

APPENDIX J
AB 52 Notification Letters and
Tribal Consultation Request

AB 52 Notification: File No: PDC18-036/PD21-009/PT21-030

July 16, 2021

Kanyon Sayers-Roods
1615 Pearson Court
San José, CA 95122
kanyon@kanyonkonsulting.com

Sent by email and U.S. Postal Service Certified Mail

Dear Ms. Sayers-Roods,

In response to the verbal notice we received from you that in accordance with Public Resources Code Section 21080.3.1 subd (b) you, as the Indian Canyon Mutsun Band of Costanoan representative, request notification of all proposed projects that require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report; we are sending you by mail and email notification of the following proposed project on file with the City of San José.

Project File Nos.: PDC18-036/PD21-009/PT21-030 (Berryessa Road Mixed Use Project)

Project Location: 1655 Berryessa Road; north side of Berryessa Road, approximately 1,100 feet west of Lundy Avenue

Project Description: Proposed change in zoning from the LI Light Industrial and A Agricultural Zoning Districts to the RM(PD) and CP(PD) Planned Development Zoning Districts to allow up to 340,000-square feet of commercial office space and up to 820 residential units on a 13.05-gross acre site.

Planned Development Permit to allow general site layout, public and private street, grading & drainage patterns and utility layout on an approximately 13.05-gross acre site.

Vesting Tentative Map to merge three parcels into one and subdivide into thirty-five lots and up to 590 condominium units on an approximately 13.05-gross acre site.

Project Applicant: Terracommercial Real Estate Corporation

Project Point of Contact: Reema Mahamood, Environmental Project Manager
reema.mahamood@sanjoseca.gov, 408.535.6872

Additional information, including project plans, are available electronically through the City's shared one drive account. Please let us know if you have any further document requests or are having trouble accessing the materials.

If you would like to consult with the City on the review of this project, please respond in writing within 30 days of receipt of this letter to the project point of contact noted above. Should the City not receive a response within 30 days, it will be presumed that you have declined consultation.

Please contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Reema Mahamood". The signature is written in a cursive style and is positioned above the typed name and title.

Reema Mahamood
Planner III, Environmental Review Team
Department of PBCE, Planning Division

Attachments:

- Notice of Preparation for the Berryessa Road Mixed Use Project

**NOTICE OF PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT FOR THE
1655 BERRYESSA ROAD MIXED USE PROJECT**

FILE NOS: PDC18-036/PD21-009/PT21-030
PROJECT APPLICANT: TERRACOMMERICAL REAL ESTATE CORPORATION
APNS: 241-03-023, -024, -025

Project Description: The applicant seeks to rezone the project site from the *LI - Light Industrial* Zoning District to a *PD - Planned Development* Zoning District. In addition, the applicant is seeking approval of a Planned Development Permit to develop up to 850 residential units and up to 480,000 square feet of commercial, and to create an approximately 0.9-acre open space area. A Vesting Tentative Map to merge three parcels into one; and re-subdivide the merged parcel into 35 lots; and create up to 590 condominium units and new streets is also included in the project.

Under the project, the three existing industrial buildings and ancillary structures and parking lot would be demolished. Trees on the site would be removed and replaced.

Project Location: The project site is within the Berryessa BART Urban Village (BBUV) Plan area and is located at 1655 Berryessa Road, on the north side of Berryessa Road, immediately west of the BART/UPRR tracks.

As the Lead Agency, the City of San José will prepare an Environmental Impact Report (EIR) for the project identified above. The City welcomes your input regarding the scope and content of the environmental information that is relevant to your area of interest, or to your agency's statutory responsibilities in connection with the proposed project. If you are affiliated with a public agency, the EIR may be used by your agency when considering subsequent approvals related to the project.

A **joint community and environmental public scoping meeting** for this project will be held:


When: Thursday, August 12, 2021 from 6:30 p.m. to 8:00 p.m.

Where: This meeting will be held virtually over Zoom. Link to be made available on project webpage at: www.sanjoseca.gov/activeeirs

The project description, location and probable environmental impacts that will be analyzed in the EIR for the project can be found on the City's Active EIRs website at www.sanjoseca.gov/activeeirs, including the EIR scoping meeting information. According to State law, the deadline for your response is 30 days after receipt of this notice. However, responses earlier than 30 days are always welcome. The City will accept comments on the scope and content of the EIR until **5:00 p.m. on August 23, 2021**. If you have comments on this Notice of Preparation, please identify a contact person from your organization, and send your written response to:

City of San José, Department of Planning, Building and Code Enforcement
Attn: Reema Mahamood, Environmental Project Manager
200 East Santa Clara Street, 3rd Floor Tower
San José, CA 95113-1905
Phone: (408) 535-6872, email: reema.mahamood@sanjoseca.gov

Christopher Burton
Director, Planning, Building and Code Enforcement

Deputy 

7-15-21
Date

**NOTICE OF PREPARATION OF AN
ENVIRONMENTAL IMPACT REPORT FOR THE
1655 BERRYESSA ROAD MIXED USE PROJECT**

July 2021

A. INTRODUCTION

The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the environmental effects of a proposed project that an agency may implement or approve. The EIR process is intended to provide information sufficient to evaluate a project and its potential to have significant impacts on the environment; to examine methods of reducing significant impacts; and to consider alternatives to the project.

The EIR for the proposed project will be prepared and processed in accordance with the California Environmental Quality Act (CEQA) of 1970, as amended. In accordance with the requirements of CEQA, the EIR will include the following:

- Summary of the EIR;
- Project Description;
- Description of the existing environmental setting, discussion of environmental impacts of the proposed project, and mitigation measures to reduce environmental impacts of the project;
- Alternatives to the project as proposed; and
- Environmental consequences, including (a) any significant environmental effects which cannot be avoided if the project is implemented; (b) any significant irreversible environmental changes caused by the project, and irretrievable commitments of resources if the project is implemented; (c) the growth inducing impacts of the proposed project; and (d) cumulative impacts.

B. PROJECT LOCATION

The project site is within the Berryessa BART Urban Village (BBUV) Plan area. The site (Assessor's Parcel Numbers [APNs] 241-03-023, -024, and -025) is surrounded by the BART/Union Pacific Railroad (UPRR) tracks to the east, Berryessa Road, the San José Flea Market and surface parking lot to the south, and residential uses to the west and north (see Figures 1, 2 and 3).

C. DESCRIPTION OF THE PROJECT

The project proposes a Planned Development Zoning for development of up to 850 residential units and 480,000 square feet of commercial space, and 0.9-acre of open space at the project site. The residences would be located in the northeastern and central areas, and along the northern and western perimeter of the site. The proposed commercial space would be located in the southern area of the site, fronting Berryessa Road, and the open space would be located on the northwestern corner of the site (see Figure 4).

Vehicle access to the project site would be provided via driveways on Berryessa Road, which would connect to new internal streets on the project site. The proposed internal streets would provide access to the proposed residences and commercial space (see Figure 5).

Residential Development

The project proposes the development of a maximum of 850 residential units which would include a mix of market-rate and affordable multi-family dwelling units, townhouses, and single-family houses. The single-family houses will be located on parcels A and B. The townhouses would be located on Parcel C. The market-rate multi-family dwelling units would be located in buildings on Parcels D, F, and G. The affordable multi-

family dwelling units would be located on Parcel H. (refer to Figure 4). The single-family houses would be located on Parcels A and B, townhouses would on Parcel C, market rate multi-family units would be on Parcels D, F, and G, and affordable multi-family units would be on Parcel H. The single-family and townhouse units would be a maximum of two-stories with a height of up to 35 feet above the ground surface. The market rate multi-family buildings on Parcels D, F, and G would be a maximum of nine stories with a height of 90 feet above the ground surface and the affordable multi-family development on Parcel H would be a maximum of 10 stories with a height of 160 feet above the ground surface. The residential development would include up to two levels of underground parking and a maximum of 905 parking stalls.

Commercial Development

The proposed up to 480,000 square foot commercial building would consist of one of the following three scenarios:

- 465,000 square feet of medical office space and 15,000 square feet of retail/restaurant space;
- 465,000 square feet of commercial office space and 15,000 square feet of retail/restaurant space; or
- 165,000 square foot (165-unit) assisted living facility space and 315,000 square feet of medical office space.

The proposed commercial building would be a maximum of 10 stories at a height of 160 feet above the ground surface. The commercial building would include up to three levels of underground parking with a maximum of a 1,200 parking stalls.

For the purposes of this EIR, the 465,000 square feet of medical office space and 15,000 square feet of retail/restaurant space will be evaluated for the commercial use, given it would be the most intensive use of the three scenarios, as it would generate the most traffic trips and emissions when compared to the two other commercial scenarios. Evaluation of the 465,000 square feet of medical office space and 15,000 square feet of retail/restaurant space scenario will provide a conservative assessment of impacts related to the proposed commercial space.

Required Project Approvals

- Planned Development (PD) Rezoning
- PD Permit
- Tentative Vesting Map
- Tree Removal Permits
- Public Works clearances including grading

D. ENVIRONMENTAL EFFECTS OF THE PROJECT

The EIR will identify the environmental effects anticipated to result from development of the project as proposed. Mitigation measures will be identified for significant impacts, as warranted. The EIR will discuss the project's significant environmental impacts on the topic areas described below. A brief discussion of the potential environmental impacts is presented below.

1) *Aesthetics*

The EIR will describe the existing aesthetic resources in the vicinity of the project site and will evaluate the project's impacts to scenic resources and public views. The project's light and glare and shade and shadow impacts will also be assessed.

2) *Air Quality*

The EIR will describe the existing air quality conditions in the Bay Area and will evaluate the air quality impacts of the project, based on a detailed air quality analysis prepared for the proposed project. Construction and operational air quality impacts will be evaluated consistent with the Bay Area Air Quality Management District Guidelines.

3) *Biological Resources*

The EIR will describe the existing biological resources on and nearby the site, impacts of the project on the existing biological resources, and compliance with the Santa Clara Valley Habitat Plan. A tree survey will inventory trees currently on the site.

4) *Cultural Resources*

The EIR will address any known impacts to potential subsurface archaeological resources (on or adjacent to the site) from project construction, based upon a records search and consultation with local Native American tribes. The existing industrial buildings on-site were constructed in 1974. The EIR will address impacts to historic structures (if any) near the site.

5) *Greenhouse Gas Emissions*

The EIR will address the project's consistency with the City's 2030 Greenhouse Gas Reduction Strategy (GHGRS). Proposed design measures to reduce energy consumption, which in turn would reduce GHG emissions, will also be discussed.

6) *Hazards and Hazardous Materials*

The site has a history of hazardous materials usage. Soil and groundwater quality investigations have been completed on the site. The EIR will address existing hazards or hazardous material conditions on and in the vicinity of the site, based upon an Environmental Site Assessment, and evaluate the potential for the project to disturb or otherwise release hazardous materials into the environment, and identify necessary mitigation measures.

7) *Land Use*

The project site is surrounded by residential, commercial, and BART uses. The EIR will describe the existing land uses adjacent to and within the project area. Land use impacts that would occur as a result of the proposed project will be analyzed, including the consistency of the project with land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect.

8) *Noise*

A noise analysis will be prepared to determine the existing ambient noise levels on the project site and project noise impacts. The EIR will address the compatibility of the proposed uses with the project site's existing and future noise exposure, offsite impacts resulting from on-site noise sources, project-generated traffic noise impacts to sensitive receptors in the area, and the temporary noise increase during project construction. The EIR will also address the potential for project construction to result in groundborne vibration impacts to surrounding uses, and identify necessary mitigation.

9) *Transportation and Traffic*

The EIR will describe the existing transportation network serving the project site and will evaluate the project's generated vehicle trips for the potential to cause impacts related to vehicle-miles-traveled (VMT) as well as whether project traffic would cause local intersection level of service to degrade below City standards. The EIR will identify mitigation for potential VMT impacts, as well as any improvements needed to restore the level of service to pre-project conditions and will describe whether the identified improvements would lead to adverse environmental impacts. The EIR will also assess the potential for the project to impact existing pedestrian, bicycle, and transit facilities in the vicinity of the site.

10) *Utilities and Service Systems*

The EIR will address the ability of existing and planned public facilities and service systems to meet the demands generated by the project. Physical impacts to the environment will be identified, such as the need to construct new utility facilities.

11) *Cumulative Impacts*

In conformance with CEQA, this section will address the impacts of implementing the project in combination with other past, present, and reasonably foreseeable future projects, including other development within the BBUV Plan area.

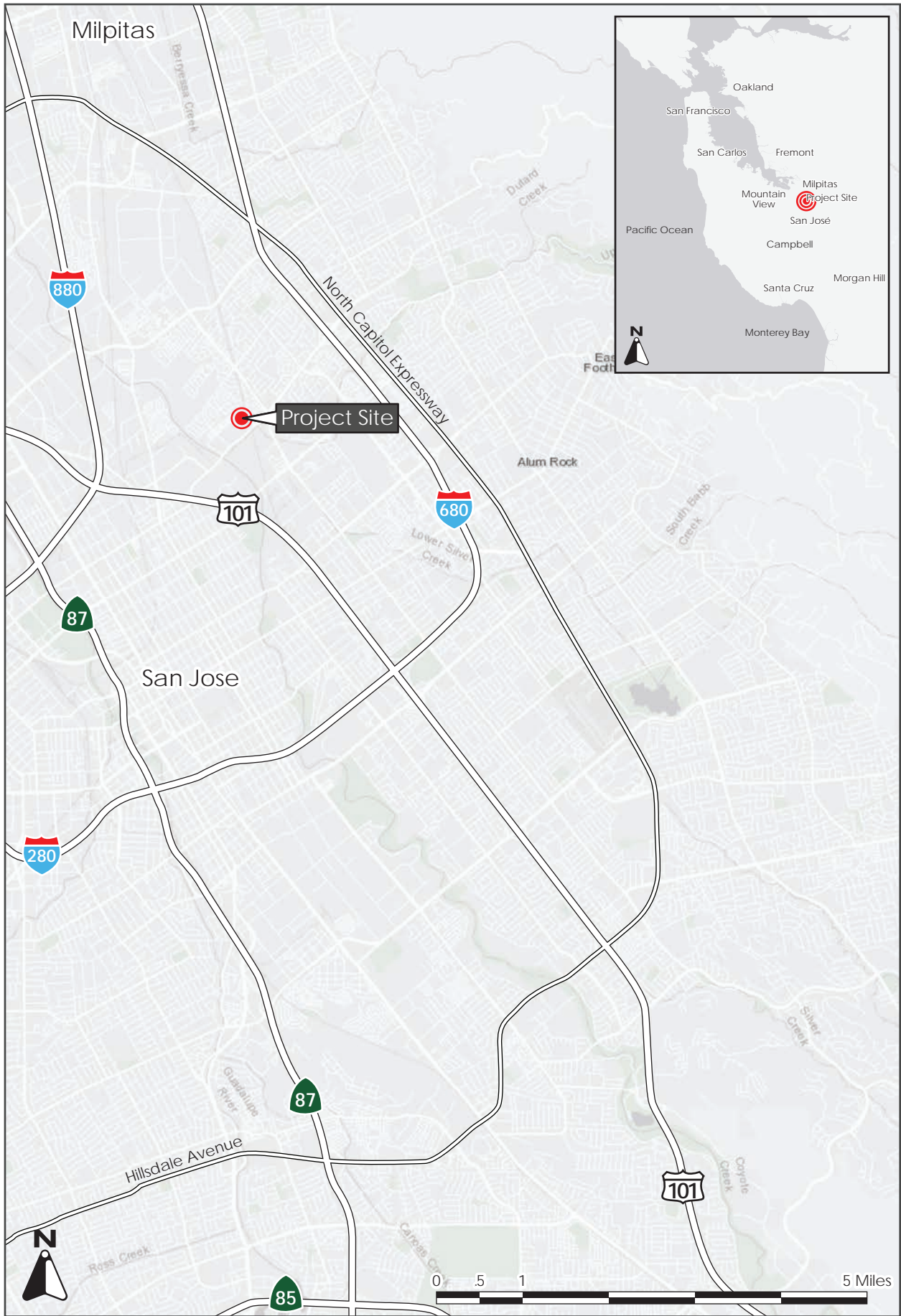
12) *Alternatives to the Project*

The EIR will evaluate Alternatives to the proposed project, including a "No Project" alternative. The alternatives analyzed will be selected based on their ability to avoid or lessen one or more significant impacts while still meeting most of the basic objectives of the proposed project.

13) *Other CEQA Sections*

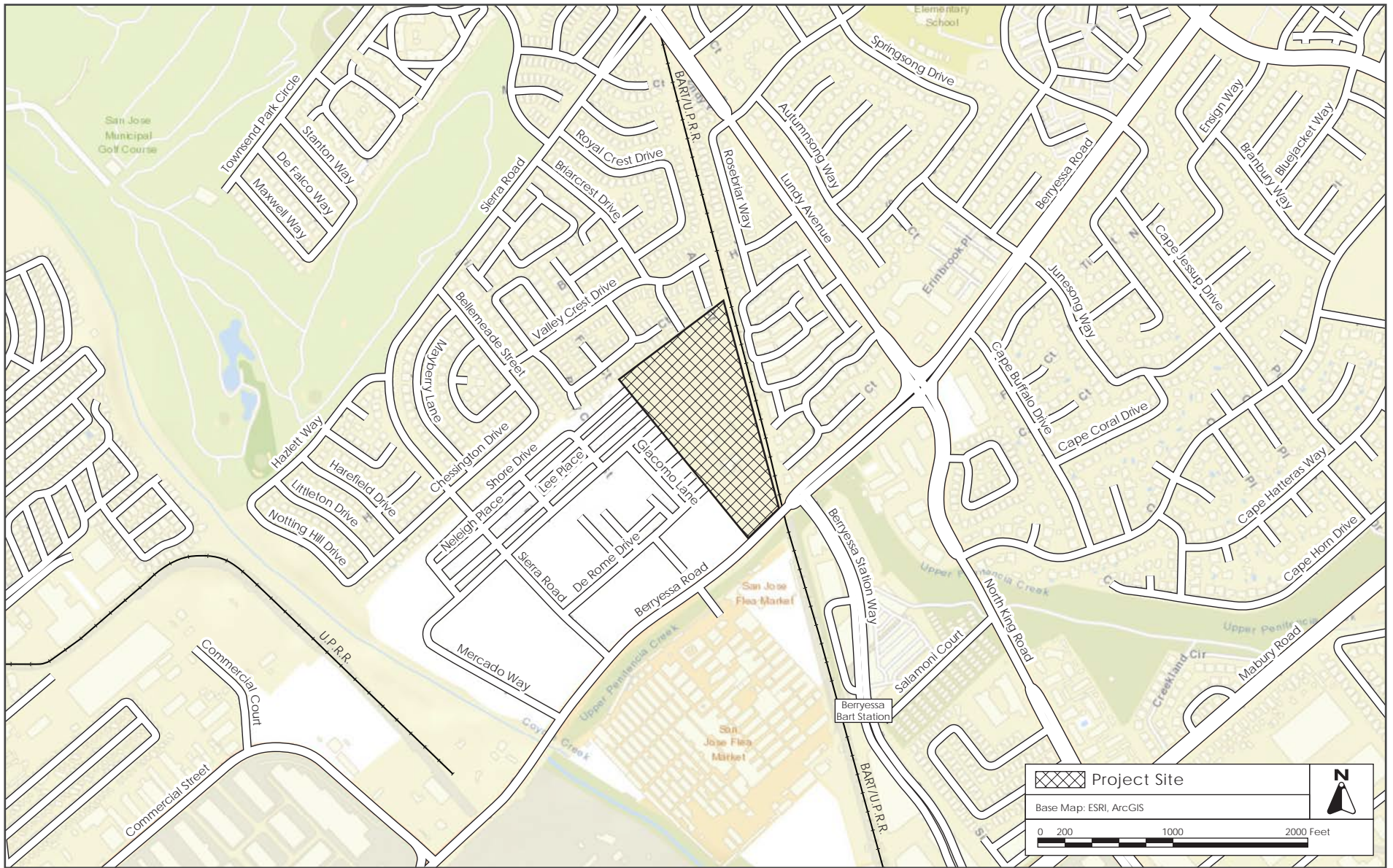
In addition to the resource sections noted above, the EIR will address the project's impacts on other topics included in the CEQA checklist, including agricultural and forestry resources, energy, geology and soils, hydrology and water quality, mineral resources, public services, recreation, and wildfire.

The EIR will include other sections required by CEQA, including growth inducing impacts, significant irreversible changes due to the proposed project, significant unavoidable impacts, authors and consultants, references, and technical appendices.



REGIONAL MAP

FIGURE 1



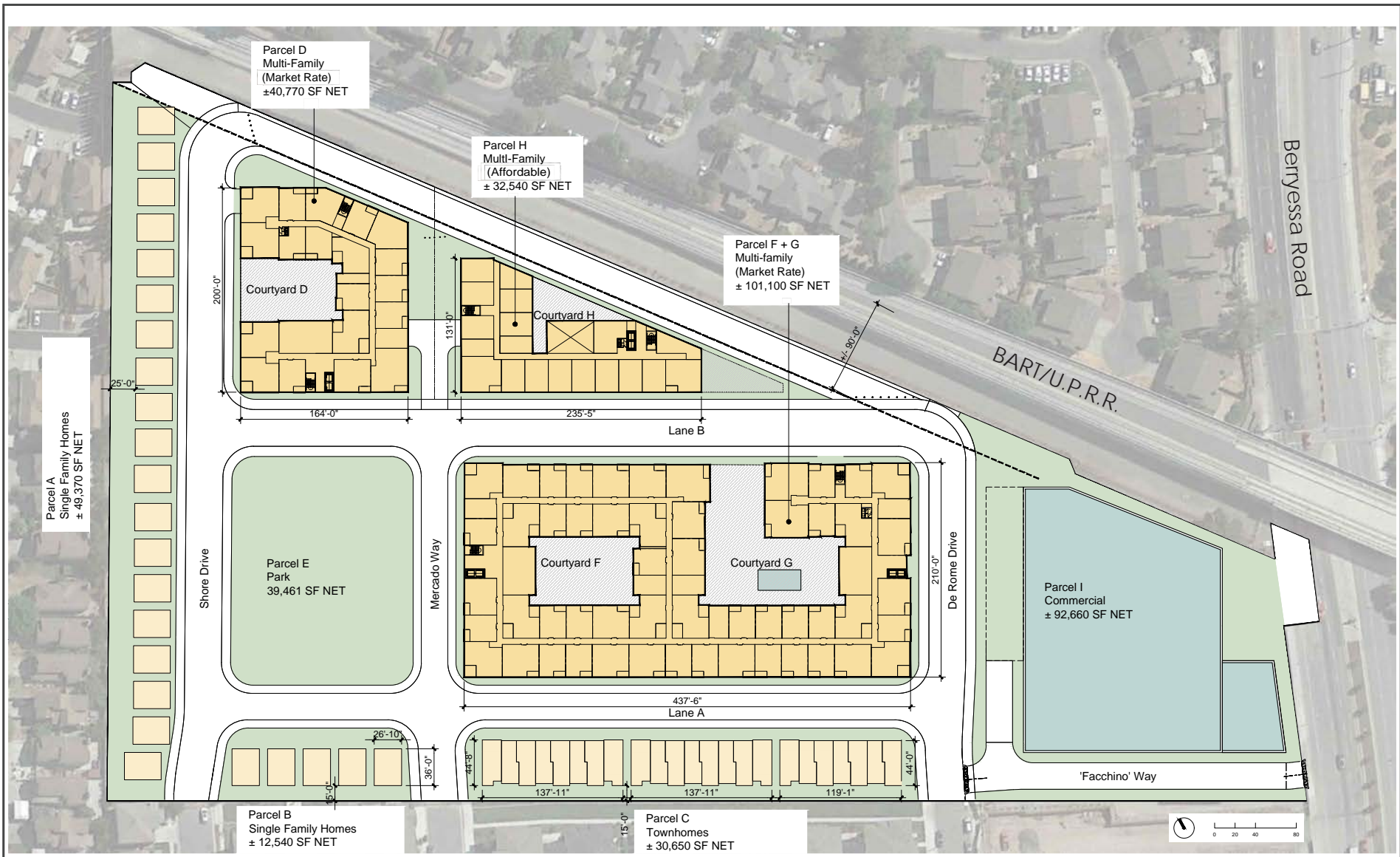
VICINITY MAP

FIGURE 2



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

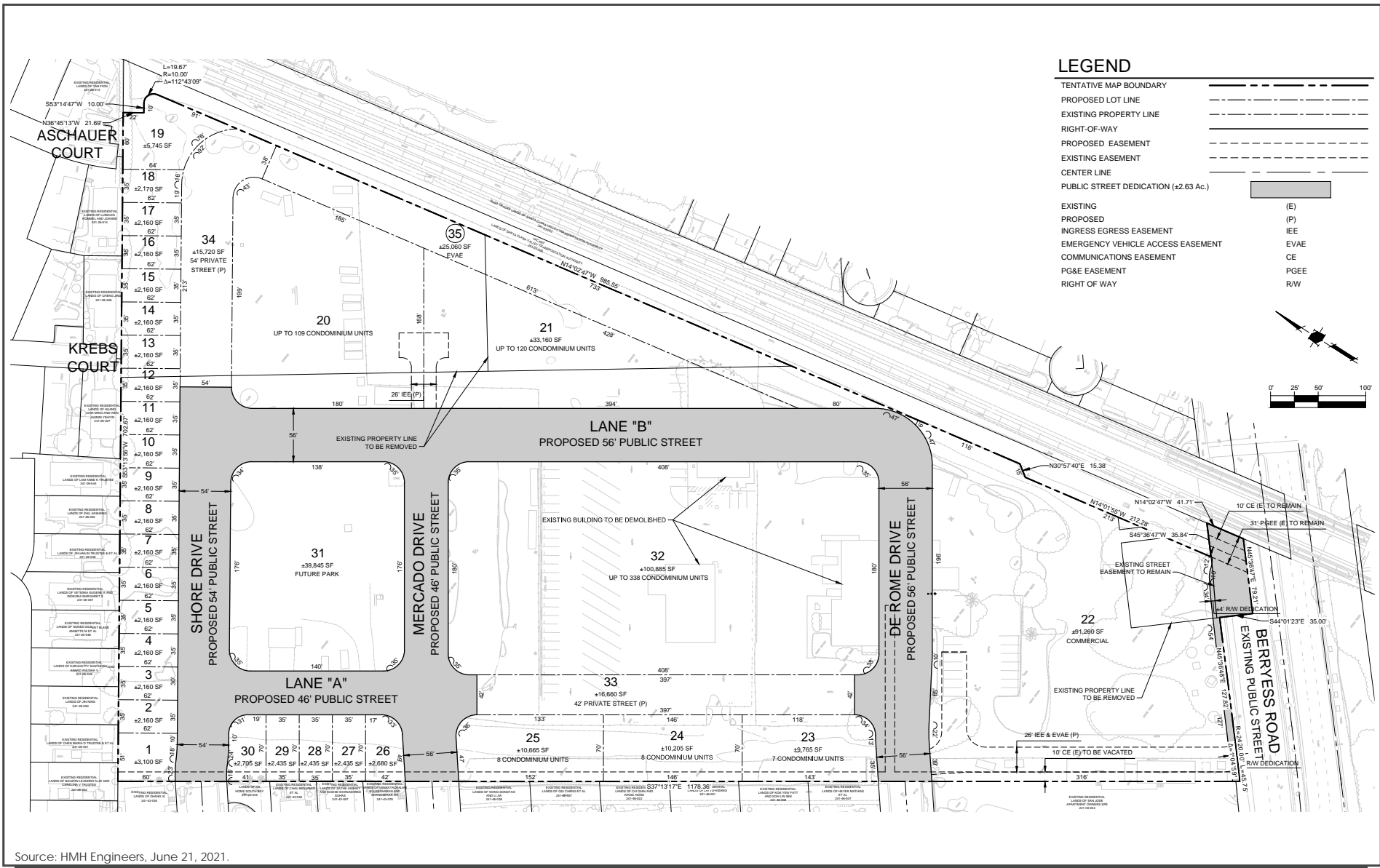
FIGURE 3



Source: KTG Architecture + Planning, June, 2021.

CONCEPTUAL SITE PLAN

FIGURE 4



Source: HMM Engineers, June 21, 2021.

PROPOSED VESTING TENTATIVE MAP

FIGURE 5

AB 52 Notification: File No: PDC18-036/PD21-009/PT21-030

July 16, 2021

Tamien Nation
Chairwoman Quirina Luna Geary
P.O. Box 8053
San José, CA 95155
Qgeary@tamien.org

Jonathan Costillas
Tribal Cultural Resource Officer
P.O. Box 866
Clearlake Oaks, CA 95423
Jcostillas@tamien.org

Sent by email and U.S. Postal Service Certified Mail

Dear Ms. Geary and Mr. Costillas,

In response to the verbal notice we received from you on June 17, 2021 and the written notice received June 28, 2021, that in accordance with Public Resources Code Section 21080.3.1 subd (b) you, as the Tamien Nation representatives, request notification of all proposed projects that require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report; we are sending you by mail and email notification of the following proposed project on file with the City of San José.

- Project File Nos.:** PDC18-036/PD21-009/PT21-030 (Berryessa Road Mixed Use Project)
- Project Location:** 1655 Berryessa Road; north side of Berryessa Road, approximately 1,100 feet west of Lundy Avenue
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Project Point of Contact: Reema Mahamood, Environmental Project Manager
reema.mahamood@sanjoseca.gov, 408.535.6872

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Please contact me if you have any questions or need additional information.

Sincerely,



Reema Mahamood
Planner III, Environmental Review Team
Department of PBCE, Planning Division

Attachments:

- Notice of Preparation for the Berryessa Road Mixed Use Project



TAMIEN NATION
P.O. Box 8053, San Jose, California 95155
(707) 295-4011 tamien@tamien.org

Sent Via Email:

RE: **Formal Request for Tribal Consultation Pursuant to the California Environmental Quality Act(CEQA), Public Resources Code section 21080.3.1, subd. (b), (d) and (e),**

Project:

Dear

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 _____ 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
- Project description, including detailed ground disturbance plans, maps, blueprints or site plans outlining phases of project.
- Project timelines

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 standards used by your agency or 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 green-space, 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. Protecting 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) Protection of the resource(s) itself.

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 all known cultural resources that have already been recorded on or adjacent to the APE.
 - Copies of 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 in the APE.
 - Whether the records search indicates a low, moderate or high probability that unrecorded cultural resources are 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 lead contacts:

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

Johnathan Costillas
Tamien Nation, Tribal Historic Preservation Officer (THPO)
PO Box 866
Clearlake Oaks, CA 95423
(925) 336-5359
jcostillas@tamien.org

Please refer to identification number TN- _____ 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