

Errata to the Initial Study/Mitigated Negative Declaration for the BNSF Waterline Crossing at Veterans Village and Highland Avenue

BNSF Waterline Crossing at Veterans Village and Highland Avenue

SCH No. 2022080289

Lead Agency:

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November 17, 2022

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
I. Introduction	1
II. Errata	2

ERRATA TO THE IS/MND FOR THE BNSF WATERLINE CROSSING AT VETERANS VILLAGE AND HIGHLAND AVENUE

I. INTRODUCTION

This Errata makes minor technical corrections and clarifications to the Initial Study/Mitigated Negative Declaration (IS/MND) for the BNSF Waterline Crossing at Veterans Village and Highland Avenue text. These Final IS/MND modifications clarify and refine the Final IS/MND and provide supplemental information to the Yorba Linda Water District (YLWD) decision-makers and the public. The information provided herein does not represent significant new information that would affect the analysis or conclusions presented in the Draft IS/MND. CEQA requires recirculation of a draft IS/MND only when “significant new information” is added to a draft IS/MND after public notice of the availability of the Draft IS/MND has occurred (refer to California Public Resources Code Section 21092.1 and CEQA Guidelines Section 15088.5), but before the IS/MND is certified. Section 15088.5 of the CEQA Guidelines specifically states: “New information added to an IS/MND is not ‘significant’ unless the IS/MND is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. ‘Significant new information’ requiring recirculation includes, for example, a disclosure showing that:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance.
- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it.
- The draft IS/MND was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

CEQA Guidelines Section 15088.5 also provides that “[r]ecirculation is not required where the new information added to the IS/MND merely clarifies or amplifies or makes insignificant modifications in an adequate IS/MND... A decision not to recirculate an IS/MND must be supported by substantial evidence in the administrative record.”

The information added pursuant to this Errata does not contain significant new information that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect environmental effect of the Project or a feasible way to mitigate or avoid such an effect that the Applicant has declined to adopt. Additionally, information provided in this Errata does not present a feasible Project alternative or mitigation measure considerably different from others previously analyzed in the Draft IS/MND. All of the information added pursuant to this Errata merely clarifies, corrects, adds to, or makes insignificant modifications to information in the Draft IS/MND. YLWD has reviewed the information in this Errata and has determined that it does not change any of the basic findings or conclusions of the Final IS/MND, does not constitute “significant new information”

pursuant to CEQA Guidelines Section 15088.5, and does not require recirculation of the Draft IS/MND.

The IS/MND modifications contained in the following pages are in the same order as the information appears in the Final IS/MND. Changes in text are signified by strikeouts (strikeouts) where text has been removed and by underlining (underline) where text has been added. The applicable page numbers from the Final IS/MND are also provided where necessary for easy reference.

II. ERRATA

1. The following information has been updated to reflect consultation between YLWD and the Gabrieleño Band of Mission Indians – Kizh Nation, and the mitigation measures agreed upon between these agencies.

Pages 5-22 and 5-23 of the Draft IS/MND is hereby edited to reflect the updated mitigation measures:

MITIGATION PROGRAM

Mitigation Measures

MM CULT-1 In the event that cultural (archaeological) resources are inadvertently unearthed during excavation activities, the contractor shall immediately cease all earth-disturbing activities within a 100-foot radius of the area of discovery and the contractor shall contact YLWD immediately. YLWD shall (a) retain a qualified professional archaeologist, and (b) contact the Tribal Monitor, for both to evaluate the significance of the find, and in consultation with YLWD, determine an appropriate course of action. If the archaeological resources are found to be significant, the archeologist, in consultation with YLWD, shall determine appropriate actions for exploration and salvage. If the resources are found to be significant Tribal Cultural Resources (as defined by Pub. Res. Code §21074(a)) ("TCR"), as determined by the Tribal Monitor, MM TCR-1 and MM TCR-2 will apply. After the find has been appropriately avoided or mitigated, work in the area may resume.

MM CULT-2 In accordance with Section 7050.5 of the *California Health and Safety Code*, if human remains are found during ground-disturbing activities, no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur. The County Coroner shall be notified of the discovery immediately. If the County Coroner determines that the remains are or believed to be Native American, s/he shall notify the NAHC in Sacramento within 24 hours of the discovery, and MM TCR-1 will apply. In accordance with Section 5097.98 of the *California Public Resources Code*, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall complete their inspection within 48 hours of being granted access to the site by YLWD. YLWD would meet and confer with the most likely descendant regarding their recommendations prior to disturbing the site by further construction activity.

Pages 5-47 through 5-48 of the Draft IS/MND is hereby edited to reflect the updated text and mitigation measures:

YLWD received one response. Mr. Salas (the Tribal Chair), for the Gabrieliño Band of Mission Indians – Kizh Nation, responded on April 22, 2022. Consultation between the Gabrieliño Band of Mission Indians – Kizh Nation and YLWD was initially scheduled on July 7, 2022. On June 27, 2022, YLWD was notified by the tribe that the July 7, 2022 meeting would be cancelled due to lack of availability. On June 29, 2022, consultation was rescheduled for August 11, 2022. On August 3, 2022, YLWD received email notice that the meeting would again need to be cancelled and rescheduled. Formal ~~consultation~~ took place on August 23, 2022, via teleconference. At that confidential meeting, YLWD and the Tribal representatives discussed the proposed Project and the IS/MND analytical approach. The tribal representatives discussed the importance of the Project site to the Gabrieliño Band of Mission Indians – Kizh Nation. However, the Project site and surrounding area has been developed through significant landscaping and hardscaping. As such, potential archaeological resources buried beneath the site's surface are likely to be heavily disturbed. While unlikely, buried resources, such as prehistoric artifacts relating to Gabrieliño village sites, historic artifacts relating to Spanish ranching, and human remains could exist on the Project site and be damaged by drilling activities for project construction, which would represent a significant impact.

Based on available information from the records search results, no information was provided that identifies a specific potential for a significant impact. However, because the tribe has identified a ~~desire to consult with YLWD regarding the project, this analysis assumes~~ potential for a significant impact related to tribal cultural resources, ~~MM TCR-1 and MM TCR-2 below are~~ recommended to reduce the potential for discovery or impacts to unknown resources by setting up a process for tribal monitoring, and unanticipated discovery of human remains.

MITIGATION PROGRAM

Mitigation Measure

MM TCR-1 Prior to the commencement of earthwork activities, YLWD shall retain a monitor ("Tribal Monitor") approved by the Gabrieliño Band of Mission Indians - Kizh Nation ("Kizh Nation"). "Earthwork activities" include pavement removal, potholing, auguring, grubbing, tree removal, boring, grading, excavation, drilling and trenching. YLWD shall provide written notification to the lead Tribal Native American representatives from the Gabrieleno Band of Mission Indians - Kizh Nation and office indicating the date and time of the commencement of earthwork activities. Native American representatives from the Gabrieleno Band of Mission Indians – Kizh Nation, . The representatives from the Gabrieleno Band of Mission Indians – Kizh Nation ("tribal representative") shall be provided and will provide the Tribal Monitor reasonable access to the Project site to monitor the earthwork activities in a manner that does not interfere with the earthwork activities. During earthwork activities, the Tribal Monitor shall complete monitoring logs that describe the earthwork activities, including the type of earthwork activities, locations of the earthwork activities, soil types, and any other facts related to TCRs. The Tribal Monitor shall provide copies of the monitoring logs to YLWD upon request. Tribal representatives, at their own expense, and in a manner that does not interfere with earthwork activities, shall be allowed to monitor subsurface ground-disturbing construction activities to the depth of 20 feet below the undisturbed ground surface. If any cultural resources TCRs are identified during the monitoring and evidence is

presented that the discovery proves to be potentially significant under CEQA, as determined by the Tribal Monitor, ~~YLWD's consulting Project Archaeologist~~, all earthwork activities shall cease within 50 feet of the discovery, until the Tribal Monitor tribal representative and the Project Archaeologist, in consultation with YLWD, will determine the appropriate actions for explorations and/or recovery.

MM TCR-2 In accordance with Section 7050.5 of the California Health and Safety Code, if Native American human remains (as defined in Pub. Res. Code §5097.98(d)(1)) are found during earthwork activities, no further excavation or disturbance of the site or any nearby area reasonably suspected, by the Tribal Monitor, to overlie the adjacent remains shall occur. The County Coroner shall be notified of the discovery immediately. If the County Coroner determines that the remains are or believed to be Native American, s/he shall notify the NAHC in Sacramento within 24 hours of the discovery. In accordance with Section 5097.98 of the California Public Resources Code, the NAHC must immediately notify those persons it believes to be the most likely descended from the deceased Native American. The descendants shall complete their inspection within 48 hours of being granted access to the site by YLWD. YLWD would meet and confer with the most likely descendant regarding their recommendations prior to disturbing the site by further earthwork activity. Human remains and grave goods shall be treated as required by Public Resources Code section 5097.98, and their discovery shall remain confidential.