

Section D

Response to Comment

D. Response to Comment

Introduction

This section presents responses to the comments received during the public review period for the Mitigated Negative Declaration (December). A newspaper notice, including information on the availability of the Draft IS/MND was published in Los Angeles Times. The CPUC received one comment from among the various State and local agencies, the public, and the Applicant that were notified of the intent to adopt the Mitigated Negative Declaration.

In a letter dated December 29, 2009, David Singleton, Program Analyst, Native American Heritage Commission submitted comments on the Proposed MND. The letter is reproduced on the next pages. The response to the comment letter follows immediately after the NAHC letter.

The Initial Study performed under CEQA considered cultural resources. No resources or remains are known or suspected to exist at the site. As noted in the NAHC letter, a file search of the NAHC Sacred Lands File revealed no Native American cultural resources within one-half mile of the site. However, a mitigation measure (CUL-1) will ensure that should there be any human remains discovered, they will be treated appropriately and in accordance with applicable laws and regulations.” No revisions were made to the MND and supporting Initial Study based on the NAHC comments.

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net



December 29, 2009

Mr. Eric Chiang

CALIFORNIA PUBLIC UTILITIES COMMISSION

505 Van Ness Avenue
San Francisco, CA 94102

Re: SCH#2009121021 CEQA Notice of Completion: proposed Mitigate Negative Declaration for the Flying M Ranch lease (Southern California Edison lease of 13.5-acres for the Hinson-Lighthipe Transmission Right-of-Way located in the City of Long Beach; Los Angeles County, California

Dear Mr. Chiang:

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources.. (Also see *Environmental Protection Information Center v. Johnson* (1985) 170 Cal App. 3rd 604) The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amended in 2009) 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 California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of 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. To adequately assess the project-related impacts on historical resources, the Commission recommends the following.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural resources were not identified within one-half mile of the APE. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Enclosed are the names of the nearest tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for this purpose, that may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We recommend that you contact persons on the attached list of Native American contacts. A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes.. Furthermore we suggest that you contact the California Historic Resources Information System (CHRIS) at the Office of Historic Preservation (OHP) Coordinator's office (at (916) 653-7278, for referral to the nearest OHP Information Center of which there are 11..

Consultation with tribes and interested Native American tribes and individuals, as consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f])*et seq*), 36 CFR Part 800.3, 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..

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 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. Discussion of these should be included in your environmental documents, as appropriate.

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of 'historic properties of religious and cultural significance' may also be protected the under Section 304 of the 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 APE and possibly threatened by proposed project activity.

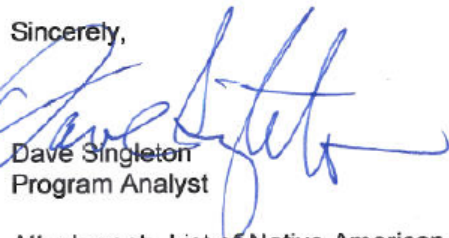
CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens.

Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. . Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony.

Again, Lead agencies should consider avoidance, as defined in §15370 of the California Code of Regulations (CEQA Guidelines), when significant cultural resources are discovered during the course of project planning and implementation

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,



Dave Singleton
Program Analyst

Attachment: List of Native American Contacts

Cc: State Clearinghouse

Native American Contacts
Los Angeles County
December 29, 2009

LA City/County Native American Indian Comm
Ron Andrade, Director
3175 West 6th Street, Rm.
Los Angeles , CA 90020
(213) 351-5324
(213) 386-3995 FAX

Gabrielino Tongva Nation
Sam Dunlap, Tribal Secretary
P.O. Box 86908
Los Angeles , CA 90086
samdunlap@earthlink.net
(909) 262-9351 - cell

Ti'At Society
Cindi Alvitre
6515 E. Seaside Walk, #C
Long Beach , CA 90803
calvitre@yahoo.com
(714) 504-2468 Cell

Gabrielino Tongva Indians of California Tribal Council
Robert F. Doramae, Tribal Chair/Cultural
P.O. Box 490
Bellflower , CA 90707
gtongva@verizon.net
562-761-6417 - voice
562-925-7989 - fax

Tongva Ancestral Territorial Tribal Nation
John Tommy Rosas, Tribal Admin.
tattnlaw@gmail.com
310-570-6567

Gabrielino Tongva
Gabrielino-Tongva Tribe
Bernie Acuna
501 Santa Monica Blvd, #
Santa Monica CA 90401
(310) 587-2203
(310) 428-7720 - cell
(310) 587-2281

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693
San Gabriel , CA 91778
(626) 286-1262 -FAX
(626) 286-1632
(626) 286-1758 - Home
(626) 286-1262 Fax

Gabrieleno Band of Mission Indians
Andy Salas, Chairperson
PO Box 393
Covina , CA 91723
gabrielenoindians@yahoo.
626-926-4131
(213) 688-0181 - FAX

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 Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009121021; CEQA Notice of Completion; proposed Mitigate Negative Declaration for the Flying M Ranch Lease (Southern California Edison lease of 13.5-acres for the Hinson-Lighthipe Transmission Right-of-Way; located in the City of Long Beach; Los Angeles County, California.

Native American Contacts
Los Angeles County
December 29, 2009

Gabrielino-Tongva Tribe
Linda Candelaria, Chairwoman
501 Santa Monica Blvd, # Gabrielino
Santa Monica CA 90401
(310) 587-2203
310-428-5767- cell
(310) 587-2281
lcandelaria1@gabrielinoTribe.org

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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 Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106, and federal NAGPRA.

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PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



January 26, 2010

Mr. Dave Singleton
Program Analyst
Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814

Re: SCH 2009121021 – Mitigated Negative Declaration for the Lease of Southern California Edison’s Hinson-Lighthipe Transmission Right of Way to Flying M Ranch, LLC.

Dear Mr. Singleton:

Thank you for your comment letter outlining responsibilities with regard to Native American artifacts and remains. The Initial Study prepared under CEQA carefully considered cultural resources. Based on the disturbed nature of the site and its existing and prior uses, an archaeologist’s record search and evaluation (including consideration of three previous studies overlaying the site that identified no cultural resources), and the lack of identified resources in the NAHC file search, it is highly unlikely that cultural resources would be encountered.

While no resources or remains are known or suspected to exist at the site, a mitigation measure (CUL-1) will ensure that should there be any human remains discovered they will be treated appropriately and in accordance with applicable laws and regulations. The mitigation measure reads as follows:

CUL-1. If human remains are discovered within the project area during any phase of construction, work within 50 feet of the remains will be suspended immediately and SCE and/or their representative will immediately notify the respective county coroner. If the remains are determined by the coroner to be Native American, the American Heritage Commission (NAHC) will be notified within 24 hours, and the guidelines of the NAHC will be adhered to in the treatment and disposition of the remains. SCE and/or their representative will also retain a professional archaeological consultant with Native American burial experience who will conduct a field investigation of the specific site and consult with the Most Likely Descendant identified by the NAHC. As necessary, the archaeological consultant may provide professional assistance to the Most Likely Descendant including the excavation and removal of human remains. SCE or its appointed representative will implement any mitigation before the resumption of activities at the site where the remains were discovered.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Chiang", with a long horizontal flourish extending to the right.

Eric Chiang
CPUC Project Manager
Energy Division, Transmission Permitting and Environmental Review