



May 7, 2025

VIA ELECTRONIC MAIL

Chairperson Reginald Pagaling
Native American Heritage Commission
1550 Harbor Boulevard, Suite 100
West Sacramento, California 95691

Re: City of Corona – WRF#3 Lift Station Project – Review of Most Likely Descendant Determination

Dear Chairperson Pagaling:

This letter is submitted on behalf of the City of Corona (“City”) to express the City’s concerns regarding Item No. 9 included on the May 9, 2025 special meeting Agenda of the Native American Heritage Commission (“NAHC” or “Commission”) concerning a review of the Most Likely Descendant (“MLD”) determination for the WRF#3 Lift Station Project (“Project”).

Failure to Comply with Bagley-Keene Act

As required by law, the description of each agenda item must give the average person enough information to decide whether to attend or participate in the meeting. (Gov. Code, § 11125, subd. (b); 67 Ops.Cal.Atty.Gen. 84, 88 (1984).) The public should not have to be “clairvoyant or have had collateral information” to understand a state body’s intended action. (67 Ops.Cal.Atty.Gen., supra, at p. 88.)

In this instance, the agenda description does not provide such information. Based upon public comments at previous NAHC meetings, the City is anticipating and is concerned that the Commission may be considering taking action as requested by the Pechanga Band of Indians (“Pechanga”) to remove the the Kizh Nation Gabrieleno Band of Mission Indians (“Kizh Nation”) as one of the most likely descendants (“MLDs”) for the Project. Such an action would be unprecedented and in violation of the Commission’s own procedures for designation of MLDs. Such an action will also be arbitrary and capricious and expose the NAHC and Commissioners to further legal action continuing to undermine its credibility in this matter.

The Public Special Meeting Notice and Agenda also fails to include an opportunity for the public to comment on Agenda Items #9 before any action on the item. The California Constitution gives people the right to access information about public business, which includes actions undertaken by the Commission. (Cal. Const., art. I, § 3, subd. (b)(1).) To advance this policy, the



Legislature enacted the Bagley Keene Open Meeting Act (“Bagley-Keene Act” or “Act”), intending that actions of state agencies be taken openly and that agency deliberation be conducted openly. (Gov. Code, § 11120; see Gov. Code, §§ 11120-11133].) The Bagley-Keene Act protects the public’s opportunity not only to observe, but also to participate in, the decision-making process of state bodies such as the Commission. (See *California State Employees’ Assn. v. State Pers. Bd.* (1973) 31 Cal.App.3d 1009, 1013.)

As a state body, the Commission must give advance notice of the time and place of meetings, and the specific topics or decisions that the state bodies will consider at the meetings. While a state body may include on its meeting agenda an opportunity for the public to comment generally on any other topic under its jurisdiction even if that topic does not appear on the agenda (Gov’t Code, § 11125.7 (a)), the agenda must give the public an opportunity to comment on each agenda item before taking action on the item. (Gov. Code, § 11125.7, subd. (a).)

The posted Notice and Agenda fails to provide such an opportunity and appears to limit public comment to the end of the agenda. Limiting public comment on agenda items to just one specific designated time rather than multiple times throughout the meeting before each agenda item defeats the purpose of ensuring the Commission “has a clear and complete understanding of the public concern” regarding the item.” (*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 528.)

Negative Impact on the Conferral Process

The Commission’s involvement in this matter has been problematic from the beginning, with the Commission taking numerous actions at the insistence of Pechanga and Soboba, which has significantly undermined the conferral process. The City was forced to sue the Commission and obtain a ruling to set aside its ultra vires actions. It appears that Agenda Item No. 9 could be yet another misguided and unsupported action by the Commission that could very well subject the Commission to another lawsuit.

The City has spent considerable time conferring with the three MLD’s designated by the NAHC for the Project in the Spring of 2022. The NAHC initially designated the Soboba Band of Luiseño Indians (“Soboba”) and the Kizh Nation and a month later, after receiving a protest from Pechanga, the NAHC designated Pechanga as the 3rd MLD for the Project.

The reinterment of the human remains inadvertently discovered on the Project site has now been delayed for three years, in large part, due to the inconsistency in the preferences for treatment provided by the three MLDs. As the Commission is aware, Pechanga and Soboba filed a lawsuit (“Pechanga Action”) which sought a stay or injunction prohibiting the City, including anyone acting on its behalf or by its permission, including the Kizh Nation, from “engaging in any ground-disturbing activities on the Project site, including without limitation, the handling, movement, relocation, and reburial of the Native American human remains, funerary items, cultural materials, and cultural soils.” The Court issued a preliminary injunction but expressly stated that the injunction did not prevent the City from reinterring the remains in compliance with California Public Resources Code section 5097.98.



On February 24, 2025, the City provided notice to the MLDs of its intent to proceed with reinterment of the remains and associated items on a location on the City's property not subject to further subsurface disturbance. Again, Pechanga and Soboba filed an ex-parte application seeking to prevent the reinterment. Ultimately, the Court allowed the City to proceed with reinterment of the remains located in the Conex box and in the spoils piles removed from the trench.

The City provided each of the MLDs an opportunity to participate in the reinternment. Both Pechanga and Soboba declined to participate but instead elected to observe the reinternment activities undertaken by the Kizh Nation. The Kizh Nation undertook screening of the spoils piles that were excavated from the trench and recovered approximately 85-90% of the same human remains that were originally discovered in the trench. The only recovery activities which remain to be completed are those related to recovery of any remains and associated items that may be located within the excavated trench. However, Pechanga and Soboba objected to such recovery and the Court has precluded the City from recovering and reintering the remains located in the trench. The writ hearing was held on April 30, 2025, and the matter is now under submission. We are anticipating a ruling in the Pechanga Action in the very near future, which will hopefully provide a path forward for the reinterment of the human remains inadvertently discovered on the Project site in March 2022. Any action taken by the Commission at this time to rescind the designation of Kizh Nation as an MLD could impact the timing of the decision.

No Authority to Rescind MLD Designation

Any action by the Commission to de-designate or remove a designated MLD is also entirely without authority. While we understand that the NAHC is currently considering new regulations concerning the designation of MLD's, the NAHC's current Most Likely Descendant Procedures ("MLD Procedures"), as set forth on the NAHC website ([Native American Heritage Commission Most Likely Descendant Procedures](#)) vests the NAHC's Executive Secretary with the authority to establish the list of Most Likely Descendants and select the MLD that is culturally affiliated to the traditional tribal territory where an inadvertent discovery of Native American human remains was made. There is nothing in the current MLD Procedures that authorizes the Commission to review the Executive Secretary's selection of MLD's for a particular project or to otherwise remove an MLD that was selected by the Executive Secretary.

Like Soboba and Pechanga, the Kizh Nation was included in the list of tribes that the NAHC directed the City to contact as part of the MLD process. Neither Pechanga, Soboba nor the Kizh Nation responded to the AB 52 consultation letter provided by the City. However, in connection with the human remains discovery, the NAHC immediately designated Soboba and Kizh Nation. The City relied on the NAHC's MLD designation, immediately granted Soboba and the Kizh Nation access to the Project site and both MLDs provided their respective preferences for treatment to the City. The law and NAHC's MLD Procedures anticipate this process being completed within 48 hours of being given access to the discovery site.

Despite the statutory time frames, over a month after the discovery, the NAHC designated Pechanga, another Luiseño tribe as the third MLD for the Project. At the NAHC's direction, the City continued to work with all three MLDs designated by the NAHC. On June 22, 2022, Justin Freeborn, attorney for the Commission, issued a letter to the City confirming that the NAHC



designated three MLDs and that the City should consult with each MLD/tribe individually unless the parties agreed to joint meetings. The City, in reliance on the NAHC's designation, has complied with these directions and has dutifully conferred with the MLDs.

It should be pointed out that the NAHC's own MLD Procedures prevent the Commission from removing an MLD and, in fact, requires that once selected, the MLD remain until the Project is completed. Importantly, the MLD Procedures expressly provide as follows:

If a MLD is selected for a particular development project, that MLD remains with the project until its conclusion.

Accordingly, not only would it be arbitrary and capricious for the Commission three years after the designation to now remove one of the MLD's, it would be a direct violation of the NAHC's own MLD Procedures.

Moreover, the timing of this item being added to a special meeting agenda while the Pechanga Lawsuit is pending is troubling. Pechanga first raised the issue with the Commission in April of 2022. Thereafter, during public comment at the July 15, 2022 NAHC Meeting chaired by Commissioner Laura Miranda (Pechanga), Pechanga Chairman Mark Macarro asked the Commission to remove the Kizh Nation as a co-MLD. The Commission did not take any action and, thereafter, continued to direct the City to confer with all three of the MLDs. Yet, now, on the eve of the hearing in the Pechanga Action and after the City commenced reinterment as allowed by the Court, this item is questionably added to the Commission's agenda.

We strongly urge the NAHC to avoid engaging in yet another ultra vires act and to comply with its current MLD Procedures. Given the history of this matter, the Commission's action taken to date, and the Commission's own regulations, changing the MLD designations at this point would be arbitrary and capricious. The City requests that the Commissioners avoid taking any action in connection with the MLD designation for the Project.

Sincerely,



Jamie Raymond
Chief Deputy City Attorney

cc: Jacob Ellis, City Manager
Brett Channing, Assistant City Manager
Justin Tucker, Assistant City Manager
Savat Khamphou, Public Works Director
Michelle Carr, General Counsel, Native American Heritage Commission



From: [Gabrieleno Administration](#)
To: [Quinn, Steven@NAHC](#); [Carr, Michelle@NAHC](#)
Cc: [Kara Grant](#)
Subject: Fwd: Agenda Item 9
Date: Wednesday, May 7, 2025 7:52:15 PM

----- Forwarded message -----

From: John Torres Torres <jtorres@msjc.edu>
Date: Wed, May 7, 2025 at 7:37 PM
Subject: Agenda Item 9
To: nahc@nahc.ca.gov <nahc@nahc.ca.gov>
CC: Andy Salas <Admin@gabrielenoindians.org>, Kara Grant <kara@grant-law.net>

May 7, 2025

Native American Heritage Commission
Commissioner
[1500 Capitol Ave](#)
[Sacramento, CA 95814](#)

Dear Chairperson Reginald Pagaling and the NAHC Commissioners,

I am an enrolled member of the Navajo Nation, a former archaeologist for the US Air Force, a decorated professor of anthropology at Mt San Jacinto College and an Indigenous Archaeologist for over 30 years. As a Native, RPA-certified archaeologist, I have a unique skill-set and I have been aiding tribes with their CRM training, and repatriation needs my entire career. I continue to work directly with tribal elders, cultural specialist and traditional healers in order to appropriately document, collect and/or prepare ancestors for repatriation.

While I currently work part time as a consultant for the Kizh Nation, I have worked with, and/or for, all three of the MLDs and many other tribes over the past 30 years. I understand the complexities and nuances of Native cultures as well as the methodological and theoretical skills of an archaeologist. I also understand the many federal and state laws regarding the protection of cultural resources. While I am not a Californian Native and have no direct lineal connection to the ancestor unearthed at WRF-3, we are all more connected to each other than to any other population on earth. I am here for the ancestors and their descendants.

I came to this project on the first site visit after the discovery. I was the only one to take a preliminary inventory of the remains on that day. I was also the project director during the screening recovery. Based on the few remains recovered on the first day, I made the incorrect assumption that most of the remains were still in the side wall of the excavation trench. The Kizh Nation wanted to screen the spoils pile in order to: a) recover any additional remains; b) identify objects of cultural patrimony and c) identify any cultural objects that could support the NHAC's determination of the Gabrieleno Band of Mission Indians - Kizh Nation as the Most Likely Descendant. It is important to note the other two MLDs did not want screening and wished to "bulldoze" the pile back in to the open trench.

As a result of the judge's ruling, the Kizh Nation systematically screened the spoils pile. About 80% of the remains of the same individual initially unearthed were recovered from the spoils pile. When combined with the remains recovered the first, about 90-95% of the human remains have been recovered. My initial assumption that the majority of the individual remained in the trench was wrong. It appears that several excavator buckets of soils were placed on top of the remains. Many of the remains recovered were found between 10-20 cm below the surface of the pile. All of the 8 tons of soil was kept separate so it can be added to the repatriation plan.

Nearly all of the remains show recent breakage due to the equipment and the time it has remained out of the ground. Based on my preliminary list and the list of elements recovered in the soils pile, I am now convinced that there is very little left of the ancestor in the trench and the few remaining elements may be still in the soils pile requiring caution while moving the pile. There are no duplicated elements nor are there any siding duplicates and it is my expert opinion that we are still dealing with a single individual. I shared this information with all authorized staff and monitors present and this was confirmed by an outside osteological expert. Additionally, a single pecten (scallop) shell was recovered about 20 cm from where a hand was recovered. This is a funerary practice I've seen in multiple Gabrieleno burials from Huntington Beach, to Chino Hills, to Cucamonga. So, the the NHAC's determination of the MLD is supported by my findings. I was completely transparent during the entire process.

I will continue to offer my skills to all tribes who need assistance (often at no cost). I have done nothing more than my job on this project and I have reported nothing but facts.

Thank you and feel free to reach out if you have any questions.

John

John A. Torres, (Diné), MA, PhD, RPA

Dept. of Anthropology, Chair

Executive Senate President

Mt. San Jacinto College

[1499 N. State Street](#)

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jtorres@msjc.edu

May 5, 2025

Native American Heritage Commission
Commissioner
1500 Capitol Ave
Sacramento, CA 95814

Dear Chairperson Pagaling and Commissioners,

I come to you with respect and to explain what I have witnessed over the last 3 years at the City of Corona Lift Station Project aka, WRF-3. Just after the inadvertent discovery I came onto the project to monitor the work outside the Ancestral Remains buffer zone with assigned Soboba Cultural Monitor Jesse Resvaloso. Although the beginning was tense Jessie and I seem to have an unspoken understanding the Ancestor's protection was of the utmost importance and that, that was our main duty at the project. Those feelings changed every time the Soboba THPO Joe Ontiveros was onsite and that tension magnified once Pechanga was included for weekly 'spot-check' visits. I tried to keep a hopeful attitude and good heart. I understood the importance of the Kizh Nation being onsite because the focus was the proper care of their ancestor and nothing else.

After that, I witnessed several NAHC televised meetings in which the Kizh Nation's authenticity has been defamed. I witness the political attacks and the relentless encroachment into the heavily populated and rich Kizh ancestral territory, the taking of their Ancestral remains from collections, funerary object, cultural belongings for repatriation by these same MLDs. All events have been upsetting and disheartening to witness such disrespectful treatment to a sister and neighboring Southern California tribe.

In the case of WRF-3 it has been even more disturbing, because at the heart of the issue is an Ancestors who has been ripped from their eternal rest and has been placed in several locations for over 3 years because no one was there to protect them during development. Even though the responsibility was awarded to one particular Tribal Historic Preservation Officer. This same THPO has continued to place blame on others and has not taking the responsibility for his negligence to protect a well documented Gabrieleño village adjacent to a major trade route, between 3 tribal villages, adjacent to heavily used foot trail, next to 3 water ways, in the vicinity of several sacred resources, and in the proximity of previously discovered TCRs. He also chose to ignore the documented requests for monitoring from the City of Corona's general construction consulting firm AKM, only sent a monitor out to the site for the first four days and on the fifth day he **determined nothing would be found**. He did that knowing the sites sensitivity and high potential for discoveries. THPO Ontiveros then allowed the on-site work to proceed and stated **if anything was found they could contact his office**. That premature and reckless decision allowed crews to work for 6-8 months. First excavating to depths of 28-30 ft below the existing surface and exporting those soils to an off-site location before the Ancestral Trench which is adjacent to the lift station ran right into the resting Ancestor at a depth of 16-18 ft below the existing surface. I want to reiterate all that work was done with **NO Monitor onsite**.

My question to those commissioners who have or currently work in Cultural Resource Management is, Would you have neglected such a pre-determined sensitive site ? Who tells a construction crew, call us if you find something? Is it not our responsibility to tribal history and the ancestors to protect them?

Because of his unacceptable decisions and in order to continue to cover his actions, I have personally witnessed him withhold information, manipulate information, lie, bully, ostracize, and try to defame our character. This has been done by the one responsible for all of this. Witnessing this has been unbearable and I see it has gotten worse over time and he has 'pulled the wool over many of your eyes'. It is because of this, I write this letter to you so you understand what has been happening for the last 3 years.

Please understand ones commitment, responsibility, reputation to do the good work, and credibility of myself and others on the Kizh Nation professional team and tribal council are under attack. We are being vilified for choosing to respectfully retrieve through Kizh approved archaeological methods the Kizh Ancestor's remains, soils, funerary objects, and the diagnostic Kizh pecten shell offering that was uncovered during screening. All this was done in order to give the Ancestor a dignified reburial.

As I stated several years ago, I am honored to do this important work. I take this work seriously. I adhere to the professional code of ethics as an Indigenous Archaeologist and even more importantly, as a human being. For those reasons, I present the truth and withhold nothing.

Please hear and honor my request that the Kizh Nation-Gabrieleeño Band of Mission Indians remain MLD on the City of Corona WRF-3 Lift Station Project.

Sincerest regards,

Aurelia Torres

Tribal Archaeologist and Cultural Monitor
Kizh Nation Resource Management
910 N. Citrus Ave
Covina CA, 91722
(626) 521-5827

Rincon Band of Luiseño Indians

One Government Center Lane | Valley Center | CA 92082
(760) 749-1051 | Fax: (760) 749-8901 | rincon-nsn.gov



VIA ELECTRONIC MAIL ONLY

nahc@nahc.ca.gov

May 8, 2025

Chairperson Pagaling and Commissioners
Native American Heritage Commission
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691

RE: MAY 9, 2025 NAHC MEETING, AGENDA ITEM #9, CORONA WRF #3 REVIEW MLD DETERMINATION

Dear Chairperson Pagaling and Commissioners:

The Rincon Band of Luiseño Indians (“Rincon”) is a federally-recognized Indian tribe. We are a Luiseño/Payómkawish tribe with shared culture, traditions, and practices with our sister Luiseño/Payómkawish Tribes: La Jolla, Pala, Pauma, Pechanga, and Soboba; all are whom are federally recognized. Due to the recent passing of Tribal Chairman Mazzetti, we are unable to attend tomorrow’s hearing and feel compelled to convey this information for the Commission’s consideration and request the Commission correct the MLD designation on this project.

Rincon was the only AB 52 consulting tribe for the City of Corona’s (“City”) Water Reclamation Facility #3 Lift Station Project (WRF #3 Project). In consultation, Rincon negotiated a mitigation solution that eventually became mitigation measure CR-1, incorporated by the City for the WRF #3 Project, into its Mitigated Negative Declaration (“MND”).

CR-1: *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 determined on a case-by-case basis by the City.*

When a new tribal cultural resources site, which includes multiple Native American human remains, cremations, and grave goods, was discovered on the WRF #3 Project in 2022, the Native American Heritage Commission (“NAHC”), ultimately named three (3) co-MLDs to the discoveries – the Soboba Band of Luiseño Indians, the Pechanga Band of Luiseño Indians, and the Kizh Nation (“Kizh”), a non-profit claiming Gabrielino heritage. Rincon was not named as MLD.

During tribal consultation with the City in 2020, Rincon submitted cultural affiliation information to the City WRF #3 Project record. This submission included information on the WRF

Bo Mazzetti
Chairman

Joseph Linton
Vice Chairman

Laurie Gonzalez
Council Member

John Constantino
Council Member

Alfonso Kolb, Sr.
Council Member

#3 Project being located within Luiseño traditional territory as well as the potential cultural sensitivity of the project area to the Luiseño tribes. When making the MLD determination, it appears that NAHC staff failed to consider the information in the record of approval for the WRF #3 Project itself, including, Rincon's own information that the site is associated with the Luiseño place name Túu'uv, the positive Sacred Lands File hit of a Luiseño site, archaeological reports identifying the area as Luiseño, not to mention the fact that Rincon chose to involve itself in this project's CEQA process at the height of the COVID pandemic because the WRF #3 Project is squarely located within Luiseño territory.

In addition to considering all of its internal files, NAHC staff should have considered the WRF #3 Project information when naming the MLD. For the NAHC staff to name a Gabrielino group, acting primarily as a self-proclaimed tribal monitoring and cultural resources management company, is violative of the NAHC's previous history and correct understanding of Luiseño traditional territory. Until this WRF #3 Project MLD designation, the NAHC has only named Luiseño bands as MLDs in Temescal Valley.

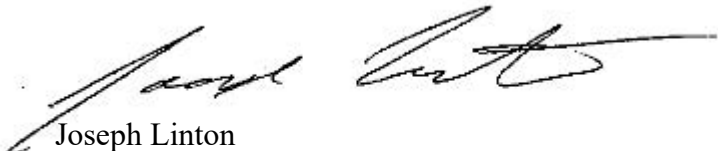
For its part, the City has used this erroneous MLD designation to shut out Rincon from participating in continued consultations on the newly discovered tribal cultural resources at the site. At no time has the City even notified Rincon of discoveries on the Project site in contravention of CR-1, including the recent discoveries from Kizh screening in 2025 (excessive handling which Rincon opposed). Like Pechanga and Soboba, Rincon was forced to initiate costly litigation to compel the City to consult with the culturally affiliated bands and protect our burial site from the destruction caused by a monitoring company, controlled by Kizh, that was mistakenly named MLD by NAHC staff.

We hereby request Commissioners formally review and correct the MLD designation by removing Kizh as not culturally-affiliated with the cemetery site. We understand there is precedent for changing MLD designations when additional information becomes known to the Commission. We stand in strong support with our sister Luiseño/Payómkawish Tribes confirming the Indian cemetery at Túu'uv is located within documented Luiseño traditional territory. We also request that the erroneous designation of Kizh not be further compounded by future Gabrieleño designations in Luiseño traditional territory.

Thank you for your consideration.

Sincerely yours,

RINCON BAND OF LUISEÑO INDIANS

A handwritten signature in black ink, appearing to read "Joseph Linton", written in a cursive style.

Joseph Linton
Tribal Vice Chairman

Copy to: Michelle Carr, Chief Counsel, NAHC, Michelle.Carr@nahc.ca.gov
Reginald Pagaling, Chairperson, NAHC, Reginald.Pagaling@nahc.ca.gov
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