

**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](http://www.nahc.ca.gov)  
e-mail: [ds\\_nahc@pacbell.net](mailto:ds_nahc@pacbell.net)



December 28, 2010

Mr. Iain Fisher

**California Public Utilities Commission**

505 Van Ness Avenue  
San Francisco, CA 94102

Mr. Greg Thomsen

**United States Department of the Interior****BUREAU OF LAND MANAGEMENT**

22835 Calle San Juan De Los Lagos  
Moreno Valley, CA 92553

RE: SCH#2009121079 Joint NEPA/EQA Notice of Completion; draft Environmental Impact Statement / Draft Environmental Impact Report (DEIS/DEIR) for the East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects; located in the Jacumba, Manzanita-Boulevard, Campo & Manzanita Indian Reservations Mountain Empire Region about 70 miles east of the City of San Diego; San Diego County, California

Dear Mssrs. Fisher and Thomsen

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. 3<sup>rd</sup> 604). The NAHC wishes to comment on the above-referenced proposed project.

The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amendment 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 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. 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. State law also addresses Native American Religious Expression in Public Resources Code §5097.9.

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 identified within the Areas of Potential Effect (APE), particularly in the Jacumba area, and on and near the Campo and Manzanita Indian Reservations. Also, it is important to understand that the absence of archaeological, Native American cultural resources in an area does not

indicate that they are not present, or will be present once ground-breaking activity begins. The best way to determine whether or not the proposed project might adversely impact on Native American cultural resources is to conduct early consultation with Native American tribes and interested Native American individuals on the attached NAHC list for that purpose, in order to avoid unanticipated discoveries once a project is underway and to learn of any sensitive cultural areas.

Enclosed a list with the names of the culturally affiliated tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for the purpose of the project. The individuals on the attached list may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APEs). 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 the NAHC recommends that you contact the California Historic Resources Information System (CHRIS) of the Office of Historic Preservation (OHP), for information on recorded archaeological data. This information is available at the Information Center at San Diego State University (619-594-5682..

Consultation with tribes and interested Native American tribes and interested Native American individuals, as consulting parties, on the attached 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, .4 & .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 Interior's 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*. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e).

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. Although tribal consultation under the California Environmental Quality Act (CEQA; CA Public Resources Code Section 21000 – 21177) is 'advisory' rather than mandated, the NAHC does request 'lead agencies' to work with tribes and interested Native American individuals as 'consulting parties,' on the list provided by the NAHC in order that cultural resources will be protected. However, the 2006 Senate Bill 1059 the state enabling legislation to the Federal Energy Policy Act of 2005, does mandate tribal consultation for the 'electric transmission corridors. This is codified in the California Public Resources Code, Chapter 4.3, and §25330 to Division 15, requires consultation with California Native American tribes, and identifies both federally recognized and non-federally recognized on a list maintained by the NAHC

In the case of inadvertent discoveries of human remains, during project construction, and there are Native American burial sites within the APEs identified that have previously been reported; such discoveries must be reported to the San Diego County Medical Examiner (858-694-2905) pursuant to California Government Code §27491. Also, 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.

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

Sincerely,

  
Dave Singleton  
Program Analyst

Attachment: List of Culturally Affiliated Native American Contacts

Cc: State Clearinghouse

**DUDEK**

605 Third Street  
Encinitas, CA 92024

Native American Contacts  
San Diego County  
December 28, 2010

Barona Group of the Capitan Grande  
Edwin Romero, Chairperson  
1095 Barona Road Diegueno  
Lakeside , CA 92040  
sue@barona-nsn.gov  
(619) 443-6612  
619-443-0681

Sycuan Band of the Kumeyaay Nation  
Danny Tucker, Chairperson  
5459 Sycuan Road Diegueno/Kumeyaay  
El Cajon , CA 92021  
ssilva@sycuan-nsn.gov  
619 445-2613  
619 445-1927 Fax

La Posta Band of Mission Indians  
Gwendolyn Parada, Chairperson  
PO Box 1120 Diegueno/Kumeyaay  
Boulevard , CA 91905  
gparada@lapostacasino.  
(619) 478-2113  
619-478-2125

Viejas Band of Kumeyaay Indians  
Bobby L. Barrett, Chairperson  
PO Box 908 Diegueno/Kumeyaay  
Alpine , CA 91903  
jrothauff@viejas-nsn.gov  
(619) 445-3810  
(619) 445-5337 Fax

San Pasqual Band of Mission Indians  
Allen E. Lawson, Chairperson  
PO Box 365 Diegueno  
Valley Center CA 92082  
allenl@sanpasqualband.com  
(760) 749-3200  
(760) 749-3876 Fax

Kumeyaay Cultural Historic Committee  
Ron Christman  
56 Viejas Grade Road Diegueno/Kumeyaay  
Alpine , CA 92001  
(619) 445-0385

lipay Nation of Santa Ysabel  
Virgil Perez, Spokesman  
PO Box 130 Diegueno  
Santa Ysabel CA 92070  
brandietaylor@yahoo.com  
(760) 765-0845  
(760) 765-0320 Fax

Campo Kumeyaay Nation  
Monique LaChappa, Chairperson  
36190 Church Road, Suite 1 Diegueno/Kumeyaay  
Campo , CA 91906  
**(619) 478-9046**  
miachappa@campo-nsn.gov  
(619) 478-5818 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. And 36 CFR Part 800.

This list is only applicable for contacting local Native Americans for consultation purposes with regard to cultural resources impact by the proposed SCH#2009121079; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the East County Substation / Tule Wind / Energia Sierra Juarez Gen-Tie Projects; draft Environmental Impact Statement / Environmental Impact Report (EIS/EIR); Lead Agencies: CPUC and BLM; San Diego

Native American Contacts  
San Diego County  
December 28, 2010

Jamul Indian Village  
Kenneth Meza, Chairperson  
P.O. Box 612  
Jamul , CA 91935 Diegueno/Kumeyaay  
[jamulrez@sctdv.net](mailto:jamulrez@sctdv.net)  
(619) 669-4785  
(619) 669-48178 - Fax

Mesa Grande Band of Mission Indians  
Mark Romero, Chairperson  
P.O. Box 270 Diegueno  
Santa Ysabel, CA 92070  
[mesagrandeband@msn.com](mailto:mesagrandeband@msn.com)  
(760) 782-3818  
(760) 782-9092 Fax

Kumeyaay Cultural Heritage Preservation  
Paul Cuero  
36190 Church Road, Suite 5 Diegueno/ Kumeyaay  
Campo , CA 91906  
(619) 478-9046  
(619) 478-9505  
(619) 478-5818 Fax

Kwaaymii Laguna Band of Mission Indians  
Carmen Lucas  
P.O. Box 775 Diegueno -  
Pine Valley , CA 91962  
(619) 709-4207

Inaja Band of Mission Indians  
Rebecca Osuna, Spokesperson  
2005 S. Escondido Blvd. Diegueno  
Escondido , CA 92025  
(760) 737-7628  
(760) 747-8568 Fax

Kumeyaay Cultural Repatriation Committee  
Steve Banegas, Spokesperson  
1095 Barona Road Diegueno/Kumeyaay  
Lakeside , CA 92040  
(619) 742-5587 - cell  
(619) 742-5587  
(619) 443-0681 FAX

Ewiiapaayp Tribal Office  
Will Micklin, Executive Director  
4054 Willows Road Diegueno/Kumeyaay  
Alpine , CA 91901  
[wmicklin@leaningrock.net](mailto:wmicklin@leaningrock.net)  
(619) 445-6315 - voice  
(619) 445-9126 - fax

Ewiiapaayp Tribal Office  
Michael Garcia, Vice Chairperson  
4054 Willows Road Diegueno/Kumeyaay  
Alpine , CA 91901  
[michaelg@leaningrock.net](mailto:michaelg@leaningrock.net)  
(619) 445-6315 - voice  
(619) 445-9126 - 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. And 36 CFR Part 800.

This list is only applicable for contacting local Native Americans for consultation purposes with regard to cultural resources impact by the proposed SCH#2009121079; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the East County Substation / Tule Wind / Energia Sierra Juarez Gen-Tie Projects; draft Environmental Impact Statement / Environmental Impact Report (EIS/EIR); Lead Agencies: CPUC and BLM; San Diego

Native American Contacts  
San Diego County  
December 28, 2010

Clint Linton  
P.O. Box 507  
Santa Ysabel, CA 92070  
Diegueno/Kumeyaay  
cjlinton73@aol.com  
(760) 803-5694  
cjlinton73@aol.com

Manzanita Band of the Kumeyaay Nation  
Leroy J. Elliott, Chairperson  
P.O. Box 1302  
Boulevard, CA 91905  
Diegueno/Kumeyaay  
(619) 766-4930  
(619) 766-4957 - FAX

Kumeyaay Diegueno Land Conservancy  
M. Louis Guassac, Executive Director  
P.O. Box 1992  
Alpine, CA 91903  
Diegueno/Kumeyaay  
guassacl@onebox.com  
(619) 952-8430

Frank Brown  
Viejas Kumeyaay Indian Reservation  
240 Brown Road  
Alpine, CA 91901  
Diegueno/Kumeyaay  
FIREFIGHTER69TFF@AOL.  
619) 884-6437

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. And 36 CFR Part 800.

This list is only applicable for contacting local Native Americans for consultation purposes with regard to cultural resources impact by the proposed SCH#2009121079; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the East County Substation / Tule Wind / Energia Sierra Juarez Gen-Tie Projects; draft Environmental Impact Statement / Environmental Impact Report (EIS/EIR); Lead Agencies: CPUC and BLM; San Diego