

## **12 Response to Comments from Tribes**

# Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012)



AMAH MUTSUN TRIBAL BAND  
78 SUNSHINE DRIVE  
P.O. BOX 5272  
GALT, CA. 95632

February 21, 2012

John Mason  
California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814  
Attn: Bay Area to Central Valley HST Partially Revised Draft Program EIR

Re: The Bay Area to Central Valley High-Speed Train **DRAFT Program Environmental Impact Report of January 2012 (Revised Draft)**

60-423

The Amah Mutsun Tribal Band, the indigenous peoples of Santa Cruz, south-Santa Clara, and northern Monterey and San Benito counties, have lived throughout the Gilroy area for the last 10,000 to 14,000 years. Because the Amah Mutsun have lived in, occupied and cared for the lands and waters around Gilroy for thousands of years, our burial areas are scattered throughout the region. As a result, construction projects often disinter Amah Mutsun remains. This is a major violation of the tribe's religious beliefs, which hold that a person's spirit comes back to earth when he or she is disinterred and will wander forever unless the body is reburied. The tribe works diligently to ensure that our ancestors are reburied after they are disinterred, and we are known for working collaboratively to minimize or avoid the effects of development on our burial sites.

The Amah Mutsun have a deep, spiritual connection to the lands and waters of our territory. This is inclusive of the Gilroy area, the Soap Lake flood basin of the Upper Pajaro River and south Gilroy, and we believe it is our role to protect the earth, its denizens and natural resources. For our people, all the lands, waters, plants, animals (not only the "listed" ones) hold deep and timeless cultural significance and therefore, are in fact, "cultural resources". Of preeminent concern on this project is the area south and east of Gilroy, which we believe HSR has categorized as agricultural land/or floodplain. This area of the upper Pajaro River is known as the Soap Lake flood basin, much of which was drained for "reclamation" – but still floods under heavy storm events. This area holds great significance for our people, and further desecration of these lands and waters via its physical bisection with a rail line is deeply troubling to us. Generally speaking, the Amah Mutsun are deeply concerned about the many negative effects that high speed rail will have on the natural environment as a whole, the Upper Pajaro/Soap Lake Basin in particular, and on the spirits of our ancestors at rest throughout the area proposed for this project. For all of these reasons, the proposed HSR project alignments through Pacheco Pass portends significant negative impacts to our peoples mental, spiritual and physical well being.

Given the density, depth, and distribution of known cultural resource sites within the alignment of the proposed rail line – or certainly within the hydrologic basins to be affected by the project, we anticipate that the construction of this line will 1) disturb human remains and burial-associated artifacts in a manner that would be difficult or impossible to mitigate; 2) it will negatively affect the hydrologic function of the affected basins, and thereby likely erode or expose cultural resources in areas within and far outside of the proposed alignments.



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60-424

AMTB has attempted to communicate these issues directly to HSRA on numerous occasions in the past 6 years (see attached documentation). However the HSRA has woefully neglected "best practices" with regard to Tribal consultation, we have all but given up on a meaningful, proactive relationship with the HSRA. Their approach, methods, and even staff/consultant attitudes toward Tribal consultation have been so poor, and entirely lacking in transparency and accountability that we have filed a formal complaint with the Federal Highway Administration.

60-425

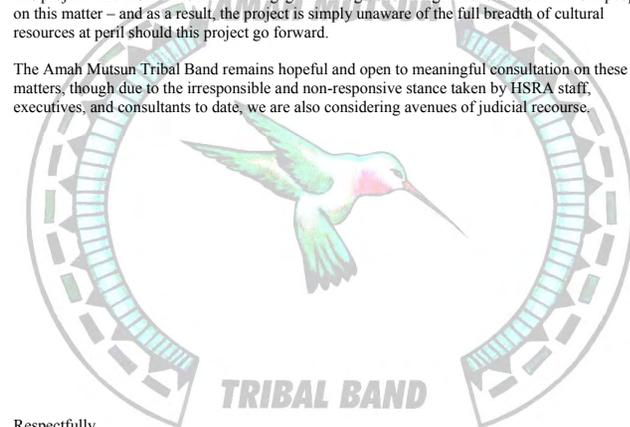
For these reasons, the Amah Mutsun Tribal Band strongly feels that this Revised Draft EIR/EIS does not adequately consider or mitigate cultural resource impacts and/or tribal concerns over this project. The HSRA has failed to engage in dialog or meaningful consultation with our people on this matter – and as a result, the project is simply unaware of the full breadth of cultural resources at peril should this project go forward.

60-426

The Amah Mutsun Tribal Band remains hopeful and open to meaningful consultation on these matters, though due to the irresponsible and non-responsive stance taken by HSRA staff, executives, and consultants to date, we are also considering avenues of judicial recourse.

Respectfully,

Valentin J. Lopez  
Chairman, Amah Mutsun Tribal Band  
(916) 743-5833



Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

January 16, 2012

To: Mr. Tim Penney  
Tribal Liaison  
Federal Highway Administration  
61 Forsyth Street, Suite 17T26  
Atlanta, GA 30303  
tim.penney@dot.gov

From: Valentin Lopez, Chairman  
Amah Mutsun Tribal Band

Dear Mr. Penney,

My name is Valentin Lopez and I am the Chairman of the Amah Mutsun Tribal Band (AMTB). The AMTB is the representative Tribal government for much of the Monterey Bay Region, including portions Santa Clara and Monterey Counties, and all of Santa Cruz and San Benito Counties, California.

I submit this letter to you in reference to the Tribal Consultation practices being employed by the High Speed Rail Authority (HSRA) in California. In short, it is the experience and finding of our Tribe that the HSRA has failed to properly execute its duties under Section 106 of the National Historic Preservation Act.

AMTB has attempted to consult with the HSRA starting in 2004, and have been denied the opportunity to conduct meaningful consultation with them on nearly every occasion. I have retained ample documentation of our communications with the HSRA, which I have included attached to this letter, along with summary notes I prepared for a public hearing in Merced on December 13, 2012.

AMTB knows the planning process quite well. We have consulted on scores of projects in our territory ranging from large infrastructure projects to small, local developments. We engage in academic and compliance-based studies in partnership with state, local, and Federal partners, and are known widely in our territory as a professional, accountable, and highly qualified organization. Our experience with the HSRA has been among the worst, in terms of professional and ethical standards, that we have encountered to date.

The HSRA has made a great many critical decisions, including specific alignments and mitigation sites, without conducting legally mandated Tribal consultation. As a result, the proposed HSR alignment cuts through known Sacred Sites and Village sites within our Traditional Tribal Territory. We strongly feel that the HSRA should cease all planning activities until they have fulfilled their requirements for Native American consultation. Furthermore, these consultations must include a complete review of the HSR alignments, placement of HSR stations, placement of heavy maintenance facilities, and an agreement on how cultural resources are defined by this project. Furthermore, our Tribal members request a complete site visit of the proposed alignments property, a review of the qualifications of the archaeology team, and more. All of these activities were proactive steps that the HSR could have and should have implemented prior to making decision impacted by these considerations.



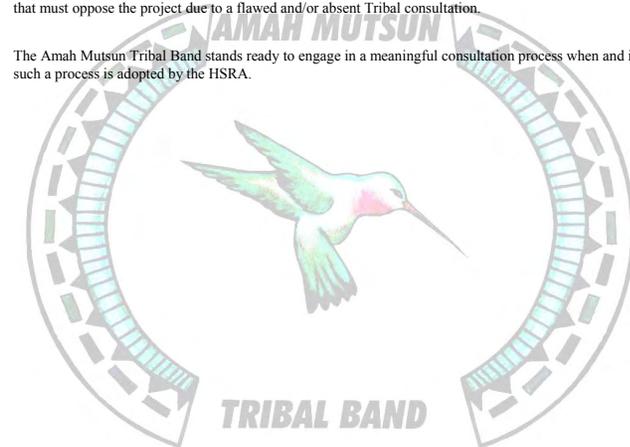
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Please find attached the aforementioned presentation notes, and a long series of dated communications between the AMTB and the HSRA, which demonstrate thoroughly our frustration with HSRA-style Section 106 consultation.

Please know that the AMTB has not taken a position on the merits of a high speed railway in California. There are certainly good arguments to be made on both sides of the issue. However, without an effective, transparent, and meaningful Tribal consultation process, we join a great number of Tribes in California that must oppose the project due to a flawed and/or absent Tribal consultation.

The Amah Mutsun Tribal Band stands ready to engage in a meaningful consultation process when and if such a process is adopted by the HSRA.



Respectfully,

Valentin J. Lopez  
Chairman, Amah Mutsun Tribal Band  
(916) 743-5833

Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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Preparatory notes used for December 13th presentation:

Good morning, Mr. Chairman and Members of the High Speed Rail Authority Board. My name is Valentin Lopez and I am the Chairman of the Amah Mutsun Tribal Band. Our Tribe is comprised of the documented descendants of those taken to Missions San Juan Bautista and Santa Cruz. During mission times Mission San Juan Bautista took the indigenous people from over 52 Yokuts tribes to San Juan Bautista. These Indians came from Fresno, Madera, Merced, and Stanislaus Counties. All members of our Tribe have Yokuts blood and it is for our Yokuts ancestors that we speak today.

Specifically, I am here today to express the Amah Mutsun's Tribal Band's frustration and outrage with the California High Speed Rail's total disregard for any type of meaningful or effective consultation as required by law. Over the years we have had contact with the HSR but as of today we have yet to review any maps or discuss our sensitive and sacred sites in the Madera, Merced, Fresno, San Benito and Santa Clara Counties. Specific examples of ineffective consultation includes the following:

*Rovianne, this paragraph is new as of today: Our Tribe first met with the High Speed Rail in 2004. The meeting was arranged by the Native American Heritage Commission and the meeting took place in a State of California facility in/at San Luis Reservoir. The meeting was attended by members of our Tribe, members of the North Valley Yokuts, including Tribal Chairwoman Kathy Perez, Debbie Pillas Treadway of the NAHC and both Deputy Directors of the HSR - including Dep Director Dan Levitt. At this meeting we stated our desires to have tribal consultation on the Merced to Fresno and, if selected by the HSR, the Merced to San Jose routes. We were told we would have Tribal consultation and were never contacted for the purpose of providing cultural resource information.*

The Amah Mutsun would like you to know that we testified at three public meeting probably in 2004 and 2005 and we again requested formal consultation with the High Speed Rail Authority on Cultural Resources. Not once did the High Speed Rail contact the Amah Mutsun to discuss initiating the consultation process.

After attending the meeting with the High Speed Rail staff in 2004, I expressed concerns and interests in consulting on this project. On June 7, 2004 I received a letter from Mr. Pinion (Attachment #1). Mr. Pinion said he would put me in contact with Teddy Goodrich, Bob Patrie and Mike Meyer. He said these individuals are familiar with the Coe State Park area and that he believed that there are archaeological sites along the proposed HSR route. Mr. Pinion stated in his email that he did "believe that there are archaeological sites along the proposed HSR route." We never heard from these individuals nor did we meet with them.

At this time I was working in Sacramento as a non uniformed Commander of the California Highway Patrol; I retired in October of 2005. Between the time I received the letter from Mr. Pinion and the time I retired in October 2005, I scheduled a meeting with Mr. Dan Leavitt, Deputy Director of High Speed Rail, and met with him in his office. I told him of our concerns for this High Speed Rail and told him of the importance for consultation. He said he understood and said he would ensure our Tribe was engaged in formal consultation with the High Speed Rail.

Not once was our Tribe contacted by the High Speed Rail for consultation. Instead, we received periodic postcard invitations for us to attend meeting with others from the Native American community.



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On August 16th, 2010 we had a conference call with Margaret Scantlebury of the HSR and others regarding the Fresno to Merced route. The Amah Mutsun again expressed concerns regarding consultation and Ms. Scantlebury said she would send us some additional information and then we would schedule a meeting. We never received information nor heard from Ms. Scantlebury regarding this phone call commitment again.

Regarding the emails dated September 29, 2010, this email documents that I initiated contact with the HSR to let them know that they had yet to follow-up with sending the Amah Mutsun Tribal Band the information, including maps, that they committed to in our August 29th, 2010 conference call. As a result of this meeting Ms. Scantlebury requested that Charlene Gross, archaeologist, send us the quad maps for the Merced to Fresno Section.

Ms. Charlene Gross sent an email dated November 11, 2010 stating that she sent the information as requested by Ms. Scantlebury in early October and that she would now like to set up a meeting to discuss known cultural resources. I responded with the dates of my availability and never heard back from either Ms. Gross or Ms. Scantlebury regarding this meeting.

The Amah Mutsun invited the HSR to attend our Quarterly Tribal Council Meeting and they agreed to attend. All 10 Council Members attend this meeting and we wanted Council to hear directly from the HSR what was happening and how do we get the consultation process back on track. No one from the HSR showed up to our Council meeting; this was a great insult to all council members.

In January 2010, the Amah Mutsun hosted a meeting at which we would be speaking about the HSR alignment to tribal partners and I invited the HSR to attend this meeting. They said "yes" in mid-November, and then just before the meeting they tried to back out. I pressured Ms. Scantlebury and she, along with three others from the HSR project, showed up with maps that were outdated and didn't show the most current alignment proposals. Ms. Scantlebury laid the map out on the floor and about 40 meeting attendees had to walk down from their seats and look down at the maps. Prior to Ms. Scantlebury leaving I requested that the HSR and the AMTB meet for consultation. She said she was busy but that she would give me a call. I waited for her call until May 2010 at which time I called to learn that she no longer worked for the HSR.

At a HSR meeting in Gilroy in October 2010, the HSR requested that we share sensitive documents and or confidential knowledge. At this meeting there were at least three persons who were not Native American although they claimed they were. I told the HSR representative of this and they still expected me to share sensitive and sacred site information with them. We did not share information at this meeting. Also, at this meeting, the HSR shared sensitive site information the non native attendees over my objection. Furthermore, the non-native persons requested the full reports for all sites listed on the known site location map for the area and HSR agreed to provide it. Finally, the non Native Americans requested to be signatories to the Programmatic Agreement for the HSR and were told they could do so. I left this meeting in total disbelief.

I was prepared to go to the Newspaper over this but then I decided to reach out once again to Mr. Dan Leavitt to see if we could establish a relationship that could lead to meaningful consultation. At the meeting it was agreed that we would work on a negotiated confidentiality agreement first. We expected to sit down with the HSR to discuss things that are important to our Tribe, for example agreeing on defining a cultural resource. Approximate two weeks later the Amah Mutsun received a document,

Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



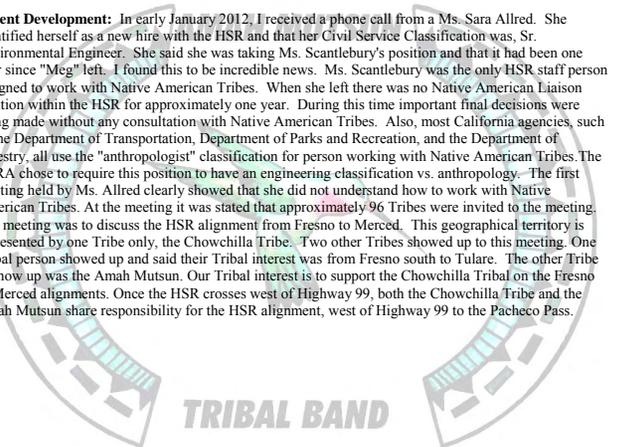
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which had been reviewed and approved by the California Department of Justice, that presented the laws related to cultural resource protection and that represented the confidentiality agreement that we would be offered. There was no negotiation on this document; it was basically "That's what you get."

Finally, the Amah Mutsun received a letter from Mr. Daniel Harris of the HSR and to our Tribe the letter seemed to suggest that the HSR was taking public comment on the Hybrid Alternative, and then after hearing the public comments the Board of Directors would consider all comments and then vote on the alternative. The email was interpreted as a "disinvite" to the meeting. We were told that a separate meeting would be held with Tribe. Our problem with this is that our comments would be taken after the vote to approve the alternative route had already been taken.

**Recent Development:** In early January 2012, I received a phone call from a Ms. Sara Allred. She identified herself as a new hire with the HSR and that her Civil Service Classification was, Sr. Environmental Engineer. She said she was taking Ms. Scantlebury's position and that it had been one year since "Meg" left. I found this to be incredible news. Ms. Scantlebury was the only HSR staff person assigned to work with Native American Tribes. When she left there was no Native American Liaison position within the HSR for approximately one year. During this time important final decisions were being made without any consultation with Native American Tribes. Also, most California agencies, such as the Department of Transportation, Department of Parks and Recreation, and the Department of Forestry, all use the "anthropologist" classification for person working with Native American Tribes. The HSRA chose to require this position to have an engineering classification vs. anthropology. The first meeting held by Ms. Allred clearly showed that she did not understand how to work with Native American Tribes. At the meeting it was stated that approximately 96 Tribes were invited to the meeting. The meeting was to discuss the HSR alignment from Fresno to Merced. This geographical territory is represented by one Tribe only, the Chowchilla Tribe. Two other Tribes showed up to this meeting. One Tribal person showed up and said their Tribal interest was from Fresno south to Tulare. The other Tribe to show up was the Amah Mutsun. Our Tribal interest is to support the Chowchilla Tribal on the Fresno to Merced alignments. Once the HSR crosses west of Highway 99, both the Chowchilla Tribe and the Amah Mutsun share responsibility for the HSR alignment, west of Highway 99 to the Pacheco Pass.



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60-427

**From:** Dennis Pinion <dennis@pinrad.net>  
**To:** VJLTestingCenter <VJLTestingCenter@aol.com>  
**Cc:** Bob Patrie & Toni Hill <rdptwh@cruzio.com>; Teddy Goodrich <teddygoodrich@yahoo.com>; Mike Meyer <bspritzer@earthlink.net>  
**Subject:** RE: High-Speed Rail Route  
**Date:** Mon, Jun 7, 2004 8:42 pm

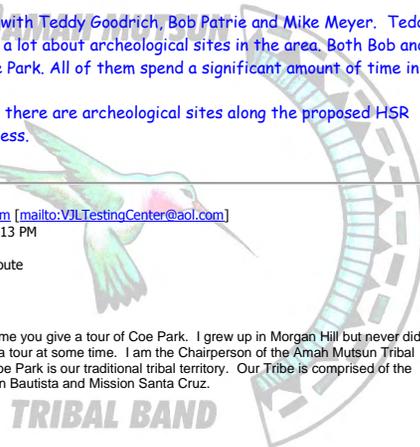
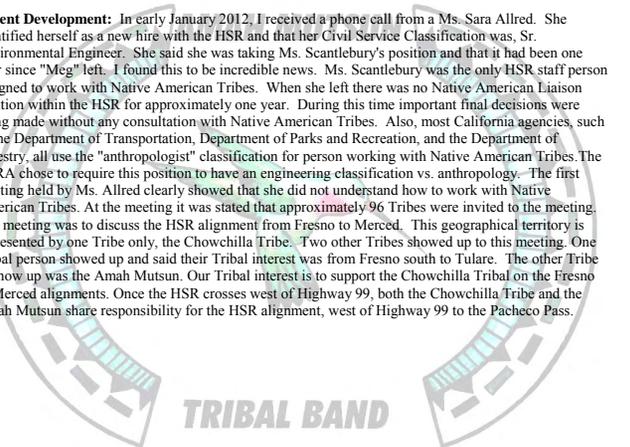
Val:  
Let me put you in contact with Teddy Goodrich, Bob Patrie and Mike Meyer. Teddy is our historian and knows a lot about archeological sites in the area. Both Bob and Mike are familiar with the Park. All of them spend a significant amount of time in the area.  
By the way, I believe that there are archeological sites along the proposed HSR route through the wilderness.  
Dennis Pinion

**From:** VJLTestingCenter@aol.com [mailto:VJLTestingCenter@aol.com]  
**Sent:** Monday, June 07, 2004 7:13 PM  
**To:** dennis@pinrad.net  
**Subject:** Re: High-Speed Rail Route

My interest is to tag along next time you give a tour of Coe Park. I grew up in Morgan Hill but never did much at the park and would like a tour at some time. I am the Chairperson of the Amah Mutsun Tribal Band and the southern part of Coe Park is our traditional tribal territory. Our Tribe is comprised of the descendants of Mission San Juan Bautista and Mission Santa Cruz.

Thank you,

Val



Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

**From:** Margaret Scantlebury <mscantlebury@hsr.ca.gov>  
**To:** vjtestingcenter <vjtestingcenter@aol.com>; gnoconnor <gnoconnor@gmail.com>  
**Cc:** Reynolds, Alisa (AReynolds@icfi.com) (AReynolds@icfi.com) <AReynolds@icfi.com>; Carter, Aaron (ACarter@icfi.com) (ACarter@icfi.com) <ACarter@icfi.com>  
**Subject:** contact information  
**Date:** Wed, Sep 29, 2010 11:50 am

Hi Valentin:

Thank you for coming to our offices this morning. As promised, here are the contact emails. Alisa Reynolds' phone number is 415-677-7147. My numbers are below.

I sent Charlane Gross, the archaeologist that is providing the quad maps, your mailing address and requested that you receive the maps for the Merced to Fresno section.

I will see you on the 11<sup>th</sup>.

Thanks again.

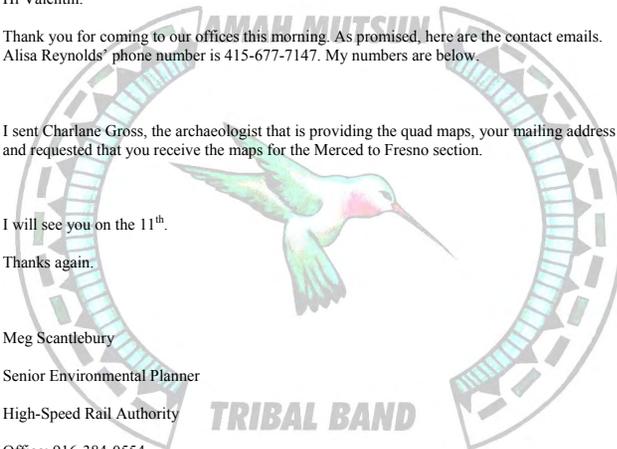
Meg Scantlebury

Senior Environmental Planner

High-Speed Rail Authority

Office: 916-384-0554

Cell: 916-261-624



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60-427

**From:** Gross, Charlane [<mailto:Charlane.Gross@aecom.com>]  
**Sent:** Thursday, November 11, 2010 2:25 PM  
**To:** JIM REDMOON; Robert Ledger; [Tony\\_Brochini@nps.gov](mailto:Tony_Brochini@nps.gov); [vlopez@amahmutsun.org](mailto:vlopez@amahmutsun.org)  
**Cc:** Margaret Scantlebury  
**Subject:** meeting

Good Afternoon –

I would like to set up a meeting for us plus Jerry Brown (I don't have an email address for him – do one of you?) to discuss the maps I sent you at the beginning of October. This would be an opportunity for us to discuss the location of Native American sites that were not identified in the background research but which you know of and think might be in the project footprint. At that time I should also be able to present project mapping for the Klein's Truck Stop area, where Native American burials were uncovered during past construction.

If possible, it would be nice to have this meeting in November; if necessary we can get together in the evening or on a weekend if taking time off of work is difficult for you. If someone wanted to get the conversation started by suggesting some dates, that would be wonderful.

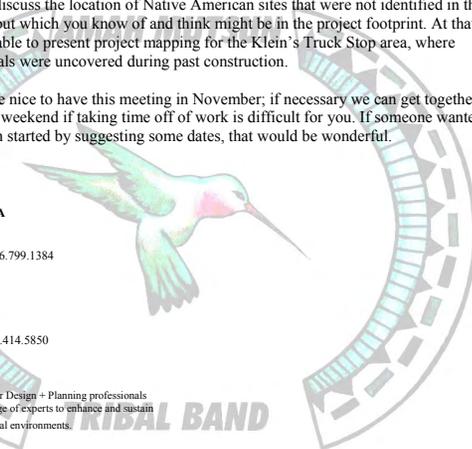
Thank you,

**Charlane Gross, M.A., RPA**  
Senior Archaeologist  
Design + Planning  
D +1 916.414.5837 M +1 916.799.1384  
[charlane.gross@aecom.com](mailto:charlane.gross@aecom.com)

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EDAW has evolved.  
Our name is now AECOM, as our Design + Planning professionals work in concert with a wider range of experts to enhance and sustain the world's built, natural and social environments.

=  
This email is also new, it is not part of notes, I found it in my email search this morning. I called Charlene and told her were were prepared to meet at her convenience, she never got back to me. Another failure!



Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

**From:** vjtestingcenter <vjtestingcenter@aol.com>  
**To:** mscantlebury <mscantlebury@hsr.ca.gov>  
**Cc:** AReynolds <AReynolds@icfi.com>; ACarter <ACarter@icfi.com>; siuw <siuw@pbworld.com>; tdejulio <tdejulio@icfi.com>; david.wemmer <david.wemmer@parsons.com>  
**Bcc:** lisann22 <lisann22@gmail.com>; denise.espinosa57 <denise.espinosa57@yahoo.com>; sippos\_acil <sippos\_acil@yahoo.com>  
**Subject:** Fwd:

**Date:** Sun, Nov 21, 2010 9:34 am

**Attachments:** Pajaro\_Invitation\_Letter.pdf (185K)

Meg,

I am writing to express the Amah Mutsun's disappointment that neither you nor any member from the High Speed Rail project attended our Quarterly Tribal Council meeting which was held at U.C. Santa Cruz this past Saturday, November 20, 2010. At the High Speed Rail meeting which was held in Gilroy on October 11, 2010, yourself, Alisa and others committed to attending this meeting. The purpose of your attendance would be for the HSR to present the trains path through our traditional tribal territory and to get Counsels input regarding the sensitive sites for our Tribe. Approximately 10 days prior to the meeting I spoke with you to confirm you and others would attend this meeting. You said you would be there. I then asked if I should notify others and you said you would handle that. You were notified that we scheduled discussion for the HSR for 1:00 - 1:40. No one from HSR showed up. It's true the weather was bad, three attendees, including myself drove to the meeting from Sacramento.

In addition, I mentioned that I would be forwarding the attached letter to you and letting you know it would be good if you or others could attend this meeting. No one from HSR attended this meeting. We are very disappointed, over 45 professionals attended this meeting, many from state, county, and city entities; other attendees were from conservation groups. This would have been an excellent opportunity for the HSR to learn of our interests.

I am often asked about our Tribes ability to successfully build relationship with different public and private groups. I always say it takes a lot of time to build trust and confidence. At this time we have no confidence that an effective relationship is possible with the HSR. Our next Quarterly Council Meeting is scheduled on February 19, 2011 in Madera, California. Our next Pajaro River Watershed meeting is scheduled for January 8, 2011; location to be determined.

Valentin Lopez, Chairman  
Amah Mutsun Tribal Band  
(916) 743-5833



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**From:** Margaret Scantlebury <mscantlebury@hsr.ca.gov>  
**To:** vjtestingcenter <vjtestingcenter@aol.com>  
**Cc:** AReynolds <AReynolds@icfi.com>; ACarter <ACarter@icfi.com>; Wai Siu <siuw@pbworld.com>; tdejulio <tdejulio@icfi.com>; david.wemmer <david.wemmer@parsons.com>  
**Subject:** RE: Amah Mutsun newsletter  
**Date:** Mon, Nov 22, 2010 9:22 am

Hi Val – Thank you for talking with me this morning. I promise this will not get outside of our team. I look forward to seeing you again soon and building the kind of good professional relationship we both want.

Meg,

**From:** vjtestingcenter@aol.com [mailto:vjtestingcenter@aol.com]  
**Sent:** Sunday, November 21, 2010 9:51 AM  
**To:** Margaret Scantlebury  
**Cc:** AReynolds@icfi.com; ACarter@icfi.com; Wai Siu; tdejulio@icfi.com; david.wemmer@parsons.com  
**Subject:** Fwd: Amah Mutsun newsletter

Meg,

Attached is a copy of our Tribal Newsletter. We seldom share our newsletters with the public, but I am sharing it with you to show some of the important relationship our Tribe has successfully established over the years. Please do not share this newsletter outside the HSR team.

Valentin Lopez, Chairman  
Amah Mutsun Tribal Band  
(916) 743-5833

This email is new and not referenced in my notes summary. Shows we are still hoping to move forward and meet. She tried to cancel next meeting which was the meeting with the conservation gps at UCSC

Charlene –Thank you for initiating this. Any day but Monday the week following Thanksgiving should be good for me.

Meg

Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

**From:** Margaret Scantlebury <mscantlebury@hsr.ca.gov>  
**To:** vjtestingcenter <vjtestingcenter@aol.com>  
**Subject:** RE: Saturday meeting  
**Date:** Thu, Jan 6, 2011 12:03 pm

Hi Val – I left a voice message for you. This Saturday is proving difficult for all the people I would like to have attend – an engineer to describe the project plans to date, an archaeologist (Alisa), a biologist since there may be biological mitigation opportunities, and myself. We are in the throws of trying to get the draft environmental documents for Merced to Fresno and Fresno to Bakersfield to the Federal Railroad Administration for approval and have been concentrating on those corridors.

I would like to commit to attending the next meeting, which will be better for all because there will be more design information and I will have the biologist get familiar with the watershed project so that we can see how we might be able to get involved.

My apologies, but, as you know, there are only two of us planners for the entire project, for all environmental studies, and we are on overload.

I hope you understand and will place us on the agenda for the next meeting.  
Meg

**From:** vjtestingcenter@aol.com [mailto:vjtestingcenter@aol.com]  
**Sent:** Wednesday, January 05, 2011 9:34 PM  
**To:** Margaret Scantlebury  
**Subject:** Saturday meeting

Hi Meg,

I sent you a letter regarding the Pajaro Watershed Meeting this Saturday. You said you would be attending this meeting. Can you, or someone from your team, be prepared to present a 20 minutes presentation on the proposed route, particularly from Casa de Fruita to Gilroy and then north to San Jose.

Thanks,  
Val  
916-743-5833  
=

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60-427

**From:** Meg Scantlebury <meg\_scantlebury@dot.ca.gov>  
**To:** vjtestingcenter <vjtestingcenter@aol.com>  
**Subject:** Re: Amah Mutsu/ val lopez  
**Date:** Fri, May 6, 2011 8:22 am

Hi Val - no, I no longer am working on HSR. ICFI is the CR firm for the SJ to Merced segment. You met Alisa Reynolds at one of the meetings. I suggest you contact her. Take care.

**From:** [vjtestingcenter@aol.com]  
**Sent:** 05/05/2011 11:27 PM AST  
**To:** Meg Scantlebury  
**Subject:** Amah Mutsu/ val lopez

Hi Meg,

I heard you are back working for Cal Trans, are you still working on the HSR project. If yes what's the status of your review our concerns and agreement to meet with us to discuss the sensitive CR's in our traditional tribal territory. If you are no longer at HSR, can you call me so I can try to find out what's going on?

Thanks,  
val  
916-743-5833

TRIBAL BAND

Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

July 12, 2011

Dan Leavitt, Deputy Director  
California High Speed Rail Authority  
770 L Street  
Sacramento, CA 95814

Bryan K. Porter, AICP  
Environmental Planning Manager  
Parsons Brinckerhoff  
c/o 770 L Street  
Sacramento, CA 95814

Dear Mr. Leavitt and Mr. Porter,

First of all we'd like to thank you for agreeing to meet with the Amah Mutsun Tribal Band on Friday, July 15, 2011. We're hopeful that this meeting can be the first step to establishing a working relationship based on mutual respect, honesty and trust.

Our goals for coming to this meeting include:

1. Development of a common understanding of each other's mandates;
2. Examination of the requisite legal consultation frame works of both state and federal laws. Specifically we would like to cover the Native American Heritage Commission's role, the required standards under the Section 106 Federal process, and the consultation process under California's SB 18 Consultation process.
3. It is the desire of the Amah Mutsun that our working relationship recognizes the legitimate rights and claims of our Tribe and that we effectively establish government to government consultation and cooperation that:
  - a. assures confidentiality of sensitive information;
  - b. works for the protection of our traditional Native way, our traditional beliefs and the environment;
  - c. truthfully and sincerely listens to the concerns and recommendations of each other;
  - d. diligently searches for ways to implement the recommendations for the protection of sensitive sites and cultural resources.
4. As we have expressed previously, we have concerns regarding the current alignment just outside Gilroy along Highway 152. This alignment cuts through two village sites and two sacred lakes, which have been drained. Many burials have been uncovered and removed from these locations. Therefore, in addition to discussing the realignment, we will be requesting a more rigorous archaeological study of the proposed alignments to determine each alignments probable impact on cultural resources.

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5. Finally, we would like to offer our assistance in helping the HSR learn how to navigate the complex and difficult process of working with California Native American Tribes.

As you can see we have many concerns to discuss and it will surely take more than one meeting to discuss them all. We do hope that this meeting puts us on the right path for finding the positive solutions that will work for the both of us.

kansireesum,

Valentin Lopez, Chairman  
Amah Mutsun Tribal Band  
(916) 743-5833



# Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

From: Porter, Bryan <Porter@pbworld.com>  
To: vilteslingcenter@aol.com  
Cc: dleavitt@hsr.ca.gov; melissa\_dumond@dot.gov; Danae Aitchison <Danae.Aitchison@doj.ca.gov>; LJimenez@hsr.ca.gov; Koby, Ann <Koby@pbworld.com>; Porter, Bryan <Porter@pbworld.com>; Rosen, Martin <mRosen@icfi.com>  
Sent: Tue, Aug 2, 2011 11:54 am  
Subject: Confidentiality Letter for the Amah Mutsun Tribe

Val – attached is the Authority’s letter regarding the confidentiality of information for sacred sites and archaeological data shared between the Amah Mutsun and the Authority. Copies of two attachments can be downloaded through use of the link below. A hardcopy version of the letter and attachments is also being sent to you via US mail. Following your review of the letter, please call me should you have questions. I can be reached at 916/384-9522. Again, thank you for your patience in our preparing this response. We look forward to continue working with you. Many thanks.

<https://ftp.pbworld.com/GetFile.aspx?fn=1645657546.zip>  
Bryan

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60-427



August 2, 2011

Chairman Valentin J. Lopez  
Amah Mutsun Tribal Band  
78 Sunshine Drive  
P.O. Box 5272  
Galt, CA 95632

**Board Members:**

- Thomas J. Umberg  
Chairperson
- Lynn Schenk  
Vice Chairperson
- Thomas Richards  
Vice Chairperson
- Robert Balgenorth
- Russell Burns
- David Crane
- Jim Hartnett
- Curt Pringle
- Matthew Toledo

Roelof van Ark  
CEO

RE: Amah Mutsun Confidentiality Letter

Dear Chairman Lopez,

The California High-Speed Rail Authority (Authority) thanks you for taking the time to meet with us here in Sacramento. We know that your time is important, and appreciate your frank and open discussion. We value the working relationship with you and hope to be as sensitive as possible to your concerns while continuing to be straightforward about what the Authority can authorize.

It is our understanding that the Tribe has requested that information regarding sacred sites and archaeological information be held confidential and not be revealed to the general public, the State Historic Preservation Officer’s (SHPO) Information Centers, nor to any other Native American group or individual. The Authority is cognizant of its obligation to keep confidential any information it gathers or receives regarding the location of sacred and ceremonial sites and archaeological resources. The California Public Records Act exempts from public disclosure the records in the Authority’s possession “of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects” described in sections 5097.9 and 5097.933 of the Public Resources Code. (Gov. Code, § 6254, subd. (r).) The Act also exempts from public disclosure records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency. (Gov. Code, § 6254.10.) In addition, the California Environmental Quality Act Guidelines prohibit inclusion of information about the location of archaeological sites and sacred lands in an environmental impact report. (CEQA Guidelines, § 15120, subd. (d).) Based on these legal provisions, the Authority will keep information on sacred and ceremonial sites and archaeological resources confidential and will not disclose such information to the general public.



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Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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Chairman Valentin J. Lopez
August 2, 2011
Page Two

Information about archaeological sites (sites with physical remains such as village sites, burial sites, midden deposits), including location, size, and nature, will be reported to the regional Information Centers and included in reports for the Authority's compliance with Section 106 of the National Historic Preservation Act (NHPA). As indicated in the attached "Information Center Rules of Operation Manual," information the Authority would report to the Information Centers pertaining to archaeological sites is managed as confidential, with access to and release of said information limited as indicated in section III of the manual. Those requesting access to the information must meet certain qualifications and sign a confidentiality agreement, samples of which are contained in the manual. The procedures are designed to protect the sensitive nature of this information.

The Authority will not report information on sacred sites (sites that lack any material remains or archaeological deposits) to the Information Centers. We note that if the Tribe were to register sacred sites with the Native American Heritage Commission (NAHC), this may help ensure confidentiality and protection for future projects in the area. While the Information Centers serve as official repositories for archaeological and historical sites information, the NAHC serves in that capacity for sacred and ceremonial sites. Archaeologists through the practice of their profession are obligated to report archaeological and historical site locations to the Information Centers; but they are under no obligation to do so when it comes to sacred and ceremonial locations that lack cultural remains.

The cultural resource reports being prepared for the various segments of the California High-Speed Train are used to fulfill compliance with the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and Section 106 of the NHPA. By law the reports are required to be sent to the SHPO for review and concurrence on recommendations made pursuant to the significance of archaeological and historical sites. Native Americans serve a very valuable role in the process by sharing potential information they may have about localities important to their people. Under all circumstances this information is kept confidential and restricted to those people who have a legitimate need to know. Those individuals with a legitimate need to know include other cultural resource professionals, project designers, and environmental planners. However, information would only be released to other cultural resource professionals whose conduct is governed by the confidentiality agreements they have signed.

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Chairman Valentin J. Lopez
August 2, 2011
Page Three

Other Native American groups or individuals identified by the NAHC as having interest in the area may be included in the sharing of information in the section 106 process. This form of information sharing happens frequently, and can be anticipated for a project like the High-Speed Train, which has long corridors that cross-cut many tribal areas. If the Amah Mutsun share with the Authority what they know about sacred or ceremonial sites in their area of concern, however, the Authority is not obligated to share that information with other tribes. Shared information could include known archaeological sites; but it does not need to include ceremonial or sacred places whose significance resides primarily among a single band.

Regarding the request for government-to-government consultation, a Programmatic Agreement between the Authority, FRA, SHPO and ACHP was signed on July 22, 2011, authorizing the Authority to formally consult with non-Federally-recognized Native American Groups (Stipulation IV B. 1). We enclose a copy of the Programmatic Agreement for your information.

The Authority is committed to working with the Amah Mutsun Tribal Band to help protect your traditional cultural places, and to work with you to avoid cultural sites and resources. In addition, we will continue to meet with you and other Amah Mutsun tribal representatives, as needed, to discuss issues or concerns you have regarding the project.

Thank you.
Dan Leavitt, Deputy Director
California High-Speed Rail Authority

- Enclosures:
1. CA Historical Resources Information System, Information Center Rules of Operations Manual
2. Section 106 Programmatic Agreement

Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 21, 2012) - Continued



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60-427

August 31, 2011

Bryan K. Porter, AICP  
Environmental Planning Manager  
Parsons Brinckerhoff  
c/o 770 L Street  
Sacramento, CA 95814

Dear Mr. Porter,

This letter is a follow-up to the phone conversation we had earlier this week . In our phone conversation I spoke of how our Tribe felt disrespected by having a letter regarding confidentiality sent to us that was in final and had been reviewed by the California Department of Justice. It was our understanding that the High Speed Rail (HSR) would be drafting a Confidentiality Agreement for our review and input and then after this letter had been negotiated we would have an acceptable agreement which would be signed by both parties. This is the process we have used many times in the past with both public and private entities. The same is true for the Programmatic Agreement; in fact, we sent you a draft agreement that was a template of what we have used in the past. What we got back was a final agreement that had been signed and approved by everyone but the Tribe; and our signature wasn't required or solicited. Once again we have negotiated Programmatic Agreements in the past and never had an agency presented us with a signed Programmatic Agreement that was a final document.

When we met in July, I began by saying trust is an issue and that before we can move forward in any meaningful way we would have to first establish a foundation of trust, respect and honesty. Both the Confidentiality Agreement and Programmatic Agreement failed to do this.

In our conversation I told you that I was about to write a letter to the HSR to present our objections to your documents. I also said this is a very important project for our Tribe. The HSR will have a very significant impact on our Tribe. The better we can communicate and understand each other the better we can minimize the impact on the remains o our ancestors and the cultural resources they left in our care. It is for this reason that we are now requesting another meeting so



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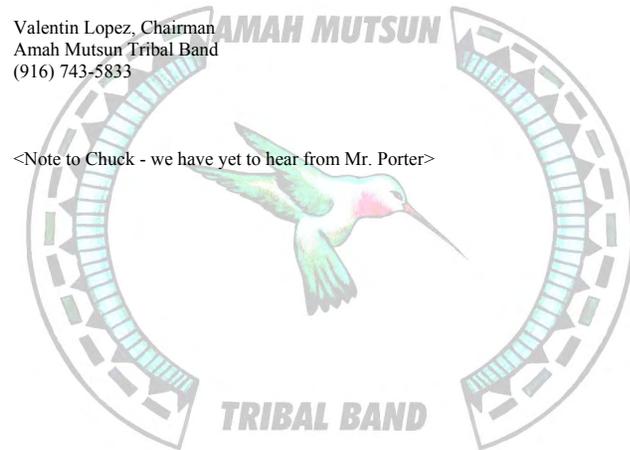
60-427

we can start to build the foundation that is needed to insert trust and respect into this relationship and this project. The best days for us to meet are on Thursdays and Fridays in the afternoon. Please call me at your convenience so we can schedule a meeting.

Sincerely,

Valentin Lopez, Chairman  
Amah Mutsun Tribal Band  
(916) 743-5833

<Note to Chuck - we have yet to hear from Mr. Porter>



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## Response to Submission 60 (Valentin Lopez, Amah Mutsun Tribal Band, February 24, 2012)

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### **60-423**

The Authority acknowledges and appreciates receiving the information regarding the Amah Mutsun Tribal Band and its connections to Santa Cruz, south Santa Clara, and northern Monterey and San Benito counties and the Gilroy area. Chapter 3.12 of the 2008 Final Program EIR addressed cultural and paleontological resources and how the first-tier project in the Bay Area to Central Valley study area might affect those resources. The chapter describes the process the Federal Railroad Administration and the Authority have followed to comply with Section 106 of the National Historic Preservation Act. The chapter also discusses the methodologies used for assessing impacts under CEQA and NEPA, and the consultation effort facilitated through the Native American Heritage Commission. Tribal consultation for the 2005 Statewide Final Program EIR was informed by input from the Amah Mutsun Tribal Band, which subsequently informed the analysis in the Bay Area to Central Valley Program EIR. Chapter 3.12 identified that impacts in the corridor between San Jose and the Central Valley over the Pacheco Pass would be significant and programmatic mitigation strategies are described. The chapter notes that the Authority would comply with all laws and regulations related to the discovery of subsurface human remains and artifacts, and also explains the anticipated process for developing a "Programmatic Agreement" to specify expectations for second-tier, project-level EIR analysis and Section 106 compliance. The Authority has prepared such a Programmatic Agreement with the Federal Railroad Administration, the Advisory Council on Historic Preservation and the State Historic Preservation Officer setting forth the process with more specificity. (Programmatic Agreement, July 15 2011.)

The Authority staff and the Federal Railroad Administration notified over 50 Native American tribal organizations and held a meeting on August 24, 2007, to discuss the Bay Area to Central Valley Draft Program EIR/EIS and to solicit input as noted in Chapter 10, Public and Agency Involvement, in the 2008 Final Program EIR. The Authority has also continued to provide Native American organizations with notices and documents for review and input

including the 2010 Revised Draft/Final Program EIR and the 2012 Partially Revised Final Program EIR.

The Authority disagrees that the project would negatively affect the hydrologic function of the affected basins or erode or expose cultural resources. Chapter 3.14, Hydrology and Water Resources, in the 2008 Final Program EIR indicates that the potential for erosion due to runoff would primarily be limited to locations of erosive soil conditions within the Diablo Range where tunnels and earthwork would be required. In addition, a mitigation strategy provided includes minimizing the footprint of facilities within floodplains through design changes or use of aerial structures. Additional mitigation strategies include the use of best management practices (BMPs) including erosion control requirements to minimize erosion during and after construction. The mitigation strategies listed in Section 3.14.5 are expected to reduce impacts to hydrology and water quality to a less-than-significant level.

### **60-424**

Comment acknowledged. The Authority has benefited from increased staff resources and is committed to developing a meaningful, productive working relationship with the Amah Mutsun Tribal Band.

### **60-425**

The Partially Revised Draft Program EIR was developed to address issues in court rulings as a result of the Town of Atherton CEQA litigation cases. Additional analysis on cultural resources issues was not identified by the court for further evaluation under CEQA. The cultural resources evaluation prepared for the 2008 Final Program EIR is contained in Chapter 3.12, and Appendix 3.12A (Bay Area to Merced, Cultural Resources Archaeology Technical Evaluation, Far Western Anthropological Research Group, Inc., January 2004 and Bay Area to Merced, Cultural Resources: Historic Architecture Technical Evaluation, JRP Historical Consulting Services 2004.)

**60-426**

The Authority appreciates the comments from the Amah Mutsun Tribal Band and looks forward to a positive working relationship in the development of the second-tier projects and EIRs that may be of interest to the tribe.

**60-427**

This submission includes correspondence between the Amah Mutsun tribal band, Federal Highway Administration, the Authority, and the Authority's consultants. It does not contain comments on the 2012 Partially Revised Draft Program EIR.

