

25 TRIBE COMMENTS

Submission 1639 (Rob Cuthrell, Amah Mutsun Land Trust, June 23, 2020)



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622

June 22, 2020

1639-2284

Attn: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

Email: san_jose_merced@hsr.ca.gov

RE: Comment on "San Jose to Merced Project Section: Draft Environmental Impact Report / Environmental Impact Statement"

Amah Mutsun Tribal Band ("the Tribe" or "AMTB") has reviewed the Draft Environmental Impact Report ("DEIR") released by the California High Speed Rail. Our Tribe paid particular attention to the Cultural Resources" Section, 13.17. As you know, all four alternatives of the proposed alignments of the High Speed Rail will significantly impact areas of profound cultural, spiritual, ceremonial, and historical significance to the Tribe. The Tribe appreciates the opportunity to review and comment on the DEIR.

Impacts of High Speed Rail (HSR) will permanently and irreversibly alter the physical landscape. The physical changes would significantly diminish the emotional and spiritual associations held by the Tribe to this landscape through injuries to the many known and unknown cultural and spiritual sites that will be partially or completely destroyed.

1639-2284

A core principle of Amah Mutsun culture and spirituality is the belief that our Tribe was created and placed in our traditional tribal territory by Creator (a spiritual being) and directed our people to care for these lands. We understand this mandate as broadly encompassing stewardship of all living things on the land, in the waters, and in the air (e.g., terrestrial animals, plants, fish, birds, etc.), as well as physical features of the landscape (e.g., streams, hills, boulders, caves, the air, etc.), which we also recognize these physical features as living beings.

Our Tribe's oral history states that over thousands of years, our ancestors gained the knowledge necessary to steward the land in ways that mutually sustained the health of the landscape and of the Tribe. Since the beginning of Euro-American colonization, our Tribe experienced immense suffering and loss that were the result of genocide; acculturation efforts; forced labor; dispossession of lands and rights; and social, economic, and political marginalization. These factors, among many others, contributed to the historical trauma which individual Tribe members and our Tribe as a whole have grappled with and continue to struggle to heal from today. Since the onset of Euro-American colonization, our Tribe has been unable to fulfill our core spiritual obligation to Creator to protect and steward the lands in our traditional territory. Even though this inability to care for our traditional lands is not our Tribe's choice or our fault, this inability to fulfill our main purpose on the Earth has nevertheless caused continuous spiritual and emotional suffering among our people for over two hundred years. Today our Tribe lives in diaspora, with the majority of Tribe members living in low income areas outside of our traditional territory because their families cannot afford the high cost of living in our homelands.

Our Tribe strongly holds the spiritual belief that healing from historical trauma must include revitalizing our role as caretakers of the lands in our traditional territory. Among all of the lands in our territory, the places with the greatest need for active protection and care are our traditional cultural, spiritual, and ceremonial centers.

The alignment of the HSR impacts cultural landscapes that are the most prominent cultural district of our Tribe, the San Juan Valley. Before Spanish colonization there were four natural lakes in the San Juan Valley. These lakes were home to seven Mutsun villages and these seven tribal villages comprised a cultural district of the Amah Mutsun. One of these lakes was known as poytokiS, the place of the fish. Another lake was a sacred medicine lake. Our ancestors lived on these lands for thousands of years and hundreds of generations. There were many sites associated with these sites such as fishing, hunting, gathering, ceremony and many other types of sites. There are also many burial sites of our ancestors on these lands. Disturbing burial sites is our Tribe's greatest concern. Disturbing burial sites is a very serious violation of our spiritual belief.

In the 1880's the four lakes were drained so the lands could be used for agriculture. Over time, these lands have been used for orchards, row crops and hay fields. Some members of our Tribe remember walking the fields and orchards to gather small fragments of the remains of our ancestors that were broken by years of plowing. We have also participated as Native American Monitors to observe the removal of our ancestors remains from their resting places in this area.

Although our Tribe has been removed from these lands for over 200 years, our ancestors are waiting for our return so we can restore spirituality to the land and bring balance and healing to Mother Earth.

The cultural significance of impacts from the four proposed HSR alignments are based on the association between impacted sites and historical events, culturally important locations, and spiritual beliefs. The cultural significance of the HSR's impact to these cultural landscape must be recognized

San Juan Valley was an important wetland landscape that provided tremendous biodiversity. This biodiversity included insects, fish, birds – migrating geese, an important wildlife corridor that connected the Santa Cruz Mountains with the Diablo Range. Taking care of this landscape was the responsibility of our ancestors. As doing so was a directive from Creator, it was our sacred covenant. Our Tribe held on to the belief that one day we would be able to return to this landscape and restore it to the greatest extent possible.

We hope the above context explains why the HSR project is of critical importance to our Tribe. This project will result in multiple and unavoidable adverse impacts to our traditional tribal territory on sensitive and cultural sites that are of the utmost importance to our Tribe. This project will undoubtedly cause immense spiritual, emotional, and psychological damage to our Tribe. The HSR will make it impossible to fulfill our goal of restoring one or two of the natural lakes and from being able to protect, conserve and steward the territory that Creator gave us the responsibility, and moral authority, to care for.

Submission 1639 (Rob Cuthrell, Amah Mutsun Land Trust, June 23, 2020) - Continued



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622

1639-2284

The project will be further evidence indigenous spirituality and cultural are of no importance to local or state governments and add further to our near total erasure from history. It must be stated that the destruction of important cultural and sacred sites, without the consent of the indigenous peoples of the area, is recognized by the United Nations as a Crime against Humanity. Furthermore, the United Nations definition of genocide includes the destruction of important cultural and sacred sites of indigenous peoples without their consent. By destroying cultural and sacred sites, this project will evidence that the destruction and domination of indigenous peoples never ended, it just evolved to include the destruction and domination of our lands.

Finally, this project will contribute to the historic trauma the Amah Mutsun have suffered as a result of three consecutive periods of brutal colonization, the Spanish/mission period, the Mexican Period and the American period. All three periods attempted to destroy our indigenous culture, spirituality, environments and indigenous knowledge. These three periods of destruction, brutality and domination resulted in historic trauma for our members. This historic trauma has resulted in suicide, addiction, depression, violence, incarceration, poverty and much more that impact us today.

Our specific comments regarding the DEIR are presented below. Our comments apply only to the portion of the project located within the traditional territory of AMTB, which approximately includes the "Morgan Hill and Gilroy" and "Pacheco Pass" subsections.

1639-2285

Comment #1: Page 3.17-19 states - "No traditional cultural properties or resources important to Native Americans have been identified in the APE." This statement is incorrect, as all Native archaeological sites in AMTB territory are important to Amah Mutsun Tribal Band. In addition, our Tribe recognizes our ethnobiological resources and the integrity of our traditional cultural landscapes to also be important cultural resources.

1639-2286

Comment #2: Page. 3.17-21 states - "The Ohlone are a linguistically defined group composed of several autonomous tribelets that spoke eight different but related languages." Speakers of these eight languages were not divided into "several autonomous tribelets" but rather 40+ small Tribes. The term "tribelet" is discouraged by most Tribes.

1639-2287

Comment #3: Page. 3.17.21 states - "The Ohlone were hunter-gatherers and relied heavily on acorns and seafood. They also exploited a wide range of other foods." Native people in this region were not hunter-gatherers, this is a derogatory term meant to minimize their knowledge, skills and abilities and spirituality. Our ancestors were very effective land stewards who managed their food, medicine, basket, and crafting resources in a very sustainable way. Characterizing them as relying primarily on "acorns and seafood" is incorrect, particularly in the cultural areas this project involves. It would be more correct to say that Native people in this area managed and utilized a wide range of natural biological resources to meet their subsistence needs.

1639-2288

Comment #4: Page. 3.17.21 states: "the Ohlone who chose to remain in their ancestral territory usually became squatters." The term "squatter" has a pejorative connotation, implying that Native people "usually" resided illegally on land owned by other people. Under Mexican and American governments, Native people were illegally dispossessed of lands that were legally intended for distribution to them in order to support their

independent livelihoods. No historical data is provided to support the assertion that Native people consequently "usually" became squatters.

1639-2289

Comment #5: The Draft Environmental Impact Report stated that the proposed alignments will impact sixteen known sites. These sites contain archaeological resources such as chert flakes, lithic scatters, burials, stone tool scatters, artifact scatters, groundstone scatters, waste flake scatters, occupation sites, and processing sites. Our Tribe has no doubt that when the alignment is selected and the area of potential effect is surveyed, many more Native archaeological sites will be found. In 2010 our Tribe worked on an archaeological research project near the proposed HSR alignment in Coe State Park. This site was recorded as being 11,300 years old. This site is evidence that our people lived on these landscapes for thousands of years and hundreds of generations. Our Tribal oral history tells us that these village sites were heavily populated for thousands of years. We believe that this project has the potential to discover many more cultural sites and to disturb the remains of hundreds and perhaps thousands of our ancestors, this is the greatest fear of our Tribe.

1639-2290

Comment #6: In many cases, it is anticipated that indigenous archaeological sites will be impacted by the project through grading or road construction, rather than subsurface excavation. Whenever possible, these areas should be filled with sediment to cap the archaeological sites prior to grading so that impacts to sites will be reduced.

1639-2291

Comment #7: It is anticipated that construction of railway on aerial structures may reduce potential impacts to archaeological sites in comparison to railway constructed at grade or on embankments. Where railway lines are constructed on embankments, areas containing archaeological sites should be capped with sediment whenever possible prior to grading to reduce impacts to sites.

1639-2292

Comment #8: AMTB wishes to continue consulting with California High Speed Rail Authority regarding impacts to cultural resources in AMTB territory.

1639-2293

Comment #9: AMTB wishes to continue consulting on alignment alternatives to better understand their potential impacts on the important lands of our ancestors.

1639-2294

Comment #10: We wish to have a Native American Monitor from our Tribe present for all archaeological survey work performed within our territory and we request that AMTB should be given authority to determine if cultural resources identified could feasibly be preserved in place or if data recovery is necessary.

1639-2295

Comment #11: In addition to the archaeological cultural resource surveys that will be completed in areas of potential effect, we request that ethnobiological resource surveys should be completed in these areas as well and that we have a Native American Monitor from our tribe participate in all work. Our request includes all areas on both public and private lands where ground disturbance activities will occur.

1639-2296

Comment #12: Our Tribe request that an ethnographic study be conducted to document the social history and culture of Native peoples in the region of the "Morgan Hill and Gilroy" and "Pacheco Pass" subsections.

Submission 1639 (Rob Cuthrell, Amah Mutsun Land Trust, June 23, 2020) - Continued



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622

- 1639-2297 | Comment#13: Our Tribe request that an archaeological treatment plan be prepared in consultation with the tribe and focus on the treatment of known and unknown archaeological resources. We further request that this plan include a 100% survey using geophysical penetration techniques on the impact areas of the ground disturbance needed for the construction.
- 1639-2298 | Comment #14: Our Tribe requests that all lands acquired by HSR in association with this project should be restored and managed using Native American traditional ecological knowledge.
- 1639-2299 | Comment #15: Our Tribe requests continued consultation as the project develops to review and discuss the impacts on a) rivers, streams, creeks and all water ways; b) all wildlife, including insects, reptiles, birds, and mammals; c) all native and nonnative flora; d) ranching and farming agreements as these relate to our traditional cultural resources; and e) the Tribe's cultural, ceremonial, religious and spiritual practices, and to its traditional ancestral Tribal lands and environment.
- 1639-2300 | Comment #16: Our Tribe requests consultation to review the possibility of restoring one or two traditional lakes in the San Juan Valley.
- 1639-2301 | Comment #17: Our Tribe requests consultation to discuss Tribal participation in cultural resources studies or surveys.
- 1639-2302 | Comment #18: As stated previously, the seven tribal village sites of San Juan Valley are known to our Tribe to be a cultural district. We request that the HSR take no actions that will divide or carve up this district. To divide this cultural district will be seen as an effort to deny the true cultural and historical significance of the San Juan Valley.
- 1639-2303 | Comment #19: Our Tribe Requests that the HSR list all eligible Native archaeological sites on the California Register of Historic Resources.
- 1639-2304 | Comment #20: AMTB requests consultation with HSR to discuss creating cultural resource easements as a method to mitigate impacts to Native archaeological sites, ethnobiological resources, and the culturally significant landscape of the San Juan Valley. Such easements would be acquired under mutual agreement between AMTB and HSR, and these easements would include endowments to sustainably support traditional land stewardship by members of AMTB.

COMMENTS ON MITIGATION:
- 1639-2305 | Comment #21: AMTB believes that no mitigation measure could make whole the unavoidable and irreversible injuries to the cultural and spiritual importance of individual Native archaeological sites and to San Juan Valley as a result of this proposal.
- 1639-2306 | Comment #22: Our Tribe requests that AMTB members be used as Native American Monitors for all ground disturbance work a) within or in proximity to known archaeological sites; b) in areas with elevated likelihood for the presence of subsurface archaeological sites; c) in areas within 400 feet of a permanent water source; and

- 1639-2306 | d) in any other areas with an elevated potential for Native archaeological resources, to be determined through future consultation between AMTB and HSR. All Native American monitors from our Tribe are knowledgeable about Amah Mutsun customs, traditions, religion, and burial practices.
- 1639-2307 | Comment #23: Our Tribe requests that AMTB members should be hired to assist with and monitor fieldwork on all archaeological and biological surveys related to this project.
- 1639-2308 | Comment #24: Our Tribe requests that AMTB members should meet with the HSR to discuss impacts to all types traditional cultural resources including archaeological sites, culturally important places, cultural landscapes, sacred places, culturally significant landscape features, and objects with cultural values.
- 1639-2309 | Comment #25: Our Tribe requests to work with the HSR to develop protocols for any ground disturbance work associated with cultural resources; including the care and handling of all cultural items including human remains.
- 1639-2310 | Comment #26: We request confidential consultation and treatment of all cultural resources and human remains associated with mitigation. Mitigation may include implementation of interpretive programs, including displays, interpretive signage, and similar measures.
- 1639-2311 | Comment #27: We request that our Tribe be allowed access to all cultural sites for prayer, ceremony and small gatherings. This includes both public and private property.
- 1639-2312 | Comment #28: We request confidential mitigation meetings to discuss additional measures as well.
- 1639-2313 | The High Speed Rail must fully consider the environmental, cultural, religious, and ceremonial impacts of the proposed Project to the Tribe as the original inhabitants of these lands. We request that the HSR continue with the consultation process with the Tribe regarding these impacts.

Thank you for the opportunity to provide these comments, as we hope that full consideration will be given to each one. Please contact me if you should have questions regarding our comments or any issue regarding our Tribe.

kan sireesum – With my heart,

Valentin Lopez, Chair
Amah Mutsun Tribal Band
P.O. Box 5272
Galt, CA 95632

Submission 1639 (Rob Cuthrell, Amah Mutsun Land Trust, June 23, 2020) - Continued



Amah Mutsun Tribal Band of Costanoan/Ohlone Indians
Historically known as "San Juan Bautista Band and San Juan Band" Indians of California
PO Box 5272 | Galt, CA 95622

cc: Edward Ketchum, Tribal Vice Chair and Tribal Historian
Amah Mutsun Tribal Band

Rob Cuthrell, Ph.D., Director of Archaeological Resource Management
Amah Mutsun Land Trust

Rovianne Leigh, Attorney
Berkee Williams, LLP

Amy T. Mackinnon, Cultural Resources Specialist
California High-Speed Rail Program
amy.mackinnon@hsr.ca.gov



Response to Submission 1639 (Rob Cuthrell, Amah Mutsun Land Trust, June 23, 2020)

1639-2284

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2285

Thank you for your comment. This statement has been revised to reflect that while no TCPs have been identified in the APE, the Amah Mutsun Tribal Band recognizes their ethnobiological resources and their traditional cultural landscapes as important cultural resources.

1639-2286

To address this comment, the Authority revised this statement on Page 3.17-21 as suggested.

1639-2287

To address this comment, the Authority revised this statement on Page 3.17-21 as suggested.

1639-2288

To address this comment, the Authority revised this statement on Page 3.17-21 to eliminate the term "squatter" and state that some Ohlone chose to remain in their ancestral territory.

1639-2289

HSR is phasing archaeological site identification and evaluation until further design is developed and PTE is granted to complete the archaeological surveys. Treatment of archaeological sites will be determined according to the MOA and the ATP developed under Section 106 through consultation with SHPO and consulting Tribes.

1639-2290

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2291

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2292

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2293

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2294

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2295

As stated in Section 3.17.4.3, Native American Outreach and Consultation, AB 52 does not apply to this project because the NOP was issued prior to July 1, 2015; therefore, ethnobiological resources surveys will not be performed for this project.

1639-2296

As stated in Section 3.17.4.3, Native American Outreach and Consultation, AB 52 does not apply to this project because the NOP was issued prior to July 1, 2015; therefore, ethnobiological resources surveys will not be performed for this project.

1639-2297

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2298

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2299

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

Response to Submission 1639 (Rob Cuthrell, Amah Mutsun Land Trust, June 23, 2020) - Continued

1639-2300

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2301

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2302

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2303

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

The Authority will follow all federal, state and local guidelines when identifying and evaluating cultural resource eligibility determinations, including the California Register of Historic Resources.

1639-2304

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2305

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2306

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2307

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2308

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2309

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2310

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2311

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2312

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1639-2313

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.