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Attorneys for **Plaintiffs**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN DIEGO**

8 WALTER ROSALES, KAREN TOGGERY, )  
9 ESTATE OF HELEN CUERRO, ESTATE )  
10 OF WALTER ROSALES' UNNAMED )  
11 BROTHER, ESTATE OF DEAN ROSALES, )  
12 ESTATE OF MARIE TOGGERY, ESTATE )  
13 OF MATTHEW TOGGERY, )  
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Plaintiffs,

v.

STATE OF CALIFORNIA, DEPARTMENT )  
OF TRANSPORTATION, LAURIE )  
BERMAN, WILLIAM FIGGE, JOHN M. )  
MARKEY, GUS SILVA, and DOES 1-20, )  
Defendants.

Case No. **37-2014-00010222-CU-PO-CTL**

**COMPLAINT FOR:**

- 1) **TORTIOUS VIOLATION OF STATUTE AND NEGLIGENCE**
- 2) **DECLARATORY AND INJUNCTIVE RELIEF**

**DEMAND FOR TRIAL BY JURY**

Plaintiffs, WALTER ROSALES, KAREN TOGGERY, ESTATE OF HELEN CUERRO, ESTATE OF WALTER ROSALES' UNNAMED BROTHER, ESTATE OF DEAN ROSALES, ESTATE OF MARIE TOGGERY, ESTATE OF MATTHEW TOGGERY, are informed and believe and thereupon allege as follows:

**PARTIES**

1. Plaintiffs, WALTER J. ROSALES, and KAREN TOGGERY, are Native American residents of San Diego County of one-half or more degree of California Indian blood.
2. Plaintiff, WALTER J. ROSALES, is also a lineal descendant and son of Native American, Helen Cuerro, the personal representative of his mother's estate, the ESTATE OF HELEN CUERRO, his son's estate, the ESTATE OF DEAN ROSALES, his unnamed brother's estate, the ESTATE OF WALTER ROSALES' UNNAMED BROTHER, and a lineal descendant

1 with ownership and control of their human remains and Native American cultural items, as set  
2 forth in Cal. Pub. Res. C. 5097.9-5097.99 and Health & Safety C. 7001 and 7100. "[T]he next of  
3 kin...have property rights in the body which will be protected, and for a violation of which they  
4 are entitled to indemnification." *Christensen v. Sup. Ct.* (1991) 54 Cal.3d 868, 890, citing  
5 *O'Donnell v. Slack* (1899) 123 Cal. 285, 289.

6 3. Plaintiff, KAREN TOGGERY, is also a lineal descendant and daughter of Native  
7 American, Marie Toggery, and the personal representative of her mother's estate, the ESTATE  
8 OF MARIE TOGGERY, as well as the mother of her son Matthew Toggery, and the personal  
9 representative of the ESTATE OF MATTHEW TOGGERY, and a lineal descendant with  
10 ownership and control of their human remains and Native American cultural items, as set forth in  
11 Cal. Pub. Res. C. 5097.9-5097.99 and Health & Safety C. 7001 and 7100.

12 4. At all times mentioned herein, Defendant, STATE OF CALIFORNIA,  
13 DEPARTMENT OF TRANSPORTATION ("CalTrans") was, and is, a public state agency that is  
14 violating the California Environmental Quality Act (CEQA), the Public Resources Code,  
15 particularly at 5097.9-5097.99, and the Health & Safety Code 7050.5, 7052, 7054, 7054.6, 7054.7,  
16 7055, 7500, and Penal Code 487.

17 5. Defendant LAURIE BERMAN is District 11 Director of CalTrans, and a resident  
18 of San Diego County, who, at various relevant times, was acting in excess of the scope of her  
19 employment and without authorization, in violation of the Cal. Pub. Res. and Health & Safety  
20 Codes.

21 6. Defendant WILLIAM FIGGE is District 11 Director of the Planning Division of  
22 CalTrans and a resident of San Diego County, who, at various relevant times, was acting in excess  
23 of the scope of his employment and without authorization, in violation of the Cal. Pub. Res. and  
24 Health & Safety Codes.

25 7. Defendant JOHN M. MARKEY, is District 11 Permit Engineer for CalTrans, and a  
26 resident of San Diego County, who, at various relevant times, was acting in excess of the scope of  
27 his employment and without authorization, in violation of the Cal. Pub. Res. and Health & Safety  
28 Codes.

1           8.       Defendant GUS SILVA, is District 11 Project Manager for CalTrans, and a  
2 resident of San Diego County, who, at various relevant times, was acting in excess of the scope of  
3 his employment and without authorization, in violation of the Cal. Pub. Res. and Health & Safety  
4 Codes.

5           9.       The true names and capacities, whether individual, corporate, associate or  
6 otherwise, of DOES 1-20, are unknown to Plaintiffs at this time, who, therefore, sue said  
7 Defendant by said fictitious names. Plaintiffs are informed and believe, and based thereon allege,  
8 that DOES 1-20 are responsible in some measure for the actions, events and happenings herein  
9 alleged, and was the legal cause of injury and damages to the Plaintiffs as herein alleged, and  
10 thereby causing irreparable damage to Native American human remains, along with the items  
11 associated with their human remains, including, but not limited to grave goods, cultural items,  
12 associated funerary objects, sacred objects, and objects of cultural patrimony, as defined in Cal.  
13 Pub. Res. C. 5097.9-5097.99, by knowingly and/or willfully mutilating, disinterring, wantonly  
14 disturbing, and willfully removing them to state property without authority of law. When the true  
15 names and capacities of said Defendants are ascertained by Plaintiffs, Plaintiffs will seek leave to  
16 amend this complaint to insert their true names and capacities, and will serve said Doe Defendants  
17 when they become known.

18           10.     At all times herein mentioned, Defendants, and each of them, were the agent,  
19 employee and/or joint venturer of their co-defendants, and were acting within the course and  
20 scope of such agency, employment and/or joint venture, with the permission and consent of their  
21 co-defendants and defendants. Furthermore, that at all times herein mentioned, Defendants, while  
22 acting as principals, expressly directed, consented to, approved, affirmed and ratified each and  
23 every action taken by the other herein alleged. Each reference to one defendant is also a reference  
24 to each and every other defendant. Plaintiffs are informed and believe and thereon allege that the  
25 defendants, and each of them, conspired with each other, to engage in acts in furtherance of a  
26 conspiracy to wrongfully and illegally violate the Plaintiffs' rights, rendering each of the  
27 defendants jointly and severally liable for all resulting and irreparable personal injury and damage  
28 to Plaintiffs.

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## JURISDICTION

3           11.     Plaintiffs' claims arise under California common and statutory law, to the same  
4 extent that any California court has jurisdiction over other civil and criminal causes of action, and  
5 those civil laws of California that are of general application to private persons or private property  
6 shall have the same force and effect, as they have elsewhere within California., as held for e.g. in  
7 *People v. Van Horn* (1990) 218 Cal. App.3d 1378.

8

## GENERAL ALLEGATIONS

9

### History of California's Jurisdiction over the Indian Cemetery in Jamul

10           12.     California was a part of the Republic of Mexico between 1823 and 1846. One of  
11 the charter documents of the Mexican Republic was the Plan of Iguala which was enacted on  
12 February 4, 1821. This remarkable document emancipated all persons then residing in Mexico and  
13 declared: "All the inhabitants of New Spain, without distinction, whether Europeans, Africans or  
14 Indians, are citizens of the monarchy, with the right to be employed in any post, according to their  
15 merits and virtues."

16           13.     Thus all Indians under the jurisdiction of Mexico, including any Indians living in  
17 or around Jamul, became full citizens of the Republic of Mexico in 1821. In addition, in 1833 the  
18 Spanish Missions were secularized by the Mexican Republic and some lands surrounding the  
19 Missions were conveyed to the resident Indians. In summary, in the Mexican Republic, all  
20 Indians were citizens of Mexico (not members of a separate tribe) who had the right to own land  
21 and, subject to a property qualification, could vote.

22           14.     Since Jamul was a part of the Republic of Mexico, the Native American families of  
23 which the Plaintiffs are the lineal descendants have inhumed, interred, deposited, and dispersed  
24 more than a hundred of their deceased family members' human remains, and items associated  
25 with their human remains, including, but not limited to grave goods, cultural items, associated  
26 funerary objects, sacred objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. C.  
27 5097.9-5097.99, in burial sites below, on, and above the ground at the cemetery in Jamul,  
28 according to their religious beliefs. The Jamul Indians have lived on one acre of private land and  
29 on land deeded to the Diocese of San Diego as an Indian cemetery, in Jamul, California, since at

1 least the latter part of the Nineteenth Century. Exhibits A, B, C, E, and F.

2 15. Between 1846 and 1850, California was governed by several United States Military  
3 Governors. The territory that was to become California, including the cemetery and any public  
4 domain lands, was ceded to the United States by Mexico in 1848 pursuant to the Treaty of  
5 Guadalupe Hidalgo. 9 Stats.922 (1848). The treaty provided for the protection of public and  
6 private property rights. Specifically property rights "of every kind," (including Indian property  
7 rights) that were respected under Mexican law was also to be respected by the United States. *Id.*

8 16. On September 9, 1850, California was admitted to the Union. 9 Stats. 452 (1850).  
9 California entered the Union on an "equal footing" with, and with the same public property rights,  
10 jurisdiction and regulatory authority, over all private property, as all other States. Thereby,  
11 California received regulatory and police power jurisdiction over all public domain property not  
12 reserved to the United States, and all private property within the State, including the Indian  
13 cemetery.

14 17. Once public domain lands are conveyed to the State or into private ownership, the  
15 United States retains no regulatory authority over such public domain lands. *Hawaii v. Office of*  
16 *Hawaiian Affairs*, 556 U.S. 163, 176 (2009); *Kleppe v. New Mexico* 426 U.S. 529, 540 (1976).  
17 After public domain property is conveyed to the State, or into private ownership, the United States  
18 no longer has authority to acquire non-public domain lands, nor can they be restored to federal  
19 jurisdiction by a unilateral federal act that purports to change the nature of the original grant of  
20 jurisdiction to the State, without condemnation or consent of the State by a majority of its  
21 legislature. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 176 (2009), "Congress cannot,  
22 after statehood, reserve or convey. . .lands that have already been bestowed upon a state. . ."

23 18. The Indian cemetery in Jamul has been private property since before California  
24 became a State. The cemetery has been owned at various times by Mexican Governor and Don,  
25 Pio Pico, U.S. General Henry S. Burton and his widow Maria Amparo Ruiz de Burton, John D.  
26 Spreckel's Coronado Beach Company, the Lawrence and Donald Daley families, and by the  
27 Catholic Diocese, as reflected in Exhibits A, B, C, D, E, and F.<sup>1</sup>

28  
29 <sup>1</sup>See also, *United States v. Pio Pico* (1870) 27 F.Cas. 537; *Estate of Burton* (1883) 63 Cal.  
36; *G.W.B. McDonald, Administrator v. Burton* (1886) 68 Cal. 445; *Henry H. Burton v. Maria A.*  
*Burton* (1889) 79 Cal. 490; *In re Burton's Estate* (1892) 93 Cal. 459; and *McDonald v. McCoy*

1           19.     On September 26, 1912, J.D. Spreckel's Coronado Beach Company deeded a  
2 portion of the cemetery in Jamul , California, to the Roman Catholic Bishop of Monterey and Los  
3 Angeles, a corporate in sole of the State of California, "to be used for the purposes of an Indian  
4 graveyard and approach thereto," "to have and to hold the above granted and described premises  
5 unto the said Grantee, his successors and assigns forever for the purpose above specified," as set  
6 forth in Exhibits A, B, C, and E. In 1912 , Father LaPointe and the Roman Catholic church  
7 erected a chapel at the cemetery. Since 1956 the diocese of St. Pius X has maintained the chapel,  
8 for the purpose of ministering at the Indian cemetery.

9           20.     Subsequently, the Catholic Diocese has retained title and maintained ownership  
10 and control of that portion of the cemetery granted by the Coronado Beach Company. The  
11 Catholic Diocese also explicitly maintained for "[itself and its] successors or assigns an easement  
12 for (1) utility service lines and (2) ingress and egress over the existing well-traveled road," which  
13 the San Diego County tax assessor's maps continue to describe as "the Indian cemetery," as set  
14 forth in Exhibits B and E.

15           21.     In 1924, Congress conferred citizenship on all Indians born in the United States  
16 including the Indians of San Diego County. 8 U.S.C. § 1401(b). And, by reason of the 14<sup>th</sup>  
17 amendment, the grant of federal citizenship had the additional effect of making Indians citizens of  
18 the states where they resided. State citizenship bestows rights and corresponding duties which one  
19 is not free to selectively adopt or reject. Included with a citizen's rights and duties is the obligation  
20 to comply with State and local laws and regulations and pay appropriate taxes for the support of  
21 State and local governments.

22           22.     Thereafter, J.D. Spreckel's Coronado Beach Company and its successors  
23 transferred the remaining portion of Rancho Jamul and the cemetery to the Daley family, and on  
24 December 12, 1978, Lawrence and Donald Daley gifted the remaining portion of the cemetery to  
25 its beneficial owners, Jamul Indians of one-half degree or more Indian blood, its ownership and  
26 possession being that of ordinary proprietors. *Paul v. United States* 371 U.S. 245, 264 (1963).  
27 States have full police power jurisdiction over this property. "Such [proprietary] ownership and  
28 use without more do not withdraw the lands from the jurisdiction of the state." *Surplus Trading*

1 *Co. v. Cook*, 281 U.S. 647, 650 (1930).

2         23. Here, the cemetery was never part of, reserved or withdrawn from, public domain  
3 lands. It has always been privately owned; first within Mexico, then the Republic of California,  
4 then within the United States when acquired from Mexico by way of the Treaty of Guadalupe  
5 Hidalgo of 1848, 9 Stat. 926, and now within the State of California. When the State of California  
6 entered the Union on September 9, 1850, on an equal footing with all other States, per Article IV,  
7 Section 3 of the U.S. Constitution, the cemetery was private property and remains within the  
8 jurisdiction of the State of California. The State of California has never ceded jurisdiction over the  
9 cemetery. This is confirmed by the lack of any "notice of such acceptance" of the "cession of such  
10 jurisdiction, exclusive or partial," having been filed with the Governor of the State of California,  
11 and the lack of any entry in the "index of record of documents with description of the lands over  
12 which the United States acquired jurisdiction," required by Cal. Govt. Code 127. Therefore, the  
13 cemetery remains within the jurisdiction of the State of California today, and California retains  
14 State and local police power over the cemetery pursuant to the 10<sup>th</sup> Amendment of the U.S.  
15 Constitution, just as it does over the Fort Rosecrans National Cemetery.

16 **Creation of a Sanctified Cemetery, Place of Worship, Religious Ceremonial Site and Sacred**  
17 **Shrine**

18         24. "It is a universally held belief among Indians that if the dead or the funeral goods  
19 interred with them are disturbed, their spirits will wander, and in the words of [Supreme Court  
20 Justice of the Pawnee Nation ]Walter Echo-Hawk, that 'restless spirits will bring evil to those  
21 who allowed their graves to be disturbed.'... While actual practices and religious beliefs may vary  
22 widely between cultures, and even within ethnic groups, the concern for the dead and the  
23 sensibilities of the living is a universal value held by all societies in all ages. The sepulture of the  
24 dead has, in all ages of the world, been regarded as a religious rite. The place where the dead are  
25 deposited, in all civilized nations and many barbarous ones is regarded in some measure at least,  
26 as consecrated ground... Consequently, the normal treatment of a corpse, once it is decently  
27 buried, is to let it lie. This idea is so deeply woven into our legal and cultural fabric that it is  
28 commonplace to hear it spoken of as a 'right.'"Thomas, "Indian Burial Rights Issues: Preservation  
29 or Desecration," Spring 1991, 59 *U.M.K.C. Law Review* 747.

1           25.     “Burial rites or their counterparts have been respected in almost all civilizations  
2 from time immemorial. [Citations.] They are a sign of the respect a society shows for the deceased  
3 and for the surviving family members. ... The outrage at seeing the bodies of American soldiers  
4 mutilated and dragged through the streets is ... a[n] ... instance of the ... understanding of the  
5 interests decent people have for those whom they have lost. Family members have a personal  
6 stake in honoring and mourning their dead and objecting to unwarranted public exploitation that,  
7 by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the  
8 deceased person who was once their own. In addition this well-established cultural tradition  
9 acknowledging a family's control over the body and death images of the deceased has long been  
10 recognized at common law.” *National Archives and Records Admin. v. Favish* (2004) 541 U.S.  
11 157, 167-68.

12           26.     The Plaintiffs have personal knowledge of more than 20 of the hundreds of Native  
13 Americans whose human remains, and items associated with their human remains, including, but  
14 not limited to grave goods, cultural items, associated funerary objects, sacred objects, and objects  
15 of cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-5097.99, have been interred and  
16 deposited in burial sites below, on, and above the cemetery.

17           27.     From their birth, the Plaintiffs have been the lineal descendants of the Native  
18 American families that have lived and have inhumed, interred, deposited, and dispersed more than  
19 a hundred of their deceased family members' human remains, and items associated with their  
20 human remains, including, but not limited to grave goods, cultural items, associated funerary  
21 objects, sacred objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-  
22 5097.99, in burial sites below, on, and above the Indian cemetery for more than a hundred years,  
23 as reflected in Exhibits A, B, C, and E.

24           28.     By virtue of the afore-described acts, a Native American sanctified cemetery, place  
25 of worship, religious and ceremonial site, and sacred shrine, as defined by Cal. Pub. Res. C. Code  
26 5097.9, and Health & Safety Code 7003-4, and 8558, have been located at the cemetery. Property  
27 so dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes,  
28 unless and until the dedication is removed from all or any part of it by an order and decree of the  
29 superior court of the county in which the property is situated, pursuant to Health & Safety Code



1 8580. Moreover, after such dedication and as long as the property remains dedicated to cemetery  
2 purposes, no road, alley, pipe line, pole line, or other public thoroughfare or utility shall be laid  
3 out, through, over, or across any part of it without the consent of not less than two-thirds of the  
4 owners of those interred there, pursuant to Health & Safety Code 8560.

5         29. Plaintiff Walter J. Rosales was personally present when his un-named younger  
6 brother's human remains and his mother, Helen Cuero's human remains, and his son, Dean  
7 Rosales' human remains, were inhumed, interred, and deposited, along with the items associated  
8 with their human remains, including, but not limited to grave goods, cultural items, associated  
9 funerary objects, sacred objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. C.  
10 5097.9-5097.99, in burial sites below, on and above the ground at the cemetery.

11         30. Plaintiff Karen Toggery was personally present when her mother, Marie Toggery's  
12 human remains and her son, Matthew Tinejero Toggery's human remains, were inhumed, interred  
13 and deposited, along with the items associated with their human remains, including, but not  
14 limited to grave goods, cultural items, associated funerary objects, sacred objects, and objects of  
15 cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-5097.99, in burial sites below, on and  
16 above the ground at the cemetery.

17         31. Plaintiffs are the lineal descendants that own and control their predecessors' human  
18 remains and Native American and associated cultural items, which are personal rights, as set forth  
19 in Cal. Pub. Res. C. 5097.9-5097.99, Health & Safety Code 7100, and 25 U.S.C. 3002, including,  
20 but not limited to grave goods, cultural items, associated funerary objects, sacred objects, and  
21 objects of cultural patrimony, which have been inhumed, interred, deposited, dispersed, and  
22 placed, in burial sites below, on and above the cemetery over the last 100 years.

23         32. Recently, the San Diego Museum of Man repatriated a significant collection of  
24 Native American human remains and funerary objects, which have also been inhumed, interred,  
25 deposited, dispersed, and placed, in burial sites below, on, and above, the cemetery.

26                 **Notice to Defendants of Plaintiffs' Human Remains and Funerary Objects**

27         33. Plaintiffs have continuously and repeatedly put all persons, including the  
28 Defendants, on written notice of:  
29

1 (A) Plaintiffs' ownership and control, as lineal descendants, of their deceased Native  
2 American family members' human remains, and the items associated with their human remains,  
3 including, but not limited to grave goods, cultural items, associated funerary objects, sacred  
4 objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-5097.99, that  
5 for more than 100 years have been inhumed, interred and deposited in burial sites below, on and  
6 above, the cemetery; and

7 (B) Plaintiffs' preference, as lineal descendants, to leave their families' human remains  
8 and funerary objects in place, as required by Cal. Pub. Res. Code 5097.98, and the CEQA  
9 Guidelines, 14 Cal. Code Regs. 15126.4 (b)(3).

10 34. The Defendants were particularly warned on February 4, 2008, that they would be  
11 held personally responsible for any violation of Cal. Pub. Res. C. 5097.9-5097.99.

12 35. During 2007, the Native American Heritage Commission was also put on notice of  
13 the existence of Native American human remains and associated Native American artifacts, grave  
14 goods, cultural items, associated funerary objects, sacred objects, and objects of cultural  
15 patrimony, as defined in Cal. Pub. Res. C. 5097.9-5097.99, in burial sites below, on and above the  
16 cemetery, as required by Cal. Health & Safety Code 7050.5.

17 36. According to testimony from Richard Dietrich before the San Diego Superior  
18 Court on March 14, 2007, Case No. 878709, the grading contractors and those that hired the  
19 grading contractors, were on written notice that the Plaintiffs' families' Native American human  
20 remains and funerary objects were interred at the cemetery, and that as lineal descendants the  
21 families' preference was to leave their remains and funerary objects in place, as required by Cal.  
22 Pub. Res. Code 5097.98, and the CEQA Guidelines 14 Cal. Code Regs. 15126.4 (b)(3).

23 37. Such notice has been published in the records of the Catholic Diocese, newspapers  
24 of general circulation, letters to CalTrans, the records and files of the San Diego Superior Court  
25 and in the Public Access to Court Electronic Records. In addition, the recorded declaration by the  
26 Coronado Beach Company and the Catholic Diocese provided constructive notice to all persons of  
27 the dedication of the cemetery to cemetery purposes, pursuant to Cal. Health & Safety Code  
28 sections 8551-8558, which dedication shall not be affected by any alienation of the property or  
29 nonuse, except as provided by Health & Safety Code 8550-8561.

1 38. Pursuant to Code of Civil Procedure section 388, Plaintiffs are serving the  
2 California Attorney General with a copy of this complaint, and consistent with Public Resources  
3 Code section 21167.5, Plaintiffs have served Defendants with notice of this suit.

4 39. On or about February 24, 2014, the Plaintiffs filed and presented their claims  
5 herein against CalTrans to the California Victim Compensation and Government Claims Board, at  
6 P.O. Box 3035, Sacramento, CA 95812-3035, pursuant to California Government Code 910 et  
7 seq. On March 10, 2014, the California Victim Compensation and Government Claims Board  
8 received Plaintiffs claim, and on March 11, 2014, notified Plaintiffs that the Board will act on  
9 their claim at a meeting on April 10, 2014, having found: "Based on its review of [Plaintiffs']  
10 claim, Board staff believes that the court system is the appropriate means for resolution of these  
11 claims, because the issues presented are complex and outside the scope of analysis and  
12 interpretation typically undertaken by the Board...The Board's rejection of your claim will allow  
13 you to initiate litigation should you wish to pursue this matter further."

14 **Defendants' Desecration of Plaintiffs' Human Remains and Funerary Objects**

15 40. Despite such written notice from the Plaintiffs, since hauling operations began on  
16 February 10, 2014, the Defendants have permitted grading, operation of heavy equipment, moving  
17 dirt and/or gravel, and other construction activities, and excavated soils from the cemetery  
18 containing Plaintiffs' families' human remains and funerary objects to be illegally deposited on  
19 state property owned and controlled by CalTrans in violation of Cal. Health & Safety Code §§  
20 7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, Public Res. Code 5097.9-5097.99, and Penal  
21 Code 487.

22 41. No permit has been posted for anyone to excavate soil from the cemetery and  
23 deposit it on state property owned and controlled by CalTrans; nor has the San Diego County  
24 coroner been notified of this recent intent to disturb human remains or the site of any nearby area  
25 reasonably suspected to overlie adjacent human remains, as required by Cal. Health & Safety  
26 Code 7050.5.

27 42. No permit required by Cal. Health & Safety Code 7500 et seq., has been posted at  
28 the cemetery or the state property owned and controlled by CalTrans on which excavated soil  
29

1 from the cemetery has been deposited, for anyone to grade, excavate, damage, disinter, remove or  
2 otherwise alter or deface, or attempt to grade, excavate, damage, disinter, remove or otherwise  
3 alter or deface, human remains or funerary objects from the cemetery. Nor can any such permit be  
4 granted, without the consent of the closest lineal descendants owning and controlling the human  
5 remains and funerary objects, which consent the Plaintiffs, who are the owners of their families'  
6 human remains and funerary objects, have not granted.

7         43.     The grading, operation of heavy equipment, moving dirt and/or gravel, and other  
8 construction activities, and dumping of the excavated soils from the cemetery on state property  
9 owned and controlled by CalTrans has caused, and will continue to cause, irreparable damage to  
10 the Plaintiffs and their Native American human remains, along with the items associated with  
11 their human remains, including, but not limited to grave goods, cultural items, associated funerary  
12 objects, sacred objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-  
13 5097.99, by knowingly and/or willfully mutilating, disinterring, wantonly disturbing, and  
14 willfully removing them without authority of law. Such conduct thereby created what the  
15 California Supreme Court describes as "liability for the serious emotional distress caused by such  
16 egregious, but clandestine, misconduct," which caused "Plaintiffs to suffer physical injury, shock,  
17 outrage, extreme anxiety, worry, mortification, embarrassment, humiliation, distress, grief and  
18 sorrow." *Christensen v. Sup. Ct.* (1991) 54 Cal.3d 868, 887.

19         44.     Knowingly mutilating, disinterring, wantonly disturbing, and willfully removing  
20 such human remains by grading, operation of heavy equipment, moving dirt and/or gravel, and  
21 other construction activities, and dumping of the excavated soils from the cemetery on state  
22 property owned and controlled by CalTrans, without authority of law is a crime, under Cal. Health  
23 & Safety Code 7050.5, and any person willfully mutilating or disinterring any remains known to  
24 be human without authority of law is guilty of a felony, under Cal. Health & Safety Code 7052, as  
25 is anyone obtaining or possessing, or who removes with malice or wantonness, and without  
26 authority of law, any Native American artifacts or human remains from a Native American grave  
27 or cairn, pursuant to Cal. Pub. Res. Code 5097.99, and any person who deposits or disposes of any  
28 human remains in any place, except in a cemetery, is guilty of a misdemeanor, pursuant to Cal.  
29 Health & Safety Code 7054.

1           45. Cal. Health & Safety Code 7050.5 provides that: "In the event of discovery or  
2 recognition of any human remains in any location other than a dedicated cemetery, there shall be  
3 no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie  
4 adjacent remains until...the recommendations concerning the treatment and disposition of the  
5 human remains have been made to the person responsible for the excavation, or to his or her  
6 authorized representative, in the manner provided in Section 5097.98 of the Public Resources  
7 Code," which includes the lineal descendants preference for "preservation of the Native American  
8 human remains and associated items in place."

-9           46. Cal. Health & Safety Code 7054.6. provides that: "(a) Except as provided in  
10 subdivision (b), cremated remains may be removed in a durable container from the place of  
11 cremation or interment and kept in or on the real property owned or occupied by a person  
12 described in Section 7100 or any other person, with the permission of the person with the right to  
13 disposition, or the durable container holding the cremated remains may be kept in a church or  
14 religious shrine, if written permission of the church or religious shrine is obtained and there is no  
15 conflict with local use permit requirements or zoning laws, if the removal is under the authority of  
16 a permit for disposition granted under Section 103060."

17           47. Cal. Health & Safety Code 7054.7 provides that: "(a) Except with the express  
18 written permission of the person entitled to control the disposition of the remains, no person shall:  
19 ... (2) Dispose of or scatter cremated remains in a manner or in a location that the remains are  
20 commingled with those of another person. ... (3) Place cremated or uncremated remains of more  
21 than one person in the same container or the same interment space."

22           48. Cal. Health & Safety Code 7055 provides that : "(a) Every person, who for himself  
23 or herself or for another person,...removes any remains... from the primary registration district in  
24 which the death or incineration occurred or the body was found...without the authority of a burial  
25 or removal permit issued by the local registrar of the district in which the death occurred or in  
26 which the body was found; or removes interred human remains from the cemetery in which the  
27 interment occurred,...without the authority of a removal permit is guilty of a misdemeanor..."

28           49. Cal. Health & Safety Code 8301.5 provides that: "The Legislature recognizes...  
29

1 The urge to associate even after death also stems from an intense social and cultural need to  
2 ensure that people are connected with their past, and also to ensure that the graves and  
3 surrounding grounds are kept, tended, adorned, and embellished according to the desires and  
4 beliefs of the decedent, family, or group.”

5         50. Cal. Pub. Res. Code 5097.98, as amended September 30, 2006, provides that upon  
6 notice and recognition of the presence of Native American human remains, which may be an  
7 inhumation or cremation, and in any state of decomposition or skeletal completeness, the  
8 landowner is obligated to ensure that the immediate vicinity, according to generally accepted  
9 cultural or archaeological standards or practices where the Native American human remains are  
10 located, is not damaged or disturbed by further development activity, so long as the lineal  
11 descendants’ preferences are to preserve the Native American human remains and associated  
12 items in place, and that any items associated with the human remains that are placed or buried  
13 with the Native American human remains are to be treated in the same manner as the remains.

14         51. The California Environmental Quality Act Guidelines provide that preservation in  
15 place is the preferred manner to mitigate impacts on historic archaeological resources, including  
16 human remains and their associated funerary objects, since preservation in place maintains the  
17 relationship between artifacts and the archaeological context, and avoids conflict with religious or  
18 cultural values of groups associated with the site. 14 Cal. Code Regs. 15126.4 (b)(3). Preservation  
19 in place is accomplished by planning construction to avoid archaeological sites and deeding the  
20 site into a permanent conservation easement. 14 Cal. Code Regs. 15126.4(b)(3)(B)1 and 4; see  
21 also 14 Cal. Code Regs. 15064.5(e).

22         52. These “statutes governing the disposition of human remains exist not only to  
23 ensure removal of dead bodies and protect public health, but also to prevent invasion of the  
24 religious, moral, and esthetic sensibilities of the survivors. These laws were enacted to prevent the  
25 type of harm alleged here to the statutory rights holders, and create a duty to those persons....If,  
26 under the circumstances, [one Defendant] should have foreseen that the [other defendants] would  
27 violate the law, then its conduct may be found to be negligent per se.” These statutes “reflect a  
28 policy of respecting the religious, ethical, and emotional concerns of close relatives and others  
29 having an interest in assuring that the disposition of human remains is accomplished in a dignified

1 and respectful manner.” “A policy of respecting religious beliefs with regard to the disposition of  
2 human remains is manifest.” *Christensen v. Sup. Ct.* (1991) 54 Cal.3d 868, 893-94, 896, 897.

3 53. “Similar recognition that the sensibilities of all survivors merit protection is found  
4 in...[Cal. Health & Safety Code] Section 7050.5 [which] prohibits desecration of human buried  
5 remains, and makes special provision for proper disposition of Native American remains  
6 discovered during an excavation. The Legislature’s findings include express recognition of Native  
7 American ‘concerns regarding the need for sensitive treatment and disposition’ of such remains.  
8 (Stats. 1982, ch. 1492, §1. Subd. (2) p. 5778.” *Christensen v. Sup. Ct.* (1991) 54 Cal.3d 868, 897.

9 54. Breach of these statutory duties “cause[s] mental anguish to the decedent’s  
10 bereaved relations...in their most difficult and delicate moments...[t]he exhibition of callousness  
11 or indifference, the offer of insult and indignity, can of course...visit agony akin to torture on the  
12 living....The tenderest feelings of the human heart center around the remains of the dead.”  
13 *Christensen* at 895, citing *Allen v. Jones* (1980) 104 Cal.App.3d 207, 211.

14 55. Despite such published notice and knowledge that the Plaintiffs’ deceased Native  
15 American family members’ human remains, and the items associated with their human remains,  
16 including, but not limited to grave goods, cultural items, associated funerary objects, sacred  
17 objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. Code 5097.9-5097.99, are  
18 interred, inhumed, deposited, dispersed and placed, in burial sites below, on, and above the  
19 cemetery, Defendants are allowing grading, operation of heavy equipment, moving dirt and/or  
20 gravel, and other construction activities, and dumping of the excavated soils from the cemetery  
21 containing Plaintiffs’ families’ human remains and funerary objects on state property owned and  
22 controlled by CalTrans, thereby causing Plaintiffs’ substantial emotional distress and personal  
23 injury and irreparable damage to the Plaintiffs and their Native American human remains, along  
24 with the items associated with their human remains, including, but not limited to grave goods,  
25 cultural items, associated funerary objects, sacred objects, and objects of cultural patrimony, as  
26 defined in Cal. Pub. Res. Code 5097.9-5097.99, by knowingly and/or willfully mutilating,  
27 disinterring, wantonly disturbing, and willfully removing them without authority of law, in  
28 violation of the California Environmental Quality Act without a proper environmental impact  
29 report, and in violation of Cal. Health & Safety Code Sections 7050.5, 7052, 7054, 7054.6,

1 7054.7, 7055, 7500, Public Res. Code 5097.9-5097.99, and Penal Code 487.

2 56. The Defendants' breaches of their duty of care have caused, and will further cause,  
3 Plaintiffs' substantial personal injury damages, in an amount in excess of \$2 million dollars,  
4 subject to further proof at trial, and have damaged the Plaintiffs' Native American human  
5 remains, along with the items associated with their human remains, including, but not limited to  
6 grave goods, cultural items, associated funerary objects, sacred objects, and objects of cultural  
7 patrimony, as defined in Cal. Pub. Res. Code 5097.9-5097.99, by the taking, knowing and/or  
8 willful mutilation, disinterment, wanton disturbance, and willful removal of them without  
9 authority of law.

10 57. The grading, operation of heavy equipment, moving dirt and/or gravel, and other  
11 construction activities, and dumping of the excavated soils from the cemetery containing  
12 Plaintiffs' families' human remains and funerary objects on state property owned and controlled  
13 by CalTrans has also caused and will continue to cause, unless enjoined, irreparable damage to,  
14 and interference with, the Plaintiffs' free expression and exercise of Native American religion as  
15 provided in the United States Constitution and the California Constitution, and has caused and  
16 shall continue to cause, unless enjoined, severe and irreparable damage to the Plaintiffs' Native  
17 American sanctified cemetery, place of worship, religious or ceremonial site, and sacred shrines  
18 located on said parcels, in an amount in excess of \$2 million dollars, subject to further proof at  
19 trial.

20 58. The grading, operation of heavy equipment, moving dirt and/or gravel, and other  
21 construction activities, and dumping of the excavated soils from the cemetery containing  
22 Plaintiffs' families' human remains and funerary objects on state property owned and controlled  
23 by CalTrans has caused, and will continue to cause, the Plaintiffs severe personal, physical and  
24 bodily injury, including severe emotional distress, all in excess of the jurisdictional limit of this  
25 court, subject to proof at trial. Such acts will also unduly interfere with the Plaintiffs' civil rights  
26 to due process and equal protection of the laws. Plaintiffs will be greatly and irreparably damaged  
27 by reason of Defendants' infringement and violation of these civil rights, and unless Defendants  
28 are enjoined by this court, said acts will further violate Plaintiffs' civil rights, and further  
29 irreparably harm the Plaintiffs.



1 59. To prevent such wrongful conduct of the defendants as herein alleged, Plaintiffs are  
2 entitled to a temporary, preliminary and permanent injunction to prevent great and irreparable  
3 injury resulting from the infringement and violation of these personal and civil rights, from the  
4 likelihood that damages cannot properly compensate Plaintiffs for such irreparable personal harm,  
5 and that Defendants will be unable to respond in damages, and from the difficulty or impossibility  
6 to ascertain the exact amount of personal bodily injury and personal property damage Plaintiffs  
7 have sustained, and will in the future sustain. These ongoing and continuing injuries sustained by  
8 Plaintiffs cannot be fully compensated in damages and Plaintiffs are without an adequate remedy  
9 at law without the imposition of the requested equitable injunctive relief.

10 60. It would be an abuse of discretion for the court to fail to exercise its continuing  
11 jurisdiction over Plaintiffs' personal injury claims arising under the California statutes, to the  
12 same extent that any other California court has jurisdiction over other civil causes of action, and  
13 those civil laws of California that are of general application to private persons or private personal  
14 property shall have the same force and effect, as they have elsewhere within California, as held for  
15 e.g., in *People v. Van Horn* (1990) 218 Cal. App.3d 1378.

16 **FIRST CAUSE OF ACTION**

17 (Tortious Violation of Statute and Negligence Against All Defendants)  
18

19 61. Plaintiffs incorporate by reference each and every allegation contained in  
20 paragraphs 1 through 60, inclusive, of this complaint as though fully set forth herein.

21 62. The Defendants owe a duty of care to the Plaintiffs to exercise reasonable care and  
22 comply with the law in the performance of the work they perform, including, but not limited to,  
23 complying with Article I, Sections. 1, 2, 3, 4, 7, 13, 19, 24 and 31 of the California Constitution,  
24 the California Environmental Quality Act, Cal. Health & Safety Code §§7050.5, 7052, 7054,  
25 7054.6, 7054.7, 7055, 7500, Public Res. Code 5097.9-5097.99, and Penal Code 487, and not  
26 violating the Plaintiffs' California civil rights, as are enjoyed by California citizens, due to their  
27 age, ancestry and their political and religious beliefs.

28 63. Plaintiffs are informed and believe and thereon allege, that Defendants both  
29 intentionally and negligently breached their duty to Plaintiffs by failing to use reasonable care to

1 protect the interests of, and prevent personal injury to, the Plaintiffs, by violating the law, and by  
2 negligently acting in the manner set forth in the allegations incorporated herein.

3         64.     These acts include, but are not limited to: mutilating, disinterring, wantonly  
4 disturbing, demolishing, willfully removing, and permitting the dumping of the Plaintiffs'  
5 families' human remains and funerary objects on state property owned and controlled by  
6 CalTrans, causing bodily injury and irreparable damage to the Plaintiffs and their personal  
7 property, Native American human remains, associated funerary objects, sacred objects, and  
8 objects of cultural patrimony, as defined in Cal. Pub. Res. Code 5097.9-5097.99, in violation of  
9 the California Environmental Quality Act without a proper environmental impact report, and in  
10 violation of Cal. Health & Safety Code §§7050.5, 7052, 7054, 7055 and Cal. Pub. Res. Code §§  
11 5097.9-5097.99, and Penal Code 487.

12         65.     These acts have caused Plaintiffs' substantial emotional distress and personal  
13 injury and irreparable damage to the Plaintiffs and their personal property, Native American  
14 human remains, along with the items associated with their human remains, including, but not  
15 limited to grave goods, cultural items, associated funerary objects, sacred objects, and objects of  
16 cultural patrimony, as defined in Cal. Pub. Res. Code 5097.9-5097.99, by knowingly and/or  
17 willfully mutilating, disinterring, wantonly disturbing, and willfully removing, damaging, or  
18 otherwise altering or defacing, them without authority of law.

19         66.     These acts have also caused substantial emotional distress and personal injury and  
20 irreparable damage to, and interference with, the Plaintiffs' free expression and exercise of Native  
21 American religion as provided in the United States Constitution and the California Constitution,  
22 and has caused and shall further cause severe and irreparable damage to the Plaintiffs' Native  
23 American sanctified cemetery, place of worship, religious or ceremonial site, and sacred shrines.

24         67.     To prevent such personal injuries to the Plaintiffs and wrongful conduct by the  
25 defendants, as herein alleged, Plaintiffs are entitled to a temporary, preliminary and permanent  
26 injunction to prevent great and irreparable injury resulting from the infringement and violation of  
27 these personal and civil rights, from the likelihood that damages cannot properly compensate  
28 Plaintiffs for such irreparable personal harm, and that Defendants will be unable to respond in  
29

1 damages, and from the difficulty or impossibility to ascertain the exact amount of personal bodily  
2 injury and personal property damage Plaintiffs have sustained, and will in the future sustain.  
3 These ongoing and continuing injuries sustained by Plaintiffs cannot be fully compensated in  
4 damages and Plaintiffs are without an adequate remedy at law without the imposition of the  
5 requested equitable injunctive relief.

6         68. If the Defendants are not enjoined from mutilating, disinterring, wantonly  
7 disturbing, demolishing, willfully removing, and causing irreparable damage to, the Plaintiffs'  
8 personal property, Native American human remains, associated funerary objects, sacred objects,  
9 and objects of cultural patrimony, as defined in Cal. Pub. Res. Code 5097.9-5097.99, in violation  
10 of Cal. Health & Safety Code §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, Public Res.  
11 Code 5097.9-5097.99, and Penal Code 487, the Plaintiffs will continue to suffer severe and  
12 irreparable personal injury, physical and bodily injury, including severe emotional distress due to  
13 the Defendants knowingly and/or wilfully mutilating, disinterring, wantonly disturbing, willfully  
14 removing, damaging and otherwise altering or defacing, and causing severe and irreparable  
15 damage to the Plaintiffs' ancestors human remains, along with the items associated with their  
16 human remains, including but not limited to grave goods, cultural items, associated funerary  
17 objects, sacred objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. Code  
18 5097.9-5097.99.

19         69. Plaintiffs are the lineal descendants' with ownership and control of their  
20 predecessors' human remains and Native American and associated cultural items, as set forth in  
21 Cal. Pub. Res. Code 5097.9-5097.99, Cal. Health & Safety Code 7100, including, but not limited  
22 to grave goods, cultural items, associated funerary objects, sacred objects, and objects of cultural  
23 patrimony, pursuant to Cal. Pub. Res. Code 5097.9-5097.99.

24         70. Plaintiffs' preferences are to preserve their families' Native American human  
25 remains and associated cultural items in place, including, but not limited to grave goods, cultural  
26 items, associated funerary objects, sacred objects, and objects of cultural patrimony, as defined in  
27 Cal. Pub. Res. Code 5097.9-5097.99, and as required by Cal. Pub. Res. Code 5097.98 and the  
28 CEQA Guidelines, 14 Cal. Code Regs.15126.4 (b)(3).  
29

1           71. Pursuant to Cal. Public Resources and Health & Safety Codes and the regulations  
2 adopted pursuant thereto, Plaintiffs are entitled to :

3           (A) prevent any further knowing and/or willful mutilation, disinterment, wanton  
4 disturbance, willful removal of Plaintiffs' Native American human remains, along with the items  
5 associated with their human remains, including, but not limited to grave goods, cultural items,  
6 associated funerary objects, sacred objects, and objects of cultural patrimony, Cal. Pub. Res. Code  
7 5097.9-5097.99, without authority of law, and permitted dumping of the Plaintiffs' families'  
8 human remains and funerary objects on state property owned and controlled by CalTrans, which  
9 have caused, and will continue to cause, irreparable damage to the Plaintiffs' Native American  
10 human remains, along with the items associated with their human remains, including, but not  
11 limited to grave goods, cultural items, associated funerary objects, sacred objects, and objects of  
12 cultural patrimony, as defined in Cal. Pub. Res. Code 5097.9-5097.99;

13           (B) a written plan of action specifically including Plaintiffs' ownership, custody and  
14 control of, and the kind of traditional and planned treatment, care and handling of, and the  
15 disposition and repatriation of, any of their human remains, funerary objects sacred objects, or  
16 objects of cultural patrimony which have been, or may be, recognized pursuant to Cal. Pub. Res.  
17 Code 5097.98;

18           (C) transfer custody to Plaintiffs any of their Native American human remains and  
19 funerary objects that have been disturbed or otherwise removed from where they were originally  
20 interred, pursuant to Cal. Pub. Res. Code 5097.98;

21           (D) repatriate to Plaintiffs any of their Native American human remains and funerary  
22 objects that have been disturbed or otherwise removed from where they were originally interred,  
23 pursuant to Cal. Pub. Res. Code 5097.98 and H&S Code 8015-16;

24           (E) prevent further disturbance of Plaintiffs' human remains and funerary objects until  
25 the Plaintiffs' preference for the preservation of their Native American human remains and  
26 associated items in place, and that any items associated with the human remains that are placed or  
27 buried with the Native American human remains are to be treated in the same manner as the  
28 remains, is carried out pursuant to Cal. Health and Safety Code 7050.5 and Cal. Pub. Res. Code  
29

1 5097.98; and

2 (F) in the event that Plaintiffs' preference for the preservation of their Native  
3 American human remains and associated items in place, is not carried out, Plaintiffs' preference  
4 will be mediated by the California Native American Heritage Commission, and their human  
5 remains and items associated with their Native American human remains and associated funerary  
6 objects, sacred objects and cultural patrimony, will be reinterred with appropriate dignity,  
7 pursuant to Cal. Pub. Res. Code 5097.94 and 5097.98 and H&S Code 8015-16.

8 72. The aforementioned acts by the Defendants have caused, and will further cause, the  
9 Plaintiffs severe personal, physical and bodily injury, including severe emotional distress, all in an  
10 amount in excess of \$2 million dollars, subject to further proof at trial. Such acts will also unduly  
11 interfere with the Plaintiffs' civil rights to due process and equal protection of the laws. Plaintiffs  
12 will be greatly and irreparably damaged by reason of Defendants' infringement and violation of  
13 these civil rights, and unless Defendants are enjoined by this court, said acts will further violate  
14 Plaintiffs' civil rights, and further irreparably harm the Plaintiffs. Plaintiffs have therefore  
15 suffered general and consequential damages proximately caused by the Defendants' negligence in  
16 an amount subject to proof at the time of trial.

## 17 SECOND CAUSE OF ACTION

### 18 (For Declaratory and Injunctive Relief against all Defendants)

19 73. Plaintiffs incorporate by reference each and every allegation contained in  
20 paragraphs 1 through 72, inclusive, of this complaint as though fully set forth herein.

21 74. Cal. Pub. Res. Code 5097.9 provides that no public agency, and no private party  
22 using or occupying public property, or operating on public property, under a public license,  
23 permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever  
24 interfere with the free expression or exercise of Native American religion as provided in the  
25 United States Constitution and the California Constitution; nor shall any such agency or party  
26 cause severe or irreparable damage to any Native American sanctified cemetery, place of worship,  
27 religious or ceremonial site, or sacred shrine located on public property, where, as here, there is no  
28 clear and convincing showing that the public interest and necessity so require.  
29

1           75. Cal. Pub. Res. Code 5097.95 provides that each state and local agency shall  
2 cooperate in carrying out its duties under the California Native American Graves Protection Act,  
3 as codified in Cal. Pub. Res. Code 5097.9-5097.99 and H&S Code 8100 et seq. Therefore, since  
4 the personal rights of the Plaintiffs, as the lineal descendants of their Native American ancestors,  
5 cannot be adequately protected without preventing the dumping of their families' human remains  
6 and funerary objects on state property owned and controlled by CalTrans, this action is brought in  
7 the Superior Court of the State of California to compel maintaining the Plaintiffs' preferences that  
8 the Native American human remains and associated cultural items remain "in place," as set forth  
9 in Cal. Pub. Res. Code 5097.9-5097.99, including but not limited to grave goods, cultural items,  
10 associated funerary objects, sacred objects, and objects of cultural patrimony, as defined in Cal.  
11 Pub. Res. C. 5097.9-5097.99, which have been inhumed, interred, and deposited in burial sites  
12 below, on and above the cemetery over the last 100 years.

13           76. If the Defendants are not enjoined from permitting grading, operation of heavy  
14 equipment, moving dirt and/or gravel, and other construction activities, and excavated soils from  
15 the cemetery to be illegally deposited on state property owned and controlled by CalTrans in  
16 violation of the California Constitution, the California Environmental Quality Act, Cal. Health &  
17 Safety Code §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500, Public Res. Code 5097.9-  
18 5097.99, and Penal Code 487, the Plaintiffs will continue to suffer severe and irreparable personal  
19 injury, physical and bodily injury, including severe emotional distress from the mutilation,  
20 disinterment, wanton disturbance, willful removal and excavation, disturbance and severe and  
21 irreparable damage to, the Plaintiffs' ancestors human remains, along with the items associated  
22 with their human remains, including but not limited to grave goods, cultural items, associated  
23 funerary objects, sacred objects, and objects of cultural patrimony, as defined in Cal. Pub. Res. C.  
24 5097.9-5097.99.

25           77. Cal. Pub. Res. Code 5097.97 provides that in the event that any Native American  
26 individual, such as the individual Plaintiffs, advises the California Native American Heritage  
27 Commission that a proposed action by a public agency may cause severe or irreparable damage to  
28 a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred  
29 shrine located on public property, or may bar appropriate access thereto by Native Americans, and

1 the proposed action would result in such damage or interference, and the public agency fails to  
2 accept the mitigation measures recommended, an action is further authorized by Cal. Pub. Res.  
3 Code 5097.94 to prevent severe and irreparable damage to, and to assure appropriate access for  
4 Native Americans to, the Native American sanctified cemetery, place of worship, religious or  
5 ceremonial site, or sacred shrine located on public property.

6 78. Cal. Pub. Res. Code 5097.94 further provides that where, as here, severe and  
7 irreparable damage will occur, appropriate access will be denied, appropriate mitigation measures  
8 are not available, and there is no clear and convincing evidence that the public interest and  
9 necessity require otherwise, the court shall issue an injunction, to prevent severe and irreparable  
10 damage to, and to assure appropriate access for Native Americans to, the Native American  
11 sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on  
12 public property. The California legislature specifically provided, in enacting the 1982  
13 amendments to Cal. Pub. Res. Code 5097.94, that: "The purpose of the act is: To provide  
14 protection to Native American human burials and skeletal remains from vandalism and  
15 inadvertent destruction."

16 79. Similarly, Cal. Pub. Res. Code 5097.98, as amended, provides that upon the  
17 recognition of Native American human remains, which may be an inhumation or cremation, and  
18 in any state of decomposition or skeletal completeness, the landowner shall ensure that the  
19 immediate vicinity, according to generally accepted cultural or archaeological standards or  
20 practices where the Native American human remains are located, is not damaged or disturbed by  
21 further development activity, so long as the lineal descendants' preferences are to preserve the  
22 Native American human remains and associated items in place, and that any items associated with  
23 the human remains that are placed or buried with the Native American human remains are to be  
24 treated in the same manner as the remains.

25 80. Plaintiffs' preferences are to preserve the Native American human remains and  
26 associated cultural items in place, as the lineal descendants' with ownership and control of their  
27 predecessors' human remains and Native American and associated cultural items, including, but  
28 not limited to grave goods, cultural items, associated funerary objects, sacred objects, and objects  
29 of cultural patrimony, as defined in Cal. Pub. Res. 5097.9-5097.99, which have been inhumed,

1 interred, and deposited in burial sites below, on and above, the cemetery over the last 100 years.

2 81. Therefore, since the individual Plaintiffs, lineal descendants of the Native  
3 Americans whose human remains, and the items associated with their human remains, including,  
4 but not limited to grave goods, cultural items, associated funerary objects, sacred objects, and  
5 objects of cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-5097.99, have been  
6 inhumed, interred, and deposited in burial sites below, on and above the cemetery over the last  
7 100 years, seek to preserve these Native American human remains and associated items in place,  
8 the court is required to issue an injunction to prevent their further mutilation, disinterment,  
9 removal, excavation, disturbance and severe and irreparable damage on state property owned and  
10 controlled by CalTrans in violation of the California Constitution, the California Environmental  
11 Quality Act, Cal. Health & Safety Code §§7050.5, 7052, 7054, 7054.6, 7054.7, 7055, 7500,  
12 Public Res. Code 5097.9-5097.99, and Penal Code 487.

13 82. An actual controversy has arisen and now exists between Plaintiffs and Defendants  
14 regarding their respective rights, duties and obligations in that Plaintiffs contend that Defendants  
15 are liable to Plaintiffs for the statutory, contractual, and tortious personal injuries and deprivations  
16 of their civil rights alleged herein, and defendants deny such liability to Plaintiffs.

17 83. Plaintiffs desire a judicial determination of the respective rights of Plaintiffs and  
18 Defendants.

19 84. Such a declaration is necessary and appropriate at this time so that the parties may  
20 ascertain their rights and duties with respect to each other.

21 85. Plaintiffs have been greatly and irreparably damaged by reason of said Defendants'  
22 statutory and tortious deprivations of Plaintiffs' personal and civil rights alleged herein, and  
23 unless Defendants are enjoined by this court, they will continue the violation of Plaintiffs' rights  
24 further irreparably harming the Plaintiffs.

25 86. As a result of the wrongful conduct of said defendants as herein alleged, Plaintiffs are  
26 entitled to a temporary, preliminary and permanent injunction to prevent great and irreparable  
27 injury resulting from the infringement and violation of their personal and civil rights, from the  
28 likelihood that Defendants will be unable to respond in damages, and from the difficulty or  
29



1 impossibility to ascertain the exact amount of personal bodily injury and damage Plaintiffs have  
2 sustained, and will in the future sustain. These ongoing and continuing injuries sustained by  
3 Plaintiffs cannot be fully compensated in damages and Plaintiffs are without an adequate remedy  
4 at law without the imposition of the requested equitable injunctive relief.

5 **WHEREFORE** Plaintiffs pray for judgment as follows:

- 6 1. General and compensatory damages according to proof;
- 7  
8 2. That the Defendants, and their officers, agents, servants, employees and attorneys  
9 and all persons in active concert with them, or any of them, be temporarily, preliminarily and  
10 permanently enjoined from permitting dumping, grading, excavating, operating heavy equipment,  
11 moving dirt and/or gravel, or any other construction activities, involving the excavated soils from  
12 the cemetery on state property owned and controlled by CalTrans in violation of the California  
13 Constitution, the California Environmental Quality Act, Cal. Health & Safety Code §§7050.5,  
14 7052, 7054, 7054.6, 7054.7, 7055, 7500, Public Res. Code 5097.9-5097.99, and Penal Code 487,  
15 and otherwise mutilating, disinterring, removing, excavating, and disturbing in any way, any  
16 Native American human remains, and the items associated with their human remains, including,  
17 but not limited to grave goods, cultural items, associated funerary objects, sacred objects, and  
18 objects of cultural patrimony, as defined in Cal. Pub. Res. C. 5097.9-5097.99, that have been  
19 deposited on the on state property owned and controlled by CalTrans in violation of the California  
20 Constitution, the California Environmental Quality Act, Cal. Health & Safety Code §§7050.5,  
21 7052, 7054, 7054.6, 7054.7, 7055, 7500, Public Res. Code 5097.9-5097.99, and Penal Code 487.
- 22 3. That Plaintiffs be awarded punitive damages;
- 23 4. That Plaintiffs be awarded their reasonable attorneys' fees, costs, and expenses in  
24 this action; and



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2

Photographed by T. FADEN, Deputy Recorder

State of California  
County of San Diego

On this 26th day of September, A.D. 1912, before me, Lou B. Matthews, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared Ed Fletcher, personally known to me to be the person described in and a his name is subscribed to the within instrument, as the attorney in fact of Charles B. Gould, and acknowledged to me that he subscribed the name of Charles B. Gould, therein as principal, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, this day and year in the Certificate first above written.



Lou B. Matthews  
Notary Public in and for the County of  
San Diego, State of California

Recorded at Request of R. C. Sparks (L. D. Weller), Sep 26, 1912, at 10  
Clerk's Office, San Diego, Cal.

Witness my hand and seal this 26th day of September, 1912, at San Diego, California.  
John H. Lacey, County Recorder  
W. Howard Lee, Deputy Recorder

Harold I. Angier

Coronado Beach Company, a corporation of the City of San Diego, County of San Diego, State of California,  
For and in consideration of the sum of One Dollar, One Cent only, granted to The Roman Catholic Bishop of Monterey and San Jose, a corporation in and for the State of California, to be used for the purpose of an Indian graveyard and approach thereto, all that Real Property situated in the County of San Diego, State of California, bounded and described as follows:

Commencing at a point on the north boundary line of the Ranch parcel distant 648.5 feet east from the Ranch corner corner No. 16, thence east along said north boundary line, 353.0 feet to a point on the western line of County Road; thence S. 47° 15' east along said westerly line of County Road 262 feet to a point, thence west 574.7 feet to a point, thence south 58.0 feet to a point, thence south 86° 45' west, 704.5 feet to a point, thence south 45° 33' west 88.5 feet to a point, thence south 57.9 feet to a point, thence west 44.2 feet to a point, thence north 239.0 feet to the point of beginning, containing 2.21 acres.

To have and to hold the above granted and described premises unto the said Grantee, his successors and assigns forever, for the purposes above specified.

In witness whereof, said corporation has caused this deed to be signed by its Vice President, and Secretary, and its corporate seal to be affixed hereto this 11th day of July 1912.  
Coronado Beach Company

Handwritten mark resembling a stylized 'X' or '8'.

A

Photographed By F. FADER, Deputy Recorder

Signed and executed in presence of By W. Clayton Vice President and Harry S. Titus Secretary



State of California } ss. County of San Diego }

On this 11th day of July in the year one thousand nine hundred and twelve before me, Fred L. Whitehead, a Notary Public in and for said County, personally appeared W. Clayton known to me to be the Vice President, and Harry S. Titus known to me to be the Secretary of the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.



Fred L. Whitehead Notary Public in and for the County of San Diego, State of California

Recorded at Request of F. Atkin & Lapointe, Sep 24 1912, at 30 Min Past 10 O'clock A.M.

John H. Lerry County Recorder By Harold I. Angiers Deputy Recorder

COMPARED: Harold I. Angiers

This Indenture made this 27th day of August 1912, between Chau & Ludington, a Corporation, duly organized existing and doing business under and by virtue of the laws of the State of California and having its principal place of business at the City of San Diego, County of San Diego, State of California, the party of the first part, and S. May Faber party of the second part, Witnesseth:

That said party of the first part, pursuant to a resolution duly passed at a meeting of its Board of Directors held at their office on August 27th 1912, and of record in Minute Book #1 at page 59 et seq. for and in consideration of Ten (\$10.00) Dollars, legal coin of the United States of America to it in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, had granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, subject however to the County and State taxes of 1912 and the covenants and conditions hereinafter named, all that certain real property situate in the City of San Diego, County of San Diego, State of California, bounded and described as follows, to wit:

Lot 11 and 12, Block 1, Lot 11 and 12 of the 10th and 11th streets, San Diego, California, as shown on the map of the City of San Diego, California, filed in the office of the

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B

# L.S. NO. 430

## MAP OF SURVEY OF RANCHO JAMUL SAN DIEGO COUNTY-CALIFORNIA

Surveyed May, 1931 Scale - 1 inch = 1000 feet

3 SHEETS - SHEET 1

Total Area - 8886.77 Acres

Meridian determined by solar observation

Surveyed for G.R. Daley, San Diego, California.

Survey by Hugo Kuehnstedt, Licensed Surveyor.

I hereby certify that I am a Licensed Surveyor, and that this survey was made under my supervision as shown on this map, and that the monuments were set as shown hereon.

Hugo Kuehnstedt  
Licensed Surveyor.

Approved this <sup>28th</sup> day of May, 1931

Jamez Hewey Johnson  
County Assessor of San Diego County,  
State of California.

No. 29698

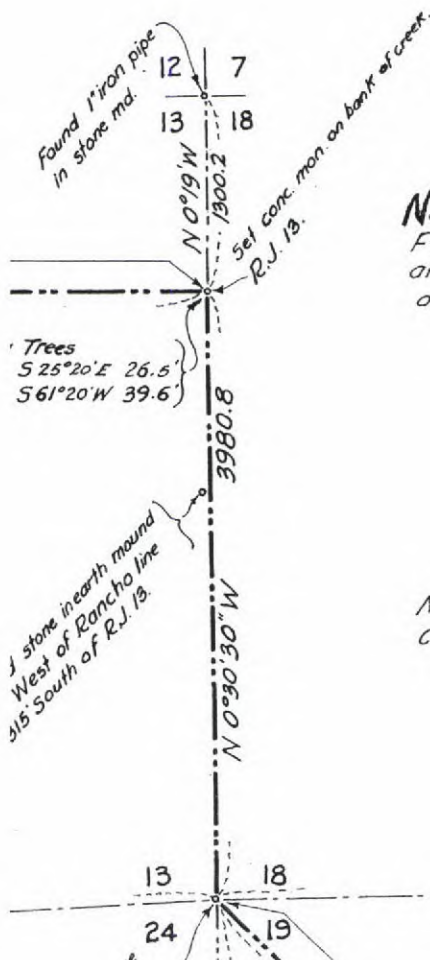
Filed at the request of Hugo Kuehnstedt  
at 03 minutes past 11:00 o'clock A.M., this 15 day  
of JUNE, 1931

O.M. Swope

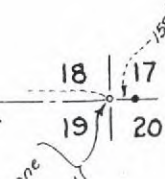
County Recorder of San Diego County, California.

By E. Hawkins  
Deputy

Note: The concrete monuments set are 12"x6"x6" with copper center, and are marked "H.K."



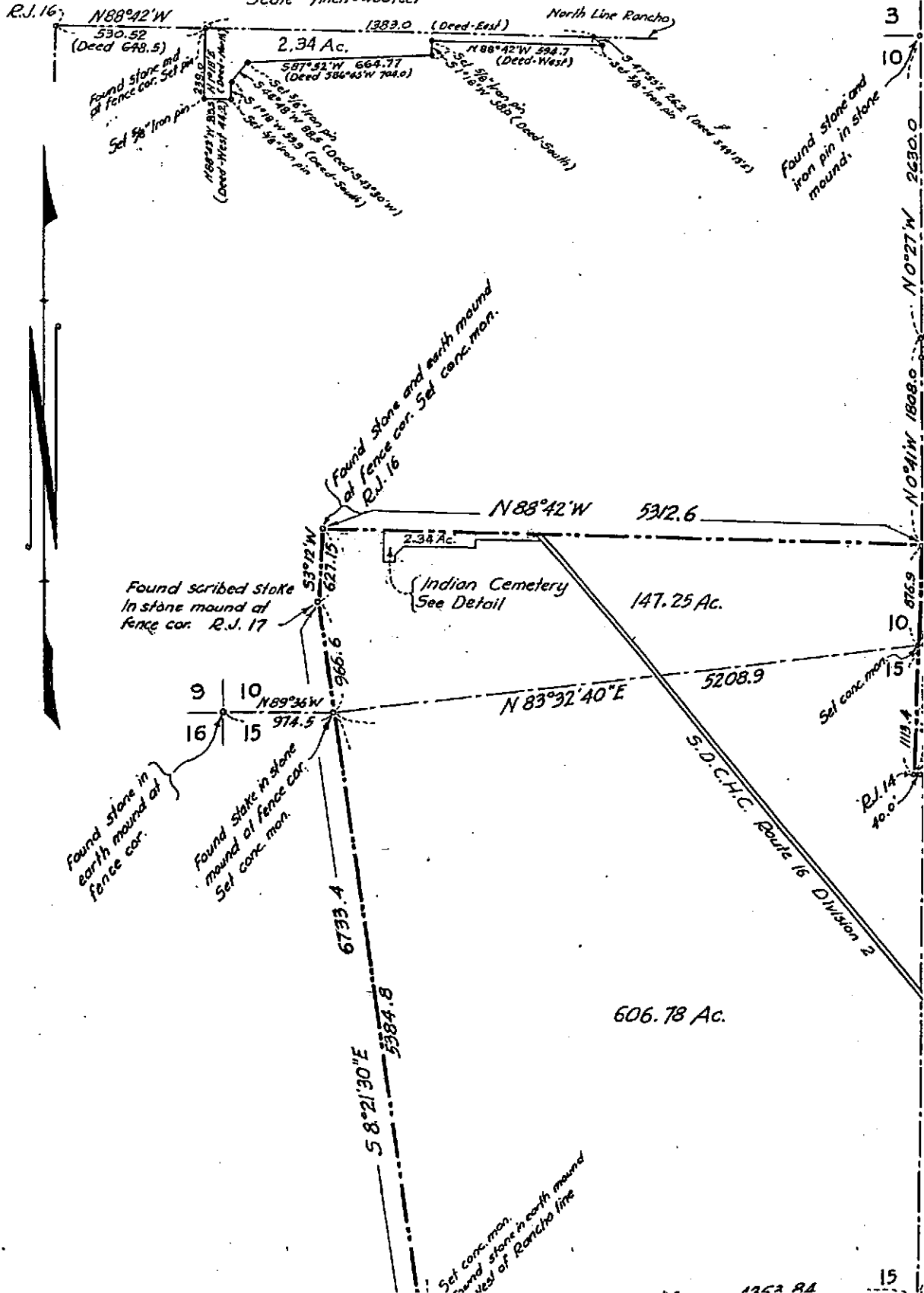
N 0° 55' E 5796.0



B

Detail of Indian Cemetery

Scale - 1 inch = 400 feet





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C

Frank Lechappa, upper right, a Barona Indian, inspects well tended graves at

Indian Catholic Cemetery in Jamul. One grave is that of veteran Daniel Aldamas,

lower left. Lower right is home of Italian family that has lived in area for years.

## Rabbi Attracts Youth With Rock Service

By DIANA DIMARCO  
PITTSBURGH (AP) — Rabbi Fredric S. Pomerantz is a round little man with longish red hair and a throbbing drive who looks more like a musician than a rabbi. He's both. He worked his way through college playing drums in a band. Now, at 31, he is associate rabbi of one of the country's largest Jewish congregations, the 1,800-family Temple Rodef Shalom. And he has set out on a course heretofore generally uncharted in Judaism.

It involved setting the traditional Hebrew prayer service to a rock beat, and organizing two coffeehouses for young people — gentile as well as Jewish.

### AIDS IN SHARING

That approach, common in Christian youth activities but still rare in Jewish worship, helps young people share mutual interests. Rabbi Pomerantz says, and adds: "It's the sharing that's important, the entertainment is secondary."

A restless, energetic man, he also is Jewish chaplain at Western Psychiatric Hospital, rabbinic advisor to the Pennsylvania Federation of Temple Youth, and originator of a free, informal education program that opened for high school students two years ago. It now also includes college students and adults.

The two coffeehouses, "The Back Door" for university students and "The Exit" for high schoolers, are open every weekend to all comers.

### NEEDS CITED

"Kids need to feel part of a group and they also need someone to show them they have responsibilities," he says.

The title of the "rock" service, Sim Shalom, means "grant us peace," and that is its basic message, says Rabbi Pomerantz, who did the up-tempo arrangement for brass, guitar, organ and drums.

"You've got to listen to the news and questions of the prayers," he says. "Yet if its the beat and the music that draws you into the meaning, there's nothing wrong with that."

## JAMUL INDIAN FAMILIES

# Cemetery Houses The Living

By ERNESTO FLORES  
In 1912, when San Diego was still a part of the Roman Catholic Diocese of Monterey, about three acres of hilly land in Jamul was turned over to the church by a realty company for use as a cemetery for Indians.

To fulfill that stipulation, the church for years has buried hundreds of Indians in the cemetery. It also erected a small chapel where services for the dead are held.

That the church regards the property as simply a place of burial was confirmed by administrators of the San Diego Roman Catholic Diocese. "As far as we are concerned the land is a cemetery and it will remain that way," they said.

### SOME LIVE THERE

Actually, only a small portion of the land has been used as a burial ground. The church, for years, has allowed Indians to live on the open areas. Today about seven families make their homes on the cemetery land.

The families, who come from various tribes in the county, live under extremely poor conditions. Having no plumbing, they get their supply from a lone well pump at the bottom of a dry wash.

They have no electricity, no sewage system and no transportation except one or two dilapidated autos. Their houses are wooden shacks surrounded by piles of junk and garbage.

In spite of these problems, however, many of them express a desire to live and die there as their parents and grandparents before them.

Church authorities are not particularly happy with the activities of various groups taking an interest in the Indians at Jamul. Because of such activities, publicity has been given the plight of the Indians.

A church spokesman said he hopes the publicity about the Indians living in the cemetery will not reflect adversely on the church. He added, "we have tried our best to help them. They should do something to help themselves, too."

Mrs. Isabel Rosales, 77, is the oldest resident of the place. She said she has lived there all her life and she remembers the time when there were more Indians living there.

"Many of them are buried in that cemetery," she said, pointing work-worn fingers at the rows of wooden crosses on a hill about 500 yards away. "Others left and didn't come back."

Mrs. Rosales' three surviving children all are married and live in other areas of the county. She lives alone. She said she has no place to go and intends to end her days there.

### WON'T MOVE

This thinking is shared by Mrs. Marie Toggery, 50, whose husband died recently. She said her three children may not think as she, but as far as she is concerned, she is not going to live anywhere else.

Mrs. Toggery's son, Jessie, 19, wants to be a lawyer. His sister, Connie, 18, studies at Grossmont Continuation School and hopes to go to col-

lege next year. The other daughter, Karen, 17, is a student at Granite Hills high school but wants to drop out and work.

Having experienced a marginal existence all their lives, the Toggerys seem to have developed an immunity to suffering. They could even laugh at the thought of death.

Mrs. Toggery was seriously ill for some time.

"I told my mother that if she dies, we just have to bury her in the cemetery," said Jessie jocularly. Mrs. Toggery joined her daughter in laughter.

### NO EVICTION

The family's only means of income is a Veterans Administration benefit for the late Mr. Toggery, who was a veteran. Their monthly check formerly was \$291, but this has been reduced to \$287 for no apparent reason, said Mrs. Toggery.

With this amount they buy food, clothing and other necessities and send the children to school.

The Indians at Jamul have one consolation, however. According to church officials, the diocese has no plan to evict the families.

"Although technically they have no business being there, we can't remove them just like that," a diocesan spokesman said.

Nevertheless, officials have a few complaints. Although the San Diego Gas & Electric Co. has agreed to extend electric lines to that part of Jamul, the residents, except for one family, refuse to spend money to bring power to their homes.

### GROUPS VISIT THEM

The diocese built a small chapel on a slope of a hill. The Rev. J. Walsh Murray, pastor of St. Pius X Church in Jamul under whose jurisdiction the cemetery falls, said he officiates in most of the funeral services. The church also erected a community house which the fami-

lies use for meetings.

For years the Indian families have been left largely to their own devices. Lately, however, some concerned groups have visited them and asked about their welfare.

One such group is the Grassroot Indian Association which has the objective of "improving the living conditions of Indians in the county by peaceful and legal means."

Frank LaChappa, 22, a Barona Indian from Poway and the association's vice chairman, said his group has met in Jamul twice.

"We are a new group and our first task is to find out the condition of living in various Indian communities. That's why we come here as often as we can," he said.

Earl Ridenhour, himself a part Indian from Oklahoma and a member of the association, said the conditions in which most local Indians live "are so deplorable, we just have to do something to help them."

## FIRST CHURCH RELIGIOUS

3795 GEORGIA STREET CHET CASTLE

9:30 THE WEAKNESS AND THE STRENGTH

11:00 GOD POWER, THE EQUALIZER

## Younger Upholds Tax For Cable TV

SAN FRANCISCO (AP) — Atty. Gen. Evelle Young has ruled that California's 332 general law cities can build and run their own cable television systems and tax citizens to fund the operation.

In the opinion requested by Senate President pro tem James Mills of San Diego, Younger said such a system is

"a public work" and could be run as a public utility.

The state's 75 charter cities, including most major cities, were not covered by the ruling. Most cable television systems built to date have been private ventures.

Revenues for the system could come from general obligation bonds and available tax money, Younger said.

IN EL CAJON  
CALVARY BAPTIST CHURCH  
10:15 a.m.  
Rev. DAVE MARSTELLER  
7:00 p.m. — WEDNESDAY — REEF F.M.  
— LINCOLN

THE EV PRESBYTERIAN of San I HWY. 165  
WILLIAM D. LIVINGSTON  
"HEATHER HER HAIR"  
ADULT CLASS 9:00 AM - 11:00 AM  
SUNDAY SCHOOL 9:00 AM  
Morning Worship 10:00 AM  
Church Office 10 to 4 Mon

EX C

# RELIGION

## Child Worship Needs Stressed In New Book

WASHINGTON (UPI) — One of the most difficult problems of parents, Sunday school teachers and pastors face is making the experience of worship meaningful and rewarding for children.

Adult worship is largely word oriented and makes worshippers spectators rather than participants. All too often, children's worship is little more than an insipid and simplified version of adult services.

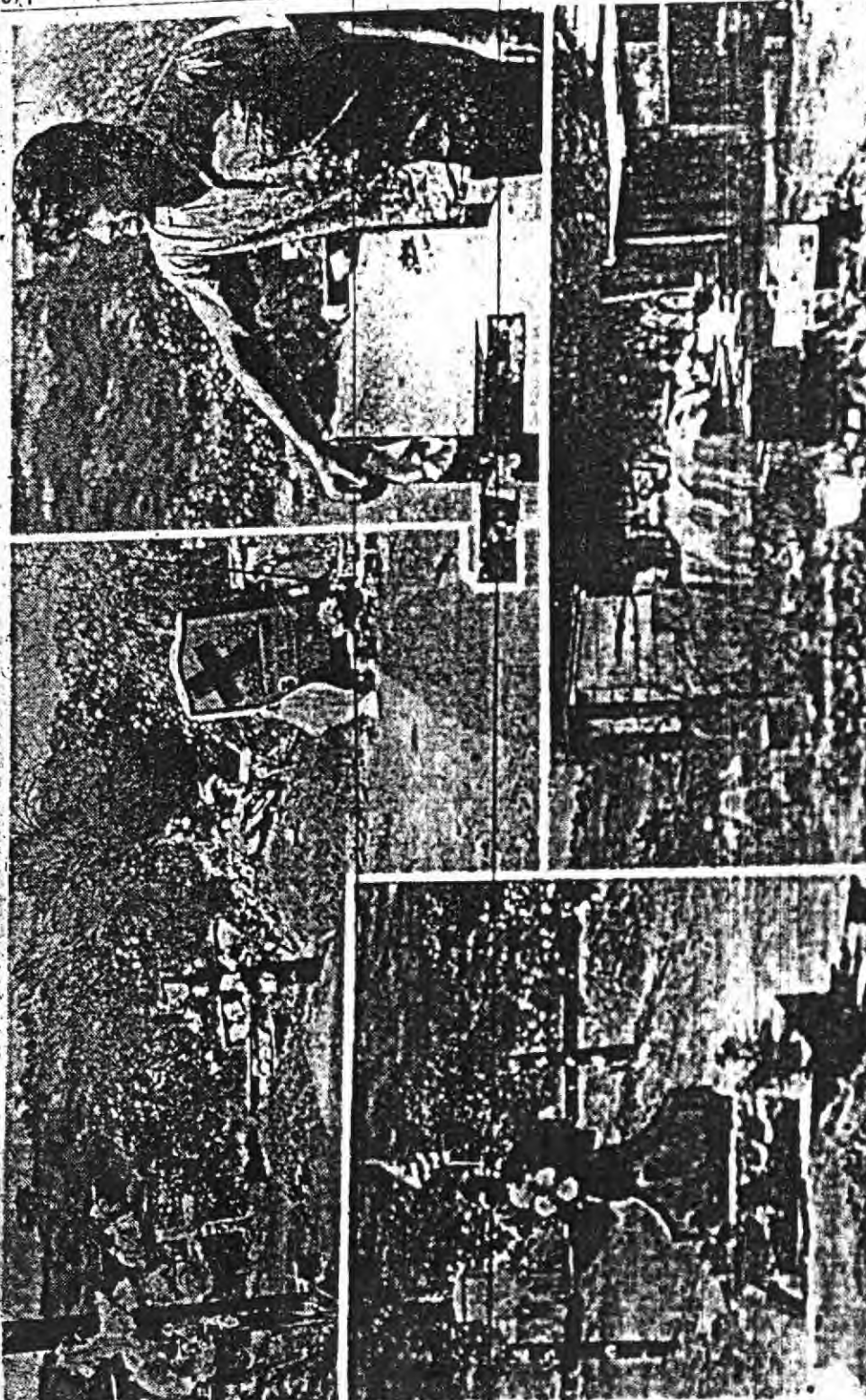
Fortunately, there are signs the situation is changing.

Not long ago, the Liturgical Conference, an independent association concerned with renewal of the life and worship of the Christian church, published a 200-page loose leaf book called "Children's Liturgies."

What makes "Children's Liturgies" so potentially useful is the way it capitalizes both on children's wonder and awe about the world and their spontaneous yearning for meaning in times of awe by length of time.

Now the conference has issued a supplement to the book by devoting the entire volume to monthly prayers and liturgies to be used during a child's children's ministry.

Published by the Liturgical Conference, the book is available for \$2.50. It is available from the Liturgical Conference, 1000 North Dearborn Street, Chicago, Ill. 60610.



Frank Lechappa, upper right, a Barona Indian, inspects well-tended graves at Indian Catholic Cemetery in Jamul. One grave is that of veteran Daniel Akkamas.

## Rabbi Attracts Youth With Rock Service

By DEANA DEMALICO  
A rabbi at a synagogue in San Diego is attracting a new generation of youth with a rock service.

## Cemetery Houses The Living

By FRANKLO FLORES  
Church authorities are not particularly happy with the activities of various groups holding an interest in the graves of Jamul. Because of such activities, publicity has been given the plight of the cemetery.

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D

RECORDING REQUESTED BY 258

FILE/PAGE NO. 78-554597  
BOOK 1978  
RECORDED REQUEST OF GRANTEE

SURVEY MONUMENT PRESERVATION USE/FEE \$10.00

AND WHEN RECORDED MAIL TO

Name Bureau of Indian Affairs  
Street Southern California Agency  
Address 5750 Division Street, Suite 201  
City & State Riverside, California 92506

Dec 27 1 49 PM '78  
OFFICIAL RECORDS RECORDER  
SAN DIEGO COUNTY, CALIF.

\$5.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TAX ROLL PARCEL NO. 597-080-01

### GRANT DEED

DOCUMENTARY TRANSFER TAX \$ - 0 -  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED.

OR COMPUTED ON FULL VALUE LESS LIENS AND ENCUMBRANCES REMAINING AT TIME OF SALE.

Signature of Declarant *William H. Gravelle, Agency*  
Agent determining tax. Firm Name *Bureau of Indian Affairs*

THIS INDENTURE, made the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

BETWEEN Donald L. Daley and Lawrence A. Daley

the parties of the first part

and The United States of America in trust for such Jamul Indians of one-half degree or more Indian blood as the Secretary of the Interior may designate

WITNESSETH: That the said parties of the first part, ~~in and to the consideration of the second part~~

do by these presents, GRANT for a valuable consideration unto the said parties of the second part and to their heirs and assigns forever, all that certain \_\_\_\_\_ or parcel of land, situate, lying and being in the \_\_\_\_\_ County of San Diego and State of California and bounded and particularly described as follows, to-wit: SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

ACCEPTANCE OF CONVEYANCE BY THE UNITED STATES IS TO BE ATTACHED HERETO AS EXHIBIT "B" AND RECORDED WITH THIS DEED.  
THIS CONVEYANCE IS MADE IN ACCORDANCE WITH SECTIONS 5 AND 19 OF THE INDIAN REORGANIZATION ACT OF JUNE 18, 1934 (48 Stat. 985 and 988; 25 U.S.C. 465 and 479) AND MADE SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD IN FAVOR OF THE PUBLIC OR THIRD PARTIES.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said parties of the second part, and to their heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seal, the day and year first above written.

X *Donald L. Daley*  
X *Lawrence A. Daley*  
Donald L. Daley and Lawrence A. Daley

STATE OF CALIFORNIA, }  
County of San Diego } ss.

On December 12, 1978, before me, the undersigned, a Notary Public in and for said State, personally appeared Lawrence A. Daley and Donald L. Daley

known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

L. E. ARTHUR  
Notary Public in and for the State of California  
My Commission Expires April 9, 1982

*L. E. Arthur*  
Notary Public in and for said State.

Title Order No. \_\_\_\_\_ Escrow or Loan No. \_\_\_\_\_  
M&L TAX STATEMENTS TO NAME ADDRESS ZIP

78-554597

D

## LEGAL DESCRIPTION

All that portion of Rancho Jamul, in the County of San Diego, State of California, according to L.S. Map thereof No. 430, filed in the Office of the Recorder of said San Diego County, May 28, 1931, more particularly described as follows:

Beginning at corner R.J. 16 as shown on said L.S. Map No. 430; thence along the Northerly line of said Rancho Jamul S.  $88^{\circ}42' DD''$  E., 529.24 feet (record N.  $88^{\circ}42'$  W., 530.52 feet) to the Westerly line of that certain parcel of land noted Indian Cemetery on said L.S. Map No. 430; thence along said Westerly line S.  $01^{\circ}20'53''$  W., 239.66 feet (record N.  $01^{\circ}18'$  E., 239.0 feet) to the Southwest corner of said Indian Cemetery; thence along the Southerly line of said Indian Cemetery S.  $88^{\circ}39'07''$  E., 83.55 feet (N.  $88^{\circ}42'$  W., 83.5 feet) to the TRUE POINT OF BEGINNING; thence continuing along said Southerly line as follows: N.  $01^{\circ}20'53''$  E., 59.94 feet (record S.  $01^{\circ}18'$  W., 59.9 feet); N.  $44^{\circ}50'53''$  E., 88.55 feet (record S.  $44^{\circ}48'$  W., 88.5 feet); N.  $87^{\circ}54'53''$  E., 665.17 feet (record S.  $87^{\circ}52'$  W., 664.77 feet); N.  $01^{\circ}20'53''$  E., 58.04 feet (record S.  $01^{\circ}18'$  W., 58.0 feet); S.  $88^{\circ}42'00''$  E., 598.46 feet to the Southwesterly line of Campo Road said point being on a 555.59 foot radius curve concave Southwesterly, a radial line from said points bears S.  $47^{\circ}16'18''$  W.; thence Southeasterly along the arc of said curve, through a central angle of  $D3^{\circ}29'08''$  a distance of 33.80 feet; thence leaving said Southwesterly line N.  $88^{\circ}42'00''$  W., 338.54 feet; thence S.  $21^{\circ}58'02''$  E., 257.03 feet; thence N.  $86^{\circ}48'26''$  W., 721.24 feet; thence N.  $86^{\circ}21'37''$  W., 388.78 feet to the TRUE POINT OF BEGINNING, said described land consisting of 4.66 acres, more or less.

EXHIBIT "A" TO DEED FROM DONALD L. DALEY AND LAWRENCE A. DALEY DATED DECEMBER 12, 1978.

78-554597



UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS Sacramento Area Office 2800 Cottage Way Sacramento, California 95825

ACCEPTANCE OF CONVEYANCE

The United States of America, acting through the undersigned, an authorized representative of the Secretary of the Interior, does hereby accept the conveyance made by Donald L. Daley and Lawrence A. Daley in that certain Grant Deed dated December 12, 1978. Said Grant Deed, with this Acceptance of Conveyance attached, shall be recorded in the Official Records of San Diego County, California.

Date: DEC 21 1978

Charles L. Joybo Jr. ACTING Area Director

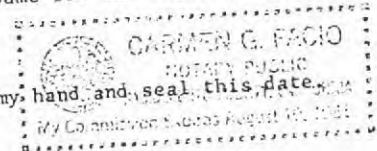
Gregory

Pursuant to the authority delegated by 230 DM 1, 10 BIAM 2 (39 F.R. 32166) and 10 BIAM 3.1 (34 F.R. 637).

State of California ) County of Sacramento ) SS.

On this 21st day of December, 1978, before me, the undersigned, a Notary Public in and for said State, personally appeared Charles L. Joybo Jr., known to me to be the person whose name is subscribed to the within Acceptance of Conveyance and acknowledged to me that he executed the same for the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this date



Carmen G. Facio

EXHIBIT "B" TO DEED FROM DONALD L. DALEY AND LAWRENCE A. DALEY DATED DECEMBER 12, 1978.

State, personally appeared Lawrence A. Daley and Donald L. Daley

known to me to be the person whose names are subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal



L. D. ARTHUR Notary Public in and for said State

L. D. Arthur Notary Public in and for said State

Title Order No.

Escrow or Loan No.

MAIL TAX STATEMENTS TO

NAME

ADDRESS

ZIP

78-554597

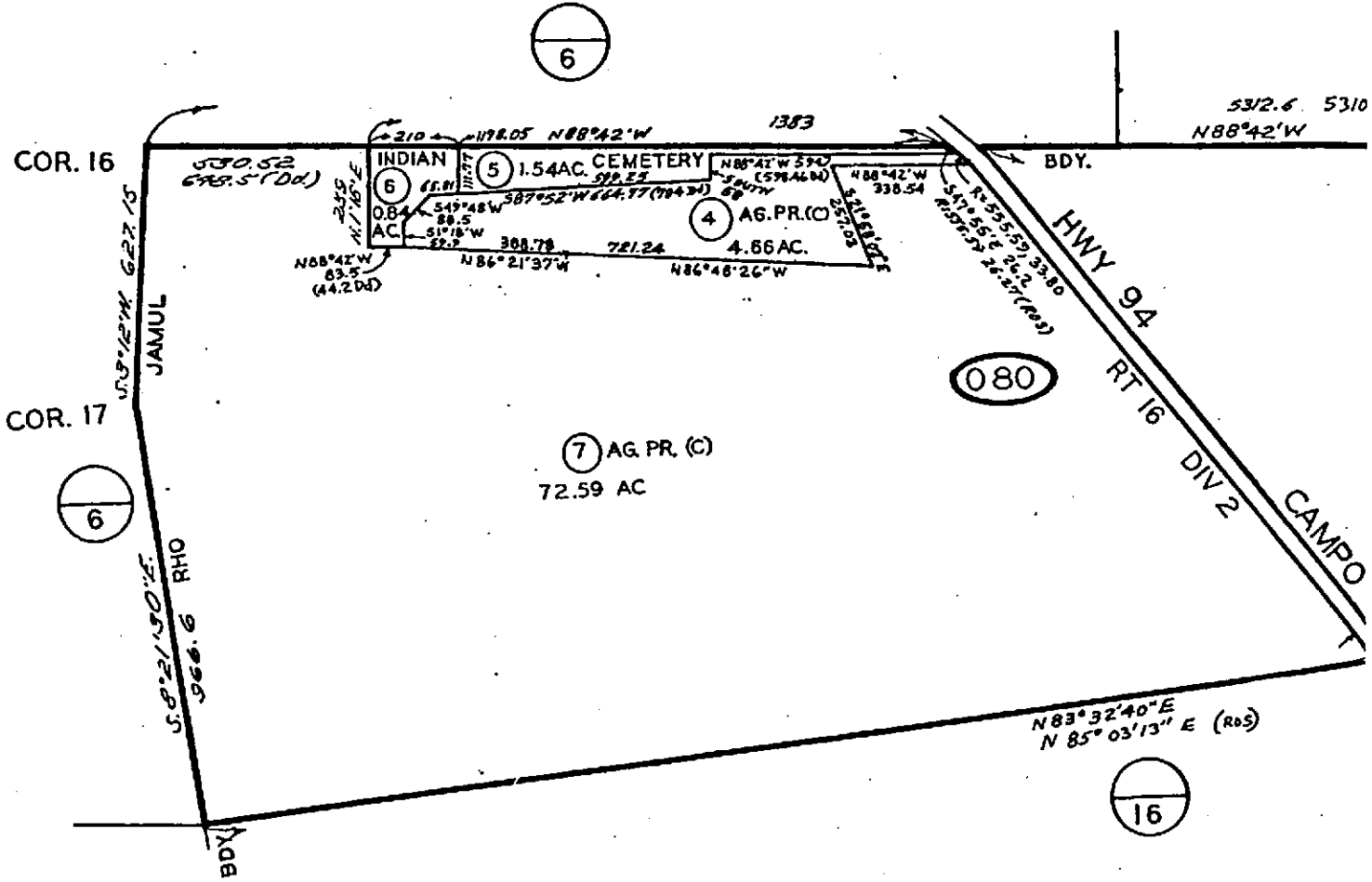
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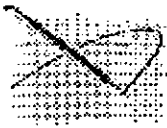
597-080



BERG 9-25-75

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

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Carmen Facio  
05/09/00 11:34 AM

To: Nancy Pierskalla/DC/BIA/DOI@BIA

cc: George Skibine/DC/BIA/DOI@BIA

Subject: Re: Gaming in San Diego

I forwarded your inquiry down to the SCA Supt. I currently have nothing on .  
We'll let you know.

For several years now, Jamul has been talking about getting the contiguous property - @ one point for a casino, and then again, just for a parking lot.

The current trust parcel was accepted into trust in 1978 for Jamul Indians of 1/2 degree (4.66 acres). They've expanded their membership, but the constitution states they have jurisdiction over the Jamul Indian Village. I have no record of the 1978 trust parcel being known as the Jamul Village. There was also a small parcel accepted into trust in 1982 by the SCA Supt. for the Jamul Indian Village (1.37 acre).

Cuyapaibe has a reservation land base that there is no legal access to. They have an off-reservation piece that is leased to the So. Calif. Indian Health Council for 50 years. There's talk that they want the Health Council to move to another location so that Cuyapaibe can use the off-reservation tract for gaming. This tract is about 8.7 acres. An addition to this 8.7 acres was made in 1997 (1.43 acre) & its purpose was as the site of the Pinto Home for Girls and it's also under a 50-year lease. Of course, there's talk about putting more land in trust for Cuyapaibe for relocation of the health facility.

F