



## GABRIELEÑO BAND OF MISSION INDIANS – KIZH NATION

California State Recognized Aboriginal Tribe of the Los Angeles Basin  
(Historically known as the Gabrieleño Tribal Council - San Gabriel Band of Mission Indians)



James Harris  
Major Projects  
Los Angeles County  
221 N. Figueroa St. Room 1350  
Los Angeles, CA 90012

Re: PROPOSED MITIGATION MEASURES RE KIZH NATION TRIBAL CULTURAL RESOURCES

Dear James Harris,

Pursuant to California Assembly Bill 52 and/or Senate Bill 18 (and any/all other applicable Federal, State, and local laws), the *Gabrieleño Band of Mission Indians – Kizh Nation* (“Tribe” or “Kizh”) requested to and did consult with Los Angeles City Planning (the “lead agency”), regarding the Sunset Wilcox Project (the “Project”). As we explained, this Project site is located within the boundaries of Kizh ancestral territory.

As such, we discussed at length the adverse impacts of this Project on Kizh historical landscapes, ceremonial places, subsurface artifacts, and other Kizh tribal cultural resources (“TCR”). Significant, confidential information was shared, including *inter alia*, Kizh oral history, elder testimony, testimony by Kizh Certified Archaeologist, John Torres, data on Native American discoveries in proximity to the Project, historical information on Kizh cultural and historical uses of the area at and surrounding the Project site, historical maps, and relevant historical literature.<sup>1</sup>

Collectively, this evidence substantiated the irreparable harm Kizh TCRs will sustain unless you adopt and enforce the proposed mitigations for this Project, which are attached hereto. Please ensure to maintain the confidentiality of all information the Kizh has provided, and any/all additional information the Kizh provides in the future. (Pub. Res. Code §21082.3(c).) The laws preserving the confidentiality of Native

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<sup>1</sup> “Evidence that may support such a finding could include, among other evidence, elder testimony, oral history, tribal government archival information, testimony of a qualified archaeologist certified by the relevant tribe, testimony of an expert certified by the Tribal Government, official tribal government declarations or resolutions, formal statements from a certified Tribal Historic Preservation Officer, and historical notes, such as those found in the Harrington Papers and other anthropological records. (Office of Planning and Research: TECHNICAL ADVISORY - AB 52 AND TRIBAL CULTURAL RESOURCES IN CEQA, June, 2017, pp. 4-5.)

American documents and records prohibits the inclusion of any information about the location of Native American artifacts, sites, sacred lands, or any other information that is exempt from public disclosure pursuant to the Public Records Act. (Cal. Code Regs. § 15120(d); Clower Valley Foundation v. City of Rocklin (2011) 197 Cal.App.4th 200, at p. 220).

Finally, as a reminder, CEQA requires lead agencies to evaluate a project's impacts to TCRs separate and apart from all other factors, such as cultural resources, archaeological, historical, and paleontological.<sup>2</sup> Moreover, the California Court of Appeal made clear in the 2020 published opinion, Save the Agoura Corndell Knoll v. City of Agoura Hills, et al. (2020) 46 Cal.App.5th 665, that upon adoption, it must be clear that the TCR mitigations adopted will sufficiently reduce the project's impacts to TCRs below the threshold of significance; otherwise, the mitigations do not comply with CEQA and cannot be enforced.<sup>3</sup> As you know, as lead agency, CEQA mandates you to oversee *and enforce* compliance with the mitigations and conditions of approval adopted for the Project, CEQA, and all applicable state and local laws. (Pub. Res. Code § 21081.6(a)(1) [The reporting or monitoring program shall be designed to ensure compliance during project implementation].)

Thank you for your anticipated cooperation. We look forward to working with you.

Sincerely,



*Andrew Salas, Chairman  
Gabrieleno Band of Mission Indians – Kizh Nation*

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Enclosures

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<sup>2</sup> Public Resources Code Section 21083.09 required the Office of Planning and Research to revise the CEQA guidelines to include separate consideration of tribal cultural resources.

<sup>3</sup> (*Id.* at pp. 685-6 [“[i]t is improper to defer the formulation of mitigation measures until after project approval; instead, the determination of whether a project will have significant environmental impacts, and the formulation of measures to mitigate those impacts, must occur before the project is approved.”]; see also CEQA Guidelines §15126.4(a)(1)(B).)

## GABRIELEÑO BAND OF MISSION INDIANS – KIZH NATION - PROPOSED TCR MITIGATION MEASURES

### TCR-1: Retain a Native American Monitor Prior to Commencement of Ground-Disturbing Activities

- A. The project applicant/lead agency shall retain a Native American Monitor from or approved by the Gabrieleño Band of Mission Indians – Kizh Nation. The monitor shall be retained prior to the commencement of any “ground-disturbing activity” for the subject project at all project locations (i.e., both on-site and any off-site locations that are included in the project description/definition and/or required in connection with the project, such as public improvement work). “Ground-disturbing activity” shall include, but is not limited to, demolition, pavement removal, potholing, auguring, grubbing, tree removal, boring, grading, excavation, drilling, and trenching.
- B. A copy of the executed monitoring agreement shall be submitted to the lead agency prior to the earlier of the commencement of any ground-disturbing activity, or the issuance of any permit necessary to commence a ground-disturbing activity.
- C. The monitor will complete daily monitoring logs that will provide descriptions of the relevant ground-disturbing activities, the type of construction activities performed, locations of ground-disturbing activities, soil types, cultural-related materials, and any other facts, conditions, materials, or discoveries of significance to the Tribe. Monitor logs will identify and describe any discovered TCRs, including but not limited to, Native American cultural and historical artifacts, remains, places of significance, etc., (collectively, tribal cultural resources, or “TCR”), as well as any discovered Native American (ancestral) human remains and burial goods. Copies of monitor logs will be provided to the project applicant/lead agency upon written request to the Tribe.
- D. On-site tribal monitoring shall conclude upon the latter of the following (1) written confirmation to the Kizh from a designated point of contact for the project applicant/lead agency that all ground-disturbing activities and phases that may involve ground-disturbing activities on the project site or in connection with the project are complete; or (2) a determination and written notification by the Kizh to the project applicant/lead agency that no future, planned construction activity and/or development/construction phase at the project site possesses the potential to impact Kizh TCRs.
- E. Upon discovery of any TCRs, all construction activities in the immediate vicinity of the discovery shall cease (i.e., not less than the surrounding 50 feet) and shall not resume until the discovered TCR has been fully assessed by the Kizh monitor and/or Kizh archaeologist. The Kizh will recover and retain all discovered TCRs in the form and/or manner the Tribe deems appropriate, in the Tribe’s sole discretion, and for any purpose the Tribe deems appropriate, including for educational, cultural and/or historic purposes.

### TCR-2: Unanticipated Discovery of Human Remains and Associated Funerary Objects

- A. Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in Public Resources Code Section 5097.98, are also to be treated according to this statute.
- B. If Native American human remains and/or grave goods discovered or recognized on the project site, then all construction activities shall immediately cease. Health and Safety Code Section

7050.5 dictates that any discoveries of human skeletal material shall be immediately reported to the County Coroner and all ground-disturbing activities shall immediately halt and shall remain halted until the coroner has determined the nature of the remains. If the coroner recognizes the human remains to be those of a Native American or has reason to believe they are Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission, and Public Resources Code Section 5097.98 shall be followed.

- C. Human remains and grave/burial goods shall be treated alike per California Public Resources Code section 5097.98(d)(1) and (2).
- D. Construction activities may resume in other parts of the project site at a minimum of 200 feet away from discovered human remains and/or burial goods, if the Kizh determines in its sole discretion that resuming construction activities at that distance is acceptable and provides the project manager express consent of that determination (along with any other mitigation measures the Kizh monitor and/or archaeologist deems necessary). (CEQA Guidelines Section 15064.5(f).)
- E. Preservation in place (i.e., avoidance) is the preferred manner of treatment for discovered human remains and/or burial goods. Any historic archaeological material that is not Native American in origin (non-TCR) shall be curated at a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Fowler Museum, if such an institution agrees to accept the material. If no institution accepts the archaeological material, it shall be offered to a local school or historical society in the area for educational purposes.
- F. Any discovery of human remains/burial goods shall be kept confidential to prevent further disturbance.

TCR-3: Procedures for Burials and Funerary Remains:

- A. As the Most Likely Descendant (“MLD”), the Koo-nas-gna Burial Policy shall be implemented. To the Tribe, the term “human remains” encompasses more than human bones. In ancient as well as historic times, Tribal Traditions included, but were not limited to, the preparation of the soil for burial, the burial of funerary objects with the deceased, and the ceremonial burning of human remains.
- B. If the discovery of human remains includes four or more burials, the discovery location shall be treated as a cemetery and a separate treatment plan shall be created.
- C. The prepared soil and cremation soils are to be treated in the same manner as bone fragments that remain intact. Associated funerary objects are objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later; other items made exclusively for burial purposes or to contain human remains can also be considered as associated funerary objects. Cremations will either be removed in bulk or by means as necessary to ensure complete recovery of all sacred materials.
- D. In the case where discovered human remains cannot be fully documented and recovered on the same day, the remains will be covered with muslin cloth and a steel plate that can be moved by heavy equipment placed over the excavation opening to protect the remains. If this type of steel plate is not available, a 24-hour guard should be posted outside of working hours. The Tribe will make every effort to recommend diverting the project and keeping the remains in situ and protected. If the project cannot be diverted, it may be determined that burials will be removed.
- E. In the event preservation in place is not possible despite good faith efforts by the project

applicant/developer and/or landowner, before ground-disturbing activities may resume on the project site, the landowner shall arrange a designated site location within the footprint of the project for the respectful reburial of the human remains and/or ceremonial objects.

- F. Each occurrence of human remains and associated funerary objects will be stored using opaque cloth bags. All human remains, funerary objects, sacred objects and objects of cultural patrimony will be removed to a secure container on site if possible. These items should be retained and reburied within six months of recovery. The site of reburial/repatriation shall be on the project site but at a location agreed upon between the Tribe and the landowner at a site to be protected in perpetuity. There shall be no publicity regarding any cultural materials recovered.
- G. The Tribe will work closely with the project's qualified archaeologist to ensure that the excavation is treated carefully, ethically and respectfully. If data recovery is approved by the Tribe, documentation shall be prepared and shall include (at a minimum) detailed descriptive notes and sketches. All data recovery data recovery-related forms of documentation shall be approved in advance by the Tribe. If any data recovery is performed, once complete, a final report shall be submitted to the Tribe and the NAHC. The Tribe does NOT authorize any scientific study or the utilization of any invasive and/or destructive diagnostics on human remains.

***PLEASE NOTE THE FOLLOWING:***

Any/all revisions to the Kizh's proposed TCR mitigations set forth above must be requested in writing, and not more than ten (10) calendar days from the date that we consulted on the subject Project. Requested revisions shall be delivered to the Kizh via email at [admin@gabrielenoindians.org](mailto:admin@gabrielenoindians.org), and in a Word document, redline format. Please include as the email subject: "REQUEST FOR MITIGATION REVISIONS," and identify the project name and location/address. If revisions are not requested within 10 calendar days of consultation, the Kizh's proposed mitigations are presumed accepted as proposed (i.e., as set forth above).

Thank you for your anticipated cooperation.