

## CHAPTER 8 RESPONSES TO COMMENTS

### INTRODUCTION

This section provides written responses to all comments received on the Draft Environmental Impact Report (Draft EIR) during its public review period from February 15, 2013 through April 4, 2013.<sup>1</sup> Comments were received in the form of letters and emails. The comment letters/emails are listed below:

1. Native American Heritage Commission (Dave Singleton), January 17, 2013
2. Santa Barbara County Air Pollution Control District (Carly Wilburton), February 21, 2013
3. Native American Heritage Commission (Dave Singleton), March 4, 2013
4. Frank Arredondo, April 4, 2013
5. Marc Chytilo, April 4, 2013
6. Dudek (David Stone), April 4, 2013
7. Dudek (David Stone), April 4, 2013
8. Citizens Advocating Rational Development (Nicholas R. Green, No Date)

Each of these comment letters/emails is divided into numbered comments. The annotated comment letters/emails are provided in this section, along with corresponding responses to each comment. All revisions identified in the responses have also been made in the other chapters of this Final EIR, using underlined text for the new text and ~~strike-out~~ text for removed text.

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<sup>1</sup> A January 2013 version of the Draft EIR was withdrawn on February 14, 2013 to correct errors discovered after publication, and a Revised Draft EIR was issued on the same date. Notices of Completion and Availability for the Draft and Revised Draft EIRs are included in Appendix T.

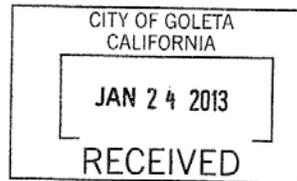
**8.1 COMMENT LETTER 1: NATIVE AMERICAN HERITAGE COMMISSION, JANUARY 17, 2013**

Comment Letter 1

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

**NATIVE AMERICAN HERITAGE COMMISSION**  
 915 CAPITOL MALL, ROOM 364  
 SACRAMENTO, CA 95814  
 (916) 653-6251  
 Fax (916) 657-5390  
 Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
 ds\_nahc@pacbell.net



January 17, 2013

Ms. Patricia Saley, City Planner  
**City of Goleta**  
 130 Cremona Drive, Suite B  
 Goleta, CA 93117

Re: SCH#2007121058; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the "Marriott Residence Inn & Hollister Center Project;" located in the City of Goleta; Santa Barbara County, California

Dear Ms. Saley:

The California Native American Heritage Commission (NAHC) is the State of California 'trustee agency' for the preservation and protection 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. 3<sup>rd</sup> 604).

This letter includes state and federal statutes relating to Native American historic properties or resources of religious and cultural significance to American Indian tribes law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

1-1

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 advises the Lead Agency to request a Sacred Lands File search of the NAHC if one has not been done for the 'area of potential effect' or APE previously.

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).

1-2

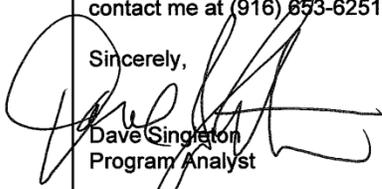
Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you

- 1-2 cont. make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order 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, including archaeological studies. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native
- 1-3 American cultural resources and California Public Resources Code Section 21083.2 (Archaeological Resources) that requires documentation, data recovery of cultural resources, construction to avoid sites and the possible use of covenant easements to protect sites.
- 1-4 Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). 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.'
- 1-5 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.
- 1-6 Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.
- 1-7 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.
- 1-8 Finally, when Native American cultural sites and/or Native American burial sites are prevalent within the project site, the NAHC recommends 'avoidance' of the site as referenced by CEQA Guidelines Section 15370(a).

1-9

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 853-6251.

Sincerely,



Dave Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

**Native American Contacts  
Santa Barbara County  
January 17, 2013**

Ernestine DeSoto  
1311 Salinas Place # 5  
Santa Barbara CA 93101  
805-636-3963

Chumash

Patrick Tumamait  
992 El Camino Corto  
Ojai , CA 93023  
(805) 640-0481  
(805) 216-1253 Cell

Chumash

Beverly Salazar Folkes  
1931 Shadybrook Drive  
Thousand Oaks, CA 91362  
folkes@msn.com  
805 492-7255  
(805) 558-1154 - cell

Chumash  
Tataviam  
Fernandeño

San Luis Obispo County Chumash Council  
Chief Mark Steven Vigil  
1030 Ritchie Road  
Grover Beach CA 93433  
(805) 481-2461  
(805) 474-4729 - Fax

Chumash

Santa Ynez Band of Mission Indians  
Vincent Armenta, Chairperson  
P.O. Box 517  
Santa Ynez , CA 93460  
varmenta@santaynezchumash.  
(805) 688-7997  
(805) 686-9578 Fax

Chumash

John Ruiz  
1826 Stanwood Drive  
Santa Barbara CA 93103  
(805) 965-8983

Chumash

Barbareno/Ventureno Band of Mission Indians  
Julie Lynn Tumamait-Stennslie, Chairwoman  
365 North Poli Ave  
Ojai , CA 93023  
jtumamait@sbcglobal.net  
(805) 646-6214

Chumash

Gilbert M. Unzueta Jr.  
571 Citation Way  
Thousand Oaks, CA 91320  
uhuffle@aol.com  
(805) 375-7229

Chumash

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#2001121058; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the Marriott REsidence Inn and Hollister Center Project; located in the City of Goleta; Santa Barbara County, California.

**Native American Contacts  
Santa Barbara County  
January 17, 2013**

Owl Clan  
Qun-tan Shup  
48825 Sapaque Road  
Bradley , CA 93426  
mupaka@gmail.com  
(805) 472-9536 phone/fax  
(805) 835-2382 - CELL

Chumash

Coastal Band of the Chumash Nation  
Toni Cordero, Chairwoman  
P.O. Box 4464  
Santa Barbara CA 93140  
cordero44@charter.net  
805-964-3447

Chumash

Stephen William Miller  
189 Cartagena  
Camarillo , CA 93010  
(805) 484-2439

Chumash

Charles S. Parra  
P.O. Box 6612  
Oxnard , CA 93031  
(805) 340-3134 (Cell)  
(805) 488-0481 (Home)

Chumash

Santa Ynez Tribal Elders Council  
Adelina Alva-Padilla, Chair Woman  
P.O. Box 365  
Santa Ynez , CA 93460  
elders@santaynezchumash.org  
(805) 688-8446  
(805) 693-1768 FAX

Chumash

Santa Ynez Band of Mission Indians  
Tribal Administrator/Counsel Sam Cohen  
P.O. Box 517  
Santa Ynez , CA 93460  
info@santaynezchumash.  
(805) 688-7997  
(805) 686-9578 Fax

Chumash

Randy Guzman - Folkes  
6471 Cornell Circle  
Moorpark , CA 93021  
ndnRandy@yahoo.com  
(805) 905-1675 - cell

Chumash  
Fernandeño  
Tataviam  
Shoshone Paiute  
Yaqui

Carol A. Pulido  
165 Mountainview Street  
Oak View , CA 93022  
805-649-2743 (Home)

Chumash

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**Native American Contacts  
Santa Barbara County  
January 17, 2013**

Melissa M. Parra-Hernandez  
119 North Balsam Street Chumash  
Oxnard , CA 93030  
envyy36@yahoo.com  
805-983-7964  
(805) 248-8463 cell

Barbareno/Ventureno Band of Mission Indians  
Raudel Joe Banuelos, Jr.  
331 Mira Flores Court Chumash  
Camarillo , CA 93012  
805-987-5314

Frank Arredondo  
PO Box 161 Chumash  
Santa Barbara CA 93102  
ksen\_sku\_mu@yahoo.com  
805-617-6884  
805-893-1459  
ksen\_sku\_mu@yahoo.com

Coastal Band of the Chumash Nation  
Janet Darlene Garcia  
P.O. Box 4464 Chumash  
Santa Barbara CA 93140  
805-689-9528

Santa Ynez Tribal Elders Council  
Freddie Romero, Cultural Preservation Consint  
P.O. Box 365 Chumash  
Santa Ynez , CA 93460  
805-688-7997, Ext 37  
freddyromero1959@yahoo.  
com

Coastal Band of the Chumash Nation  
Crystal Baker  
P.O. Box 4464 Chumash  
Santa Barbara CA 93140  
805-689-9528

Barbareno/Ventureno Band of Mission Indians  
Kathleen Pappo  
2762 Vista Mesa Drive Chumash  
Rancho Pales Verdes CA 90275  
310-831-5295

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## Response to Comment No. 1-1

The Native American Heritage Commission (NAHC) advises the Lead Agency to request a Sacred Lands File search of the NAHC if one has not been done for the “area of potential effect” (APE) previously. In compliance with the California Environmental Quality Act (CEQA), the City of Goleta (City) identified the potential for an adverse change in the significance of an historical resource (in this case an archaeological resource) and has prepared an Environmental Impact Report (EIR) to evaluate the impacts on these resources as well as to identify mitigation to address such impacts.

The City and CRMS (City-contracted archaeological consultants) each submitted Sacred Lands File search request letters to the NAHC, on 9/2/09 and 12/7/09, respectively, which are included in Final EIR Appendix R1.

## Response to Comment No. 1-2

The comment urges the City to contact and correspond with the list of Native American contacts provided with the comment letter, and to provide pertinent project information, including archaeological studies.

City efforts to inform and request input from individuals identified on the NAHC-provided Native American contact list are identified under the heading “Native American Consultation” in Section 4.4 of the EIR, Cultural Resources. The discussion of Native American Consultation has been supplemented. Additional discussion has been added to include past City efforts associated with the prior, similar Marriott Residence Inn project in 2008, including requests made by the Native American Chumash community (e.g., applicant agreement to hand-dig in piling areas). Additional City efforts associated with the current project request that were not described in the Draft EIR have also been added (i.e., the Notice of Preparation of an EIR in 2009, additional field work in May 2010, an August 2010 meeting to discuss the Draft CRMS report, and a May 2013 meeting to discuss the Revised Draft EIR Cultural Resources section and final CRMS report [see Final EIR Appendix R1]).

Section 4.4.1.3, Project Site, Native American Consultation, is revised as follows:

The Chumash Native American community considers CA-SBA-58 to be a large and permanent prehistoric village site, occupied during the Middle and Late Periods of Chumash prehistory, which is significant to their heritage. Further, the Chumash Native American community is concerned for sites and places that provide or may provide ties to the lifeways of the ancestral Chumash and their predecessors, including village sites such as the project site, at the edges of the former boundaries of the current Goleta Slough.

During processing of the original Marriott Residence Inn and Hollister Center Project in 2007–2008, a “meet and confer” process was conducted between staff, the applicant, and interested members of the Chumash Native American community. Four meet and confer discussions were held (May 5, 2008; May 19, 2008; June 18, 2008; and August 6, 2008). According to the letter from former City of Goleta Planning Director Steve Chase to Katy Sanchez of the Native American Heritage Commission (NAHC) dated October 7, 2008 (included in Appendix R1), more than 12 hours of discussion occurred during these meetings and at least another 40 hours of various discussions took place between the parties in other meetings and phone conversations in support of these discussions. The

earlier Marriott Residence Inn project would have been located on the same property, although it would have included a larger building with different site preparation/grading details and greater disturbance to the archaeological site. The revisions that have been incorporated into the current project design are, in part, a result of input from the 2008 meetings with the Chumash Native American community. The applicant also incorporated the required hand-digging of all piling locations not included in the Phase 3 data recovery excavations in response to comments received at these meetings. (This requirement is further included as required mitigation to ensure implementation of this aspect of the project description.)

The current project includes dividing a single 10.71-acre parcel into two smaller parcels—one that includes an existing building and one that is vacant, but is envisioned for development of a hotel. The current request does not involve an amendment to the City's General Plan or a change in the property's zoning. In July 2009, the project applicant requested that the City rescind its 2008 project approval and proceed with preparation of an EIR for a similar project. A Notice of Preparation of an EIR and an EIR Scoping document were prepared, and these documents were provided to the NAHC. (The current project described in this Final EIR has been revised since July 2009.)

On January 20, 2010, CRMS sent a letter to individuals included on the Native American contact list, which CRMS received from the NAHC. This letter requested that comments be submitted to CRMS in writing. (See letter and related emails between F. Arredondo and N. Campbell in Appendix R1.)

The City informed the local Native American community when additional borings were performed on the project site on April 26 and May 28, 2010 (correspondence dated April 23 and May 22, 2010 included in Appendix R1).

In addition, notification was provided regarding a consultation with CRMS to discuss draft findings following their review of previous cultural resources reports as well as field work related to the project site (correspondence included in Appendix R1). Members of the Chumash Native American community were provided the Draft CRMS report prior to a noticed August 12, 2010 meeting, which was scheduled for the purpose of explaining the preliminary conclusions of the Draft CRMS report and to obtain comments from the Native American community about the draft report. Staff scheduled this meeting to accommodate the schedules of several Native Americans who had been involved in previous project discussions. The purpose of providing the draft report before the meeting was to allow individuals to review the preliminary analyses themselves, prior to receiving CRMS's summary of the report at the meeting. The intent was further to allow for the most effective opportunity for discussion and comment on the draft report at the August meeting before the report was finalized and incorporated into Section 4.4 of the EIR, Cultural Resources. Other than the applicant, only individuals from the NAHC contact list were invited to the meeting or provided with a copy of the draft report. This meeting was discussed and scheduled in coordination with members of the Native American community. (See emails included in Appendix R1.)

The consultation was held at the City of Goleta office on August 12, 2010. The Native American Contact List provided with the ~~Native American Heritage Commission's~~ (NAHC's) NOP comment letter was used to notify interested members of the Chumash Native American community of the above field work and consultation. Frank Arredondo was the only Native American in attendance at the August 12, 2010, meeting. At the

meeting, CRMS archaeologists presented their draft report, followed by comment and discussion. Staff also explained that there would be continued opportunities for participation by interested members of the Native American community ~~will occur~~ through completion of the environmental process and decision maker hearings.

### **Response to Comment No. 1-3**

The comment recommends avoidance rather than pursuing a project that would damage or destroy Native American cultural resources and documentation, data recovery, construction to avoid sites, and the possible use of covenant easements to protect sites.

Total avoidance would not accomplish the project objectives. However, the project design, along with the mitigation measures recommended in the EIR, will reduce impacts to cultural resources and ensure the project is implemented in a manner that partially avoids and substantially reduces impacts. The project proposal and EIR-identified mitigation measures include requirements to avoid and/or minimize direct impacts of such standard construction methods as over-excavation and re-compaction. The project design and mitigation measures would also minimize impacts to cultural resources by protecting buried resources in place. These requirements include: (1) a foundation design that avoids or minimizes over-excavation and earth disturbance; (2) utility/paving/landscape installation standards that avoid disturbance to sensitive, intact soil areas; (3) capping of the project site with fill between any underlying resources and new structural development/ hardscape areas/new landscaped areas; (4) implementation of a data recovery program; and (5) mandatory monitoring of all development activities involving earth disturbance by an archaeologist and Native American observer. The archaeologist/Native American observer shall have the ability to stop work to evaluate and address cultural resource impacts if potentially significant resources are encountered or if there are changes to the grading and construction plans that could impact sensitive cultural/archaeological resources.

### **Response to Comment No. 1-4**

The comment states that, if the National Environmental Policy Act (NEPA) applies to the project, Native American consultation must comply with NEPA and Section 106 and 4(f) of the National Historic Preservation Act.

The project is not subject to NEPA, nor is the project subject to Section 106 of the National Historic Preservation Act, which only applies to the actions of federal agencies. For similar reasons, Section 4(f), codified at 23 U.S.C. § 138 and 49 U.S.C. § 303, does not apply to this project.

### **Response to Comment No. 1-5**

The comment recommends that details related to historic properties of religious and cultural significance should be kept confidential. Culturally sensitive and confidential information included in the archaeological reports (e.g., boundaries of archaeological sites) is not included in the EIR or other public documents for the project.

### **Response to Comment No. 1-6**

This comment advises that California state codes contain provisions in the event that human remains are inadvertently discovered. Mitigation Measure MM CUL-3e in Section 4.4 of the EIR

is revised as follows to include additional reference to California Government Code Section 27491, which addresses the duties of the coroner when human remains are encountered:

**MM CUL-3e. Discovery of Human Remains**

Procedures will be prepared and followed in the event human remains are discovered.

**Plan Requirements and Timing:** ~~Prior to any site preparation, ground disturbing, grading, and/or construction activities, the permittee and construction crew will meet on site. The following actions must be taken immediately upon the discovery of human remains, consistent with the local Chumash representative(s), identified as the Most Likely Descendant (MLD) by the State Native American Heritage Commission. The MLD, permittee, the Lead Agency, and City-approved archaeologist will discuss procedures Public Resources Code 5097.98:~~

- Stop work in the affected area.
- Notify the coroner.
- Fence off the area.
- Leave all items in the area as is.

~~In some situations (as determined appropriate by the City, the site archaeologist, and Native American observer), work may be allowed to continue in another part of the parcel. City staff shall also be notified of the discovery of human remains. Public Resources Code 5097.98 also addresses specific timing and other criteria with regard to MLD recommendations for the disposition of human remains. These procedures will include those identified by California Public Resources Code 5097.98, State CEQA Guidelines Section 15064.5, and the City's Cultural Resource Guidelines. The coroner will be contacted if human remains are discovered. Satisfactory disposition of the remains will be agreed upon by all parties so as to limit future disturbance. Procedures will be reviewed and approved by the City prior to Land Use Permit issuance.~~

**Monitoring:** City staff will periodically site inspect monitoring activities and will respond according to procedures in the event human remains are discovered.

Health and Safety Code Section 7050.5 applies to repossession businesses. This comment does not require changes to the EIR. Nevertheless, if any of the events specified in Health and Safety Code Section 7050.5 occur, the applicant, the City, and the Coroner will be required by law to abide by the provisions of that statute.

### **Response to Comment No. 1-7**

This comment advises that consultation must be the result of an ongoing relationship between the Native American tribes and lead agencies, project proponents, and their contractors.

See responses to Comments 1-2 and 1-3 for a discussion of the pre-project and during-project consultation processes, which involve all of the interest groups specified in Comment 1-7.

### **Response to Comment No. 1-8**

The comment recommends avoidance of cultural and/or burial sites that may be present within the project site.

Mitigation measures identified in the project EIR are consistent with the description of mitigation options in CEQA Guidelines Section 15370, as defined below:

“Mitigation” includes:

- a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- e) Compensating for the impact by replacing or providing substitute resources or environments.

As described in response to Comment 1-3, the lead agency has recommended a variety of mitigation measures that fall into the CEQA-specified categories of mitigation.

### **Response to Comment No. 1-9**

This comment provides contact information for Dave Singleton of the Native American Heritage Commission.

Thank you for your comments. Any follow-up questions regarding your comments will be directed to Mr. Singleton.