

# Appendix A

## NOP and NOP Comments



# Notice of Preparation for an Environmental Impact Report for the Proposed Crosswinds Mission View Drive Project

Date of Distribution: January 29, 2021

## A. INTRODUCTION

The purpose of an Environmental Impact Report is to inform decision-makers and the general public of the environmental impacts of a proposed project that an agency (in this case, the City of Morgan Hill) may implement or approve. The EIR process is intended to: (1) provide information sufficient to evaluate a project and its potential for significant impacts on the environment; (2) examine methods (e.g., project-specific mitigations, uniformly applied development regulations) for avoiding or reducing significant impacts; and (3) consider alternatives to the proposed project.

In accordance with CEQA, the Draft EIR will include the following:

- A summary of the project, its potential significant environmental impacts, and mitigations required to avoid or reduce those significant impacts;
- A project description;
- A description of the existing environmental setting, potential environmental impacts, and mitigations for the project;
- Alternatives to the proposed project; and
- Other environmental consequences of the project, including
  - (1) growth-inducing effects
  - (2) significant unavoidable impacts
  - (3) irreversible environmental changes
  - (4) cumulative impacts, and
  - (5) effects found not to be significant.

## B. PROJECT LOCATION

The approximately 31-acre project site is located at the intersection of Half Road and Mission View Drive in the City of Morgan Hill. The site is bounded by Half Road to the south and Mission View Road to the east. The project is located on four parcels (APNs 728-30-001, 728-30-002, 728-30-003, and 728-30-004). The project site is mostly undeveloped and consists of grassland and boxed nursery trees. A vacant single-family residence constructed in the 1950s is located on the southwestern section of the site. Regional, vicinity, and aerial maps of the project site are shown in Figures 1, 2, and 3, respectively. A tentative site plan is shown in Figure 4.

The adjacent parcels (APNs 728-30-006, 728-30-008, and 728-30-009) to the west are undeveloped, consisting of mostly grasses and trees. South of the project site, across Half Road, is a vacant field with grasses and residences. East of the project site, across Mission View Drive, is a field with orchards and associated structures, and single-family residences. North of the project site, is an adjacent vacant parcel of land, followed by a health center and associated parking.

## C. PROJECT DESCRIPTION

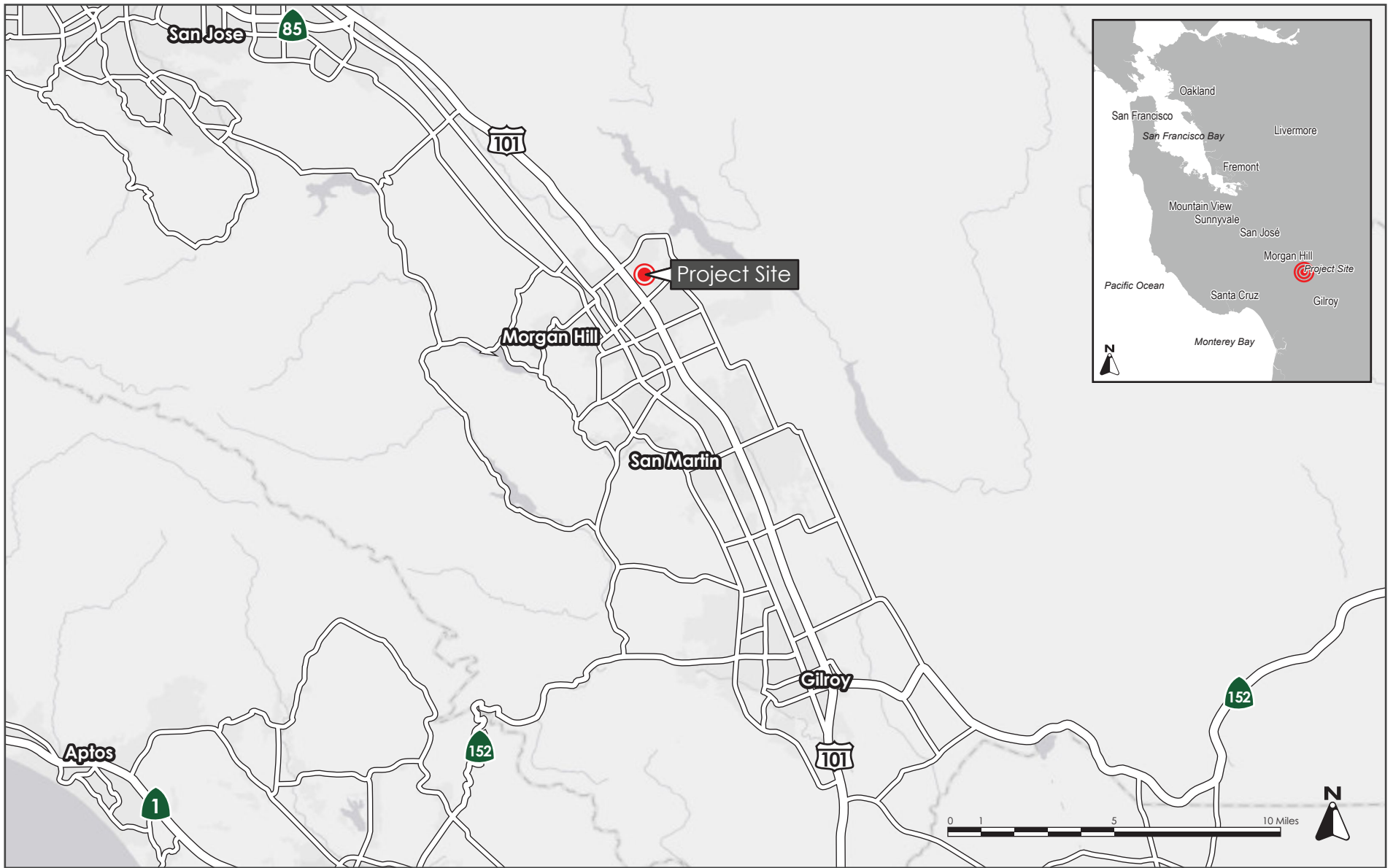
The project proposes to construct a total of 269 new one- to two-story residential units, including 56 one- to two-story single-family, 64 duets, and 149 three-story condominium units. The project would include approximately 40 below-market-rate (BMR) units. The project proposes recreational areas

including a clubhouse, pool, children's play area, and barbeque/picnic areas. The project would also include landscaping, including trees and lawn areas.

The project site would be accessed via three vehicular connections: two site entries from DePaul Drive and one entry from Mission View Drive. The project would also include emergency vehicle access to Half Road and DePaul Drive. The site will include private internal streets that would provide access to residences and on-street parking. Each unit would include a two-car garage on the ground floor. On-street parking and uncovered parking stalls would be available to guests.

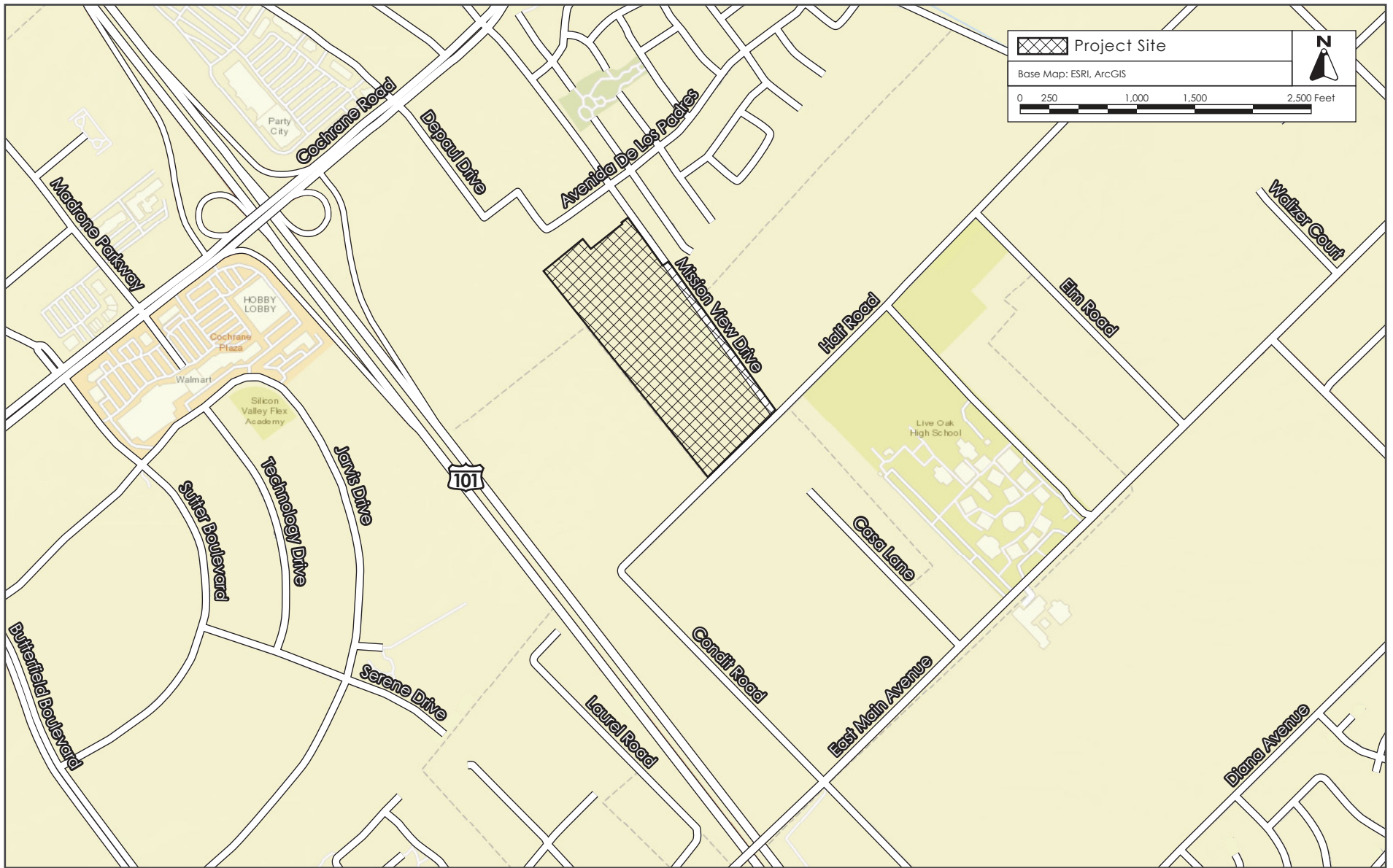
### **Required Project Approvals**

1. Vesting Tentative Map
2. Architectural Design Review
3. Issuance of Demolition, Grading, Building, and Occupancy Permits
4. Tree Removal Permits



REGIONAL MAP

FIGURE 1



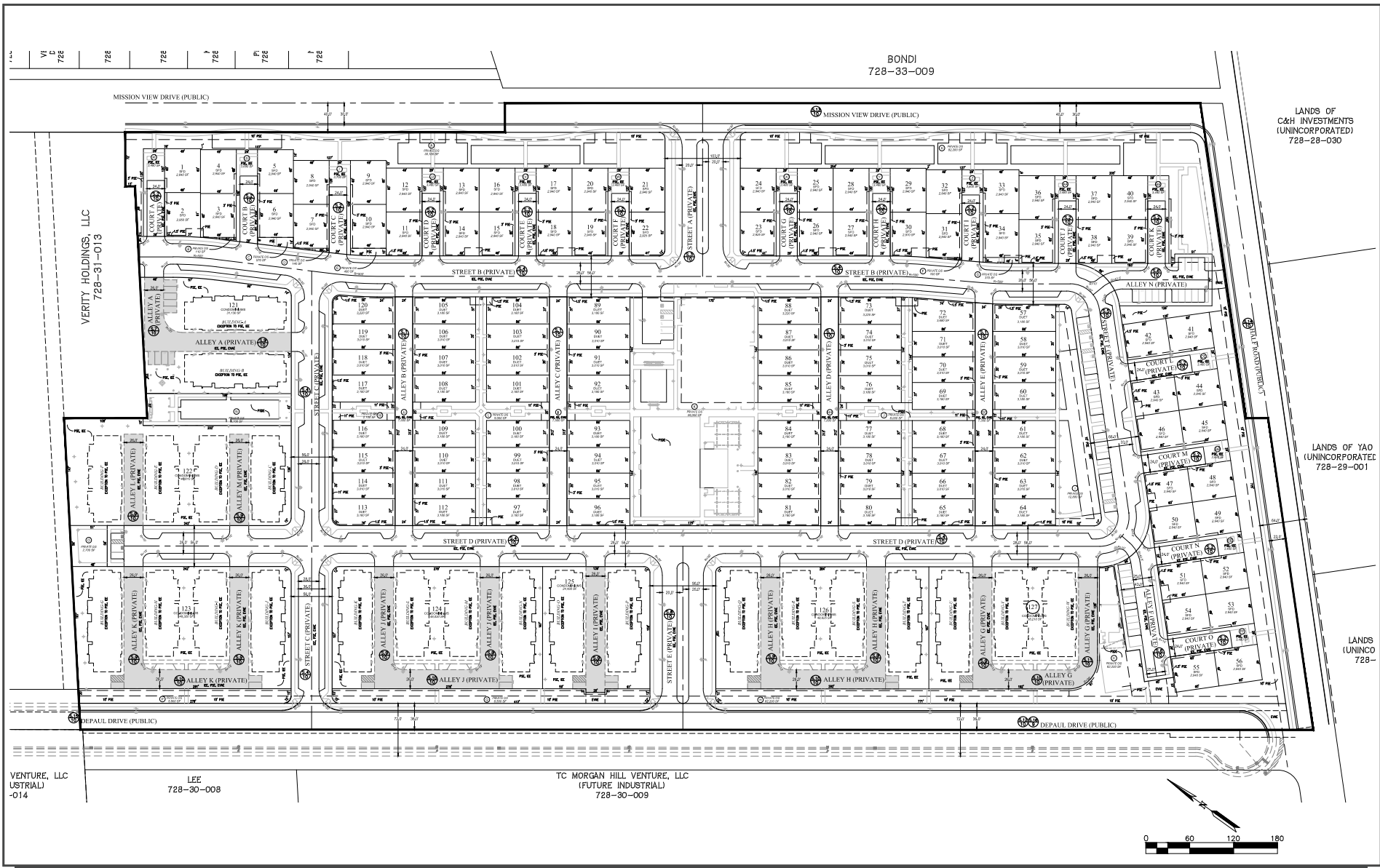
VICINITY MAP

FIGURE 2



AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 3



TENTATIVE SITE PLAN

FIGURE 4



## **D. POTENTIAL IMPACTS OF THE PROJECT**

The EIR will identify the significant environmental effects anticipated to result from development and operation of the project as proposed. The EIR will include the following specific environmental categories as related to the proposed project. Below are key resource topics that will be analyzed in the EIR:

- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Land Use and Planning
- Noise and Vibration
- Transportation
- Utilities and Service Systems

### **Agricultural Resources**

Portions of the project site have historically been used for agricultural purposes, including an orchard that is no longer actively cultivated. According to the Santa Clara County Important Farmland 2016 Map, the majority of the site is designated as Prime Farmland, Farmland of Statewide Importance, and Unique Farmland. In November 2014, the City adopted its Agricultural Lands Preservation Program (Preservation Program), which intends to preserve open space agricultural activity within the Morgan Hill Sphere of Influence. The EIR will discuss the project's compliance with the City's General Plan and the Preservation Program's mitigation measures as detailed in the Agricultural Mitigation Ordinance.

### **Air Quality**

The EIR will describe the existing air quality conditions in the Bay Area and will evaluate the proposed project's construction and operational impacts to local and regional air quality in accordance with the 2017 Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines and thresholds.

### **Biological Resources**

Habitats in the project area are low in species diversity and include predominately urban adapted birds and animals. The EIR will address the loss of trees within, and adjacent to, the construction zones. In addition, the EIR will identify and discuss the project's biological impacts during construction and operation and the project's consistency with the Santa Clara Valley Habitat Plan.

### **Cultural Resources**

The EIR will identify and discuss potential subsurface archaeological resource impacts from project construction. The project site contains a vacant single-family residential building that was constructed in the 1950s. The EIR will address the building's historic potential and any known existing cultural resources on and adjacent to the site. The EIR will also evaluate the potential for the site to contain tribal cultural resources in accordance with AB52.

### **Energy**

Implementation of the proposed project would result in an increased demand for energy on-site. The EIR will discuss the increase in energy usage on-site and energy efficiency measures proposed by the project.

### **Greenhouse Gas (GHG) Emissions**

The EIR will address the project's contribution to regional and global greenhouse gas (GHG) emissions based on BAAQMD thresholds and consistency with policies adopted by the City of Morgan Hill for reducing GHG emissions. The daily GHG emissions resulting from the project will be estimated using the California Emissions Estimator Model. Proposed design measures to reduce energy consumption, which in turn would reduce GHG emissions, will be discussed.

### **Hazards and Hazardous Materials**

The EIR will address existing hazards or hazardous material conditions on and in the vicinity of the site and will address the potential for hazardous materials impacts to result from implementation of the proposed project.

### **Land Use and Planning**

The project site is located in a rural/suburban area of Morgan Hill and is surrounded by agricultural land, residences, and a school. The EIR will describe the existing land uses adjacent to the site. Land use impacts that would occur as a result of the proposed project will be analyzed, including the consistency of the project with land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect.

### **Noise and Vibration**

Noise levels in the project area are primarily influenced by vehicular noise on surrounding roadways, including US 101. The EIR will discuss noise and vibration that would result from the construction and operation of the proposed project (including noise from project generated traffic) and its impact on nearby sensitive receptors. Noise levels will be evaluated for consistency with applicable noise standards and guidelines. Additionally, the EIR will evaluate the effects of vibration during project construction on adjacent buildings.

### **Transportation**

The EIR will examine the transportation impacts from the project by completing a vehicle-miles traveled (VMT) analysis. The EIR will also include a level of service (LOS) analysis. The project's effects on LOS will be evaluated based on consistency with the City's LOS policy and will not be used as a metric to determine CEQA impacts. Any environmental impacts (e.g., such as removal of trees) resulting from recommended roadway improvements will be evaluated. Project-generated impacts or operational issues associated with vehicular access or on-site circulation would be addressed.

### **Utilities and Service Systems**

Implementation of the proposed project could result in an increased demand on utilities and service systems compared to existing conditions. The EIR will examine the impacts of the project on utilities and service systems, including the sanitary sewer and storm drainage systems, water supply, and solid waste management.

### **Other Resource Topics**

The EIR will analyze impacts related to other resource topics including aesthetics, geology and soils, hydrology and water quality, mineral resources, population and housing, public services, recreation, and wildfire.

### **Cumulative Impacts**

In conformance with CEQA Guidelines Section 15130, the EIR will include a discussion of cumulative impacts from the project in combination with other past, pending and reasonably probable future

development in the area, based on projections for development according to General Plan buildout. The EIR will analyze and describe any significant cumulative impacts to which the project may contribute.

**Significant Unavoidable Impacts**

The EIR will identify those significant impacts that cannot be avoided if the project is implemented as proposed.

**Alternatives**

The EIR will evaluate possible alternatives to the proposed project based on the results of the environmental analysis. The alternatives discussion will focus on those alternatives that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant environment effects (CEQA Guidelines Section 15126.6). Alternatives to the proposed project would include a “No Project” alternative. Other alternatives that may be discussed include “Reduced Development (i.e., smaller project size),” a “Design” Alternative and “Location” alternatives. Alternatives will be chosen based on their ability to avoid or lessen one or more significant impacts while still meeting most of the basic objectives of the proposed project.

**Other Required Sections**

In conformance with the CEQA Guidelines, the EIR will also contain the following sections: 1) Growth Inducing Impacts; 2) Significant Irreversible Environmental Changes; 3) EIR References and Organizations & Persons Consulted; and 4) EIR Authors.

The following pages contain comments  
received on the NOP.



March 16, 2021

**BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT**

Gina Paolini, Principal Planner  
Morgan Hill Development Services  
City of Morgan Hill  
17575 Peak Ave  
Morgan Hill, CA 95037

RE: Crosswinds Mission View Drive Residential Project – Notice of Preparation of a Draft Environmental Impact Report

Dear Ms. Paolini,

Bay Area Air Quality Management District (District) staff has reviewed the Notice of Preparation (NOP) for the Draft Environmental Impact Report (DEIR) for Crosswinds Mission View Drive Residential Project (Project). The Project would include development of 269 new residential units, comprised of 56 single-family, 64 duets, and 149 condominium units. There would be a total of 40 below-market-rate (BMR) units. Each unit would include a two-car garage on the ground floor. The Project site would be located near Highway 101 on the west side along Mission View Drive between Half Road and Cochrane Road.

Air District staff recommends the DEIR include the following information and analyses:

- **The DEIR should estimate and evaluate the potential health risk to existing and future sensitive populations within and near the Project area from toxic air contaminants (TACs) and fine particulate matter (PM<sub>2.5</sub>) as a result of the Project's construction and operations.** Air District staff recommends that the DEIR evaluate potential cumulative health risk impacts of TACs and PM<sub>2.5</sub> emissions on sensitive receptors within and near the Project area.
- **The GHG impact analysis should include an evaluation of the Project's consistency with the most recent draft of the AB 32 Scoping Plan by the California Air Resources Board and with the State's 2030 and 2050 climate goals.** The Air District's current recommended GHG thresholds in our CEQA Guidelines are based on the State's 2020 GHG targets which are now superseded by the 2030 GHG targets established in SB 32. The DEIR should demonstrate how the Project will be consistent with the Scoping Plan.

**ALAMEDA COUNTY**  
John J. Bauters  
(Secretary)  
Pauline Russo Cutter  
David Haubert  
Nate Miley

**CONTRA COSTA COUNTY**  
John Gioia  
David Hudson  
Karen Mitchoff  
(Vice Chair)  
Mark Ross

**MARIN COUNTY**  
Katie Rice

**NAPA COUNTY**  
Brad Wagenknecht

**SAN FRANCISCO COUNTY**  
Myrna Melgar  
Shamann Walton  
Tyronne Jue  
(SF Mayor's Appointee)

**SAN MATEO COUNTY**  
David J. Canepa  
Carole Groom  
Davina Hurt

**SANTA CLARA COUNTY**  
Margaret Abe-Koga  
Cindy Chavez  
(Chair)  
Rich Constantine  
Rob Rennie

**SOLANO COUNTY**  
Erin Hannigan  
Lori Wilson

**SONOMA COUNTY**  
Teresa Barrett  
Lynda Hopkins

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

Connect with the  
Bay Area Air District:



- 
- **The DEIR should evaluate all feasible mitigation measures, both onsite and offsite, for air quality and GHG impacts.** The DEIR should prioritize onsite mitigation measures, followed by offsite mitigation measures, within the Project area. Examples of potential emission reduction measures that should be evaluated and considered include, but are not limited to:
    - Prohibiting or minimizing the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (<http://dieselfree33.baaqmd.gov/>) and signed by Steve Tate, former Mayor for City of Morgan Hill;
    - Implementing green infrastructure and fossil fuel alternatives in the development and operation of the Project, such as renewable diesel, electric heat pump water heaters, and solar PV back-up generators with battery storage capacity;
    - Installing all-electric appliances to eliminate the use of natural gas, a high global warming potential greenhouse gas that also produces oxides of nitrogen and other pollutants when combusted;
    - Requiring construction vehicles to operate with the highest tier engines commercially available;
    - Providing funding for zero-emission transportation projects, including a neighborhood electric vehicle program, community shuttle/van services and car sharing, and enhancement of active transportation initiatives, among others;
    - Providing funding for expanding and improving bicycle and pedestrian infrastructure (e.g., protected bike lanes to the nearest Caltrain station) and projects that improve pedestrian access to transit, employment, and major activity centers; and
    - Implementing a zero-waste program consistent with SB 1383 organic waste disposal reduction targets including the recovery of post-consumer food materials for uses such as composting.
  
  - **The DEIR should evaluate the Project's consistency with the Air District's 2017 Clean Air Plan (2017 CAP).** The DEIR should discuss 2017 CAP measures relevant to the Project and show the Project's consistency with the measures. The 2017 CAP can be found on the Air District's website: <http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans>.
  
  - **The DEIR should evaluate the Project's consistency with the City of Morgan Hill Climate Action Plan.** The DEIR should analyze the Project's consistency with the City of Morgan Hill's most recently adopted Climate Action Plan and ensure all measures in the Climate Action plan that are applicable to the Project are incorporated into the Project's design.
  
  - **The Air District's CEQA website contains several tools and resources to assist lead agencies in analyzing air quality and GHG impacts.** These tools include guidance on quantifying local emissions and exposure impacts. The tools can be found on the Air District's website: <http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools>. If the Project requires a site-specific analysis, please contact Air District staff to obtain more recent data.

- 
- **Certain aspects of the Project may require a permit from the Air District (for example, back-up diesel generators).** Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or [byoung@baaqmd.gov](mailto:byoung@baaqmd.gov) to discuss permit requirements. Any applicable permit requirements should be discussed in the DEIR.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Areana Flores, Environmental Planner, at (415) 749-4616, or [aflores@baaqmd.gov](mailto:aflores@baaqmd.gov).

Sincerely,



Greg Nudd  
Deputy Air Pollution Control Officer

cc: BAAQMD Chair Cindy Chavez  
BAAQMD Director Margaret Abe-Koga  
BAAQMD Director Rich Constantine  
BAAQMD Director Rob Rennie

# County of Santa Clara

## Parks and Recreation Department

298 Garden Hill Drive  
Los Gatos, California 95032-7669  
(408) 355-2200 FAX (408) 355-2290  
Reservations (408) 355-2201

[www.parkhere.org](http://www.parkhere.org)



March 17, 2021

City of Morgan Hill  
Development Services  
Attn: Gina Paolini  
17575 Peak Avenue  
Morgan Hill, CA 95037

### **SUBJECT: Notice of Preparation of an Environmental Impact Report (EIR) for the Crosswinds Mission View Drive Residential Project**

Dear Gina Paolini,

The County of Santa Clara Parks and Recreation Department (County Parks Department) is submitting the following comments on the Notice of Preparation of an Environmental Impact Report for the Crosswinds Mission View Drive Residential Project (Residential Project).

The County Parks Department's review is primarily focused on potential impacts related to the *Santa Clara County Countywide Trails Master Plan Update (Countywide Trails Plan)*, an element of the County General Plan (adopted by the Board of Supervisors on November 14, 1995), relative to countywide trail routes, public access and regional parks. There are two *Countywide Trails Plan* trail routes in the vicinity of the Residential Project which share the same route:

*Juan Bautista de Anza National Historic Trail (R1-A)*- hiking, equestrian and off-road bicycle route, located along the Madrone Channel levee

*Coyote Creek- Llagas Sub-regional Trail (S5)*- hiking, equestrian and off-road bicycle route, located along the Madrone Channel levee

It is noted that the Residential Project was originally featured as a varied portion of the "Morgan Hill Technology Park and Mixed-Use Residential Project" (Mixed-Use Project). The County Parks Department submitted a comment letter in April 2019 regarding the Mixed-Use Project and the fact that the parcels under review were directly adjacent to the completed trail segments noted above (currently referred to as the Madrone Channel Trail). The County Parks Department is aware that the application for the Mixed-Use Project was withdrawn on September 18, 2020, and this new Residential Project is now focused solely on a proposed residential development a few parcels farther away from the existing Madrone Channel Trail.

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian

County Executive: Jeffrey V. Smith





The County Parks Department supports the collaborative efforts between various City of Morgan Hill departments and other local agencies in regard to this Residential Project and future site improvements. The location of the proposed development is not adjacent to the existing Madrone Channel Trail. If the Residential Project is determined to have any direct or indirect impacts to the Madrone Channel Trail or other recreational uses, those impacts must be analyzed in the EIR.

Thank you for the opportunity for County Parks Department to provide comments on the Notice of Preparation of an Environmental Impact Report for the Crosswinds Mission View Drive Residential Project. If you have any questions, please email me at [kelly.gibson@prk.sccgov.org](mailto:kelly.gibson@prk.sccgov.org)

Sincerely,

*Kelly Gibson*

Kelly Gibson  
Assistant Planner



Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian

County Executive: Jeffrey V. Smith

# County of Santa Clara

Roads and Airports Department  
Planning, Land Development and Survey



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

**March 15, 2021**

**Gina Paolini**

Principal Planner II

17575 Peak Avenue, Morgan Hill, CA 95037

[Gina.Paolini@MorganHill.CA.gov](mailto:Gina.Paolini@MorganHill.CA.gov)

## **SUBJECT: Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for Crosswinds Mission View Drive Residential Project**

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for Crosswinds Mission View Drive Residential Project, and is submitting the following comments:

- This is the proposed residential as part of the Morgan Hill Technology and Mixed-Use Residential Project. We provided comments for the Technology Center EIR in June 2020, however the project was withdrawn by the applicant on September 18, 2020 according to the project website <https://www.morgan-hill.ca.gov/1765/Morgan-Hill-Technology-Park-EIR>. For this Residential project, we would like to see traffic analysis at the same study intersections as the Technology Center project analysis. In addition, the TIA should incorporate comments the County already submitted for the Technology Center project that are still valid for this project as well. (Please see attached letter that was sent as part of the Technology Center Project for your review.)
- All-way stop signs installation at Half Rd and Mission View Dr is underway by County. (Installation in-process, not shown on plans)
- Ensure project site alleyway has no public vehicle access to Half Rd. Only for Emergency use.

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

Thank you.



# MARIANI FAMILY PROPERTIES

1615 Half Road  
Morgan Hill, CA 95037  
510-339-6367 (Jacoby Phone)

Morgan Hill Development Services  
Attention: Gina Paolini, Principal Planner  
17575 Peak Avenue, Morgan Hill, California 95037  
(408) 310-4676 | [Gina.Paolini@MorganHill.CA.gov](mailto:Gina.Paolini@MorganHill.CA.gov)

Re: Crosswinds Notice of Preparation: SCH Number 2021010358

March 17, 2021

Dear Ms Paolini:

We are the property owners of the parcels immediate east, across Mission View Drive, of the proposed Crosswinds project by Dividend Homes. We appreciate the opportunity to submit this letter as part of the Notice of Preparation of a Draft Environmental Impact Report (DEIR) required under the California Environmental Quality Act (CEQA). We are the longest, continuous property owners in the area and as such have of keen understanding of the past and current laws governing the property in our immediate neighborhood.

It is our understanding that Notices of Preparations are done to ensure that the contents of Environmental Impact Reports enable a more informed public to comment on the proposed project. We are aware also that the information provided in an EIR can be used in subsequent environmental reviews on projects proposed for the nearby area. As such, it is important that all information, including that concerning neighboring properties, be as complete and accurate as possible. Any errors or omissions can create problems if the EIR information is used or relied upon in subsequent environmental studies.

The Mariani family has reviewed the documents that were provided to the public by the City of Morgan Hill to solicit comments on the Crosswinds project. In reviewing that information we believe that there are some design elements of the Crosswind's project that, while perhaps beneficial to the project applicant, can mislead the public regarding concerns and legal rights of adjacent property owners including the Mariani family. Furthermore, the Marianis believe there are some public improvements not included in the project diagrams that should be included noted – such as pedestrian sidewalks and public utility lines under or along Mission View Drive and intersection improvements at Half Road and Mission View Drive.

Although we will conclude with topic items per the normal EIR impact categories, there are four general areas of overlapping information that need to be provided in the EIR specific to the Crosswinds project and its relationship to the Mariani property.

- 1) The EIR should clarify that the Morgan Hill 2035 General Plan (adopted 2016) designated the Mariani property for Residential Detached Medium.
- 2) California housing law SB 330 (Housing Crisis Act of 2019) defines a broad list of changes and definitions aimed at addressing the problems caused by the statewide housing shortage. Within SB330 is a specific component that addresses the use of property that has both prime agriculture soils and is over 50% surrounded by urban uses and has public utilities in or proposed on the adjoining public streets. Housing is to be enabled under such circumstances by SB 330, Section 3 (d) (4).
- 3) The Mariani property and Crosswind's project are bordered on their south boundary by a former Spanish Rancho line. Such a Rancho boundary line (Rancho De Laguna Seca), created in 1834, causes a series of complex title matters that require special treatment when locating public improvements at the intersection of Half Road and Mission View Drive. The situation is further complicated by City of Morgan Hill and Santa Clara County boundaries and need resolving as part of the Crosswinds project.
- 4) On January 21, 2021, the Association of Bay Area Governments (ABAG), in their required reporting to the California Department of Housing and Community Development, (HCD), concluded that in the next State-mandated Regional Housing Needs Allocation (RHNA 2023-2031) more housing is needed in unincorporated Santa Clara County locations. When the Crosswind's project is completed, the Mariani property will be 100% surrounded by urban uses and be a likely candidate for inclusion for annexation to meet the Morgan Hill/Santa Clara County RHNA figures. Such a circumstance raises a question on why the Crosswinds project included a 100-foot agriculture setback on its west side of Mission View Drive.

#### **Crosswinds Project NOP/DEIR concerns**

1. **Land Use** – what are the Morgan Hill General Plan 2035 Land Use categories on the properties that surround the proposed Crosswinds project? How is the Crosswinds project site plan consistent with the adjacent General Plan land uses?
2. **Housing** - how does the number and type of proposed housing units in the Crosswinds project help satisfy the current and proposed ABAG-adopted. January 21, 2021 RHNA housing allocation for Morgan Hill and the Santa Clara County combined total. What are the cumulative implications or impacts of the ABAG adopted January 21, 2021 Santa Clara County RHNA for properties surrounding the Crosswinds project.
3. **Green House Gases** – both the Crosswinds project and the neighboring properties, which have a Morgan Hill General Plan Residential Use, are within a short commuting distance of Morgan Hill job centers – business parks, shopping centers, hospital' school. What is the implication and impact of such locational circumstances to state and regional law and policy concerning the need to reduce greenhouse gas emissions by shortening/lessening car commutes.
4. **Transportation and Public Services** discussion is needed on Morgan Hill transportation services and plans for the streets bordering the Crosswinds and neighboring properties. That discussion should include officially adopted Capital Improvement Plans and Street and Utility Plans (sewer/water/storm) for Mission View Drive and Half Road, among other streets. The discussion should also include planned bicycle; pedestrian, and public transit/bus service on such streets. In particular, the EIR should discuss the impact of the

connections provided by the bus line on Mission View Drive and Half Road to citywide job and education centers and how the project's site design and location accounts for the bus line.

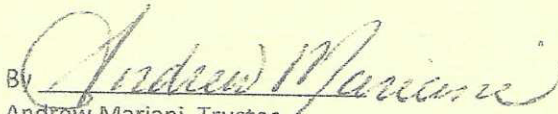
Thank you for considering the inclusion of these items in the upcoming Crosswind's DEIR.

Sincerely

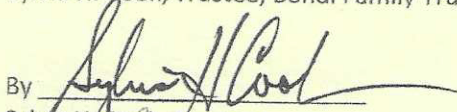
Survivor's Trust created under the  
Mariani Family 1999 Trust dated April 13, 1999

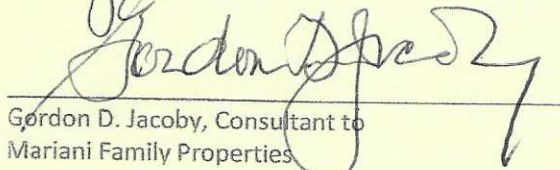
By   
Mitchell L. Mariani, Trustee

Andrew Mariani 2008 Revocable Trust dated  
September 22, 2008

By   
Andrew Mariani, Trustee

Sylvia H. Cook, Trustee, Bondi Family Trust dated October 29, 1993

By   
Sylvia H. Cook, Trustee

  
Gordon D. Jacoby, Consultant to  
Mariani Family Properties



## NATIVE AMERICAN HERITAGE COMMISSION

February 1, 2021

Gina Paolini  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

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1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)

**Re: 2021010358, Crosswinds Residential Project, Santa Clara County**

Dear Ms. Paolini:

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).

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.

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.**

## 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\\_CalEPAPDF.pdf](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](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](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](mailto:Nancy.Gonzalez-Lopez@nahc.ca.gov).

Sincerely,



Nancy Gonzalez-Lopez  
Cultural Resources Analyst

cc: State Clearinghouse



March 17, 2020

City of Morgan Hill  
Development Services  
17575 Peak Avenue, Morgan Hill, CA 95037

Attn: Gina Paolini  
Via Email: [gin.paolini@morganhill.ca.gov](mailto:gin.paolini@morganhill.ca.gov)

Subject: Notice of Preparation (NOP) for a Draft Environmental Impact Report for Crosswinds Mission View Drive Residential Project

Dear Gina:

Thank you for the opportunity to review the NOP for the Crosswinds Mission View Drive Residential Project. VTA has provided earlier comments on this project site regarding adding a bus stop to support this new community. VTA has the following comments on the NOP.

## Transportation Impact Analysis

VTA's Congestion Management Program (CMP) requires a Transportation Impact Analysis (TIA) for any project expected to generate 100 or more net new peak-hour trips. For any questions about the *TIA Guidelines*, please contact Brent Pearse of the VTA Planning Division at 408-546-7985 or [Brent.Pearse@vta.org](mailto:Brent.Pearse@vta.org).

## Pedestrian and Bicycle Accommodations

VTA requests that the TIA analysis of Pedestrian and Bicycle modes consider the completeness of the pedestrian and bicycle network on roadways and intersections adjacent to and nearby the project site. The analysis of pedestrian accommodations in the TIA Report should discuss – and the site plan should clearly indicate moving forward – sidewalks/pedestrian paths within the site and connectivity between the new building(s), bus stops, nearby destinations such as Live Oak High School and the De Paul Health Center, and existing sidewalks; refer to Sections 6.4, 9.3, and 9.4 of the *VTA Transportation Impact Analysis Guidelines (TIA Guidelines)* for more information.

## Bus Stop Improvements

VTA Route 87 serves the frontage of the project on Mission View Drive. The stop spacing in-between the two nearest stops of the development is 3,400 feet and does not have close enough pedestrian facilities nearby to access the nearest stops. A new southbound bus stop should be installed after the main entrance on Mission View Drive. A bus stop in the northbound direction is also recommended on the condition that there will be a signalized crosswalk for the new development. The preferred location for the new bus stop is past the main entrance on Mission View Drive. VTA would like to determine the location when off-site plans are drafted (see attachment). VTA also recommends to:

- Install street lighting at the bus stop
- Place trees and landscaping outside of the bus stop area

- Install a new passenger pad 8'x40' minimum per VTA Standards

VTA would like the opportunity to review updated site plans to ensure the placement of driveways, landscaping, and any other features do not conflict with bus operations. VTA's Transit Passenger Environment Plan provides design guidelines for bus stops. This document can be downloaded at <http://www.vta.org/tpep>. VTA has a Bus Stop Placement, Closures, and Relocations Policy. Prior to any construction or bus stop impact, please contact [bus.stop@vta.org](mailto:bus.stop@vta.org).

Thank you for the opportunity to review this project. If you have any questions, please contact me at (408) 550-4559.

Sincerely,

A handwritten signature in black ink that reads "Brent Pearce". The signature is written in a cursive style with a large initial "B" and "P".

Brent Pearce  
Transportation Planner

MH1907