

## **Appendix 8-1 Kizh Nation Mitigation Measures**

## Appendices

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## Gabrieleno Band of Mission Indians – Kizh Nation

### *Protection of Tribal Cultural Resources (TCRs)*

#### **Most Important Things for Agencies to Know About AB52:**

- An EIR, MND, or ND can not be certified until AB-52 tribal consultation has concluded.
- Agreed mitigation measures with the tribe, **MUST** be recommended for inclusion in the environmental document.
- Signature confirming acceptance of these mitigation measures recommended by our Tribal Government is required within 14 days of receipt to conclude AB52 consultation.

#### **Tribal Cultural Resources Mitigation Measures within Kizh Nation Tribal Territory:**

Note: To avoid compliance issues with the following laws, all Native American Monitoring shall be conducted by a documented lineal descendant from the ancestral Tribe of the project area (NAGPRA Law 10.14)

- The Native American Graves Protection and Repatriation Act (NAGPRA), Public Law-101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048.
- CEQA Guidelines Section 15064.5, PRC 5097.98 (d)(1).
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

*If you are receiving these measures, The Gabrieleno Band of Mission Indians Kizh -Nation are the direct lineal descendants of your project area. The Kizh Nation **ONLY** responds and consults on projects within their **ANCESTRAL** tribal territory. Therefore, to remain in compliance with above referenced laws and to enable our Tribe with the ability to protect and preserve our last remaining and irreplaceable Tribal Cultural Resources, it is recommended that the project applicant retain a qualified professional tribal monitor/consultant from the Gabrieleno Band of Mission Indians Kizh -Nation. The Kizh Nation possesses Tribal archives including documented historical information as well as multiple members who possess unique knowledge derived from oral tradition passed down through generations of the Tribe in order to provide the expertise needed to identify whether a project is located within a culturally sensitive area given its proximity to village areas, commerce areas, recreation areas, ceremonial areas, and burial locations.*

#### **Native American Heritage Commission (NAHC) Guidelines for Native American Monitors/Consultants**

**(approved 9/13/05):** By acting as a liaison between Native American, archaeologist, developers, contactors and public agency, a Native American monitor/consultant can ensure that cultural features are treated appropriately from the Native American point of view. This can help others involved in a project to coordinate mitigation measures. These guidelines are intended to provide prospective monitors/consultants, and people who hire monitors/consultants, with an understanding of the scope and extent of knowledge that should be expected.

**Mitigation Guidelines for Tribal Cultural Resources (TCRs):** CEQA now defines TCRs as an independent element separate from archaeological resources. Environmental documents shall address a separate Tribal Cultural Resources section that includes a thorough analysis of the impacts to only TCRs and includes separate and independent mitigation measures created with tribal input under AB-52 consultations. Therefore, all agreements, mitigation, and conditions of approval regarding TCRs shall be handled solely with the Tribal Government and conversely all agreements, mitigation, and conditions of approval regarding Archaeological Resources shall be handled by an Archaeological resource company.



## MITIGATION MEASURES

**Retain a Native American Monitor/Consultant:** The Project Applicant shall be required to retain and compensate for the services of a Tribal monitor/consultant who is both ancestrally affiliated with the project area and approved by the Gabrieleño Band of Mission Indians-Kizh Nation Tribal Government and is listed under the Native American Heritage Commission's (NAHC) Tribal Contact list for the area of the project location. This list is provided by the NAHC. A Native American monitor shall be retained by the Lead Agency or owner of the project to be on site to monitor all project-related, ground-disturbing construction activities (i.e., boring, grading, excavation, potholing, trenching, etc.). A monitor associated with one of the NAHC recognized Tribal governments which have commented on the project shall provide the Native American monitor. The monitor/consultant will only be present on-site during the construction phases that involve ground disturbing activities. Ground disturbing activities are defined by the Gabrieleño Band of Mission Indians-Kizh Nation as activities that may include, but are not limited to, pavement removal, pot-holing or auguring, grubbing, tree removals, boring, grading, excavation, drilling, and trenching, within the project area. The Tribal Monitor/consultant will complete daily monitoring logs that will provide descriptions of the day's activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when the project site grading and excavation activities are completed, or when the Tribal Representatives and monitor/consultant have indicated that the site has a low potential for impacting Tribal Cultural Resources.

**Unanticipated Discovery of Tribal Cultural and Archaeological Resources:** Upon discovery of any tribal cultural or archaeological resources, cease construction activities in the immediate vicinity of the find until the find can be assessed. All tribal cultural and archaeological resources unearthed by project construction activities shall be evaluated by the qualified archaeologist and tribal monitor/consultant. If the resources are Native American in origin, the Gabrieleño Band of Mission Indians-Kizh Nation shall coordinate with the landowner regarding treatment and curation of these resources. Typically, the Tribe will request preservation in place or recovery for educational purposes. Work may continue on other parts of the project while evaluation and, if necessary, additional protective mitigation takes place (CEQA Guidelines Section 15064.5 [f]). If a resource is determined by the qualified archaeologist to constitute a "historical resource" or "unique archaeological resource", time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation, must be available. The treatment plan established for the resources shall be in accordance with CEQA Guidelines Section 15064.5(f) for historical resources.

**Public Resources Code Sections 21083.2(b)** for unique archaeological resources. Preservation in place (i.e., avoidance) is the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. All Tribal Cultural Resources shall be returned to the Tribe. Any historic archaeological material that is not Native American in origin shall be curated at a public, non-profit institution with a research interest in the materials, if such an institution agrees to accept the material. If no institution accepts the archaeological material, they shall be offered to the Tribe or a local school or historical society in the area for educational purposes.

### **Unanticipated Discovery of Human Remains and Associated Funerary Objects:**

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 PRC 5097.98, are also to be treated according to this statute. Health and Safety Code 7050.5 dictates that any discoveries of human skeletal material shall be immediately reported to the County Coroner and excavation 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 that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the NAHC and PRC 5097.98 shall be followed.



### **Resource Assessment & Continuation of Work Protocol:**

Upon discovery of human remains, the tribal and/or archaeological monitor/consultant/consultant will immediately divert work at minimum of 150 feet and place an exclusion zone around the discovery location. The monitor/consultant(s) will then notify the Tribe, the qualified lead archaeologist, and the construction manager who will call the coroner. Work will continue to be diverted while the coroner determines whether the remains are human and subsequently Native American. The discovery is to be kept confidential and secure to prevent any further disturbance. If the finds are determined to be Native American, the coroner will notify the NAHC as mandated by state law who will then appoint a Most Likely Descendent (MLD).

### **Kizh-Gabrieleno Procedures for burials and funerary remains:**

If the Gabrieleno Band of Mission Indians - Kizh Nation is designated 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. 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.

### **Treatment Measures:**

Prior to the continuation of ground disturbing activities, 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. 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. The Tribe will work closely with the qualified archaeologist to ensure that the excavation is treated carefully, ethically and respectfully. If data recovery is approved by the Tribe, documentation shall be taken which includes at a minimum detailed descriptive notes and sketches. Additional types of documentation shall be approved by the Tribe for data recovery purposes. Cremations will either be removed in bulk or by means as necessary to ensure completely recovery of all material. If the discovery of human remains includes four or more burials, the location is considered a cemetery and a separate treatment plan shall be created. Once complete, a final report of all activities is to 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.

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.



**Professional Standards:** Archaeological and Native American monitoring and excavation during construction projects will be consistent with current professional standards. All feasible care to avoid any unnecessary disturbance, physical modification, or separation of human remains and associated funerary objects shall be taken. Principal personnel must meet the Secretary of Interior standards for archaeology and have a minimum of 10 years of experience as a principal investigator working with Native American archaeological sites in southern California. The Qualified Archaeologist shall ensure that all other personnel are appropriately trained and qualified.

Acceptance of Tribal Government Recommended Mitigation Measures:

By \_\_\_\_\_  
Lead Agency Representative Signature

Date: \_\_\_\_\_

Revised: April 2020





## Attachment A

Kizh Nation Ancestral Tribal Territory extended along the coast from Malibu Creek in Los Angeles County down to Aliso Creek in Orange County and encompassed the Channel Islands of Catalina (Pimugna), San Nicolas (Haraasnga), and San Clemente (Kiinkenga). Our inland border was the San Gabriel Mountains (Hidakupa) and eastwardly our territory extended to parts of San Bernardino (Waatsngna), Orange, and Riverside counties.

