

Comment Letter No. 3

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

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December 7, 2011

Ms. Mitra Mehta-Cooper, Principal Planner
County of Riverside Planning Department
4080 Lemon Street, 12th Floor
Riverside, CA 92502-1409

Re: SCH#2009121076; CEQA Notice of Completion; draft Environmental Impact Report No. 524 (DEIR) and General Plan Amendment (GPA No. 1077; Zoning Amendment No. 348.4729) for the "Temecula Valley Wine Country Community Plan Project" located in southwest Riverside County, California

Dear Ms. Mehta-Cooper:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. The NAHC wishes to comment on the proposed project.

This project is also subject to required tribal government consultation pursuant to California Government Code §§65352.3, 65352.4, *et seq.*

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ... objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect.

The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were identified** within the project area identified (e.g. within one-half mile of 'area of potential effect' or APE). Also, the absence of archaeological resources does not preclude their existence. . California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred

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sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction. The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

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Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

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Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

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Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

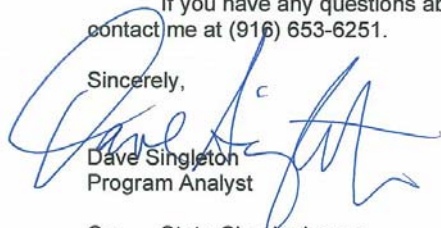
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To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

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If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

California Native American Contacts
Riverside County
December 7, 2011

Los Coyotes Band of Mission Indians
Shane Chapparosa, Spokesperson
P.O. Box 189 Cahuilla
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loscoyotes@earthlink.net
(760) 782-0711
(760) 782-2701 - FAX

Ramona Band of Cahuilla Mission Indians
Joseph Hamilton, Chairman
P.O. Box 391670 Cahuilla
Anza, CA 92539
admin@ramonatribe.com
(951) 763-4105
(951) 763-4325 Fax

Pala Band of Mission Indians
Tribal Historic Preservation Office/Shasta Gaugher
35008 PalaTemecula Road, PMB Luiseno
445, Cupeno
Pala, CA 92059
(760) 891-3515
sgaugher@palatribe.com
(760) 742-3189 Fax

Rincon Band of Mission Indians
Tiffany Wolfe, Cultural & Environmental
P.O. Box 68 Luiseno
Valley Center, CA 92082
twolfe@rincontribe.org
(760) 297-2632
(760) 297-2639 Fax

Pauma & Yuima Reservation
Randall Majel, Chairperson
P.O. Box 369 Luiseno
Pauma Valley CA 92061
paumareservation@aol.com
(760) 742-1289
(760) 742-3422 Fax

Santa Rosa Band of Mission Indians
John Marcus, Chairman
P.O. Box 391820 Cahuilla
Anza, CA 92539
sestrada@
(951) 659-2700
(951) 659-2228 Fax

Pechanga Band of Mission Indians
Paul Macarro, Cultural Resources Manager
P.O. Box 1477 Luiseno
Temecula, CA 92593
(951) 770-8100
pmacarro@pechanga-nsn.
gov
(951) 506-9491 Fax

Morongo Band of Mission Indians
Michael Contreras, Cultural Heritage Prog.
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Banning, CA 92220 Serrano
(951) 201-1866 - cell
mcontreras@morongo-nsn.
gov
(951) 922-0105 Fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009121076; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) and General Plan Amendment No. 1077 for the Temecula Valley Wine Country Community Plan; located near the City of Temecula in southwestern Riverside County, California.

California Native American Contacts
Riverside County
December 7, 2011

Pauma Valley Band of Luiseño Indians
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bennaecalac@aol.com
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(760) 742-3422 - FAX

Willie J. Pink
48310 Pechanga Road Luiseno
Temecula , CA 92592
wjpink@hotmail.com
(909) 936-1216
Prefers e-mail contact

Rincon Band of Mission Indians
Bo Mazzetti, Chairperson
P.O. Box 68 Luiseno
Valley Center, CA 92082
bomazzetti@aol.com
(760) 749-1051
(760) 749-8901 Fax

La Jolla Band of Mission Indians
James Trujillo, Vice Chair
22000 Highway 76 Luiseno
Pauma Valley CA 92061
rob.roy@lajolla-nsn.gov
(760) 742-3796
(760) 742-1704 Fax

San Luis Rey Band of Mission Indians
Cultural Department
1889 Sunset Drive Luiseno
Vista , CA 92081 Cupeno
760-724-8505

760-724-2172 - fax

Cahuilla Band of Indians
Luther Salgado, Sr., , Chairperson
PO Box 391760 Cahuilla
Anza , CA 92539
tribalcouncil@cahuilla.net
915-763-5549

Pechanga Band of Mission Indians
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(951) 695-1778 Fax

Pechanga Cultural Resources Department
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951-770-8100
(951) 694-0446 - FAX

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Response No. 3

Native American Heritage Commission Dave Singleton, Program Analyst

3.1 This comment does not identify any specific concern with the adequacy of the Draft PEIR. Therefore, no further response is required. (State CEQA Guidelines § 15088(a) (CEQA requires that a lead agency respond to *environmental* comments.)) Please see responses below regarding the County’s full compliance with CEQA and SB18 consultation requirements.

3.2 As indicated in the Draft PEIR Section 4.5 *Cultural and Paleontological Resources*, the County initiated consultation with California Native American Heritage Commission under SB 18 concurrently with the Notice of Preparation (NOP) process for the Project in December 2009. Of the eight tribes listed by the NAHC, four responded (Pala Band of Mission Indians, Cahuilla Band of Indians, Soboba Band of Luiseno Indians, and Pechanga Band of Luiseno Mission Indians). Generally, the Pala Band of Mission Indians determined that the Project as described is not within the boundaries of the recognized Pala Indian Reservation and that the Project is beyond the boundaries of the tribe’s Traditional Use Area, and they therefore state no concerns with the Project. The Cahuilla Band of Indians and the Soboba Band of Luiseno Indians concluded that the Project is outside the existing reservation, but falls within the bounds of the Tribal Traditional Use Area; therefore, requests Cultural Resource Monitors at the time of ground disturbance. During individual consultation both tribes noted the cultural sensitivity of the project area, but indicated that they have no specific concerns regarding the Project. However, the Soboba Band of Luiseno Indians wishes to defer to the Pechanga Band of Luiseno Indians. Refer to Response 22 for further information regarding the Pechanga Band’s comments. The Pechanga Band of Luiseno Mission Indians requests to continue to be notified and involved in the entire CEQA environmental review process for the duration of the Project. The Pechanga Band of Luiseno Mission Indians also requests that they assist the County with the development of appropriate mitigation measures that will guide cultural resources review for future implementing projects. The Draft PEIR includes mitigation measures CUL 1-3 to ensure future site-specific implementing projects consider the requests by the Pechanga Band of Luiseno Mission Indians.

The comment also references an attached list of tribes for additional tribal notifications. This list is updated from the one provided by NAHC in response to the SB 18/NOP, and includes an additional four tribes. Although the County

has fully complied with SB18 consultation by contacting the tribes originally suggested by the NAHC at the time of NOP distribution/early SB18 consultation, the County has sent additional tribal notification letters to the additional tribes noted in this comment letter. Please refer to Appendix B to this Responses to Comments document for a copy of the additional tribal notification letters.

- 3.3 The Draft PEIR includes mitigation measures (CUL 1-3) that identify the appropriate actions in the event archaeological resources are accidentally discovered during construction. Further, the California Health and Safety Code Sections 7050.5-7055 describe the general provisions for human remains. Specifically, Health and Safety Code Section 7050.5 describes the requirements if any human remains are accidentally discovered during excavation of a site. As required by State law, the requirements and procedures set forth in Section 5097.98 of the California Public Resources Code would be implemented, including notification of the County Coroner, notification of the Native American Heritage Commission, and consultation with the individual identified by the Native American Heritage Commission to be the “most likely descendant”. If human remains are found during excavation, excavation must stop in the vicinity of the find and any area that is reasonably suspected to overly adjacent remains until the County Coroner has been called out, and the remains have been investigated and appropriate recommendations have been made for the treatment and disposition of the remains in the Draft PEIR Mitigation Measure CUL-3. This comment is consistent with the Draft PEIR Chapter 4.5 *Cultural Resources and Paleontological Resources*.
- 3.4 This comment does not identify any specific concern with the adequacy of the Draft PEIR or any environmental issues. Therefore, no further response is warranted. (*Browning-Ferris Indust. of California, Inc. v. City Council of the City of San Jose* (1986) 181 Cal.App.3d 852 (where a general comment is made, a general response is sufficient.)) The County has a long history of effectively working with the local Native American tribes through the SB18 and CEQA process on this Project as defined in the Draft PEIR Chapter 4.5 *Cultural Resources and Paleontological Resources*. The County went to great lengths to address comments received from the tribes through the formal NOP and SB18 consultation process, as well as informal consultation. Also refer to Response Nos. 14, 15 and 21 for Responses to Comments from specific tribes.