

Appendix A

Notice of Preparation and NOP Scoping Comments

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212 Locust Street, Suite C, Santa Cruz, CA 95060 ♦ (831) 420-5200

January 11, 2021

Notice of Preparation of an Environmental Impact Report and Public Scoping Meeting Notice

RE: Newell Creek Pipeline Improvement Project

To Interested Agencies and Persons:

The City of Santa Cruz (City) as the Lead Agency for the Newell Creek Pipeline (NCP) Improvement Project (Proposed Project) has issued this Notice of Preparation (NOP) pursuant to the California Environmental Quality Act (CEQA) to notify responsible and trustee agencies and other interested parties that an Environmental Impact Report (EIR) will be prepared to evaluate potential environmental impacts of the Proposed Project. The City is soliciting public input regarding the scope and content of environmental information to be included in the EIR.

The NOP provides information about the public review and comment period, project location, project description, and the probable environmental effects of the Proposed Project, and is posted on the City's website at cityofsantacruz.com/waterenvdocs.

Public Review and Comment

The City is interested in receiving input from agencies and the public with regard to the proposed replacement and improvement activities. Your agency may need to use the EIR prepared by our agency when considering your permit or other approval for the Proposed Project, if any is required. Please respond with written comments regarding the proposed scope and the intended content of the EIR as it relates to your agency's area of statutory responsibility or your areas of concern or expertise. We are requesting that all comments be provided in writing to enable us to address the comments as intended in the EIR. Written comments are also requested from organizations and other interested parties regarding the scope and evaluation of potential environmental issues associated with the Proposed Project.

Written responses are due within 30 days of the receipt of this notice, as provided by state law. As such, a 30-day public review and scoping period is established from **January 15, 2020 to February 15, 2020**. Comments may be submitted by mail, email, or by attending the Public Scoping Meeting (see details below) and submitting a written comment. All comments should indicate a contact person for the agency or organization.

All written responses are requested to be received by 5:00 p.m. on Monday, February 15, 2021, and should be sent to the following address:

Doug Valby, Associate Civil Engineer
City of Santa Cruz Water Department
212 Locust Street, Suite C
Santa Cruz, CA 95060
Email: dvalby@cityofsantacruz.com

One public scoping meeting regarding the Proposed Project and EIR will be held. You or members of your agency, organization, or the public are invited to attend to provide written comments on the scope and content of environmental information to be included in the EIR. This meeting will include a brief overview of the proposed project and EIR process and allow time for questions about the project or process. The meeting will be held as follows:

The City of Santa Cruz Water Department (City) will hold one Scoping Meeting on February 2, 2021 at 5:30 p.m. In light of the COVID-19 pandemic, the meeting will be held via Zoom for remote public participation. The call-in number and link for the presentation are provided below.

Please click the link below to join the webinar:

<https://zoom.us/j/99843466481>

Or iPhone one-tap :

US: +16699009128,,99843466481# or +13462487799,,99843466481#

Or Telephone, dial (for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656
or +1 301 715 8592 or 888 788 0099 (Toll Free) or 833 548 0276 (Toll Free) or
833 548 0282 (Toll Free) or 877 853 5247 (Toll Free)

Webinar ID: 998 4346 6481

International numbers available:

<https://zoom.us/j/99843466481>

Project Location and Existing Facilities

The existing NCP is located in the Santa Cruz Mountains in the unincorporated area of Santa Cruz County, except for the portion of the NCP that extends onto the City's Graham Hill Water Treatment Plant (GHWTP) property, which is located within the City, but is surrounded by unincorporated lands. Both the existing NCP and the Proposed Project extend approximately 9 miles between Newell Creek Dam, a City facility that impounds Loch Lomond Reservoir, to the north and GHWTP to the south (see Figure 1).

As shown on Figure 2, the northern segment of the existing pipeline extends from just south of the existing Newell Creek Dam to the Felton Booster Pump Station (FBPS) that is located at the intersection of Graham Hill Road and East Zayante Road. The Proposed Project would generally follow the existing

pipeline alignment in the northern segment with some minor realignments. Both the existing NCP and Proposed Project pipeline cross Newell Creek in two locations in the northern segment. The San Lorenzo River also is a major natural feature in the project area, and is located west of the existing pipeline and Proposed Project in some sections in the northern segment.

The southern segment of the existing NCP extends from the FBPS to the GHWTP. The existing pipeline extends from the FBPS under Zayante Creek and extends through an active lumber yard and Henry Cowell Redwoods State Park and then along Graham Hill Road for approximately one mile to the GHWTP. The Proposed Project also would extend under Zayante Creek and follow a short section along the existing NCP alignment, but would then be rerouted to Graham Hill Road, as shown on Figure 2.

Project Background

The NCP is a critical component of the City's raw water supply infrastructure. It conveys untreated water to and from the Loch Lomond Reservoir (see Figure 1), which is the City's only raw surface water storage facility. The NCP conveys untreated water to Loch Lomond Reservoir from the Felton Diversion on the San Lorenzo River and from Loch Lomond Reservoir to the GHWTP. The pipeline is critical to supplying the water system during dry seasons, extended dry periods, and storm events, when other water sources are diminished or otherwise impaired. The NCP conveys water to the water system via the FBPS to the GHWTP for treatment and distribution into the area served by the City. The FBPS is located approximately midway along the NCP alignment at the intersection of Graham Hill Road and East Zayante Road. When the San Lorenzo River has high flows and storage is available in the Loch Lomond Reservoir, the NCP is also used to pump water from the Felton Diversion on the San Lorenzo River up to the Reservoir (via the FBPS) to store for later use. Although the NCP is not used continuously, it is a critical component to the City's water supply when needed during both wet and dry seasons. It is also a backup source should one of the City's other raw water supplies become inoperable.

The purpose of the Proposed Project is to address the identified deficiencies in existing pipeline conditions, as well as provide improved access for maintenance and repair. The NCP was constructed in approximately 1960, is reaching the end of its useful life, and is experiencing increased frequency of breaks due to corrosion and land movement along portions of its alignment due to geological conditions. Due to steep terrain and landslides present in some locations, the existing NCP has been damaged and/or is located in areas that make access and repairs difficult, such as a portion of the existing NCP along Pipeline Road in Henry Cowell Redwoods State Park and another section along a steep hillside in the Brackney area, east of Highway 9 between Felton and Ben Lomond.

Project Description

The Proposed Project consists of replacement of 8.75 miles of the existing NCP with a new 24-inch polyvinyl chloride (PVC), ductile iron or high-density polyethylene (HDPE) pipeline. The pipeline generally would be installed within existing road pavement, road right-of-way (ROW), and/or existing City's easements. The proposed northern NCP segment from the Newell Creek Access Road Bridge to the FBPS generally follows the existing NCP alignment with a few short re-alignments to avoid crossing private property. Wherever possible, the new pipeline would be installed parallel to the existing pipeline. The proposed southern NCP segment from the FBPS to the GHWTP generally includes a new pipeline section along Graham Hill Road. Figures 3 and 4 show the proposed NCP alignment sections

within the northern and southern segments, respectively. Once the new pipeline is installed and the interconnections are made, the majority of the existing NCP is expected to be abandoned in place.

Other components of the Proposed Project include installation of air release valves that extend approximately 24 inches above ground. The FBPS has been improved over the past decade, and no new pump stations are required. The Proposed Project may include widening and/or paving of existing roadway shoulders within existing road ROW.

Construction

The Proposed Project is scheduled to be constructed in phases over multiple years from approximately 2022 to 2028. Three pipeline sections have been identified as having the highest priority for replacement and would proceed first: the Brackney North section in the northern segment as shown on Figure 3 and the two Graham Hill Road sections in the southern segment that would replace the existing pipe through Henry Cowell State Park as shown on Figure 4. For sections of the pipeline that are installed using standard trenching techniques, it is expected that approximately 60 to 100 linear feet of new pipeline would be installed per day on average.

The majority of the Proposed Project would be installed within existing roadways and using conventional (open cut) trenching methods. Special construction techniques may be utilized in the Brackney area, which has experienced multiple landslides that have damaged the pipeline, and the risk of additional damage by future landslides is of great concern. The methods that would be utilized for this pipeline segment would consist of a combination of constructing the pipeline within the bedrock using micro-tunneling or deep trenches, where feasible. It is anticipated that construction at creek crossings would involve extending the pipeline along existing roadways and bridges, or utilizing trenchless methods to tunnel underneath the creeks. No construction is anticipated within flowing channels. The City has adopted standard construction practices that would be implemented by the City or its contractors during construction activities to provide erosion and air quality controls and water quality and habitat protection. Traffic controls would be in place for construction activities in roadways.

Probable Environmental Effects of the Proposed Project

After completing a preliminary review of the Proposed Project, as described in Section 15060(d) of the CEQA Guidelines, the City has determined that an EIR should be prepared to assess the potentially significant environmental impacts of the Proposed Project. Because the preparation of an EIR is clearly required for the Proposed Project, an Initial Study will not be prepared.

The EIR will address environmental impacts of the Proposed Project's construction and operation activities, and will propose mitigation measures to address significant impacts that are identified. The following describes the anticipated environmental issues that will be addressed in the EIR.

- Air Quality and Greenhouse Gas Emissions. Effects on air quality and greenhouse gas emissions would primarily be associated with construction activities and would be temporary and short term. However, both construction and operational emissions of criteria pollutants and greenhouse gasses will be estimated using the California Emissions Estimator Model emissions model and compared to the Monterey Bay Air Resources District emissions-based thresholds to assess potential impacts.

- Biological Resources. Potential impacts on biological resources could result from construction near existing waterways, such as Newell and Zayante Creeks, and sensitive habitat areas, such as the Zayante Sandhills. The Zayante Sandhills are a unique community of plants and animals found in the project area. Potential direct and indirect impacts to sensitive vegetation communities, special-status plant and wildlife species, and jurisdictional aquatic resources associated with both construction and operation of the Proposed Project will be assessed based on a biological survey of the study area and preparation of a technical biological resources report to support the EIR analysis.
- Cultural and Tribal Cultural Resources. Potential impacts to cultural and tribal cultural resources that could occur during ground-disturbing construction activities will be evaluated. This includes both archaeological and historical resources. A cultural resources inventory and evaluation report will be prepared to support the EIR analysis.
- Energy. A temporary increase in the consumption of energy would be required during construction and limited change in the use of power would be required for operation of the pipeline. The impact analysis will assess if the Proposed Project would result in potentially significant environmental impacts due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation, or conflict with or obstruct a state or local plan for renewable energy or energy efficiency.
- Geology and Soils. Construction of the Proposed Project could result in site-specific impacts on or from local geology and soils conditions. Potential impacts related to geologic, seismic, and soils constraints will be assessed. Potential impacts to paleontological resources will also be evaluated.
- Hazards and Hazardous Materials. Potential impacts related to hazards and hazardous materials will be evaluated including the potential hazardous materials associated with transport, use, and disposal of hazardous materials during construction and potential hazardous emissions or hazardous materials used during construction and operations.
- Hydrology and Water Quality. Potential impacts related to hydrology and water quality will be assessed including temporary and permanent impacts to hydrology and water quality as a result of near-stream construction.
- Noise and Vibration. Potential construction-period noise and vibration impacts to sensitive receivers (residences) in the vicinity of the Proposed Project will be assessed with modeling based on noise measurements taken at the site and review of construction phases and equipment usage. Operational noise would not be expected to change with the Proposed Project and therefore will not be analyzed in detail in the EIR.
- Transportation. Construction-related vehicle trips will be estimated and temporary construction-related traffic will be evaluated to identify any hazardous conditions on roadways or inadequacies in emergency access that may result during construction of the Proposed Project. Operation-period vehicle trips are anticipated to be similar to existing conditions, and will be described in the EIR.
- Wildfire. The Proposed Project is located in a state responsibility area, traversing moderate and high fire hazard severity zones. Therefore, this section will focus on the potential for construction activities to impair an emergency response or evacuation plan, exacerbate

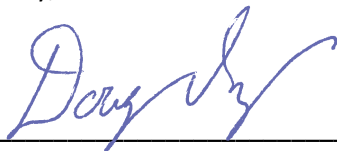
wildfire risks, and expose people to risks due to post-fire effects, consistent with standards in the CEQA Guidelines Appendix G. The focus will be on elements of construction that could exacerbate fire hazard risks, however, once construction is completed, the underground pipeline would not create conditions that would affect wildland fire risks.

- Impacts Not Found Significant. The EIR will explain why other effects were determined to not be potentially significant and were not discussed in detail in the EIR. For example, the pipeline would not be visible from public viewpoints, would not damage scenic resources, or produce light and glare; therefore, no significant aesthetic impacts are anticipated.
- Other Sections. The EIR will include additional topics as required by the CEQA Guidelines including significant irreversible environmental changes, growth inducement, cumulative impacts, and alternatives. The EIR will describe and evaluate a reasonable range of alternatives to the Proposed Project that would feasibly attain most of the Proposed Project's basic objectives while avoiding or substantially lessening any significant effects of the Proposed Project. These alternatives may include alternative pipeline routes, including the Quail Hollow Road and Mount Hermon Road corridors, alternative construction techniques, and/or rehabilitation and/or replacement in place of the existing pipeline. For each alternative, the EIR will assess the degree to which it might reduce one or more identified significant project impacts, whether it could result in other new or increased impacts, its feasibility, and the degree to which it is consistent with the project objectives. The "No Project" alternative will also be evaluated as required by CEQA.

Further Information

For environmental review information or questions about the Proposed Project, please contact Doug Valby at dvalby@cityofsantacruz.com.

Sincerely,



Doug Valby
Associate Civil Engineer

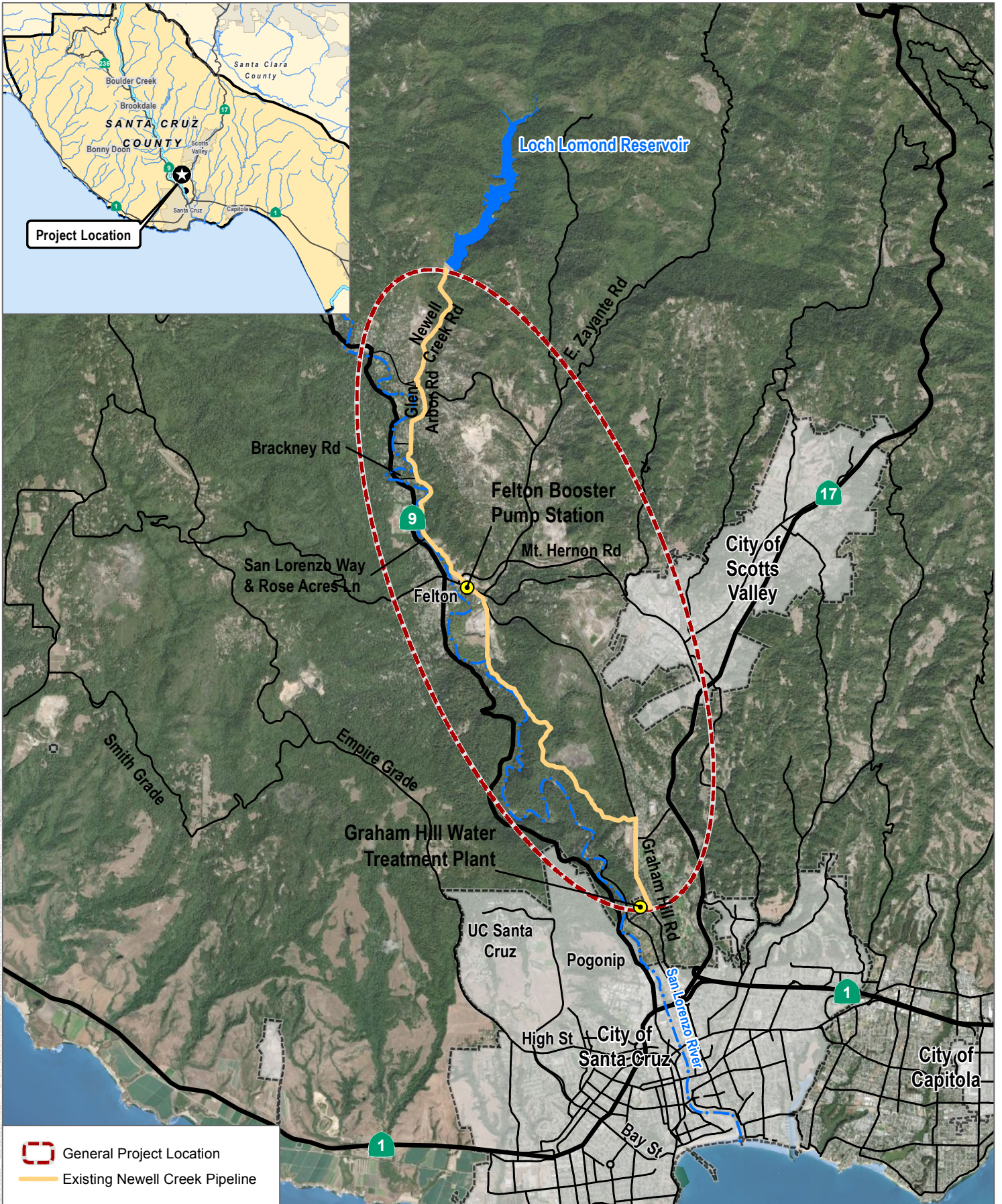
Attachments

Figure 1: Regional Location

Figure 2: Proposed Newell Creek Pipeline Improvement Project Overview

Figure 3: Proposed Newell Creek Pipeline Improvement Project Northern Segment

Figure 4: Proposed Newell Creek Pipeline Improvement Project Southern Segment



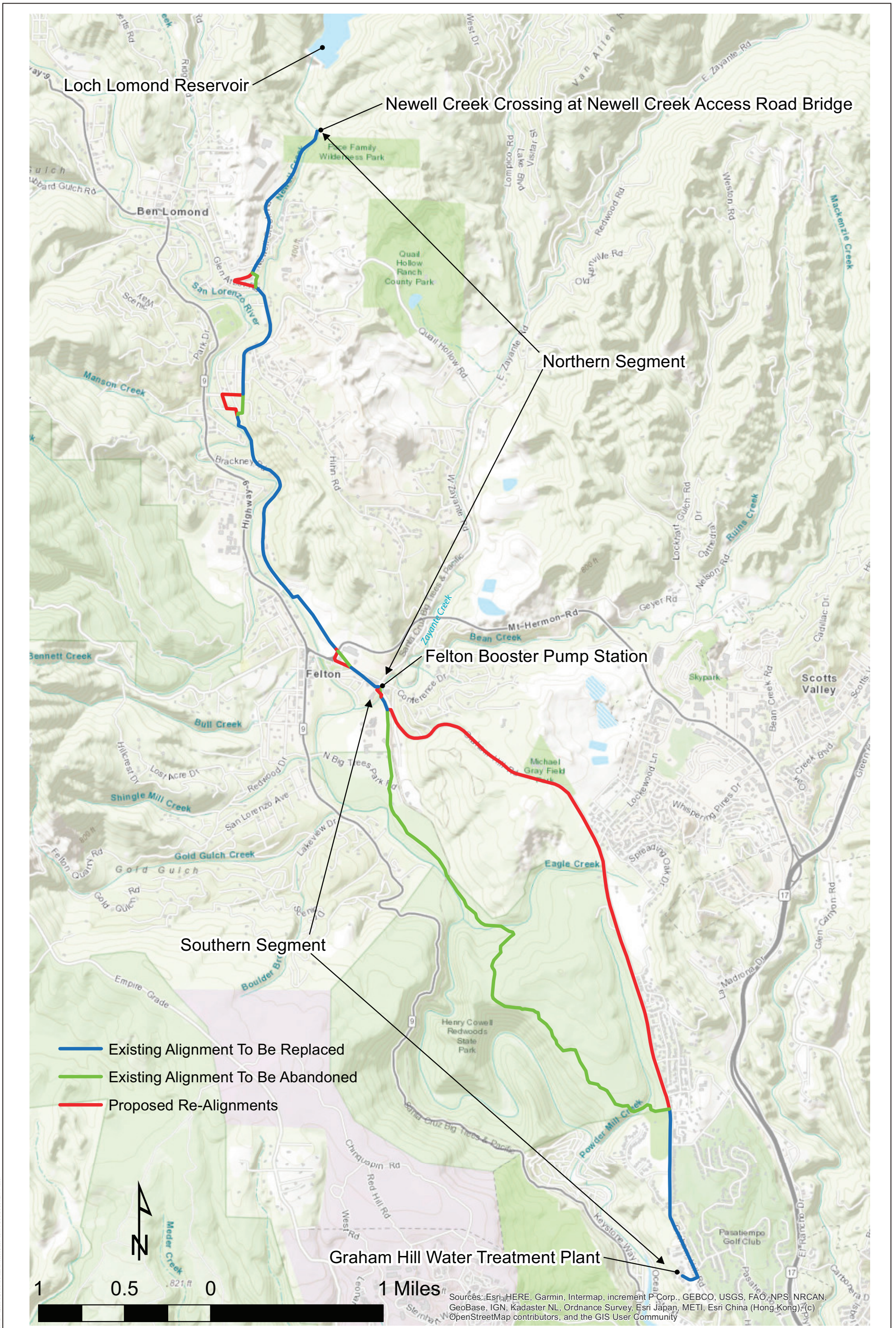
SOURCE: ESRI 2020, City of Santa Cruz 2020

FIGURE 1

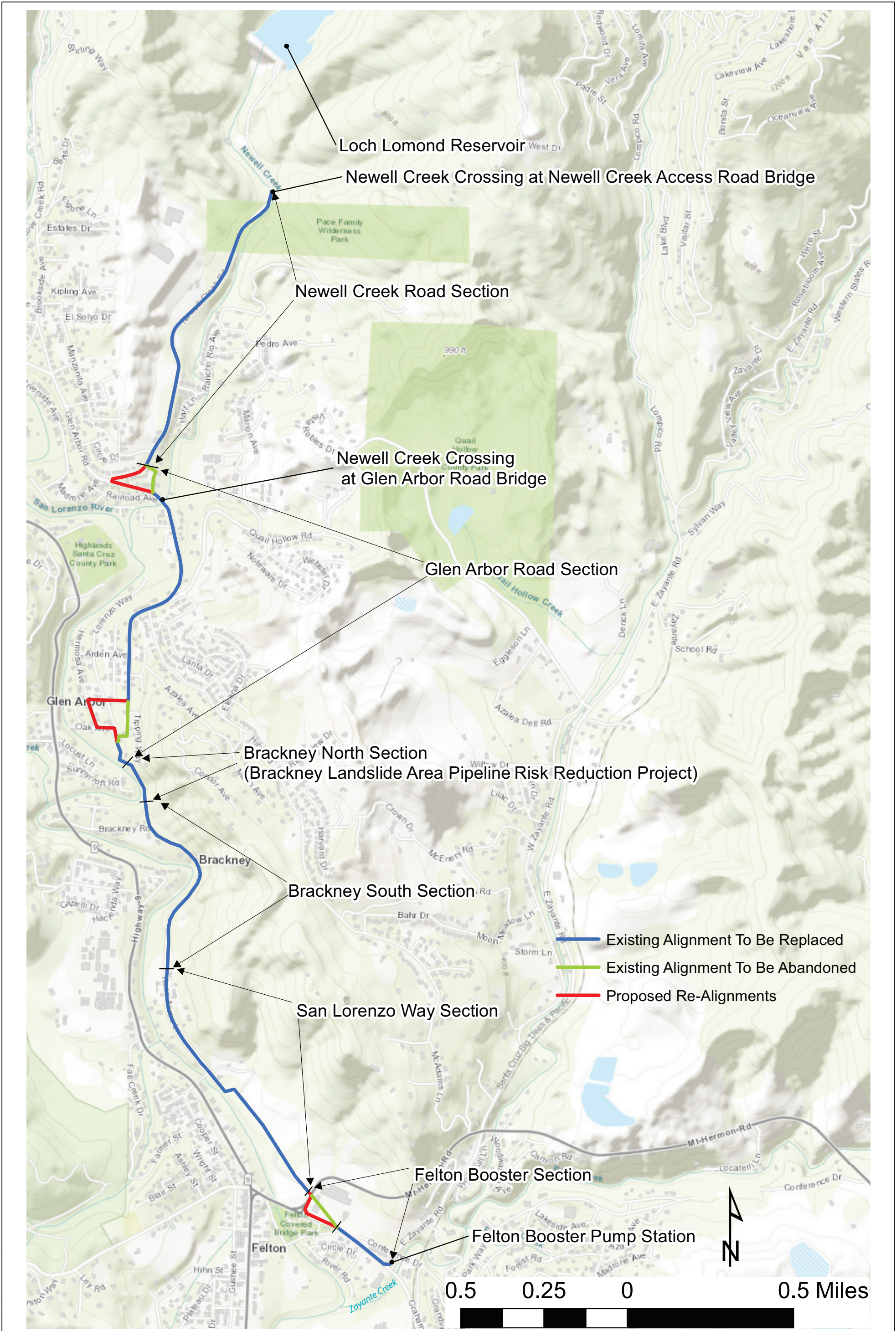
Project Location

Newell Creek Pipeline Improvement Project





SOURCE: City of Santa Cruz Water Department 2020

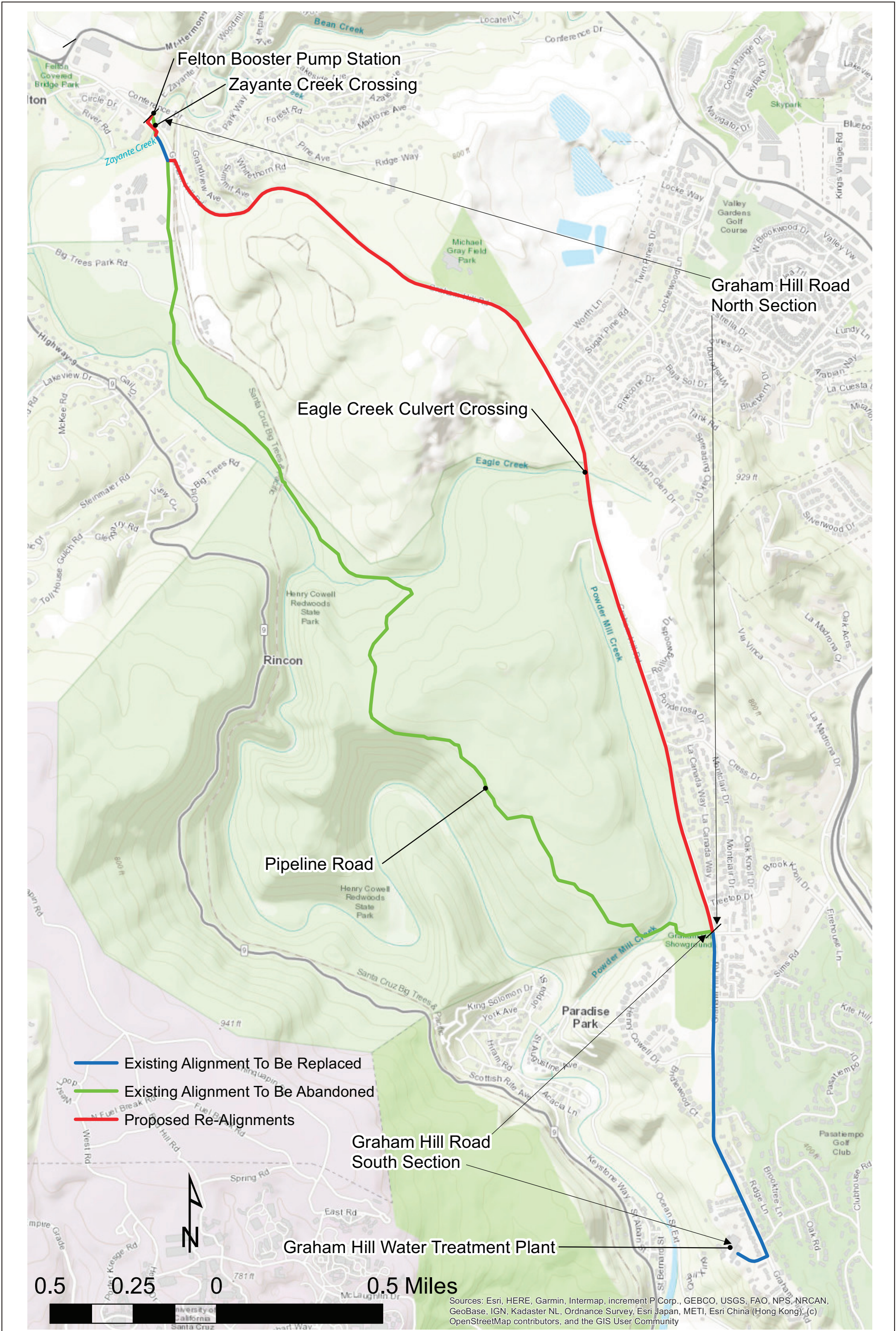


SOURCE: City of Santa Cruz Water Department 2020

FIGURE 3

Proposed Newell Creek Pipeline Improvement Project Northern Segment

Newell Creek Pipeline Improvement Project



SOURCE: City of Santa Cruz Water Department 2020

FIGURE 4

Proposed Newell Creek Pipeline Improvement Project Southern Segment



NATIVE AMERICAN HERITAGE COMMISSION

January 19, 2021

Doug Valby
City of Santa Cruz Water Development Dept
212 Locust Street, Suite C
Santa Cruz, CA 95060



CHAIRPERSON
Laura Miranda
Luiseño

Re: 2021010166, Newell Creek Pipeline Replacement Project, Santa Cruz County

VICE CHAIRPERSON
Reginald Pagaling
Chumash

Dear Mr. Valby:

SECRETARY
Merri Lopez-Keifer
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 Atebery
Karuk

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
William Mungary
Paiute/White Mountain
Apache

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 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_CalEPAPDF.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, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Nancy.Gonzalez-Lopez@nahc.ca.gov.

Sincerely,



Nancy Gonzalez-Lopez
Cultural Resources Analyst

cc: State Clearinghouse

