



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

September 15, 2022

County of Santa Clara Department of Planning and Development
70 West Hedding Street
East Wing, 7th Floor
San Jose, CA 95110

Re: **Request for Translation and Interpretation Services to Meaningfully Participate in the Draft EIR Process**

Dear Santa Clara Department of Planning and Development:

We write on behalf of the ACLU Foundation of Northern California to express our concern about the lack of language access to Santa Clara County's California Environmental Quality Act (CEQA) process, including the recent Draft Environmental Impact Report (EIR) for the Sargent Ranch Quarry Project. The Project, if approved, would have significant and unavoidable impacts on various communities, including limited-English speaking communities who are currently excluded from the EIR public comment process because of linguistic barriers. Thus, it's critical that the County expand language access through written translations and interpretation services as part of the public comment period so that limited-English speaking residents who would be impacted by the project can meaningfully participate regardless of their English proficiency. To that end, we request that Santa Clara (1) translate critical Draft EIR documents, at a minimum the Draft EIR summary, pertaining to the Sargent Ranch Quarry Project into Spanish, Chinese, Taiwanese, Tagalog, and Vietnamese; (2) provide interpretation services in the same languages during public meetings discussing the Project; and (3) extend the public comment period to allow for the translation of documents and the participation of limited-English speaking residents. Given the County's language diversity,¹ it is vital that the County

¹ Santa Clara County is home to residents speaking more than 100 different languages. County of Santa Clara, Office of Cultural Competency, "Language Access," <https://bit.ly/3qFERha>. According to 2020 ACS 5-year data, 10.4% of the county's households are made up of limited-English speaking households, with an estimated 98,736 limited-English speaking households that speak Spanish and 176,182 that speak an Asian or Pacific Island language. U.S. Census Bureau, 2020 ACS 5-year, Table S1602, <https://bit.ly/3Djpcfe>. Given the large population of limited-English speakers in Santa Clara, the County is required to provide all election-related materials in Spanish, Chinese (including Taiwanese), Tagalog, and Vietnamese as part of its requirements under Section 203 of the federal Voting Rights Act. *Federal Register Notices*, Vol. 86, No. 233 (Dec. 8, 2021), <https://bit.ly/3xxdECd>. The Section 203

address language access issues surrounding the drafting process of the EIR by taking the measures referenced above, to the extent it is not already doing so.

It is crucial that the EIR documents be translated to Spanish, Chinese, Taiwanese, Tagalog, and Vietnamese, and that the County provide interpretation services during public meetings discussing the Project. Meaningful participation requires basic language access as residents are unable to engage with the Draft EIR due to language barriers. CEQA guidelines explicitly emphasize that “[p]ublic participation is an essential part of the CEQA process.”² Furthermore, CEQA Guidelines require plain language writing so that decision makers and the public can rapidly understand documents.³ Translation and interpretation services are key language services that allow for more community members to rapidly understand the very documents that will impact them.

The Draft EIR is a living document that requires access and robust community engagement to fulfill its purpose of detailing potential adverse environmental impacts, reduction measures, and feasible alternatives that may sway decision making. If approved, the planned 403-acre mining operation and process plant would severely impact the sacred site of the Amah Mutsun Tribal Band and have significant and unavoidable air quality impacts that will disproportionately fall on disadvantaged communities, including those with limited-English proficiency.⁴ All community members who are impacted by the project, regardless of their English proficiency, should be given the opportunity to be active participants in the Draft EIR process through expanded language access.

Full public engagement and participation is particularly critical given the limited opportunities that community members have to weigh in on the Project. The EIR public comment period is not only an integral part of the EIR development process but is many community members’ only opportunity to weigh in on issues that directly affect them.⁵ Despite

requirements are triggered when more than 5% of voting age citizens in a county are limited-English proficient or if there are more than 10,000 voting age citizens that are limited-English proficient. Under state law, the County is also required to provide translated copies of election ballots, known as facsimile ballots, in Cambodian/Khmer, Gujarati, Hindi, Japanese, Korean, Nepali, Panjabi, Tamil, and Telugu. California Secretary of State CCROV Memorandum # 22039, *Re: Reinstated Languages Required under California Elections Code section 14201, Language Minority Determinations* (March 1, 2022), <https://bit.ly/3RF0SIY>.

² CEQA Guidelines, § 15201; *see also San Franciscans for Reasonable Growth v. City and County of San Francisco*, 193 Cal.App.3d 1544, 1549 (1987) (“an EIR in this state must be written and presented in such a way that its message can be understood by governmental decision makers and members of the public who have reason to be concerned with the impacts which the document studies.”).

³ CAL. CODE REGS. tit. 14, § 15140.

⁴ *See EPA 2021 Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*. U.S. Environmental Protection Agency, www.epa.gov/cira/social-vulnerability-report

(finding that “socially vulnerable” demographics, based on income, education level, race and ethnicity, and age, can be exposed to higher impacts of climate change).

⁵ *See Emmington v. Solano County Redevelopment Agency*, 195 Cal.App.3d 491, 503 (1987) (finding Initial Study invalid where “the sheer bulk of material an interested citizen was referred to, without any guidance on how to proceed, served to discourage rather than encourage participation in the public review process.”).

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the direct impact the Project would have on their lives, non-English speaking residents will be excluded from meaningful participation in the EIR comment period without such interpretation and translation services.

The County of Santa Clara's Office of Cultural Competency adopted a policy that seeks to "ensure that every resident has meaningful access to County services, programs, benefits, and information."⁶ Under this policy, the County strives to meet the language needs of its residents, regardless of their proficiency in English and states that it will provide free interpretive services to "ensure meaningful access" to program information, participation, and services. Additionally, the County seeks to promote availability of language interpretive services to residents and visitors through the publication of information on the County website and, "when feasible, on publicly disseminated information." The Draft EIR is released on the County's website to allow opportunity for public engagement and input. This public comment period is a crucial step of the Draft EIR process. Incorporating interpretation and translation services will not only provide access to publicly displayed information but allow for opportunities for engagement with such information.

Santa Clara's own Language Access Guidelines and Procedures also state that the County "should endeavor to make available publicly released written documents, at a minimum, in Spanish and Vietnamese."⁷ County departments are also "encouraged to translate documents into additional languages, such as, traditional Chinese or Tagalog, as appropriate." Given the County's Language Access guidelines and state law, it is difficult to see how any "undue burden" would be imposed by providing translation and interpretation services surrounding the Project within the Draft EIR. Rather, if approved, the Project will overburden directly impacted communities who may not have had a chance to meaningfully participate in the decision-making process due to language barriers.

Under federal law, recipients of federal funding must "take reasonable steps to ensure meaningful access to their programs and activities by limited English proficiency (LEP) persons," based on "four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs."⁸ Given the community's diverse linguistic needs, the direct impact the Project would have on its limited-English speaking community members, and the importance of having ample channels of contribution to the Draft EIR process, each of these factors favor providing interpretation and translation services as part of the public comment period.

⁶ Policy 3.58, Language Access (2015), <https://occ.sccgov.org/language-access>.

⁷ County of Santa Clara, Language Access Guidelines and Procedures, <https://bit.ly/3SjdGF5>

⁸ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41459 (2002).

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Under state law, it is a “discriminatory practice” for a recipient of state funds “to fail to take appropriate steps to ensure that alternative communication services are available to ultimate beneficiaries,” including members of the public, “except where the State agency determines that such a requirement would place an undue hardship on the recipient.”⁹ “Alternative communication services” include “the provision of the services of a multilingual employee or an interpreter.”¹⁰

To fulfill its obligations to the community, the County should determine what translation and interpretation services would be necessary to make the Draft EIR understandable to Santa Clara County’s non-English speaking residents, and then provide those services. As mentioned above, the County should, at a minimum, translate the Draft EIR summary, provide interpretation services during any public meetings discussing the project, and extend the public comment period. Not doing so would make it exceedingly difficult for non-English speaking residents directly impacted by the Project to make independent, reasoned judgements about the EIR and participate effectively in any step of the environmental review process. By refusing to put forth a minimum effort of translating crucial parts of the Draft EIR or providing interpretation services, the County will effectively be denying many residents a voice guaranteed to them by CEQA requirements.

We hope this information is helpful and look forward to confirming that the County will ensure that community members will have access to (1) translated crucial documents within the EIR in Spanish, Chinese, Taiwanese, Tagalog, and Vietnamese; (2) interpretation services in the same languages during the public comment period; and (3) the public comment period will be extended. Please let us know if you have any questions.

Sincerely,

/s/ Allison Lim

Allison Lim
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Legal Fellow
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Tedde Simon
Racial & Economic Justice Program
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ACLU Foundation of Northern California

cc: Santa Clara County Board of Supervisors
Robert Salisbury, Senior Planner

⁹ 2 CAL. CODE REGS. tit. 2, § 11162(c).

¹⁰ 2 CAL. CODE REGS. tit. 2, § 11161 (a); cf. GOVT. CODE § 7293 (requiring that local public agencies “serving a substantial number of non-English-Speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person.”).