

Appendix A

Notice of Preparation and Scoping Comments Received



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, TDD: 586-3013, www.ci.milpitas.ca.gov

Notice of Preparation and Scoping Meeting Milpitas Metro Specific Plan Subsequent Environmental Impact Report State Clearinghouse #2006032091

Date: September 16, 2021

To: State Clearinghouse, Agencies, Organizations and Interested Parties

Subject: Notice of Preparation and Scoping Meeting for the Milpitas Metro Specific Plan Subsequent Environmental Impact Report

Scoping Meeting: **September 30, 2021 at 3:00 P.M. – 4:00 P.M.**

Comment Period: **September 16, 2021 to October 18, 2021**

The City of Milpitas (City) will serve as the Lead Agency in the preparation of a Subsequent Environmental Impact Report (SEIR) for the Milpitas Metro Specific Plan (Metro Plan or project) and would like your views regarding the scope and content of the environmental information to be addressed in the SEIR.

The purpose of this notice is (1) to serve as a Notice of Preparation (NOP) of a SEIR pursuant to the State CEQA Guidelines Section 15082; (2) to advise and solicit comments and suggestions regarding the scope and content of the SEIR to be prepared for the Metro Plan; and (3) to notice the public scoping meeting. The project description, location, and a summary of potential environmental effects are included in this NOP further below.

The project is a long-term planning document that updates the original 2008 Milpitas Transit Area Specific Plan (TASP) and vision for the area. As explained in further detail below, the Metro Plan would expand the TASP area by 73 acres and would accommodate additional future growth in Milpitas, in addition to the growth identified in the TASP. No specific development projects are proposed as part of the Metro Plan. Information regarding the project description, project location, and topics to be addressed in the Draft SEIR is provided below. Additional project documents and information are available at the City of Milpitas, Planning Department located at City Hall 455 E. Calaveras Boulevard, Milpitas, CA 95035, and on-line using the following weblinks:

- <https://www.ci.milpitas.ca.gov/milpitas/departments/environmentaldocuments/>
- <https://www.ci.milpitas.ca.gov/metro/>

For questions regarding this notice, please contact Kevin Riley at 1-408-586-3292, or by email: kriley@ci.milpitas.ca.gov.

Notice of Preparation 30-Day Comment Period

The City, as the Lead Agency, requests that responsible and trustee agencies, and the Office of Planning and Research, respond in a manner consistent with Section 15082(b) of the CEQA Guidelines. Pursuant to Public Resources Code Section 21080.4, responsible agencies, trustee agencies and the Office of Planning and Research must submit any comments in response to this notice no later than 30 days after receipt.

NOP – Milpitas Metro Specific Plan

Consistent with Section 15082(b) of the CEQA Guidelines, comments should provide specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility and should identify significant environmental issues, reasonable alternatives, mitigation measures, and whether an agency will be a responsible or trustee agency. In accordance with the time limits established by CEQA, the NOP public review period will begin on September 16, 2021 and end on October 18, 2021.

In the event that the City does not receive a response from any Responsible or Trustee Agency by the end of the review period, the City may presume that the Responsible Agency or Trustee Agency has no response to make (State CEQA Guidelines Section 15082(b)(2)).

How to Comment

All comments in response to this notice must be submitted in writing at the address below, or via email, by the close of the 30-day NOP review period, which is 5:00 PM on October 18, 2021:

Kevin Riley, Metro Plan Project Manager | City of Milpitas
455 East Calaveras Boulevard, Milpitas, CA 95035
Email: kriley@ci.milpitas.ca.gov

**It is noted that additional opportunities for public comment on the Metro Plan and pending Draft SEIR will be provided. These documents are anticipated to be available for public review in the fall of 2021.*

Scoping Meeting

The City will hold a virtual online scoping meeting to provide an opportunity for agency representatives and the public to assist the City in determining the scope and content of the SEIR. The scoping meeting is not intended to be a substitute for comments submitted in response to the NOP, but rather to supplement or expand the understanding of the project, its potential effects and possible mitigation measures, as well as to offer an opportunity for other interested parties to weigh in on the scope and content of the forthcoming SEIR. Any comments on the NOP should be submitted in writing, per the directions listed above in the "How To Comment" section.

The scoping meeting will be held on Thursday, September 30, 2021, at 3:00 P.M. – 4:00 P.M. The scoping meeting can be accessed at:

Facebook: <https://www.facebook.com/CityofMilpitas/>
YouTube: <https://www.ci.milpitas.ca.gov/youtube>
Web Streaming: <https://www.ci.milpitas.ca.gov/webstreaming>

Please submit comments during the meeting by email to kriley@ci.milpitas.ca.gov. For comments before or after the meeting or additional information, please contact Kevin Riley at 1-408-586-3292, or by email: kriley@ci.milpitas.ca.gov.

Project Location and Setting

The City of Milpitas is located at the southern tip of the San Francisco Bay, in Santa Clara County, California. With San Jose situated to its south, Milpitas sits in the northeast section of the South Bay, bordering the East Bay and Fremont. Milpitas is often called the "Crossroads of Silicon Valley" with most of its 13.63 square miles of land situated between two major freeways (I-880 and I-680), and traversed by State Route 237, and County-managed Montague Expressway.

The planning area for the 2008 TASP (TASP Area) comprises an approximately 437-acre area in the southeastern portion of the City, just north of San Jose. The TASP Area is centered on a roughly 0.5-mile radius around the Milpitas Bay Area Rapid Transit (BART) Station (Milpitas Transit Center) located near

the intersection of Montague Expressway and East Capitol Avenue. The boundaries of the TASP Area are the Great Mall to the north, South Main Street to the west, Trade Zone Boulevard and the city limits to the south, Milpitas Boulevard to the southeast, and the industrial lands to the northeast.

As explained in more detail in the following section, the planning area for the Metro Plan (Metro Plan Area) comprises the TASP Area plus an additional 73-acres. As part of the Metro Plan, the Metro Plan Area has been expanded to include additional parcels on the east side of Main Street and the industrial area between Berryessa Creek and Highway 680, which the General Plan establishes as an Innovation District. Similar to the TASP Area, the Metro Plan Area is generally bound by and includes the Great Mall and industrial lands to the north, South Main Street to the west, Trade Zone Boulevard and the city's limits to the south, and I-680 and the San Jose border to the east. The Metro Plan Area is organized into five subdistricts, which are generally separated by major street corridors including Great Mall Parkway/Capitol Avenue, Montague Expressway, Milpitas Boulevard, and the BART rail tracks. The parcels along Main Street are part of the McCandless subdistrict, a primarily residential neighborhood with some services, across Great Mall Parkway from Great Mall. The expansion area to the east of the Transit Center is part of the new Innovation District. The location of the Metro Plan Area is shown in Figure 1 (Project Location).

Project Description

The Metro Plan will replace the 2008 TASP in its entirety. The Metro Plan aims to update the original TASP vision and complete existing and emerging neighborhoods by expanding access to neighborhood services and retail, creating exciting new opportunities for business and jobs near transit and housing, providing additional affordable and market-rate housing, enhancing multimodal connections and non-vehicular mobility throughout the area, providing a greater variety of shared public spaces, and strengthening the identity and sense of place of the Metro Plan Area.

The Metro Plan Area covers a significant portion of the southern area of the City, and the Metro Plan provides policies to guide development in this district in terms of land use, circulation, community design, and utilities and services. The Milpitas General Plan calls for the maintenance and implementation of the Milpitas Metro Specific Plan to guide development around the Milpitas Transit Center and light rail stations into a transit-oriented urban neighborhood with a mix of land uses (General Plan Land Use Goal LU-2, Policy LU 2-1, and Action LU-2a). The Metro Plan will fulfill that requirement.

The Metro Plan expands the original 437-acre TASP area by approximately 73 acres, annexing approximately 60 acres of an industrial area on the east side near I-680 and approximately 13 acres on the west side along a portion of South Main Street, resulting in a Metro Plan area of 510 acres. In addition, the Metro Plan Area would be divided into five subdistricts. To balance the high-density development in the plan area, each subdistrict includes or will include at least one park or open space amenity, as well as linear parks and trails, which will provide residents and workers with outdoor recreational space. In addition, a series of area-wide infrastructure improvements will take place to accommodate residential and mixed-use development; make it more accessible to and comfortable for pedestrians; improve vehicle navigability; and reduce obstructions to development. The proposed land use map for the Metro Plan is shown in Figure 2 (Proposed Milpitas Metro Specific Plan Land Use Map).¹

¹ The City of Milpitas is considering annexing a 3.7-acre site from the City of San Jose. This site is located on the east side of the I-680, south of the Montague Expressway; is located adjacent to the proposed Innovation District; and is shown in Figure 1. The certainty of this annexation is not known at this time; therefore, this SEIR will not consider this annexation site in its environmental analysis. If this site is annexed by the City of Milpitas, then additional environmental review would be prepared at that time.

NOP – Milpitas Metro Specific Plan

The following objectives have been identified for the Metro Plan:

1. Accommodate a maximum of 7,000 additional housing units to help the City to meet its regional housing needs requirements and support transit ridership.
2. Support the evolution of the Great Mall site from a purely retail-based mall site into a mixed-use, retail and amenity-rich area that is well integrated into the Milpitas Metro Plan Area.
3. Create additional neighborhood-serving retail to serve demand from Plan Area residents, community members, and the local workforce, including up to 300,000 additional square feet of retail and restaurant space.
4. Attract business investments and generate employment opportunities through commercial development near transit, with a maximum of 3,000,000 square feet of new office/R&D/light manufacturing space.
5. Ensure adequate public open space to serve residential development. In compliance with the General Plan, the goal for open space development is 3.5 acres per 1,000 residents or the equivalent in terms of recreational value. Some recreational opportunities may be provided outside the plan area, and intensively-programmed and high quality spaces may be counted as equivalent to larger spaces in meeting open space goals.
6. Support the development of an Innovation District in the industrial area east of the Transit Station and west of Highway 680, which will become a hub of employment and research and development, better integrating Milpitas into Silicon Valley.
7. Enhance the street network to create a multi-modal network that includes pedestrian and bikeways to reinforce a pedestrian scale and grid where appropriate.
8. Expand the plan boundaries to encourage the development of an Innovation District east of the Transit Center, and provide opportunities for housing development along Main Street.
9. Redefine the five subdistricts, which are bound by major streets and other impediments, each with its own character based on the allocated mix of land uses and development densities, parks placement, street grid, pedestrian connections, and proximity to the Milpitas Transit Center. Particular visions include:
 1. High to very high-density housing and/or high intensity office and employment uses along arterials, the light rail and the BART stations;
 2. Vibrant mix of lifestyle retail and amenities, high density housing and/or offices within the Great Mall District, along Great Mall Parkway and Montague Expressway; and
 3. Innovation District redeveloped with high-density office, research, light manufacturing uses and services primarily to the east of Berryessa Creek.
10. Encourage higher density and intensity on the sites closest to the BART and light rail transit nodes in order to support transit ridership and to respond to strong market interest in high-density development. High density is particularly appropriate on wide streets where taller buildings fit with the scale of the street, such as Montague Expressway, Capitol Avenue/Great Mall Parkway, and the Milpitas Boulevard Extension.
11. Ensure the active transportation-oriented character of the Plan Area by creating streetscapes that are richly detailed, fine-grained, and provide good connectivity between desired destinations.
12. Develop parks that provide active and passive recreation opportunities and pedestrian connectivity in each subdistrict, as per the Parks and Recreation Master Plan. Encourage the development of creative, usable outdoor space on building rooftops and balconies.

13. Require local-serving retail on particular sites where it is feasible and appropriate, and permit it in otherwise residential and commercial-only structures.
14. Promote the development of hotels where appropriate to meet demand, and support commercial activity to provide an important revenue source for the City.
15. Improve the City transportation network and contribute to the County transportation network and transportation demand management over the next 20 years by improving the multimodal network and implementing the Active Transportation Plan. Key enhancements include creating safer connections for pedestrians and bicyclists and establishing a plan-wide transportation demand management (TDM) program.

Additional Growth Under the Metro Plan

While no specific development projects are proposed as part of the Metro Plan, the Metro Plan will accommodate future growth in Milpitas, including new businesses, expansion of existing businesses, and new residential uses. The buildout analysis assumes a 20-year horizon, and 2040 is assumed to be the buildout year of the Metro Plan.

Anticipated growth accommodated by the Metro Plan within the Metro Plan Area includes new and expanded businesses, new and expanded retail uses, and new hotel and residential uses. Table 1 below summarizes the range of net growth, including residential units, and non-residential square footage that could occur.

Consistent with the Metro Plan Land Use Map (see Figure 2), future growth would largely be focused into the five subdistricts or neighborhoods; each of which would have different characteristics and support different land uses. As shown in Table 1, buildout of the Metro Plan could yield an additional 7,000 dwelling units and 14,000 new residents; and 700 hotel rooms, as well as 300,000 square feet (sf) of retail uses, and 3 million sf of office uses, including 500,000 sf of industrial uses, resulting in approximately 9,500 new jobs; in addition to the buildout that was envisioned under the 2008 TASP.

Table 1: Comparison of Existing Growth under the 2008 TASP and Additional Growth under the Metro Plan

Land Use	Existing Development in 2008	TASP Planned New Development	Total TASP Planned Development	Entitled by 2019^a	Additional Projected Development for Metro Plan by 2040	Total Planned Development (TASP plus Metro Plan)
Dwelling Units	468	7,109	7,577	6,955	7,000	14,5777
Office (sf)	52,780	993,843	1,050,000	10,630	3,000,000 ^b	4,050,000
Retail (sf)	1,970,000	287,075	2,240,000	186,500	300,000	2,540,000
Hotel (rooms)	292	350	642	0 ^c	700	1,342

Notes:

- ^a. Entitled, under construction, or constructed/occupied.
- ^a. Includes 500,000 sf of industrial uses
- ^c. Currently there are concept plans for a high-rise hotel.

Subsequent EIR Analysis

The City, as the Lead Agency under CEQA, will prepare a SEIR for the Metro Plan. The purpose of a SEIR is to inform decision makers and the general public of the environmental effects associated with major changes to a previously certified EIR. The SEIR process is intended to provide environmental information sufficient to evaluate major changes and to identify the potential for new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

In May 2008, the City certified a Final Environmental Impact Report (Certified EIR) for the TASP, which evaluated the buildout of approximately 7,100 residential units resulting in 18,000 new residents; and 1,000,000 sf of office space, 285,000 sf of retail space, and 175,000 sf of hotel space resulting in 4,200 new jobs under the TASP. As described above, the Metro Plan would allow for additional growth and expand the boundaries of the TASP Area. In accordance with CEQA and the CEQA Guidelines, the SEIR analysis will focus on the potential impacts of the changes to the project and will not reevaluate the project as a whole. Accordingly, the SEIR will examine the revised project in the context of the 2008 Milpitas TASP EIR, focusing on the changes to environmental impacts and mitigation that would result from the revisions to the project.

The SEIR will be prepared in accordance with CEQA and will include:

- A description of the project;
- A description of the current environmental setting as compared to the environmental setting from the Certified EIR, new or increased potential environmental impacts, and new or revised mitigation measures;
- Alternatives to the project as currently proposed; and
- New environmental consequences or significant changes in environmental consequences as compared to the Certified EIR, including: (a) any significant environmental effects which cannot be avoided if the project is implemented, (b) the growth-inducing impacts of the project, and (c) cumulative impacts.

The City has determined that the Metro Plan has the potential to result in new environmental effects or environmental effects that are increased in severity compared to the 2008 TASP EIR with respect to the following resource topics, which will be addressed in the SEIR:

- Transportation
- Air Quality and Greenhouse Gas Emissions
- Noise
- Population and Housing
- Public Services
- Utilities
- Land Use

Hazardous Waste Sites

Portions of the project are located on or in close proximity to areas with hazardous materials contamination compiled pursuant to Government Code Section 65962.5 (Cortese List).

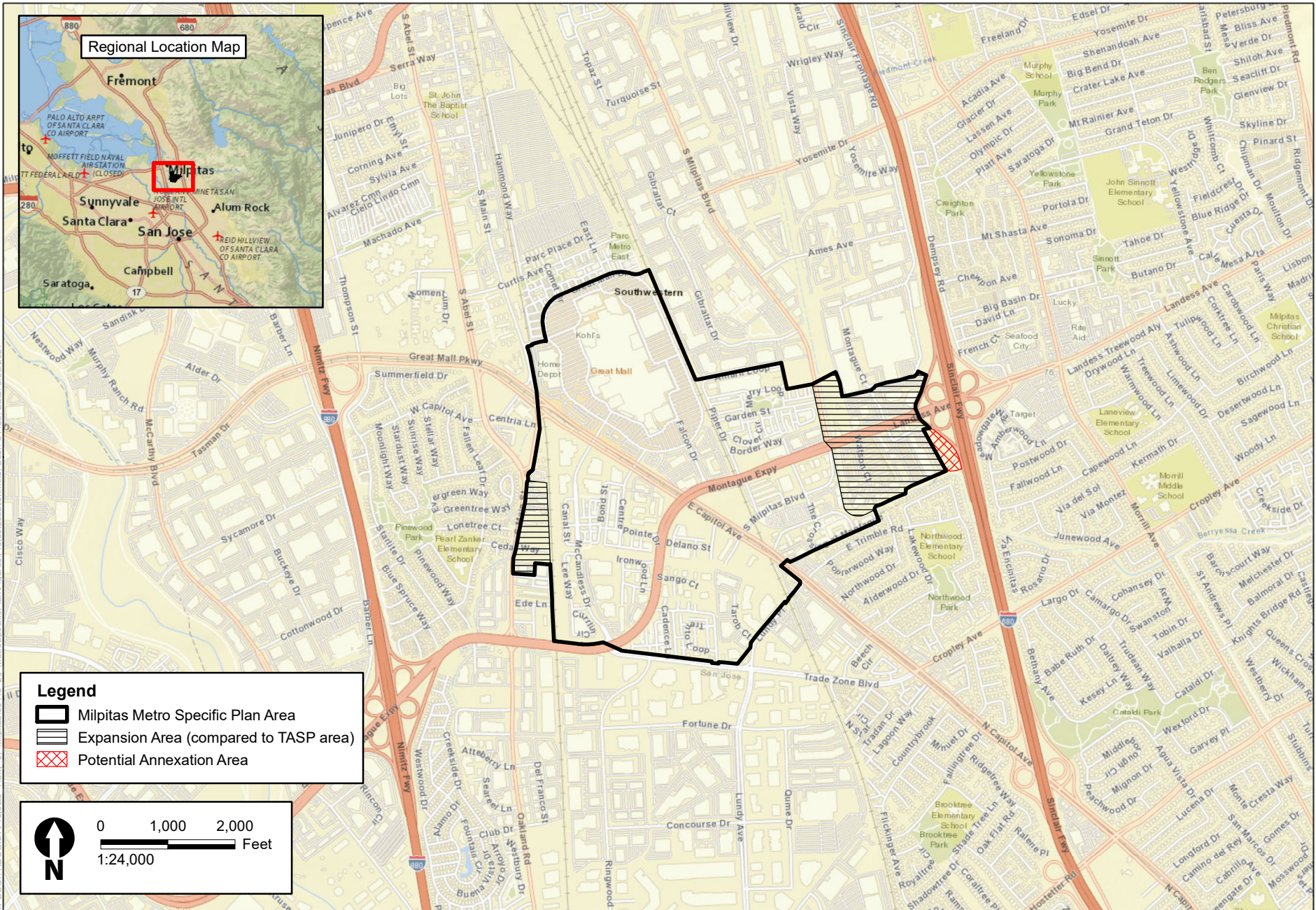
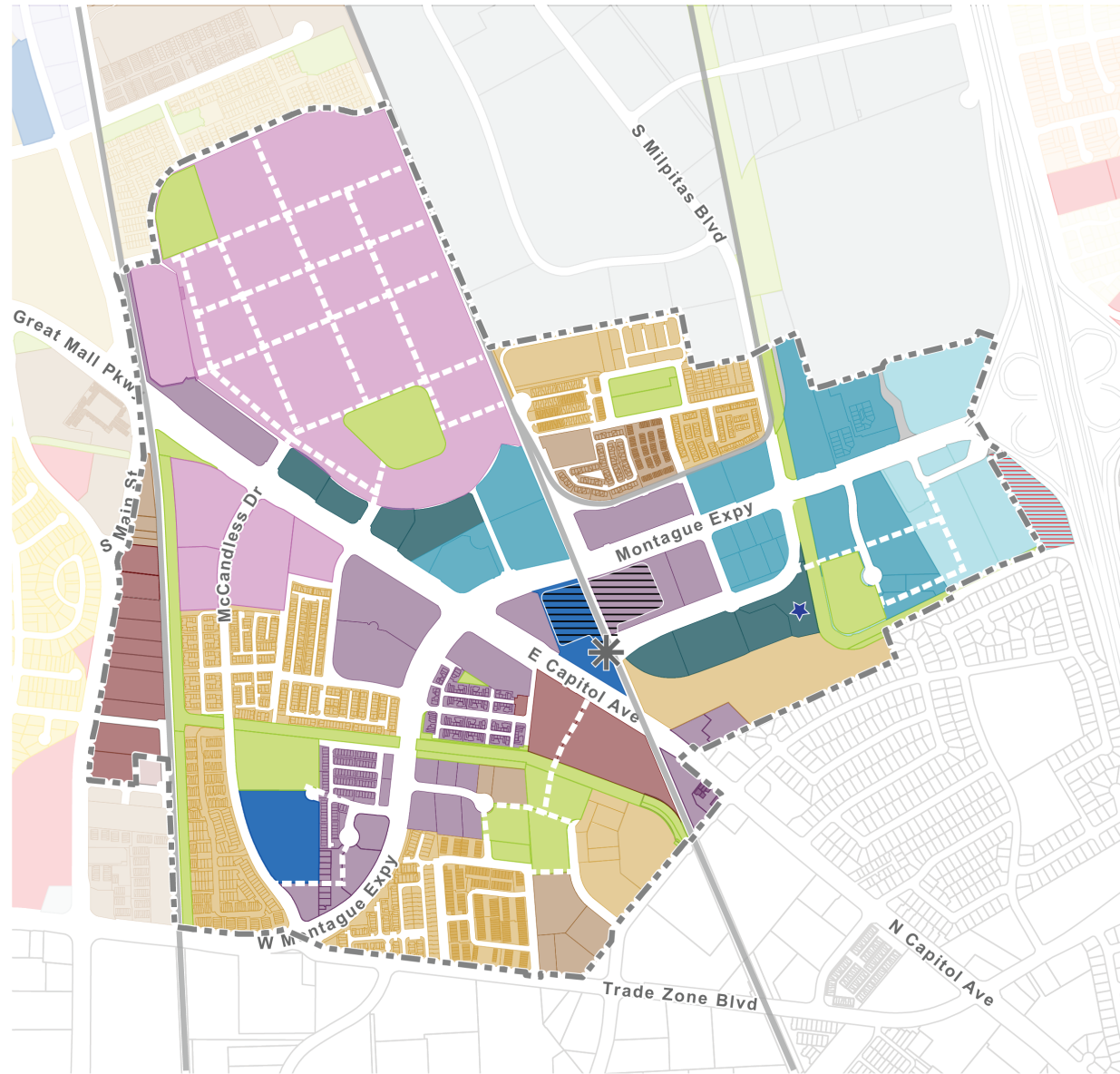


Figure 1
Project Location Map



Legend

- Milpitas Metro
- * BART Station
- ★ Police Substation*
- Railway
- ≡ Transit Center
- ▨ Potential Annexation Area
- Public Facilities (PF)
- Permanent Open Space (POS)
- Residential Retail High Density Mixed Use (RRMU) 40-85 units/acre; max 2.5 FAR
- Boulevard Very High Density Mixed Use (BVMU) 85-250 units/acre; 2.5-5.0 FAR
- Business Park Research & Development, Lower Density (BPRD-L); 1.0-2.5 FAR
- Business Park Research & Development, Higher Density (BPRD-H); 1.0-2.5 FAR
- Business Park Research & Development, Residential (BPRD-R); 1.0-5.0 FAR
- Multi-Family Residential High Density (MFH) 30-40 units/acre
- Multi-Family Residential Very High Density (VHD) 40-85 units/acre
- Urban Residential (URR) 70-120 units/acre

*Location of police substation is approximate and shall be determined through the implementation of the MMSPP.

Graphics...00113.20 (9/10/21) AB

Source: Urban Field Studio, 2021.

Figure 2
Proposed Milpitas Metro Specific Plan Land Use Map

From: "Ayon, Llisel@DOT" <Llisel.Ayon@dot.ca.gov>
Date: October 15, 2021 at 10:16:53 AM PDT
To: Kevin Riley <kriley@ci.milpitas.ca.gov>
Cc: OPR State Clearinghouse <State.Clearinghouse@opr.ca.gov>
Subject: **Milpitas Metro NOP - Caltrans Comments**

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hello Kevin,

Thank you for including Caltrans in the review process for this project. The following comments are based on our review of the NOP. If you have any questions regarding these comments or require any additional information, please feel free to contact me at this email address or the phone number listed below.

Thank you,

Llisel Ayon
Associate Transportation Planner
Local Development - Intergovernmental Review
California Department of Transportation – District 4
Cell: (510) 506-6184

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660
www.dot.ca.gov



October 15, 2021

SCH #: 2006032091
GTS #: 04-SCL-2021-00952
GTS ID: 24224
Co/Rt/Pm: SCL/680/6.4

Kevin Riley, Project Manager
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035

Re: Milpitas Metro Specific Plan Notice of Preparation (NOP) for Draft Environmental Impact Report (DEIR)

Dear Kevin Riley:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Milpitas Metro Specific Plan. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the September 2021 NOP.

Project Understanding

The Milpitas Metro Specific Plan Project will update the 2008 Milpitas Transit Area Specific Plan. The updated plan will expand the original planning area by 73 additional acres, change land use classifications and policies, and allow for additional population and employment growth.

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).

If the project meets the screening criteria established in the City's adopted Vehicle Miles Traveled (VMT) policy to be presumed to have a less-than-significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the

"Provide a safe and reliable transportation network that serves all people and respects the environment"

exempt status in align with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR, which should include the following:

- VMT analysis pursuant to the City's guidelines. Projects that result in automobile VMT per capita above the threshold of significance for existing (i.e. baseline) city-wide or regional values for similar land use types may indicate a significant impact. If necessary, mitigation for increasing VMT should be identified. Mitigation should support the use of transit and active transportation modes. Potential mitigation measures that include the requirements of other agencies such as Caltrans are fully enforceable through permit conditions, agreements, or other legally-binding instruments under the control of the City.
- A schematic illustration of walking, biking and auto conditions at the project site and study area roadways. Potential traffic safety issues to the State Transportation Network (STN) may be assessed by Caltrans via the Interim Safety Guidance.
- The project's primary and secondary effects on pedestrians, bicycles, travelers with disabilities and transit performance should be evaluated, including countermeasures and trade-offs resulting from mitigating VMT increases. Access to pedestrians, bicycle, and transit facilities must be maintained.

Transportation Impact Fees and Fair Share Contributions

We encourage a sufficient allocation of fair share contributions toward multimodal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT. Caltrans welcomes the opportunity to work with the City and local partners to secure the funding for needed mitigation. Traffic mitigation- or cooperative agreements are examples of such measures.

Please identify in text and graphics existing and proposed improvements for the pedestrian, bicycle, and transit networks. The City should estimate the cost of needed improvements, expansion, and maintenance for the Plan area, as well as identify viable sources of funding, correlated with the pace of improvements, and a scheduled plan for implementation along with the DEIR.

Please consider the following projects for fair share contributions:

- Plan Bay Area 2040 - Transit Efficiency & Service Improvement Project
- Plan Bay Area 2040 - Envisions Expressway Program (Montague Expressway)
- Plan Bay Area 2050 - I-680/Montague Expressway Interchange Improvement
- Plan Bay Area 2050 - I-880/Montague Expressway Interchange Improvement

Kevin Riley, Project Manager
October 15, 2021
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Lead Agency

As the Lead Agency, the City of Milpitas is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Llisel Ayon at Llisel.Ayon@dot.ca.gov. Additionally, for future notifications and requests for review of new projects, please email LDIGR-D4@dot.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is written in a cursive, flowing style with a long horizontal tail stroke.

MARK LEONG
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

From: Reena Brilliot <RBrilliot@santaclaraca.gov>

Date: October 15, 2021 at 1:42:23 PM PDT

To: Kevin Riley <kriley@ci.milpitas.ca.gov>

Cc: Andrew Crabtree <acrabtree@santaclaraca.gov>, Michael Liw <MLiw@santaclaraca.gov>

Subject: City of Santa Clara comments on Milpitas Metro Specific Plan SEIR NOP

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Kevin!

Thank you for providing the City of Santa Clara an opportunity to comment on the NOP for the Milpitas Metro Specific Plan EIR.

Please reference the attached comment letter and list of pending projects in the City of Santa Clara for use in the transportation analysis.

Have a great weekend!

Reena Brilliot

Assistant Director | Community Development Department

RBrilliot@SantaClaraCA.gov

www.santaclaraca.gov



October 15, 2021

Kevin Riley

**Subject: City of Santa Clara comments on Milpitas Metro Specific Plan SEIR
NOP**

Dear Kevin Riley:

Thank you for sharing the Notice of Preparation for the Milpitas Metro Specific Plan Subsequent EIR NOP. The City of Santa Clara has the following comments related to the transportation analysis.

- While the City of Santa Clara has adopted Vehicle Miles Travelled (VMT) as the CEQA metric to measure transportation environmental impacts, the City still also conducts operational traffic analysis at intersections. As this project can add up to 300 peak hour trips within the City of Santa Clara, the City is requesting a local transportation analysis to be conducted at signalized intersections. The City uses the methodology and procedures contained within the VTA TIA Guidelines to conduct the local transportation analysis. Level of service and delay should be determined for intersections that meet the "10-trip rule" along the corridors of Tasman Drive, Agnew Road, Lick Mill Boulevard, and Lafayette Street as project trips most likely will utilize these routes.
- The local transportation analysis must also include an analysis of bicycle and pedestrian facilities in terms of their availability, project effects on future bike/pedestrian plans, and improvements proposed by the project. Maps and information on existing and planned bicycle facilities within Santa Clara can be found on the City's website at <https://www.santaclaraca.gov/our-city/departments-g-z/public-works/engineering/committees/bicycle-and-pedestrian-advisory-committee>.
- The project site is located near the eastern boundary of the City of Santa Clara. Relevant approved projects within Santa Clara need to be included in the study estimates of the Background traffic volumes. This is consistent with the CMP TIA Guidelines. A list of approved projects within the City of Santa Clara is attached.
- Similarly, pending projects within Santa Clara need to be incorporated in the Cumulative traffic volume estimates, in order to reflect the growth in both the local and regional traffic. A list of pending projects within the City of Santa Clara is attached.
- Any physical improvements required or planned at study intersections need to evaluate secondary impacts to alternative modes of transportation.
- Fair share contributions should be made for adverse effects found along roadways and/or intersections, including along Agnew Road, Tasman Drive, Lick Mill Boulevard, and Lafayette Street.

[Double click **here** and type Receipt Name; Press F11]

Re: [Click **here** and type Subject]

October 15, 2021

Page 2 of 2

The City of Santa Clara looks forward to meeting with the City of Milpitas. Please contact Michael Liw, Assistant Director of Public Works to discuss the findings of the local transportation analysis.

Sincerely,



Andrew Crabtree

Director of Community Development

cc: Michael Liw, Assistant Director of Public Works
Jonathan Yee, Transportation Manager
Carol Shariat, Principal Transportation Planner
Reena Brilliot, Assistant Director of Community Development

From: "Hultman, Debbie@Wildlife" <Debbie.Hultman@wildlife.ca.gov>

Date: October 18, 2021 at 3:20:21 PM PDT

To: Kevin Riley <kriley@ci.milpitas.ca.gov>

Cc: OPR State Clearinghouse <State.Clearinghouse@opr.ca.gov>, "Garrison, Kristin@Wildlife" <Kristin.Garrison@wildlife.ca.gov>, "Blinn, Brenda@Wildlife" <Brenda.Blinn@wildlife.ca.gov>, "Weightman, Craig@Wildlife" <Craig.Weightman@wildlife.ca.gov>

Subject: Milpitas Metro Specific Plan-SCH2006032091

Good Afternoon Kevin Riley,

Please see the attached letter for your records. If you have any questions, contact Kristin Garrison, cc'd above.

Thank you,

Debbie Hultman | Assistant to the Regional Manager

California Department of Fish and Wildlife – Bay Delta Region

2825 Cordelia Road, Ste. 100, Fairfield, CA 94534

707.428.2037 | debbie.hultman@wildlife.ca.gov



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 428-2002

www.wildlife.ca.gov

GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



October 18, 2021

Kevin Riley
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
kriley@ci.milpitas.ca.gov

Subject: Milpitas Metro Specific Plan, Notice of Preparation of a Subsequent Draft Environmental Impact Report, SCH No. 2006032091, Santa Clara County

Dear Kevin Riley:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a Subsequent Draft Environmental Impact Report (SDEIR) from the City of Milpitas (City) for the Milpitas Metro Specific Plan (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act Permit, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Milpitas

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Kevin Riley
City of Milpitas
October 18, 2021
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Objective: City of Milpitas certified the Milpitas Transit Area Specific Plan (TASP) Environmental Impact Report in 2008. The SDEIR will expand the TASP area by approximately 73 additional acres for a total area of 510 acres and change land use classifications (e.g., increased allowable densities, new land use classifications, and change in location of land use classifications).

Location: The Project area is located in the southernmost portion of the City of Milpitas. The Project area is generally bounded by the Great Mall to the north, South Main Street to the west, Trade Zone Boulevard and the City limits to the south, Milpitas Boulevard to the southeast, and Highway 680 to the east.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

In order to avoid significant impacts to avian species potentially nesting within or near the Project area, CDFW recommends that the following protective measures be included in the SDEIR.

Potential Impacts to Habitat and Avian Species

Habitat Assessment

In review of the NOP, Figure 1 Project Location Map, and Google Earth aeriels, Berryessa Creek and two unnamed drainage channels are located within the Project area. Berryessa Creek and the unnamed drainage channels appear to include wetland plant species, riparian habitat and grass and herbaceous vegetation.

The NOP does not discuss if the proposed Project may result in impacts to Berryessa Creek, drainage channels, or associated habitats such as tree removal. The NOP, page 5, describes objective #15 to improve the City transportation network, and NOP, page 3, discusses that area-wide infrastructure improvements will take place to accommodate residential and mixed-use development. Several bridges or culvert crossings also appear to currently exist over Berryessa Creek and drainage channels. Implementation of projects such as bridge widening or replacement, replacing or installing new utility lines, and expansion of or new installation of stormwater outfalls within the Berryessa Creek or the drainage channels could result in impacts to riparian habitat, and fish and wildlife species.

If the Project may result in impacts to riparian areas and other habitat types, CDFW recommends the measures below be included in the DEIR to potentially offset some of the foreseeable impacts.

Kevin Riley
City of Milpitas
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1. Habitat Assessment: A qualified biologist will conduct a habitat assessment to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to the drainage channels located within the Project area (as listed above).
2. Wetland Delineation: A formal wetland delineation will be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. [Please note that, while there is overlap, State and federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602 differ; therefore, the delineation should identify both State and federal wetlands, as well as which activities may require Notification to comply with Fish and Game Code (§ 1602 and §2081(b)).]
3. Nesting Bird Surveys: If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist will conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys will be conducted at the appropriate times of day and during appropriate nesting times.
4. Active Nest Buffers: If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction will be established. The buffer will be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist will conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist will monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman will have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.
5. Qualified Biologist: A qualified biologist is an individual who has a degree in biological sciences or related resource management with a minimum of two seasonal years post-degree experience conducting bird nest surveys. During or following academic training, a qualified biologist will have achieved a high level of

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professional experience and knowledge in biological sciences and special-status species identification, ecology and habitat requirements.

6. Notification of Lake or Streambed Alteration: Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Project activities in or around drainage channels and other waterbodies within the Project may require that the project proponent submit an LSA Notification to CDFW. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

Avian Collision with Buildings

The NOP describes, in comparison to the TASP, an additional 7,000 dwelling units, 700 hotel rooms, 300,000 square feet of retail, and 3 million square feet of office uses, including 500,000 square feet of industrial uses. The NOP does not discuss if this expansion will occur with a change of use of the current building height levels, or with other design or planning changes.

If the proposed Project will include an increase in building height over existing conditions, this could potentially result in an increase in the number or frequency of avian collisions with buildings, especially tall buildings located adjacent to riparian areas. CDFW therefore recommends that the SDEIR include building height and land use location alternatives that reduce environmental impacts such as locating tall buildings at a biologically appropriate distance away from wetlands or riparian areas. The SDEIR should analyze all potential impacts of increases in building height, types of materials used on the exterior façade of buildings, and changes in other design features on volant wildlife species, and include avoidance and minimization measures that reduce those impacts to a less-than-significant levels.

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The

Kevin Riley
City of Milpitas
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types of information reported to CNDDDB can be found at the following link:
<https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Stephanie Fong

CF047D7F8D234E1...
Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento

From: "Torney, Lola" <lola.torney@vta.org>
Date: October 18, 2021 at 4:22:25 PM PDT
To: Kevin Riley <kriley@ci.milpitas.ca.gov>
Cc: "plan.review" <plan.review@vta.org>
Subject: VTA comments on Milpitas Metro Specific Plan NOP

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Kevin,
Attached are VTA's comments on the NOP for the Milpitas Metro Specific Plan. Thank you!

~Lola Torney

Lola Torney | She/Her
Transportation Planner III
Bicycle and Pedestrian Program

Santa Clara Valley Transportation Authority
3331 North First Street, Building B
San José, CA 95134-1927
Phone [408-321-5830](tel:408-321-5830)



October 18, 2021

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Attn: Kevin Riley
By Email: kriley@ci.milpitas.ca.gov

Dear Kevin,

VTA appreciates the opportunity to comment on the Notice of Preparation for the Milpitas Metro Specific Plan Subsequent Environmental Impact Report (SEIR) project. VTA has reviewed the document and has the following comments:

Land Use and Densification

VTA supports the addition of the Innovation District to the Metro Plan area east of the Milpitas Bay Area Rapid Transit (BART) station. VTA also supports the Boulevard Very High-Density Mixed Use and Business Park Research and Development Land Uses on VTA parcels next Great Mall and Parking lot. Also, VTA supports the future changes of Great Mall's evolution from purely retail to mixed-use site. This is a transit-supportive change that can increase transit ridership in Milpitas and therefore may lead to lower greenhouse gas emissions in Santa Clara County.

Once transit facilities are no longer needed as public facilities, VTA would like Boulevard Very High-Density Mixed use as the underlayer. VTA does not want any blue for public facilities to be on our land that can be used for transit-oriented development.

Transportation Impact Analysis (TIA)

The City should perform operations analysis of key intersections near the plan area and CMP intersections that may be affected the project. This will likely include the following intersections:

1. Montague Expressway / South Milpitas Boulevard
2. Montague Expressway / East Capitol Avenue
3. Montague Expressway / Trade Zone Boulevard
4. Montague Expressway / South Main Street

The Local Transportation Analysis (LTA) performed should examine if any localized improvements can be done to these intersections to address these operational issues without any widening if possible and instead focus on multi-modal improvements to bikes, pedestrians and transit.

Mitigations to Address CMP Standards

The City is still required to conform to the requirements of the VTA CMP, which is governed by state CMP legislation. While VTA is supportive of the City's use of Vehicle Miles Traveled as CEQA

methodology for transportation impacts in conformance with SB 743, the CMP guidelines currently refer to an LOS standard for CMP purposes. The TIA shall include a discussion of mitigation measures to address any impacts per CMP standards identified in the analysis.

Transportation Demand Management

VTA recommends that the SEIR analyze the potential for the project to reduce its VMT and intersection operational effects through a comprehensive Transportation Demand Management (TDM) program, including setting a target, third-party monitoring, and an enforcement framework. Chapter 8 of VTA's TIA Guidelines includes recommendations for such Target-Based Trip Reduction programs. VTA supports trip caps and aggressive parking management strategies to help reach these TDM goals.

Safety, Security, and Access

VTA engages with its partners at BART, the Federal Transit Administration (FTA), the Department of Homeland Security (DHS), and the California Public Utilities Commission (CPUC) concerning existing and future access underneath VTA Light Rail guideway. New access points or modification near the guideway may trigger regulatory requirements or review of the FTA, DHS, and the CPUC. If any proposals, including art, access for autos, bicycles, or pedestrians is shown in the Metro Plan, VTA strongly recommends documenting proposal as "Conceptual" to set public expectations. Any proposed modifications would require close VTA collaboration and coordination.

VTA notes the possible location for a police substation near the Milpitas BART station shown in some maps. VTA recommends coordinating with VTA's County Sheriff Transit Patrol for this effort. The County Sheriff handles the police activities for VTA and would appreciate coordination when determining needs and location. Please contact me through email to begin coordination.

Noise and Vibration

The SEIR should analyze the impacts of noise and vibration on any future projects or uses. The SEIR should identify any impacts and propose mitigations for the project based on current and future conditions. BART currently operates trains throughout the day as part of VTA's BART Silicon Valley Phase I project within the Metro Plan area.

Thank you again for the opportunity to review this project. If you have any questions, please do not hesitate to contact me at 408-321-5830 or lola.torney@vta.org.

Sincerely,



Lola Torney
Transportation Planner III

ML0601

From: "Talbo, Ellen" <Ellen.Talbo@rda.sccgov.org>
Date: October 19, 2021 at 11:14:13 PDT
To: Kevin Riley <kriley@ci.milpitas.ca.gov>
Cc: "Aghegnehu, Ben" <ben.aghegnehu@rda.sccgov.org>, "Camacho, Leo" <Leo.Camacho@rda.sccgov.org>, "Pham, Thien" <Thien.Pham@rda.sccgov.org>
Subject: **Public Comment for Milpitas Metro NOP SEIR**

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hi Kevin,
Unfortunately our network experienced a difficulty last night that didn't allow this letter to go through. Please accept the attached letter for the NOP SEIR.

Thank you greatly,
Ellen Talbo, AICP

*County Transportation Planner | Dept. of Roads and Airports
Santa Clara County | 101 Skyport Drive | San Jose CA 95127
www.countyroads.org
(408) 573-2484 office | (408) 234-6533 cell*

County of Santa Clara

Roads and Airports Department

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



October 18, 2021

Kevin Riley
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

SUBJECT: Response to Notice of Preparation for the Milpitas Metro Specific Plan Subsequent EIR (SEIR)

Dear Mr. Riley,

The Department of Roads and Airports appreciates the opportunity to review the Notice of Preparation of a SEIR for the Metro Specific Plan. We submit the following comments pertaining to the SEIR:

- We understand that the SEIR is intended to be programmatic and prepared so that the Metro Specific Plan can be characterized as one large project. We also understand that Level of Service is no longer a consideration for the purposes of CEQA mitigation. Due to the signal operations and coordination needed to move expressway traffic flows at a reasonable level, the County still evaluates level of service for the purposes of analyzing operational and safety impacts from individual developments along and surrounding the expressway. Therefore, we prefer an approach to continue to require traffic impact analysis studies for individual development projects within the Metro subarea on the basis of analyzing local operational and safety impacts as a means of demonstrating that an individual project and its impacts are consistent with the findings in the programmatic SEIR. We are open and available to meet mutually with City staff and applicants at a pre-application stage to coordinate an adequate scope of work in the preparation of any local traffic studies. Please contact Leo Camacho, Senior Land Development Engineer, at leo.camacho@rda.sccgov.org as the main point of contact for any questions related to this.
- Should impacts from an individual project within the subarea trigger any future fair share contribution(s), the County would prefer to utilize the fair share contribution toward the cost of the Montague Expressway widening project and/or any future planned active transportation or intersection improvements on Montague Expressway.

We also submit the following comments related to the development aspects of implementing the Metro Plan:

- We observed the patterns of high density mixed use among both retail and residential uses in Figure 2 of the scoping notice and acknowledge the environment this creates for higher pedestrian circulation surrounding or along Montague Expressway. Due to the higher volumes and higher traffic speeds of Montague Expressway, we believe that pedestrian safety would be best served, at a minimum, through the provision of sidewalks in a consistent manner free of gaps in the network.



Therefore, the County will require sidewalk frontage improvements upon development application for encroachment permitting.

- Maintenance of non-standard improvements in the County right of way will be subject to a maintenance indemnification agreement between the encroachment permit applicant and the County unless otherwise coordinated between the City and County.
- The implementation of a bicycle network on Montague Expressway would require mutual planning, design, and coordination between the City and County due to the unique geometric features of the roadway related to sight distance, speed, curvature, intersection configuration, driveway conflicts, and other technical design issues that impact users safety. Please contact Ellen Talbo, County Transportation Planner, at ellen.talbo@rda.sccgov.org for any questions or to discuss implementation of the bicycle infrastructure within the subarea.

For the reasons listed above we invite the City to dually engage with our Land Development and Transportation Planning units on a frequent enough basis to sufficiently check in about any development activity that requires City/County coordination. We thank you for engaging the department in this effort. Further we recognize the City's efforts and goals in addressing regional housing development challenges and support the City's goals of reducing congestion through increases in transit use. If you have any questions or concerns about these comments, please feel free to contact me at 408-573-2482.

Thank you,

A handwritten signature in black ink that reads "D. Ellen Talbo" with a long horizontal flourish extending to the right.

Ellen Talbo, AICP
County Transportation Planner



NATIVE AMERICAN HERITAGE COMMISSION

September 20, 2021

Kevin Riley
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

RECEIVED
SEP 21 2021
UM

CHAIRPERSON
Laura Miranda
Luiseño

Re: 2006032091, Milpitas Metro Specific Plan Project, Santa Clara County

VICE CHAIRPERSON
Reginald Pagaling
Chumash

Dear Mr. Riley:

SECRETARY
Merri Lopez-Kelfer
Luiseño

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

COMMISSIONER
Julie Tumamait-Stenslie
Chumash

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

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

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

AB 52

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

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

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

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. 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.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPA.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

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

If you have any questions or need additional information, please contact me at my email address:
Katy.Sanchez@nahc.ca.gov.

Sincerely,

Katy Sanchez

Katy Sanchez
Associate Environmental Planner

cc: State Clearinghouse