



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

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Transmitted via Electronic Mail
November 7, 2022

Re: Sargent Ranch Quarry, Environmental Impact Report, SCH # 2016072058

Dear Mr. Salisbury:

The American Civil Liberties Foundation of Northern California (“ACLU NorCal”) and the American Civil Liberties Union (“ACLU”) submit this letter to provide comments on the draft Environmental Impact Report (“EIR”) for the proposed Sargent Ranch Quarry Project. We respectfully urge Santa Clara County to deny the conditional-use permit for the Sargent Ranch Quarry Project due to the devastating, permanent, and irreversible effects that would result from this project and from all alternative projects identified in the EIR.

The site currently known as “Sargent Ranch” has long been known to the Amah Mutsun Tribal Band (“AMTB”) by another name—Juristac. It sits at the heart of AMTB’s ancestral lands and is one of the Tribe’s last remaining sacred sites. For thousands of years, the Amah Mutsun people have lived in a relationship of respect and reciprocity with this land. Until they were forcibly removed with the arrival of the Spanish Missions, often into indentured servitude, they routinely hosted ceremonies integral to their existence at Juristac. AMTB hopes that this stolen sacred land will eventually be returned to the Tribe. But in the meantime, because the sacred landscape at Juristac is central to the cultural and religious identity of the Amah Mutsun, allowing this project to continue—and with it, the desecration of this landscape—would permanently sever and destroy their connection to the land and their ability to carry out cultural and religious ceremonies, dances, and other practices in the future.

American Civil Liberties Union Foundation of Northern California

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The decision whether to grant the quarry permit, then, has long-ranging consequences for the AMTB. It is, effectively, a vote on whether AMTB will ever again be able to access the Juristac landscape for spiritual and cultural purposes. It is a vote on whether to permanently cut off AMTB from the ancestral lands that are integral to its Indigenous identity. If the permit is approved, access to sand and gravel for thirty years will come at unconscionable cost: the future survival and vitality of the AMTB.

I. Scope of Public Comment & the ACLU's Interest in the Protection of Juristac

There are a number of concerns regarding the accuracy, sufficiency, and findings of the draft EIR. In particular, the EIR does not fully comply with the California Environmental Quality Act or the required Tribal consultation under A.B. 52. In addition, the EIR fails to fully account for or protect Juristac's role as one of the Bay Area's most critical wildlife corridors and homes to a host of rare, threatened, and endangered species that are essential to the long-term balance and health of the region. Furthermore, the negative environmental effects of this project are likely to disproportionately impact communities of color and low-income communities. We understand that these important concerns will be addressed by a variety of other organization and technical experts. Thus, our public comment focuses on the impact that this proposed project would have on the Indigenous people of the region, placing the proposed quarry in the proper historical context of centuries-long oppression of Indigenous people in California.

The ACLU and the ACLU Nor Cal are longtime supporters and defenders of the rights of all Native American peoples to retain their specific and unique cultural and religious traditions and practices and enforce assurances made to them by the United States in treaties, compacts, and other government commitments.¹ In our Indigenous Justice work, we are committed to following the lead of Indigenous peoples as they endeavor to uphold their sovereignty, dignity, and identities. We believe that the future existence of Tribes across our country depends ultimately upon secure and permanent land bases. So, too, does their religious freedom. We vigorously defend the rights of all people to practice their faith. The First Amendment protects religious equality for *all*; people of every religion, not just the majority faith, have the right to hold and to exercise their religious beliefs. In the context of Indigenous peoples and sacred landscapes, there can be no exercise of religious freedom if the foundation for the practice of one's belief system has been forever decimated. For Indigenous people, whose belief systems and spirituality are intimately tied to the land to which they belong, exercise of religion is intimately tied to the protection of sacred landscapes.

¹ ACLU Bd. POL'Y 313; ACLU FOUND. OF N. CAL. BD. RESOL. NO. 2021-06-24A, *In Support of Nationwide ACLU Indigenous Justice Initiatives* (Jun. 24, 2021), available at: <https://www.aclunc.org/sites/default/files/FOUNDATION%20RESOLUTION%20supporting%20indigenous%20justice%20FINAL%2006.24.21.pdf>.

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II. Tribal Sovereignty

Indigenous peoples and their governments have inherent sovereignty, the right to govern themselves and their lands and determine their own futures. This sovereignty predates the existence of the United States and stretches back to time immemorial. It does not depend on any external recognition. Facing the seemingly insurmountable problems of impoverishment and negative outcomes Indigenous people face due to ongoing colonization, the exercise of tribal sovereignty has proven to be the most successful policy.²

The U.S. Constitution, legal precedent, hundreds of treaties, acts of Congress, and applicable principles of human rights affirm and protect tribal sovereignty. Through treaties and other agreements, the United States and Native Nations entered into government-to-government relationships, the federal government acknowledging Tribes' existence as sovereign nations predating the U.S. In exchange for vast swaths of ancestral territory—nearly the entire country—and often upon forced removal to distant, barren lands, the federal government assumed a trust relationship with the Tribes, legally binding itself to provide for the education, health, and well-being of Native American peoples; to hold tribal land in trust and respect self-determination; and to provide federal protections for sacred and burial sites and rights to hunt, fish and gather.

The U.S. government officially recognizes 574 Indian tribes across the contiguous 48 states and Alaska. According to the U.S. Government Accountability Office (GAO), there are nearly 400 Tribes without federal recognition, over 70 of which are in California.³ The rights of these Tribes—to govern themselves, steward their land, and define their citizenry—are not legally recognized. The citizens of these Tribes are not eligible for the federal benefits and basic services that were promised in exchange for vast swaths of territory, ranging from healthcare to other federal programs and benefits afforded to other federally recognized Tribes. Many tribes are today fighting to gain or regain federal recognition. This process is widely criticized as broken, bureaucratic, and prohibitively expensive.⁴ And yet, the Amah Mutsun have been engaged in this process for the past three decades.⁵

² For example, JOSEPH P. KALT AND JOSEPH WILLIAM SINGER, *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*, NATIVE ISSUES RESEARCH SYMPOSIUM, HARVARD UNIV. (2004), available at: https://scholar.harvard.edu/files/jsinger/files/myths_realities.pdf.

³ U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-348, INDIAN ISSUES: FEDERAL FUNDING FOR NON-FEDERALLY RECOGNIZED TRIBES (2012), available at: <https://www.gao.gov/products/gao-12-348>.

⁴ *Federal Recognition*, NAT'L CONG. OF AM. INDIANS, available at <https://www.ncai.org/policy-issues/tribal-governance/federal-recognition> (last visited Nov. 7, 2022).

⁵ *Petitioner #120: Amah Mutsun Band of Ohlone/Coastanoan Indians, CA*, U.S. DEP'T OF THE INTERIOR, INDIAN AFFAIRS, available at: <https://www.bia.gov/as-ia/ofa/120-amamut> (last visited Nov. 7, 2022); H.R. 3475, 109th Cong. (2005), available at: <https://www.congress.gov/bill/109th-congress/house-bill/3475/text>.

III. The Permit Application Must Be Viewed Through a Broader Historical Lens That Takes into Account the Persecution of Indigenous Peoples, Including the Seizure and Destruction of Sacred Lands.

A. Genocide & assimilation: the mistreatment of Indigenous people in the United States

Alongside horrendous acts of violence, governmental laws, policies, and practices have actively and intentionally sought to erase Indigenous cultures and peoples for centuries. If Indigenous people could be assimilated into dominant society, they would no longer have ties or claim to the land, and nothing would stand in the way of Manifest Destiny. While we will not attempt to summarize hundreds of years of these policies and practices here, we offer a glimpse into some of the relevant laws and programs as background context for the ongoing oppression of Indigenous people in the United States.

Across the country, the federal government used forced child removal as a tool of cultural genocide. The federal Indian boarding school program, which operated from 1819 to 1969, sought to strip Indigenous people from everything that made them Indigenous and assimilate them into dominant society. Thousands of Native American children were violently torn from their homes and communities and sent to militarized institutions, where they were physically and sexually abused, prohibited from speaking Indigenous languages or engaging in any cultural practices, and faced inhumane conditions and enslavement. Government-sanctioned and funded churches — the vast majority Catholic or other Christian denominations — were heavily involved in the operations of these schools, and conversion to Christianity was considered essential to assimilation. To date, over 50 marked and unmarked mass graves of the children killed at these “schools” have been found.⁶

To the same end, in 1883, the federal government enacted the “Code of Indian Offenses” with the aim of suppressing Indigenous practices and customs. Discussing the Code, the Secretary of the Interior at the time explained:

I desire to call your attention to what I regard as a great hindrance to the civilization of the Indians, viz the continuance of the old heathenish dances, such as the sun-dance, scalp dance, &c. These dances, or feasts, as they are sometimes called, ought, in my judgement, to be discontinued, and if the Indians now supported by the Government are not willing to discontinue them, the agents should be instructed to compel such discontinuance.

The Code applied only to Native Americans. Dances and feasts were punished by imprisonment or the withholding of food rations, which were guaranteed by treaties. A medicine man convicted of encouraging others to follow traditional practices faced imprisonment for at

⁶ BRYAN NEWLAND, *Federal Indian Boarding School Initiative Investigative Report*, U.S. DEP’T OF THE INTERIOR, INDIAN AFFAIRS, (2022). available at: https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

least 10 days or “until he could provide evidence that he had abandoned his beliefs.”⁷ It was not until 1978, with the passage of the American Indian Religious Freedom Act, that the rights of Indigenous people to “believe, express, and exercise their traditional religions” was protected under federal law.⁸

B. *California’s shameful abuse of Indigenous people*

“As a place, California has always been and remains Indigenous land, and Indigenous People are central to the history and future of the place.”⁹

In California, the oppression of Indigenous people manifested in a variety of ways. From the Mission Period through the Gold Rush and into contemporary times, government officials and local communities in California sought to wrest all land from Indigenous communities based on their deep and explicit anti-Indigenous bigotry. Native peoples—perceived as standing in the way of the rich bounty that California’s diverse natural beauty signified for newcomers and who were seen as uncivilized and savage—were forcibly removed from and dispossessed of their ancestral lands and many were enslaved.

Beginning in the 1769 and lasting over 60 years, the brutal Spanish Catholic Mission system seized property from Tribes and enslaved and murdered thousands of Indigenous persons. “The Spanish crown decreed in the 1760s that the Indians were to be rounded up, baptized into Christianity and their culture destroyed ... Within the missions is a terrible truth--that they were little more than concentration camps where California's Indians were beaten, whipped, maimed, burned, tortured and virtually exterminated by the friars.”¹⁰ The Missions engaged in cultural genocide through forced conversion to Catholicism, and the absolute prohibition of the practice of Indigenous traditions or speaking of Indigenous languages. The Mexican Ranchos continued the practice of slavery and brutal oppression: while land was transferred from the Spanish Missions to private land holders, little changed for California Native peoples.

⁷ H.R. Exec. Doc. No. 1-48 (1883), available at:

<https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=6725&context=indianserialset>; See also, Dennis Zotigh, *Native Perspectives on the 40th Anniversary of the American Indian Religious Freedom Act*, SMITHSONIAN MAGAZINE, Nov. 30, 2018, <https://www.smithsonianmag.com/blogs/national-museum-american-indian/2018/11/30/native-perspectives-american-indian-religious-freedom-act/>; David Martínez DAVID MARTÍNEZ, LIFE OF THE INDIGENOUS MIND: VINE DELORIA JR. AND THE BIRTH OF THE RED POWER MOVEMENT (2019).

⁸ STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES: THE AUTHORITATIVE GUIDE TO INDIAN AND TRIBAL RIGHTS, 225-226 (4th ed. 2012).

⁹ DAMON B. AKINS & WILLIAM J. BAUER JR., WE ARE THE LAND: A HISTORY OF NATIVE CALIFORNIA (2021).

¹⁰ Elias Castillo, *The Dark, Terrible Secret of California’s Missions*, SF GATE, Nov. 8, 2004, available at: <https://www.sfgate.com/opinion/openforum/article/The-dark-terrible-secret-of-California-s-missions-2685666.php>.

When California was brought into the Union, its membership was founded on the forced removal, enslavement, and genocide of Indigenous peoples.¹¹ As the state’s first Governor, Peter Burnett, put it in his 1851 address to the Legislature: “That a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected.” The State sanctioned and funded massacres against Indigenous peoples—authorizing \$1.29 million in the 1850s to pay for the militia campaigns that amounted to genocide.¹²

In the 1850s, the federal government negotiated and signed 18 treaties with California Tribes, promising 8.5 million acres of land to Native people. But California landowners, politicians and the wealthy elite fought to prevent the “cessation” of any land to Indigenous people, and the U.S. Senate refused to ratify these treaties. These attempts at erasing Indigenous people and cultures continued well through the 20th Century. In California, the Rancheria Termination Act “terminated” 41 rancherias between 1958-1967, with more to follow in the ensuing decade.

In addition to this brutal violence, laws and policies attempting to sever Indigenous children from their homes and communities were central to California genocide. The 1850 “Act for the Governance and Protection of Indians” made the enslavement of California Indians legal and fueled the kidnapping and trafficking of Native American children into indentured servitude. At least 12 federal Indian boarding schools were located in California.¹³ The largest of these, the Sherman Indian School in Riverside, has its own dedicated cemetery.

C. The ongoing legacy of historical violence and abuse of Indigenous people

Centuries of genocide and forced assimilation continue to have devastating impacts on Indigenous people in California today. While modern systems of oppression may be less conspicuous than missions and boarding schools, the legacies of these violent policies and practices continue to harm Indigenous people. As the Center for Disease Control and Prevention has recognized, there is currently a crisis of Missing and Murdered Indigenous People.¹⁴ Murder is the third-leading cause of death among American Indian and Alaska Native women, rates of

¹¹ See, for example, *Gold Chains: The Hidden History of Slavery in California*, ACLU FOUND. OF N. CAL., available at: <https://www.aclunc.org/sites/goldchains/index.html> (last visited Sept. 26, 2022); and BENJAMIN MADLEY, *AN AMERICAN GENOCIDE: THE UNITED STATES AND THE CALIFORNIA INDIAN CATASTROPHE, 1846-1873 (THE LAMAR SERIES IN WESTERN HISTORY)* (2016) (last visited Sept. 26, 2022).

¹² See, for example, BRENDAN C. LINDSAY, *MURDER STATE: CALIFORNIA’S NATIVE AMERICAN GENOCIDE, 1846-1873* 346 (2015); and, MADLEY, *supra* note 11. For a non-comprehensive list of genocide incidents in the San Joaquin Valley, see *Timeline of Genocide Incidents in the San Joaquin Valley Region*, STATE OF CAL. NATIVE AM. HERITAGE COMM’N, available at: <http://nahc.ca.gov/cp/timelines/san-joaquin/> (last visited Apr. 9, 2021).

¹³ NEWLAND, *supra* note 6.

¹⁴ CTR. FOR DISEASE CONTROL AND PREVENTION, *CDC Works to Address Violence Against American Indian and Alaska Native People* (2020), available at: <https://www.niwrc.org/sites/default/files/images/resource/violence-against-native-peoples-fact-sheet.pdf>.

violence on reservations can be up to ten times higher than the national average,¹⁵ and nearly half of all Native American women report having experienced sexual violence. The crisis is particularly acute in California, which has the fifth-highest number of cases of Missing and Murdered Indigenous Women, Girls and Two Spirit People of all states.¹⁶

While Indigenous students today are not sent to boarding schools, they face vast disparities in educational outcomes. In California, Native American third graders have one of the lowest English proficiency rates among all racial/ethnic groups. Native American students as a whole have a rate of school suspension that is twice the state average, and Indigenous students are the most likely among all groups to be chronically absent.¹⁷ These disparities are directly linked to systematic barriers facing Indigenous students in public schools, including a lack of culturally responsive curriculum that features Indigenous history, language, and culture; inaccurate depictions of California and U.S. history; and invisibility of Native American contributions to society.¹⁸

The ongoing effects of settler-colonialism and forced displacement are also evidenced in the disproportionate rates of poverty and homelessness experienced by Indigenous people. As discussed above, California Native peoples were the first to be made homeless in this state, violently disposed of their ancestral lands to make way for Missions, ranchers, and settlers. In 2020, 45 out of every 10,000 Native American people experienced homelessness nationally, compared to only 18 out of every 10,000 for white Americans.¹⁹ And in California, rent-burden rates are 2.6% higher for Native households than for all other California households. Native Americans in California also rank last among all racial/ethnic groups for food security and internet access.²⁰

¹⁵ Ronet Bachman, et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known*, U.S. DEP'T OF JUST. (Aug. 2008), available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>.

¹⁶ ABBY ABINANTI, ET AL., YUROK TRIBAL COURT, *To' Kee Skuy' Soo Ney-Wo-Chek' I Will See You Again in a Good Way Progress Report* (2020), available at: https://www.sovereign-bodies.org/_files/ugd/6b33f7_c7031acf738f4f05a0bd46bf96486e58.pdf.

¹⁷ CAL. CONSORTIUM FOR URB. HEALTH, CAL. NATIVE VOTE PROJECT, AND ADVANCEMENT PROJECT CAL., *We the Resilient: Stories and Data from American Indians & Alaska Natives in California* (2021), available at: <https://canativevote.org/what-we-do/research/>.

¹⁸ THEODORA SIMON, ET AL., *Failing Grade: The Status of Native American Education in Humboldt County*, ACLU OF N. CAL. (2020), available at: <https://www.aclunc.org/sites/default/files/ACLU%20Humboldt%20report%2010%2026%2020%20final%20web.pdf>.

¹⁹ *State of Homelessness: 2022 Edition*, NAT'L ALL. TO END HOMELESSNESS, available at: <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2021/> (last visited Sept. 26, 2022).

²⁰ CAL. CONSORTIUM FOR URB. HEALTH, CAL. NATIVE VOTE PROJECT, AND ADVANCEMENT PROJECT CAL., *supra* note 17.

Finally, the legacy of the state-sanctioned violence against, and enslavement of, Indigenous people is evident today in the striking disparities in mass incarceration. According to data from the 2010 Census, the nationwide incarceration rate for Native Americans was more than double that of white Americans.²¹ Similarly, a different report shows the incarceration rate in California of Native Americans as one-and-a-half times higher than the overall state rate.²² This trend also tragically affects Indigenous young people—in 2015, Native youth nationwide were approximately three times more likely to be incarcerated than white youth.²³

IV. Approval of the Sargent Ranch Quarry Project Will Desecrate and Destroy Juristac as a Religious and Cultural Site, Continuing the Persecution Suffered for Centuries by the Amah Mutsun.

A. The persecution of the Amah Mutsun and seizure of Juristac

The Amah Mutsun have lived in the Monterey Bay area since time immemorial. Their ancestral territory includes parts of San Benito, Monterey, Santa Cruz, Santa Clara, and San Mateo counties. In the AMTB's words:

We are the Amah Mutsun Tribal Band. Our ancestors, collectively referred to by many as “Ohlone”, are the indigenous peoples of south-San Francisco and north-Monterey Bay area. We trace our ancestry and heritage through a keyhole in time when the Spanish occupied our traditional lands and held us in their missions at San Juan Bautista and Santa Cruz. Before that time our peoples were of many Bands, villages, and communities. Though they spoke similar languages, traded, and intermarried, they were distinct in territory and leadership. Now living on this side of the contact gateway, in these modern times and with much of our traditional ways, stories and histories disrupted, we stand united – regaining our knowledge, celebrating our heritage, reclaiming our sovereignty, honoring our Creator and protecting our homeland.

Their story from time of contact to modern times is emblematic of the appalling violence and abuse historically borne by Indigenous peoples in California. With the arrival of the Spanish in the 1770s and the founding of Mission Santa Cruz and Mission San Juan Bautista, the Amah Mutsun people were forcibly removed from their land and enslaved at Missions under harsh conditions facing violence, disease, and malnutrition. They were prohibited from engaging in any traditional practices. This was followed by the Mexican period, during which the Amah

²¹ ROXANNE DANIEL, *Since you asked: What data exists about Native American people in the criminal justice system?* PRISON POL'Y INITIATIVE (Apr. 22, 2022), available at: <https://www.prisonpolicy.org/blog/2020/04/22/native/>.

²² CAL. CONSORTIUM FOR URB. HEALTH, CAL. NATIVE VOTE PROJECT, AND ADVANCEMENT PROJECT CAL., *supra* note 17.

²³ DANIEL, *supra* note 21.

Mutsun continued to face conditions of slavery on Mexican Ranchos, territorial dispossession, and the increasing degradation of their natural environment.

Despite this tragic history, the Amah Mutsun Tribe is experiencing a resurgence: today, there are over 600 tribal members, a contemporary Tribal Council and Constitution, thriving language and cultural programs, and efforts to repatriate and steward ancestral lands. The Tribe is recognized by California as a Tribal Government under S.B. 18 and is entitled to Tribal Consultation under the California Environmental Quality Act.²⁴

Juristac is a sacred landscape for the Amah Mutsun: “The whole area around Juristac is a power place. Long ago, the people all jointly agreed that this was an area that had power. This is where our ancestors held healing ceremonies, this is where our spiritual doctors went, at La Brea, to prepare themselves for the dances.”²⁵ Although it was among the land violently seized from the Amah Mutsun centuries ago, the AMTB maintains a special obligation toward, and relationship with, Juristac, as AMTB Chairman Valentin Lopez has explained:

“We honor our ancestors by returning to those places where they had ceremony. For thousands and thousands of years they fulfilled their sacred responsibilities to manage and protect those lands. Through no fault of their own, they were violently interrupted. We cannot let them, or their responsibility be forgotten. We have a duty to continue to fulfill those responsibilities. Without these spiritual sites, we lose our purpose for being here.”²⁶

The importance and sanctity of Juristac are documented in the EIR itself, which affirms that the land “was, and continues to be, *the most sacred landscape of the Mutsun people and the AMTB with immense spiritual and cultural value.*”²⁷ According to the EIR, “[t]he *entirety of the landscape* as defined by the boundaries given to the AMTB is a Tribal Cultural Resource, which includes all hills and natural features on the Project site.”²⁸ The AMTB recognizes Juristac’s “importance as a home to spiritual deities, tribal ceremonies, doctoring, a refuge, and a source of

²⁴ Some supporters of the quarry project have pointed to the AMTB’s lack of federal recognition as a reason to question the Tribe’s legitimacy. But the lack of federal recognition for AMTB is a direct result of the wrongful dispossession of its ancestral lands. The Amah Mutsun are descendants of Tribal leaders who were party to negotiations with federal Indian Agents, which led to 18 treaties signed between California Native peoples and the federal government between 1851-1852. Because the promises made to the Amah Mutsun in the 1850s treaties were broken, the Tribe does not have a dedicated, protected land base today and thus has been denied the federal protections to which it should be entitled.

²⁵ Olivia Wynkoop, *Planning Commission Opens Floor for Public Comment In Controversial Mining Project*, SF GATE, AUG. 22, 2022, available at: <https://www.sfgate.com/news/bayarea/article/Planning-Commission-Opens-Floor-For-Public-17390356.php>.

²⁶ *About*, PROTECT JURISTAC, available at: <http://www.protectjuristac.org/about/> (last visited Sept. 26, 2022).

²⁷ SANTA CLARA COUNTY, SARGENT RANCH QUARRY DRAFT ENVIRONMENTAL IMPACT REPORT 3.5-27 (2022) (emphasis added).

²⁸ *Id.*

important plants, animals and fish[,]” and “AMTB villages in the JTCL maintained the sacredness of the landscape.”²⁹ Further:

The Ohlone are a deeply spiritual people who continue to practice ceremonial traditions that predate missionization. Many of these traditions pertain to the Project area and have been documented in a confidential ethnographic study prepared as part of the environmental review for the Project. This study documents Ohlone religion, and cosmology, provided through consultation with Ohlone Tribal elders and cultural experts and supplemented with data collected by early ethnographers and within the historical record. Central to the ceremonial values of the Sargent Ranch region is the ancestral figure of *Kuksui*, who made his home in these hills and came in spirit to nearby Ohlone villages.³⁰

B. The proposed quarry and alternatives would cause irreversible damage to Juristac

Sargent Ranch Partners has proposed a sand and gravel mine (the “Sargent Ranch Quarry Project”) on a 403-acre site in Santa Clara County, also known as Juristac by the AMTB. If approved, the proposed project would include operation of a 62-acre processing plant area, three open pit quarry sites up to 250 ft deep, a 1.6-mile-long conveyor belt, and a 22-foot-wide access road over a period of thirty years. An estimated 40 million tons of sand and gravel aggregate would be produced over the life of the mine, primarily for use in local road building and general construction.

The EIR identified fourteen separate significant and unavoidable impacts from the mine, all of which would occur even with attempts at mitigation. Among these, the EIR found that there would be “permanent and irreversible alterations” to the Juristac Tribal Cultural Landscape, and that *no reclamation activities* could ever restore it to a condition that reflects its cultural significance.

The project would also destroy grasslands, oak woodlands, riparian corridors, and freshwater ponds and streams, including the habitat for threatened species. It would pump tens of thousands of gallons of water per day and contribute to air and traffic pollution in the region.

The two alternatives presented in the EIR—aside from the “no project” alternative—would likewise cause significant and irreversible harm to Juristac’s cultural and spiritual landscapes.³¹ And any proposed mitigation measures would not meaningfully reduce the negative impact of the project or the two alternatives.

²⁹ *Id.*

³⁰ *Id.* at 3.5-12.

³¹ See *id.* at impact 3.5-5 “substantial adverse change in the significance of the Juristac Tribal Cultural Landscape” and *id.* at impact 3.5-9, “cumulative adverse changes in the significance of tribal cultural resources.”

In sum, every version of this proposed project would cause substantial harm to Juristac, and the purported short-term economic gains of this project do not outweigh the irreversible and devastating impact the quarry would inflict on the community at large or on the AMTB. As the EIR makes clear, the quarry project would irreparably damage and desecrate the sacred site of Juristac, causing irreparable harm to the AMTB.

C. *The destruction and desecration of Juristac will devastate the AMTB*

For many Indigenous people, culture, religion, language, and identity are inextricably linked to the land.³² This is recognized by California law under A.B. 52: “California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.”³³ Belonging to a particular place and existing as Indigenous people cannot be separated: “It is not enough to say that certain sites are regarded as sacred. For many native peoples, they are people *of* a particular place, and their particular homelands and landscapes are inextricably tied to their identity as peoples.”³⁴ Thus, the destruction of Indigenous land causes generational trauma and permanent harm to the Tribes tied to it, and “[t]he protection of sacred places is vital to maintaining and preserving the distinct identities, traditions, and histories of Native peoples.”³⁵

Moreover, religious and cultural practices are “rooted in the land.” These “[s]acred sites often provide the physical foundation for a tribe’s creation stories, the thread that connects each new generation to their ancestors and knits them into the fabric of tribal culture and identity.”³⁶ The ability to conduct rituals and ceremonies at these places is “vital to maintaining and passing from generation to generation the distinct identities, traditions, and histories of Native peoples.”³⁷

As discussed above, the Amah Mutsun have already endured significant historical persecution. The enslavement of their ancestors and seizure of their land centuries ago has left them unable to fully practice their religious and cultural beliefs, which are directly tied to, and interwoven with, specific sacred landscapes. The Amah Mutsun Land Trust reports that, “due to our difficult history and generations of physical, mental, and political abuses, our land

³² MICHAEL D. MCNALLY, *From Substantial Burden on Religion to Diminished Spiritual Fulfillment: The San Francisco Peaks Case and the Misunderstanding of Native American Religion*, 30 J. OF L. AND RELIGION 36 (2015), available at: <https://www.cambridge.org/core/journals/journal-of-law-and-religion/article/from-substantial-burden-on-religion-to-diminished-spiritual-fulfillment-the-san-francisco-peaks-case-and-the-misunderstanding-of-native-american-religion/79A44593EA1D40090FF90149DD4143C5>.

³³ A.B. 1441, 2013-2014 Sess. (Cal. 2014), available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52.

³⁴ MCNALLY, *supra* note 32 at 12.

³⁵ Fawn Sharp, *NCAI State of Indian Nations 2022 Address - Raising the Bar: Advancing Advocacy for Indian Country*, NAT’L CONG. OF AM. INDIANS (Feb. 14, 2022), available at: https://www.ncai.org/2022_State_of_Indian_Nations_Address.pdf.

³⁶ *Protecting Sacred Sites*, INDIAN LAW RESOURCE CENTER, available at: <https://indianlaw.org/issue/Protecting-Sacred-Sites> (last visited Sept. 26, 2022).

³⁷ *Id.*

stewardship practices were disrupted, and much of our culture was lost. AMLT serves not only in the re-learning of our history and restoration of indigenous management practices, but it also serves as a vehicle for healing.”³⁸

Unable to access Juristac to conduct cultural and religious ceremonies and rites at the moment, AMTB’s sense of belonging to the land is all that currently remains to sustain the tribe’s historical connection to its ancestors. Destruction of the landscape will significantly undermine, if not completely sever, that connection. It would also undercut AMTB’s long-term efforts to rematriate lands that belonged to their ancestors,³⁹ including Juristac, by desecrating Juristac and permanently destroying its religious and cultural value.

If approved, this proposed quarry would constitute another act of attempted genocide against the Amah Mutsun Tribal Band. Settler-colonialism is an ongoing process upon which our entire society is structured, not an event in time or history. The goal of the settler-colonial society is to destroy and replace—eliminate the Indigenous people on the land they seek to settle and get rid of what was there before, rather than become part of it or merge with it. Settler-colonialism violently tears Indigenous people from the land and turns that land into property to be used as a resource and extracted from. That rupture from the land is ongoing violence against Indigenous people.

The future survival and vitality of the AMTB is largely tied to the preservation of Juristac’s sanctity. If this sacred place is damaged or destroyed, AMTB’s Indigenous culture, faith, and identity will be irreversibly and traumatically ravaged as well.

³⁸ THE AMAH MUTSUN LAND TRUST, <https://www.amahmutsunlandtrust.org/> (last visited Nov. 7, 2022).

³⁹ Indigenous-led movements throughout California are working alongside local, state, and federal governments and private landowners to return land to Indigenous stewardship. Just this month, for example, the city of Oakland announced plans to return control of 5 acres of city-owned land to the Lisjan people. *City Announces Plan to Return Sequoia Point Land to Indigenous Stewardship*, SF Gate, Sept. 9, 2022, available at: <https://www.sfgate.com/news/bayarea/article/City-Announces-Plan-To-Return-Sequoia-Point-Land-17430753.php>. In 2019, the city of Eureka voted unanimously to return Duluwat Island, the site where the Wiyot Tribe has held world renewal ceremonies since time immemorial, to the Tribe, voluntarily deeding the 200-acre island back to the Tribe and guaranteeing Indigenous stewardship. Thadeus Greenson, *Duluwat Island is Returned to the Wiyot Tribe in Historic Ceremony*, NORTH COAST JOURNAL OF POLITICS, PEOPLE & ART, Oct. 21, 2019, available at: <https://www.northcoastjournal.com/NewsBlog/archives/2019/10/21/duluwat-island-is-returned-to-the-wiyot-tribe-in-historic-ceremony>. And in 2015, Sonoma County also took on rematriation efforts by supporting the return of nearly 700 acres of coastal ranch land to the Pomo people and the creation of the Kashia Coastal Reserve. Debra Utacia Krol, *How This Tribe Got Their Coastal California Land Returned*, YES! SOLUTIONS JOURNAL, Apr. 2, 2018, available at: <https://www.yesmagazine.org/issue/decolonize/2018/04/02/how-this-tribe-got-their-coastal-california-lands-returned>.

V. **The Proposed Quarry Project Will Irreparably Impair the Integrity of Juristac and Destroy Its Important and Distinctive Cultural and Religious Features.**

Section § 4.10.370 (“Surface mining”) of the Santa Clara County Municipal Code provides that “no person shall conduct a surface mining operation unless a use permit is approved by the Planning Commission pursuant to Chapters 5.20 and 5.65 of the Zoning Ordinance.” Under Section 5.65.030.C, a use permit may be approved only if it “the proposed use, by its nature, scale, intensity or design, will not impair the integrity and character of the zoning district or neighborhood, and will not be significantly detrimental to any important and distinctive features of the site’s natural setting.”⁴⁰

For the reasons discussed above, the proposed quarry project does not meet the stated requirements for a use permit. Because of the quarry’s nature, scale, intensity, and design—which would involve the mining of hundreds of acres of land for three decades—the integrity of the surrounding area would be permanently altered and diminished. Juristac’s distinctive cultural and religious significance is inextricably tied to preservation of its natural setting. The proposed quarry would be more than detrimental to that natural setting; it would be destructive.

VI. **Protection of These Resources is Vital Both for the AMTB and the Public Interest**

“The protection of sacred places is vital to maintaining and preserving the distinct identities, traditions, and histories of Native peoples. Co-management practices must be an inclusive and shared responsibility. It is our sovereign right to manage and protect our resources.”⁴¹ Fawn Sharpe, President of the National Congress of American Indians.

A. *Land & Culture as a Protective Factor*

According to the Amah Mutsun Land Trust, “due to our difficult history and generations of physical, mental, and political abuses, our land stewardship practices were disrupted, and much of our culture was lost. AMLT serves not only in the re-learning of our history and restoration of indigenous management practices, it also serves as a vehicle for healing.” This is borne out in much research around the importance of cultural connection and identity as a protective factor for Indigenous youth and communities.

For example, according to research compiled by the National Indian Child Welfare Association, being connected to culture is a proven protective factor for Native children: “cultural identity and ethnic pride result in greater school success, lower alcohol and drug use, and higher social functioning in Native children, adolescents, and young adults. Native children, adolescents, and young adults involved in their tribal communities and cultural activities have

⁴⁰ Santa Clara County Municipal Code § 5.65.030.D further prohibits the grant of a use permit unless “[t]he proposed use will not be detrimental to the public health, safety or general welfare.”

⁴¹ Sharp, *supra* note 34.

lower rates of depression, alcohol use, and antisocial behavior. Tribal language, ceremonies, and traditions are linked to a reduced risk of delinquent behavior for Native children, adolescents, and young adults ... Identification with a specific cultural background and a secure sense of cultural identity is linked to higher self-esteem, higher educational attainment, and lower rates of mental health problems and substance abuse in adolescents and adults.”⁴² For the Amah Mutsun, cultural identity, language, ceremony, and tradition are directly tied to their sacred landscapes; permanent access to Juristac is key to the exercise of these important practices, which permit the existence of the tribe as a tribal community and contribute greatly to the healing and well-being of Amah Mutsun youth.

B. *Protection of Juristac is a Vital Public Interest*

There is a powerful, broad, and diverse coalition of civil society organizations, faith groups, elected officials, community leaders, educational institutions and educators, racial justice groups, Native Nations, and the general public that have organized in defense of Juristac since this project was first proposed. The cities of Gilroy,⁴³ Morgan Hill,⁴⁴ Santa Clara,⁴⁵ Sunnyvale⁴⁶ and Santa Cruz,⁴⁷ along with the Santa Clara County Human Rights Commission,⁴⁸ have all passed resolutions in support of the Amah Mutsun Tribal Band and in opposition to this

⁴² PROTECT ICWA CAMPAIGN, *ICWA Talking Points Guide*, NAT’L INDIAN CHILD WELFARE ASS’N (Feb. 2019), available at: https://www.nicwa.org/wp-content/uploads/2019/02/2019-02-12-ICWA-Talking-Points-Guide_NICWA-FINAL.pdf.

⁴³ Erik Chalhoub, *Council opposes Sargent Quarry project*, GILROY DISPATCH, Aug. 16, 2022, available at: <https://gilroydispatch.com/council-opposes-sargent-quarry-project/>.

⁴⁴ Michael Moore, *Morgan Hill Joins Amah Mutsun Tribe in Opposing Proposed Sargent Ranch Gravel Mine*, SAN JOSE INSIDE, Jan. 17, 2022, available at: <https://www.sanjoseinside.com/news/morgan-hill-supports-amah-mutsun-tribe-opposes-proposed-sargent-ranch-gravel-mine/>.

⁴⁵ City of Santa Clara, Resolution 21-9037 (Dec. 14, 2021), available at: <https://santaclara.legistar.com/LegislationDetail.aspx?ID=5357737&GUID=87707965-B11D-4C9E-86E1-3E212030C1EA&Options=&Search=>.

⁴⁶ At their June 7, 2022 City Council meeting, the Sunnyvale City Council voted unanimously to “adopt a Resolution in support of the efforts of the Amah Mutsun Tribal Band to preserve Sargent Ranch/Juristac as open space” and further, to “authorize the Mayor to work with Staff as appropriate to write any additional advocacy letters that may be required in support of the efforts of the Amah Mutsun Tribal Band to preserve Sargent Ranch/Juristac.” City of Sunnyvale, Resolution 1123-22 (Jun. 7, 2022), available at: https://sunnyvaleca.granicus.com/player/clip/3804?view_id=4&redirect=true&h=69f6505430947b6d3502fc64a2d3ea3f.

⁴⁷ “At the February 11, 2020, Council meeting, the Santa Cruz City Council unanimously passed a resolution supporting the efforts of the Amah Mutsun Tribal Band to preserve Sargent Ranch/Juristac as open space in perpetuity and to regain access to their cultural and spiritual sites at Juristac.” City of Santa Cruz, Resolution NS-29,624 (Feb. 11, 2020), available at: <https://www.cityofsantacruz.com/Home/Components/News/News/8667/36>.

⁴⁸ Michael Moore, *Human rights commission opposes Sargent Mine*, GILROY DISPATCH, Nov. 10, 2021, available at: <https://gilroydispatch.com/human-rights-commission-opposes-sargent-mine/>.

“The Santa Clara County Human Rights Commission last week voted to help the Amah Mutsun Tribal Band protect its sacred ancestral lands—known as Juristac—from being developed into a sand and gravel quarry. The 15-seat commission at the Nov. 4 meeting unanimously voted to send the county planning commission and board of supervisors a letter ‘concerning the human rights implications of the Sargent Mine,’ Chair Bryan Franzen said.”

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proposed project. Nearly 25,000 people have signed various petitions opposing this proposed project.

In Santa Clara County alone, the City of San Jose, Santa Clara University, San Jose State University, Stanford University, Foothills College, the Santa Clara Valley Open Space Authority, the Town of Los Gatos, and others have acknowledged the Amah Mutsun as ancestral inhabitants of the region or instituted land acknowledgement practices naming the Amah Mutsun as original stewards of the land.⁴⁹ Clearly, residents of the region are learning about the history and contemporary realities of Indigenous people and are committing to acknowledge and recognize the ancestral peoples of their communities. Continuing the practice of acknowledging Indigenous people while simultaneously stripping those people of their culture and identity would be deeply cynical.

⁴⁹ *Tribal Partnership*, OPEN SPACE AUTHORITY, available at: <https://www.openspaceauthority.org/about-us/partnerships/tribal-partnership.html> (last visited Nov. 7, 2022); *Council Actions*, TOWN OF LOS GATOS CAL., available at: <https://www.losgatosca.gov/2723/Council-Actions> (last visited Nov. 7, 2022); *Muwekma Ohlone SJSU Area Land Acknowledgement*, SAN JOSÉ STATE UNIVERSITY, available at: <https://www.sjsu.edu/diversity/land-acknowledgement/>; OFFICE FOR DIVERSITY AND INCLUSION, *Land Acknowledgement*, SANTA CLARA UNIVERSITY, available at: <https://www.scu.edu/diversity/resources/land-acknowledgment/> (last visited Nov. 7, 2022); Sherry Segura, et al., *San José Charter Review Commission Recommendation Memo*, CITY OF SAN JOSE, Oct. 29 2021, available at: <https://www.sanjoseca.gov/home/showpublisheddocument/79305/637717099030900000> (last visited Nov. 7, 2022); *Land Acknowledgements*, SANTA CLARA UNIVERSITY FOOTHILL COLLEGE, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiwzKOr6ZT6AhXJdKQIHwyMB7cQFnoECAwQAQ&url=https%3A%2F%2Ffoothill.edu%2Fabout%2Fland-acknowledgement.html&usg=AOvVaw3r29EokBu3dWnOIEYJ3ZXI> (last visited Nov. 7, 2022).; OFFICE FOR DIVERSITY AND INCLUSION, *Land Acknowledgement*, SANTA CLARA UNIVERSITY, available at: <https://www.scu.edu/diversity/resources/land-acknowledgment/> (last visited Nov. 7, 2022); Sherry Segura, et al., *San José Charter Review Commission Recommendation Memo*, CITY OF SAN JOSE, Oct. 29 2021, available at: <https://www.sanjoseca.gov/home/showpublisheddocument/79305/637717099030900000> (last visited Nov. 7, 2022); *Land Acknowledgements*, SANTA CLARA UNIVERSITY FOOTHILL COLLEGE, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiwzKOr6ZT6AhXJdKQIHwyMB7cQFnoECAwQAQ&url=https%3A%2F%2Ffoothill.edu%2Fabout%2Fland-acknowledgement.html&usg=AOvVaw3r29EokBu3dWnOIEYJ3ZXI> (last visited Nov. 7, 2022). (last visited Nov. 7, 2022); *Land Acknowledgements*, SANTA CLARA UNIVERSITY FOOTHILL COLLEGE, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiwzKOr6ZT6AhXJdKQIHwyMB7cQFnoECAwQAQ&url=https%3A%2F%2Ffoothill.edu%2Fabout%2Fland-acknowledgement.html&usg=AOvVaw3r29EokBu3dWnOIEYJ3ZXI> (last visited Nov. 7, 2022).; OFFICE FOR DIVERSITY AND INCLUSION, *Land Acknowledgement*, SANTA CLARA UNIVERSITY, available at: <https://www.scu.edu/diversity/resources/land-acknowledgment/> (last visited Nov. 7, 2022); Sherry Segura, et al., *San José Charter Review Commission Recommendation Memo*, CITY OF SAN JOSE, Oct. 29 2021, available at: <https://www.sanjoseca.gov/home/showpublisheddocument/79305/637717099030900000> (last visited Nov. 7, 2022); *Land Acknowledgements*, SANTA CLARA UNIVERSITY FOOTHILL COLLEGE, available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiwzKOr6ZT6AhXJdKQIHwyMB7cQFnoECAwQAQ&url=https%3A%2F%2Ffoothill.edu%2Fabout%2Fland-acknowledgement.html&usg=AOvVaw3r29EokBu3dWnOIEYJ3ZXI> (last visited Nov. 7, 2022).

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VII. Conclusion

There are simply no overriding considerations that could possibly outweigh the devastating impacts that the project, and the desecration of the sacred landscape at Juristac, would have on the Amah Mutsun people. There are no overriding considerations that the County could point to that could justify this strike at the very heart of tribal culture and existence.

Accordingly, we urge you to reject the permit application for the proposed quarry and work with the AMTB to ensure that Juristac's distinctive cultural and religious import, and its overall integrity, are maintained for future generations of the Amah Mutsun people.

If you have any questions, please do not hesitate to contact the ACLU Foundation of Northern California at tsimon@aclunc.org. Thank you for your consideration.

Sincerely,



Tedde Simon, Racial & Economic Justice Advocate, Indigenous Justice
John Doe, Senior Staff Attorney
ACLU Foundation of Northern California



Daniel Mach, Director
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