STATE OF CALIFORNIA Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION
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January 11, 2013

Ms. Ann Chapman, Senior Planner
Tulare County Resource Management Agency
5961 S. Mooney Boulevard
Visalia, CA 93277

Sent by FAX to: 559-730-2653
No. of Pages: 4

Re: Sacred Lands File Search and Native American Contacts list for the proposed Sacred Lands File Search and Native American Contacts list for the proposed **"Special Use Permit for the Harvest Power - TUlare Anaerobic Digester and Compressed Natural Gas Facility Project;"** located near the City of Tulare; Tulare County, California

Dear. Ms. Chapman:

The Native American Heritage Commission (NAHC) conducted a search of the Native American Heritage Commission (NAHC) *Sacred Lands File* was completed for the area of potential project effect (Area of Potential Effect or APE) referenced above. Please note that the absence of specific site information in the *Sacred Lands File* does not indicate the absence of Native American traditional cultural places or cultural landscapes in any APE. While in this case, a search of the NAtHC *Sacred Lands File* did not indicate the presence of Native American cultural sites within one-half mile of the APE location data you provided.

Also, a Native American tribe or individual may be the only source for the presence of traditional cultural places. For that reason, enclosed is a list of Native American individuals/organizations who may have knowledge of traditional cultural places in your project area. This list should provide a starting place in locating any areas of potential adverse impact.

California Public Resources Code §§5097.94 (a) and 5097.96 authorize the NAHC to establish a Sacred Land Inventory to record Native American sacred sites and burial sites. These records are exempt from the provisions of the California Public Records Act pursuant to. California Government Code §6254 (r). The purpose of this code is to protect such sites from vandalism, theft and destruction.

In the 1985 Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites

The 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. CA Government Code §65040.12(e) defines "environmental justice" provisions and is applicable to the environmental review processes. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and 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.

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. Local Native Americans may have knowledge of the religious and cultural significance of the historic properties of the proposed project for the area (e.g. APE). Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). We urge consultation with those tribes and interested Native Americans on the list that the NAHC has provided in order to see if your proposed project might impact Native American cultural resources. Lead agencies should consider avoidance as defined in §15370 of the CEQA Guidelines when significant cultural resources as defined by the CEQA Guidelines §15064.5 (b)(c)(f) may be affected by a proposed project. If so, Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "substantial," and Section 21083.2 which requires documentation, data recovery of cultural resources.

The NAHC makes no recommendation or preference of any single individual, or group over another. All of those on the list should be contacted, if they cannot supply information, they might recommend others with specific knowledge. By contacting all those listed, your organization will be better able to respond to claims of failure to consult with the appropriate tribe or group. If a response has not been received within two weeks of notification, the NAHC requests that you follow-up with a telephone call to ensure that the project information has been received.

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.'

Partnering with local tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C 4321-43351) and Section 106 4(f), Section 110 and (k) of the federal NHPA (16 U.S.C. 470 *et seq*), Section 4(f) of the Department of Transportation Act of 1966 (23 CFR 774); 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 NAHC remains concerned about the limitations and methods employed for NHPA Section 106 Consultation.

Also, California Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery', another important reason to have Native American Monitors on board with the project.

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. An excellent way to reinforce the relationship between a project and local tribes is to employ Native American Monitors in all phases of proposed projects including the planning phases.

Confidentiality of "historic properties of religious and cultural significance" 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 APE and possibility threatened by proposed project activity.

If you receive notification of change of addresses and phone numbers from any of these individuals or groups, please notify me. With your assistance we are able to assure that our lists contain current information. If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton

Attachment: Native American Contact List

Native American Contacts
Tulare County
January 11, 2013

Santa Rosa Rancheria
Rueben Barrios Sr., Chairperson
P.O. Box 8 — Tache
Lemoore , CA 93245 — Tachi
(559) 924-1278 — Yokut
(559) 924-3583 Fax

Wuksache Tribe
John Sartuche
1028 East "K" Avenue — Wuksache
Visalia , CA 93292
signsbysarch@aol.com
(559) 636-1136

Tule River Indian Tribe
Neil Peyron, Chairperson
P.O. Box 589 — Yokuts
Porterville , CA 93258
chairman@tulerivertribe-nsn.
(559) 781-4271
(559) 781-4610 FAX

Jennifer Malone
637 E Lakeview — Wukchumni
Woodlake , CA 93286 — Tachi
indianpopup@sbcglobal.net — Yowlumni
559-564-2146 - home
559-280-0712 - cell

Wuksache Indian Tribe/Eshom Valley Band
Kenneth Woodrow, Chairperson
1179 Rock Haven Ct. — Foothill Yokuts
Salinas , CA 93906 — Mono
kwood8934@aol.com — Wuksache
831-443-9702

Santa Rosa Tachi Rancheria
Lalo Franco, Cultural Coordinator
P.O. Box 8 — Tachi
Lemoore , CA 93245 — Tache
(559) 924-1278 - Ext. 5 — Yokut
(559) 924-3583 - FAX

Tubatulabals of Kern Valley
Robert L. Gomez, Jr., Tribal Chairperson
P.O. Box 226 — Tubatulabal
Lake Isabella, CA 93240
(760) 379-4590
(760) 379-4592 FAX

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 Harvest - Tulare Anaerobic Digester and Compressed Natural Gas Facility Project; located near the City of Tulare; Tulare County, California for which a Sacred Lands File search and Native American Contacts were requested.