

First Amendment
to the
Draft
Environmental Impact Report
(SCH# 2020100529)

Almaden Villas

File No. SP20-013



August 2021

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1.0 INTRODUCTION

This First Amendment, together with the Draft Environmental Impact Report (Draft EIR), constitutes the Final Environmental Impact Report (Final EIR) for the Almaden Villas project.

1.1 PURPOSE OF THE FINAL EIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also identifies mitigation measures and alternatives to the project in order to reduce or eliminate significant environmental impacts. The Final EIR is intended to be used by the City of San José in making decisions regarding the project.

Pursuant to CEQA Guidelines Section 15090(a), prior to approving a project, the lead agency shall certify that:

- 1) The Final EIR has been completed in compliance with CEQA;
- 2) The Final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the Final EIR prior to approving the project; and
- 3) The Final EIR reflects the lead agency's independent judgment and analysis.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specifies that the Final EIR shall consist of:

- a) The Draft EIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- d) The lead agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the lead agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines (Public Resources Code Section 21092.5[a] and CEQA Guidelines Section 15088[b]), the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final EIR and all documents referenced in the Final EIR are available for public review at the office of the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor, San José, California, on weekdays during normal business hours. The Final EIR is also available for review on the City's website at <http://www.sanjoseca.gov/activeeirs>.

2.0 DRAFT EIR PUBLIC REVIEW SUMMARY

The Draft EIR for the Almaden Villas project, dated June 2021, was circulated to affected public agencies and interested parties for a 45-day review period from June 21, 2021 through August 5, 2021. The City undertook the following actions to collect public input on the scope of the EIR and to inform the public of the availability of the Draft EIR:

- The City filed a Notice of Preparation (NOP) with the California State Clearinghouse for a 30-day review period from October 29, 2020 through November 30, 2020, under State Clearinghouse Number 2020100529. The City distributed the NOP to affected agencies, interested groups, and individuals.
- The City held a Public Scoping meeting to receive public input on the scope of the Draft EIR on November 12, 2020. Comments received at the public scoping meeting were addressed in the Draft EIR.
- The City published the Notice of Availability (NOA) of the Draft EIR in the San José Mercury News on June 21, 2021 and filed it with the County of Santa Clara County Clerk-Recorder on the same day. The NOA was also emailed on June 21, 2021 to local neighboring jurisdictions, local agencies, and members of the public who had indicated interest in the project and in general notification of City documents (see *Section 3.0* for a list those that received the Draft EIR).
- The Draft EIR was electronically transmitted to the State Clearinghouse on June 21, 2021, and posted on the City's website at <http://www.sanjoseca.gov/activeeirs>. Due to the ongoing COVID-19 pandemic and associated shutdown of government services and facilities, hard copies of the Draft EIR were not available for public review.

During the public review of the Draft EIR, the City received three comment letters as listed below. Responses to the comment letters are provided in *Section 4.0* below.

1. Kanyon Konsulting, LLC (June 22, 2021)
2. Tamien Nation of the Greater Santa Clara County (July 15, 2021)
3. Santa Clara Valley Water District (Valley Water) (August 4, 2021)

The City did not receive any comments from state agencies on the Draft EIR.

3.0 DRAFT EIR RECIPIENTS

CEQA Guidelines Section 15086 requires that a local lead agency consult with and request comments on the Draft EIR prepared for a project of this type from responsible agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies.

The City published the Notice of Availability (NOA) of the Draft EIR in the San José Mercury News on June 21, 2021. The public comment period began on June 21, 2021 and ended on August 5, 2021. The City mailed and/or electronically mailed the NOA to local neighboring jurisdictions, public/quasi-public agencies, tribal contacts, environmental planning groups, and other members of the public who expressed interest in the project. The Draft EIR was posted on the City's website at <http://www.sanjoseca.gov/activeeirs>. Due to the ongoing COVID-19 pandemic and associated shutdown of government services and facilities, hard copies of the Draft EIR were not available for public review.

The following agencies received a copy of the Draft EIR from the City or via the State Clearinghouse:

- Association of Bay Area Governments
- Bay Area Air Quality Management District
- Bay Area Metro
- California Air Resources Board
- California Department of Fish and Wildlife, Region 3
- California Department of Transportation, District 4
- California Department of Toxic Substances Control
- California Energy Commission
- California Environmental Protection Agency
- California Native American Heritage Commission
- California Regional Water Quality Control Board, Region 2
- City of Campbell, Planning Division
- City of Cupertino
- City of Fremont
- City of Milpitas
- City of Morgan Hill, Planning Division
- City of Mountain View, Community Development
- City of Santa Clara
- City of Saratoga
- City of Sunnyvale, Planning Division
- Greenbelt Alliance
- Guadalupe-Coyote Resource Conservation District
- Native American Heritage Commission
- PG&E Land Rights Services
- San José Unified School District
- San Jose Water Company
- Santa Clara County Planning Department

- Santa Clara County Roads & Airports Transportation Planning Department
- Santa Clara Valley Audubon Society
- Santa Clara Valley Transportation Authority
- Santa Clara Valley Water District
- Sierra Club-Loma Prieta Chapter
- Town of Los Gatos
- United States Fish and Wildlife Service

Copies of the NOA for the Draft EIR were sent by mail and/or email to the following organizations, and businesses who expressed interest in the project:

- Adams Broadwell Joseph & Cardozo
- Lozeau Drury LLP

Additionally, copies of the NOA for the Draft EIR were sent by mail and/or email to the following individuals who expressed interest in the project:

- William Ross
- Tim Henderson
- Emil Robu
- Alfredo Baccari
- Kate and Richard Kosoglow
- Beth Minton
- Jennifer Mowery
- Bill Schworer
- Heidi Gomozias
- Cathleen Stanger
- Jennifer Ridgeway
- Chuck Phelps

4.0 RESPONSES TO DRAFT EIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft EIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Copies of the letters and emails received by the City of San José are included in their entirety in Attachment A of this document. Comments received on the Draft EIR are listed below.

Comment Letter and Commenter Page of Response

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B. Tamien Nation of the Greater Santa Clara County (July 15, 2021)	7
C. Santa Clara Valley Water District (Valley Water) (August 4, 2021).....	10

LETTER A: Kanyon Konsulting, LLC

Comment A.1: I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter.

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a potentially eligible cultural site, I am interested in consulting and voicing our concerns. With some instances like this, usually we recommend that a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities. The presence of a Native monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

Kanyon Konsulting, LLC has numerous Native Monitors available for projects such as this, if applicable, we recommend a Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Kanyon Konsulting is a strong proponent of honoring truth in history, when it comes to impacting Cultural Resources and potential ancestral remains, we need to recognise the history of the territory we are impacting. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after - barely acknowledging the Cultural Representatives of the territory they steward and are responsible for. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences, bringing in considerations about the Indigenous peoples and environment of this territory that you work, have settled upon and benefit from.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the Indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

Potential Approaches to Indigenous Cultural Awareness/History:

- Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque, page on the website, mural, display, or an Educational/Cultural Center with information about the history/ecology/resources of the land)
- Commitment to consultation with the Native Peoples of the territory in regards to presenting and messaging about the Indigenous history/community of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc, Cultural display of cultural resources/botanical knowledge or Culture sharing of Traditional Ecological Knowledge - Indigenous Science and Technology)
- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

Response A.1: As discussed on pages 78-83 of the Draft EIR, a records search at the Northwest Information Center of the California Historical Resources Information System (CHRIS) for the project area was conducted by a qualified archaeologist from Holman Associates (September 18, 2019). All identified cultural resources within ¼ mile were examined and studies within or abutting the project area were reviewed. No archaeological sites were identified within or

adjacent to the project site. In northern Santa Clara County, Native American archaeological sites have been recorded adjacent to major creeks and tributaries, especially near confluences. The project site is located approximately 500 feet east of the Guadalupe River, suggesting a moderate to high potential for Native American resources. The archaeological review concluded that the project site has a moderate to high potential for Native American resources within the project area, especially buried resources. The EIR provides mitigation measures and permit conditions requiring preliminary testing, a treatment plan if resources are discovered, and protocols for monitoring and reporting to protect potential archaeological or Native American resources (see Mitigation Measures CR-1.1 to CR-1.5 of the Draft EIR).

LETTER B: Tamien Nation of the Greater Santa Clara County

Comment B.1: 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 June 21, 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 B.1: See Response A.1. As discussed on pages 78-83 of the Draft EIR, the archaeological review for the project (Holman Associates, 2019) concluded that the project site has a moderate to high potential for Native American resources due to its proximity to the Guadalupe River. The EIR identified this as a significant impact and provides mitigation measures and permit conditions requiring preliminary testing, a treatment plan if resources are discovered, and protocols for monitoring and reporting to protect potential archaeological and

Native American resources and to reduce the impact to a less than significant level (see Mitigation Measures CR-1.1 to CR-1.5 of the Draft EIR).

In 2017, the City sent a letter to tribal representatives in the area to welcome participation in consultation process for all ongoing, proposed, or future projects within the City's Sphere of Influence or specific areas of the City. At the time of preparation of the EIR, no Native American tribes had sent written requests for notification of projects to the City of San José, except for those in Coyote Valley (approximately 10 miles south of the site) and downtown San José (about 1,000 feet north of the site).

The City notified tribal representatives for tribes known to have traditional lands and cultural places pursuant to the Native American Heritage Commission within the City of San José during the NOP process and circulation of the NOA of the Draft EIR. Listed tribes were sent the NOP for the proposed project in October 2020 in compliance with AB 52. In addition, the City sent out referral and consultation requests to all applicable tribal representatives for the project on June 24, 2020 and did not receive further consultation requests.

This comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the Draft EIR and associated appendices, or present new information that would require recirculation of the Draft EIR pursuant of CEQA Guideline Section 15088.5.

Comment B.2: 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 B.2: See Responses A.1 and B.1. As discussed on pages 78-83 of the Draft EIR, a records search at the Northwest Information Center of the CHRIS was conducted for the project by a qualified archaeologist from Holman Associates. No archaeological sites were identified within or adjacent to the project site. However, the archaeological review concluded that the project site has a moderate to high potential for Native American resources due to its proximity to the Guadalupe River. The Draft EIR identified this as a significant impact and provides mitigation measures and permit conditions requiring preliminary testing, a treatment plan if resources are discovered, and protocols for monitoring and reporting to protect potential archaeological and Native American resources (see Mitigation Measures CR-1.1 to CR-1.5 of the Draft EIR).

Comment B.3: 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.

Response B.3: As described in previous responses, the Draft EIR contains mitigation and permit conditions to preserve potential archaeological or Native American resources.

Comment B.4: Tamien Nation expects to begin consultation within 30 days of your receipt of this letter. Please contact Tamien Nation lead contact person identified in the attached request for notification.

Quirina Geary
Chairwoman
PO Box 8053
San Jose, CA 95155
(707) 295-4011
qgeary@tamien.org

Please refer to identification number TN-20210621-02 in any correspondence concerning this project. Thank you for providing us with this notice and the opportunity to comment.

Response B.4: See Response B.1 above.

AB 52 requires a tribe that is traditionally and culturally affiliated to the geographic area where a project is located must request notification, in writing, that the tribe be notified projects in the tribe's area of traditional and cultural affiliation (Public Resource Code § 21080.3.1 (b)). The City did not receive such a request from Tamien Nation at the time the City determined that an EIR was the appropriate level of environmental review under CEQA.

The Draft EIR identified the site to have a medium to high cultural sensitivity based on Holman Associates' literature review and identified mitigation measures for preliminary investigation.

A virtual consultation meeting was held between City staff and Tamien Nation on Monday August 16, 2021 via Zoom. The meeting included the following participants: Chairwoman Quirina Geary, Tamien Nation, and Cassandra van der Zweep, Supervising Environmental Planner for the City of San José. The meeting consisted of a project summary and discussion of known archeological sensitivity on the site. At this meeting, based on the information in the reports, Chairwoman Quirina stated the project site's sensitivity and requested that a Native American monitor or representative be part of the investigation, including getting the results of the any investigation study from the preliminary investigation. Furthermore, the Nation would request to be part of any treatment plan process of treatment of finds on the site, if applicable and that cultural sensitivity training be provided.

At the meeting, all parties agreed to elaborate on the existing cultural resource mitigation measures and Standard Permit Conditions to include the participation of a Native American representative. A summary letter and applicant contact information was sent to the Chairwoman after the meeting and is included in Attachment B.

Accordingly, Staff revised the mitigation measure (refer to text changes in *Section 5* of this document) to represent the agreement between parties and revised the Standard Permit Conditions to reflect the City's existing standards. The revisions of the mitigation measures and Standard Permit Conditions only compliment and clarify the protocol of the actions, and do not result in a change in intent based on disclosed information already in the Draft EIR. For these reasons, the changes in mitigation measures are not substantial revisions that would result in a recirculation of the Draft EIR, consistent with Section 15073.5 of the CEQA guidelines.

LETTER C: Santa Clara Valley Water District (Valley Water)

Comment C.1: The Santa Clara Valley Water District (Valley Water) has reviewed the Draft Environmental Impact Report (DEIR) for the Almaden Villas Project at 1747 Almaden Road. In November 2020, Valley Water provided comments on the Notice of Preparation, which were acknowledged in the DEIR. Valley Water has no further comments on the DEIR, and would like an opportunity to review the Final EIR when available.

Response C.1: The City will provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final EIR and all documents referenced in the Final EIR are available for public review at the office of the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor, on weekdays during normal business hours. The Final EIR is also available for review on the City's website at <http://www.sanjoseca.gov/activeeirs>.

5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the Almaden Villas Draft EIR, dated June 2021. Revised or new language is underlined, and deletions are shown in ~~strikeout~~ text.

Page 80, third paragraph through the end of page 81 are revised as follows:

MM CR-1.1 Preliminary Investigation. Prior to the issuance of any grading or building permits, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, 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, shall complete a subsurface exploration of the project site commensurate with proposed disturbances to sample the historically sensitive areas and sample the deeper native soils that could contain the remains of Native American resources. The exploration work shall be conducted by a qualified archaeologist, in consultation with the Native American representative, after the demolition of the existing commercial vacant buildings and removal of the asphalt on the parking lot. To explore for potential Native American resources, deeper trenches shall be placed beyond the areas considered sensitive for historic-era resources and dug to a depth commensurate with proposed impacts, or until the soils and sediments are determined to be reliably culturally sterile. Archaeological monitoring may be necessary to examine deeper impacts. If any ground-disturbing activities are required for other environmental concerns or for potholing to identify previous utilities, utility removal, or any grading prior to subsurface archaeological explorations, an archaeological and Native American monitor shall be required.

The investigation program, including an archaeological monitoring plan, if necessary, shall be submitted to the Director of Planning, Building and Code Enforcement of the Director's designee for review and approval prior to issuance of any grading or building permits.

MM CR-1.2 Treatment Plan. Prior to the issuance of demolition and grading permits, the project applicant shall ensure implementation of the archaeological resources treatment plan by a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission from the City of San José and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. The Treatment Plan shall be prepared and submitted to the Director of PBCE or Director's designee. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy used to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

Implementation of the plan, by a qualified archaeologist, in consultation with a Native American representative, shall be required prior to the issuance of any grading or building permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CR -1.3 Evaluation and Documentation. During all ground disturbance or construction related activities, the project proponent shall notify the Director of Planning, Building and Code Enforcement or Director’s designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during grading or other construction activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand - excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan, as outlined in MM CR-1.2. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Informative Center (NWIC), and/or equivalent.

MM CR -1.4 Technical Reporting. Once all analyses and studies required by the treatment plan have been completed, a technical report summarizing the results of the field investigation and data recovery shall be prepared. The report shall document the results of field and laboratory investigations and shall meet the Secretary of the Interior’s Standards for Archaeological Documentation. The contents of the report shall be consistent with the protocol included in the treatment plan. The report shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director’s designee for review and approval prior to issuance of building permits. Once approved by the City, the final documentation shall be submitted to the Northwest Information Center (NWIC) and made available to Native American

representative registered with the Native American Heritage Commission from the City of San José and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3.

MM CR-1.5 Maintain Confidentiality. As required under Public Resources Code (PRC) Section 21084.3, the project applicant shall protect the confidentiality of any resources discovered on-site. The treatment plan and all pertinent data and results shall not be available for public review or distribution. The site of any reburial of Native American human remains shall be kept confidential and not be disclosed pursuant to the California Public Records Act, California Government Code Section 6254.10, 6254(r). The County Medical Examiner shall also withhold public disclosure of information related to such reburials pursuant to the exemptions set forth in California Government Code Section 6254(e).

Page 82, the first paragraph is revised to incorporate the updated standard permit condition language on addressing the inadvertent discovery of human remains, as follows:

- If 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 (PBCE) or the Director's designee and the City's Historic Preservation Officer shall 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 José and that is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3, shall examine the find. The archaeologist shall 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. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Page 187, sixth paragraph, the last sentence is revised as follows:

In addition, the City has sent out referral and consultation requests to all applicable tribal representatives for the project on June 24, 2020 and ~~has~~ has not received as further consultation request.

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Attachment A
Draft EIR Comment Letters

Mahamood, Reema

From: KKLLC Admin <admin@kanyonconsulting.com>
Sent: Tuesday, June 22, 2021 8:33 AM
To: Mahamood, Reema
Subject: File Nos.: SP20-013, T20-014 Almaden Villas Project

[External Email]

miSmin Tuuhis [Good Day]

Kan rakat Kanyon Sayers-Roods. I am writing this on behalf of the Indian Canyon Band of Costanoan Ohlone People as requested, responding to your letter

As this project's Area of Potential Effect (APE) overlaps or is near the management boundary of a potentially eligible cultural site, I am interested in consulting and voicing our concerns. With some instances like this, usually we recommend that a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities. The presence of a Native monitor and archaeologist will help the project minimize potential effects on the cultural site and mitigate inadvertent issues.

Kanyon Consulting, LLC has numerous Native Monitors available for projects such as this, if applicable, we recommend a Cultural Sensitivity Training at the beginning of each project. This service is offered to aid those involved in the project to become more familiar with the indigenous history of the peoples of this land that is being worked on.

Kanyon Consulting is a strong proponent of honoring truth in history, when it comes to impacting Cultural Resources and potential ancestral remains, we need to recognise the history of the territory we are impacting. We have seen that projects like these tend to come into an area to consult/mitigate and move on shortly after - barely acknowledging the Cultural Representatives of the territory they steward and are responsible for. Because of these possibilities, we highly recommend that you receive a specialized consultation provided by our company as the project commences, bringing in considerations about the Indigenous peoples and environment of this territory that you work, have settled upon and benefit from.

As previously stated, our goal is to Honor Truth in History. And as such we want to ensure that there is an effort from the project organizer to take strategic steps in ways that #HonorTruthinHistory. This will make all involved aware of the history of the Indigenous communities whom we acknowledge as the first stewards and land managers of these territories.

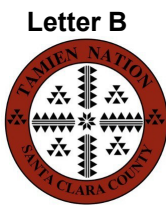
Potential Approaches to Indigenous Cultural Awareness/History:

- Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque, page on the website, mural, display, or an Educational/Cultural Center with information about the history/ecology/resources of the land)
- Commitment to consultation with the Native Peoples of the territory in regards to presenting and messaging about the Indigenous history/community of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc, Cultural display of cultural resources/botanical knowledge or Culture sharing of Traditional Ecological Knowledge - Indigenous Science and Technology)
- Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

We look forward to working with you.
Tumsan-ak kannis [Thank You]
Kanyon Sayers-Roods

Consultant / Tribal Monitor [ICMBCO]
Kanyon Konsulting, LLC

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



TAMIEN NATION
of the Greater Santa Clara County
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(707) 295-4011 tamien@tamien.org

July 15, 2021

Reema Mahamood, Planner III, Environmental Review

Sent Via Email: reema.mahamood@sanjoseca.gov

RE: Formal Request for Tribal Consultation Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21080.3.1, subds. (b),(d) and (e) Draft EIR, The Almaden Villas Project, 1747 Almaden Road, Planning File No. SP20-013

Dear Ms. Mahamood,

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 June 21, 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.

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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.

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B-2

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 lead contact person identified in the attached request for notification.

Quirina Geary
Chairwoman
PO Box 8053
San Jose, CA 95155
(707) 295-4011
qgeary@tamien.org

Please refer to identification number TN-20210621-02 in any correspondence concerning this project. Thank you for providing us with this notice and the opportunity to comment.

Sincerely,



Quirina Geary
Chairwoman

cc: Native American Heritage Commission

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B-3

B-4

Mahamood, Reema

From: Shree Dharasker <sdharasker@valleywater.org>
Sent: Wednesday, August 4, 2021 11:41 AM
To: Mahamood, Reema
Cc: Michael Martin
Subject: RE: Notice of Availability - Draft EIR - Almaden Villas Project

You don't often get email from sdharasker@valleywater.org. [Learn why this is important](#)

[External Email]

Dear Ms. Mahamood,

The Santa Clara Valley Water District (Valley Water) has reviewed the Draft Environmental Impact Report (DEIR) for the Almaden Villas Project at 1747 Almaden Road. In November 2020, Valley Water provided comments on the Notice of Preparation, which were acknowledged in the DEIR. Valley Water has no further comments on the DEIR, and would like an opportunity to review the Final EIR when available.

C-1

Please contact me if there are questions.

Shree Dharasker
Associate Engineer-Civil
Community Projects Review Unit
(408)630-3037

From: Mahamood, Reema <reema.mahamood@sanjoseca.gov>
Sent: Monday, June 21, 2021 2:56 PM
To: Mahamood, Reema <reema.mahamood@sanjoseca.gov>
Subject: Notice of Availability - Draft EIR - Almaden Villas Project

**NOTICE OF AVAILABILITY OF A
DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) FOR
THE ALMADEN VILLAS PROJECT**

Description: The project includes a Special Use Permit to allow the demolition of two vacant existing structures and construction of a six-story, 90,323 square-foot multi-family residential building consisting of 62 residential units with a one-story, at-grade parking garage. Nine of the 62 units will be designated for affordable housing. The building would have a maximum height of approximately 78 feet from grade to the top of the stairwell, with a roof amenity deck and a yoga/exercise area, on an approximately 0.57-gross acre site. The project also includes an application for a Tentative Map for condominium purposes.

Location: 1747 Almaden Road, west of Almaden Road, approximately 380 feet south of Willow Glen Way, in San José.

Assessor's Parcel No.: 456-03-003

The proposed project will have potentially significant environmental effects on construction air quality, biological resources, cultural resources, hazards and hazardous materials, and noise and vibration. With implementation of mitigation measures, the potential impacts would be less than significant.

The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present at the project location. The project site is not listed on any toxic sites databases. The Draft EIR and documents referenced in the Draft EIR are available for review online at the City of San José’s “Active EIRs” website at www.sanjoseca.gov/activeeirs.

In response to the County’s COVID-19 Shelter-in-Place Order, hard copies are not available for review at libraries or at City Hall. Therefore, if requested, a hard copy will be mailed to you. Please allow time for printing and delivery.

The public review period for this Draft EIR begins on June 21, 2021 and ends on **August 5, 2021**. Written comments must be received at the Planning Department by 5:00 p.m. on **August 5, 2021** to be addressed as part of the formal EIR review process.

Please submit written comments to **Reema Mahamood** in the Department of Planning, Building and Code Enforcement via the following methods:

Email: reema.mahamood@sanjoseca.gov

Mail: Department of Planning, Building, and Code Enforcement
Attn: Reema Mahamood
200 E. Santa Clara Street, T-3
San Jose, CA 95113

For the official record, please date your comments, and reference **Planning File No. SP20-013**.

Following the close of the public review period, the Director of Planning, Building and Code Enforcement will prepare a Final Environmental Impact Report that will include responses to comments received during the review period. At least ten days prior to the public hearing on the EIR, the City’s responses to comments received during the public review period will be available for review and will be sent to those who have commented in writing on the EIR during the public review period.

Reema Mahamood
Planner III, Environmental Review

City of San José | Planning, Building & Code Enforcement
200 E. Santa Clara St., T-3
San José, CA 95113
d - 408.535.6872
reema.mahamood@sanjoseca.gov

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Attachment B
Consultation Request Response Letter

August 17, 2021

Ms. Quirina Geary, Chairwoman
Tamien Nation of the Greater Santa Clara County
P.O. Box 8053
San José, California 95155
(707) 295-4011
qgeary@tamien.org

RE: Response to TN-20210621-02 Consultation Request for 1747 Almaden Road, File No. SP20-013

Dear Ms. Quirina Geary,

The purpose of this letter is to summarize the actions taken by the City to address concerns raised during consultation and to document the results of the consultation.

The City received your consultation request during the public circulation period of the Draft Environmental Impact Report (SEIR) for the Almaden Villas Affordable Housing Project, Planning File No. SP20-013 (Tamien Nation ID No. TN-20210621-02). The project is a Special Use Permit to allow the demolition of two vacant existing structures and construction of a six-story, 90,323 square-foot multi-family residential building consisting of 62 residential units with a one-story, at-grade parking garage. Nine of the 62 units will be designated for affordable housing. The building would have a maximum height of approximately 78 feet from grade to the top of the stairwell, with a roof amenity deck and a yoga/exercise area, on an approximately 0.57-gross acre site. The project also includes an application for a Tentative Map for condominium purposes.

The applicant submitted the planning application on October 18, 2019. City staff reviewed the plans and in October of 2020 released a Notice of Preparation (NOP) for the Draft EIR after the City determined that the appropriate level of environmental review for this project pursuant to the California Environmental Quality Act (CEQA) would be an Environmental Impact Report.

Environmental review of this project officially commenced on October 29, 2020 with the release of the NOP for a 30-day circulation period. A scoping meeting was held on November 12, 2020. The Draft EIR was circulated for public review and comment from June 21, 2021 through August 5, 2021. The NOP and Notice of Availability of the Draft EIR were sent to tribal representatives for Tribes known to have traditional lands and cultural places pursuant to the Native American Heritage Commission (NAHC) at the time of each release (October 2020 and June 2021, respectively). During the NOP notification period, Tamien Nation had not been identified as a tribal contact by the NAHC for this project site, and the City received Tamien Nation's request for consultation on this project in July of 2021. Therefore, although the tribe was consulted in good faith by the City through the NOA release, such consultation was not mandated by AB 52 because the tribe was not recognized at the time of commencement of the CEQA review process, but was instead facilitated as a response to public comments during the environmental public review of the Draft SEIR under the California Environmental Quality Act (CEQA).

Potential Impacts

The literature search completed for the project identified the project site as having moderate to high potential for Native American resources. Consistent with the analysis in the Archaeological Literature Search prepared by Holman and Associates Archaeological Consultants, dated September 18, 2019, the draft EIR identified that the project may impact unknown Native American archaeological deposits during excavation and construction activities.

Accordingly, the Draft EIR included - via mitigation measure (MM-CR-1.1) – a preliminary investigation consisting of subsurface mechanical exploration for the absence/presence of buried cultural/Native American resources prior to any grading or ground disturbing activities associated with construction and subsequent protocol.

Summary of Consultation and Correspondence

On July 15, 2021, during the public circulation period for the Draft EIR, Chairwoman Geary submitted Tamien Nation’s request for consultation for the project to discuss the significant effects of the project and recommended mitigation measures. The City followed up on August 6, 2021 to schedule a meeting to review the Tribe’s concerns and discuss the identified impacts and mitigation measures.

Chairwoman Geary and City Staff (Cassandra van der Zweep) consulted via a Zoom Meeting on August 16, 2021. Ms. Geary stated Tamien Nation’s concern that the project could impact potential tribal cultural resources and described the site’s sensitivity and requested the inclusion of the following conditions:

- A. Native American monitor(s) present on-site during ground disturbing activities.
- B. Cultural Sensitivity Training with a provision for Native American monitor participation.
- C. Direct coordination with applicant.
- D. Recovery and Treatment of uncovered artifacts – Tamien Nation would like to be part of decision-making if artifacts are encountered and to ensure data recovery methods are appropriate.
- E. Provision of site findings (technical report) to Tamien Nation

Staff agreed to review the request and modify the applicable standard permit conditions and mitigation measures to include tribal coordination, where feasible.

Conclusion

Given the concerns expressed in the letter received from Tamien Nation, the subsequent meeting on August 16, 2021 (described above), and consistent with the Draft EIR’s determination of the project site’s cultural sensitivity, City staff modified the subsurface cultural resources mitigation measure language to include the presence of a tribal monitor/representative registered with the Native American Heritage Commission and who is traditionally and culturally affiliated with the geographic area, as described in Public Resources Code Section 21080.3 The modified mitigation measure language now reads (revisions are underlined and reflected in the 1st Amendment to the draft EIR):

- i. **MM CR-1.1 Preliminary Investigation.** Prior to the issuance of any grading or building permits, a qualified archaeologist who is trained in both local prehistoric and historical archaeology 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 shall complete a subsurface exploration of the project site commensurate with proposed disturbances to sample the historically sensitive areas and sample the deeper native soils that could contain the remains of Native American resources. The exploration work shall be conducted by a qualified archaeologist in consultation with the Native American representative after the demolition of the existing commercial vacant buildings and removal of the asphalt on the parking lot. To explore for potential Native American resources, deeper trenches shall be placed beyond the areas considered sensitive for historic-era resources and dug to a depth commensurate with proposed impacts, or until the soils and sediments are determined to be reliably culturally sterile. Archaeological monitoring may be necessary to examine deeper impacts. If any ground-disturbing activities are required for other environmental concerns or for potholing to identify previous utilities, utility removal, or any grading prior to subsurface archaeological explorations, an archaeological and Native American monitor shall be required.

The investigation program, including an archaeological monitoring plan, if necessary, shall be submitted to the Director of Planning, Building and Code Enforcement of the Director's designee for review and approval prior to issuance of any grading or building permits.

- ii. **MM CR-1.2 Treatment Plan.** Prior to the issuance of demolition and grading permits, the project applicant shall ensure implementation of the archaeological resources treatment plan by 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. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. The Treatment Plan shall be prepared and submitted to the Director of PBCE or Director's designee.

The treatment plan shall contain, at a minimum: • Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information). • Detailed field strategy used to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Appendices: all site records, correspondence, and consultation with Native Americans, etc.

Implementation of the plan, by a qualified archaeologist in consultation with a Native American representative, shall be required prior to the issuance of any grading or building permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

- iii. **MM CR -1.3 Evaluation and Documentation.** During all ground disturbance or construction related activities, the project proponent shall notify the Director of Planning, Building and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during grading or

other construction activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand -excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan, as outlined in MM CR-1.2. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Informative Center (NWIC), and/or equivalent.

- iv. **MM CR -1.4 Technical Reporting.** Once all analyses and studies required by the treatment plan have been completed, a technical report summarizing the results of the field investigation and data recovery shall be prepared. The report shall document the results of field and laboratory investigations and shall meet the Secretary of the Interior’s Standards for Archaeological Documentation. The contents of the report shall be consistent with the protocol included in the treatment plan. The report shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or the Director’s designee for review and approval prior to issuance of building permits. Once approved by the City, the final documentation shall be submitted to the Northwest Information Center (NWIC) and be made available to 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
- v. **MM CR-1.5 Maintain Confidentiality.** As required under Public Resources Code (PRC) Section 21084.3, the project applicant shall protect the confidentiality of any resources discovered on-site. The treatment plan and all pertinent data and results shall not be available for public review or distribution. The site of any reburial of Native American human remains shall be kept confidential and not be disclosed pursuant to the California Public Records Act, California Government Code Section 6254.10, 6254(r). The County Medical Examiner shall also withhold public disclosure of information related to such reburials pursuant to the exemptions set forth in California Government Code Section 6254(e).

In addition, the project would incorporate the updated standard permit condition language addressing the inadvertent discovery of human remains, as follows:

- If 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 (PBCE) or the Director’s designee and the City’s Historic Preservation Officer shall 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 shall examine the find. The archaeologist shall 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. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting

any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Finally, beyond the identified mitigation measures and Standard Permit Conditions identified above, Staff is coordinating with the applicant to see if they would be receptive to an applicant volunteered condition of approval to require Cultural Sensitivity Training provided by a Native American Representative prior to ground disturbing activities. If agreed to, this condition of approval would be included in the Special Use Permit.

Given our agreement on the revised mitigation and Standard Permit Condition language which will be applied to the project, City Staff considers consultation for this project has been satisfied in accordance with CEQA Section 21080.3.2. Should there be any outstanding Tribal concerns, please identify them to Staff immediately.

Please contact Cassandra van der Zweep at Cassandra.vanderzweep@sanjoseca.gov if you have any questions.

Sincerely,



Christopher Burton
Director of Planning, Building and Code Enforcement