

Appendix NOP

Notice of Preparation and Comment Letters



NOTICE OF PREPARATION

City of San Leandro Housing Element and General Plan Update Supplemental Program Environmental Impact Report

Date: January 14, 2022

To: Reviewing Agencies, Interested Parties, and Organizations

Subject: Notice of Preparation of a Supplemental Draft Program Environmental Impact Report for the City of San Leandro Housing Element and General Plan Update, and Scheduling of a Scoping Meeting on Wednesday, January 19, 2022

The City of San Leandro (City) is preparing an update to the City's General Plan and has determined that a Supplemental Program Environmental Impact Report (EIR) will be necessary to evaluate environmental impacts of the 2023-2031 Housing Element Update and related General Plan updates pursuant to the California Environmental Quality Act (CEQA). In compliance with CEQA, the City will be the Lead Agency and will prepare the Supplemental Program EIR. The City is requesting comments and guidance on the scope and content of the Supplemental Program EIR from responsible and trustee agencies, interested public agencies, organizations, and the general public (CEQA Guidelines Section 15082).

This Notice of Preparation (NOP) provides a summary of the Housing Element and General Plan Update project, includes the City's preliminary identification of the potential environmental issues to be analyzed in the Supplemental Program EIR, and provides information on how to comment on the scope of the Supplemental Program EIR.

Notice of Preparation Public Review Period: January 14, 2022 to February 14, 2022

The City requests your careful review and consideration of this notice and invites any and all input and comments from interested agencies, persons, and organizations regarding the preparation of the Supplemental Program EIR. Comments and responses to this notice must be in writing and submitted to the Avalon Schultz by 5 p.m. on February 13, 2022. If applicable, please indicate a contact person for your agency or organization. If your agency is a responsible agency as defined by CEQA Guidelines Section 15381, your agency may use the environmental documents prepared by the City when considering permits or approvals for action regarding the project.

Lead Agency Contact:

Avalon Schultz, AICP, Principal Planner
City of San Leandro Community Development Department
835 East 14th Street
San Leandro, California 94557
aschultz@sanleandro.org

Written Comments: Please submit written comments to any of the below by 5:00 p.m. on February 14, 2022:

- Email: aschultz@sanleandro.org
- Regular Mail: City of San Leandro, 835 East 14th Street, San Leandro, California 94577. Attn: Avalon Schultz, Community Development Department

Public Scoping Meeting: The City will hold a virtual scoping meeting to provide an opportunity for agency staff and interested members of the public to provide verbal comments on the scope of the environmental issues to be addressed in the EIR. The virtual scoping meeting will be held in tandem with a community workshop for the Housing Element on **Wednesday, January 19 at 6:00 p.m.** For more information and to register to attend the scoping meeting, go to <https://slhousingelement.com/get-involved/>. The scoping presentation will be available to view after Thursday, January 20 at <https://slhousingelement.com/project-resources/>.

Project Background: The City is preparing an update to its Housing Element as mandated by the State. To that end, the City is beginning preparation of its 6th Cycle Housing Element Update, which will result in a series of Zoning Amendments to address the City's anticipated Regional Housing Needs Allocation (RHNA) and reduce barriers to housing development. The City will also prepare related General Plan updates. The proposed Housing Element Update and related General Plan updates would constitute a change to the previously approved General Plan Update. Therefore, the Supplemental Program EIR will evaluate whether any new or substantially more severe impacts on the environment would result from the project changes, compared to the environmental impacts disclosed in the previously certified General Plan Update EIR. Due to the citywide scope of the Housing Element Update, the City determined that a Supplemental Program EIR is the appropriate CEQA document.

Project Location: The Housing Element and General Plan Update will encompass the entirety of the City of San Leandro, as identified in Figure 1 below. The City of San Leandro is in northern Alameda County in the eastern portion of the San Francisco Bay Area. The city is adjacent to the cities of Alameda and Oakland to the north, the unincorporated community of San Lorenzo and the City of Hayward to the south, Lake Chabot Regional Park to the east, and the San Francisco Bay to the west. Major roadway access is provided by Interstate 880 (I-880), State Route (SR) 185, and Interstate 580 (I-580). Existing land uses in the city consist of residential at varying densities, commercial, mixed use, institutional public facilities, and open space.

Proposed Project:

Housing Element Update: The Housing Element is part of the City's 2035 General Plan and presents a comprehensive set of housing goals, objectives, policies, and actions for the years 2023-2031. The Housing Element Update will be based on the City's latest RHNA estimates, which determined that the City must plan for 3,855 residential units, plus a buffer of some number of units to ensure ongoing compliance with the No Net Loss provisions of State housing law. For the purposes of the EIR, the City will evaluate potential increases in allowable densities and units over allowable development under the existing land uses and development regulations of the General Plan. Site selection is based on an analysis of site-specific constraints, including existing and proposed zoning, access to utilities, location, development potential, density, and inclusion in a previous RHNA cycle.

The Housing Element Update includes the following topics: identification of adequate housing sites; affordable housing development; preservation of existing housing; development of accessory dwelling units; special housing needs, including housing for people experiencing homelessness; fair housing and housing equity; removing or mitigating governmental constraints; and energy conservation.

Other General Plan Updates and Related Zoning Amendments: The Land Use Element of the General Plan will be updated to reflect new housing sites identified in the Housing Element, as needed. This will include minor changes to the land use table and map to accommodate residential land uses on the sites identified to meet the RHNA

allocation. Updates to other elements of the General Plan and Zoning Map and Zoning Code Amendments will occur as needed.

Project Alternatives: The Supplemental Program EIR will evaluate a reasonable range of project alternatives that, consistent with CEQA, meet most of the project objectives and reduce or avoid potential environmental effects, including the required No Project Alternative.

Potential Environmental Effect Areas: The Supplemental Program EIR will describe the reasonably foreseeable and potentially significant adverse effects of the proposed project (both direct and indirect). The Supplemental Program EIR also will evaluate the cumulative impacts of the project when considered in conjunction with other related past, present, and reasonably foreseeable future projects. The City anticipates that the proposed project could result in potentially significant environmental impacts in the following topic areas, which will be further evaluated in the EIR.

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

When the Draft Supplemental Program EIR is completed, it will be available for review at the City's offices located at 835 East 14th Street, Leandro, California 94577 and online at: <https://slhousingelement.com/>. The City will issue a Notice of Availability of a Draft EIR at that time to inform the public and interested agencies, groups, and individuals of how to access the Draft EIR and provide comments.

If you have questions regarding this NOP or the scoping meeting, please contact Avalon Schultz at (510) 577-3352 or via email at aschultz@sanleandro.org.



Avalon Schultz, Principal Planner

January 11, 2022
Date

Figure 1





February 9, 2022

Avalon Schultz, AICP, Principal Planner
City of San Leandro Community Development Department
835 East 14th Street
San Leandro, CA, 94557

SUBJECT: Response to the Notice of Preparation (NOP) of a Supplemental Draft Program Environmental Impact Report for the City of San Leandro Housing Element and General Plan Update

Dear Avalon Schultz,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of the Supplemental Program Environmental Impact Report (EIR) for the San Leandro Housing Element and General Plan Update. The project would include all of the City of San Leandro, located in northern Alameda County. The proposed Housing Element and General Plan updates would change the previously approved General Plan Update based on the City's latest Regional Housing Needs Allocation (RHNA), which require the City to plan for a minimum of 3,855 residential units. The Housing Element Update will identify adequate housing sites in addition to considering housing affordability, preservation, homelessness, equity and energy conservation. The Land Use Element of the General Plan will be updated as needed to reflect new housing sites identified in the Housing Element, which could require minor changes to the Zoning Map and Zoning Code Amendments.

The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

Basis for Congestion Management Program (CMP) Review

- It appears that the proposed project will generate at least 100 p.m. peak hour trips over existing conditions, and therefore the CMP Land Use Analysis Program requires the City to conduct a transportation impact analysis of the project. For information on the CMP, please visit: <https://www.alamedactc.org/planning/congestion-management-program/>.

Use of Countywide Travel Demand Model

- The Alameda Countywide Travel Demand Model should be used for CMP Land Use Analysis purposes. The CMP requires local jurisdictions to conduct travel model runs themselves or through a consultant. The City of San Leandro and the Alameda CTC signed a Countywide Model Agreement on April 1, 2008. Before the model can be used for this project, a letter must be submitted to the Alameda CTC requesting use of the model and describing the project. A copy of a sample letter agreement is available upon request. The most current version of the Alameda CTC Countywide Travel Demand Model was updated in May 2019 to be consistent with the assumptions of Plan Bay Area 2040.

Impacts

- The Supplemental Program EIR should address all potential impacts of the plan on the Metropolitan Transportation System (MTS) roadway network.
 - MTS roadway facilities in the plan area include:
 - I-880, I-580, and I-238 in San Leandro, Oakland, Unincorporated Alameda County and Hayward
 - SR-112/Davis Street San Leandro
 - SR-185 East-14th Street in San Leandro and Unincorporated Alameda County
 - Washington Avenue in San Leandro and Unincorporated Alameda County
 - For the purposes of CMP Land Use Analysis, the Highway Capacity Manual 2010 freeway and urban streets methodologies are the preferred methodologies to study vehicle delay impacts.
 - The Alameda CTC has *not* adopted any policy for determining a threshold of significance for Level of Service for the Land Use Analysis Program of the CMP.
- The Supplemental Program EIR should address potential impacts of the project on Metropolitan Transportation System (MTS) transit operators.
 - MTS transit operators potentially affected by the plan include: AC Transit, BART, and Capital Corridor
 - Transit impacts for consideration include the effects of project vehicle traffic on mixed flow transit operations, transit capacity, transit access/egress, need for future transit service, and consistency with adopted plans.
- The Supplemental Program EIR should address potential impacts of the plan to people biking and walking in and near the plan area, especially nearby roads included in the Countywide High-injury Network and major barriers identified in the Countywide Active Transportation Plan.
 - Impacts to consider on conditions for cyclists include effects of vehicle traffic on cyclist safety and performance, site development and roadway improvements, and consistency with adopted plans.

Mitigation Measures

- Alameda CTC's policy regarding mitigation measures is that to be considered adequate they must:
 - Adequately sustain CMP roadway and transit service standards;
 - Be fully funded; and
 - Be consistent with project funding priorities established in the Capital Improvement Program of the CMP, the Countywide Transportation Plan (CTP), and the Regional Transportation Plan (RTP) or the Federal Transportation Improvement Program, if the agency relies on state or federal funds programmed by Alameda CTC.
- The Supplemental Program EIR should discuss the adequacy of proposed mitigation measure according to the criteria above. In particular, the Supplemental Program EIR should detail when proposed roadway or transit route improvements are expected to be completed, how they will be funded, and the effect on service standards if only the funded portions of these mitigation measures are built prior to Project completion. The Supplemental Program EIR should also address the issue

of transit funding as a mitigation measure in the context of the Alameda CTC mitigation measure criteria discussed above.

- Jurisdictions are encouraged to discuss multimodal tradeoffs associated with mitigation measures that involve changes in roadway geometry, intersection control, or other changes to the transportation network. This analysis should identify impacts to automobiles, transit, bicyclists, and pedestrians. The HCM 2010 MMLOS methodology is encouraged as a tool to evaluate these tradeoffs, but project sponsors may use other methodologies as appropriate for particular contexts or types of mitigations.
- The Supplemental Program EIR should consider the use of TDM measures, in conjunction with roadway and transit improvements, as a means of attaining acceptable levels of service. Whenever possible, mechanisms that encourage ridesharing, flextime, transit, bicycling, telecommuting and other means of reducing peak hour traffic trips should be considered.

Thank you for the opportunity to comment on this NOP. Please contact me at (510) 208 7484 or Chris G. Marks, Associate Transportation Planner at (510) 208-7453, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cath', with a long horizontal flourish extending to the right.

Cathleen Sullivan
Director of Planning

cc: Chris G. Marks, Associate Transportation Planner
Shannon McCarthy, Associate Transportation Planner



**BAY AREA
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MANAGEMENT
DISTRICT**

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Connect with the
Bay Area Air District:



February 14, 2022

Ms. Avalon Schultz
Principal Planner
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

RE: City of San Leandro Housing Element and General Plan Update – Notice of Preparation

Dear Ms. Schultz

Bay Area Air Quality Management District (Air District) staff has reviewed the Notice of Preparation (NOP) for the City of San Leandro (City) Housing Element and General Plan Update (Plan) Supplemental Draft Program Environmental Impact Report (Program SDEIR). The City's Housing Element Update is based on the City's latest Regional Housing Needs Allocation (RHNA) estimates, which determined that the City must plan for 3,855 residential units, plus a buffer of some number of units to reduce barriers to housing development. The City will evaluate potential increases in allowable densities and units over allowable development under the existing land uses and development regulations of the General Plan. The Land Use Element of the General Plan will be updated to reflect new housing sites identified in the Housing Element Update and include updates to other elements of the General Plan and Zoning Map and Zoning Code Amendments, as needed.

Air District staff supports the City's efforts to increase residential development and thus help address the region's severe housing crisis. Pursuit of this laudable goal must also assure that potential air quality and health impacts be avoided. Air District staff recommends the Program SDEIR include the following information and analysis:

- As identified by the Air District's CARE program and Assembly Bill (AB) 617 Community Health Protection Program, the San Leandro community census tracts that are in the top 30 percent of pollution burden statewide, as identified in CalEnviroScreen 4.0, are currently cumulatively impacted with air pollution, which highlights the urgency of avoiding additional air pollution in these communities. Increases in air pollution exposure in areas that are already overburdened would be of concern; therefore, the City should fully evaluate potential significant impacts and implement all feasible measures to minimize air quality impacts to the greatest extent possible.
- The Program SDEIR should provide a detailed analysis of the Plan's potential effects on local and regional air quality. The Air District's CEQA Air Quality Guidelines, which provide guidance on how to evaluate a Plan's construction, operational, and cumulative air quality

impacts, can be found on the Air District's website: <https://www.baaqmd.gov/plans-and-climate/california-environmentalquality-act-ceqa/updated-ceqa-guidelines>.

- The greenhouse gas (GHG) impact analysis should include an evaluation of the Plan's consistency with the California Air Resources Board's most recent AB 32 Scoping Plan and with the State's 2030, 2045, and 2050 climate goals. The Air District's current GHG thresholds and CEQA Guidelines are based on the State's 2020 targets which are now superseded by the 2030 targets established in SB 32. The Air District recommends that cities and counties evaluate such plans based on whether they would be consistent with California's long-term climate goal of achieving carbon neutrality by 2045. To be consistent with this goal, these plans should reduce GHG emissions in the relevant jurisdiction to meet an interim milestone of 40 percent below the 1990 emission levels by 2030, consistent with SB 32, and to achieve carbon neutrality by 2045 as defined in Executive Order B-55-18.
- The Program SDEIR should evaluate all feasible measures to minimize air pollutant emissions and exposure and should prioritize onsite measures within the Plan area, followed by offsite measures. Examples of potential emission and exposure reduction measures that should be evaluated and considered include, but are not limited to:
 - Implementing green infrastructure and fossil fuel alternatives in the development and operation of the Plan, such as solar photovoltaic (PV) panels, renewable diesel, electric heat pump water heaters, and solar PV back-up generators with battery storage capacity.
 - Including a building decarbonization goal or policy in the Plan (<https://www.buildingdecarb.org/compass.html>) and requiring no natural gas use in proposed structures.
 - Include air filtration for new and existing buildings that may be exposed to elevated air pollution, such as MERV 13 filters, as well as vegetative buffers between new and existing buildings, and sources of pollution. For more emissions and exposure reduction best practices, see the Air District's Planning Healthy Places guidance, Appendices A and B, here: https://www.baaqmd.gov/~media/files/planning-and-research/planning-healthy-places/php_may20_2016-pdf.pdf.
 - Prohibiting or minimizing the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (<http://dieselfree33.baaqmd.gov/>).
 - Requiring construction vehicles to operate with the highest tier engines commercially available.
 - Meeting the vehicles miles traveled (VMT) requirement under SB 743.
 - Requiring installation of electric vehicle (EV) charging infrastructure and capacity to meet power requirements to meet future EV charging needs.
 - 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 and projects that improve pedestrian access to transit, employment, and major activity centers.
 - Implementing a zero-waste program consistent with SB 1383 organic waste disposal reduction targets.
- The Program SDEIR should evaluate the Plan's consistency with the Air District's 2017 Clean Air Plan (2017 CAP) and should discuss 2017 CAP measures relevant to the Plan. 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 Program SDEIR should evaluate and analyze the Plan's consistency with the San Leandro 2021 Climate Action Plan and consider any updates on San Leandro's 2017 Climate Hazards Assessment.
- 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 Plan requires a site-specific analysis, please contact Air District staff to obtain more recent data.
- Certain aspects of the Plan 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 to discuss permit requirements. Any applicable permit requirements should be discussed in the SDEIR.

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 Alesia Hsiao, Senior Environmental Planner, (415) 745-8419, ahsiao@baaqmd.gov.

Sincerely,



Greg Nudd
Deputy Air Pollution Control Officer

cc: BAAQMD Vice Chair John J. Bauters
BAAQMD Director Pauline Russo Cutter
BAAQMD Director David Haubert
BAAQMD Director Nate Miley

February 7, 2022

Avalon Schultz, AICP, Principal Planner
City of San Leandro Community Development Department
835 East 14th Street
San Leandro, CA 94557

Re: Notice of Preparation of a Supplemental Draft Program Environmental Impact
Report for the City of San Leandro Housing Element and General Plan Update, San
Leandro

Dear Ms. Schultz:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Supplemental Draft Environmental Impact Report for the City of San Leandro Housing Element and General Plan Update, which encompasses the entirety of the City of San Leandro (City). EBMUD has the following comments.

WATER SERVICE

Effective January 1, 2018, water service for new multi-unit structures shall be individually metered or sub-metered in compliance with California State Senate Bill 7 (SB-7). SB-7 encourages conservation of water in multi-family residential, mixed-use multi-family and commercial buildings through metering infrastructure for each dwelling unit, including appropriate water billing safeguards for both tenants and landlords. EBMUD water services shall be conditioned for all development projects within the Housing Element and General Plan Update that are subject to SB-7 requirements and will be released only after the project sponsor has satisfied all requirements and provided evidence of conformance with SB-7.

Main extensions that may be required to serve any specific developments within the Housing Element and General Plan Update to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsors' expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsors' expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. When development plans are finalized for individual projects within the Housing Element and General Plan Update, project sponsors should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipelines and services requires substantial lead-time, which should be provided for in the project sponsors' development schedule.

Project sponsors for individual projects within the Housing Element and General Plan Update should be aware that EBMUD will not install piping or services in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsors must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete, and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsors is insufficient, EBMUD may require the project sponsors to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsors' expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

WATER RECYCLING

EBMUD's Policy 9.05 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant, fish, and wildlife to offset demand on EBMUD's limited potable water supply. Some portions of the City's boundaries fall within and around EBMUD's San Leandro Recycled Water Pipeline service area. Any projects within the boundary of EBMUD's San Leandro Recycled Water Pipeline service area have opportunities for recycled water applications ranging from landscape irrigation, toilet flushing, and other non-potable commercial and industrial applications that can be served by existing or expanded recycled water pipelines in the future.

The current recycled water in the area is limited to secondary treated supply. State and health regulations do not allow the use of secondary treated water for some of the above applications; however, the existing San Leandro Recycled Water Project could potentially expand uses in the future should the treatment level be upgraded to a tertiary level. If EBMUD determines that recycled water will be available and of adequate quality, then the project sponsors for individual projects within the Housing Element and General Plan Update will be responsible for the extension of recycled water pipelines to and within

the proposed development. EBMUD recommends that the City and project sponsors maintain continued coordination and consultation with EBMUD, as they plan and implement the various projects within the City, regarding the feasibility of providing recycled water for appropriate non-potable uses.

WATER CONSERVATION

Individual projects within the Housing Element and General Plan Update presents an opportunity to incorporate water conservation measures. EBMUD requests that the City include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom
Manager of Water Distribution Planning

DJR:KTL:grd
sb22_029. San Leandro Housing Update NOP Response



NATIVE AMERICAN HERITAGE COMMISSION

January 25, 2022

Avalon Schultz
City of San Leandro
835 East 14th Street
San Leandro, CA 94557

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NAHC HEADQUARTERS
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California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

**Re: 2022010214, City of San Leandro Housing Element and General Plan Update Project,
Alameda County**

Dear Ms. Schultz:

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_CalEPAPDF.pdf

SB 18

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

Some of SB 18's provisions include:

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

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

NAHC Recommendations for Cultural Resources Assessments

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

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

- b.** The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.
- 3.** Contact the NAHC for:
- a.** A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b.** A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
- 4.** Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
- a.** Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b.** Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c.** Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subs. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
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Sincerely,



Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse

