

MEMORANDUM

DATE August 23, 2017

TO Krinjal Mathur, Planner, City of San José

FROM Alexis Mena, Senior Associate, PlaceWorks

SUBJECT Alviso Park Master Plan Update Initial Study and Mitigated Negative Declaration Response to Comments

The 30-day public comment period for the Alviso Park Master Plan Update Initial Study and Mitigated Negative Declaration (IS/MND) started on June 30, 2017 and comments were accepted through Monday, July 31, 2017. Comment letters submitted during this public comment period are attached to this Response to Comments Memorandum. Table 1, below, lists and provides a brief response to each comment that was received.

The comments and responses shown in this Response to Comments Memo do not require any “substantial revisions” to the IS/MND as defined in the California Environmental Quality Act (CEQA) Guidelines Section 15073.5. No new avoidable significant impacts have been identified and no mitigation measures or project revisions must be added in order to reduce the effect to insignificance. Accordingly, no recirculation of the IS/MND is required.

This Response to Comments Memorandum, together with the June 2017 IS/MND, constitutes the Final IS/MND for the proposed project.

Attachments:

- » Comment Letter 1: Jean Dresden, July 6, 2017
- » Comment Letter 2: Gayle Totton, Associate Governmental Project Analyst, Native American Heritage Commission, July 12, 2017
- » Comment Letter 3: Roy Molseed, Senior Environmental Planner, Santa Clara Valley Transportation Authority, July 27, 2017
- » Comment Letter 4: Cherise Orange, Associate Planner, County of Santa Clara Parks and Recreation Department, July 28, 2017

TABLE 1 RESPONSE TO COMMENTS ON THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Comment No.	Comment	Response
Comment Letter 1: Jean Dresden, July 6, 2017		
1-1	I note that the section on burrowing owls is boilerplate (i.e. cut and paste) and the language of the section states the developer should decide whether to take one or two days on the survey depending on the size of the site. It seems to me that this professional, the author of the biological analysis, should specify whether this is a large or small site requiring 1 or 2 days to gather information on the presence/absence of owls. Leaving that decision up to the contractor is irresponsible.	The comment pertains to Mitigation Measure BIO-1. Mitigation Measure BIO-1 requires two surveys, regardless of the size of the project site, unless owls are detected during the first survey, in which case a second survey is not required. Both surveys must last a minimum of three hours, and the qualified biologist will determine if additional survey time is required beyond the three-hour minimum.
Comment Letter 2: Gayle Totton, Associate Governmental Project Analyst, Native American Heritage Commission, July 12, 2017		
2-1	<p>The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration prepared for the project referenced above. The review included the Project Description, the Initial Study Environmental Checklist, and the Environmental Analysis, section V Cultural Resources, prepared by PlaceWorks for the City of San Jose. We have the following concerns:</p> <p>1. There are no mitigation measures specifically addressing Tribal Cultural Resources separately. Mitigation measures must take Tribal Cultural Resources into consideration as required under AB-52, with or without consultation occurring. Mitigation language for archaeological resources (as in Project Conditions V (b) - recovery, scientific analysis, professional museum curation, data recovery) is not always appropriate for or similar to measures specifically for handling Tribal Cultural Resources. For sample mitigation measures, please see the California Natural Resources Agency (2016) "Final Text for tribal cultural resources update to Appendix G: Environmental Checklist Form," http://resources.ca.gov/ceqa/docs/ab52/Clean-final-AB-52-App-G-text-Submitted.pdf</p>	The IS/MND does not identify a significant impact to tribal cultural resources (TCR); therefore, no mitigation measures are required. Section 15126.4(a)(3) of the California Environmental Quality Act (CEQA) Guidelines states that mitigation measures are not required for less-than-significant impacts.
2-2	2. Tribal Cultural Resources 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.	The IS/MND identifies that TCR could be inadvertently discovered on the project site. Page 4-43 states, "Although there are no known archeological or paleontological resources, human remains, or tribal cultural resources located on the project site, there is the potential for buried archaeological sites and as-yet-undocumented subsurface resources (i.e., prehistoric/historic cultural, Native American,

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Comment No.	Comment	Response
		<p>and paleontological) to be disturbed by future construction.” The IS/MND discusses that the proposed project would not require any major excavation activities that that it is not expected that native soils would be affected during the construction phase. However, the City would require, as a project condition, that all work stop near prehistoric or historic subsurface cultural resources discovered during ground-disturbing activities, and that a qualified archaeologist be consulted to assess the find and identify appropriate avoidance and mitigation measures.</p>
2-3	<p>The California Environmental Quality Act (CEQA), specifically Public Resources Code section 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. 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. 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).</p> <p>CEOA was amended in 2014 by Assembly Bill 52. (AB 52). 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", 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. Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.[“] 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 may also apply.</p>	<p>The comment is noted. The IS/MND does include an evaluation of potential impacts to TCR. Additionally, the City notified the tribes in the area, per the contact list provided by the NAHC, at the start of the public circulation process. The City sent these tribal contacts the Notice of Intent to Adopt a Mitigated Negative Declaration via email.</p> <p>The proposed project is a master plan update and is not subject to Senate Bill (SB) 18 requirements.</p>

TABLE 1 RESPONSE TO COMMENTS ON THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION

Comment No.	Comment	Response
	Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.	
2-4	<p>Agencies should be aware that AB 52 does not preclude agencies 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, entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".</p> <p>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.</p> <p>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.</p>	The comment is noted. The City of San José appreciates the information and thanks the NAHC for its interest in this project.
Comment Letter 3: Roy Molseed, Senior Environmental Planner, Santa Clara Valley Transportation Authority, July 27, 2017		
3-1	<p>Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Initial Study for an update to the Alviso Park Master Plan. We have the following comments.</p> <p><u>Pedestrian Accommodations and Access to Transit</u></p> <p>There are no existing sidewalks on the east side of Tony P. Santos Street along the park frontage. The project proposes to build a 4-foot wide sidewalk on the east side of Tony P. Santos Street where no sidewalk currently exists, and to build new 6-foot wide sidewalks on both sides of Wilson Way (p. 3-13). It is unclear from the project plans or Initial Study whether these sidewalks will be installed with a sidewalk buffer. Given that the majority of park users are expected to arrive by foot and bicycle (p. 3-6) VTA recommends installing street tree buffers on Tony P Santos Street and along the northern part of Wilson Way where it does not appear additional sidewalk buffers are proposed, per the project Site Plan, Figure 3-4 (p. 3-10).</p>	Sidewalks would be designed and installed consistent with applicable City standards. The park planning is currently in a conceptual phase and specific design specifications for new sidewalks have not yet been developed. The comment does not address the adequacy of the IS/MND and pertains to site and circulation planning issues. The City appreciates VTA's input and will take these comments into consideration as the project moves from the planning phase into the design and implementation phase.

TABLE 1 **RESPONSE TO COMMENTS ON THE INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION**

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	<p>Additionally, VTA recommends that the sidewalk on the east side of Tony P. Santos Street be constructed at least 6-feet wide, similar to on Wilson Way. Resources on pedestrian quality of service, such as the Highway Capacity Manual 2010 Pedestrian Level of Service methodology, indicate that such accommodations improve pedestrian perceptions of comfort and safety on a roadway.</p> <p>VTA supports the creation of internal circulation pathways throughout the park that connect to the bus stop near Alviso Library on North 1st Street. This circulation network will enhance connections for transit riders and provide direct connections to group picnic areas, sports fields and the enhanced community plaza. VTA Route 58 currently runs along North 1st Street and provides access to the park near George Mayne Elementary School and the Alviso Branch Library. As part of VTA's Next Network, Route 58 will be discontinued and Route 59 will be created. Route 59 will provide connections to VTA's Light Rail at Baypointe Station and Old Ironside Station and to Caltrain at Santa Clara Station. For more specific information regarding these changes please visit: nextnetworkvta.org.</p> <p>We also recommend the project include marked pedestrian crossings across North First Street to facilitate access to our bus stop and access between the residential neighborhoods and the park.</p>	
3-2	<p><u>Bicycle Accommodations</u></p> <p>The Initial Study does not contain information about bicycle parking or any transportation analysis regarding expected bicycle trips. VTA suggests further analysis to document how many expected park users will arrive by bicycle; see Section 9.3 in VTA's TIA Guidelines for guidance on analyzing the effects to bicycle users and Section 9.4 for guidance on analyzing site circulation to enhance bicycle trips. VTA supports bicycling as an important transportation mode and thus recommends inclusion of conveniently located bicycle parking for the project. Bicycle parking facilities can include bicycle lockers or secure indoor parking for all-day storage and bicycle racks for short-term parking. VTA's Bicycle Technical Guidelines provide guidance for estimating supply, siting and design for bicycle parking facilities. This document may be downloaded from www.vta.org/bikeprogram.</p>	As stated on page 1-2 of the IS/MND, the IS/MND evaluates potential impacts using the thresholds in Appendix G of the CEQA Guidelines. Provision of parking, including bicycle parking, is not included in the thresholds used in the IS/MND.
3-3	<p><u>Bus Service</u></p> <p>VTA maintains an existing bus stop along the project frontage on North 1st Street, about 230</p>	The comment is noted.

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	<p>feet east of Trinity Park Drive. VTA recommends the project include the following improvements for the bus stop:</p> <ul style="list-style-type: none"> ▪ Install a bus stop bench to VTA specifications ▪ Install a 10' X 55' bus stop pavement pad to VTA specifications ▪ Provide solar-powered real-time information sign (e.g., Digital Bus Stop) to VTA specifications <p>For bus stop related questions, please email bus.stop@vta.org</p>	
Comment Letter 4: Cherise Orange, Associate Planner, County of Santa Clara Parks and Recreation Department, July 28, 2017		
4-1	<p>The County of Santa Clara Parks and Recreation Department (County Parks) submits these comments in response to the City of San Jose's Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) for the Alviso Park Master Plan Update (File No. PP16-132). The intent of the update is to improve and enhance existing park features and amenities. New facilities proposed include an enclosed sun deck adjacent to the swimming pool, shaded structures for picnic areas, outdoor fitness equipment, a dog park, a dedicated San Francisco Bay Trail (R4) segment, as well as youth practice baseball and soccer fields.</p> <p>The County Parks Department is charged with the planning and implementation of <i>The Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan)</i>, an element of the Parks and Recreation Section of the County General Plan adopted by the Board of Supervisors on November 14, 1995. Although responsibility for the actual construction and long-term management of each individual trail varies, the County Parks Department provides general oversight and protection for the overall trail system.</p> <p>The Countywide trail system provides recreational opportunities for residents as well as a safe route for non-vehicular transportation throughout the County. The City of San Jose's commitment to construction and opening of trails is appreciated by the Department. The County Parks Department is in support of the Alviso Park Master Plan Update and the construction of a dedicated segment of the San Francisco Bay Trail.</p>	<p>The comment is noted. The City of San José appreciates the County for its comments and for its interest in this project.</p>

COMMENT LETTER # 1

From: jeanann2@aol.com [mailto:jeanann2@aol.com]

Sent: Thursday, July 06, 2017 8:34 PM

To: Mathur, Krinjal <krinjal.mathur@sanjoseca.gov>

Subject: Re: San Jose Planning: Public Review of Draft IS/MND for the Alviso Park Master Plan Update

I note that the section on burrowing owls is boilerplate (i.e. cut and paste) and the language of the section states the developer should decide whether to take one or two days on the survey depending on the size of the site. It seems to me that this professional, the author of the biological analysis, should specify whether this is a large or small site requiring 1 or 2 days to gather information on the presence/absence of owls. Leaving that decision up to the contractor is irresponsible.

1-1

Thanks

Jean Dresden

STATE OF CALIFORNIA

Edmund G. Brown Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION

Environmental and Cultural Department
 1550 Harbor Blvd., Suite 100
 West Sacramento, CA 95691
 Phone (916) 373-3710
 Fax (916) 373-5471



July 12, 2017

Krinjal Mathur
 City of San Jose
 200 East Santa Clara Street
 San Jose, CA 95113

Sent via e-mail: krinjal.mathur@sanjoseca.gov

Re: SCH# 2017062081, Proposed Alviso Park Master Plan Update Project, City of San Jose; Santa Clara County, California

Dear Mr. Mathur:

The Native American Heritage Commission (NAHC) has reviewed the Mitigated Negative Declaration prepared for the project referenced above. The review included the Project Description, the Initial Study Environmental Checklist, and the Environmental Analysis, section V Cultural Resources, prepared by PlaceWorks for the City of San Jose. We have the following concerns:

1. There are no mitigation measures specifically addressing Tribal Cultural Resources separately. Mitigation measures must take Tribal Cultural Resources into consideration as required under AB-52, **with or without consultation** occurring. **Mitigation language for archaeological resources (as in Project Conditions V (b) - recovery, scientific analysis, professional museum curation, data recovery) is not always appropriate for or similar to measures specifically for handling Tribal Cultural Resources.** For sample mitigation measures, please see the California Natural Resources Agency (2016) "Final Text for tribal cultural resources update to Appendix G: Environmental Checklist Form," <http://resources.ca.gov/ceqa/docs/ab52/Clean-final-AB-52-App-G-text-Submitted.pdf>
2. Tribal Cultural Resources 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.

The California Environmental Quality Act (CEQA)¹, specifically Public Resources Code section 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.² 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.³ 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).⁴ **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"⁵, 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."⁶ Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.⁷ 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 1966⁸ may also apply.

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

¹ Pub. Resources Code § 21000 et seq.

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

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

⁴ Government Code 65352.3

⁵ Pub. Resources Code § 21074

⁶ Pub. Resources Code § 21084.2

⁷ Pub. Resources Code § 21084.3 (a)

⁸ 154 U.S.C. 300101, 36 C.F.R. § 800 et seq.

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2-3

Agencies should be aware that AB 52 does not preclude agencies 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, 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.

Please contact me at gayle.totton@nahc.ca.gov or call (916) 373-3710 if you have any questions.

Sincerely,



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

Attachment

cc: State Clearinghouse

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.⁹ 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)."¹⁰

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.¹¹

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.¹²

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 sections 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.¹³

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

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.¹⁵

Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 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 section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable.¹⁶

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 section 21084.3 (b).¹⁷

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 sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 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.

⁹ Pub. Resources Code § 21080.3.1, subs. (d) and (e)

¹⁰ Pub. Resources Code § 21080.3.1 (b)

¹¹ Pub. Resources Code § 21080.3.2 (a)

¹² Pub. Resources Code § 21080.3.2 (a)

¹³ Pub. Resources Code § 21082.3 (c)(1)

¹⁴ Pub. Resources Code § 21082.3 (b)

¹⁵ Pub. Resources Code § 21080.3.2 (b)

¹⁶ Pub. Resources Code § 21082.3 (a)

¹⁷ Pub. Resources Code § 21082.3 (e)

- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days.¹⁸

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 § 5097.993 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 Sections 5097.9 and 5097.993 of the Public Resources Code.

- 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
- **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.**¹⁹
- 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,²⁰ 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 sections 5097.9 and 5097.993 that are within the city’s or county’s jurisdiction.²¹
- **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.²²

NAHC Recommendations for Cultural Resources Assessments:

- Contact the NAHC for:
 - 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) 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.

¹⁸ Pub. Resources Code § 21082.3 (d)

¹⁹ (Gov. Code § 65352.3 (a)(2)).

²⁰ pursuant to Gov. Code section 65040.2,

²¹ (Gov. Code § 65352.3 (b)).

²² (Tribal Consultation Guidelines, Governor’s Office of Planning and Research (2005) at p. 18).

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.²³
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.²⁴

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.²⁵ 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 section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 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.

²³ (Civ. Code § 815.3 (c)).

²⁴ (Pub. Resources Code § 5097.991).

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



July 27, 2017

City of San Jose
 Department of Planning and Building
 200 East Santa Clara Street
 San Jose, CA 95113

Attention: Krinjal Mathur

Subject: City File No. PP16-132 / Alviso Park Master Plan Update

Dear Ms. Mathur:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Initial Study for an update to the Alviso Park Master Plan. We have the following comments.

Pedestrian Accommodations and Access to Transit

There are no existing sidewalks on the east side of Tony P. Santos Street along the park frontage. The project proposes to build a 4-foot wide sidewalk on the east side of Tony P. Santos Street where no sidewalk currently exists, and to build new 6-foot wide sidewalks on both sides of Wilson Way (p. 3-13). It is unclear from the project plans or Initial Study whether these sidewalks will be installed with a sidewalk buffer. Given that the majority of park users are expected to arrive by foot and bicycle (p. 3-6) VTA recommends installing street tree buffers on Tony P Santos Street and along the northern part of Wilson Way where it does not appear additional sidewalk buffers are proposed, per the project Site Plan, Figure 3-4 (p. 3-10). Additionally, VTA recommends that the sidewalk on the east side of Tony P. Santos Street be constructed at least 6-feet wide, similar to on Wilson Way. Resources on pedestrian quality of service, such as the Highway Capacity Manual 2010 Pedestrian Level of Service methodology, indicate that such accommodations improve pedestrian perceptions of comfort and safety on a roadway.

VTA supports the creation of internal circulation pathways throughout the park that connect to the bus stop near Alviso Library on North 1st Street. This circulation network will enhance connections for transit riders and provide direct connections to group picnic areas, sports fields and the enhanced community plaza. VTA Route 58 currently runs along North 1st Street and provides access to the park near George Mayne Elementary School and the Alviso Branch Library. As part of VTA's Next Network, Route 58 will be discontinued and Route 59 will be created. Route 59 will provide connections to VTA's Light Rail at Baypointe Station and Old Ironside Station and to Caltrain at Santa Clara Station. For more specific information regarding these changes please visit: nextnetwork.vta.org.

3-1

We also recommend the project include marked pedestrian crossings across North First Street to facilitate access to our bus stop and access between the residential neighborhoods and the park.

3-1
cont.

Bicycle Accommodations

The Initial Study does not contain information about bicycle parking or any transportation analysis regarding expected bicycle trips. VTA suggests further analysis to document how many expected park users will arrive by bicycle; see Section 9.3 in VTA's TIA Guidelines for guidance on analyzing the effects to bicycle users and Section 9.4 for guidance on analyzing site circulation to enhance bicycle trips. VTA supports bicycling as an important transportation mode and thus recommends inclusion of conveniently located bicycle parking for the project. Bicycle parking facilities can include bicycle lockers or secure indoor parking for all-day storage and bicycle racks for short-term parking. VTA's Bicycle Technical Guidelines provide guidance for estimating supply, siting and design for bicycle parking facilities. This document may be downloaded from www.vta.org/bikeprogram.

3-2

Bus Service

VTA maintains an existing bus stop along the project frontage on North 1st Street, about 230 feet east of Trinity Park Drive. VTA recommends the project include the following improvements for the bus stop:

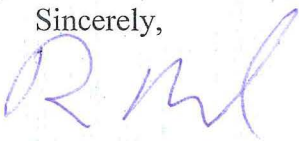
- Install a bus stop bench to VTA specifications
- Install a 10' X 55' bus stop pavement pad to VTA specifications
- Provide solar-powered real-time information sign (e.g., Digital Bus Stop) to VTA specifications

3-3

For bus stop related questions, please email bus.stop@vta.org

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

Sincerely,



Roy Molseed
Senior Environmental Planner

cc: Michael Liw, San Jose Development Services
Patricia Maurice, Caltrans
Brian Ashurst, Caltrans

SJ1729

County of Santa Clara

Parks and Recreation Department

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July 28, 2017

Krinjal Mathur, Environmental Project Manager
City of San Jose
City of San Jose
200 E. Santa Clara St., 3rd Fl. Tower
San Jose, CA 95113 - 1905

SUBJECT: Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) for the Alviso Park Master Plan Update (File No. PP16-132)

To Whom It May Concern:

The County of Santa Clara Parks and Recreation Department (County Parks) submits these comments in response to the City of San Jose's Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) for the Alviso Park Master Plan Update (File No. PP16-132). The intent of the update is to improve and enhance existing park features and amenities. New facilities proposed include an enclosed sun deck adjacent to the swimming pool, shaded structures for picnic areas, outdoor fitness equipment, a dog park, a dedicated San Francisco Bay Trail (R4) segment, as well as youth practice baseball and soccer fields.

The County Parks Department is charged with the planning and implementation of *The Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan)*, an element of the Parks and Recreation Section of the County General Plan adopted by the Board of Supervisors on November 14, 1995. Although responsibility for the actual construction and long-term management of each individual trail varies, the County Parks Department provides general oversight and protection for the overall trail system.

The Countywide trail system provides recreational opportunities for residents as well as a safe route for non-vehicular transportation throughout the County. The City of San Jose's commitment to construction and opening of trails is appreciated by the Department. The County Parks Department is in support of the Alviso Park Master Plan Update and the construction of a dedicated segment of the San Francisco Bay Trail.

If you have questions related to these comments, please call me at (408) 355-2228 or e-mail me at Cherise.Orange@prk.sccgov.org.

Sincerely,
Cherise Orange
Associate Planner

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Ken Yeager, S. Joseph Simitian

County Executive: Jeffrey V. Smith

4-1



