CHAPTER 10 Responses to Comments

10.1 ORGANIZATION OF THE RESPONSES TO COMMENTS

In total, one comment letter was received during the DEIR review period from one state department. No comment letters were received from private organizations or individuals. Table 10-1 (Comment Letters Received on the DEIR) provides summarized information regarding the comment letter.

	Table 10-1 Comment Letters Received on the DEIR							
No.	Commenter/Organization	Abbreviation	Page Where Comment Begins	Page Where Response Begins				
	STATE DEPARTMENTS							
1	Native American Heritage Commission (dated November 9, 2011)	NAHC	10-2	10-8				
PRIVATE ORGANIZATIONS								
	None							
Individuals								
	None							

This chapter of the EIR contains the comment letter received on the DEIR during the public review period, as well as the Lead Agency's responses to these comments. Reasoned, factual responses have been provided to the comment letter received, with a particular emphasis on environmental issues. Detailed responses have been provided where a comment raises a specific issue; however, a general response has been provided where the comment is relatively general. Generally, the responses to comments provide explanation or expand on information contained in the DEIR.

10.2 COMMENTS ON THE DEIR

This section contains the original comment letter, which has been bracketed to isolate the individual comments, followed by a section with the responses to the comments within the letter. As noted above, and stated in CEQA Guidelines Sections 15088(a) and 15088(b), comments that raise environmental issues are provided with responses. Comments that are outside of the scope of CEQA review will be forwarded for consideration to the decision makers as part of the project approval process.

10.2.1 State Departments

Native American Heritage Commission (NAHC), dated November 9, 2011

NAHC

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION 915 CAPITOL MALL, ROOM 384 SACRAMENTO, CA 98814 (918) 853-8951

(916) 653-6251 Fax (916) 657-5390 Web Site www.nahc.ca.gox de_nahc@pacbell.net





November 9, 2011

Ms. Kimberly Christensen, AICP, Planning Manager

City of El Segundo Planning and Building Safety Department

350 Main Street El Segundo, CA 90245

Re: SCH#2011071019 CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the "540 East Imperial Avenue Specific Plan Project;" located in the City of El Segundo; Los Angeles County, California

Dear Ms. Christensen:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites. The NAHC wishes to comment on the proposed project. This project is also subject to California Government Code §65352.3 (SB 18).

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments 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 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.

The NAHC Sacred Lands File (SLF) search resulted as follows: Native American cultural resources were not identified within the project area identified. Also, the absence of archaeological resources does not preclude their existence. California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to. California Government Code §6254 (r). The

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purpose of this code is to protect such sites from vandalism, theft and destruction. The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached <u>list of Native American contacts</u>, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends avoidance as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

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Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 et seq), 36 CFR Part 800.3 (f) (2) & .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 Interiors 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. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's Standards include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he 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 APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be

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followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

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If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

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Gabrielino Tongva

Gabrielino Tongva

California Native American Contacts

Los Angeles County November 9, 2011

LA City/County Native American Indian Comm Ron Andrade, Director 3175 West 6th St, Rm. 403 Los Angeles, CA 90020 randrade@css.lacounty.gov

(213) 351-5324 (213) 386-3995 FAX

Ti'At Society/Inter-Tribal Council of Pimu Cindi M. Alvitre, Chairwoman-Manisar 3098 Mace Avenue, Aapt. D Gabrielino Costa Mesa, CA 92626 calvitre@yahoo.com (714) 504-2468 Cell

Tongva Ancestral Territorial Tribal Nation

John Tommy Rosas, Tribal Admin. Private Address Gabri

Gabrielino Tongva

tattnlaw@gmail.com

310-570-6567

Gabrieleno/Tongva San Gabriel Band of Mission Anthony Morales, Chairperson

PO Box 693

Gabrielino Tongva

San Gabriel , CA 91778 GTTribalcouncil@aol.com

(626) 286-1632

(626) 286-1758 - Home

(626) 286-1262 -FAX

Gabrielino Tongva Nation Sam Dunlap, Chairperson

P.O. Box 86908

Los Angeles , CA 90086 samdunlap@earthlink.net

(909) 262-9351 - cell

Gabrielino Tongva Indians of California Tribal Council Robert F. Dorame, Tribal Chair/Cultural Resources

P.O. Box 490

Bellflower , CA 90707

gtongva@verizon.net

562-761-6417 - voice 562-761-6417 - fax

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Cont.

Gabrielino-Tongva Tribe Bernie Acuna

1875 Century Pk East #1500 Gabrielino

Los Angeles , CA 90067 (619) 294-6660-work

(310) 428-5690 - cell (310) 587-0170 - FAX

bacuna1@gabrieinotribe.org

Gabrielino-Tongva Tribe Linda Candelaria, Chairwoman

1875 Century Park East, Suite 1500 Los Angeles , CA 90067 Gabrielino

Icandelaria1@gabrielinoTribe.org

626-676-1184- cell (310) 587-0170 - FAX 760-904-6533-home

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

Distribution of this list does not relieve any person of the 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.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011071019; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the 540 East Imperial Avenue Specific Plan Project; located in the City of El Segundo; Los Angeles County, California

California Native American Contacts Los Angeles County

November 9, 2011

Gabrieleno Band of Mission Indians Andrew Salas, Chairperson P.O. Box 393 Gabirelino Covina , CA 91723 (626) 926-4131 gabrielenoindians@yahoo. com

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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 the 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.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2011071019; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the 540 East Imperial Avenue Specific Plan Project; located in the City of El Segundo; Los Angeles County, California

10.2.2 Private Organizations

No comment letters on the DEIR were received from private organizations.

10.2.3 Individuals

No comment letters on the DEIR were received from individuals.

10.3 RESPONSES TO COMMENTS ON THE DEIR

10.3.1 State Departments

Native American Heritage Commission (NAHC), dated November 9, 2011

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This comment provides introductory or general information regarding the role of the Native American Heritage Commission (NAHC), applicable CEQA statutes, as well as other policies and requirements, and encourages consultation with Native American Tribes in the area. This comment provides information on the provisions regarding historic or aesthetic significant resources as defined by CEQA. The comment states that a Sacred Lands Search prepared for the proposed project site did not identify Native American cultural resources on the proposed project area (including the project site). This portion of the comment states that Native American tribes in the area of the proposed project should be consulted since culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area. The letter also provides the contact information for the culturally affiliated tribes and individuals.

As discussed on DEIR page 1-2 to 1-3, the scope of the EIR includes only assessment and evaluation of potentially significant environmental issues which were identified through preparation of the Initial Study/Notice of Preparation (IS/NOP), comments in response to the publicly circulated IS/NOP, and scoping discussions among consulting staff and the City of El Segundo. In accordance with Section 15128 (Effects Not Found to Be Significant) of the CEQA Guidelines, the cultural resource issue area was not considered significant and was scoped out during the IS/NOP process (Appendix A1 of the DEIR).

Additionally, as discussed on IS/NOP page 43, mitigation measure MM CR-1 would ensure the monitoring of construction activities by a qualified professional and require scientific recovery and evaluation of any archaeological or paleontological resources that might be encountered. Mitigation measure MM CR-2 on IS/NOP page 45 reflects provisional measures in case human remains are discovered. Mitigation measure MM CR-2 would ensure appropriate examination, treatment, and protection of human remains, as required by law.

Further, this comment letter is a duplicate letter to that submitted by the NAHC on August 22, 2011 in responses to the IS/NOP process. This comment letter was considered during preparation of the IS/NOP and determination of the level of significance of No Impact to this environmental issue area. This comment provides information that is not a direct comment on the content or adequacy of the DEIR, and does not raise any specific environmental issue. This comment has been noted

and will be forwarded to decision-makers prior to their consideration of project approval. No further response is required.

10.3.2 Organizations

No comment letters on the DEIR were received from private organizations.

10.3.3 Individuals

No comment letters on the DEIR were received from individuals.