Oceanside Circulation Element Update

Appendix G

SB 18 Tribal Analysis Coordination Correspondence

Prepared by the City of Oceanside

February 2010

Additional Information

California Native Americans

Cultural Resources

Strategic Plan

Commissioners

Federal Laws and Codes

State Laws and Codes

Local Ordinances and Codes

Additional Information

Return to CNAHC Home Page

LOCAL GOVERNMENT TRIBAL CONSULTATION LIST REQUEST

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814 (916)
653-4082 (916) 657-5390 - Fax

Project Title: General Plan Amendment (GPA10-00001), the Circulation Element Update

Local Government/Lead Agency: City of Oceanside

Contact Person: Scott Nightingale, Associate Planner

Street Address: 300 N. Coast Highway

City: Oceanside Zip: 92054

Phone: (760) 435-3526 Fax: (760) 754-2958

Specific Area Subject to Proposed Action: The GPA would amend the General Plan Circulation Element for the entire City of Oceanside. The Circulation Element Update will establish Goals and Objectives for the Circulation Element, and the recommended Polices needed to support and achieve them. The Update will address the Master Transportation/Circulation Plan, Level of Service Polices, Transportation issues, Traffic growth, potential future road way improvements.

County: San Diego City/Community: City of Oceanside

Local Action Type:

___ General Plan ___ General Plan Element ___ General Plan Amendment _X_

Specific Plan ___ Specific Plan Amendment

Consultation Request

__X__ Pre-planning Outreach Activity

Project Description: An application requesting approval to amend the City of Oceanside's General Plan to establish Goals and Objectives for the Circulation Element, and the recommended Polices needed to support and achieve them. The Update will address the Master Transportation/Circulation Plan, Level of Service Polices, Transportation issues, Traffic growth, potential future road way improvements.

__X__ **Sacred Lands File Search and Native American Contacts List Request**

Information Below is Required for a Sacred Lands File Search

USGS Quadrangle Name
San Luis Rey

Township _____ **Range** _____ **Section(s)** _____

NAHC Use Only

Date Received: _____

Date Completed _____

Native American Tribal Consultation lists are only applicable for consulting with California Native American tribes per Government Code Section 65352.3.

Native American Contacts
San Diego County
January 27, 2010

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

Rincon Band of Mission Indians
Angela Veltrano, Rincon Culture Committee
P.O. Box 68 Luiseno
Valley Center , CA 92082
council@rincontribe.org
(760) 749-1051
(760) 749-8901 Fax

San Luis Rey Band of Mission Indians
Henry Contreras, Most Likely Descendant
1763 Chapulin Lane Luiseno
Fallbrook , CA 92028
(760) 728-6722 - Home
(760) 908-7625 - Cell

San Luis Rey Band of Mission Indians
Russell Romo
12064 Old Pomerado Road Luiseno
Poway , CA 92064
(858) 748-1586

Pauma Valley Band of Luiseño Indians
Bennae Calac, Tribal Council Member
P.O. Box 369 Luiseno
Pauma Valley , CA 92061
bennaecalac@aol.com
(760) 617-2872
(760) 742-3422 - FAX

San Luis Rey Band of Mission Indians
Carmen Mojado, Co-Chair
1889 Sunset Drive Luiseno
Vista , CA 92081
cjmojado@slrmissionindians.org
(760) 724-8505
(760) 724-2172 - FAX
(760) 917-1736 - cell

Kupa Cultural Center (Pala Band)
Shasta Gaughen, Assistant Director
35008 Pala-Temecula Rd.PMB Box 445 Luiseno
Pala , CA 92059
cupa@palatribe.com
(760) 891-3590
(760) 742-4543 - FAX

La Jolla Band of Mission Indians
ATTN: Rob Roy,Environmental Director
22000 Highway 76 Luiseno
Pauma Valley , CA 92061
lajolla-sherry@aol.com and
(760) 742-3790
(760) 742-1704 Fax

Mel Vernon, Chairperson
San Luis Rey Band of Mission Indians
1044 North Ivy Street Luiseno
Escondido , CA 92026
melvern@aol.com
(760) 746-8692
(760) 703-1514 - cell

Hi Scott, 2/4/10
We need to coordinate & set a meeting with the Luiseno's listed on this page for the Circleroots update, similar to what we did for Gallant-Lacon. Please follow proper protocol & see me before we do this. Thanks, Jerry

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

Distribution of this list does not relieve any person of statutory responsibili
Safety Code, Section 5097.94 of the Public Resources Code and Section 50

This list is only applicable for contacting local Native Americans with regar
SCH#2009121020; CEQA Notive of Preparation (NOP); draft Environmental I
Oceanside Circulation Element of the General Plan Update; located in the C

CITY OF OCEANSIDE
DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

February 8, 2010

RE: INVITATION TO CONSULT UNDER SENATE BILL 18

General Plan Amendment (GPA10-00001), Circulation Element Update

To Whom It May Concern:

This letter formally invites you to request consultation pursuant to Senate Bill 18 ("SB 18"; Government Code Section 65352.3) regarding the proposed project. As you may know, SB18 became effective on March 01, 2005 and requires local governments to consult with California Native American Tribes about proposed local land use planning decisions for the purpose of protecting traditional tribal cultural places and sacred sites. The proposed project will require an amendment to the Oceanside General Plan (GPA) and therefore is subject to the requirements of SB18.

The GPA would amend the General Plan Land Use Element to allow the update of the transportation circulation plan, level of service polices, transportation issues, traffic growth, and potential future roadway improvements. A concept site plan is enclosed for your review and to assist you in deciding whether or not to consult with the City of Oceanside on the proposed project.

The intent of consultation is to provide an opportunity for local governments and interested tribes to work together early in the project planning process. Early consultation will assist in the protection of tribal cultural places that might not appear on cultural resource registries. This notice represents your opportunity to participate in the process for this project. SB18 defines tribal cultural places as:

- Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine

- Native American historic, cultural, or sacred site that is listed or may be eligible for listing in the California Register of Historic Resources including historic or prehistoric ruins and any burial ground, archaeological, or historic site

A request for consultation for this project must be made within ninety (90) days of the date of this notice. Under SB18, if your tribe requests to participate in the consultation process, any sensitive information shared with the City regarding cultural places and/or sacred sites will be kept strictly confidential and will not be divulged to the public. Should your tribe not desire to consult on the proposed project, please inform us in writing of that as well.

Please direct your correspondence to *Scott Nightingale, Associate Planner* at the address listed in the letterhead or by e-mail at *snightingale@ci.oceanside.ca.us*.

Respectfully Submitted,

Scott Nightingale,
Associate Planner

Enclosure: Concept Site Plan

SAN LUIS REY BAND
of Mission Indians

Tribal Council

Mel Vernon
Captain

Carmen Mojado
Secretary of Government Relations

Charlotte Herrera
Secretary of the Treasury

Tom Beltran
Secretary of Economic Development

Al Cerda
Secretary of Tribal Ethics and Information

Clara Guy
Tribal Elder

Henry Contreras
Council Member

David Herrera
Council Member

Mary Lou Beltran
Council Member

Carrie Lopez
Tribal Advisor

Merri Lopez, Esq.
Tribe Legal Advisor

Contact information
1889 Sunset Drive
Vista, CA 92081
Tel: (760) 724-8505
Fax: (760) 724-2172

Revised: 01 05

FEBRUARY 22, 2010

Received
FEB 24 2010
Planning Division

Re: Comments on Proposed (PEIR) for General Plan – Circulation Element Update

Dear City of Oceanside,

The San Luis Rey Band of Mission Indians hereby submits the following comments on the proposed (PEIR) for General Plan- Circulation Element Update. **("Project").**

The San Luis Rey Band ("Band" or "Tribe") is a San Diego County Tribe whose traditional territory includes the current cities of Vista, Oceanside, Carlsbad, San Marcos and Escondido, among others. The Band's primary concerns are the preservation and protection of cultural, archaeological, sacred and historical sites of significant to the Band located within the Project area.

The Band is concerned about protecting the unique and irreplaceable cultural resources which will be affected by the Project. The Tribe is also concerned about the appropriate and lawful treatment of Native American human remains and cultural and sacred items which are likely to be disturbed during the Project's development and ground disturbing activities. The Band does have a Most Likely Descendant on file with the Native American Heritage Commission in the event that human remains are discovered during the grading process.

The need for mitigation measures for this Project are undisputed. The strongest protections must be afforded to protect these invaluable resources. The Band intends to use all appropriate and necessary procedures available to ensure that these resources are property addressed via the CEQA and SB 18 processes.

To ensure a complete and undisputed understanding by all parties regarding the protection of these priceless resources, the Band respectfully

SAN LUIS REY BAND
of Mission Indians

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1889 Sunset Drive
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requests that the following mitigation measures be added as mandatory conditions for approving the grading permit for the Project. The Developer must be required to submit written proof of these requirements before the permit may be issued.

1. The Developer must execute a Pre-Excavation Agreement with the Band prior to any ground-disturbing activities on the Project site. The agreement will, at minimum, include the following provisions:

   A. Require appropriate treatment of human remains and cultural items.
   B. Require a good faith effort by the parties to agree on what is appropriate treatment and dignity when addressing human remains and cultural items.
   C. Require that any human remains or cultural items recovered during the grading process be returned to the Band, and not curated in a facility absent the express written consent of the Band.
   D. Require avoidance for all significant and sacred archaeological sites which may be found during development. Avoidance is the preferred method of preservation under CEQA for such resources.
   E. Require Native American monitors to be present during all ground-disturbing activities.
   F. Provide for the compensation of tribal monitors at the expense of the Developer.

2. Additionally, the Band requests that Native American monitors be added as a mandatory requirement, in addition to any archaeological monitor required by state law.

With these clarifications, the San Luis Rey Band believes that the mitigation measures described above will provide adequate protection for the cultural resources and human remains that may be discovered in the Project area. The Band intends to carefully monitor this Project to ensure that the requirements imposed by CEQA and SB 18 are rigorously applied for the duration of the Project.

SAN LUIS REY BAND
of Mission Indians

Tribal Council

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Contact information
1889 Sunset Drive
Vista, CA 92081

Tel: (760) 724-8505
Fax: (760) 724-2172

The Band truly appreciates the commitment of City of Oceanside to continue consultation with the Tribe during the Project. We look forward to continuing this positive relationship and we thank you for your assistance in protecting our invaluable Luiseño cultural resources.

Sincerely,

Mel Ver

Mel Vernon
San Luis Rey Band of Mission Indians

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

Received
FEB 01 2010
Planning Division

January 28, 2010

Mr. Jerry Hittleman, City Planner
CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

Re: SCH#2009121020 CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the **City of Oceanside Circulation Element of the General Plan Update;** located in the City of Oceanside; San Diego County, California

Dear Mr. Hittleman:

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 identified** within one-half mile of the City-wide APE encompassing the General Plan.

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 se),* 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

PALA BAND OF MISSION INDIANS
Tribal Historic Preservation Office
35008 Pala Temecula Rd. PMB 445
Pala, CA 92059

Ph: (760) 891-3591
Fax: (760) 742-4543

February 24, 2010

Received
FEB 26 2010
Planning Division

Scott Nightingale
City of Oceanside- Development Services Dept.
300 N. Coast Highway
Oceanside, CA 92054

Re: General Plan Amendment (GPA10-00001), Circulation Element Update

Dear Mr. Nightingale:

The Pala Band of Mission Indians Tribal Historic Preservation Office has received your notification of the project referenced above. This letter constitutes our response on behalf of Robert Smith, Tribal Chairman.

We have consulted our maps and determined that the project as described is not within the boundaries of the recognized Pala Indian Reservation. It is, however, within the boundaries of the territory that the tribe considers its Traditional Use Area (TUA). Therefore, we request to be kept in the information loop as the project progresses and would appreciate being maintained on the receiving list for project updates, reports of investigations, and/or any documentation that might be generated regarding previously reported or newly discovered sites. Further, we may recommend archaeological monitoring pending the results of site surveys and records searches associated with the project. If the project boundaries are modified to extend beyond the currently proposed limits, we request updated information and the opportunity to respond to your changes.

We appreciate involvement with your initiative and look forward to working with you on future efforts. If you have questions or need additional information, please do not hesitate to contact me by telephone at 760-891-3591 or by e-mail at sgaughen@palatribe.com.

Sincerely,

Shasta C. Gaughen, MA
Tribal Historic Preservation Officer
Pala Band of Mission Indians

ATTENTION: THE PALA TRIBAL HISTORIC PRESERVATION OFFICE IS RESPONSIBLE FOR ALL REQUESTS FOR CONSULTATION. PLEASE ADDRESS CORRESPONDENCE TO **SHASTA C. GAUGHEN** AT THE ABOVE ADDRESS. IT IS NOT NECESSARY TO ALSO SEND NOTICES TO PALA TRIBAL CHAIRMAN ROBERT SMITH. PLEASE ALSO NOTE THAT JOE NIXON NO LONGER WORKS FOR THE PALA THPO.