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**NATIVE AMERICAN HERITAGE COMMISSION**

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**RECEIVED**

JUL 19 2012

RWQCB-CVR  
FRESNO, CALIF.

July 16, 2012

Mr. Scott Hatton

**California Regional Water Quality Control Board**

1685 E Street  
 Fresno, CA 93706

Re: SCH#2011061095; CEQA Notice of Completion: proposed Mitigated Negative Declaration for the POM Wonderful LLC Whole FRUIT and juice Extraction Plant Expansion Project; located in the Del Rey Community; Fresno County, California.

Dear Mr. Hatton:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation 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 of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

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 "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).

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 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. 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 Section 2183.2 that requires documentation, data recovery of cultural resources.

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.'

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 the 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.

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'.

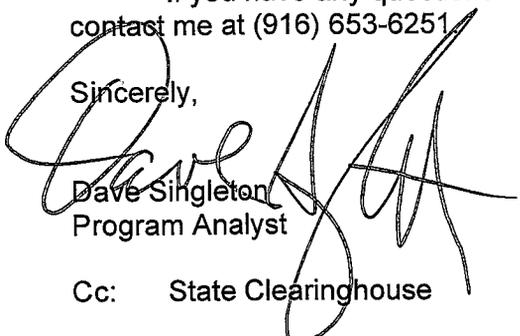
To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

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).

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

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Sincerely,



Dave Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

## Native American Contact

Fresno County

July 16, 2012

Big Sandy Rancheria of Mono Indians  
Liz Hutchins Kipp, Chairperson  
P.O. Box 337 / 37302 Western Mono  
Auberry, CA 93602  
ck@bigsandyrancheria.com  
(559) 855-4003  
(559) 855-4129 Fax

Cold Springs Rancheria of Mono Indians  
Robert Marquez, Chairperson  
P.O. Box 209 Mono  
Tollhouse, CA 93667  
(559) 855-5043  
559-855-4445 - FAX

North Fork Mono Tribe  
Ron Goode, Chairperson  
13396 Tollhouse Road Mono  
Clovis, CA 93619  
rwgoode911@hotmail.com  
(559) 299-3729 Home  
(559) 355-1774 - cell

Dumna Wo-Wah Tribal Government  
Robert Ledger SR., Tribal Chairperson  
2216 East Hammond Street Dumna/Foothill  
Fresno, CA 93602 Mono  
ledgerrobert@ymail.com  
559-519-1742 - office

Sierra Nevada Native American Coalition  
Lawrence Bill, Interim Chairperson  
P.O. 125 Mono  
Dunlap, CA 93621 Foothill Yokuts  
(559) 338-2354 Choinumni

Choinumni Tribe; Choinumni/Mono  
Lorrie Planas  
2736 Palo Alto Choinumni  
Clovis, CA 93611 Mono

Table Mountain Rancheria  
Bob Pennell, Cultural Resources Director  
P.O. Box 410 Yokuts  
Friant, CA 93626-0177  
(559) 325-0351  
(559) 217-9718 - cell  
(559) 325-0394 FAX

Kings River Choinumni Farm Tribe  
John Davis, Chairman  
1064 Oxford Avenue Foothill Yokuts  
Clovis, CA 93612-2211 Choinumni  
(559) 307-6430

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#2012061095; CEQA Notice of Commission; proposed Mitigated Negative Declaration for the POM Wonderful LLC Whole Fruit and Juice Extraction Project located in the Del Rey area; Fresno County, California.

## Native American Contact

Fresno County

July 16, 2012

Dunlap Band of Mono Historical Preservation Soc  
Mandy Marine, Board Chairperson  
P.O. Box 18 Mono  
Dunlap , CA 93621  
mandy\_marine@hotmail.  
com  
559-274-1705

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

Chowchilla Tribe of Yokuts  
Jerry Brown  
10553 N. Rice Road North Valley Yokuts  
Fresno , CA 93720  
559-434-3160

Dumna Wo-Wah Tribal Government  
Eric Smith, Cultural Resource Manager  
2216 East Hammond Street Dumna/Foothill  
Fresno , CA 93602 Mono  
nuem2007@yahoo.com  
559-519-1742 - office

The Choinumni Tribe of Yokuts  
Rosemary Smith, Chairperson  
1505 Barstow Choinumni  
Clovis , CA 96311 Foothill YoKut  
monoclovis@yahoo.com

Dumna Wo-Wah Tribal Government  
John Ledger, Assistant Cultural Resource Manager  
2216 East Hammond Street Dumna/Foothill  
Fresno , CA 93602 Mono  
ledger17bonnie@yahoo.com  
559-519-1742 - office

Frank Marquez  
P.O. Box 565 Mono  
Friant , CA 93626 Foothill Yokut  
francomarquez@pmr.org  
559-213-6543 - cell  
559-822-3785

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