



## NATIVE AMERICAN HERITAGE COMMISSION

February 26, 2020

Catherine Keylon  
City of BurlingameVia Email to: [ckeylon@burlingame.org](mailto:ckeylon@burlingame.org)CHAIRPERSON  
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**[Vacant]**EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)**Re: SCH# 2020029042, Topgolf Burlingame, City of Burlingame, San Mateo County, California**

Dear Ms. Keylon:

The Native American Heritage Commission (NAHC) has reviewed the Draft Environmental Impact Report (DEIR)/Mitigated Negative Declaration (MND) or Negative Declaration prepared for the project referenced above. The review may have included the Cultural Resources Section, Archaeological Report, Appendices for Cultural Resources Compliance, as well as other informational materials. We have the following concerns:

- There is no information in the documents of any contact or consultation with all traditionally, culturally affiliated California Native American Tribes from the NAHC's contact list.

The California Environmental Quality Act (CEQA) <sup>1</sup>, specifically Public Resources Code section 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.<sup>2</sup> 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.<sup>3</sup> 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 in 2014 by Assembly Bill 52 (AB 52).<sup>4</sup> **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.** AB 52 created a separate category for "tribal cultural resources"<sup>5</sup>, that now includes "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."<sup>6</sup> Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.<sup>7</sup> Your project may also be subject to **Senate Bill 18 (SB 18)** (Burton, Chapter 905, Statutes of 2004), Government Code 65352.3, if it also involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space. **Both SB 18 and AB 52 have tribal consultation requirements.** Additionally, 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<sup>8</sup> may also apply.

<sup>1</sup> Pub. Resources Code § 21000 et seq.<sup>2</sup> Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b); CEQA Guidelines Section 15064.5 (b)<sup>3</sup> Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1); CEQA Guidelines § 15064 (a)(1)

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

Agencies should be aware that AB 52 does not preclude agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52. 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/>. Additional information regarding AB 52 can be found online at [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf), entitled "Tribal Consultation Under AB 52: Requirements and Best Practices".

The NAHC recommends lead agencies consult with all 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.

A brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments is also attached.

If you have any questions or need additional information, please contact me at my email address: [Sarah.Fonseca@nahc.ca.gov](mailto:Sarah.Fonseca@nahc.ca.gov).

Sincerely,



Sarah Fonseca  
Cultural Resources Analyst

Attachment

cc: State Clearinghouse

## Pertinent Statutory Information:

### **Under AB 52:**

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements: 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. 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,<sup>4</sup> and **prior to the release of a negative declaration, mitigated negative declaration or environmental impact report**. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18).<sup>5</sup>

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.<sup>6</sup>

1. 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.

If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

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.<sup>11</sup>

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).<sup>12</sup>

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:

<sup>4</sup> Pub. Resources Code § 21080.3.1, subs. (d) and (e)

<sup>5</sup> Pub. Resources Code § 21080.3.1 (b)

<sup>6</sup> Pub. Resources Code § 21080.3.2 (a)

<sup>7</sup> Pub. Resources Code § 21080.3.2 (a)

<sup>8</sup> Pub. Resources Code § 21082.3 (c)(1)

<sup>9</sup> Pub. Resources Code § 21082.3 (b)

<sup>10</sup> Pub. Resources Code § 21080.3.2 (b)

<sup>11</sup> Pub. Resources Code § 21082.3 (a)

<sup>12</sup> Pub. Resources Code § 21082.3 (e)

- 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.<sup>13</sup>

***This process should be documented in the Tribal Cultural Resources section of your environmental document.***

#### **Under SB 18:**

Government Code § 65352.3 (a) (1) requires consultation with Native Americans on general plan proposals for the purposes of "preserving or mitigating impacts to places, features, and objects described § 5097.9 and § 5091.993 of the Public Resources Code that are located within the city or county's jurisdiction. Government Code § 65560 (a), (b), and (c) provides for consultation with Native American tribes on the open-space element of a county or city general plan for the purposes of protecting places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code.

- SB 18 applies to **local governments** and requires them 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. Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf)
- **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.**<sup>14</sup>
- **There is no Statutory Time Limit on Tribal Consultation under the law.**
- **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research,<sup>15</sup> 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.<sup>16</sup>
- **Conclusion Tribal Consultation:** Consultation should be concluded at the point in which:
  - o The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - o 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.<sup>17</sup>

#### **NAHC Recommendations for Cultural Resources Assessments:**

- Contact the NAHC for:
  - o 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.
  - o A Native American Tribal Contact 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.
    - The request form can be found at <http://nahc.ca.gov/resources/forms/>.
- Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - o If part or the entire APE has been previously surveyed for cultural resources.
  - o If any known cultural resources have been already been recorded on or adjacent to the APE.
  - o If the probability is low, moderate, or high that cultural resources are located in the APE.
  - o If a survey is required to determine whether previously unrecorded cultural resources are present.

<sup>13</sup> Pub. Resources Code § 21082.3 (d)

<sup>14</sup> (Gov. Code § 65352.3 (a)(2)).

<sup>15</sup> pursuant to Gov. Code section 65040.2,

<sup>16</sup> (Gov. Code § 65352.3 (b)).

<sup>17</sup> (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

- 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.
  - 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.
  - The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

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

- Avoidance and preservation of the resources in place, including, but not limited to:
  - Planning and construction to avoid the resources and protect the cultural and natural context.
  - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- 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:
  - Protecting the cultural character and integrity of the resource.
  - Protecting the traditional use of the resource.
  - Protecting the confidentiality of the resource.
- 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.
- 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.<sup>18</sup>
- Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.<sup>19</sup>

The lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources.<sup>20</sup> 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.
- 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.
- 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.

<sup>18</sup> (Civ. Code § 815.3 (c)).

<sup>19</sup> (Pub. Resources Code § 5097.991).

<sup>20</sup> per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)).



**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

P.O. BOX 23660, MS-10D

OAKLAND, CA 94623-0660

PHONE (510) 286-5528

TTY 711

www.dot.ca.gov

*Making Conservation  
a California Way of Life.*

March 11, 2020

SCH #2020029042

GTS # 18720

GTS ID: 04-SM-2020-00310

Co/Rt/Pm: SM/101/16.091

Catherine Keylon, Senior Planner  
City of Burlingame  
501 Primrose Road  
Burlingame, CA 94010

**Topgolf Burlingame- Mitigated Negative Declaration (MND)**

Dear Catherine Keylon:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Topgolf Burlingame Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the February 2020 MND.

***Project Understanding***

The project proposes to redevelop the site, previously a golf course, with a Topgolf entertainment complex that includes a three-level, approximately 71,074 square-foot main building reaching up to 46 feet in height, outdoor patio, and an approximately five-acre outdoor driving range outfield. Access to the site is via Anza Blvd and is 1,000 feet from the Anza Blvd. on/off-ramp.

***Travel Demand Analysis***

While Caltrans strongly recommends the Lead Agency provide a Vehicle Miles Traveled (VMT) analysis of transportation impacts, please be advised that use of the VMT metric after July 1, 2020 is required by CEQA for land use projects per California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15064.3(c). With the enactment of Senate Bill (SB) 743, Caltrans is focusing on transportation infrastructure that supports smart growth and efficient development to ensure alignment with State policies using efficient development patterns, innovative travel demand reduction strategies, multimodal improvements, and VMT as the primary transportation impact metric. The travel demand analysis should include

a clarification of the intensity of events/receptions to be held at the location and how the associated travel demand and VMT will be mitigated.

### **Vehicle Trip Reduction**

From Caltrans' *Smart Mobility 2010: A Call to Action for the New Decade*, the project site is identified as **Place Type 2b: Close-In Corridors** where location efficiency factors, such as community design, are moderate and offer strong regional accessibility. Given the place, type and size of the project, the project's Transportation Impact Analysis (Appendix G) has included Transportation Demand Management (TDM) elements to reduce VMT and greenhouse gas emissions. However, additional measures listed below can promote further reductions in regional VMT.

- Project design to encourage walking, bicycling and transit access;
- Transit and trip planning resources such as a commute information kiosk;
- Real-time transit information system;
- Transit subsidies for employees on an ongoing basis;
- Ten percent vehicle parking reductions;
- Charging stations and designated parking spaces for electric vehicles;
- Carpool and clean-fuel parking spaces;
- Designated parking spaces for a car share program;
- Employee transportation coordinator;
- Bicycle route mapping resources;
- Participation/Formation in/of a Transportation Management Association (TMA) in partnership with other developments in the area; and
- Aggressive trip reduction targets with Lead Agency monitoring and enforcement.

TDM programs should be documented with annual monitoring reports by a TDM coordinator to demonstrate effectiveness. Also, reducing parking supply can encourage active forms of transportation, reduce regional VMT, and lessen future transportation impacts on State facilities.

For additional TDM options, please refer to the Federal Highway Administration's *Integrating Demand Management into the Transportation Planning Process: A Desk Reference* (Chapter 8). The reference is available online at: <http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>.

### **Transportation Impact Fees**

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements necessitated by the proposed

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

**Lead Agency**

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

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Laurel Sears at (510) 286-5614 or [laurel.sears@dot.ca.gov](mailto:laurel.sears@dot.ca.gov).

Sincerely,



Mark Leong  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse



**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4  
OFFICE OF TRANSIT AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D  
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March 13, 2020

SCH #2020029042  
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GTS ID: 04-SM-2020-00310  
Co/Rt/Pm: SM/101/16.091

Catherine Keylon, Senior Planner  
City of Burlingame  
501 Primrose Road  
Burlingame, CA 94010

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primary transportation impact metric. The travel demand analysis should include a clarification of the intensity of events/receptions to be held at the location and how the associated travel demand and VMT will be mitigated.

With respect to the local and regional roadway system, provide project related trip generation, distribution, and assignment estimates. To ensure that queue formation does not create traffic conflicts, the project-generated trips should be added to the existing, future and cumulative scenario traffic volumes for the intersections and freeway ramps listed below. Potential queuing issues should be evaluated including on-ramp storage capacity and analysis of freeway segments near the project; turning movements should also be evaluated. In conducting these evaluations, it is necessary to use demand volumes rather than output volumes or constrained flow volume.

- Intersections and Ramps: U.S. 101 at Broadway, U.S. 101 at Airport Boulevard and U.S. 101 at Poplar Avenue. Please make sure that impacts on these ramps are assessed due to the project generated trips.
- The calculated queues as shown in Appendix C (intersection #3 - Broadway/US 101 ramps, and intersection #9 - US 101 off-ramp/Airport Boulevard) are for saturated conditions without considering demand volumes. Please perform an analysis taking into account the demand volumes. If there is spill over queue and impact on ramps, please identify mitigation measures for these impacts. CEQA does not exempt these types of operational concerns from evaluation and mitigation.

### **Vehicle Trip Reduction**

From Caltrans' *Smart Mobility 2010: A Call to Action for the New Decade*, the project site is identified as **Place Type 2b: Close-In Corridors** where location efficiency factors, such as community design, are moderate and offer strong regional accessibility. Given the place, type and size of the project, the project's Transportation Impact Analysis (Appendix G) has included Transportation Demand Management (TDM) elements to reduce VMT and greenhouse gas emissions. However, additional measures listed below can promote further reductions in regional VMT.

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Catherine Keylon, Senior Planner  
March 13, 2020  
Page 4

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Should you have any questions regarding this letter, please contact Laurel Sears  
at (510) 286-5614 or [laurel.sears@dot.ca.gov](mailto:laurel.sears@dot.ca.gov).

Sincerely,

Mark Leong  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse



## CD/PLG-Catherine Keylon

---

**Subject:** FW: Comments on MND for Topgolf Burlingame

**From:** Shani Kleinhaus [mailto:shanibirds@gmail.com]

**Sent:** Thursday, March 12, 2020 4:52 PM

**To:** CD/PLG-Kevin Gardiner <kgardiner@burlingame.org>

**Cc:** M

<mailto:kgardiner@burlingame.org>

**Subject:** Comments on MND for Topgolf Burlingame

Dear Kevin,

The Sequoia Audubon Society, the Santa Clara Audubon Society and the Sierra Club Loma Prieta Chapter (Wildlife Committee) submit the following comments on the Draft Initial Study / Mitigated Negative Declaration (MND) for the Topgolf Burlingame project (Project).

Due to the proximity of the site to a major migratory bird flyway, and documented occurrences of raptors entanglements in Topgolf nets in facilities in the United States, we believe the mitigations offered for impacts to avian species are not sufficient to reduce the risk to raptors (including peregrine falcons) to a less than significant level.

To truly mitigate and minimize hazardous impacts to Migratory Birds on the Pacific Flyway and in nearby wetlands and the San Francisco Bay, we suggest:

- 1) Please require Bird Safe Design for all glass surfaces.
- 2) Please require a Monitoring program, to detect any birds that may be tangled in the nets
- 3) Please require an Educational program to educate employees and direct them 1) to avoid harassing birds that may come into the facility, and 2) to call a the Department of Fish and Wildlife, a Crane Operator and Wildlife Rescue Services should a bird become tangled.
- 4) Please require the applicant to provide contracts with organizations that can, on call; 4.1) Provide and operate a crane ; and 4.2) Wildlife Rescue organization available to care for injured birds or wildlife on the Project site (we recommend the Peninsula Humane Society for this purpose). This requirement should apply during construction and operations.
- 5) Ensure that there is no light spillage beyond the active use area, and no-uplighting.

Thank you,

On behalf of the Sequoia Audubon Society, the Santa Clara Audubon Society and the Sierra Club Loma Prieta Chapter Wildlife Committee,

Shani Kleinhaus, Ph.D.  
Environmental Advocate  
Santa Clara Valley Audubon Society  
22221 McClellan Rd.  
Cupertino, CA 95014  
650-868-2114  
[shani@scvas.org](mailto:shani@scvas.org)