

## **Smith Basin Improvement Project**

### Appendix G

#### AB52 Tribal Consultation

Sagecrest Planning+Environmental, February 2020

DIRECTORS

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**ORANGE COUNTY WATER DISTRICT**  
ORANGE COUNTY'S GROUNDWATER AUTHORITY

OFFICERS

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STEPHEN R. SHELDON  
  
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September 17, 2019

Andrew Salas, Chairperson  
Gabrieleno Band of Mission Indians-Kizh Nation  
PO Box 393  
Covina, CA 91723

by email to: [admin@gabrielenoindians.org](mailto:admin@gabrielenoindians.org)  
[gabrielenoindians@yahoo.com](mailto:gabrielenoindians@yahoo.com)

**Subject: Assembly Bill 52 Consultation for the Smith Basin Rehabilitation Project, City of Orange, CA**

Dear Chairperson Salas:

Thank you for your interest in proposed development projects by the Orange County Water District (OCWD). OCWD is in receipt of the Gabrieleno Band of Mission Indians-Kizh Nation's request, pursuant to the provisions of Assembly Bill 52 and Section 21080.3.1 (d) of the Public Resources Code, for formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with your tribe. This letter is to extend the opportunity to request consultation to protect any tribal cultural resources that may exist in the planning area.

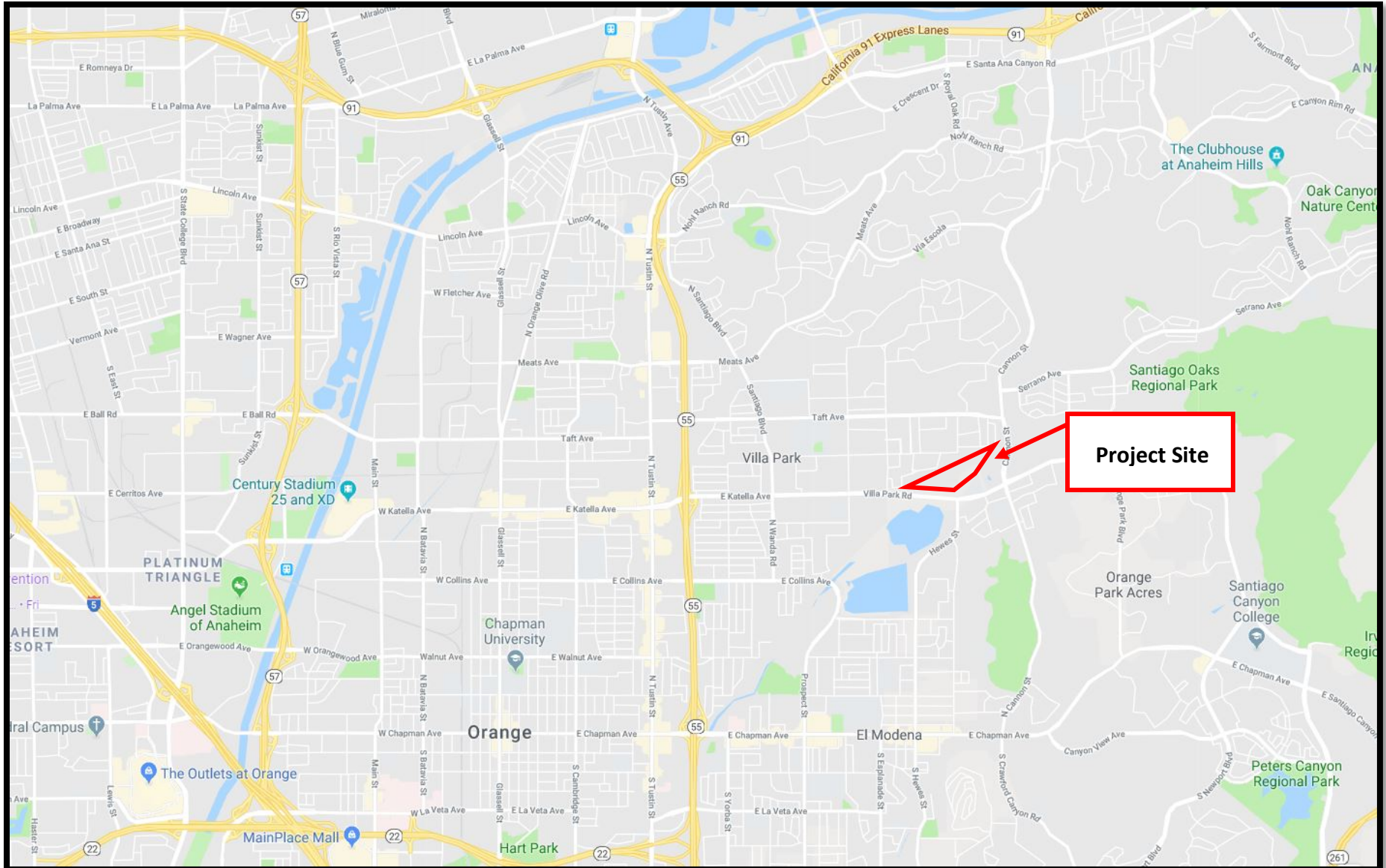
The OCWD, as Lead Agency, is preparing an Initial Study for the Smith Basin Rehabilitation Project located in the area of the Santiago Creek that is north of Villa Park Road and west of Cannon Street, in the City of Orange, Orange County (Project Site). Figure 1 is a map of the Project Location. The Proposed Project consists of geotechnical improvements to improve slope stability to four main areas of Smith Basin that have experienced substantial erosion of the basin slopes. Much of the bottom of Smith Basin will be graded to repair the existing slope damage and to re-establish Santiago Creek to its previous alignment within the project limits. Soil will be excavated from the bottom of the basin and used as fill on the damaged slopes to restore their previous configuration.

The input of the Gabrieleno Band of Mission Indians-Kizh Nation is important to the Orange County Water District's planning process. Please contact me in writing, preferably by email, within 30 days of receipt of this letter if you wish to consult on the Proposed Project. If you require any additional information or have any questions, please contact me at 714-378-3256 or via e-mail at [sneville@ocwd.com](mailto:sneville@ocwd.com). Thank you for your assistance.

Sincerely,

*Shawn Nevill*  
Shawn Nevill  
Principal Planner

**Attachments:** Figure 1 - Regional Location Map, Figure 2 – Project Limits

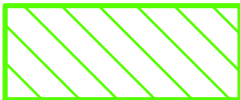


**Figure 1: Regional Location Map**

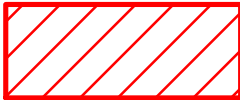
Source: Google Maps



# Legend



Limit of Grading



Repair Area



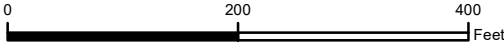
Staging Area



Access Road



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Smith Basin Rehabilitation Project  
Project Limits





## GABRIELENO BAND OF MISSION INDIANS - KIZH NATION

Historically known as The San Gabriel Band of Mission Indians  
recognized by the State of California as the aboriginal tribe of the Los Angeles basin

Project Name: The Smith Basin Rehabilitation Project in the City of Orange

Dear Shawn Nevill,

Thank you for your letter dated September 17, 2019 regarding AB52 consultation. The above proposed project location is within our Ancestral Tribal Territory; therefore, our Tribal Government requests to schedule a consultation with you as the lead agency, to discuss the project and the surrounding location in further detail.

Please contact us at your earliest convenience. ***Please Note: AB 52, "consultation" shall have the same meaning as provided in SB 18 (Govt. Code Section 65352.4).***

Thank you for your time,

Andrew Salas, Chairman  
Gabrieleno Band of Mission Indians – Kizh Nation  
1(844)390-0787

Andrew Salas, Chairman

Albert Perez, treasurer I

Nadine Salas, Vice-Chairman

Martha Gonzalez Lemos, treasurer II

Dr. Christina Swindall Martinez, secretary

Richard Gradias, Chairman of the council of Elders

PO Box 393 Covina, CA 91723

[www.gabrielenoindians@yahoo.com](mailto:www.gabrielenoindians@yahoo.com)

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## Gabrieleno Band of Mission Indians – Kizh Nation

### *Protection of Tribal Cultural Resources (TCRs)*

#### **Most Important Things for Agencies to Know About AB52:**

- An EIR, MND, or ND can not be certified until AB-52 tribal consultation has concluded.
- Agreed mitigation measures with the tribe, **MUST** be recommended for inclusion in the environmental document.
- Signature confirming acceptance of these mitigation measures recommended by our Tribal Government is required within 14 days of receipt to conclude AB52 consultation.

#### **Tribal Cultural Resources Mitigation Measures within Kizh Nation Tribal Territory:**

Note: To avoid compliance issues with the following laws, all Native American Monitoring shall be conducted by a documented lineal descendant from the ancestral Tribe of the project area (NAGPRA Law 10.14)

- The Native American Graves Protection and Repatriation Act (NAGPRA), Public Law-101-601, 25 U.S.C. 3001 et seq., 104 Stat. 3048.
- CEQA Guidelines Section 15064.5, PRC 5097.98 (d)(1).
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

*If you are receiving these measures, The Gabrieleno Band of Mission Indians Kizh -Nation are the direct lineal descendants of your project area. The Kizh Nation ONLY responds and consults on projects within their ANCESTRAL tribal territory. Therefore, to remain in compliance with above referenced laws and to enable our Tribe with the ability to protect and preserve our last remaining and irreplaceable Tribal Cultural Resources, it is recommended that the project applicant retain a qualified professional tribal monitor/consultant from the Gabrieleno Band of Mission Indians Kizh -Nation. The Kizh Nation possesses Tribal archives including documented historical information as well as multiple members who possess unique knowledge derived from oral tradition passed down through generations of the Tribe in order to provide the expertise needed to identify whether a project is located within a culturally sensitive area given its proximity to village areas, commerce areas, recreation areas, ceremonial areas, and burial locations.*

#### **Native American Heritage Commission (NAHC) Guidelines for Native American Monitors/Consultants**

**(approved 9/13/05):** By acting as a liaison between Native American, archaeologist, developers, contactors and public agency, a Native American monitor/consultant can ensure that cultural features are treated appropriately from the Native American point of view. This can help others involved in a project to coordinate mitigation measures. These guidelines are intended to provide prospective monitors/consultants, and people who hire monitors/consultants, with an understanding of the scope and extent of knowledge that should be expected.

**Mitigation Guidelines for Tribal Cultural Resources (TCRs):** CEQA now defines TCRs as an independent element separate from archaeological resources. Environmental documents shall address a separate Tribal Cultural Resources section that includes a thorough analysis of the impacts to only TCRs and includes separate and independent mitigation measures created with tribal input under AB-52 consultations. Therefore, all agreements, mitigation, and conditions of approval regarding TCRs shall be handled solely with the Tribal Government and conversely all agreements, mitigation, and conditions of approval regarding Archaeological Resources shall be handled by an Archaeological resource company.



## MITIGATION MEASURES

**Retain a Native American Monitor/Consultant:** The Project Applicant shall be required to retain and compensate for the services of a Tribal monitor/consultant who is both approved by the Gabrieleño Band of Mission Indians-Kizh Nation Tribal Government and is listed under the NAHC's Tribal Contact list for the area of the project location. This list is provided by the NAHC. The monitor/consultant will only be present on-site during the construction phases that involve ground disturbing activities. Ground disturbing activities are defined by the Gabrieleño Band of Mission Indians-Kizh Nation as activities that may include, but are not limited to, pavement removal, pot-holing or auguring, grubbing, tree removals, boring, grading, excavation, drilling, and trenching, within the project area. The Tribal Monitor/consultant will complete daily monitoring logs that will provide descriptions of the day's activities, including construction activities, locations, soil, and any cultural materials identified. The on-site monitoring shall end when the project site grading and excavation activities are completed, or when the Tribal Representatives and monitor/consultant have indicated that the site has a low potential for impacting Tribal Cultural Resources.

**Unanticipated Discovery of Tribal Cultural and Archaeological Resources:** Upon discovery of any archaeological resources, cease construction activities in the immediate vicinity of the find until the find can be assessed. All archaeological resources unearthed by project construction activities shall be evaluated by the qualified archaeologist and tribal monitor/consultant approved by the Gabrieleño Band of Mission Indians-Kizh Nation. If the resources are Native American in origin, the Gabrieleño Band of Mission Indians-Kizh Nation shall coordinate with the landowner regarding treatment and curation of these resources. Typically, the Tribe will request reburial or preservation for educational purposes. Work may continue on other parts of the project while evaluation and, if necessary, mitigation takes place (CEQA Guidelines Section 15064.5 [f]). If a resource is determined by the qualified archaeologist to constitute a "historical resource" or "unique archaeological resource", time allotment and funding sufficient to allow for implementation of avoidance measures, or appropriate mitigation, must be available. The treatment plan established for the resources shall be in accordance with CEQA Guidelines Section 15064.5(f) for historical resources and

**Public Resources Code Sections 21083.2(b)** for unique archaeological resources. Preservation in place (i.e., avoidance) is the preferred manner of treatment. If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. Any historic archaeological material that is not Native American in origin shall be curated at a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County or the Fowler Museum, if such an institution agrees to accept the material. If no institution accepts the archaeological material, they shall be offered to a local school or historical society in the area for educational purposes.

### **Unanticipated Discovery of Human Remains and Associated Funerary Objects:**

Native American human remains are defined in PRC 5097.98 (d)(1) as an inhumation or cremation, and in any state of decomposition or skeletal completeness. Funerary objects, called associated grave goods in PRC 5097.98, are also to be treated according to this statute. Health and Safety Code 7050.5 dictates that any discoveries of human skeletal material shall be immediately reported to the County Coroner and excavation halted until the coroner has determined the nature of the remains. If the coroner recognizes the human remains to be those of a Native American or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission (NAHC) and PRC 5097.98 shall be followed.



### **Resource Assessment & Continuation of Work Protocol:**

Upon discovery, the tribal and/or archaeological monitor/consultant/consultant will immediately divert work at minimum of 150 feet and place an exclusion zone around the burial. The monitor/consultant(s) will then notify the Tribe, the qualified lead archaeologist, and the construction manager who will call the coroner. Work will continue to be diverted while the coroner determines whether the remains are Native American. The discovery is to be kept confidential and secure to prevent any further disturbance. If the finds are determined to be Native American, the coroner will notify the NAHC as mandated by state law who will then appoint a Most Likely Descendent (MLD).

### **Kizh-Gabrieleno Procedures for burials and funerary remains:**

If the Gabrieleno Band of Mission Indians – Kizh Nation is designated MLD, the following treatment measures shall be implemented. To the Tribe, the term “human remains” encompasses more than human bones. In ancient as well as historic times, Tribal Traditions included, but were not limited to, the burial of funerary objects with the deceased, and the ceremonial burning of human remains. These remains are to be treated in the same manner as bone fragments that remain intact. Associated funerary objects are objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later; other items made exclusively for burial purposes or to contain human remains can also be considered as associated funerary objects.

### **Treatment Measures:**

Prior to the continuation of ground disturbing activities, the land owner shall arrange a designated site location within the footprint of the project for the respectful reburial of the human remains and/or ceremonial objects. In the case where discovered human remains cannot be fully documented and recovered on the same day, the remains will be covered with muslin cloth and a steel plate that can be moved by heavy equipment placed over the excavation opening to protect the remains. If this type of steel plate is not available, a 24-hour guard should be posted outside of working hours. The Tribe will make every effort to recommend diverting the project and keeping the remains in situ and protected. If the project cannot be diverted, it may be determined that burials will be removed. The Tribe will work closely with the qualified archaeologist to ensure that the excavation is treated carefully, ethically and respectfully. If data recovery is approved by the Tribe, documentation shall be taken which includes at a minimum detailed descriptive notes and sketches. Additional types of documentation shall be approved by the Tribe for data recovery purposes. Cremations will either be removed in bulk or by means as necessary to ensure completely recovery of all material. If the discovery of human remains includes four or more burials, the location is considered a cemetery and a separate treatment plan shall be created. Once complete, a final report of all activities is to be submitted to the Tribe and the NAHC. The Tribe does NOT authorize any scientific study or the utilization of any invasive diagnostics on human remains.

Each occurrence of human remains and associated funerary objects will be stored using opaque cloth bags. All human remains, funerary objects, sacred objects and objects of cultural patrimony will be removed to a secure container on site if possible. These items should be retained and reburied within six months of recovery. The site of reburial/repatriation shall be on the project site but at a location agreed upon between the Tribe and the landowner at a site to be protected in perpetuity. There shall be no publicity regarding any cultural materials recovered.





**Professional Standards:** Archaeological and Native American monitoring and excavation during construction projects will be consistent with current professional standards. All feasible care to avoid any unnecessary disturbance, physical modification, or separation of human remains and associated funerary objects shall be taken. Principal personnel must meet the Secretary of Interior standards for archaeology and have a minimum of 10 years of experience as a principal investigator working with Native American archaeological sites in southern California. The Qualified Archaeologist shall ensure that all other personnel are appropriately trained and qualified.

Acceptance of Tribal Government Recommended Mitigation Measures:

By \_\_\_\_\_  
Lead Agency Representative Signature

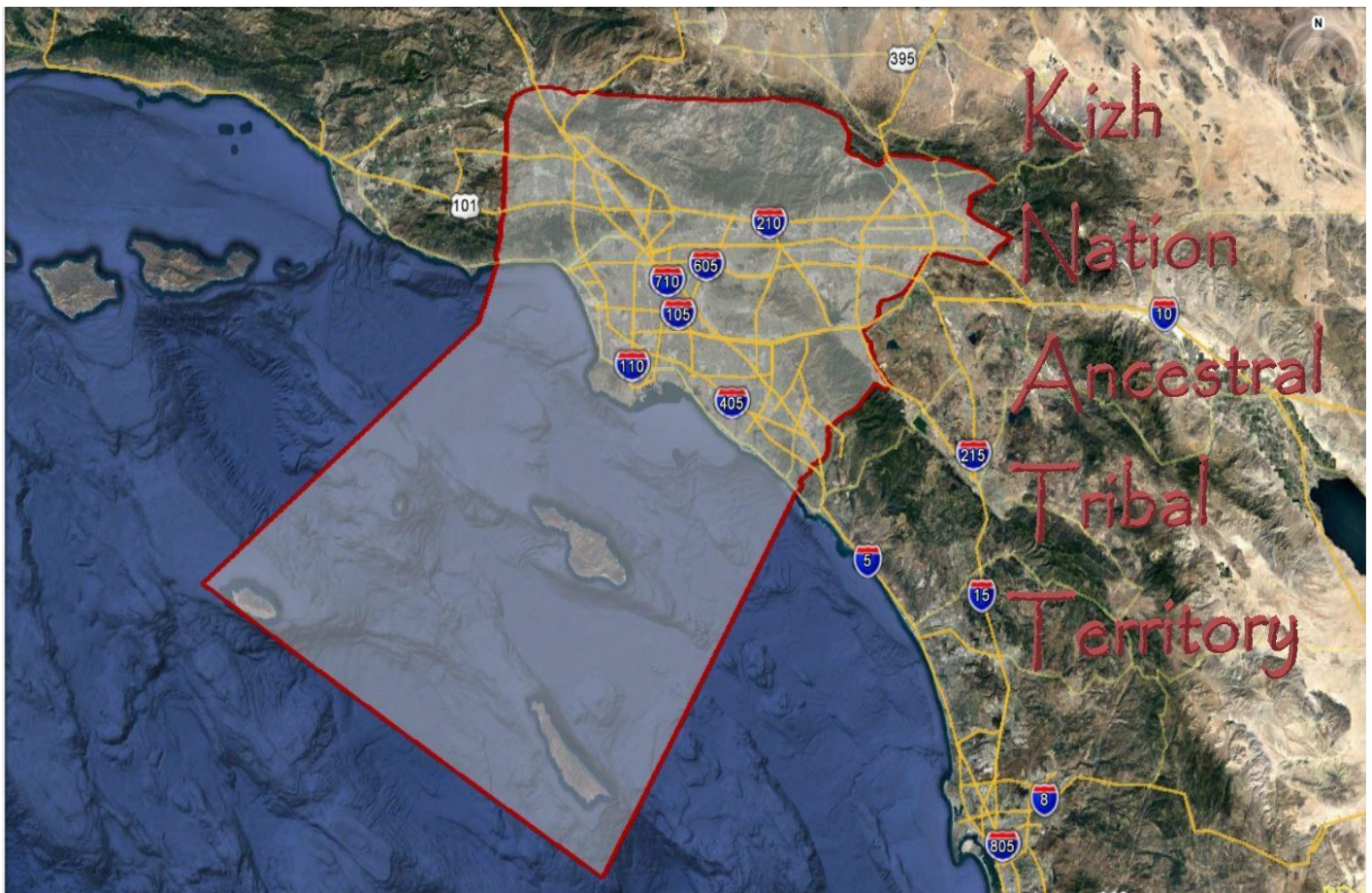
Date: \_\_\_\_\_

Revised: August 2018



## Attachment A

Kizh Nation Ancestral Tribal Territory extended along the coast from Malibu Creek in Los Angeles County down to Aliso Creek in Orange County and encompassed the Channel Islands of Catalina (Pimugna), San Nicolas (Haraasnga), and San Clemente (Kiinkenga). Our inland border was the San Gabriel Mountains (Hidakupa) and eastwardly our territory extended to parts of San Bernardino (Waatsngna), Orange, and Riverside counties.





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September 17, 2019

Joyce Stanfield Perry, Tribal Manager  
Juaneno Band of Mission Indians-Acjachemen Nation  
4955 Paseo Segovia  
Irvine, CA 92603  
by email to: [kaamalam@gmail.com](mailto:kaamalam@gmail.com)

**Subject: Assembly Bill 52 Consultation for the Smith Basin Rehabilitation Project, City of Orange, CA**

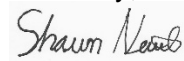
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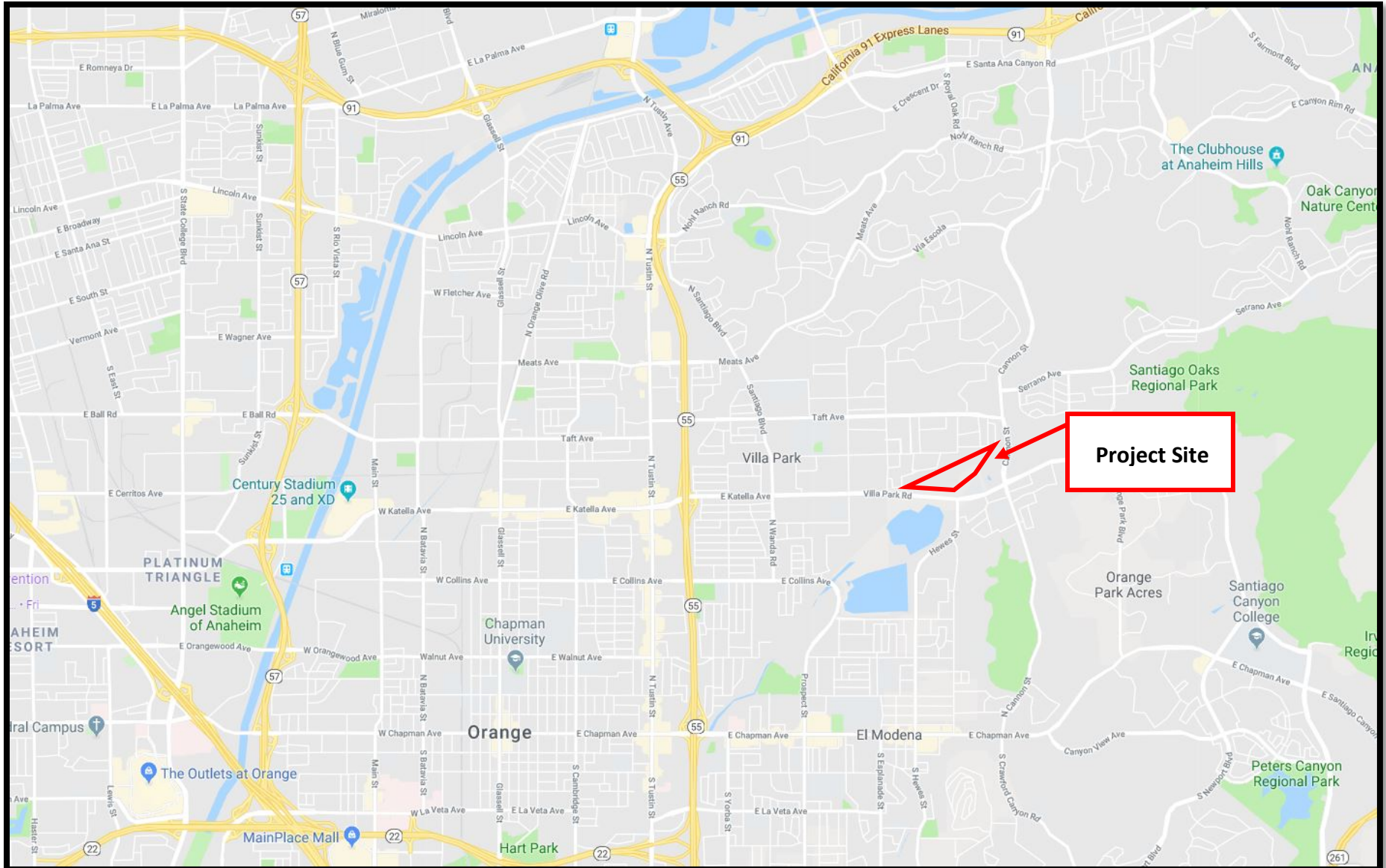
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Sincerely,

  
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**Attachments:** Figure 1 - Regional Location Map, Figure 2 – Project Limits

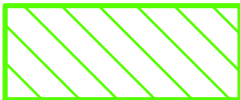


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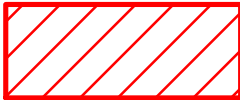
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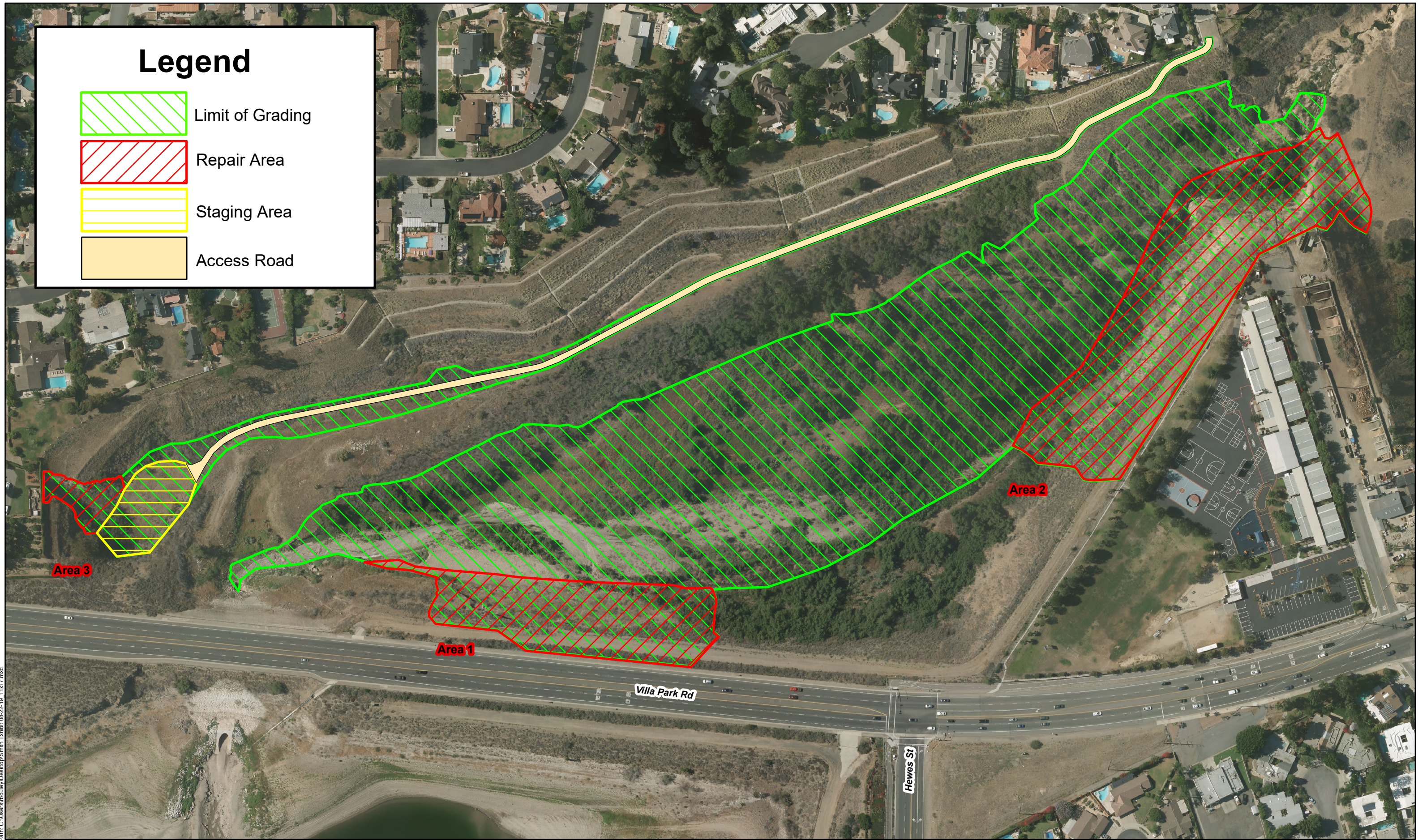
Repair Area



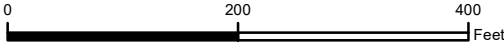
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Smith Basin Rehabilitation Project  
Project Limits



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September 17, 2019

Mr. Anthony Morales, Chairperson  
San Gabriel Band of Mission Indians  
PO Box 693  
San Gabriel, CA 91778

by email to: [GTTribalcouncil@aol.com](mailto:GTTribalcouncil@aol.com)

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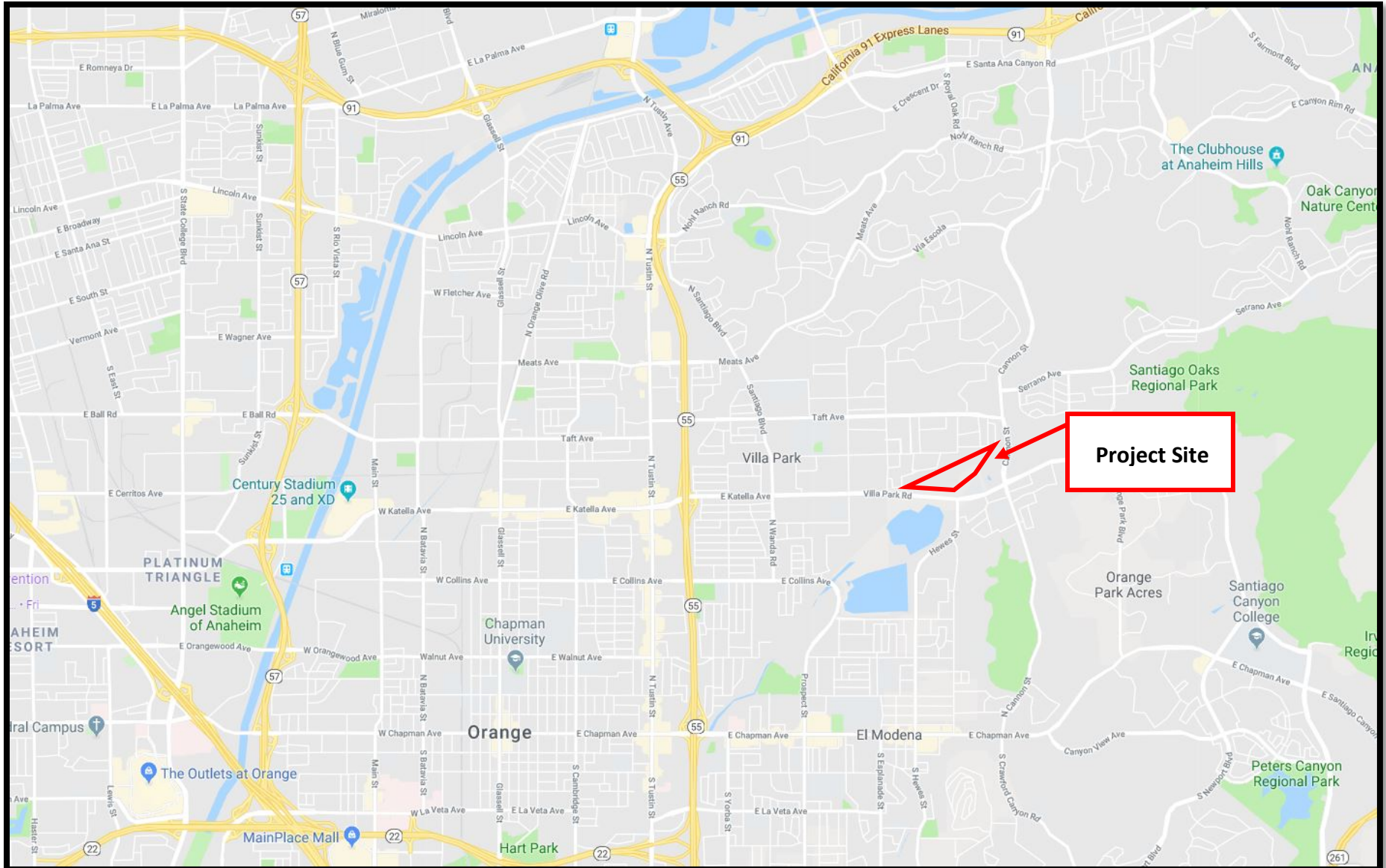
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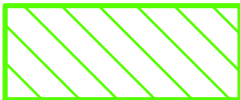


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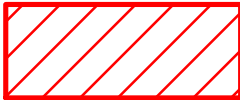
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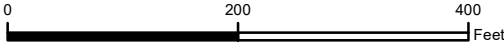
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