

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

735A



FROM: TLMA - Transportation Department

SUBMITTAL DATE:
November 16, 2010

SUBJECT: Cultural Resources Treatment and Tribal Monitoring Agreement for the Goetz Road/Salt Creek Bridge

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement between the County of Riverside and the Pechanga Band of Luiseño Indians ("Pechanga Band"), and;
2. Authorize the Chairman of the Board of Supervisors to execute the same.

BACKGROUND: The Riverside County Transportation Department proposes to complete improvements on Goetz Road and Newport Road associated with the "Audie Murphy Ranch" development within the Cities of Menifee and Canyon Lake. The master developer for the "Audie Murphy Ranch" project filed for bankruptcy and left various roads and bridge

Approved

Juan C. Perez
Director of Transportation

JCP:ah

Continued on Attached Page

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 40,000	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year: 2010/2011

SOURCE OF FUNDS: Developer Performance Bond Fund (100%)	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Jennifer L. Sargent*
Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *1988 V. K. VICTOR* 11/15/10
MARSHAL L. VICTOR DATE

Dept's Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. 3.51 of 10/19/10 | District: 3 | Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.59

The Honorable Board of Supervisors

RE: Cultural Resources Treatment and Tribal Monitoring Agreement for the Goetz Road/Salt
Creek Bridge

November 16, 2010

Page 2 of 2

improvement within the development incomplete.

By Minute Order dated October 21, 2010 (agenda item 3.51), the Board approved and awarded a construction contract for the completion of improvements on Goetz Road. These improvements consist of widening Goetz Road to four lanes, constructing a new bridge over the Salt Creek, and various other improvements.

Environmental Impact Report (EIR) No. 436 and an Addendum to EIR 436 (dated 7/7/10) address the improvements to Goetz Road and the construction of Goetz Road Bridge and required Native American monitoring during construction as a mitigation measure. The Cultural Resources Treatment and Tribal Monitoring Agreement provides for monitoring by the Pechanga Tribe to satisfy the cultural resources mitigation measure.

County Counsel has reviewed and approved the Cultural Resources Treatment and Tribal Monitoring Agreement.

Construction is expected to begin in December of 2010.

Project Number B80643

CULTURAL RESOURCES TREATMENT AND TRIBAL MONITORING AGREEMENT (Pre-Excavation Agreement)

Goetz Road/Salt Creek Bridge

I. PARTIES

The PARTIES to this Agreement are (1) The Pechanga Band of Luiseño Indians, a federally recognized Indian tribe ("PECHANGA BAND") and (2) Riverside County on behalf of its Transportation Department ("COUNTY").

All notices to the PARTIES shall be given at the addresses below:

Pechanga Band of Luiseño Indians

Mr. Gary DuBois, Director
Pechanga Cultural Resources
P.O. Box 2183
Temecula, CA 92593
Telephone: (951) 308-9295
Facsimile: (951) 506-9491

Counsel for the Pechanga Band

Michele Fahley, Deputy General Counsel
Pechanga Band of Luiseño Indians
Office of the General Counsel
P.O. Box 1477
Temecula, CA 92593
Telephone: (951) 770-6179
Facsimile: (951) 694-0734

County

Juan C. Perez, Director
Riverside County Transportation Department
4080 Lemon St., 8th floor
Riverside, CA 92501
Telephone: (951) 955-6782
Facsimile: (951) 955-3164

II. SUBJECT MATTER

This Agreement concerns a project known as the **Goetz Road/Salt Creek Bridge** ("PROJECT"). The Riverside County Medical Examiner's Office will be provided a copy of this Agreement by the PECHANGA BAND. The County of Riverside, Lead Agency for the Project, and agency responsible for environmental compliance of this PROJECT ("Lead Agency"), will be provided a copy of this Agreement by the PECHANGA BAND.

III. PURPOSE

The purpose of this agreement is to formalize procedures for the treatment of Native American human remains, grave goods, funerary objects, ceremonial items, and cultural items, in the event that any are found in conjunction with development of the bridge portion of the PROJECT. This agreement also formalizes procedures for tribal monitoring during all bridge related excavation, and ground-disturbing activities performed in conjunction with the PROJECT. This Agreement is entered into pursuant to the mitigation measures required under the California Environmental Quality Act, Cal. Public Resources Code § 21000 et seq. ("CEQA"). This Agreement is effective as of the date

provided for in Section XIX.

IV. CULTURAL AFFILIATION

The PARTIES agree that the PROJECT area consists of land which has been traced to and traditionally occupied by the PECHANGA BAND. Any human remains as defined in Section VII which are found in conjunction with the development of this PROJECT shall be treated in accordance with Sections V through VIII of this Agreement. Cultural resources shall be treated in accordance with Section IX of this Agreement. Significant sites shall be treated in accordance with Section X of this Agreement.

V. MOST LIKELY DESCENDANT

In the event that Native American human remains are found during development of this PROJECT, the PARTIES understand that the determination of Most Likely Descendant ("MLD") under California Public Resources Code Section 5097.98 will be made by the Native American Heritage Commission ("NAHC") upon notification to NAHC of the discovery of said remains at the PROJECT site. Until such time, neither the PECHANGA BAND nor the COUNTY guarantees that the PECHANGA BAND or one of its members will be so named. However, given the location of the site and the history and prehistory of the area, the PARTIES agree that their good faith belief is that, when and if such Native American human remains are discovered at the PROJECT site, Tribal Chairperson Mark Macarro of the PECHANGA BAND will be named the MLD.

Should the NAHC determine that a member of an Indian tribe other than the PECHANGA BAND is the MLD, the provisions of this Agreement relating to the treatment of such Native American human remains shall be null and void in their entirety, except that, in such an event, the provisions of **Addendum 1** to this Agreement relating to compensation, shall specifically continue in full force and effect.

VI. COORDINATION WITH COUNTY MEDICAL EXAMINER'S OFFICE

The COUNTY shall immediately contact the Medical Examiner and the PECHANGA BAND in the event that any human remains are discovered during the development of the PROJECT. The Medical Examiner shall ensure that notification is provided to the NAHC as required by California Public Resources Code Section 5097.98(a).

VII. TREATMENT OF NATIVE AMERICAN REMAINS

In the event that Native American human remains are found during the bridge excavation and associated ground-disturbing activities of the PROJECT and the PECHANGA BAND or a member of the PECHANGA BAND is determined to be MLD pursuant to Section V of this Agreement, the following provisions shall apply.

The term "Native American human remains" encompasses more than human bones because the PECHANGA BAND'S traditions call for the burial of associated cultural resources with the deceased (grave goods and funerary objects), and the ceremonial burning of Native American human remains, funerary objects, grave goods and animals. Ashes and other remnants of these burning ceremonies, as well as grave goods and funerary objects, associated with or buried with the Native American remains, are to be treated in the same manner as bones, bone fragments and cremations.

The Medical Examiner shall immediately be notified, ground disturbing activities in that location shall cease, and the remains shall be left in the place where they were discovered until the Medical Examiner has had the opportunity to inspect the remains in place and make a determination as required by State law, and until a final decision as to the treatment and disposition has been made pursuant to this Agreement and State law.

The PECHANGA BAND shall be allowed, pursuant to California Public Resources Code Section 5097.98(a), to (1) inspect the site of the discovery and (2) make recommendations as to how the human remains and grave goods should be treated with appropriate dignity. The COUNTY shall discuss and confer with the PECHANGA BAND all reasonable options with regard to its preferences and recommendations for treatment. The PARTIES agree to discuss in good faith what constitutes "appropriate dignity," as that term is used in the applicable statutes and in the PECHANGA BAND'S customs and traditions.

In addition, pursuant to California Public Resources Code §5097.98(f), upon discovery of multiple human remains, the COUNTY agrees to consult with the PECHANGA BAND to consider appropriate treatment of multiple human remains. The PECHANGA BAND understands that consultation with the COUNTY would be required in discussing appropriate treatment.

The PECHANGA BAND shall complete its inspection and make its MLD recommendation within forty-eight (48) hours of receiving notification of the MLD determination from the NAHC. The PECHANGA BAND shall have the final determination as to the disposition and treatment of human remains and grave goods. The PARTIES acknowledge that the PECHANGA BAND's general preference is that all human remains not be disturbed and the COUNTY agrees in good faith to accommodate that preference when feasible.

VIII. NON-DISCLOSURE OF LOCATION OF REBURIALS

It is understood by the PARTIES that, unless otherwise required by law, the site of any reburial of Native American human remains shall not be disclosed and will not be governed by public disclosure requirements of the California Public Records Act, Cal. Govt. Code § 6250 et seq. The Medical Examiner shall withhold public disclosure of information related to such reburial pursuant to the specific exemption set forth in California Government Code Section 6254(r).

IX. TREATMENT OF CULTURAL RESOURCES

Treatment of all cultural items, including ceremonial items and archaeological items will reflect the religious beliefs, customs, and practices of the PECHANGA BAND.

The COUNTY agrees to give all cultural items, including ceremonial items and archaeological items, which may be found at the PROJECT site to the PECHANGA BAND for appropriate treatment, unless the COUNTY is otherwise ordered by a court or agency of competent jurisdiction. The COUNTY waives any and all claims to ownership of Tribal ceremonial and cultural items, and all archaeological items which may be found on the PROJECT site in favor of the PECHANGA BAND. If temporary possession of cultural items by the COUNTY or an agent, subcontractor, or representative of the COUNTY is necessary (for example a PROJECT archaeologist), said entity or individual shall not possess those items for longer than is reasonably necessary, and which will include inventory and evaluation of cultural materials at the project site. All PARTIES agree that ceremonial and sacred items shall be immediately relinquished to the PECHANGA BAND for appropriate treatment.

X. SIGNIFICANT SITES IMPACTED BY PROJECT

All PARTIES agree that if additional significant sites or sites not identified as significant in the PROJECT environmental review process, but later determined to be significant, are located within the PROJECT impact area, such sites will be subjected to further archaeological and cultural significance evaluation by the County of Riverside, as Lead Agency, and the PECHANGA BAND to determine if additional mitigation measures are necessary to treat sites in a culturally appropriate manner consistent with CEQA requirements for mitigation of impacts to cultural resources.

XI. WORK STATEMENT FOR TRIBAL MONITORS

The description of work for Tribal monitors is attached hereto as Addendum 1 and incorporated herein by reference. Addendum 1 specifies the development activities that Tribal monitors will monitor, the geographical area over which this monitoring shall be conducted, the size of the monitoring crew, the powers of the monitoring crew, and provisions for compensation of the Tribal monitors, and other pertinent provisions.

XII. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, executors, administrators, and assigns of the parties, including subsequent land owners, and developers, of the PROJECT area, and any person or entity obligated to comply with environmental and cultural/archaeological protection laws applicable to this PROJECT.

XIII. ENVIRONMENTAL COMPLIANCE

Nothing in this Agreement shall excuse the Lead Agency on this PROJECT or the COUNTY from their obligations under any applicable state or federal laws or regulations, including but not limited to the California Environmental Quality Act (CEQA); Public Resources Code § 21000 et seq., the National Historic Preservation Act ("NHPA") 16 U.S.C. § 470 et seq.; California Public Resources Code Sections 5097.98, 5097.98(c), and 5097.99; California Health and Safety Code Sections 7050.5(c); California Government Code Section 6254, 65040.2, 65092, 65351, 65352, 65560, 65352.3, 65352.4, 65562.5; California Civil Code 815.3; the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 et seq.; the California Native American Graves Protection and Repatriation Act of 2001, California Health and Safety Code §§8010 et seq.; the American Indian Religious Freedom Act, 16 U.S.C. § 1996, et seq., and the First Amendment to the United States Constitution. Nothing in this Agreement is intended to make any of the above-referenced laws applicable where such laws would otherwise be inapplicable.

XIV. INDEMNITY

The PECHANGA BAND in no way indemnifies nor guarantees the Lead Agency or the COUNTY in any of their legal obligations.

XV. SEVERABILITY

Should any part of this Agreement be found by any court or agency of competent jurisdiction to be to any extent invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

XVII. LIMITATION ON SCOPE

This Agreement is unique to this PROJECT only and does not set a precedent for other PROJECTS.

XVIII. AUTHORITY TO EXECUTE

Each of the persons executing this Agreement expressly warrants that he or she is authorized to do so on behalf of the entity for which he or she is executing this Agreement. Each party to this Agreement represents and warrants that this Agreement is executed voluntarily, with full knowledge of its significance.

XIX. COUNTERPARTS

This Agreement may be signed in two or more counterparts and will be effective when all PARTIES and signatories have affixed their signatures to two or more of the counterparts and said counterparts have been delivered to all PARTIES, at which time the counterparts together will be deemed one original document.

Date: _____

Date:

Tribe: PECHANGA BAND OF
LUISEÑO INDIANS

COUNTY: RIVERSIDE COUNTY
BOARD OF SUPERVISORS.

By: Mark Macarro
Its: Tribal Chairman

By:
Its: CHAIRMAN

FORM APPROVED COUNTY COUNSEL
BY: MARSHAL VICTOR 11/15/10
DATE

**ADDENDUM 1
TRIBAL MONITORING**

Goetz Road/Salt Creek Bridge

I. SPECIFICATIONS

Given the nature and sensitivity of the archaeological sites and cultural resources that are or may be in the Project area, the PECHANGA BAND may designate monitor representatives to be retained as Tribal monitors during bridge related excavation and ground-disturbing activities performed in conjunction with the PROJECT development. Monitor representatives shall cooperate with COUNTY'S archaeological monitors and with COUNTY'S Construction Engineer.

In the event that human remains, as defined in Section VII of the Cultural Resources Treatment and Tribal Monitoring Agreement, incorporated herein by reference, are found during the bridge excavation of the PROJECT, tribal monitors are authorized to temporarily halt and/or relocate grading or excavation activities pending further investigation by the Medical Examiner and the PECHANGA BAND, pursuant to California Health & Safety Code §7050.5. The monitors are further authorized to temporarily halt and/or relocate grading or excavation activities, for short periods of time, to conduct further evaluation of the significance of discovered cultural items, including further controlled excavations pursuant to California Public Resources Code §21083.2(i). Surface or subsurface artifacts of significance may be collected and mapped during this controlled excavation.

If Native American human remains are found, coordination of the treatment of those remains, as defined in Section VII of the Cultural Resources Treatment and Tribal Monitoring Agreement, will be conducted in accordance with Sections V through VIII of this Agreement. Cultural resources shall be treated in accordance with Section IX of this Agreement. Significant sites shall be treated in accordance with Section X of this Agreement.

Regarding bridge excavation activities, a pre-excavation conference shall be held by the COUNTY to clarify monitoring specifications with the contractor and/or COUNTY Project manager and Construction Engineer. The Pechanga Cultural Resources Committee or the PECHANGA BAND's designated representative shall be invited to participate in this conference. The PECHANGA BAND shall coordinate with the COUNTY'S Construction Engineer on activities that involve the COUNTY's Contractor.

If necessary, archaeological observation shall consist of a qualified archaeologist, retained by the COUNTY, to be present during ground-disturbing activities to identify and/or ascertain the significance of any subsurface cultural resources or to aid in the avoidance of sensitive areas.

II. PROJECT TO BE MONITORED

Monitoring shall encompass the bridge related excavation for the construction of the **Goetz Road/Salt Creek Bridge as shown on the attached Exhibit A**. Based on the cultural and archaeological sensitivity of the Project site, including the potential for human remains and cultural resources, and the fact that cultural resources have been discovered during development phases of the Audie Murphy Project, it is agreed that monitoring will be allowed for all bridge related excavation, and ground-disturbing activities performed in conjunction with the Project development.

III. PROJECT CREW SIZES

For purposes of determining Tribal monitoring crew sizes, a written schedule of bridge related ground-disturbing activities, as defined above, will be submitted by the COUNTY to the PECHANGA BAND or its designated representatives one week in advance of the commencement of these activities.

The PARTIES to this Agreement anticipate the need for a Tribal monitoring crew consisting of two (2) persons. If the scope of work changes to require additional monitors (for example, if inadvertent discoveries of cultural resources are made or simultaneous grading in two or more geographic areas), the COUNTY agrees to come to a reasonable agreement with the PECHANGA BAND regarding compensation of more than two (2) monitors.

IV. COMPENSATION

The PECHANGA BAND shall hire the Tribal monitoring crew for this PROJECT and shall be responsible for coordinating their activities on this PROJECT. The PECHANGA BAND recognizes that dangerous conditions can exist at the PROJECT work site, particularly during excavation and grading operations, and agrees to assume responsibility for the safety of the Tribal monitoring crew while on the Project site. The PECHANGA BAND possesses liability insurance for its monitors.

The COUNTY shall compensate the Tribal monitors at the rate of **\$50.00** per hour, based on submittal of monitoring logs signed by the Construction Engineer plus reimbursement for all reasonable and documented mileage expenses at the current IRS mileage rate (**\$0.50** per mile). Work performed during 2011 shall be compensated at the Base Rate and adjusted for inflation. The adjustment, if any, shall be calculated in accordance with the United States Department of Labor, Bureau of Labor Statistics, Revised Consumer Price Index. Hourly rate compensation adjustments shall be made only once a year. For purposes of rate compensation adjustment, a year commences on January 1st. A minimum half-day charge ("show up time") will be charged to the COUNTY for unannounced work stoppages of Tribal monitors which are not due to actions of the PECHANGA BAND. The hourly rate will not be applicable to travel time to and from the PROJECT site.

The COUNTY agrees that the PECHANGA BAND may invoice the COUNTY for the Tribal monitors' compensation on a monthly basis. The COUNTY also agrees to remit payment in full to the following address within thirty (30) days of receipt of the PECHANGA BAND's invoice:

Accounting Department
Pechanga Band of Luiseño Indians
Attn: Accounts Receivable
P.O. Box 1477
Temecula, CA 92593

EXHIBIT A - GOETZ ROAD PROPOSED BRIDGE



Disclaimer: Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.