



# DAVID J. POWERS

## & ASSOCIATES, INC.

ENVIRONMENTAL CONSULTANTS & PLANNERS

### MEMORANDUM

**DATE:** May 7, 2019

**TO:** Debby Fernandez, City of Santa Clara

**FROM:** Amy Wang, Associate Project Manager

**SUBJECT:** Responses to Comments on the Catalina II Residential Development Project Initial Study for a Mitigated Negative Declaration

#### I. INTRODUCTION

This memorandum addresses the environmental issues raised in public comments received by the City of Santa Clara on the Initial Study for a Mitigated Negative Declaration (MND) prepared for the proposed Catalina II Residential Development project. The Initial Study was circulated for public review for 30 days, from March 27, 2019 through April 26, 2019. A total of four comment letters were received from four public agencies. The letters are attached to this memorandum in Appendix A. This memorandum iterates comments received from the agencies and provides responses.

#### II. RESPONSE TO PUBLIC COMMENTS RECEIVED ON THE INITIAL STUDY FOR A MITIGATED NEGATIVE DECLARATION

##### A. Responses To Comments From California Department Of Transportation (Caltrans) District 4, Dated April 24, 2019

###### Comment A.1: Encroachment Permit

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To obtain an encroachment permit, a completed encroachment permit application, environmental documentation, and six (6) sets of plans clearly indicating the State ROW, and six (6) copies of signed and stamped traffic control plans must be submitted to:

Office of Encroachment Permits, California DOT  
District 4, P.O. Box 23660  
Oakland, CA 94623-0660.

Response A.1: Caltrans' comments on the encroachment permit process requirement (applicable to the project's utility improvement work on El Camino Real) is noted. No response is required.

**Comment A.2:** Active Transportation

The Caltrans District 4 Bike Plan (Plan) for the San Francisco Bay Area was developed within the framework of *Toward an Active California*, the California State Bicycle and Pedestrian Plan. This framework includes an overall vision, goals, objectives, and strategies to improve bicycle safety and mobility throughout the State. The District 4 Bike Plan, the first of its kind in the State, evaluates bicycle needs on and across the Bay Area's State transportation network and identifies infrastructure improvements to enhance bicycle safety and mobility and remove some of the barriers to bicycling in the region. This Plan will guide District 4 and its partners to develop an integrated bicycle network for the Bay Area.

Many of the improvements identified in the Plan are conceptual and will require further study and coordination with local jurisdictions and stakeholders. The Plan will be updated regularly as future needs and opportunities are identified and evaluated. Fair Share contributions need to be considered for the project below:

- Provide a Class IV separated bikeway on El Camino Real (Hwy 82) from Lawrence Expressway to I-880 in the City of Santa Clara (Project ID SC-82-C03)

**Response A.2:** The comment requests a fair-share contribution for installation of Class IV separated bikeway on El Camino Real from Lawrence Expressway to Interstate 880 in the City of Santa Clara, an improvement identified in the Caltrans *District 4 Bike Plan*. The Metropolitan Transportation Commission (MTC) is the transportation planning, coordinating, and financing agency for Santa Clara County, which includes the City of Santa Clara. In order to collect fair-share fees for a transportation improvement, it must be included in a Regional Transportation Plan (RTP) by the MTC to initiate a funding program for the improvement. *Plan Bay Area 2040* is the most current RTP adopted by the MTC. A review of *Plan Bay Area 2040* shows the improvement referenced above is not included in *Plan Bay Area 2040*; therefore, no funding program is in place to collect fair-share fees for this improvement. Furthermore, as discussed in Section 4.16.2(a,f) of the Initial Study (see Page 80), the project would not result in a significant impact to bicycle facilities; therefore, mitigation is not required.

**B. Responses To Comments From Native American Heritage Commission, Dated April 11, 2019**

**Comment B.1:** The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration prepared for the above referenced project. The review included the Introduction and Project Description; and the Environmental Checklist and Impact Discussion, section 4.5, Cultural Resources and Tribal Cultural Resources, prepared by David J. Powers & Associates, Inc. for the City of Santa Clara. We have the following concern(s):

1. While consultation requirements under AB-52 have technically been met, the NAHC recommends that consultation outreach to the tribes on the NAHC list is consistent with Best Practices. Please refer to: <http://nahc.ca.gov/wp->

**Response B.1:** As described in Section 4.5.2(e) of the Initial Study (see Page 37), no known tribal cultural resources are known to be present on the site and to date, no tribes have contacted the City to request they be notified of projects pursuant to AB 52. In the event tribal resources are encountered during construction, they would be protected through implementation of mitigation measure MM CUL-1.1 (see Page 36 of the Initial Study). This mitigation measure will reduce impacts to tribal cultural resources, if they are encountered, to a less than significant level.

**Comment B.2:** 2. Mitigation for inadvertent finds of human remains is incomplete or inaccurate. Please refer to California Public Resources Code § 5097.98 for the process of designating a MLD for human remains determined to be Native American.

**Response B.2:** Mitigation measure MM CUL-1.2 of the Initial Study (see Page 37) provides that if the County Coroner determines that human remains are of Native American origin, the Coroner will contact the Native American heritage Commission (NAHC) immediately, for an identification of the most likely descendants (MLD). Consistent with California Public Resources Code Section 5097.98, additional clarifying text has been added to the end of MM CUL-1.2 to further describe the MLD process (see Page 5 of this memo).

**Comment B.3:** 3. Cultural and Tribal Cultural Resource assessments are not documented. These should adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources. The lack of documented resources does not preclude inadvertent finds, which should be addressed in the mitigation measures.

**Response B.3:** Refer to Response B.1.

#### **C. Santa Clara Valley Transportation Authority, Dated April 26, 2019**

**Comment C.1:** Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Initial Study for 39 townhouses on 1.7 acres on the north side of El Camino Real, 345 feet east of Lincoln Street. We have the following comments.

The El Camino Real Corridor is VTA's highest ridership and most important corridor within Santa Clara County. VTA supports increased development densities located along El Camino Real that create sustainable, walkable and activated places. Focusing increased densities along transit corridors provide options for people to reduce solo driving and improve options for people to walk, bike and take transit.

VTA recognizes that a one-size-fits-all approach isn't always appropriate for designing places. There are, however, consistently applied fundamental principles that work together to enhance transit and create great places. The Catalina project falls short for what is considered viable density for a robust transit corridor such as El Camino Real.

El Camino Real represents one of the greatest opportunities and places in Santa Clara County to create memorable places with an intensity of uses to attract people for work, shop and play. VTA plays a significant role in moving people, and to support transit and the built environment surrounding it. Projects that move forward on El Camino Real should contain significantly higher densities. We look forward to continuing to work with the City of Santa Clara as the El Camino Real Specific Plan progresses to achieve these shared goals of creating great communities that serve not only the needs of City residents and businesses but the region as a whole.

**Response C.1:** As described in Section 4.10.2(b) of the Initial Study (see Page 59-60), the project site has a General Plan land use designation of *Community Mixed-Use*, which allows a density of 20 to 36 dwelling units/acre [du/ac]. The project is consistent with the General Plan land use designation by redeveloping the 1.7-acre site with 39 townhouse units, resulting in a density of 23 du/ac; therefore, the density proposed is consistent with the City's General Plan and would not result in a land use impact.

**D. Santa Clara Valley Water District, Dated April 22, 2019**

**Comment D.1:** The Santa Clara Valley Water District (Valley Water) has reviewed the Mitigated Negative Declaration (MND) for Catalina II Residential Development (APN 224-48-004, -005, -006) dated March 25, 2019. There is no Valley Water right of way or facilities at the project site; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water encroachment permit is not required for the proposed improvements. We appreciate the opportunity to review this document.

**Response D.1:** No response is required.



### Initial Study Text Addition

This section contains an addition to the text of the Catalina II Residential Development Project Initial Study dated March 2019. New language is underlined.

Page 37: **ADD** the following paragraph to the end of MM CUL-1.2:

**MM CUL-1.2:** In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) immediately. Once NAHC identifies the most likely descendants, the descendants shall make recommendations regarding proper burial, which shall be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

The descendants may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.

## **Appendix A: Initial Study Comment Letters**

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**Amy Wang**

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**From:** Debby Fernandez <DFernandez@santaclaraca.gov>  
**Sent:** Wednesday, April 24, 2019 9:37 AM  
**To:** Amy Wang  
**Cc:** Stephen E. Schott; Jim Sullivan (jsullivan@d@yahoo.com); Cory Kusich  
**Subject:** FW: Catalina II Residential Project MND GTS #04-SCL-2019-00562 GTS ID 15090

See DOT comments below.

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**From:** Chop, Zachary@DOT <zachary.chop@dot.ca.gov>  
**Sent:** Wednesday, April 24, 2019 9:36 AM  
**To:** Debby Fernandez <DFernandez@santaclaraca.gov>  
**Cc:** Maurice, Patricia@DOT <patricia.maurice@dot.ca.gov>  
**Subject:** Catalina II Residential Project MND GTS #04-SCL-2019-00562 GTS ID 15090

Ms. Fernandez,

Thank you for including Caltrans in the environmental review process for the Catalina II Residential Project MND. Please be advised of our encroachment permitting process, detailed below, as well as our Active Transportation fair share contribution request:

**Encroachment Permit**

Please be advised that any work or traffic control that encroaches onto the State ROW requires an encroachment permit that is issued by Caltrans. To obtain an encroachment permit, a completed encroachment permit application, environmental documentation, and six (6) sets of plans clearly indicating the State ROW, and six (6) copies of signed and stamped traffic control plans must be submitted to:

Office of Encroachment Permits, California DOT  
District 4, P.O. Box 23660  
Oakland, CA 94623-0660.

To download the permit application and obtain more information, visit  
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

**Active Transportation**

The Caltrans District 4 Bike Plan (Plan) for the San Francisco Bay Area was developed within the framework of *Toward an Active California*, the California State Bicycle and Pedestrian Plan. This framework includes an overall vision, goals, objectives, and strategies to improve bicycle safety and mobility throughout the State. The District 4 Bike Plan, the first of its kind in the State, evaluates bicycle needs on and across the Bay Area's State transportation network and identifies infrastructure improvements to enhance bicycle safety and mobility and remove some of the barriers to bicycling in the region. This Plan will guide District 4 and its partners to develop an integrated bicycle network for the Bay Area.

Many of the improvements identified in the Plan are conceptual and will require further study and coordination with local jurisdictions and stakeholders. The Plan will be updated regularly as future needs and opportunities are identified and evaluated. Fair Share contributions need to be considered for the project below:

- Provide a Class IV separated bikeway on El Camino Real (Hwy 82) from Lawrence Expressway to I-880 in the City of Santa Clara (Project ID SC-82-C03)

Thanks!

Zachary Chop  
Associate Transportation Planner  
Office of System & Regional Planning  
Caltrans District 4  
111 Grand Ave Oakland Ca 94612  
(510) 622-1643



STATE OF CALIFORNIA  
NATIVE AMERICAN HERITAGE COMMISSION  
Cultural and Environmental Department  
1550 Harbor Blvd., Suite 100  
West Sacramento, CA 95691  
Phone (916) 373-3710  
Email: [nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
Website: <http://www.nahc.ca.gov>

Gavin Newsom, Governor



April 11, 2019

Debby Fernandez  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050

Also sent via e-mail: [dfernandez@santaclaraca.gov](mailto:dfernandez@santaclaraca.gov)

RE: SCH# 2019039150, Catalina II Residential Development Project, City of Santa Clara; Santa Clara County, California

Dear Ms. Fernandez:

The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration prepared for the above referenced project. The review included the Introduction and Project Description; and the Environmental Checklist and Impact Discussion, section 4.5, Cultural Resources and Tribal Cultural Resources, prepared by David J. Powers & Associates, Inc. for the City of Santa Clara. We have the following concern(s):

1. While consultation requirements under AB-52 have technically been met, the NAHC recommends that consultation outreach to the tribes on the NAHC list is consistent with Best Practices. Please refer to: [http://nahc.ca.gov/wp-content/uploads/2015/04/AB52TribalConsultationRequirementsAndBestPractices\\_Revised\\_3\\_9\\_16.pdf](http://nahc.ca.gov/wp-content/uploads/2015/04/AB52TribalConsultationRequirementsAndBestPractices_Revised_3_9_16.pdf)
2. Mitigation for inadvertent finds of human remains is incomplete or inaccurate. Please refer to California Public Resources Code § 5097.98 for the process of designating a MLD for human remains determined to be Native American.
3. Cultural and Tribal Cultural Resource assessments are not documented. These should adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources. **The lack of documented resources does not preclude inadvertent finds**, which should be addressed in the mitigation measures.

Agencies should be aware that AB 52 does not preclude them from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. For that reason, we urge you to continue to request Native American Tribal Consultation Lists and Sacred Lands File searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>. Additional information regarding AB 52 can be found online at [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf), entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

The NAHC recommends lead agencies consult with all California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources.

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions, please contact me at my email address: [gayle.totton@nahc.ca.gov](mailto:gayle.totton@nahc.ca.gov).

Sincerely,

*Gayle Totton*  
Gayle Totton, B.S., M.A., Ph. D  
Associate Governmental Program Analyst

Attachment  
cc: State Clearinghouse

The California Environmental Quality Act (CEQA)<sup>1</sup>, specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment.<sup>2</sup> If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.<sup>3</sup> In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended in 2014 by Assembly Bill 52. (AB 52).<sup>4</sup> **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015.** AB 52 created a separate category for "tribal cultural resources"<sup>5</sup>, that now includes "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment."<sup>6</sup> Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.<sup>7</sup> Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code §65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. **Both SB 18 and AB 52 have tribal consultation requirements.** Additionally, if your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966<sup>8</sup> may also apply.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

#### **Pertinent Statutory Information:**

##### **Under AB 52:**

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a **lead agency** shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice.

A **lead agency** shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project.<sup>9</sup> and **prior to the release of a negative declaration, mitigated negative declaration or environmental impact report.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18)."<sup>10</sup>

The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects.<sup>11</sup>

##### **1. The following topics are discretionary topics of consultation:**

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.<sup>12</sup>

With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process **shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10.** Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public.<sup>13</sup>

If a project may have a significant impact on a tribal cultural resource, **the lead agency's environmental document shall discuss** both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.

<sup>1</sup> Pub. Resources Code § 21000 et seq.

<sup>2</sup> Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)

<sup>3</sup> Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

<sup>4</sup> Government Code 65352.3

<sup>5</sup> Pub. Resources Code § 21074

<sup>6</sup> Pub. Resources Code § 21084.2

<sup>7</sup> Pub. Resources Code § 21084.3 (a)

<sup>8</sup> 154 U.S.C. 300101, 36 C.F.R. § 800 et seq.

<sup>9</sup> Pub. Resources Code § 21080.3.1, subds. (d) and (e)

<sup>10</sup> Pub. Resources Code § 21080.3.1 (b)

<sup>11</sup> Pub. Resources Code § 21080.3.2 (a)

<sup>12</sup> Pub. Resources Code § 21080.3.2 (a)

<sup>13</sup> Pub. Resources Code § 21082.3 (c)(1)

- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.<sup>14</sup>

Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.<sup>15</sup>

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 **shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program**, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.<sup>16</sup>

If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, **the lead agency shall consider feasible mitigation** pursuant to Public Resources Code §21084.3 (b).<sup>17</sup> An environmental impact report **may not be certified**, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days.<sup>18</sup>

***This process should be documented in the Tribal Cultural Resources section of your environmental document.***

#### **Under SB 18:**

Government Code §65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described §5097.9 and §5091.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code §65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Public Resources Code §5097.9 and §5097.993.

- SB 18 applies to **local governments** and requires them to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)
- **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.**<sup>19</sup>
- **There is no Statutory Time Limit on Tribal Consultation under the law.**
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,<sup>20</sup> the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction.<sup>21</sup>
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
  - The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation.<sup>22</sup>

#### **NAHC Recommendations for Cultural Resources Assessments:**

- Contact the NAHC for:

<sup>14</sup> Pub. Resources Code § 21082.3 (b)

<sup>15</sup> Pub. Resources Code § 21080.3.2 (b)

<sup>16</sup> Pub. Resources Code § 21082.3 (a)

<sup>17</sup> Pub. Resources Code § 21082.3 (e)

<sup>18</sup> Pub. Resources Code § 21082.3 (d)

<sup>19</sup> (Gov. Code § 65352.3 (a)(2)).

<sup>20</sup> pursuant to Gov. Code section 65040.2,

<sup>21</sup> (Gov. Code § 65352.3 (b)).

<sup>22</sup> (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).



- A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
- A Native American Tribal Contact List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - If part or the entire APE has been previously surveyed for cultural resources.
  - If any known cultural resources have been already been recorded on or adjacent to the APE.
  - If the probability is low, moderate, or high that cultural resources are located in the APE.
  - If a survey is required to determine whether previously unrecorded cultural resources are present.
- If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

**Examples of Mitigation Measures That May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**

- Avoidance and preservation of the resources in place, including, but not limited to:
  - Planning and construction to avoid the resources and protect the cultural and natural context.
  - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - Protecting the cultural character and integrity of the resource.
  - Protecting the traditional use of the resource.
  - Protecting the confidentiality of the resource.
- Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed.<sup>23</sup>
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.<sup>24</sup>

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.<sup>25</sup> In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

<sup>23</sup> (Civ. Code § 815.3 (c)).

<sup>24</sup> (Pub. Resources Code § 5097.991).

<sup>25</sup> per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).



April 26, 2019

City of Santa Clara  
Department of Planning  
1500 Warburton Avenue  
Santa Clara, CA 95050

Attention: Debby Fernandez

Subject: City File No. PLN2018-13609 / Catalina II Residential

Dear Ms. Fernandez:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Initial Study for 39 townhouses on 1.7 acres on the north side of El Camino Real, 345 feet east of Lincoln Street. We have the following comments.

The El Camino Real Corridor is VTA's highest ridership and most important corridor within Santa Clara County. VTA supports increased development densities located along El Camino Real that create sustainable, walkable and activated places. Focusing increased densities along transit corridors provide options for people to reduce solo driving and improve options for people to walk, bike and take transit.

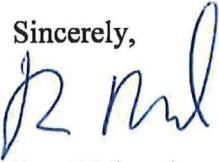
VTA recognizes that a one-size-fits-all approach isn't always appropriate for designing places. There are, however, consistently applied fundamental principles that work together to enhance transit and create great places. The Catalina project falls short for what is considered viable density for a robust transit corridor such as El Camino Real.

El Camino Real represents one of the greatest opportunities and places in Santa Clara County to create memorable places with an intensity of uses to attract people for work, shop and play. VTA plays a significant role in moving people, and to support transit and the built environment surrounding it. Projects that move forward on El Camino Real should contain significantly higher densities. We look forward to continuing to work with the City of Santa Clara as the El Camino Real Specific Plan progresses to achieve these shared goals of creating great communities that serve not only the needs of City residents and businesses but the region as a whole.

City of Santa Clara  
April 26, 2019  
Page 2

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in blue ink, appearing to read "R Molseed".

Roy Molseed  
Senior Environmental Planner

SC1902





File: 33913  
Guadalupe River

April 22, 2019

Ms. Debby Fernandez  
City of Santa Clara  
Planning Division  
1500 Warburton Avenue  
Santa Clara, CA 95050

Subject: Mitigated Negative Declaration for Catalina II Residential Development Project  
(APN 224-48-004, -005, -006) – PLN2018-13609, PLN2018-13610 and  
CEQ2018-01065

Dear Ms. Fernandez:

The Santa Clara Valley Water District (Valley Water) has reviewed the Mitigated Negative Declaration (MND) for Catalina II Residential Development (APN 224-48-004, -005, -006) dated March 25, 2019.

There is no Valley Water right of way or facilities at the project site; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water encroachment permit is not required for the proposed improvements.

We appreciate the opportunity to review this document. If you have any questions, please contact me at (408) 630-3157 or [kthai@valleywater.org](mailto:kthai@valleywater.org).

Sincerely,

Kevin Thai  
Assistant Engineer II  
Community Projects Review Unit

cc: U. Chatwani, C. Haggerty, K. Thai, File

