

**From:** [Van Der Zweep, Cassandra](#)  
**To:** [Natalie Noyes](#)  
**Subject:** Fw: FILE NOS: H21-005/T21-005 Bay West Development, Bryon Wolf APN: 237-08-079  
**Date:** Tuesday, June 22, 2021 10:33:30 AM

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Good morning Natalie,

I plan to send you a compilation of all comments received at the end of the NOP circulation and forward them as they come in unless you have a preferred way to receive these comments?

Here is the first one (forwarded),

**Cassandra van der Zweep**

Supervising Planner | Planning, Building & Code Enforcement  
City of San José | 200 East Santa Clara Street  
Email: [cassandra.vanderzweep@sanjoseca.gov](mailto:cassandra.vanderzweep@sanjoseca.gov) | Phone: (408)-535-7659

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**From:** KKLLC Admin <[admin@kanyonkonsulting.com](mailto:admin@kanyonkonsulting.com)>  
**Sent:** Monday, June 21, 2021 11:06 AM  
**To:** Van Der Zweep, Cassandra <[Cassandra.VanDerZweep@sanjoseca.gov](mailto:Cassandra.VanDerZweep@sanjoseca.gov)>  
**Subject:** FILE NOS: H21-005/T21-005 Bay West Development, Bryon Wolf APN: 237-08-079

[External Email]

miSmin Tuuhis [Good Day]

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

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

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

Kanyon Konsulting is a strong proponent of honoring truth in history, when it comes to impacting Cultural Resources and potential ancestral remains, we need to recognise the

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

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

Potential Approaches to Indigenous Cultural Awareness/History:

➤ Signs or messages to the audience or community of the territory being developed. (ex. A commerable plaque, page on the website, mural, display, or an Educational/Cultural Center with information about the history/ecology/resources of the land)

➤ Commitment to consultation with the Native Peoples of the territory in regards to presenting and messaging about the Indigenous history/community of the land (Land Acknowledgement on website, written material about the space/org/building/business/etc, Cultural display of cultural resources/botanical knowledge or Culture sharing of Traditional Ecological Knowledge - Indigenous Science and Technology)

➤ Advocation of supporting indigenous lead movements and efforts. (informing one's audience and/or community about local present Indigenous community)

We look forward to working with you.

Tumsan-ak kannis [Thank You]

Kanyon Sayers-Roods

Consultant / Tribal Monitor [ICMBCO]

Kanyon Konsulting, LLC

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NATIVE AMERICAN HERITAGE COMMISSION



June 30, 2021

Cassandra van der Zweep  
City of San Jose  
200 E. Santa Clara Street, 3rd Floor Tower  
San Jose, CA 95113

**Re: 2021060414, 550 East Brokaw Road Project, Santa Clara County**

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COMMISSIONER  
[Vacant]

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[Vacant]

EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

**NAHC HEADQUARTERS**  
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)

Dear Ms. van der Zweep:

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

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

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

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

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

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

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

**7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:

- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

**8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

**9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

**10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**

- a.** Avoidance and preservation of the resources in place, including, but not limited to:
  - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
  - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - i.** Protecting the cultural character and integrity of the resource.
  - ii.** Protecting the traditional use of the resource.
  - iii.** Protecting the confidentiality of the resource.
- c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

**11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPA.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPA.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](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:  
[Sarah.Fonseca@nahc.ca.gov](mailto:Sarah.Fonseca@nahc.ca.gov).

Sincerely,



Sarah Fonseca  
Cultural Resources Analyst

cc: State Clearinghouse





July 13, 2021

City of San Jose, Department of Planning, Building and Code Enforcement  
Attn: Cassandra van der Zweep, Environmental Project Manager  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose CA 95113-1905

[Cassandra.vanderZweep@sanjoseca.gov](mailto:Cassandra.vanderZweep@sanjoseca.gov)

Re: Notice of Preparation for the 550 E. Brokaw Project Draft Environmental Impact Report  
(H21-005/T21-005/ER21-018)

Dear Ms. van der Zweep:

Thank you for including the City of Santa Clara (Santa Clara) in the environmental review process for the 550 E. Brokaw Project (Project) and for informing Santa Clara of the Notice of Preparation of a Draft EIR for the Project. The Project includes the demolition of an existing commercial building and a surface parking lot, totaling approximately 859,000 square feet; the removal of 258 trees; and the construction of seven office buildings totaling approximately 1,924,110 square feet and two parking garages totaling approximately 1,647,920 square feet on an approximately 19.70-gross acre site.

Santa Clara requests that the environmental analysis for the Project include and address the following:

**1. Local Transportation Analysis**

Santa Clara understands that vehicles miles traveled (VMT) is now the adopted CEQA metric to measure transportation environmental impacts per City of San Jose City Council Policy 5-1. Nonetheless, development is still subject to the requirements of the Congestion Management Program (CMP), and congestion impacts must be analyzed in conformance with the *VTA Transportation Impact Analysis Guidelines*. Additionally, the City of San Jose's Transportation Analysis Handbook dated April 2018 requires project transportation impacts in external jurisdictions, including adjacent cities, to be analyzed according to that jurisdiction's significance criteria, performance metrics, and thresholds of significance. Accordingly, Santa Clara requests that the EIR include a local transportation analysis (LTA) to analyze the Project's transportation impacts on CMP facilities and facilities within Santa Clara. Santa Clara would also like to review and comment on the scope of work related to the LTA.

a. Impacts to CMP Facilities

The Project is located adjacent to I-880 and US101, which are freeways within the CMP roadway network, and contains road segments and intersections which are also part of the CMP network. Santa Clara requests that the LTA provide a level of service evaluation for CMP intersections, freeway segments, ramps, and expressways, as well as a multimodal analysis. In particular, the level of service analysis should analyze intersections meeting the 10-trip rule per the *VTA Transportation Impact Analysis Guidelines*, such as Central Expressway, Coleman Avenue, De La Cruz Boulevard, El Camino Real, Great America Parkway, Montague Expressway, Tasman Drive, Trimble Road intersections. Further, the LTA should address how the Project will maintain traffic level of service standard (LOS E) at CMP facilities including those within the City of Santa Clara. Fair share contributions should be required for adverse effects found along roadways and/or intersections, including along Lafayette Street, De La Cruz Boulevard, Tasman Drive, El Camino Real, and Central Expressway. Additionally, the LTA should address how the Project will comply with North San Jose Deficiency Plan requirements.

b. Impacts to Santa Clara Facilities

Based on a preliminary trip generation calculation, net Project trips are estimated to be 7,680 daily, 1,957 in the AM peak hour, and 1,096 in the PM peak hour. Assuming only 10 percent of trips are from Santa Clara (which is about 2 miles away), this results in 768 daily trips, 196 AM peak hour trips, and 110 PM peak hour trips. The City of Santa Clara Transportation Operation Analysis Policy requires a level of service analysis to be performed for any project expected to generate 100 or more net new peak hour trips, including both inbound and outbound trips. Accordingly, the LTA should include a level of service analysis on effected intersections. Non-CMP intersections likely requiring such an analysis include:

- Lick Mill Blvd. @ Moreland Way, Montague Expwy
- Agnew Rd/Lafayette St., Agnew Rd/Sunfire Way, Agnew Rd/Harrigan Dr.
- De La Cruz Blvd. @ Greenwood Dr., Aldo Ave., Laurelwood Rd.,
- De La Cruz Blvd. @ driveway north of Martin Ave., Martin Ave., Reed St.
- Coleman/Brokaw Rd.

**2. North San Jose Area Development Policy and North San Jose Settlement Agreement**

The Project is located within the area encompassed by the North San Jose Area Development Policy (NSJADP). Santa Clara understands that the City of San Jose takes the position that the analysis of congestion impacts prepared for the NSJADP EIR may no longer serve to allow streamlined environmental review under CEQA, is considering modifying or retiring the policy, and is requiring preparation of individual environmental review documents for projects in North San Jose.

Despite taking this stance as to CEQA review, the NSJADP is still an applicable policy, and the EIR must address whether the Project is consistent with it. Further, the City of San Jose must still apply the requirements of the NSJADP to collect transportation impact fees to fund transportation improvements identified in the NSJADP and the Settlement Agreement among Santa Clara, the City of San Jose, and the County of Santa Clara that was entered into in November 2006 (2006 Settlement Agreement) to settle litigation challenging San Jose's approval of the NSJADP as necessary to serve development. Further, regardless of any future modifications to, or retirement of, the NSJADP, the terms of the 2006 Settlement Agreement will still apply. The 2006 Settlement Agreement requires, among other things, that with Phase 1, San Jose must fund and complete the following transportation improvements:

- Widen Montague Expressway to 8-lanes from Lick Mill Boulevard to Trade Zone Boulevard, including all portions of the Expressway regardless of City boundaries, including Interchange modifications at I-880 and the Trimble flyover; and
- Provide funding and coordinate with the County regarding early design work for a proposed Montague/Mission/101 Interchange project.

(See 2006 Settlement Agreement, Paragraphs 1.2, 1.4-1.5.)

Santa Clara understands that funding is not yet secured for all transportation improvements tied to Phase 1 and that the required transportation improvements have not yet been built per the current level of development. Accordingly, transportation improvements are still necessary to serve development of Phase 1, and the Project must be required to pay transportation impact fees in accordance with the NSJADP and 2006 Settlement Agreement to fund the Project's fair share toward those improvements.

Santa Clara requests that the City of San Jose confirm its intentions to honor its obligations to collect fees for the necessary transportation improvements as required under the NSJADP and the 2006 Settlement Agreement. Santa Clara has sought clarification since at least March 2019 regarding how the City of San Jose intends to comply with the terms of the 2006 Settlement Agreement if it changes the structuring of the NSJADP phasing and when the required transportation improvements will be completed. These issues should be addressed in the environmental review and EIR for the Project.

\* \* \* \* \*

Cassandra van der Zweep, City of San Jose, Environmental Project Manager  
Re: Notice of Preparation for the 550 E. Brokaw Project Draft Environmental Impact Report  
July 13, 2021  
Page 4 of 4

Thank you for the opportunity to comment on the Notice of Preparation for the Project. Santa Clara looks forward to reviewing the scope of the LTA. Should you have any questions regarding this letter, please contact Reena Brilliot, Planning Manager via email at [rbrilliot@santaclaraca.gov](mailto:rbrilliot@santaclaraca.gov) or phone 408-615-2452.

Best Regards,



Andrew Crabtree  
Director of Community Development

attachment

cc: Reena Brilliot, Planning Manager  
Michael Liw, Assistant Director of Public Works



TAMIEN NATION  
of the Greater Santa Clara County  
P.O. Box 8053, San Jose, California 95155  
(707) 295-4011 tamien@tamien.org

July 15, 2021

City of San Jose  
Cassandra Van Der Zweep  
Planner IV Supervising Planner

Sent Via Email: Cassandra.vanderZweep@sanjose.ca.gov

RE: Formal Request for Tribal Consultation Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21080.3.1, subs. (b),(d) and (e) 550 East Brokaw Road, San Jose

Dear Mr. Van Der Zweep,

This letter constitutes a formal request for tribal consultation under the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21080.3.1 subdivisions (b), (d) and (e)) for the mitigation of potential project impacts to tribal cultural resource for the above referenced project. Tamien Nation requested formal notice and information for all projects within your agency's geographical jurisdiction and received notification on June 18, 2021, regarding the above referenced project.

Tamien Nation requests consultation on the following topics checked below, which shall be included in consultation if requested (Public Resources Code section 21080.3.2, subd. (a):

- Alternatives to the project
- Recommended mitigation measures
- Significant effects of the project

Tamien Nation also requests consultation on the following discretionary topics checked below (Public Resources Code section 21080.3.2, subd. (a):

- Type of environmental review necessary
- Significance of tribal cultural resources, including any regulations, policies or standards used by your agency to determine significance of tribal cultural resources
- Significance of the project's impacts on tribal cultural resources
- Project alternatives and/or appropriate measures for preservation or mitigation that we may recommend, including, but not limited to:

- (1) Avoidance and preservation of the resources in place, pursuant to Public Resources Code section 21084.3, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks or other open space, to incorporate the resources with culturally appropriate protection and management criteria;
- (2) Treating the resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resources, including but not limited to the following:
  - a. Protecting the cultural character and integrity of the resource;
  - b. Protection the traditional use of the resource; and
  - c. Protecting the confidentiality of the resource.
- (3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- (4) Protecting the resource.

Additionally, Tamien Nation would like to receive any cultural resources assessments or other assessments that have been completed on all or part of the project's potential "area of project effect" (APE), including, but not limited to:

1. The results of any record search that may have been conducted at an Information Center of the California Historical Resources Information System(CHRIS), including, but not limited to:
  - A listing of any and all known cultural resources have already been recorded on or adjacent to the APE;
  - Copies of any and all cultural resource records and study reports that may have been provided by the Information Center as part of the records search response;
  - If the probability is low, moderate, or high that cultural resources are located in the APE.
  - Whether the records search indicates a low, moderate or high probability that unrecorded cultural resources are located in the potential APE; and
  - If a survey is recommended by the Information Center to determine whether previously unrecorded cultural resources are present.
2. The results of any archaeological inventory survey that was conducted, including:
  - Any report that may contain site forms, site significance, and suggested mitigation measures.

All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure in accordance with Government Code Section 6254.10.

3. The results of any Sacred Lands File (SFL) check conducted through Native American Heritage Commission. The request form can be found at [http://www.nahc.ca.gov/slf\\_request.html](http://www.nahc.ca.gov/slf_request.html). USGS 7.5-minute quadrangle name, township, range, and section required for the search.
4. Any ethnographic studies conducted for any area including all or part of the potential APE; and
5. Any geotechnical reports regarding all or part of the potential APE.

We would like to remind your agency that CEQA Guidelines section 15126.4, subdivision (b)(3) states that preservation in place is the preferred manner of mitigating impacts to archaeological sites. Section 15126.4, subd. (b)(3) of the CEQA Guidelines has been interpreted by the California Court of Appeal to mean that “feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts.” *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, disapproved on other grounds, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

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

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

Please refer to identification number TN-20210618-01 in any correspondence concerning this project. Thank you for providing us with this notice and the opportunity to comment.

Sincerely,



Quirina Geary  
Chairwoman

cc: Native American Heritage Commission

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

P.O. BOX 23660, MS-10D

OAKLAND, CA 94623-0660

www.dot.ca.gov

*Making Conservation  
a California Way of Life.*

July 19, 2021

SCH #: 2021060414

GTS #: 04-SCL-2020-00906

GTS ID: 19964

Co/Rt/Pm: SCL/880/5.24

Cassandra van der Zweep  
Environmental Project Manager  
City of San Jose  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San Jose, CA 95113-1905

**Re: 550 E. Brokaw Project – Notice of Preparation (NOP) for Draft Environmental Document (DEIR)**

Dear Cassandra van der Zweep:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the 550 E. Brokaw Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the June 2021 NOP.

**Project Understanding**

The project is located in San Jose, CA between East Brokaw Road, Junction Avenue, and Interstate (I)-880. The proposed project would demolish an existing commercial building and a surface parking lot to allow for the construction of seven office buildings, and two parking garages.

**Travel Demand Analysis**

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

If the project meets the screening criteria established in the City's adopted Vehicle Miles Traveled (VMT) policy to be presumed to have a less-than-

significant VMT impact and exempt from detailed VMT analysis, please provide justification to support the exempt status in alignment with the City's VMT policy. Projects that do not meet the screening criteria should include a detailed VMT analysis in the DEIR, which should include the following:

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

### **Highway Operations**

Given the project's proximity to I-880 and US-101, Caltrans recommends the inclusion of a traffic analysis in the TIS for potential impacts along the following freeway segments:

- Freeway segments on I-880 from SR-87 to Montague Expressway in both directions; and
- Freeway segments on US-101 from I-880 to San Tomas Expressway in both directions.

Additionally, please perform a queuing analysis for potential impacts on the following ramps and corresponding intersections:

- Route 880
  - NB on-ramp from E. Brokaw Road
  - NB off-ramp to E. Brokaw Road
  - SB off-ramp to O'Toole Avenue

- SB on-ramp from E. Brokaw Road
- Route 101
  - NB on-ramp from E. Brokaw Road
  - NB off-ramp to E. Brokaw Road
  - SB on-ramp from N. 1<sup>st</sup> Street
  - SB off-ramp to Airport Parkway

Vehicle queues due to project-added traffic shall be accommodated within the ramps and freeway traffic shall not be impacted. If the project generated traffic impacts ramp operations, impacts shall be mitigated, or a fair share fee shall be allocated for mitigation. The project applicant shall coordinate with the City of San Jose and Caltrans for any proposed mitigation measures.

### **Transportation Impact Fees**

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed project; viable funding sources such as development and/or transportation impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

### **Construction-Related Impacts**

Potential impacts to the State Right-of-Way (ROW) from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified. Any storm runoff generated by the development shall not encroach on the State ROW and shall be discharged to a suitable storm drainage system. Project work that requires movement of oversized or excessive load vehicles on state roadways requires a transportation permit that is issued by Caltrans. To apply, visit: <https://dot.ca.gov/programs/traffic-operations/transportation-permits>. Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to I-880 and US-101.

### **Lead Agency**

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

### **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

### **Encroachment Permit**

Please be advised that any permanent work or temporary traffic control that encroaches onto the ROW requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating the State ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to [D4Permits@dot.ca.gov](mailto:D4Permits@dot.ca.gov).

To download the permit application and to obtain more information on all required documentation, visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

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

Sincerely,



MARK LEONG

District Branch Chief

Local Development - Intergovernmental Review

c: State Clearinghouse



July 19, 2021

Santa Clara Valley Audubon Society  
22221 McClellan Rd  
Cupertino, CA 95014  
408-656-7978  
[giulianna@scvas.org](mailto:giulianna@scvas.org)

City of San José  
Department of Planning, Building and Code Enforcement  
Attn: Cassandra van der Zweep, Environmental Project Manager  
200 East Santa Clara Street, 3rd Floor Tower  
San José, CA 95113-1905

Via email to: [cassandra.vanderzweep@sanjoseca.gov](mailto:cassandra.vanderzweep@sanjoseca.gov)

Re: 550 E. Brokaw Road Environmental Impact Report (EIR), Notice of Preparation (NOP)  
Comments

The Santa Clara Valley Audubon Society (SCVAS) submits the following comments regarding the scope of the Environmental Impact Report (EIR) for the 550 E. Brokaw Project. Constructing towers of 135-feet and a parking structure of 118-feet and slating the removal of 258 trees can have consequences for bird populations, urban wildlife and habitat value, increase urban heat island effect and the health of the Coyote Creek riparian corridor only 600-feet away.

We ask the EIR to study and mitigate the following project's potential impacts:

- Impacts of removing the trees on the urban forest;
- Heat island impacts of glass facade and loss of tree canopy;
- Bird collision with glass facades;

SCVAS requests the EIR to explore the following mitigation measures and/or alternatives:

- Consider reducing glass facades, and providing bird safety measures for all remaining facades.
- Consider the removal of fewer trees. While in an urban, commercial area, trees still provide habitat value for urban wildlife and removing 258 trees will be consequential for

insects, small wildlife, and birds. Urban ecology has been found to be increasingly important for wildlife populations and the EIR should study the effects of tree removal on the urban forest;

- Study the effect of glass seen from the creek corridor. Being only 600-feet away from Coyote Creek, using glass material for the building structures can confuse and be fatal for bird populations;
- Study the effect of light at night on the creek corridor. Being only 600-feet from Coyote Creek, light that is visible from the creek corridor can have a negative effect on the riparian ecosystem.

As we increasingly urbanize our city and increase our skyline, we must hold biodiversity and healthy urban habitats to a high standard. We are in the midst of a sixth mass extinction and must acknowledge the importance of urban ecology, especially tree canopy. Moreover, being near a riparian corridor, the EIR should study how the project may have a cumulative and/or site specific effect on the creek habitat.

If you have any questions or concerns please contact Giulianna Pendleton, Environmental Advocacy Assistant for SCVAS at [giulianna@scvas.org](mailto:giulianna@scvas.org).

Thank you,

Giulianna Pendleton  
Environmental Advocacy Assistant  
Santa Clara Valley Audubon Society  
[giulianna@scvas.org](mailto:giulianna@scvas.org)