

# Responses to Comments on the Draft IS-MND

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This following document includes comments received during the circulation of the Draft Initial Study-Mitigated Negative Declaration (IS-MND) prepared for the 2539 East Garvey Avenue Project (project) and responses to those comments by the City of West Covina.

The Draft IS-MND was circulated for a 20-day public review period that began on October 22, 2020 and ended on November 12, 2020. The City of West Covina received two comment letters on the Draft IS-MND. The commenters and the page number on which each commenter's letter appear are listed below.

Letter No. and Commenter	Page No.
1 Adriana Raza, Customer Service Specialist, Los Angeles County Sanitation Districts	2
2 Kara Grant, Attorney at Law	6

The comment letters and responses follow. The comment letters have been numbered sequentially and each separate issue raised by the commenter, if more than one, has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response 1.1, for example, indicates that the response is for the first issue raised in comment Letter 1).

Because no changes were made to the text of the Draft IS-MND in response to these comment letters or for any other reason, the Draft IS-MND plus this Responses to Comments document and the Mitigation Monitoring and Reporting Program (MMRP) constitute the Final IS-MND for this project.

# Letter 1



**LOS ANGELES COUNTY  
SANITATION DISTRICTS**  
*Converting Waste Into Resources*

**Robert C. Ferrante**  
Chief Engineer and General Manager

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November 6, 2020

Ref. DOC 5945312

Ms. Jo-Anne Burn, Planning Manager  
Planning Department  
City of West Covina  
1444 West Garvey Avenue, Suite 317  
West Covina, CA 91790

Dear Ms. Burns:

### **NOI Response for 2539 East Garvey Avenue Project**

The Los Angeles County Sanitation Districts (Districts) received a Notice of Intent to Adopt a Mitigated Negative Declaration (NOI) for the subject project on October 26, 2020. The proposed project is located within the jurisdictional boundary of District No. 22. We offer the following comments regarding sewerage service:

1. The wastewater flow originating from the proposed project will discharge to a local sewer line, which is not maintained by the Districts, for conveyance to the Districts' No. 22 Main Trunk Sewer, located in Workman Avenue at Hollenbeck Avenue. The Districts' 24-inch diameter trunk sewer has a capacity of 10.8 million gallons per day (mgd) and conveyed a peak flow of 3.9 mgd when last measured in 2015. 1.1
2. The wastewater generated by the proposed project will be treated at the San Jose Creek Water Reclamation Plant (WRP) located adjacent to the City of Industry, which has a capacity of 100 mgd and currently processes an average flow of 58.5 mgd. All biosolids and wastewater flows that exceed the capacity of the San Jose Creek WRP are diverted to and treated at the Joint Water Pollution Control Plant in the City of Carson. 1.2
3. The expected increase in average wastewater flow from the project site, described in the document as a total of 42,455 square feet of retail-commercial space and a 4,500 square-foot restaurant, is 16,275 gallons per day, after the structures on the project site are demolished. For a copy of the Districts' average wastewater generation factors, go to [www.lacsd.org](http://www.lacsd.org), under Services, then Wastewater Program and Permits, select Will Serve Program, and scroll down to click on the [Table 1, Loadings for Each Class of Land Use](#) link. 1.3
4. The Districts are empowered by the California Health and Safety Code to charge a fee to connect facilities (directly or indirectly) to the Districts' Sewerage System or to increase the strength or quantity of wastewater discharged from connected facilities. This connection fee is a capital facilities fee that is used by the Districts to upgrade or expand the Sewerage System. Payment of a connection fee will be required before this project is permitted to discharge to the Districts' Sewerage System. For more information and a copy of the Connection Fee Information Sheet, go to [www.lacsd.org](http://www.lacsd.org), under Services, then Wastewater (Sewage) and select Rates & Fees. In determining the impact to the Sewerage System and applicable connection fees, the Districts will determine the user category (e.g. Condominium, Single Family home, etc.) that best represents the actual or anticipated use of the parcel(s) or facilities on the parcel(s) in the development. For more specific information regarding the connection fee application procedure and fees, the developer should contact the Districts' Wastewater Fee Public Counter at (562) 908-4288, extension 2727. 1.4

5. In order for the Districts to conform to the requirements of the Federal Clean Air Act (CAA), the capacities of the Districts' wastewater treatment facilities are based on the regional growth forecast adopted by the Southern California Association of Governments (SCAG). Specific policies included in the development of the SCAG regional growth forecast are incorporated into clean air plans, which are prepared by the South Coast and Antelope Valley Air Quality Management Districts in order to improve air quality in the South Coast and Mojave Desert Air Basins as mandated by the CCA. All expansions of Districts' facilities must be sized and service phased in a manner that will be consistent with the SCAG regional growth forecast for the counties of Los Angeles, Orange, San Bernardino, Riverside, Ventura, and Imperial. The available capacity of the Districts' treatment facilities will, therefore, be limited to levels associated with the approved growth identified by SCAG. As such, this letter does not constitute a guarantee of wastewater service, but is to advise the developer that the Districts intend to provide this service up to the levels that are legally permitted and to inform the developer of the currently existing capacity and any proposed expansion of the Districts' facilities.

1.5

If you have any questions, please contact the undersigned at (562) 908-4288, extension 2717 or at [araza@lacsdsd.org](mailto:araza@lacsdsd.org).

Very truly yours,



Adriana Raza  
 Customer Service Specialist  
 Facilities Planning Department

AR:ar

cc: A. Schmidt  
 A. Howard

## Letter 1

**COMMENTER:** Adriana Raza, Customer Service Specialist, Los Angeles County Sanitation Districts

**DATE:** November 6, 2020

### Response 1.1

The commenter explains that wastewater flows originating from the proposed project will discharge to a local sewer line not maintained by the Sanitation Districts of Los Angeles County (the Districts), for conveyance to the District's No. 22 Main Trunk Sewer in Workman Avenue at Hollenbeck Avenue. According to the commenter this 24-inch diameter trunk sewer has a capacity of 10.8 million gallons per day (mgd) and conveyed a peak flow of 3.9 mgd when last measured in 2015. This would mean that this trunk sewer has a remaining capacity of approximately 6.9 mgd. As explained in Section 19, *Utilities and Service Systems*, on page 122 of the IS-MND, the proposed project would generate approximately 5,059,722 gallons of wastewater per year, or 13,862 gallons of wastewater per day. According to these estimates, the proposed project's wastewater generation would equal approximately 0.2% of the remaining capacity of this trunk sewer. This is consistent with the findings of Section 19.a.c of the IS-MND that the wastewater treatment provider which serves or may serve the project has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments.

### Response 1.2

The commenter states that the wastewater generated by the proposed project will be treated at the San Jose Creek Water Reclamation Plan (SJCWRP), which has a capacity of 100 mgd and currently process an average flow of 58.5 mgd, and that all biosolids and wastewater flows that exceed the capacity of the SJCWRP are diverted to and treated at the Joint Water Pollution Control Plant in the City of Carson. On pages 121-122 in Section 19.a.c of the IS-MND, it is stated that the capacity of the SJCWRP is 100 mgd and the average daily flow to the SJCWRP is approximately 66 mgd, leaving approximately 34 mgd in available capacity. The District's estimated average daily flow to the SJCWRP of 58.5 mgd is less than the estimated average daily flow to the SJCWRP of 66 mgd reported in the IS-MND, and would result in an estimated remaining capacity of 41.5 mgd rather than the 34 mgd reported in the IS-MND. This would mean that the proposed project's net increase in estimated daily wastewater generation of 3,614 mgd would account for even less of the SJCWRP's remaining available daily capacity than stated in the IS-MND, and the IS-MND's finding of a less than significant impact with respect to wastewater conveyance and treatment facilities remains valid.

### Response 1.3

The commenter states that the expected increase in average daily wastewater flow from the project site is 16,275 gallons per day, after the structures on the project site are demolished. This estimate is slightly higher than the IS-MND's estimate that the proposed project would generate approximately 13,862 gallons of wastewater per day, but even using this slightly higher estimate of expected average daily wastewater flow, the proposed project's wastewater flows would still remain well within the available capacities of the District's conveyance and treatment facilities. This information therefore does not affect the IS-MND's finding of a less than significant impact with respect to wastewater conveyance and treatment facilities.

#### **Response 1.4**

The commenter notes that payment of a connection fee will be required before a permit to connect to the sewer is issued. This comment is noted. The applicant would pay applicable connection fees.

#### **Response 1.5**

The commenter states that in order to comply with the federal Clean Air Act, the capacities of the Districts' wastewater treatment facilities are based on the regional growth forecast adopted by the Southern California Association of Governments (SCAG). Therefore, the commenter notes that the available capacity of the Districts' facilities is limited to levels associated with approved growth identified by SCAG. The commenter concludes by stating that wastewater service is not guaranteed, but that the Districts intend to provide service up to the levels legally permitted.

As discussed in Section 14, *Population and Housing*, of the IS-MND, project-related growth would be within SCAG population forecasts.

## Letter 2

**Greg Martin**

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**From:** Jo-Anne Burns <JBurns@westcovina.org>  
**Sent:** Monday, November 2, 2020 7:50 AM  
**To:** Greg Martin  
**Subject:** [EXT] FW: : AB52 Consultation- 2539-2505 E Garvey Avenue

**CAUTION: This email originated from outside of Rincon Consultants. Be cautious before clicking on any links, or opening any attachments, until you are confident that the content is safe .**

Hello Greg,  
Please see the comment on the IS/MND below.

Sincerely,

**Jo-Anne Burns | Planning Manager**  
City of West Covina | Planning Division  
Phone: (626) 939-8422 | Direct: (626) 939-8761  
[jburns@westcovina.org](mailto:jburns@westcovina.org)

**City Hall Business Hours:**  
Monday-Thursday 7:30 AM-5:30 PM



**From:** Kara Grant <kara@grant-law.net>  
**Sent:** Thursday, October 29, 2020 7:06 PM  
**To:** Jo-Anne Burns <JBurns@westcovina.org>; Gabrieleno Administration <admin@gabrielenoindians.org>  
**Cc:** Matthew Teutimez <Matthew.Teutimez@gabrielenoindians.org>; Gabrieleno Chairman <chairman@gabrielenoindians.org>  
**Subject:** Re: : AB52 Consultation- 2539-2505 E Garvey Avenue

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Evening,

I represent the Gabrieleño Band of Mission Indians – Kizh Nation (the “Tribe” or “Client”). This email concerns your consultation with my client regarding the Project at 2539-2505 E. Garvey Avenue (the “Project”), and the City’s response to the Tribe’s proposed mitigations.

During the AB 52 consultation, my Client proposed mitigation measures they determined to be necessary to reduce the Project’s impacts to their tribal cultural resources (“TCR”) to less than significant, as required by the California Environmental Quality Act (“CEQA”). The City found that TCR mitigations are required for this Project, and that finding is supported by the information my Client provided pursuant to AB 52, including but not limited to: the Tribe’s ancestral affiliation with the Project location, the significance of the Project location to the Tribe, the Tribe’s historical use of the Project area (including specific activities performed there, such as use as trade routes, villages, ceremonial, etc.). This

2.1

information was substantiated by the Tribe’s oral history, as well as literature, historical maps and other documentation and data all of which my Client provided to the City. My client also shared TCR discoveries in the Project area, which further support their request that their proposed TCRs be adopted by the City for this Project.

2.1

The information described above amounts to “substantial evidence,” that a significant likelihood exists that the Project will adversely impact the Tribe’s TCRs. Accordingly, the only way the City may approve this Project is if mitigations adequate to either avoid or substantially lessen that impact are adopted in the MND, required as Conditions of Approval for the Project, and then actually enforced by the City. (Pub. Res. Code §§ 21084.3(b), 21082.3(b).) The City informed my Client that their proposed mitigations were approved with “a slight modification to allow any qualified Native American Monitor.” (Email from Jo-Ann Burns to Tribe, dated Oct. 27, 2020.) The Tribe rejected the City’s modification to the proposed mitigations.

Given my Client’s ancestral affiliation with the Project location, it is no surprise that they were the *only* tribe that consulted with the City pursuant to AB 52. (See MND, Appendix B, at p. 5.) CEQA expressly states that the geographically and culturally affiliated tribe (i.e., the tribe with ancestral ties to the project locale) possesses “expertise” on their TCRs in the Project area. (Pub. Res. Code Sec. §21080.3.1(a).) It follows then, that only the ancestrally affiliated tribe could possibly provide a lead agency with the oral history, personal knowledge, historical and anthropological information, and other documentation necessary to constitute the “substantial evidence” needed to support the TCR finding.

2.2

The legislative intent of AB 52 is to ensure that lead agencies engage in government-to-government consultation with, receive evidence directly from, and consider mitigations proposed by the tribe bearing the “expertise” on the TCRs present at the project location. Consultation with a tribe that is not ancestrally affiliated, and in turn does not possess “expertise” regarding the TCRs present at the project site, would be completely meaningless under CEQA. Allowing monitoring by a tribe without the ancestral affiliation is equally meaningless to protect, avoid, and mitigation project impacts to the “expert” tribe’s TCRs.

That said, it does not follow that the City proposes to adopt mitigations for TCRs that will permit monitoring for this Project, which was found very likely to impact my Client’s TCRs, by a monitor from any tribe other than the Kizh Nation. How could a monitor with no relevant affiliation with the Kizh Nation and with no ancestral connect to the Project location, possibly be “qualified” to protect the Kizh Nation’s resources? They clearly could not because they do not know the oral history or possess the knowledge necessary to recognize the Tribe’s TCRs, (2) they have no history with the location they would need to monitor; and (3) State law would prevent them from handling any human remains and/or grave goods discovered on the Project site. (See Pub. Res. Code § 5097.98(a); 14 Cal. Code Regs. §15064.5(e)(1)(B); Pub. Res. Code § 5097.98(b)(d); Health & Safety Code § 7050.5(b); Gov’t Code §27491.)

Simply put, there is no reasonable rationale for the City’s modification to my Client’s proposed TCR mitigations, which would permit monitoring by any tribe, because a monitor from a tribe other than Kizh Nation does not possess the “expertise” necessary for the adopted mitigations to effectively reduce the Project impacts to an acceptable level. The consequence of the City’s revision to my Client’s proposed mitigations is that it will ensure the Project’s noncompliance with CEQA because the mitigation measure is wholly ineffective. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1115 [mitigation measures must be effective in reducing the identified impact to a less than significant level; mitigation measures for groundwater depletion were not shown to be effective].)

If you have any questions or would like to discuss this matter further, please feel free to contact me.

Sincerely,

Kara Grant

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Kara E. Grant | Attorney at Law  
KARA GRANT LAW

## Letter 2

**COMMENTER:** Kara Grant, Attorney at Law

**DATE:** October 29, 2020

### Response 2.1

The commenter states that they represent the Gabrieleño Band of Mission Indians – Kizh Nation (Tribe), and that their email (letter) concerns the City’s consultation with the Tribe regarding the proposed project and the City’s response to the Tribe’s proposed mitigations. The commenter then states that during AB 52 consultation for the proposed project the Tribe proposed mitigation measures they determined to be necessary to reduce the proposed project’s impacts to tribal cultural resources (TCRs) to a less than significant level, and shared other information with the City to support this conclusion. These statements are consistent with the outcomes of the AB 52 consultation process reported in Section 18.a on page 116 of the IS-MND.

### Response 2.2

The commenter states that there is “substantial evidence,” that a significant likelihood exists that the proposed project will adversely impact the Tribe’s TCRs. They then state that the Tribe requested specific TCR mitigation measures be adopted by the City for this project, that the City incorporated their recommended mitigation measures into the IS-MND but with “a slight modification to allow any qualified Native American Monitor,” and that the Tribe rejected the City’s modification to the proposed mitigations.

The commenter then points out that the Tribe was “the only tribe that consulted with the City pursuant to AB 52.” This is correct. As stated in Section 18.a on page 116 of the IS-MND:

*Three tribes have requested notification of projects within the City of West Covina: the Soboba Band of Luiseño Indians, Gabrieleño Band of Mission Indians – Kizh Nation (Kizh Nation), and Gabrielino/Tongva Nation. Per PRC Section 21080.3.1, the City mailed consultation letters to these three tribes on August 13, 2020 (see Appendix J) and subsequently received a response from the Kizh Nation requesting consultation to discuss the proposed project in further detail.*

The commenter then goes on to state the following:

*CEQA expressly states that the geographically and culturally affiliated tribe (i.e., the tribe with ancestral ties to the project locale) possesses “expertise” on their TCRs in the Project area. (Pub. Res. Code Sec. §21080.3.1(a).) It follows then, that only the ancestrally affiliated tribe could possibly provide a lead agency with the oral history, personal knowledge, historical and anthropological information, and other documentation necessary to constitute the “substantial evidence” needed to support the TCR finding.*

The commenter then states that:

*Consultation with a tribe that is not ancestrally affiliated, and in turn does not possess ‘expertise’ regarding the TCRs present at the project site, would be completely meaningless under CEQA. Allowing monitoring by a tribe without the ancestral affiliation is equally meaningless to protect, avoid, and mitigation project impacts to the “expert” tribe’s TCRs.*

The City has, in fact, through its consultation with the Tribe, consulted with a tribe that is ancestrally affiliated with the project locale. Mitigation Measure TCR-1 of the IS-MND states that the project applicant shall obtain the services of a qualified Native American Monitor(s) during construction-related ground disturbance activities. This measure does not specify a tribe or tribal representative with which the qualified Native American Monitor(s) shall be affiliated so as not to prioritize the needs of any one specific tribal organization over any others that are ancestrally affiliated with the region. While the Gabrieleño Band of Mission Indians – Kizh Nation (Tribe) was the only tribal organization that consulted with the City pursuant to AB 52 on this project, they are not necessarily the only tribal organization with ancestral affiliation with the region, as indicated by the fact that there are two other tribal organizations that have requested notification of projects within the City of West Covina.

The commenter states that “The legislative intent of AB 52 is to ensure that lead agencies engage in government-to-government consultation with, receive evidence directly from, and consider mitigations proposed by the tribe bearing the “expertise” on the TCRs present at the project location.” The City of West Covina has complied with all aspects of this legislative intent of AB 52 by consulting with the Tribe, receiving evidence directly from the Tribe, and considering mitigations proposed by the Tribe. AB 52 does not require the lead agency to adopt mitigation measures proposed by the Tribe, and the commenter’s claim that “a monitor from a tribe other than Kizh Nation does not possess the ‘expertise’ necessary for the adopted mitigations to effectively reduce the Project impacts to an acceptable level” is not supported by the evidence described above. Additionally, nothing in Mitigation Measure TCR-1 of the IS-MND precludes the City or applicant from selecting a qualified Native American Monitor or Monitors affiliated with the Tribe.

For the reasons discussed above, the analysis and conclusions of the IS-MND as they relate to TCRs remain valid, and no revisions to the IS-MND are required to address this comment.