

1073-1087 South Winchester Boulevard
Mixed-Use Project

File Nos. SP20-002 & T20-003

Initial Study / Mitigated Negative Declaration

RESPONSES TO PUBLIC COMMENTS AND TEXT CHANGES

August 2021

CEQA Lead Agency:



City of San José
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, California 95113 Phone: (408) 535-3555

In Consultation with:

EMC Planning Group
Teri Wissler Adam, Vice President and Senior Principal
wissler@emcplanning.com
831-649-1799 ext. 203

Table of Contents

SECTION 1	SUMMARY OF COMMENTS	3
SECTION 2	AGENCIES AND PERSONS COMMENTING ON THE IS/MND	4
SECTION 3	RESPONSE TO COMMENTS.....	5
A.	RESPONSE TO SANTA CLARA COUNTY ROADS AND AIRPORTS DEPARTMENT	5
B.	RESPONSE TO PACIFIC GAS AND ELECTRIC	8
C.	SANTA CLARA VALLEY WATER DISTRICT	9
D.	RUDY SLANKAUSKAS.....	11
E.	CHAIRWOMAN QUIRINA GEARY, TAMIEN NATION.....	12
SECTION 5	RESPONSE TO COMMENTS.....	16

Attachments

Attachment A – All Public Comments to IS/MND During Public Review Period

SECTION 1

SUMMARY OF COMMENTS

The 1073-1087 South Winchester Boulevard Mixed-Use Project Initial Study /Mitigation Negative Declaration (IS/MND) was circulated for public review for a 20-day review period, from May 26, 2021 to June 15, 2021. During the circulation period, the City of San José received five (5) comment letters.

In summary, the comments received on the draft IS/MND did not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. CEQA does not require formal responses to comments on an IS/MND, only that the lead agency consider the comments received [CEQA Guidelines §15074(b)].

Nevertheless, responses to the comments are included in this document to provide a complete environmental record.

The following pages contain a list of the agencies and persons that submitted comments on the IS/MND and the City's responses to comments received on the IS/MND. The specific comments have been excerpted from the letter and are presented as "Comment" with each response directly following ("Response"). A copy of the actual letter submitted to the City of San José is attached to this document.

SECTION 2**AGENCIES AND PERSONS COMMENTING ON
THE IS/MND**

	Comment Received From	Date of Letter	Response on Page
A.	Santa Clara County Roads and Airports Department	June 10, 2021	5
B.	Pacific Gas and Electric	May 27, 2021	8
C.	Santa Clara Valley Water District	June 10, 2021	9
D.	Rudy Slankauskas	May 31, 2021	11
F.	Chairwoman Quirina L. Geary	June 11, 2021	12

SECTION 3

RESPONSE TO COMMENTS

This memo responds to comments on the IS/MND as they relate to the potential environmental impacts of the project under CEQA. Numbered responses correspond to comments in the comment letter. A copy of the comment letter is attached.

A. RESPONSE TO SANTA CLARA COUNTY ROADS AND AIRPORTS DEPARTMENT

Comment A1: Please provide details for proposed TDM program management and any enforcement/fines for not meeting VMT goals, since this project is close to San Tomas Expressway

Response A1: As described in the Transportation/Traffic Section 3.17 of the Initial Study, the project will require the implementation of a Transportation Demand Management (TDM) program. Mitigation Measure TR-1, outlines the required details for the TDM program:

MM TR-1: Prior to the issuance of any planning permits, the project applicant shall implement a Transportation Demand Management (TDM). The plan shall include an annual monitoring requirement establishing an average daily trip (ADT) cap of 36 AM peak-hour trips and 41 PM peak-hour trips. The annual monitoring report must demonstrate the project is within 10 percent of the ADT cap and must be prepared by a traffic engineer. If the project is not in conformance with the trip cap, the project may add additional TDM measures to meet this trip cap. A follow-up report shall be required within six months. If the project is still out of conformance, penalties shall be assessed per Council Policy 5-1. A copy of the TDM plan shall be submitted to the Director of Planning, Building and Code Enforcement, or Director's designee and the Director of the City of San José Department of Public Works prior to issuance of any planning permits. The annual monitoring report shall be submitted to the Director of Planning, Building and Code Enforcement, or Director's designee and the Director of the City of San José Department of Public Works within 10 days from anniversary of building occupancy. The project applicant shall implement one of the following mitigation measures:

- Option A: Telecommuting and Alternative Work Schedules: Encourage 100% of the employees to telecommute, shift work schedules, or commute outside of peak congestion periods on a 9/80 schedule or 9 of 80 hours on alternative work schedule. This measure reduces commute vehicle trips; or
- Option B: Operate a Free Direct Shuttle: Provide shuttle service for at least 15 percent of the project employees that would serve the project site and areas with high concentrations of employed residents. This measure reduces drive-alone commute trips; or
- Option C: Provide Ride-Sharing Programs: Organize a program to match individuals interested in carpooling who have similar commutes for at least 15 percent of the project employees. This measure promotes the use of carpooling and reduces the number of drive-alone trips; or
- Option D:

1. Car Sharing Program: Provide subsidies and promotions, as well as dedicated parking spaces, for carsharing services such as ZipCar, Car2Go, and GetAround, etc for 100 percent of the project employees. Supporting a carsharing program gives people on-demand access to shared fleets of vehicles. Car-sharing reduces personal motorized vehicle dependence, which supports more walking, biking, carpooling, and transit use. Subject to negotiations with the City and possible negotiations with Car Share companies; and
2. Commute Trip Reduction Marketing/Education: Implement marketing/educational campaigns that promote the use of transit, shared rides, and travel through active modes for 100 percent of the project employees. Strategies may include incorporation of alternative commute options into new employee orientations, event promotions, and publications; and
3. Employee Parking “Cash Out” and on-site TDM coordinator: Require Project employers to offer parking "cash-out" for 60 percent of the project employees. Providing a "cash-out" incentives gives employees the choice to forgo subsidized/free parking for a cash payment equivalent to the cost that the employer would otherwise pay for the parking space. Providing an alternative to subsidized/free parking encourages commuters to travel by walking, biking, carpooling, and transit.

As described in the Mitigation Measure, compliance will be confirmed with yearly mitigation reports submitted to the City of San José’s Department of Planning, Building, and Code Enforcement and Department of Public Works. If the project is not in conformance with the trip cap, the project may add additional TDM measures to meet this trip cap. A follow-up report shall be required within six months. If the project is still out of conformance, penalties shall be assessed per Council Policy 5-1.

Under Appendix B (Section C) of Council Policy 5-1, a short grace period not to exceed six (6) months, is provided to Projects that are not in compliance with their Trip Cap requirements based on the annual monitoring report. A non-conforming Project will be required to submit a new Trip Cap implementation plan which includes how and why the already established plan failed and new strategies and measures to attain the Trip Cap. Monetary fees will be assessed if a Project is not in compliance with its Trip Cap after the grace period. The annual monetary fees are set at 1/5th the cost of the Transportation System Improvement(s) values defined in Section D2 of Appendix B of the Policy and collected in the manner defined in this same section. This comment does not result in new or more significant impacts or additional mitigation and therefore, the IS/MND does not require recirculation.

Comment A2: This project and the 1212-1224 South Winchester Boulevard Hotel Project, are in close proximity to each other, combined will generate 100 AM and 116 PM peak hour trips, respectively. The County believes that the Local Transportation Analysis (LTAs) for both projects should include the three following intersections on San Tomas, which are County’s intersections and are within one mile of the proposed projects:

- **Hamilton Ave (CMP)**
- **Payne Ave**

▪ **Williams**

Response A2: As shown in the trip assignment figures for each of the proposed developments (Figure 14, page 34 of the 1073-1087 South Winchester Boulevard Traffic Analysis (Appendix H) and Figure 11, page 29 of the 1212-1224 South Winchester Boulevard Traffic Analysis (Appendix H), the proposed project is projected to generate a total of 437 daily vehicle trips, with 36 trips (20 inbound and 16 outbound) occurring during the AM peak hour and 41 trips (16 inbound and 25 outbound) occurring during the PM peak hour; the hotel project would generate a total of 1,266 daily vehicle trips, with 64 trips (37 inbound and 27 outbound) occurring during the AM peak hour and 75 trips (37 inbound and 38 outbound) occurring during the PM peak hour for a combined total of 100 AM peak hour trips and 116 AM peak hour trips as indicated by the commenter. As stated in the Local Traffic Analysis section of the traffic study prepared for the subject project, intersections were selected for study if the project is expected to add 10 vehicle trips per hour per lane to an intersection that meets one of the following criteria as outlined in the Transportation Analysis Handbook:

- Within a ½-mile buffer from the project’s property line;
- Outside a ½-mile buffer but within a one-mile buffer from the project AND currently operating at D or worse;
- Designated Congestion Management Program (CMP) facility outside of the City’s Infill Opportunity Zones;
- Outside the City limits with the potential to be affected by the project, per the transportation standards of the corresponding external jurisdiction with potential to be affected by the project, per engineering judgement of Public Works.

The following intersections located between a one-half mile and one-mile radii from the project site were included in the study based on the above criteria:

1. Winchester Boulevard and Williams Road
2. Winchester Boulevard and Payne Avenue
3. Winchester Boulevard and Walgrove Way (unsignalized)

The hotel project (1212-1224 South Winchester) included the following intersections in the study:

1. Winchester Boulevard and Williams Road
2. Winchester Boulevard and Payne Avenue
3. Winchester Boulevard and David Avenue/Williamsburg Drive
4. Winchester Boulevard and Hamilton Avenue
5. Winchester Boulevard and Fireside Drive

The San Tomas Expressway intersections with Hamilton Avenue, Payne Avenue and Williams Road do not meet the above the criteria and therefore were not chosen for the intersection study. Furthermore, the use of San Tomas Expressway is expected to be minimal since it does not provide access to I-280 as does Winchester Boulevard. Therefore, the referenced San Tomas Expressway intersections do not meet the City’s selection criteria for study. This comment does not result in new or more significant impacts or additional mitigation and therefore, the IS/MND does not require recirculation.

B. RESPONSE TO PACIFIC GAS AND ELECTRIC

Comment B1: This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.

Response B1: The applicant will comply with all application requirements. This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required.

Comment B2: If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.

Response B2: This project is not part of a larger project. This comment does not address the adequacy of the Draft MND. No further CEQA analysis is required.

Comment B3: An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities

Response B3: The applicant will comply with all application requirements. This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required.

C. RESPONSE TO SANTA CLARA VALLEY WATER DISTRICT

Comment C1: On Sheet C4.0 of the project plans, the name of the receiving body listed in the project site information should be corrected from “San Tomas” to “San Tomas Aquino Creek”.

Response C1: The comment requests a correction to the project plans. The correction of the creek shown on the plans is changed from San Tomas to San Tomas Aquino Creek and is included in Section 4 (Text Changes to the IS/MND). This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required.

Comment C2: Section 4.10.2 on page 96 should be revised to say that Santa Clara County is divided into two subbasins, the Santa Clara Subbasin and Llagas Subbasin, and that the project is in the Santa Clara Subbasin of the Santa Clara Valley Basin. Please refer to Section 1.2 and Figure 1-1 on page 1-2 of the Valley Water 2016 Groundwater Management Plan.

Response C2: The comment requests a correction to labeling of the groundwater subbasins where the project is located. The correction of the subbasins is revised to state that Santa Clara County is divided into two subbasins, the Santa Clara Subbasin and Llagas Subbasin, and that the project is in the Santa Clara Subbasin of the Santa Clara Valley Basin and is included in Section 4 (Text Changes to the IS/MND). This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required.

Comment C3: Section 4.10.2 on page 96 and Part d of Section 4.10.4 on page 105 should define FEMA Flood Zone D as an area where flood hazards are undetermined, but possible.

Response C3: The comment requests a correction to the IS/MND. The correction of the Flood Zone description text is changed to define the FEMA Flood Zone D as an area where flood hazards are undetermined but possible and is included in Section 4 (Text Changes to the IS/MND). This comment does not address the adequacy of the Draft MND. No further CEQA analysis is required.

Comment C4: Part b of Section 4.10.4 on page 102 needs to be revised to note that water service to the project site would be provided by San Jose Water Company, the retailer for this area, not Valley Water, who is the water wholesaler.

Response C4: The comment requests a correction to the IS/MND. The correction of the water service provider text is changed to show that water service to the project site would be provided by San José Water Company, and is included in Section 4 (Text Changes to the IS/MND). This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required.

Comment C5: Part b of Section 4.10.4 on page 103 states that Valley Water has 18 major groundwater recharge facilities. While Valley Water has a complex and interconnected network of groundwater recharge facilities, the reference to the number of facilities should be removed as Valley Water does not categorize groundwater facilities by major or minor and therefore it is not clear how it was determined that there are 18 major facilities.

Response C5: The comment requests a correction to the IS/MND. The correction removes the reference to the specific number of Valley Water facilities, and is included in Section 4 (Text Changes to the IS/MND). This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required

Comment C6: Section 4.16.2 on page 146 should be revised to reflect the correct distance of approximately 1.2 miles to the Los Gatos Creek Trail.

Response C6: The comment requests a correction to the IS/MND. The correction of the distance from the project site to Los Gatos Creek Trail is changed to approximately 1.2 miles, and is included in Section 4 (Text Changes to the IS/MND). This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required

Comment C7: Valley Water records do not show any wells on the project site (APN: 299-25-038); however, it is always possible that a well exists that is not in Valley Water records. Abandoned or unused wells can provide a vertical conduit for contaminants to pollute groundwater. To avoid impacts to groundwater quality, any wells found on-site that will not be used must be properly destroyed in accordance with Ordinance 90-1, which requires issuance of a well destruction permit or registered with Valley Water and protected during construction. Property owners or their representatives should call the Wells and Water Measurement Unit at (408) 630-2660 for more information regarding well permits and registration for the destruction of wells.

Response C7: The comment addresses the issue of unknown wells that may be discovered during construction activities. This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required

D. RESPONSE TO RUDY SLANKAUSKAS

Comment D1: I am very concerned about the project being proposed on Winchester. I can't believe a six-story, 65-foot high, mixed-use building would be considered for that site. The plan calls for the building to be built all the way to the back of the lot making it impossible for a firetruck to get to the back of the building in the event of a fire. It is extremely intrusive to the people who will have this monstrosity towering over their yards and houses. Please vote to stop this project.

Response D1: The project site is designated Mixed Use Commercial in the Winchester Boulevard Urban Village Plan. The Mixed Use Commercial designation allows a density of up to 75 dwelling units per acre for sites larger than 0.7 acre and at least a 0.5 floor area ratio (FAR) for residential/commercial mixed-use projects. The maximum height allowed is 65 feet (5-6 stories) per the Building Height Diagram in the Winchester Boulevard Urban Village Plan. The subject project is approximately 0.82 acres and therefore, the proposed density of 74.4 dwelling units per acre (61/0.82) is appropriate and consistent with the 75 dwelling units per acre allowed for sites larger than 0.7 acres. The project proposes a total height of 65 feet (six stories) and is in conformance with the height standard. The project building would be set back 20 feet from the rear property line consistent with the development standards of the Winchester Boulevard Urban Village Plan.

As part of the Fire Site Review for the project during the Planning stage, the Fire Department reviews 1) General Fire and First Responder site emergency access; 2) Review water supply and hydrant requirements; 3) Location of Fire Command Center; 4) Location of Fire Pump and Generators, and as applicable; and 5) Other site conditions and restraints. The Fire Department has reviewed the plans and requires the applicant to apply for a fire clearance variance. The variance provision is available to all applicants and requires a formal process whereby the applicant must detail the variance proposed and provide justification for the variance. The variance application may be approved or denied by the Fire Marshall and Fire Engineer. The applicant would have to gain approval of the fire variance prior to obtaining a Building Permit. As analyzed in the Hazards and Hazardous Materials Section 4.9 and Public Services Section 4.15 of the Initial Study, the project would comply with and not interfere with the Emergency Response Plans for the City, would not adversely impact fire protection services.

This comment does not address the adequacy of the IS/MND. No further CEQA analysis is required.

E. RESPONSE TO CHAIRWOMAN GEARY

Comment E1: This letter constitutes a formal request for tribal consultation under the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21080.3.1 subdivisions (b), (d) and (e)) for the mitigation of potential project impacts to tribal cultural resource for the above referenced project. Tamien Nation requested formal notice and information for all projects within your agency's geographical jurisdiction and received notification on May 26, 2021, regarding the above referenced project. Tamien Nation requests consultation on the following topics checked below, which shall be included in consultation if requested (Public Resources Code section 21080.3.2, subd. (a):

- Alternatives to the project
- Recommended mitigation measures
- Significant effects of the project

Tamien Nation also requests consultation on the following discretionary topics checked below (Public Resources Code section 21080.3.2, subd. (a):

- Type of environmental review necessary
- Significance of tribal cultural resources, including any regulations, policies or standards used by your agency to determine significance of tribal cultural resources
- Significance of the project's impacts on tribal cultural resources
- Project alternatives and/or appropriate measures for preservation or mitigation that we may recommend, including, but not limited to:

- (1) Avoidance and preservation of the resources in place, pursuant to Public Resources Code section 21084.3, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks or other open space, to incorporate the resources with culturally appropriate protection and management criteria;
- (2) Treating the resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resources, including but not limited to the following:
 - a. Protecting the cultural character and integrity of the resource;
 - b. Protection the traditional use of the resource; and
 - c. Protecting the confidentiality of the resource.
- (3) 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.
- (4) Protecting the resource.

Response E1: As discussed on pages 164-166 of the draft Initial Study, the City sent a letter to tribal representatives in the area to welcome participation in a consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City in 2017, consistent with Assembly Bill 52 (AB 52). At the time of preparation of the Initial Study, no Native American tribes that are or have been traditionally affiliated with the project vicinity have requested notification from the City of San Jose, except for projects within the Coyote Valley (approximately 22 miles southeast of the site) or in downtown San José (approximately five miles northeast of the site). Due to the distance of the project site from Coyote Valley and the

Downtown Core, the project would not have a significant impact on tribal cultural resources.

Nonetheless, the City responded to the request for consultation on July 20, 2021 via email and outlined the type of environmental review necessary for the project, effects of the project, recommended conditions, and general information regarding the project site's archaeological sensitivity. On July 26, 2021, the City met with Chairwoman Geary via Zoom to discuss the project comments. The City followed up on August 13, 2021 to formally close the consultation process.

The project will modify the following standard permit conditions for inadvertent discovery of subsurface cultural resources (revised language underlined):

In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or Director's designee and Historic Preservation Officer of the Department of Planning, Building and Code Enforcement will be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Heritage Commission from the City of San Jose and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3 will examine the find. The archaeologist and Native American representative will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. If the finds do not meet the definition of a historical or archaeological resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it should be avoided by project activities. Project personnel should not collect or move any cultural material. Fill soils that may be used for construction purposes should not contain archaeological materials.

In addition, the project applicant has agreed to voluntary permit conditions further expanding Native American participation pre-construction and during construction. Therefore, no further CEQA analysis is required and the comment does not result in new or more significant impacts or additional mitigation and therefore, the IS/MND does not require recirculation.

Comment E2: Additionally, Tamien Nation would like to receive any cultural resources assessments or other assessments that have been completed on all or part of the project's potential "area of project effect" (APE), including, but not limited to:

1. The results of any record search that may have been conducted at an Information Center of the California Historical Resources Information System (CHRIS), including, but not limited to:

- A listing of any and all known cultural resources have already been recorded on or adjacent to the APE;
- Copies of any and all cultural resource records and study reports that may have been provided by the Information Center as part of the records search

response;

- If the probability is low, moderate, or high that cultural resources are located in the APE.
 - Whether the records search indicates a low, moderate or high probability that unrecorded cultural resources are located in the potential APE; and
 - If a survey is recommended by the Information Center to determine whether previously unrecorded cultural resources are present.
2. The results of any archaeological inventory survey that was conducted, including:
- Any report that may contain site forms, site significance, and suggested mitigation measures.

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 in accordance with Government Code Section 6254.10.

3. The results of any Sacred Lands File (SFL) check conducted through Native American Heritage Commission. The request form can be found at http://www.nahc.ca.gov/slf_request.html. USGS 7.5-minute quadrangle name, township, range, and section required for the search.

4. Any ethnographic studies conducted for any area including all or part of the potential APE; and

5. Any geotechnical reports regarding all or part of the potential APE.

Response E2: Because the project site is not within the radius of the Downtown Core or the Coyote Valley and because City-generated GIS data does not identify the project location as an archaeologically sensitive area, the Initial Study did not include CHRIS research or a Sacred Lands File check. Therefore, this information could not be shared with the Tamien Nation as requested. However, as indicated above, after the consultation process, the project applicant agreed to a modified standard permit condition which explicitly includes Native American representation in the event of subsurface tribal cultural finds. Therefore, no further CEQA analysis is required and the comment does not result in new or more significant impacts or additional mitigation and therefore, the IS/MND does not require recirculation.

Comment E3: We would like to remind your agency that CEQA Guidelines section 15126.4, subdivision (b)(3) states that preservation in place is the preferred manner of mitigating impacts to archaeological sites. Section 15126.4, subd. (b)(3) of the CEQA Guidelines has been interpreted by the California Court of Appeal to mean that “feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts.” *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, disapproved on other grounds, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

Tamien Nation expects to begin consultation within 30 days of your receipt of this letter. Please contact Tamien Nation’s lead contact person identified in the attached request for notification.

Response E3: The CEQA Guidelines, Section 15126.4 (b), as indicated by the commenter, does outline the consideration and discussion of mitigation measures proposed to minimize significant effects related to impacts on historical resources. The full discussion under subsection (b)(3) follows:

Public agencies should, whenever feasible, seek to avoid damaging effects on any

historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following: 1. Planning construction to avoid archaeological sites; 2. Incorporation of sites within parks, greenspace, or other open space; 3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site. 4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provisions for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

As discussed in Response E:1, the project includes standard permit conditions addressing the treatment of subsurface cultural resources and accidental discovery of human remains. The standard permit condition for the treatment of subsurface cultural resources has been modified to specifically include participation by Native American representative(s) geographically and culturally affiliated with the project site area as described above in Response E1. In addition, the project applicant has agreed to voluntary permit conditions further expanding Native American participation pre-construction and during construction. Therefore, no further CEQA analysis is required and the comment does not result in new or more significant impacts or additional mitigation and therefore, the IS/MND does not require recirculation.

SECTION 4

TEXT CHANGES TO THE IS/MND

Page Number	Description of Change
96	<p>Change 1: The Santa Clara Valley Groundwater Basin is the source for all groundwater in the County and is divided into three <u>two</u> sub-basins: <u>the Santa Clara sub-basin</u> Valley, Coyote Valley, and <u>the Llagas sub-basin</u>. The project site is located within the Santa Clara Valley sub-basin <u>of the Santa Clara Valley Basin</u> and the San Tomas watershed.</p> <p>Change 2: The site is in FEMA Flood Zone D, which means <u>an area where flood hazards are undetermined, but possible</u>. there is no analysis of flood hazards.</p>
102	<p>Water service to the project site would be provided by <u>San José Water Company, the retailer for the City</u>. †The Santa Clara Valley Water District (Valley Water) is the wholesale water supplier for Santa Clara County and, which receives its water supply from several locations including local groundwater, local surface water, and imported treated water.</p>
103	<p>Valley Water operates and maintains 18 major <u>a complex and interconnected network of</u> groundwater recharge facilities in the Santa Clara Valley and diverts water from local reservoirs and imported water to in-stream and off-stream percolation facilities to assist with groundwater recharge in the Santa Clara Valley.</p>
105	<p>The site is in FEMA Flood Zone D, which means <u>an area where flood hazards are undetermined, but possible</u>. there is no analysis of flood hazards.</p>
146	<p>According to the General Plan EIR Figure 3.9-4, the nearest trail to the project site is the Los Gatos Creek Trail, located approximately 2.5 <u>1.2</u> miles east of the project site</p>

SECTION 5 PUBLIC COMMENTS ATTACHMENTS

Please see copy of the original comment letter in Attachment A.

ATTACHMENT A

ALL PUBLIC COMMENTS TO
IS/MND DURING PUBLIC REVIEW PERIOD

County of Santa Clara

Roads and Airports Department
Planning, Land Development and Survey

101 Skyport Drive
San Jose, CA 95110-1302
(408) 573-2460 FAX 441-0276



June 10, 2021

Maira Blanco

Planning, Building & Code Enforcement
City of San Jose | 200 East Santa Clara Street
bethlehem.telahun@sanjoseca.gov
San Jose, CA 95113

SUBJECT: Public Review of Draft Mitigated Negative Declaration: 1073-1087 South Winchester Boulevard Mixed-Use Project (File Nos. SP20-002 & T20-003)

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Public Review of Draft Mitigated Negative Declaration: 1073-1087 South Winchester Boulevard Mixed-Use Project (File Nos. SP20-002 & T20-003), and is submitting the following comments:

- Please provide details for proposed TDM program management and any enforcement/fines for not meeting VMT goals, since this project is close to San Tomas Expressway.
- This project and the 1212-1224 South Winchester Boulevard Hotel Project, are in close proximity to each other, combined will generate 100 AM and 116 PM peak hour trips, respectively. The County believes that the Local Transportation Analysis (LTAs) for both projects should include the three following intersections on San Tomas, which are County's intersections and are within one mile of the proposed projects:
 - Hamilton Ave (CMP)
 - Payne Ave
 - Williams

If you have any questions or concerns about these comments, please contact me at 408-573-2462 or ben.aghegnehu@rda.sccgov.org

Thank you.





May 27, 2021

Maira Blanco
City of San Jose
200 E Sanata Clara St
San Jose, CA 95113

Ref: Gas and Electric Transmission and Distribution

Dear Maira Blanco,

Thank you for submitting the 1073-1087 South Winchester Blvd plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management



Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. **Standby Inspection:** A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.
2. **Access:** At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.
3. **Wheel Loads:** To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. **Grading:** PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.
5. **Excavating:** Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch



wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches [$24/2 + 24 + 36/2 = 54$] away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible ($90^\circ \pm 15^\circ$). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.



11. Cathodic Protection: PG&E pipelines are protected from corrosion with an “Impressed Current” cathodic protection system. Any proposed facilities, such as metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E’s facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as **"RESTRICTED USE AREA – NO BUILDING."**
2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.
3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.
4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 15 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.
5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.
6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.
7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.



8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 (http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

Thu 6/10/2021 5:36 PM

Dear Ms. Blanco:

The Santa Clara Valley Water District (Valley Water) has reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) for the proposed 1073-1087 South Winchester Boulevard Mixed-Use Project, received by Valley Water on May 26, 2021.

The proposed development is not located adjacent or within any Valley Water facilities or right-of-way; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water encroachment permit is not required for this project.

Valley Water has the following comments regarding the project:

1. On **Sheet C4.0** of the project plans, the name of the receiving body listed in the project site information should be corrected from "San Tomas" to "San Tomas Aquino Creek".
2. **Section 4.10.2** on page 96 should be revised to say that Santa Clara County is divided into two subbasins, the Santa Clara Subbasin and Llagas Subbasin, and that the project is in the Santa Clara Subbasin of the Santa Clara Valley Basin. Please refer to Section 1.2 and Figure 1-1 on page 1-2 of the Valley Water 2016 Groundwater Management Plan.
3. **Section 4.10.2** on page 96 and **Part d of Section 4.10.4** on page 105 should define FEMA Flood Zone D as an area where flood hazards are undetermined, but possible.
4. **Part b of Section 4.10.4** on page 102 needs to be revised to note that water service to the project site would be provided by San Jose Water Company, the retailer for this area, not Valley Water, who is the water wholesaler.
5. **Part b of Section 4.10.4** on page 103 states that Valley Water has 18 major groundwater recharge facilities. While Valley Water has a complex and interconnected network of groundwater recharge facilities, the reference to the number of facilities should be removed as Valley Water does not categorize groundwater facilities by major or minor and therefore it is not clear how it was determined that there are 18 major facilities.
6. **Section 4.16.2** on page 146 should be revised to reflect the correct distance of approximately 1.2 miles to the Los Gatos Creek Trail.
7. Valley Water records do not show any wells on the project site (APN: 299-25-038); however, it is always possible that a well exists that is not in Valley Water records. Abandoned or unused wells can provide a vertical conduit for contaminants to pollute groundwater. To avoid impacts to groundwater quality, any wells found on-site that will not be used must be properly destroyed in accordance with Ordinance 90-1, which requires issuance of a well destruction permit or registered with Valley Water and protected during construction. Property owners or their representatives should call the Wells and Water Measurement Unit at (408) 630-2660 for more information regarding well permits and registration for the destruction of wells.

Thank you for the opportunity to review the IS/MND. If you have any questions, or need further information, you can reach me at (408) 630-2955, or by e-mail at JAlvarado@valleywater.org. Please reference Valley Water File No. 34456 on future correspondence regarding this project.

Thank you,

JOURDAN ALVARADO, CFM

ASSISTANT ENGINEER II (CIVIL)

Community Projects Review Unit

jalvarado@valleywater.org

Tel. (408) 630-2955 CPRU Hotline (408) 630-2650



SANTA CLARA VALLEY WATER DISTRICT

5750 Almaden Expressway, San Jose CA 95118

www.valleywater.org

Clean Water · Healthy Environment · Flood Protection

Mon 5/31/2021 9:31 AM

Maira,

I am very concerned about the project being proposed on Winchester.

I can't believe a six-story, 65-foot high, mixed-use building would be considered for that site. The plan calls for the building to be built all the way to the back of the lot making it impossible for a firetruck to get to the back of the building in the event of a fire. It is extremely intrusive to the people who will have this monstrosity towering over their yards and houses. Please vote to stop this project.

Sincerely, Rudy Slankauskas



TAMIEN NATION
OF THE GREATER SANTA CLARA COUNTY
P.O. Box 8053, San Jose, California 95155
(707) 295-4011 tamien@tamien.org

June 11, 2021

City of San Jose
Maira Blanco
Planning Project Manager
Sent Via Email: Maira.Blanco@sanjoseca

RE: Formal Request for Tribal Consultation Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21080.3.1, subs. (b), (d) and (e) for 1073-1087 South Winchester Boulevard, San José, CA

Dear Ms. Blanco,

This letter constitutes a formal request for tribal consultation under the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21080.3.1 subdivisions (b), (d) and (e)) for the mitigation of potential project impacts to tribal cultural resource for the above referenced project. Tamien Nation requested formal notice and information for all projects within your agency's geographical jurisdiction and received notification on May 26, 2021, regarding the above referenced project.

Tamien Nation requests consultation on the following topics checked below, which shall be included in consultation if requested (Public Resources Code section 21080.3.2, subd. (a):

- Alternatives to the project
- Recommended mitigation measures
- Significant effects of the project

Tamien Nation also requests consultation on the following discretionary topics checked below (Public Resources Code section 21080.3.2, subd. (a):

- Type of environmental review necessary
- Significance of tribal cultural resources, including any regulations, policies or standards used by your agency to determine significance of tribal cultural resources
- Significance of the project's impacts on tribal cultural resources
- Project alternatives and/or appropriate measures for preservation or mitigation that we may recommend, including, but not limited to:

- (1) Avoidance and preservation of the resources in place, pursuant to Public Resources Code section 21084.3, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks or other open space, to incorporate the resources with culturally appropriate protection and management criteria;
- (2) Treating the resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resources, including but not limited to the following:
 - a. Protecting the cultural character and integrity of the resource;
 - b. Protection the traditional use of the resource; and
 - c. Protecting the confidentiality of the resource.
- (3) 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.
- (4) Protecting the resource.

Additionally, Tamien Nation would like to receive any cultural resources assessments or other assessments that have been completed on all or part of the project's potential "area of project effect" (APE), including, but not limited to:

1. The results of any record search that may have been conducted at an Information Center of the California Historical Resources Information System (CHRIS), including, but not limited to:
 - A listing of any and all known cultural resources have already been recorded on or adjacent to the APE;
 - Copies of any and all cultural resource records and study reports that may have been provided by the Information Center as part of the records search response;
 - If the probability is low, moderate, or high that cultural resources are located in the APE.
 - Whether the records search indicates a low, moderate or high probability that unrecorded cultural resources are located in the potential APE; and
 - If a survey is recommended by the Information Center to determine whether previously unrecorded cultural resources are present.
2. The results of any archaeological inventory survey that was conducted, including:
 - Any report that may contain site forms, site significance, and suggested mitigation measures.

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 in accordance with Government Code Section 6254.10.

3. The results of any Sacred Lands File (SFL) check conducted through Native American Heritage Commission. The request form can be found at http://www.nahc.ca.gov/slf_request.html. USGS 7.5-minute quadrangle name, township, range, and section required for the search.
4. Any ethnographic studies conducted for any area including all or part of the potential APE; and
5. Any geotechnical reports regarding all or part of the potential APE.

We would like to remind your agency that CEQA Guidelines section 15126.4, subdivision (b)(3) states that preservation in place is the preferred manner of mitigating impacts to archaeological sites. Section 15126.4, subd. (b)(3) of the CEQA Guidelines has been interpreted by the California Court of Appeal to mean that "feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts." *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, disapproved on other grounds, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

Tamien Nation expects to begin consultation within 30 days of your receipt of this letter. Please contact Tamien Nation's lead contact person identified in the attached request for notification.

Quirina Geary
Chairwoman
POBox8053
San Jose, CA 95155
(707) 295-4011

Sincerely,



Quirina Geary
Chairwoman

cc: Native American Heritage Commission