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CITY OF SANTA ANA

PUBLIC WORKS AGENCY

20 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org

December 12, 2012

Gabrieleno Band of Mission Indians
Kizh Nation
Andrew Salas, Chariperson
P.O. Box 393
Covina, CA 91723

Subject: Assembly Bill (AB) 52 (Public Resources Code §21080.3.1): Septic to Sewer Conversion Project, Santa Ana, Orange County, California

Dear Mr. Kizh:

The City of Santa Ana (City) is the lead agency, pursuant to the California Environmental Quality Act (CEQA), for the Septic to Sewer Conversion Project (hereinafter referred to as Project), Initial Study/Mitigated Negative Declaration (IS/MND). The IS/MND will analyze the environmental impacts of the Project.

The Project proposes installing sewer mains and laterals and transferring existing residences and business from septic systems to the City's sewer system in the Pasadena Street, Medford Avenue, Deodar Street, and Ponderosa Street neighborhood. The Project would install approximately 630 linear feet (LF) of 8-inch sewer main within Ponderosa Street and approximately 635 LF of 8-inch sewer main within Pasadena Avenue, Medford Avenue and Deodar Street. The Project would also abandon 32 existing septic tanks and install the private side connection to the public sewer main at the 32 properties.

AB 52 requires lead agencies to consult with California Native American tribes that request such consultation in writing prior to the agency's release of a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) or notice of a Mitigated Negative Declaration (MND), or Negative Declaration (ND). To that end, the City is

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notifying you of this Project. AB 52 allows tribes 30 days after receiving notification to request consultation.

Your participation in this local planning process is important. If you possess any information or knowledge regarding Native American Sacred Lands or other tribal cultural resources in and around the Project site, and wish to consult with the City regarding these resources or mitigation measures to reduce the impacts of the Project on them, please direct your email to AFernandez@santa-ana.org or any correspondence on this matter to:

Armando Fernandez
City of Santa Ana | Senior Civil Engineer | Project Manager
200 S. Daisy Avenue
Santa Ana, CA 92703

The City would welcome a response at your earliest possible convenience, but no later than 30 days after receiving this letter. Should we not receive a response within 30 days, we will presume that you have declined consultation under AB 52. Please do not hesitate to let me know if you have any questions or would like to discuss the proposed Project.

Should you have any questions, please contact me at (714) 647-3316.

Sincerely,



Armando Fernandez, PE
Senior Civil Engineer

Cc: Rudy Rosas
Reading File

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**Native American Heritage Commission
Native American Contact List
Orange County
11/26/2019**

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This list is current only as of the date of this document. Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resource Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources assessment for the proposed Santa Ana Septic to Sewer Conversations Project, Orange County.

**Native American Heritage Commission
Native American Contact List
Orange County
11/26/2019**

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This list is only applicable for contacting local Native Americans with regard to cultural resources assessment for the proposed Santa Ana Septic to Sewer Conversations Project, Orange County.



GABRIELENO BAND OF MISSION INDIANS - KIZH NATION

Historically known as The San Gabriel Band of Mission Indians
recognized by the State of California as the aboriginal tribe of the Los Angeles basin

Project Name: The Septic to Sewer Conversion Project, Pasadena Street, Santa Ana, Orange, California

Dear Armando Fernandez,

Thank you for your letter dated December 12, 2019 regarding AB52 consultation. The above proposed project location is within our Ancestral Tribal Territory; therefore, our Tribal Government requests to schedule a consultation with you as the lead agency, to discuss the project and the surrounding location in further detail.

Please contact us at your earliest convenience. ***Please Note: AB 52, "consultation" shall have the same meaning as provided in SB 18 (Govt. Code Section 65352.4).***

Thank you for your time,

Andrew Salas, Chairman
Gabrieleno Band of Mission Indians – Kizh Nation
1(844)390-0787

Andrew Salas, Chairman
Albert Perez, treasurer I

Nadine Salas, Vice-Chairman
Martha Gonzalez Lemos, treasurer II

Dr. Christina Swindall Martinez, secretary
Richard Gradias, Chairman of the council of Elders

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PUBLIC WORKS AGENCY

MEMORANDUM OF UNDERSTANDING

Date: May 18, 2020

To: Matthew Teutimez
Gabrieleno Band of Mission Indians KIZH Nation

Re: Septic to Gravity Sewer Conversion Project
Medford Avenue and Pasadena Street
Santa Ana, CA

Preamble

It was great to hear about the history of the Gabrieleno's from Andy and yourself. The passion and heartfelt emotion that have been passed down by your ancestors cannot be replaced by the history read in books.

Purpose

Throughout your stories, it became evident and clear to City staff that a strong collaboration with the KIZH Nation is a primary key to making this project a success. The City intends to walk this path with your concerns as a top priority and work with you step by step as we progress through this journey. As the oral histories were being passed down to us, I could not help but think of a day when our children will also come together and collaborate on these areas of mutual interest and importance. Please rest assured that it is our intent, and one of the City's goals, to help address any apprehension related to the protection of the Gabrieleno history.

Working Together

As discussed during our conference call on May 13, 2020, the City acknowledges and agrees to work co-operatively in good faith and mutual trust.

- The City will conduct further research of available records that may show whether the project site was originally built on engineering fill material or over natural ground. This will help to determine the likelihood of historical findings within proposed digging depth for construction of sewer main/services and water replacement main/services.
- The Gabrieleno Band of Mission Indians KIZH Nation will share historical maps in their possession. The maps depict historical settlement locations and maps that illustrate waterways within the project area. The City anticipate that these records will be made available by June 1, 2020.
- The City also requests the Gabrieleno Band of Mission Indians KIZH Nation documents for mitigation requirements as well. While the City understands that every project will have a unique set of circumstances, understanding the nature of some of these desires will help the City plan for the future of this project and correspond accordingly, keeping your Nation's best interests fully in mind.
- The City will overlay historical records that are made available with current maps to determine the proximity of past settlements and historical waterways to the project location.
- The City will share our research and data with the Gabrieleno Band of Mission Indians KIZH Nation and schedule a future conference call to discuss the findings and future steps, if necessary.

The City agrees to complete transparency and mutual respect as we support each other in our responsibility and the purpose of this partnership. Should there be any questions or concerns, please contact me at afernandez@santa-ana.org or 714-647-3316.

Sincerely,



Armando Fernandez, PE
Senior Civil Engineer

Cc: Rudy Rosas
Reading File

Brian Ige
PWA – Water Resources Division
714-647-3385

From: Gabrieleno Administration <admin@gabrielenoindians.org>
Sent: Thursday, June 4, 2020 2:13 PM
To: Ige, Brian <bige@santa-ana.org>
Cc: Fernandez, Armando <AFernandez@santa-ana.org>; Matthew Teutimez <Matthew.Teutimez@gabrielenoindians.org>; Andy Salas <chairman@gabrielenoindians.org>
Subject: AB52 Consultation: Septic Sewer Conversion Project in the City of Santa Ana.

Thank you for your time during the AB52 consultation for the project at Septic Sewer Conversion Project in the City of Santa Ana.

As stated in the Public Resource Code section 21080.3.1. (a) The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources and an area that has cultural value. According to section 21074. (a) "Tribal cultural resources" can be sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe.

Therefore, to explain our concerns for impacts to tribal cultural resources (TCR's) and how this project location may impact TCR's due to the location and the proposed ground disturbing activities, attached are screenshots and some explanatory text that was also verbally explained in the phone consultation for your project location.

This Septic Sewer Conversion_1938 map indicates the project location within the Village of Pasbengna. All of our mainland villages (sans our island villages) overlapped each other to help facilitate the movement of tribal cultural resources throughout the landscape and also to our sister tribes outside of our traditional ancestral territory. Village use areas were usually shared between village areas and were commonly used by two or more adjoining villages depending on the type, quantity, quality, and availability of natural resources in the area. Therefore, human activity can be pronounced within the shared use areas due to the combined use by multiple villages and TCR's may be present in the soil layers from the thousands of years of human activity within that landscape.

This Septic Sewer Conversion_1901 map shows the project's close proximity to a railroad that existed in this location. All railroads were placed on top of our Tribe's traditional trade routes because when the first railroad planners came out west, the topography was too varied to place the rail lines just anywhere, so they chose the paths of least resistance that already existed which were our traditional trade routes that were flattened by human travel over thousands of years of use.

The Septic Sewer Conversion_1938 and the Septic Sewer Conversion_1881 map shows the many trade routes around the project area. Trade routes were heavily used by our Tribe for movement of trade items, visiting of family, going to ceremony, accessing recreation areas, and accessing foraging areas. Within and around these routes contained seasonal or permanent ramadas or trade depots, seasonal and permanent habitation areas, and often still contain isolated burials and cremations from folks who died along the trail. These isolated burials are not associated with a village community burial site or ceremonial burial site, rather the location is simply where the person died and was buried where they died. Therefore, isolated burials are more concentrated and likely to occur in proximity to our trade

routes, especially the major trade routes. Trade routes are considered “cultural landscapes”, as stated in section 21074. (a) because the landscapes will house the objects, therefore, both cultural landscapes and cultural objects are protected under AB52 as a tribal cultural resource.

The Septic Sewer Conversion_1938 maps indicate the hydrography or waterways that existed around the project area. All water sources were used by our Tribe for life sustenance. Along these watercourses and water bodies occurred seasonal or permanent hamlets, seasonal or permanent trade depots, ceremonial and religious prayer sites, and burials and cremation sites of our ancestors. These activities occurred around water, both inland and coastal, because these water areas create unique habitats and riparian corridors that provide an abundance of food and medicine resources along with aesthetically peaceful areas with running water, shade trees, and shelter. Larger water bodies were high attractants for human activity and the banks and shores of these water bodies have a higher than average potential for encountering Tribal Cultural Resources of artifacts and human remains during ground disturbing activities. Waterways are a “cultural landscape”, as stated in section 21074. (a) and are protected under AB52 as a tribal cultural resource.

Due to the project site being located within and around a sacred village (Pabengna), adjacent to sacred water courses, a major traditional trade routes, there is a high potential to impact Tribal Cultural Resources still present within the soil from the thousands of years of prehistoric activities that occurred within and around these Tribal Cultural landscapes. Therefore, to avoid impacting or destroying Tribal Cultural Resources that may be inadvertently unearthed during the project's ground disturbing activities and pursuant to our consultation, we have provided to the Lead Agency substantial evidence that the proposed project may have a significant impact on our TCRs. “. . . [T]ribal Cultural Resources include, but are not limited to, sites, features, places, or objects with cultural value to descendant communities, traditional culture properties, or tribal cultural landscapes consistent with the guidance of the federal National Park Services’ Advisory Council on Historic Preservation.” (AB 52, Natural Resources Agency, at p. 2.) Moreover, Public Resources Code (“PRC”) Section 21084.2 states that “[a] project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” A project that may have a significant effect on the environment requires appropriate mitigation. (PRC § 21082.3(b).) Through the consultation process, AB 52 authorized California Native American tribes to assist lead agencies in identifying, interpreting, and determining the significance of TCRs. (See AB 52, Legislative Digest.) Unless the environmental document includes mitigation measures agreed on during the consultation process, "if substantial evidence demonstrates" the project "will cause" a significant effect to a TCR, the agency must "consider" feasible mitigation measures "pursuant to" Pub Res C §21084.3(b).

As well, Consultation is not deemed concluded for purposes of CEQA until the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource, or when a party concludes, after a reasonable effort, that mutual agreement cannot be reached. (PRC §21080.3.2(b).) Any mitigation measures agreed on during the consultation process must be recommended by lead agency staff for inclusion in the environmental document and the mitigation monitoring and reporting program for the project pursuant to section 21082.3(a) of the PRC. Moreover, now that consultation has begun, as the lead agency, you may certify an EIR or adopt a mitigated negative declaration for the subject project (which that may have a significant impact on a tribal cultural resource) only after consultation has concluded. (PRC §21082.3(d).)

Please find attached the proposed mitigation measures for the subject project. Once you have reviewed them, please provide written notification to the Tribe stating whether and to what extent you will include and require the proposed mitigations for TCR for the subject project so that we may conclude our consultation, and if you do not agree with the mitigations as proposed, so that we may continue our consultation discussions in an effort to reach an agreement.

Admin Specialist
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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.

