



COUNTY OF SANTA CRUZ

PLANNING DEPARTMENT

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NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT

Date: June 30, 2017
To: All Recipients on the Distribution List (Attachment 1)
Lead Agency: County of Santa Cruz Planning Department
Contact: Todd Sexauer, Environmental Planner
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
Subject: Notice of Preparation of a Draft Environmental Impact Report
Project Title: Nissan of Santa Cruz Project
Project Applicant: Don Gropetti, Gropetti Automotive
c/o Bill Wiseman, Kimley Horn

In implementing its duties under Section 15021 of the California Environmental Quality Act (CEQA) Guidelines, the County of Santa Cruz Planning Department (as Lead Agency) intends to prepare an Environmental Impact Report (EIR) for the Nissan of Santa Cruz Project (Proposed Project). In accordance with Section 15082 of the CEQA Guidelines, the County of Santa Cruz Planning Department has prepared this Notice of Preparation (NOP) to provide responsible and trustee agencies with sufficient information describing the Proposed Project and its potential environmental effects.

In April 2017, the County of Santa Cruz Planning Department prepared an Initial Study/Mitigated Negative Declaration (IS/MND) for a previous project on a smaller portion of the currently proposed site. The IS/MND was circulated for public review and comment from April 12, 2017 through May 8, 2017. That project was withdrawn when the applicant added additional properties to the site. Due to the changed project, and based upon comments received about the prior project, the County concluded that an EIR should be prepared rather than an MND. The analyses contained in a revised Initial Study are being used to focus the EIR on relevant subject areas and to eliminate discussions of subject areas where effects will not be significant.

As specified by the CEQA Guidelines, the NOP will be circulated for a 30-day review period. The County of Santa Cruz Planning Department welcomes responsible and trustee agency input during this review; specifically input is requested as to the scope and content of environmental information that is germane to your agency's statutory responsibilities in connection with the Proposed Project. Your agency will need to use the EIR prepared by our agency when considering your permit or other

approval for the Proposed Project. In the event that no response is received by your agency by the end of the review period, the County of Santa Cruz Planning Department may presume that your agency has no comment to make regarding the scope of the EIR.

Comments may be submitted in writing during the review period and addressed to:

**Todd Sexauer, Environmental Coordinator
County of Santa Cruz Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060**

Because of time limits mandated by state law, all comments related to this notice must be postmarked or received no later than 5 p.m. on **August 1, 2017**

Project Location

The project site is located in the central portion of Santa Cruz County, north of the City of Capitola. The project site is located approximately 1,000 feet north of Highway 1 and approximately 1,100 feet east of Rodeo Creek Gulch. The site is bordered by Soquel Drive and 41st Avenue, on the north and east, a microbrewery and full service car wash to the south, and by a lumber yard to the west. Figure 1 illustrates the regional location of the proposed project, and Figure 2 shows the project within the local context.

The proposed project site includes eight developed parcels located in the unincorporated community of Soquel in Santa Cruz County. The site is comprised of eight adjacent parcels (APN 030-121-06, 07, 08, 12, 13, 27, 53, and 57). The parcels are situated to the south of Soquel Drive and west of 41st Avenue at their intersection. Existing vehicular access to the site would be available from both east and westbound Soquel Drive and from southbound 41st Avenue.

Project Setting

The project site is relatively flat with a gradual downward slope to the south. The project site consists of eight individual parcels containing a mix of residential and commercial development. The surrounding area is developed with commercial development including, Home Depot, Best Buy, Safeway supermarket and gas station along with a variety of retail and commercial services. The project site is bordered by Soquel Drive/commercial uses and 41st Avenue/commercial uses, on the north and east, a microbrewery and full service car wash to the south, and by a lumberyard to the west. Ocean Honda, a Service Commercial zone, is located across Soquel Drive to the northwest across from the existing lumberyard.

All of the properties are zoned C-2 (Community Commercial) which is consistent with the parcels' General Plan designation of C-C (Community Commercial). The project site is noted as having a C-C (Community Commercial) Land Use designation as envisioned in the Sustainable Santa Cruz County (SSCC) Plan. The SSCC Plan is a planning study was "accepted" by the Santa Cruz County Board of Supervisors on October 28, 2014. However, the SSCC Plan does not serve as a policy document. Its principles and recommendations would need to be incorporated into the General Plan and County Code in order to become effective.

Background

A previous automotive dealership project was proposed by the applicant within a portion of the current project area that included five of the eight parcels currently proposed parcels. These parcels include assessor parcel numbers 030-121-08, 12, 13, 27, and 53. Shortly after the start of public review for the Initial Study, the applicant discovered that three additional parcels at the corner of 41st Avenue and Soquel Drive were on the market (030-121-06, 07, and 57). Upon discovery of the

intent of the applicant to purchase these parcels, the County of Santa Cruz Planning Department determined that the project would have to be reevaluated under CEQA with the inclusion of these additional parcels. In addition, the County of Santa Cruz Planning Department determined that due to the close proximity of the project site to Highway 1, project and cumulative traffic impacts from the proposed project on Highway 1 should be evaluated in the traffic impact analysis and an EIR should be prepared.

Project Description

Land Use and Zoning

The project proposes to construct a 12,551 square foot automobile dealership with a separate 9,996 square foot automobile service building at the southwest corner of the intersection of Soquel Drive and 41st Avenue in Soquel. A conceptual site plan is shown in Figure 3.

The project proposes a General Plan amendment to change the existing land use designation from Community Commercial (C-C) to Service Commercial (C-S). In addition, a zone change from Community Commercial (C-2) to Service Commercial (C-4) is also proposed. The existing C-2 zoning does not allow auto sales. See the Table 1 below for a complete description.

The site would provide 154 parking spaces to accommodate inventory as well as visitor and service parking. Discretionary approvals would include a General Plan Amendment, Rezoning, Commercial Development Permit, Grading Permit and Sign Exception.

Assessor Parcel No.	Acreage	Existing Uses	Existing		Proposed	
			General Plan Land Use	Zoning	General Plan Land Use	Zoning
030-121-06	0.302	Self-serve Car Wash	C-C	C-2	C-S	C-4
030-121-07	0.132	Self-serve Car Wash	C-C	C-2	C-S	C-4
030-121-08	0.162	SFD	C-C	C-2	C-S	C-4
030-121-12	0.202	SFD	C-C	C-2	C-S	C-4
030-121-13	0.280	SFD	C-C	C-2	C-S	C-4
030-121-27	0.819	Undeveloped	C-C	C-2	C-S	C-4
030-121-53	0.301	SFD	C-C	C-2	C-S	C-4
030-121-57	0.370	Retail Paint Store	C-C	C-2	C-S	C-4
Total	2.568					
Notes: C-C – Community Commercial; C-S – Service Commercial; C-2 – Neighborhood Commercial; C-4 – Service Commercial; SFD – Single Family Dwelling Source: County of Santa Cruz, 2017						

The 12,551 square foot automobile dealership would be constructed primarily from aluminum composite metal panels, glass, and concrete block. The two story structure would have a maximum height of 29 feet six inches with an additional four feet allowed for the Nissan Tablet sign, for a total height of 33 feet six inches. The first floor amenities include a showroom, shared lounge, service advisors office, service manager office, sales offices, quiet lounge, restrooms, administrative

conference room, parts department, and new vehicle delivery area. The second floor amenities include a small meeting room, general manager's office, administrative office, additional office, and bulk parts area. The proposed building-mounted and monument signage would be in excess of the 50 square feet allowed by County Code, requiring approval of a Sign Exception.

The 20 foot high single story 9,996 square foot service facility would provide six service bays with rollup doors, an oil change bay, car wash bay, restrooms, lounge, and oil and tool storage areas (Figure 3). The service facility would be constructed primarily from aluminum composite metal panels, glass, and concrete block as is the main dealership building.

The project would also dedicate the necessary road right-of-way along the project frontage on Soquel Drive and construct a dedicated right-turn pocket onto 41st Avenue from eastbound Soquel Drive (see Figure 3). The existing signal light arm and associated control cabinet located at the corner of Soquel Drive and 41st Avenue would also be relocated to the south to allow for the construction of the dedicated right-turn pocket. In addition, two PG&E power poles supporting distribution lines would need to be relocated approximately 15 feet to the south of their current locations to allow for the proposed right-turn pocket. The project would also be conditioned to require installation of new curb gutter, landscape strip, and sidewalk along the entire project frontage of Soquel Drive and 41st Avenue.

The project proposes to demolish existing onsite structures to include one 4,700 square foot commercial building, a six bay self-service car wash, and four single family dwellings with outbuildings ranging from approximately 650 to 1,100 square feet in size. Proposed grading of the relatively flat site includes approximately 2,485 cubic yards of cut and 1,625 cubic yards of fill with 860 cubic yards of export. Following demolition of the existing structures, the site would be cleared of loose soil, organics, and debris within the project limits. This would include the removal of all demolition debris from existing and prior structures. Non-engineered fill caused by the demolition and removal of structures would be removed and or processed according to the geotechnical investigation. Engineered fill would be mechanically compacted to a minimum of 90 percent relative compaction. Non engineered fill would be removed and replaced as engineered fill in all paved areas. No permanent cut or fill slopes are proposed for the project site. Standard earthwork equipment would be used during site preparation and grading.

The project proposes to retire unneeded existing Santa Cruz Water Department (SCWD) water services extending onto the project site from 41st Avenue. A new ¾-inch water service would be installed from 41st Avenue to serve the facility. In addition, an existing ¾-inch water service would be retrofitted into an irrigation service for the facility. A 6-inch fire service backflow device would also be installed at the northwest corner of the project site near the project frontage that would also provide fire service to the 7,500 square foot service area. An 8-inch fire service water line would also be installed that would be reduced to serve an onsite 6-inch fire hydrant. An additional 6-inch fire hydrant would be installed along the 41st Avenue frontage. A 4-inch sanitary sewer line would be installed from 41st Avenue, and existing electric, gas, and communication services would be assumed.

Potential Approvals and Permits Required

No federal or state permits or approvals are anticipated. However, a General Plan Amendment and Rezoning, Development Permit, Grading Permit, Encroachment Permit, and Sign Exception would be required by the County of Santa Cruz.

Potential Environmental Effects

Pursuant to CEQA and CCR Section 15064, the discussion of potential project effects on the environment in the EIR will concentrate on those impacts that the County has determined may be potentially significant. The 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 County has determined that the proposed project could potentially result in environmental impacts in the following topic areas, which will be further evaluated in the EIR:

- Aesthetics and Visual Resources
- Air Quality
- Cultural Resources
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Land Use and Planning
- Transportation and Traffic
- Cumulative Impacts

- **Aesthetics and Visual Resources**

Although the project area is located outside of any designated scenic areas and/or roadways, the site will be evaluated for potential impacts to the existing visual character and/or quality of the site and its surroundings. In addition, the project proposes to install new exterior lighting with lighted signage. Therefore, the analysis will also evaluate impacts associated with the new source of light and glare that could affect views in the area.

- **Air Quality**

The air quality analysis will be prepared in conformance with the methodologies outlined in the Monterey Bay Air Resources District (MBARD) 2008 CEQA Guidelines. The analysis will include a detailed discussion of the current air quality setting within the local airshed along with local climatic and air pollution data from local air monitoring stations. Significance criteria will be based on MBARD thresholds.

Potential long-term emissions associated with the project would primarily be the result of increased traffic and/or increased vehicle miles traveled. This input data will be carefully coordinated with the traffic study, in consultation with MBARD staff. Mobile emissions will be quantified using the California Emissions Estimator Model (CalEEMod) software. Vehicle usage factors to be employed in the analysis will be coordinated with the traffic study based upon the increase in trips associated with the proposed project, as determined by the traffic analysis.

Short-term (construction-related) emissions will be compared to current state and federal Air Quality Standards and MBARD construction emissions thresholds of significance (82 pounds per day of PM₁₀). Projected long-term emissions will be compared to the MBARD's operational thresholds of significance (137 pounds per day of VOC or NO₂, 82 pounds per day of PM₁₀, 550 pounds per day of CO, and 150 pounds per day of SO₂).

- **Cultural Resources**

Consistent with Section 21083.2 of CEQA, the EIR section addressing cultural resources and archaeology will be based on the records search and field survey results documented in the Cultural Resources Evaluation. This report will be attached as an appendix to the EIR (excluding any confidential documents). The EIR cultural resources section will include a description of the cultural resources setting based on the existing report, methodologies used in the analysis, an assessment of any cultural resources identified (including direct impacts from onsite development as well as off-site impacts due to extension of infrastructure), and a

discussion of mitigation measures needed to fully mitigate the impacts of the proposed project.

Consistent with Section 15064.5 of CEQA, the EIR section addressing historical resources, multiple structures in the project area have been evaluated to determine their significance and the potential for significant impacts to historic resources associated with their demolition. The EIR will evaluate impacts associated with the proposed project and provide appropriate mitigation if required.

The County will also conduct government to government tribal consultations in conformance with Senate Bill 18 of 2005 (SB 18; California Public Resources Code § 65351—65352), which is required for general plan and specific plan amendments. The NAHC will provide a list of Native American tribal contacts for the project that should be contacted under SB 18.

- **Greenhouse Gas Emissions**

The EIR will evaluate impacts related to greenhouse gases (GHGs) and climate change. This analysis will consider the proposed project's potential contribution to cumulative impacts related to climate change. The study will include an overview of the types and sources of GHGs, and the potential environmental effects of GHGs and climate change. An overview of the current regulatory framework regarding GHGs/climate change, including Assembly Bill (AB) 32, Senate Bill (SB) 97, and SB 375, as well as adopted amendments to the State CEQA Guidelines, will also be described.

The analysis will quantify carbon dioxide equivalent (CDE) units associated with project construction and operation. Emission factors and methodologies from the Local Government Operations Protocol (LGOP) for the Quantification and Reporting of Greenhouse Gas Emissions Inventories (May 2010) will be used to calculate GHG emissions from the proposed project. These emission factors will be applied through the use of CalEEMod software. CalEEMod quantifies direct emissions from construction and operation (including vehicle use), as well as indirect emissions, such as GHG emissions from energy production, solid waste handling, vegetation planting and/or removal, and water conveyance. Further, the model calculates the benefits from implementing mitigation measures, including GHG mitigation measures developed and approved by the California Air Pollution Control Officers Association (CAPCOA).

The Monterey Bay Air Resources District (MBARD) has not formally adopted thresholds to evaluate GHG emissions, and encourages lead agencies to consider a variety of metrics for evaluating GHG emissions and related mitigation measures as they best apply to the specific project. County staff will consult with MBARD staff during the preparation of this section to determine appropriate thresholds for this project. A GHG section will be prepared using the results from CalEEMod that focuses on the impacts of the proposed project on climate change, as well as the impacts of climate change on the project region.

- **Hazards and Hazardous Materials**

The EIR will discuss impacts related to hazardous materials, including those associated with the storage of hazardous materials. This analysis will be based on a Phase I Environmental Site Assessment (ESA) conducted for the site. The results of the Phase I ESA will be summarized in the EIR section, and included as an appendix to the EIR. This section will also

involve identification of applicable local, state, and federal codes and regulations that are in place to manage hazards. Specifically, the scope includes the following:

- Contact with local agencies to identify potential public safety hazards in the project area.
 - Identify potential project specific and cumulative public safety impacts associated with the proposed project.
 - Develop mitigation measures needed to avoid or minimize public safety impacts.
- **Land Use and Planning**

The project site is currently designated Community Commercial (C-C) under the County of Santa Cruz General Plan, and is zoned Community Commercial (C-2). Under the proposed project, the site would be redesignated to Service Commercial (C-S) and rezoned Service Commercial (C-4; see Table 1 above). Given that much of the site is currently developed with non-conforming uses that are in poor condition, and the site's proximity to both Community Commercial and Service Commercial land uses, development of the site as proposed is not likely to result in significant land use compatibility impacts. This section of the EIR will describe potential issues related to the project from a planning and policy perspective, including cross-references to other EIR sections where these issues are addressed in detail.

The policy consistency analysis requires a thorough review of the project against the various regulatory documents adopted by the County and other responsible agencies. The land use analysis will focus on:

- Compatibility with adjacent properties, including changes in the character of the site and the scale and appropriateness of the proposed new development.
 - Policy consistency with the General Plan and Zoning District.
 - Assessment related to the principles and concepts in the Sustainable Santa Cruz County Planning Study.
- **Transportation and Traffic**

The transportation and Traffic section of the EIR will be based on a 2017 Traffic Impact Analysis prepared for the project. Traffic impacts are a major concern for the public. The Traffic Impact Analysis will be summarized in the EIR section, and attached to the EIR as an appendix. This EIR section will be drafted to identify existing traffic conditions, near-term traffic conditions, traffic calculated to be generated by the proposed project, and analysis of estimated impacts to area circulation and transportation resulting from the proposed project. Project contributions to cumulative traffic impacts in the area resulting from the project and other approved/pending projects will also be analyzed in this section. The EIR will identify mitigation measures determined to be appropriate and those determined to be feasible for implementation, and as appropriate will identify impacts that would remain significant and unavoidable if required.

- **Cumulative Impacts**

Consistent with Section 15130 of the CEQA Guidelines, the County will discuss cumulative impacts of the project when the project's incremental effect is cumulatively considerable. The analysis will be conducted using either a "list of past, present and probable future projects producing related or cumulative impacts" or "a summary of projections contained in the adopted general plan. Assumptions will be coordinated with the cumulative traffic analysis

and with the assumptions of other projects in the vicinity to ensure consistency. This analysis will address each topic covered in the EIR environmental analysis and will identify appropriate mitigation measures intended to reduce any potentially significant cumulative impacts to a less than significant level.

These issue areas will be discussed further in the project EIR, and feasible and practicable mitigation measures will be recommended to reduce any identified potentially significant and significant impacts. Pursuant to CEQA, the discussion of potential effects on the physical environment is focused on those impacts that may be significant or potentially significant. CEQA allows a lead agency to limit the detail of discussion of the environmental effects that are not considered potentially significant (PRC Section 21100, CCR Sections 15126.2[a] and 15128). CEQA requires that the discussion of any significant effect on the environment be limited to substantial, or potentially substantial, adverse changes in physical conditions that exist within the affected area, as defined in PRC Section 21060.5 (statutory definition of “environment”). Effects identified in the Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the lead agency subsequently receives information inconsistent with the finding in the Initial Study (CCR Section 15143). Environmental issue areas scoped out of the Project EIR will include an explanation of why these issues would not result in significant environmental effects and are not required to be evaluated further. Environmental issue areas that are anticipated to be scoped out of the EIR are listed below.

- Agriculture and Forestry Resources
- Biological Resources
- Geology and Soils
- Mineral Resources
- Population and Housing
- Noise
- Public Services and Utilities
- Recreation
- Tribal Cultural Resources

Alternatives to be Evaluated in the EIR

In accordance with the State CEQA Guidelines (14 CCR Section 15126.6), the EIR will describe a range of reasonable alternatives to the proposed project that are capable of meeting most of the projects’ objectives, and would avoid or substantially lessen any potential significant effects that may be identified. The EIR will also identify any alternatives that were considered but rejected by the lead agency as infeasible and briefly explain the reasons why. The EIR will provide an analysis of the No-Project Alternative and will also identify the environmentally superior alternative. One of the project alternatives would consider the possibility that a ninth parcel (030-121-34) could in the future be redesignated and rezoned by the County in order to provide for consistency within the block should the proposed project be approved.

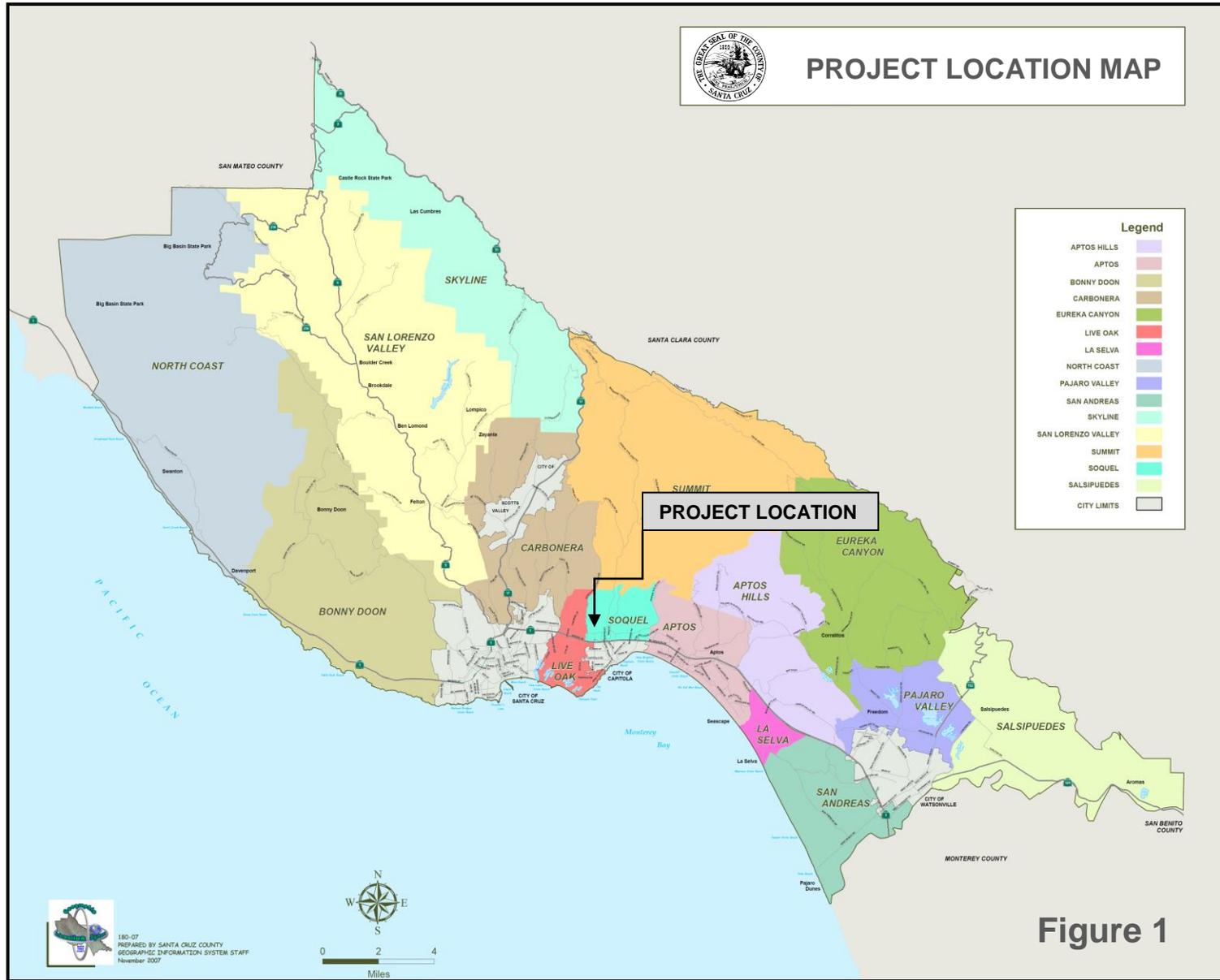
Documents Available for Public Review

The NOP and Initial Study are available for public review at the following location:

County of Santa Cruz Planning Department
Records Room
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

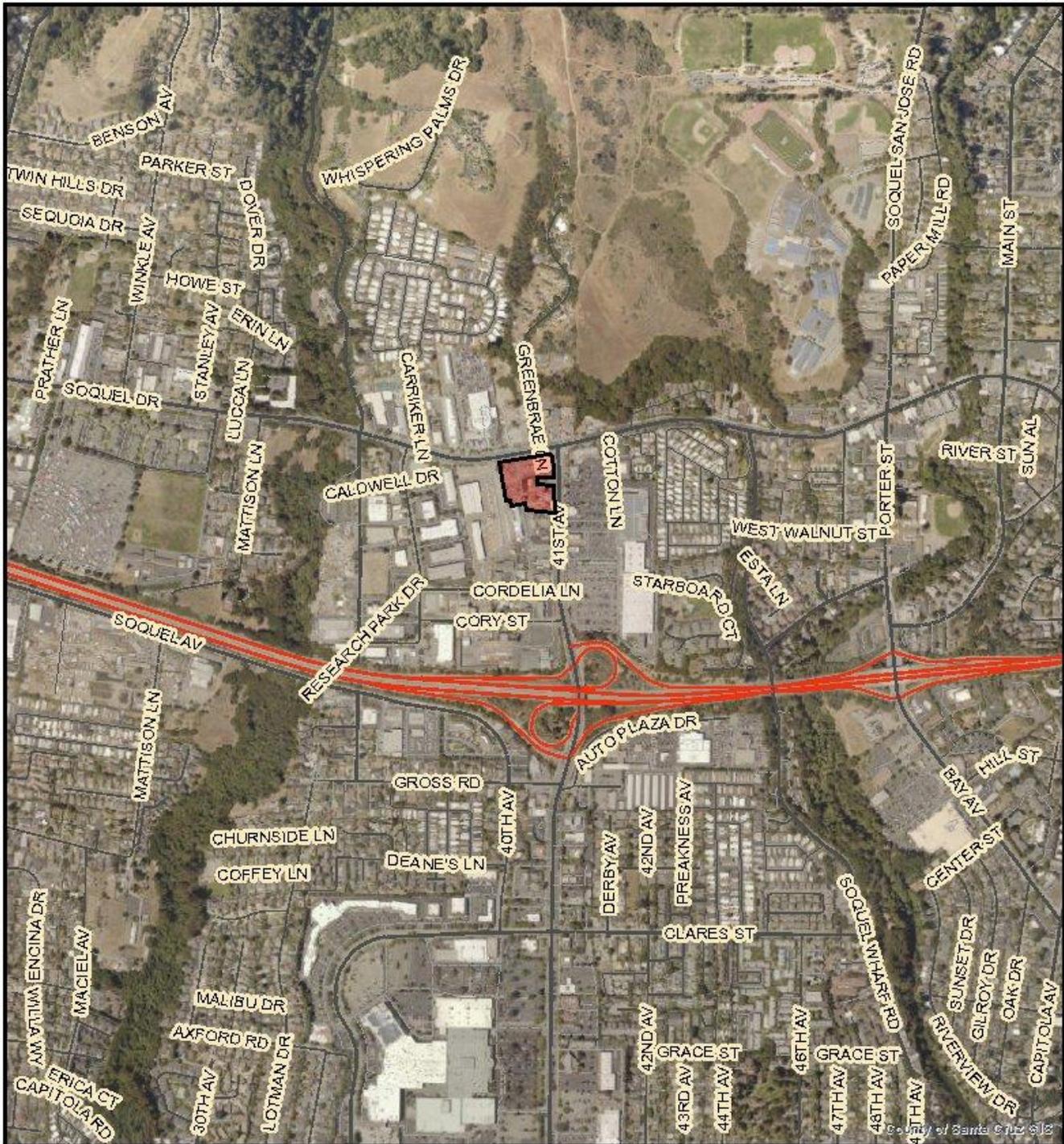
The NOP is also available for public review online at:

<http://www.sccoplanning.com/PlanningHome/Environmental/CEQAInitialStudiesEIRs/CEQADocumentsOpenforPublicReview.aspx>



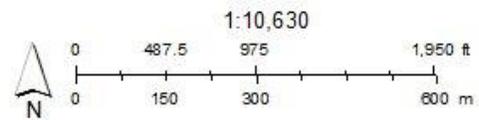
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Project Vicinity



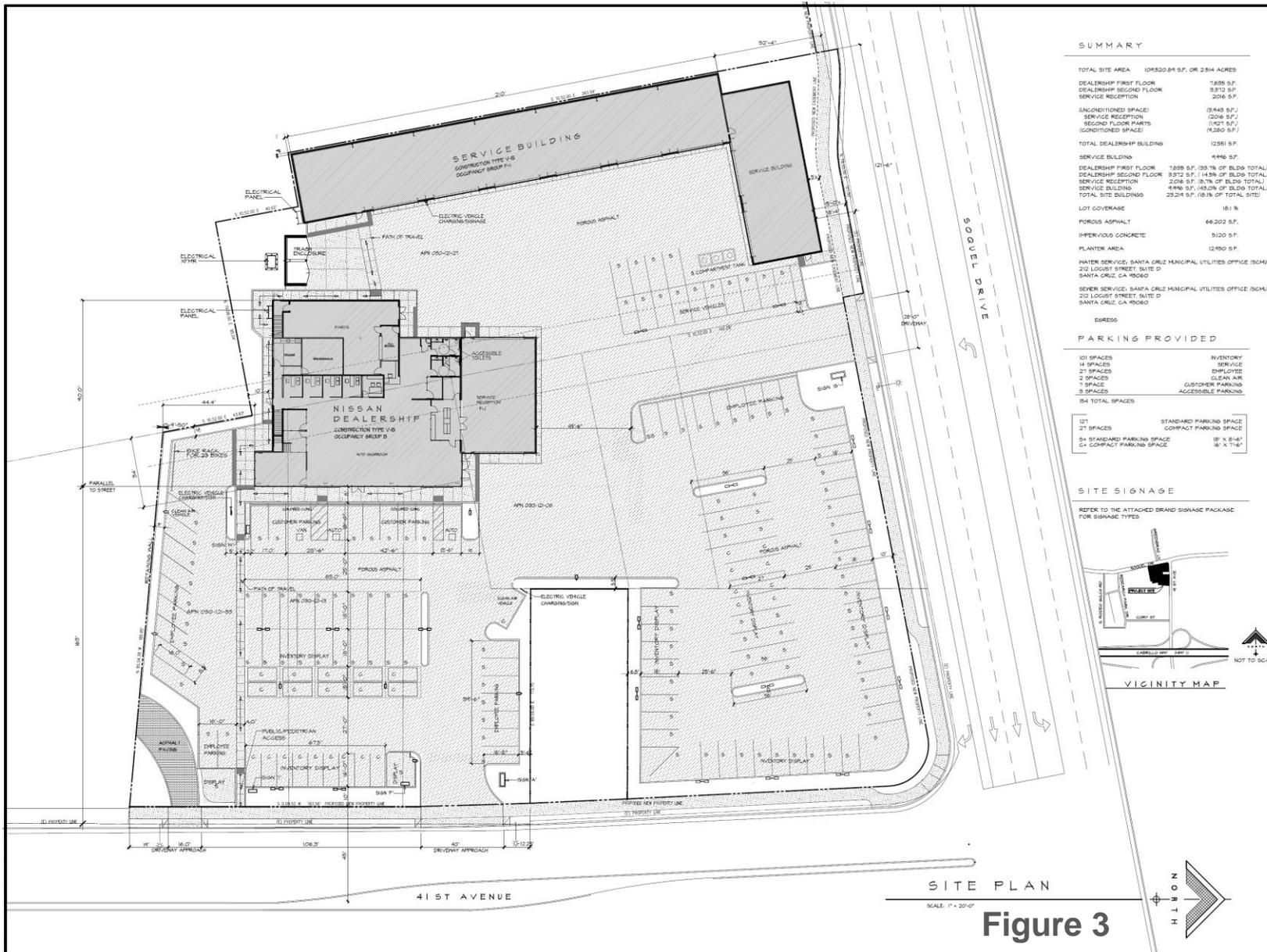
Streets	— Major Road
--- Alley	— Ramp
— Business Route	— State Highway
— Driveway	— Street
— Levee	— Unnamed

Figure 2



June 28, 2017

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APR 05-08-12-11
APR 05-08-12-12
APR 05-08-12-13
APR 05-08-12-14
APR 05-08-12-15

AUTO SHOWROOM & SERVICE BUILDINGS FOR
Santa Cruz NISSAN
NISSAN
SOGUEL, CA

PROJECT No: 1502
DATE: 02/05/2018
SITE PLAN
CUP
SHEET No: A-1.11

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Attachment 1

Nissan of Santa Cruz Project EIR Distribution List for the Notice of Preparation

COUNTY OF SANTA CRUZ

**County of Santa Cruz Department of Public Works
Traffic**

701 Ocean Street, Suite 410
Santa Cruz, CA 95060
Attn: Jack Sohriakoff

**County of Santa Cruz Department of Public Works
Sanitation**

701 Ocean Street, Suite 410
Santa Cruz, CA 95060
Attn: Kent Edler

County of Santa Cruz Dept. of Environmental Health

701 Ocean Street,
3rd Floor - Room 312
Santa Cruz, CA 95060
Attn: John Ricker

County of Santa Cruz Sheriff's Office

5200 Soquel Avenue
Santa Cruz, CA 95062
Attn: Sergeant Roy Morales

**County of Santa Cruz
Agricultural Commissioner**

175 Westridge Drive
Watsonville, CA 95076
Attn: Juan Hildalgo

**County of Santa Cruz
Commission on Disabilities**

701 Ocean Street, Room 30
Santa Cruz, California 95060

County of Santa Cruz Planning Commission

701 Ocean Street, 4th Floor
Santa Cruz, CA 95060

**County of Santa Cruz Department of Public Works
Storm Water Management**

701 Ocean Street, Suite 410
Santa Cruz, CA 95060
Attn: Rachel Fatoohi

**County of Santa Cruz
Mosquito Abatement and Vector Control District**

640 Capitola Road
Santa Cruz, CA 95062
Attn: Paul Binding

County of Santa Cruz, Board of Supervisors

701 Ocean Street, Room 500
Santa Cruz, CA 95060
Attn: John Leopold, 1st District Supervisor
Zach Friend, 2nd District Supervisor
Ryan Coonerty, 3rd District Supervisor
Greg Caput, 4th District Supervisor
Bruce McPherson, 5th District Supervisor

**County of Santa Cruz Economic Development
Coordinator**

County Administration Office
701 Ocean St, Room 520
Santa Cruz, Ca 95060
Attn: Barbara Mason

LAFCO of Santa Cruz County

701 Ocean Street #318D
Santa Cruz CA 95060
Attn: Pat McCormick

**Santa Cruz County Regional Transportation
Commission**

1523 Pacific Avenue
Santa Cruz, CA 95060
Attn: Grace Blakeslee

County of Santa Cruz Clerk of the Board

701 Ocean Street, Room 500
Santa Cruz, CA 95060

LOCAL GOVERNMENTS

City of Santa Cruz

Water Department
212 Locust Street, Suite A
Santa Cruz, California 95060
Attn: Chris Berry

City of Capitola

Community Development Department
420 Capitola Avenue
Capitola, CA 95010
Attn: Richard Grunow

REGIONAL GOVERNMENT

Association of Monterey Bay Area Governments

PO Box 2453
Seaside, CA 93955

SPECIAL DISTRICTS

Central Fire Protection District

930 17th Avenue
Santa Cruz, CA 95062

Santa Cruz Metropolitan Transit District

110 Vernon Street
Santa Cruz, CA 95060
Attn: Ciro Aguirre

PUBLIC LIBRARIES**Porter Memorial Library**

3050 Porter Street
Soquel, CA 95073
Attn: References Desk

Capitola Branch Library

2005 Wharf Road
Capitola, CA 95010
Attn: References Desk

STATE OF CALIFORNIA**California Highway Patrol**

Coastal Division
4115 Broad Street, Suite B-10
San Luis Obispo, CA 93401

California Department of Transportation

District 5
50 Higuera Street
San Luis Obispo, CA 93401-5415
Attn: Jennifer Calate'

State of California**Governor's Office of Planning and Research
State Clearinghouse**

P.O. Box 3044
Sacramento, CA 95812-3044

California Native American Heritage Commission

1550 Harbor Blvd, Suite 100
West Sacramento, CA 95691

California Regional Water Quality Control Board

Region 3
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Monterey Bay Air Resources District

24580 Silver Cloud Court
Monterey, CA 93940
Attn: Amy Clymo

Office of Historic Preservation

1725 23rd Street, Suite 100
Sacramento, CA 95816

FEDERAL**None**

Response Letters
to the
Notice of Preparation

NATIVE AMERICAN HERITAGE COMMISSION

Environmental and Cultural Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
Phone (916) 373-3710
Fax (916) 373-5471
Email: nahc@nahc.ca.gov
Website: <http://www.nahc.ca.gov>
Twitter: @CA_NAHC



July 7, 2017

Todd Sexauer
Santa Cruz County
701 Ocean Street, 4th Floor
Santa Cruz, CA 05960

RE: SCH#2017072002 Nissan of Santa Cruz Project, Santa Cruz County

Dear Mr. Sexauer:

The Native American Heritage Commission 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 section 21084.1, states that a project that may cause a substantial adverse change in the significance of an 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 Section 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, § 15064 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 with the area of project 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 or a notice of negative declaration or 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 sections 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 section 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 section 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 section 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 section 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 nonfederally 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 sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 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 section 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 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 section 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 sections 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 been 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, section 15064.5(f) (CEQA Guidelines section 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 section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 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, please contact me at my email address: frank.lienert@nahc.ca.gov

Sincerely,



for Frank Lienert
Associate Governmental Program Analyst

cc: State Clearinghouse