



Pechanga Band of Indians
for
NAHC Review

October 20, 2023

**WRF-3 Lift Station IS/MND (June 2020),
Cultural Resources and Tribal Cultural
Resources sections**

5 Cultural Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project:				
a. Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CEQA requires a lead agency to determine whether a project may have a significant effect on historical resources (Public Resources Code [PRC], Section 21084.1). The significance of cultural resources and impacts to those resources is determined by whether or not those resources can increase our collective knowledge of the past. The primary determining factors are site content and degree of preservation. State CEQA Guidelines Section 15064.5 states the term "historical resources" shall include the following:

1. A resource listed in or determined to be eligible by the State Historical Resources Commission for listing in the California Register of Historical Resources PRC Section 5024.1, Title 14 California Code of Regulations [CCR], Section 4850 et. seq.).
2. A resource included in a local register of historical resources, as defined in PRC Section 5020.1(k) or identified as significant in an historical resource survey meeting the requirements of PRC Section 5024.1(g), shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
3. Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California, may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing in the California Register of Historical Resources [CRHR] (PRC Section 5024.1, Title 14 CCR, Section 4852) as follows:
 - Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage
 - Is associated with the lives of persons important in our past
 - Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values

- Has yielded, or may be likely to yield, information important in prehistory or history (State CEQA Guidelines Section 15064.5)

Properties listed on the National Register of Historic Properties are automatically listed on the CRHR, along with State Landmarks and Points of Interest. The CRHR can also include properties designated under local ordinances or identified through local historical resource surveys.

Per PRC Section 21084.1, a project that may cause a substantial adverse change in the significance of a historical resource may have a significant impact on the environment. A “substantial adverse change” in the significance of a historical resource is defined as “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” State CEQA Guidelines Section 15064.5(b) states the significance of an historical resource is “materially impaired” when a project does any of the following:

- Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in the CRHR
- Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources or its identification in an historical resources survey, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant
- Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the CRHR as determined by a lead agency for purposes of CEQA

In addition, if it can be demonstrated that a project would cause damage to a unique archaeological resource, the lead agency may require reasonable efforts be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. To the extent that resources cannot be left undisturbed, mitigation measures are required (PRC Section 21083.2[a], [b]).

PRC Section 21083.2(g) defines a unique archaeological resource as an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it:

1. Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information
2. Has a special and particular quality such as being the oldest of its type or the best available example of its type
3. Is directly associated with a scientifically recognized, important prehistoric or historic event or person

Rincon Consultants, Inc. prepared a Cultural Resources Assessment for the project to evaluate project impacts to historical and archaeological resources. The Cultural Resources Assessment includes a records search at the Eastern Information Center, historical imagery review, a Sacred Lands File search with the Native American Heritage Commission (NAHC), and a pedestrian field survey. The following analysis is based on the Cultural Resources Assessment, which is provided in full as Appendix C.

- a. *Would the project cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?*

A search of the California Historical Resources Information System at the Eastern Information Center located at the University of California, Riverside was completed on January 6, 2020. The search was performed to identify all previously recorded cultural resources, as well as previously conducted cultural resources studies within the project site and a 0.5-mile radius surrounding it. The records search included a review of the National Register of Historic Places, the CRHR, the Office of Historic Preservation Historic Properties Directory, the California Inventory of Historic Resources, and the Archaeological Determinations of Eligibility list. Table 7, below, provides details about the 11 previously recorded cultural resources within a half-mile radius of the project site.

Table 7 Previously Recorded Resources within 0.5-mile of the Project Site

Primary Number	Trinomial	Resource Type	Description	Recorder(s) and Year(s)	NRHP/CRHR Status
P-33-003832	CA-RIV-003832	Site	Historic	1990 (K. Swope and D. Peirce); 1990 (Daniel F. McCarthy); 1996 (CRM TECH); 2001 (Bruce Love, Tom Tang, and Riordan Goodwin); 2005 (Kristie R, Blevins and Anna M. Hoover); 2006 (J.D. Goodman); 2006 (J.D. Goodman, Nick Reseburg, and Windy Jones); 2011 (Robin D. Hoffman)	Evaluated, determined ineligible
P-33-004112	CA-RIV-004112	Structure, Site	Historic; reported destroyed	1991 (K. Swope and K. Hallaran); 1997 (Bruce Love); 2005 (Ivan Strudwick, Joseph Baumann, and Brett Jones); 2007 (Joshua Patterson)	Unknown
P-33-006439	N/A	Plaque, Site	Historic, reported moved or missing	1934 (James Jones); 1959 (W.A. Savage); 1979 (Jim Arbuckle); 1982 (Gloria Scott); 2007 (Joshua Patterson)	Unknown
P-33-012511	N/A	Isolate	Historic	2002 (Jeanette McKenna)	Not listed
P-33-012559	N/A	Isolate	Prehistoric	1987 (L.A. Carbone); 2007 (Joshua Patterson)	Not listed
P-33-013146	N/A	Isolate	Prehistoric	1990 (K. Swope and D. Peirce)	Not listed
P-33-013147	N/A	Isolate	Prehistoric	1990 (K. Swope and D. Peirce); 2007 (Joshua Patterson)	Not listed
P-33-013148	N/A	Isolate	Prehistoric	1990 (K. Swope and D. Peirce); 2007 (Joshua Patterson)	Not listed
P-33-015322	CA-RIV-008090	Site	Historic	2006 (Garcia, Kyle and J.D. Stewart)	Unknown
P-33-026860	CA-RIV-012617	Site	Prehistoric	2016 (Stephen Bryne)	Unknown
P-33-028905	N/A	Isolate	Prehistoric	2019 (Megan Wilson)	Not listed

Source: Rincon 2020

As indicated in Table 7, few historic resources exist in the project vicinity and no resources were noted within the project site. One study (CA-RI-03153) has been completed within the current project site. CA-RI-03153 was conducted in 1988 for a proposed development project. No cultural resources were documented by the study within the project site. Additionally, Rincon conducted a pedestrian field survey of the project site on January 9, 2020, which did not identify any previously recorded or newly identified cultural resources within the project area. As no historical resources exist on the project site, the proposed project would have no impact.

NO IMPACT

- b. *Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?*

As indicated in Table 7, no archaeological resources have been identified on the project site. Six archaeological resources have been previously recorded within a half-mile of the project site, none of which are listed in the NRHP/CRHR. The background research and pedestrian survey of the project site did not identify any previously recorded or newly identified archaeological resources. Additionally, a survey of the eastern portion of the project site in 1988, prior to the paving of the parking lot, was negative for archaeological resources. Rincon requested a records search of the Sacred Lands File from the NAHC to identify the potential for cultural resources within the project site and to obtain contact information for Native Americans groups or individuals who may have knowledge of resources within the project site. The Sacred Lands File search was returned with positive results, which means the NAHC identified a potentially sensitive tribal cultural resource within the project area. Given the level of development within and adjacent to the project site, it is likely that the sacred sites identified by the NAHC exists in the surrounding area and not on the project site.

As part of its AB 52 consultation process, which is further detailed in Section 18, *Tribal Cultural Resources*, the City prepared and sent letters to 33 NAHC-listed Native American contacts to request information on potential tribal cultural resources in the project vicinity that may be impacted by project development. At the time of this reporting, no known sacred sites or tribal cultural resources have been specifically identified within the project site; however, the Rincon Band of Luiseño Indians recommended that archaeological and tribal monitoring be included for ground disturbances that extend beyond previously disturbed depths in case previously unidentified, buried resources are located on the project site. Mitigation Measure CR-1 would meet the recommendations of the Rincon Band of Luiseño Indians and would apply during all ground disturbance phases of project construction, reducing potential impacts to a less-than-significant level.

Mitigation Measure

With implementation of the following mitigation measure, potential impacts related to archaeological resources would be reduced to a less-than-significant level.

CR-1 Retain a Native American Monitor

A Native American monitor who is ancestrally related to the project area shall be retained to be on site to monitor project-related ground-disturbing construction activities that extend beyond previously disturbed depths (i.e., grading, excavation, trenching, etc.). Native American monitoring of project-related ground-disturbing activities shall be performed under the direction of the qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards

for archaeology (National Park Service 1983). If any previously unidentified tribal cultural resources are unearthed during project construction, the City shall continue Native American consultation procedures, which may determine additional measures to avoid or reduce impacts to the resource are required. These additional measures to avoid or reduce impacts shall be determined on a case-by-case basis and approved by the City.

LESS THAN SIGNIFICANT WITH MITIGATION INCORPORATED

- c. *Would the project disturb any human remains, including those interred outside of formal cemeteries?*

No known human remains have been documented within the project site or the immediate vicinity. While the project site is unlikely to contain human remains, the potential for the recovery of human remains during ground-disturbing activities is always a possibility. If human remains are found, existing regulations outlined in the State of California Health and Safety Code Section 7050.5 state that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. In the event of an unanticipated discovery of human remains, the County Coroner must be notified immediately. If the human remains are determined to be prehistoric or Native American in origin, the Coroner will notify the NAHC, which will determine and notify a most likely descendant (MLD). The MLD shall complete the inspection of the site within 48 hours of being granted access and provide recommendations as to the treatment of the remains to the landowner. Therefore, impacts to human remains would be less than significant.

LESS THAN SIGNIFICANT IMPACT

18 Tribal Cultural Resources

	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in a Public Resources Code Section 21074 as either a site, feature, place, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

On July 1, 2015, California Assembly Bill 52 of 2014 (AB 52) was enacted, expanding CEQA by defining a new resource category, "tribal cultural resources." AB 52 states, "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" (PRC Section 21084.2). It further states the lead agency shall establish measures to avoid impacts altering the significant characteristics of a tribal cultural resource, when feasible (PRC Section 21084.3).

PRC Section 21074 (a)(1)(A) and (B) defines tribal cultural resources as "sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe" and is:

1. Listed or eligible for listing in the CRHR or in a local register of historical resources as defined in PRC Section 5020.1(k), or
2. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In applying these criteria, the lead agency shall consider the significance of the resource to a California Native American tribe.

AB 52 also establishes a formal consultation process for California tribes regarding those resources. The consultation process must be completed before a CEQA document can be certified or adopted. Under AB 52, lead agencies are required to “begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.” Native American tribes to be included in the process are those having requested notice of projects proposed in the jurisdiction of the lead agency.

On January 13, 2020, Corona DWP received a letter from the Native American Heritage Council that provided a list of tribes who have ancestral ties to the project area. On February 10, 2020, the City distributed AB 52 consultation letters for the proposed project, including project information, map, and contact information, to 33 Native American Tribes (38 contacts) (see Appendix C for a copy of the letters). The Native American contacts provided with an AB 52 consultation letters include the following list of recipients:

- Agua Caliente Band of Cahuilla Indians
- Augustine Band of Cahuilla Mission Indians
- Cabazon Band of Mission Indians
- Cahuilla Band of Indians
- Campo Band of Diegueño Mission Indians
- Ewiiapaayp Band of Kumeyaay Indians
- Gabrieleño Band of Mission Indians – Kizh Nation
- Gabrieleno/Tongva San Gabriel Band of Mission Indians
- Gabrielino/Tongva Nation
- Gabrielino Tongva Indians of California Tribal Council
- Gabrielino-Tongva Tribe
- Jamul Indian Village
- Juaneño Band of Mission Indians
- Juaneño Band of Mission Indians Acjachemen Nation
- La Jolla Band of Luiseño Indians
- La Posta Band of Diegueño Mission Indians
- Los Coyotes Band of Cahuilla and Cupeño Indians
- Manzanita Band of Kumeyaay Nation
- Mesa Grande Band of Diegueño Mission Indians
- Morongo Band of Mission Indians
- Pala Band of Mission Indians
- Pauma Band of Luiseño Indians
- Pechanga Band of Luiseño Indians
- Ramona Band of Cahuilla Indians
- Rincon Band of Luiseño Indians
- San Fernando Band of Mission Indians
- San Luis Rey Band of Mission Indians
- San Pasqual Band of Diegueño Mission Indians
- Santa Rosa Band of Cahuilla Indians

- Soboba Band of Luiseño Indians
- Sycuan Band of the Kumeyaay Nation
- Torres-Martinez Desert Cahuilla Indians
- Viejas Band of Kumeyaay Indians

Under AB 52, Native American tribes have 30 days to respond and request further project information and formal consultation. All letters were received by February 10, 2020. Therefore, the consultation request period for all tribes closes on March 11, 2020.

The City received five response letters of which four declined or deferred any further consultation. The Rincon Band of Luiseño Indians requested a phone consultation on February 28, 2020. Consultation began on March 11, 2020 and ended on March 12, 2020 with the agreement to have tribal monitoring during the period of excavation which is further discussed below.

- a. *Would the project cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074 that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?*
- b. *Would the project cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code 21074 that is a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1?*

As discussed in Section 5, *Cultural Resources*, Rincon requested a records search of the Sacred Lands File from the NAHC to identify the potential for cultural resources within the project site and to obtain contact information for Native Americans groups or individuals who may have knowledge of resources within the project site. The Sacred Lands File search was returned with positive results, which means the NAHC identified a potentially sensitive tribal cultural resource within the project area. However, it is unknown whether the identified tribal cultural resource is located on the project site. As part of its AB 52 consultation process, the City prepared and sent letters to 33 NAHC-listed Native American contacts to request information on potential cultural resources in the project vicinity that may be impacted by project development. The NAHC reviews the Sacred Lands File by quadrangle map, which provides a large area to review to determine a positive or negative results response. Given the level of development within and adjacent to the project site, it is likely that the sacred site identified by the NAHC exists in the surrounding area and not on the project site.

At the time of this reporting, no known sacred sites or tribal cultural resources have been specifically identified within the project site. The Rincon Band of Luiseño Indians did not identify any existing tribal cultural resources on the project site during the consultation process, but recommended that archaeological and tribal monitoring occur during ground disturbance activities. The requirement for this monitoring is identified in Section 5, *Cultural Resources*.

Because no tribal cultural resources were identified during the records search, site survey or as a result of the consultation process, no impact would occur.

NO IMPACT

**California Attorney General Opinion
No. 07-103 (November 6, 2007)**

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

EDMUND G. BROWN JR.
Attorney General

OPINION	:	No. 07-103
	:	
of	:	November 6, 2007
	:	
EDMUND G. BROWN JR.	:	
Attorney General	:	
	:	
DANIEL G. STONE	:	
Deputy Attorney General	:	
	:	

THE NATIVE AMERICAN HERITAGE COMMISSION has requested an opinion on the following question:

To what extent, if any, may the Native American Heritage Commission delegate its powers and duties to its executive secretary, including the authority to hold hearings, make findings, and ask the Attorney General to bring an action to prevent severe and irreparable damage to a Native American sanctified cemetery or to prevent the taking of artifacts from a Native American grave?

CONCLUSION

The Native American Heritage Commission may delegate to its executive secretary those powers and duties that do not require the exercise of the special judgment and discretion conferred upon the commission by statute. Such delegable powers include the authority to investigate claims of damage or threatened damage to a Native American sanctified cemetery or of removal or threatened removal of artifacts from a Native American grave; to prepare preliminary reports, hold hearings, and make recommended findings subject to the commission's review and approval; and to recommend that the commission bring an action, through the Attorney General, to prevent such damage or such removal.

ANALYSIS

The Native American Heritage Commission (Pub. Resources Code, §§ 5097.9-5097.994; "Commission")¹ is charged by the Legislature with identifying and cataloguing places of cultural significance to Native Americans and with protecting the integrity and sanctity of Native American burial sites, skeletal remains, and grave artifacts found on public and private property. (See *Native American Heritage Com. v. Board of Trustees* (1996) 51 Cal.App.4th 675, 681-682; *People v. Van Horn* (1990) 218 Cal.App.3d 1378, 1392-1394; 71 Ops.Cal.Atty.Gen. 121, 121-123 (1988).)

The Commission is comprised of nine members, a majority of whom must be from California Native American tribes and be nominated by tribes or other Native American organizations. (§ 5097.92; see *People v. Van Horn, supra*, 218 Cal.App.3d at p. 1395.) Commission members are appointed by the Governor with the advice and consent of the Senate. (§ 5097.91.) The Commission has an "executive secretary," who is also appointed by the Governor. (§ 5097.92.)

The question presented for resolution concerns whether the Commission may delegate to its executive secretary the powers and prerogatives conferred by statute upon the Commission. More particularly, we are asked whether such a delegation may include the following specific powers: (1) the authority to hold hearings and make findings concerning the effects of proposed actions by public agencies; and (2) the authority to ask the Attorney General to bring an action to prevent severe and irreparable damage to historical, cultural, or sacred Native American sites or to prevent the taking of artifacts from Native American graves. We conclude that the Commission may delegate to its executive secretary matters that do not require an exercise of the special discretion and judgment conferred upon the

1. All further references to the Public Resources Code are by section number only.

Commission. The Commission may not delegate its authority to make final findings about the extent to which Native American sacred sites, remains, and artifacts are threatened, or its power to determine appropriate mitigation measures, or its discretion to choose whether and when the Attorney General should be asked to file an action on the Commission's behalf.

Section 5097.94 states the general powers of the Commission:

The commission shall have the following powers and duties:

(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloging of known graves and cemeteries shall be completed on or before January 1, 1984. The commission shall notify landowners on whose property such graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

(b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.

(c) To make recommendations to the Legislature relative to procedures which will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter.

(f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In any action to enforce the provisions of this subdivision the commission shall introduce evidence showing that such cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

(h) To request and utilize the advice and service of all federal, state, local, and regional agencies.

(i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.

(j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.

(k) To mediate, upon application of either of the parties, disputes arising between landowners and known descendents relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate

dignity, of the human remains and any items associated with Native American burials.

In addition, section 5097.97 provides:

In the event that any Native American organization, tribe, group, or individual advises the commission that a proposed action by a public agency may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans, the commission shall conduct an investigation as to the effect of the proposed action. Where the commission finds, after a public hearing, that the proposed action would result in such damage or interference, the commission may recommend mitigation measures for consideration by the public agency proposing to take such action. If the public agency fails to accept the mitigation measures, and if the commission finds that the proposed action would do severe and irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, the commission may ask the Attorney General to take appropriate legal action pursuant to subdivision (g) of Section 5097.94.

Section 5097.994 establishes civil penalties for the unlawful excavation, destruction, removal, or defacement of historical, cultural, or sacred Native American sites on private land, and provides that “[a] civil action may be brought pursuant to this section by the district attorney, the city attorney, or the Attorney General, or by the Attorney General upon a complaint by the Native American Heritage Commission.” (§ 5097.994, subd. (d).)

Accordingly, the Commission’s powers and duties include: (1) identifying and cataloguing places of special religious or social significance to California Native Americans; (2) helping Native Americans make known their concerns regarding the treatment of Indian graves and cemeteries; (3) identifying Native American burial sites on private property and, upon the discovery of remains, notifying the most likely descendants so they might recommend treatment and disposition of the remains and of the grave goods; (4) mediating disputes between landowners and Native Americans that may arise in such private property contexts; (5) assisting landowners and Native American Groups in developing agreements regarding the disposition of graves and artifacts; (6) making recommendations for the purchase by the state or public agencies of sacred sites on private lands to facilitate access thereto by Native Americans; (7) ensuring and protecting access by Native Americans to sacred sites on public property; (8) assisting state agencies in negotiations with the federal

government for the protection of sacred places on federal lands; (9) requesting and applying the advice and services of federal, state, regional, and local agencies; and (10) working with the Department of Parks and Recreation, the California Arts Council, and other governmental agencies on Indian matters.

In contrast, the statutory scheme does not assign any specific duties, powers, responsibilities, or functions to the Commission's executive secretary; neither do the statutes require that the executive secretary be a tribe member or tribal leader, or that he or she be nominated by tribes or other Native American organizations. The statutes are silent about which of the Commission's responsibilities, if any, may be delegated to the executive secretary by the Commission, and under what circumstances. (Cf., e.g., Gov. Code, § 17530 [duties of executive director of Commission on State Mandates]; Gov. Code, § 18654 [State Personnel Board's delegation of powers to executive officer]; Gov. Code, § 20099 [delegation by Board of Administration of the Public Employees' Retirement System to executive officer]; Gov. Code, § 22208 [delegation by Retirement Board of the State Teachers' Retirement System to executive officer]; Gov. Code, § 83108 [Fair Political Practices Commission's delegation to executive director]; Ed. Code, § 71090 [delegation by Board of Governors of California Community Colleges to Chancellor]; Wat. Code, § 13223 [delegation by regional water quality control boards to respective executive officers].)

Because the legislative scheme assigns no specific duties to the executive secretary and is silent about the extent to which the Commission's powers may be delegated, we turn to general principles governing the delegation of authority to state and local public agencies. It is well established that, in the absence of express statutory authorization, powers and authority conferred upon a public agency cannot be surrendered or delegated to a subordinate if they involve the exercise of judgment or discretion in the agency's areas of special expertise; rather, such powers are said to be in the nature of a public trust, placed exclusively in the hands of the specified public agency. (See, e.g., *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 24-25; *California Sch. Employees Assn. v. Personnel Commission* (1970) 3 Cal.3d 139, 144; *American Federation of Teachers v. Board of Education* (1980) 107 Cal.App.3d 829, 834; 64 Ops.Cal.Atty.Gen. 47, 51 (1981); 63 Ops.Cal.Atty.Gen. 240, 243 (1980).)

It is likewise well established, however, that boards and commissions may delegate to their executive officers a wide variety of powers and responsibilities that may be characterized as "routine" or "preliminary" or "ministerial in nature" and that do not require application of the board's or commission's special expertise. This distinction was made by the Supreme Court in *California Sch. Employees Assn. v. Personnel Commission*, *supra*, 3 Cal.3d 139:

As a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. [Citations.] Under normal circumstances and absent statutory provisions to the contrary the dismissal of employees involves the exercise of judgment or discretion. [Citations.]

On the other hand, public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action. [Citations.] Moreover, an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself. [Citations.]

(*Id.* at pp. 144-145.) These principles regarding the delegation of authority by a board or a commission have been applied in a variety of different contexts. (See, e.g., *Bagley v. City of Manhattan Beach*, *supra*, 18 Cal.3d at pp. 24-25; *American Federation of Teachers v. Board of Education*, *supra*, 107 Cal.App.3d at p. 834; *Ellerbroek v. Saddleback Valley Unified School Dist.* (1981) 125 Cal.App.3d 348, 374; *Schechter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396-398; 62 Ops.Cal.Atty.Gen. 479, 482 (1979).)

As noted above, the Legislature has in many instances specifically provided for a broad delegation of powers from a board or commission to its executive officer. These statutes may also establish a presumption that any authority held by a board that *may* lawfully be delegated *has been* delegated to its executive officer. (See, e.g., Gov. Code, § 18654; see also 72 Ops.Cal.Atty.Gen. 58, 59-62 (1989).)

The extent to which a public agency's authority may lawfully be delegated to an executive officer depends not only upon the agency's enabling statute, but also upon whether and to what degree the agency has first provided clear guidelines within which subordinates may apply, administer, or enforce the authority granted. That is to say, if a board or commission has exercised its judgment in defining standards and establishing protocols for the treatment of a matter within its jurisdiction, it may then delegate the application or enforcement of those defined standards in specified situations. (See *Sacramento Chamber of Commerce v. Stephens* (1931) 212 Cal. 607, 610; *American Federation of Teachers v. Board of Education*, *supra*, 107 Cal.App.3d at pp. 834-835; cf. *Kugler v. Yocum* (1968) 69 Cal.2d 371, 375-376 ["legislative power may properly be delegated if channeled by a sufficient standard"].)

Examples of permissible delegations include most personnel decisions, supervision of the agency's staff, and general day-to-day administration of the agency's

operations. (See, e.g., *Wilson v. San Francisco Mun. Ry.* (1973) 29 Cal.App.3d 870, 873; 63 Ops.Cal.Atty.Gen., *surpa*, at pp. 244-245; but see *California Sch. Employees Assn. v. Personnel Commission*, *supra*, 3 Cal.3d at p. 144 [public agency's dismissal of permanent employees normally involves exercise of judgment or discretion]; *Civil Service Assn. v. Redevelopment Agency* (1985) 166 Cal.App.3d 1222, 1225-1226 [same].)

On the other hand, matters that call for an exercise of the board's or commission's special discretion or judgment may not lawfully be delegated to an executive officer or other body because such authority is exclusively reserved, as a public trust, for the public agency to which that authority has been conferred by law. If this were not so, the board or commission would itself have little purpose. (See, e.g., *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 235 [legislative functions such as the power to levy taxes and adopt budgets "may not be delegated to an executive officer, leaving no discretion in the governing board"].)

In our view, Commission functions such as (1) determining whether sacred Native American sites, remains, or artifacts are suffering or are threatened with severe damage; (2) determining appropriate mitigation measures; and (3) deciding whether and when to bring a legal action are not "routine," "preliminary," or "ministerial in nature," but rather call for exercise of the Commission's special judgment and discretion. (Compare, e.g., *Bagley v. City of Manhattan Beach*, *supra*, 18 Cal.3d at pp. 24-25 [city council's power to determine salaries]; *California Sch. Employees Assn. v. Personnel Commission*, *supra*, 3 Cal.3d at p. 144 [school district board's authority to dismiss district employees]; *Sacramento Chamber of Commerce v. Stephens*, *supra*, 212 Cal. at p. 610 [city council's power to appropriate city funds]; *Webster v. Board of Education* (1903) 140 Cal. 331, 332 [school superintendent's authority to sit as *ex officio* member of board of education]; *American Federation of Teachers v. Board of Education*, *supra*, 107 Cal.App.3d at p. 834 [board's authority to accept employee's resignation]; *Myers v. City Council of City of Pismo Beach* (1966) 241 Cal.App.2d 237, 241-242 [city council's power to levy taxes]; *City of Redwood City v. Moore* (1965) 231 Cal.App.2d 563, 576 [city council's authority to issue bonds]; *Mitchell v. Walker* (1956) 140 Cal.App.2d 239, 243-244 [city council's power to fix compensation for city officials and employees].)

Hence, we believe that the final administrative decisions as to each of these matters must be made by the Commission, in keeping with the public trust conferred upon it, and may not be delegated to any other body or other officer. (See *Bagley v. City of Manhattan Beach*, *supra*, 18 Cal.3d at pp. 24-25; *California Sch. Employees Assn. v. Personnel Commission*, *supra*, 3 Cal.3d at p. 144; *American Federation of Teachers v. Board of Education*, *supra*, 107 Cal.App.3d at p. 834; 64 Ops.Cal.Atty.Gen., *supra*, at p. 51; see also *Hampson v. Superior Court* (1977) 67 Cal.App.3d 472, 484 [regional water board may

authorize executive officer to make initial determinations, but may not relinquish its right and duty to review and, where appropriate, to overrule such preliminary determinations].)

Still, we believe that the Commission may delegate to its executive secretary, or to other representatives, the responsibility for taking preliminary steps associated with these decisions, such as investigating claims, conducting evidentiary hearings, making preliminary evaluations of evidence, preparing reports and recommendations that may include recommended findings and decisions, and establishing and maintaining contacts with Native American groups, interested parties, law enforcement agencies, and other public agencies. (Cf. Gov. Code, § 19582 [State Personnel Board may authorize representative, such as administrative law judge, to hold hearing and prepare proposed decision, but only board “shall render the decision that in its judgment is just and proper”]; *California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 593 [in adjudication of disciplinary actions, administrative law judge “has no authority to issue decisions or take other action” on State Personnel Board’s behalf, but may only render proposed decisions for board’s consideration]; *Klevesahl v. Byington*, (1934) 1 Cal.App.2d 671, 676 [civil service commission may delegate tasks of investigating facts and preparing reports, but may not delegate its authority to determine moral character of applicants].) As the court observed in *Schechter v. County of Los Angeles*, *supra*, 258 Cal.App.2d 391:

When an act or duty is discretionary the information and data needed for the exercise thereof . . . need not be personally gathered. “. . . the rule that requires an executive officer to exercise his own judgment and discretion in making an order of such nature does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report the facts and their recommendation in relation to the advisability of the order, and also to draft it in the first instance. [Citations.] It suffices that the judgment and discretion finally exercised and the orders finally made by the superintendent were actually his own; and that there then attaches thereto the presumption of regularity in order to effectuate the intent manifested thereby.” [Citations.]

(*Id.* at pp. 397-398.) In addition, the Commission may delegate the handling of routine personnel matters and the oversight of the day-to-day operations of the Commission and its staff.

A contrary conclusion -- that the executive secretary may perform all of the functions and make all of the determinations charged by statute to the Commission -- would not only render the Commission virtually superfluous, including the requirement that a majority of its membership be Native Americans (§ 5097.92; *People v. Van Horn*, *supra*, 218

Cal.App.3d at p. 1395), but it would also effectively negate two significant policies and principles that govern the conduct of state boards and commissions -- namely, quorum rules and "open-meeting" requirements.

The quorum rule for convening meetings is intended to ensure that a board's or commission's determinations reflect the considered judgment of at least a significant and representative number of the board's or commission's members. The body may not conduct official business when fewer than a prescribed number of its members are in attendance. (See Civ. Code, § 12; Code Civ. Proc., § 15; *People v. Harrington* (1883) 63 Cal. 257, 259-260; *Jacobs v. Board of Sup'rs of City and County of San Francisco* (1893) 100 Cal. 121, 132; *Ursino v. Superior Court* (1974) 39 Cal.App.3d 611, 620; *Ford v. Civil Service Commission* (1958) 161 Cal.App.2d 692, 697; 66 Ops.Cal.Atty.Gen. 336, (1983); 63 Ops.Cal.Atty.Gen., *supra*, at p. 245; 61 Ops.Cal.Atty.Gen. 243, 252-253 (1978); 58 Ops.Cal.Atty.Gen. 706, 706-707 (1975).)

Open-meeting requirements serve a different purpose: they are intended to ensure that governmental deliberations and decision making are accessible to public scrutiny and have the benefit of public participation and comment. (See Gov. Code, §§ 11120-11132; 86 Ops.Cal.Atty.Gen. 210, 212 (2003); 85 Ops.Cal.Atty.Gen. 145, 147 (2002).) As we observed in 75 Ops.Cal.Atty.Gen. 263, 266 (1992), there is an implicit presumption underlying such open-meeting laws "that statutorily created bodies will act at meetings." This premise applies even when the enabling statutes do not expressly call for regular meetings of the board or commission in question. (*Ibid.*)

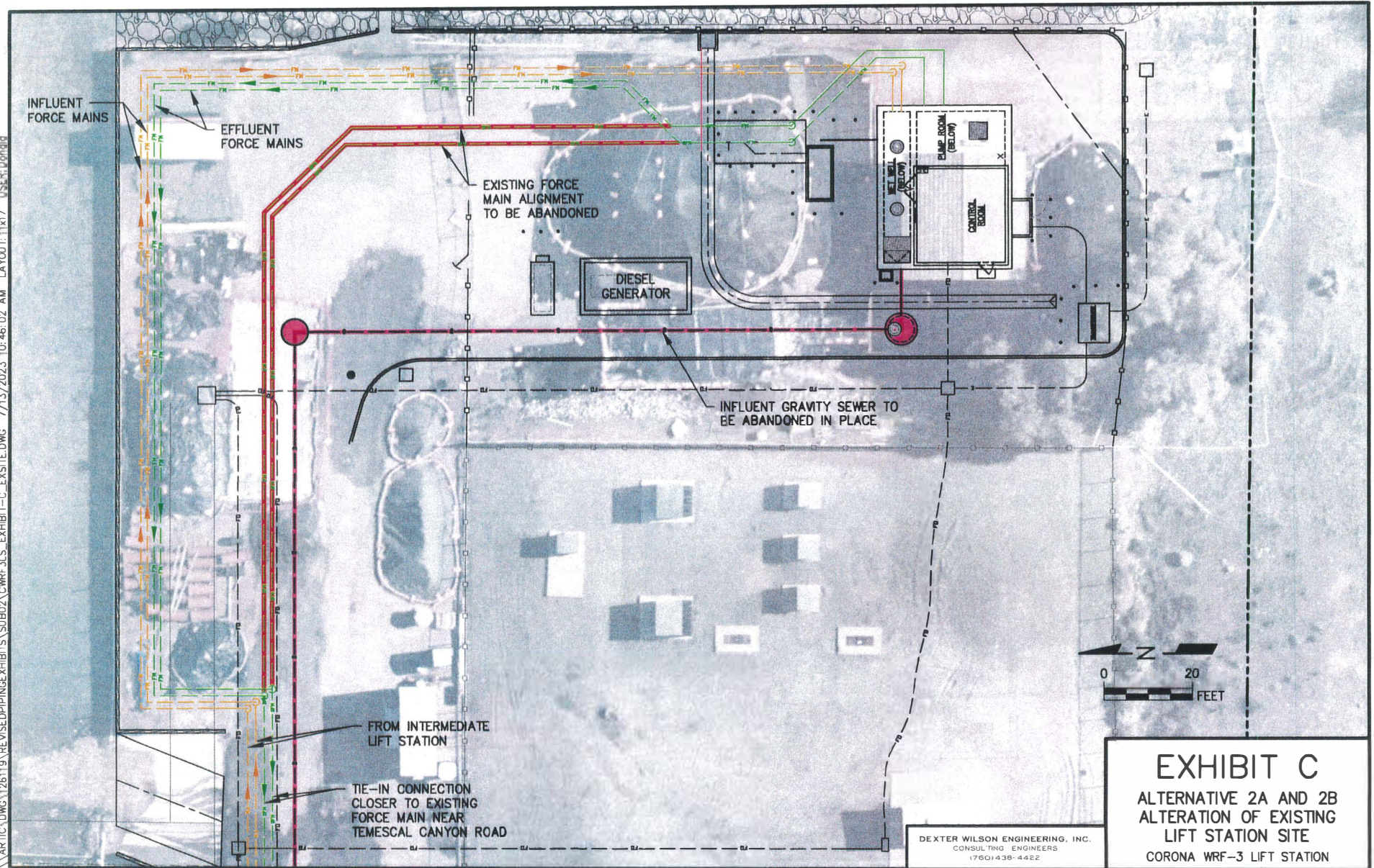
Here, because the Legislature has created a nine-member Commission and has specified that a majority of its members be Native Americans, we must presume that the Commission must act as a body, not as a single-person entity, in discharging its specially designated statutory functions. (See also *In re Retirement Cases* (2003) 110 Cal.App.4th 426, 471 [if administrative body has statutory discretion to act, courts may not usurp that discretion or compel its exercise in particular manner]; cf. *People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1150-1155 [prosecutor's action does not usurp commission's discretion where statutory scheme specifically confers shared enforcement authority upon commission and public prosecutors].) A quorum must be present for the Commission to take official action, and the Commission's meetings must be open to the public.

We conclude that the Commission may delegate to its executive secretary those powers and duties that do not require the exercise of the special judgment and discretion conferred upon the Commission by statute. Such delegable powers include the authority to investigate claims of damage or threatened damage to a Native American sanctified cemetery or of removal or threatened removal of artifacts from a Native American grave; to prepare

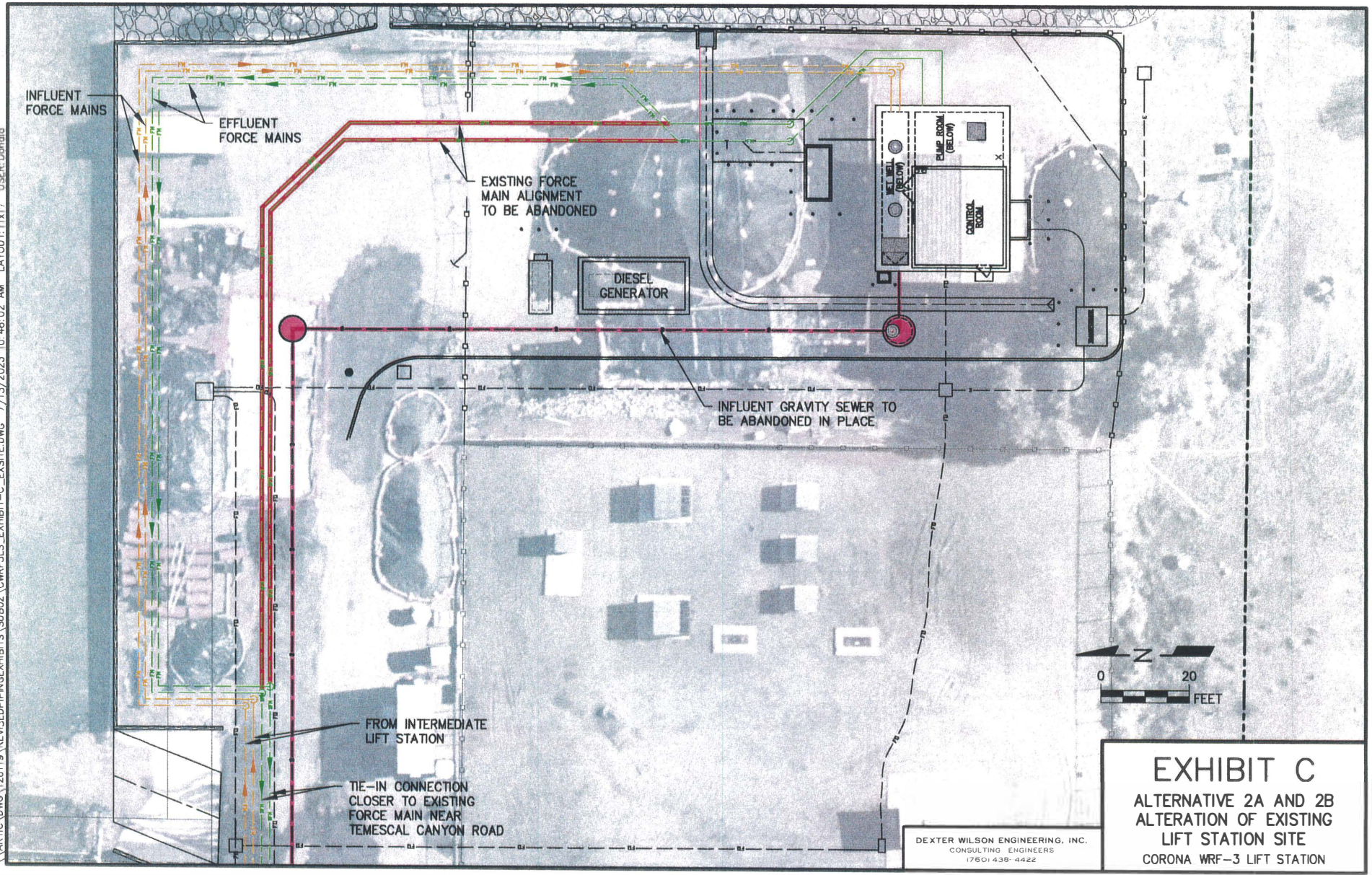
preliminary reports, hold hearings, and make recommended findings subject to the Commission's review and approval; and to recommend that the Commission bring an action, through the Attorney General, to prevent such damage or such removal.

**Site Plan Concept Alternative 2A and 2B
Alteration of Existing Lift Station Site
(July 12, 2023)**

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DEXTER WILSON ENGINEERING, INC.
CONSULTING ENGINEERS
17601 438-4422

EXHIBIT C
ALTERNATIVE 2A AND 2B
ALTERATION OF EXISTING
LIFT STATION SITE
CORONA WRF-3 LIFT STATION

**Tuu'uv Burial Area and Tuu'uv Maps and Text -
Pechanga Confidential Submittal Pursuant to
Government Code sections 7927.000 and
7927.005**

Rincon Band of Luiseño Indians
October 19, 2023
Request for Consultation

VIA USPS AND ELECTRONIC MAIL TO: <Jacob.Ellis@CoronaCA.gov>

Joseph Linton
Council Member

Native American monitoring of project-related ground-disturbing activities shall be performed under the direction of the qualified archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards for archaeology (National Park Service 1983). If any previously unidentified tribal cultural resources are unearthed during project construction, the City shall continue Native American consultation procedures, which may determine additional measures to avoid or reduce impacts to the resource are required. These additional measures to avoid or reduce impacts shall be determined on a case-by-case basis and approved by the City." (page 35)

Per CR-1, the City was to "continue Native American consultation procedures, which may determine additional measures to avoid or reduce impacts to the resource are required". It is therefore concerning for the Tribe to learn that the City never contacted the Rincon Band when ancestral remains and funerary objects were identified. The Tribe is requesting immediate consultation with the City to address the lack of communication and discuss mitigation and avoidance measures, as required by CR-1.

Please contact Rincon Tribal Historic Preservation Officer at (760) 749 1092 ext. 323 or via electronic mail at cmadrigal@rincon-nsn.gov. Thank you for the opportunity to protect our cultural assets.

Sincerely yours,

RINCON BAND OF LUISEÑO INDIANS



Bo Mazzetti
Tribal Chairman

Copies to: Raymond Hitchcock, Executive Secretary, Native American Heritage Commission,
email: raymond.hitchcock@nahc.ca.gov
Cheryl Madrigal, Tribal Historic Preservation Officer, Rincon Band of Luiseno
Indians, email: cmadrigal@rincon-nsn.gov
Denise Turner Walsh, Attorney General, Rincon Band of Luiseno Indians, email:
dwalsh@rincon-nsn.gov



PECHANGA BAND OF INDIANS
CULTURAL RESOURCES DEPARTMENT
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CORONA WRF #3 LIFT STATION
INFORMATION REGARDING THE SITE AS A
NATIVE AMERICAN SANCTIFIED CEMETERY
AND INDIAN CEMETERY

Prepared by

Pechanga Cultural Resources Department
Pechanga Office of the General Counsel

October 2023

CONFIDENTIAL

Confidentiality Notice: The information in this report is **confidential**. It shall not to be released to the public or subject to a public records act request pursuant to Government Code sections 7927.000 and 7927.005, or subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations or any other authority.