluff Project is just one more example on an ever-growing list. In fact, the Draft EIR for the Village at Playa Vista states, on pages 1224 and 1225: “Although each project must develop adequate mitigation measures to substantially lessen or avoid impacts on an individual basis, the incidental loss of all project study area archaeological resources may constitute a significant cumulative impact.” We believe that there is a ‘cumulative impacts’ issue under CEQA caused by this project which has not been adequately addressed in the Draft EIR, when taking it into account all the past projects that have impacted archaeological deposits in the area, including the West Bluff Project.

Response 14-5

As the commentor notes, Section IV.P.(2), Archaeological Resources, of the Draft EIR concludes, on pages 1224-1225, that the loss of project-study area archaeological resources may constitute a significant cumulative impact. The Proposed Project would implement mitigation measures to lessen potential impacts of the Proposed Project on these resources. As the commentor has noted, these mitigation measures are in compliance with CEQA.

Comment 14-6

We believe the cumulative impacts to Native American cultural sites caused by past projects within the Ballona region, and potentially by the new Villages at Playa Vista Project, also raises an “Environmental Justice” issue. A central focus of Environmental Justice is whether or not development project alternatives have high and disproportionate adverse environmental effects on a low income population or a minority population. As such, impact equity should be

considered in close and sympathetic consultation with the affected communities. In that the Programmatic Agreement for project is over a decade old, whether “sympathetic consultation” has in fact occurred on this project can certainly be questioned.

Response 14-6

The environmental impacts of the Proposed Project on archaeological resources has been analyzed in the DEIR (See Section IV.P.(2), Archaeological Resources). See Response 14-3, above. The Most Likely Descendant designated by the Native American Heritage Commission for Playa Vista has provided guidelines for the handling of human remains. The guidelines would be considered in connection with the handling of Native American remains discovered during construction of the Proposed Project. (See Appendix of the Final EIR).

Please also see Responses 14-3 and 14-5.

This comment is noted and will be incorporated into the Final EIR for review and consideration of the decision-makers.

Comment 14-7

CEQA states that preservation in place is the preferred manner of mitigating impacts, such as planning construction to avoid the site, incorporating sites in open-space, capping a site with a layer of soil, or placing it site in a conservation easement. While Native American human remains in of themselves may not be considered a “unique archaeological resource” under CEQA, they are extremely significant to their descendents and the same considerations of avoidance should also be afforded to inadvertent discoveries of Native American human remains. Once an Most Like Descendent (MLD) is designated under PRC section 5097.98, there should be a “good faith effort” by the landowner to explore with the MLD all feasible options for preserving remains in place.

Response 14-7

See Response 14-4, above. As the commentor notes, although CEQA may not consider Native American remains as a “unique archaeological resource,” the Proposed Project would implement measures to address all significant archaeological sites. The exact location of burials and other archaeological resources is not easily predicted and there are instances where remains and artifacts are found during construction. As stated in the Draft EIR, in cases where human remains are encountered, the Applicant shall comply with the Programmatic Agreement and the requirements of the California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98.

Comment 14-8

Mitigation measures proposed on pages 1222 and 1223 state that the curation of materials and records resulting from the implementation of the Programmatic Agreement are to be curated in accordance with 36 Code of Federal Regulations Part 79. The selection of a curatorial facility for materials not determined to be associated funerary objects under PRC section 5097.98 should be done in consultation with culturally affiliated Gabrielino / Tongva people. Furthermore, the “commemorative display center” described on page 1223 should be designed in consultation with culturally affiliated Gabrielino / Tongva people to ensure that materials are displayed in a culturally sensitive manner.

Response 14-8

As part of consultation pursuant to the Programmatic Agreement regarding curation, various Gabrielino groups requested that artifacts recovered from the archaeological sites at Playa Vista not leave Los Angeles County. The Fowler Museum at UCLA, which is the only museum in Los Angeles County that meets federal standards (36 Code Fed. Reg. 79), has agreed to curate the collections. Gabrielino groups were notified that the Fowler Museum would accept the material and made no objections. Further, Gabrielino groups will be consulted during the planning of any commemorative display center for Native American artifacts that may occur in the adjacent First Phase Project.

Comment 14-9

In summary, based on the above considerations, the NAHC requests the EIR for the Village at Playa Vista addresses the following:

1. Completion of meaningful documented good faith Native American consultation effort under Section 106 of the National Historic Preservation Act, as intended by the 404 process, and execution of a new Programmatic Agreement for the project.
2. Resolution of the “cumulative impacts” issues under CEQA.
3. Addition of a mitigation measure that addresses the possibility of preserving in situ Native American human remains inadvertently discovered during the project.
4. The curation and culturally sensitive treatment of recovered artifacts, not subject to PRC Section 5097.98.

Thank you for the opportunity to comment on the draft environmental impact report for the Village at Playa Vista, I look forward to your response regarding the above requests.

Response 14-9

See Responses 14-3, 14-4, 14-5, and 14-8, above.