

4.4 Cultural Resources and Tribal Cultural Resources

4.4.1 Introduction

This section evaluates the potential for cultural resources and tribal cultural resources to be located on or beneath the surface of the Project site. Cultural resources include historic architectural resources, prehistoric and historic-era archaeological resources, and human remains. A tribal cultural resource is a site, feature, place, landscape, sacred place or object, that is of cultural value to a Native American tribe. Information presented in this chapter is based on a cultural resources inventory completed by the archaeological consulting firm Archeo-Tec, Inc. (Archeo-Tec), supplemented by information presented in the *Contra Costa County General Plan*, previously published EIRs, and *The History of Contra Costa County, California*. Although the numerous original sources cited in the Archeo-Tec report have not been included in this chapter, the Archeo-Tec report may be reviewed at the Contra Costa County Department of Conservation and Development.

Archeo-Tec conducted an archival records search at the Northwest Information Center (NWIC) at Sonoma State University to review all cultural resources studies and recorded resources within a half-mile radius of the Project site. ESA updated the records search. Archeo-Tec also contacted the staff of the Native American Heritage Commission in Sacramento. Two Archeo-Tec archaeologists conducted a surface reconnaissance of the Project site. The results of the archival and field research are summarized in this chapter.

4.4.2 Environmental Setting

Natural Context

The San Francisco Bay region is located within the Coast Ranges Geomorphic Province of California, which probably began to form 2 to 3 million years ago and is characterized by a system of northwest-southeast trending longitudinal mountain ranges and valleys, such as the Las Trampas Ridge and the San Ramon Valley, that are controlled by faulting and folding. Two major faults—the Las Trampas and Bollinger faults—are in the immediate area.

Alluvial deposits from the creeks that flow from the East Bay Hills created today's flatlands, such as the alluvial fan on which the present Project site is situated. The Project site is situated very close to Pacheco Creek, which connects with the series of bays to the north. This water source and the associated marshy environment created a hospitable environment for the region's prehistoric and early historic-era inhabitants.

Prehistoric Background

The Project site is located at the northeastern edge of an area that was occupied by the Penutian-speaking Bay Miwok at the time the Spanish arrived in northern California in the 18th century. Their territory encompassed much of the San Francisco Bay area and extended eastward to the

Central Valley. The Bay Miwok are known to have occupied this region at least since 300 A.D., though their presence may date back as far as 2500 B.C. The language spoken in the area prior to the Miwok's presence is unknown, but was probably a Hokan language. The archaeological record indicates that Contra Costa County has been inhabited for at least 9,000 years.

At the time of contact with the Europeans, there were an estimated 7,000 to 10,000 Native Americans living in the coastal area stretching from Point Sur in Monterey County, northward through the Coast Ranges to the Sacramento River Delta and eastward to the San Joaquin River. The Bay Miwok were one of five geographically and linguistically distinct groups in the area, including Costanoan, Patwin, Wappo, Coast Miwok and Bay Miwok.

The Costanoans are often referred to in anthropological literature as the Ohlone. "Costanoan" was the name the Spanish used to refer to the Ohlone; the name was derived from "Los Costanos," which is Spanish for "the coastal people." Ohlone was the most widespread of the five local languages and was spoken on the San Francisco Peninsula, in the Santa Clara Valley and the mountains to the east and west of the valley and throughout much of the East Bay. Bay Miwok was spoken in the interior valleys of the East Bay, perhaps extending as far as the shoreline in the vicinity of present-day East Oakland. Coast Miwok was spoken throughout the Marin Peninsula. Patwin was spoken on the north shores of Suisun Bay. Wappo was spoken in the upper Napa and Sonoma Valleys. Although mutually unintelligible, the Costanoan, Bay Miwok and Coast Miwok languages all derive from Utian stock; Utian is one of four language families collectively described as Penutian languages (the others being Wintuan, Maiduan and Yokutsan).

Like other west-central California Native American Groups, the Bay Miwok were organized into autonomous territorial political groups. Each territorial group was a community of interrelated families that occupied and occasionally defended a common territory, seasonally cooperated to harvest various food resources and jointly participated in ceremonies viewed as intrinsic to cosmological maintenance or successful passage through life events. The Bay Miwok were divided into five autonomous tribelets: Saclan, Chupcan, Volvon, Julpun and Tatcan. The Project site was likely within Chupcan territory. The size of most tribelet populations ranged between 200 and 400 people. Settlements were often located adjacent to water sources—permanent or seasonal.

The Bay Miwok subsisted on the bountiful natural food resources that characterized the Bay Area. Much of their diet was seasonal, focusing on foods that were particularly abundant at different times of the year. Staples of their diet included fish (principally salmon), shellfish, water fowl, tule elk and acorns. Acorns were pounded by mortar and pestle to form a mush that was often flavored with berries. Other plant foods, gathered predominantly by women, included seeds (such as wild oats, balsam root, ripgut grass, redmaids and buttercup), nuts (buckeye, laurel, hazelnut and pine), roots and greens. Men contributed to the food supply by fishing and hunting for game. Larger animals were hunted with bows and obsidian-tipped arrows and traps and snares were set for smaller mammals such as rabbits. The Bay Miwok fished from creeks using nets and/or basket traps deployed from small rafts constructed of tule rushes, propelled by double-bladed paddles.

The Bay Miwok relied on the natural environment in other aspects of their lives as well. They utilized local rock and mineral sources to manufacture cutting, scraping and other tools and local sandstone for grinding and pounding tools. Cinnabar and hematite could be used to barter with non-coastal groups for more exotic materials, such as obsidian. Animal remains were also particularly useful. In addition to the use of pelts and feathers for clothing and bedding, sinew was used for bow strings and teeth, bones, claws and beaks were employed as tools, including awls, pins, daggers, scrapers and knives. Feathers, bones and shells were used in a wide variety of personal ornamentation.

The houses of the Bay Miwok were conical or dome-shaped structures of interlaced poles and twigs covered with brush or tule bulrushes. The houses were grouped together around a central cleared area. The small villages were generally located near sources of fresh water such as creeks and springs, though they were also found on alluvial flats and along the first set of ridges between valleys and mountain ranges.

An extended family household averaging about 15 persons comprised the basic Miwok social unit, though the size could vary considerably. Bay Miwok society was divided into moieties and further divided into clans. The largest social unit was the tribelet, which consisted of a group of interrelated villages under the leadership of a single headman. As previously noted, tribelets ranged in size from 200 to 400 individuals and were politically and socially autonomous.

Infiltration of Europeans into the Bay Area rapidly led to the decimation of the Bay Miwok people. They were forced into servitude on the Spanish missions and large “rancherias” in northern Alameda and Contra Costa counties. Disease and overwork, as well as conflicts with other tribal groups, led to their decline. By the beginning of the American historical period (1848), the Bay Miwok had ceased to exist as an ethnic or linguistic entity.

Historic Background

Spanish/Mexican and Early American Eras (1769–1848)

The first expedition into the East Bay occurred in 1772 when Pedro Fages and his party explored the San Francisco Bay and Carquinez Strait, including the Diablo and Livermore Valleys near Concord. In the spring of 1776, Captain Juan Bautista de Anza established the San Francisco Presidio and by April 1, de Anza’s men had traveled through San Francisco, down the peninsula and up the East Bay shoreline, passing through Antioch and the plains of eastern Contra Costa County toward Tracy.

The establishment of the Mission Dolores in San Francisco in the same year began the “Mission Period” in the San Francisco Bay area, part of an effort by the Spanish to spread Christianity through the establishment of 21 Roman Catholic missions in Alta California in the late 18th and early 19th centuries. The missions in the East Bay were used to graze thousands of cattle and sheep, as well as for grain production and housed several hundred native Bay Miwok Indian converts. The first Bay Miwok to be missionized were the Saclan (south) at Mission San Francisco in 1794.

Most of California south of Sonoma was under Mexican rule from the 1820s to 1848. In the years following the 1810 Mexican Revolution, Mexican political instability added to the diminishing conditions at and funding to, the Missions. As a result, the Mission's power and influence waned during this period. Historic settlement in the region began in 1823 when large grants of land were awarded by the Mexican government to settlers. In 1833-34, the Mexican government secularized the Spanish missions and many mission lands were also subsequently granted to individuals who established the great ranchos, or vast cattle raising estates. The Project site was part of the *Rancho Las Juntas*, which was subsequently obtained in 1832 by William Welch, a Scotsman and after which was known as the Welch Rancho.

At the end of the Mexican War in 1848, all of Alta California was ceded to the United States under the Treaty of Guadalupe Hidalgo. The date of July 8, 1846 marked the conversion of California from Mexican to American jurisdiction. On this day, a landing party from the sloop-of-war *Portsmouth*, under the command of Captain John B. Montgomery, waded ashore at the town of Yerba Buena (present-day San Francisco) and raised the stars and stripes to the top of the flagpole in the town's dusty plaza, thereby claiming California for the United States.

Middle to Late Nineteenth Century (1848–1900)

In the mid-nineteenth century, much of the former rancho lands were subdivided and sold off to the influx of settlers brought to California by the Gold Rush. Contra Costa County was one of the original 27 counties established when the State was founded in 1850. The County originally encompassed 1,500 square miles of territory, but that was reduced by nearly one-half when southern and western portions of the County were ceded, along with northern portions of Santa Clara County, to create Alameda County in 1853. Following this land transfer, Contra Costa County covered an area of 877 square miles.¹

The County was originally called Mt. Diablo County, but the name was changed to Contra Costa County prior to its incorporation. The name derives from the Spanish language, in which “contra costa” means “opposite coast.” This refers to the County's location on the opposite side of San Francisco Bay from the town of Yerba Buena (present-day City of San Francisco). Many local names in the County—such as Martinez, Pacheco and Moraga—also have roots in the Spanish language, representing the family names of the recipients of large land grants from the King of Spain.

The City of Martinez, first settled by Europeans in 1823, was laid out as a surveyed and subdivided town in 1849; its name is in honor of the *commandante* of the San Francisco Presidio, Ignacio Martinez. Initially incorporated by the Court of Sessions in 1851, the Supreme Court subsequently declared the incorporation act void. Martinez continued functioning as a robust village until it was successfully incorporated in 1867. Martinez has been the county seat of Contra Costa County since 1851. The City developed as a center for wheat shipping, following the gradual decline of nearby Pacheco in that role.

¹ According to the *General Plan*, the current jurisdictional area of the County is 805 square miles, including 73 square miles of water.

Twentieth Century

The twentieth century brought about further development in and around Martinez. Shell Oil built an oil refinery on a 400-acre site adjacent to Martinez in 1915, employing over 2,000 men and precipitating significant population and building growth in the area. Additional oil refineries and other industries, such as ore mining and fertilizer manufacture, located in or near Martinez during the early years of the twentieth century. The region continues to be an important petroleum port and processing location.

Archaeological Record

Prehistoric research in the San Francisco Bay Area is one of the oldest archaeological traditions in California. When U.C. Berkeley archaeologist N.C. Nelson conducted the first intensive archaeological survey of the region between 1907 and 1908, he recorded no less than four hundred and twenty-five shellmounds on or near the shoreline of the Bay. They were encountered in a wide variety of places, including adjacent to springs or streams, on exposed bluffs or headlands, or in salt marshes, but the majority were located within 50 feet of the Bay and the largest mounds were typically encountered at the head of sheltered coves.

The large prehistoric population of the San Francisco Bay region resulted in the creation of a prolific archaeological record, with some of the most important sites located in Contra Costa County. The nearest recorded prehistoric site to the Project site is CA-CCO-249, located approximately 1 mile to the northeast and originally recorded by Nelson. This prehistoric habitation site is thought to have been partially destroyed by development.

Archeo-Tec conducted a record search at the NWIC of the California Historical Resources Information System at Sonoma State University on April 25, 2007 (File No. 06-1677). Three previous cultural resources surveys have been conducted within the Project site. David Chavez and Associates conducted a survey (S-14337) in 1992 that included roughly the southwestern half of the Project site. No evidence of archaeological deposits or historic-period resources were identified during this survey. William Self Associates, Inc. conducted a survey (S-25311) in 2002 for a 70-mile-long Kinder Morgan Energy Partners gas pipeline extending between Concord and Sacramento. Approximately 0.3 kilometer of the pipeline alignment crossed the northeastern portion of the Project site. This survey also failed to identify any significant cultural resources. William Self Associates conducted an additional survey (P-07-002675) on the northeastern tip of the current Project site in 2004 for the same Kinder Morgan pipeline project. The Pacheco Slough Historic Dump (P-07-002747), a mid-twentieth century domestic refuse dump, was recorded and evaluated.

Archeo-Tec's archival research identified 12 prior cultural resources surveys conducted within 0.25 miles of the Project site, three of which returned positive results. The Guzzetti House (P-07-002747), recorded by Solano Archaeological Services in 2006, is a residence originally constructed in 1948. Located at 576 Palms Drive, this house is located just outside the northwestern boundary of the Project site. The Contra Costa Canal (P-07-002695), constructed

between 1937 and 1948, is a concrete-lined canal that carries water from the Delta to Martinez. It is located near the southeastern boundary of the Project site, running roughly parallel to I-680.

The third site, referenced as the Pacheco Slough Historic Dump (P-07-002674), consists of a historic-period artifact concentration and associated foundation remains recorded by William Self Associates in June 2004 during construction monitoring of the Kinder Morgan gas pipeline discussed above. Recovered artifacts were characteristic of a rural residential deposit and appear to date from 1880 to 1930. The foundations appear to be those of an out-building, despite the residential character of the artifacts themselves. The site was recommended not significant due to the relatively late date of manufacture of its constituents and a general lack of association.

The remainder of the cultural resources surveys conducted within 0.25 miles of the Project site had negative results, with no cultural materials from either the prehistoric or historic period identified. The Archeo-Tec report also listed ten previous cultural resources surveys performed within 0.5 miles of the Project, nine of which also had negative results. The tenth survey, conducted by David Chavez and Associates in 1992, documents California Historical Landmark No. 722. Located just over 0.25 miles south of the Project site, this California Landmark is the location of the 1856 murder of Dr. John Marsh, a prominent figure in Contra Costa County history, who established the Los Meganos Ranch about 30 miles outside of Martinez in 1837.

ESA conducted an addendum records search at the NWIC for the Project on July 19, 2011 (File No. 11-0061), October 30, 2017 (File No. 17-1271), and July 16, 2020 (File No. 20-0047). The addendum records searches identified one additional cultural resource and three additional studies within the 0.5-mile search radius. The resource is the Peyton Marsh Drainage System (P-07-002685), a twentieth-century public works mosquito abatement project located approximately 1/3-mile west of the Project site. This resource has been recommended not eligible for the National Register (Linn, 1997).

Native American Consultation

As part of the cultural resources assessment, Archeo-Tec consulted with the staff of the Native American Heritage Commission in Sacramento to determine whether any sites deemed sacred by members of the local Native American Community are located within the confines of the Project site. Following a search of the sacred lands file, Ms. Debbie Pilas-Treadway of the Native American Heritage Commission sent Archeo-Tec a letter dated May 7, 2007 indicating that the search failed to indicate the presence of Native American cultural resources in the immediate Project area. Nonetheless, the letter cautioned that the “absence of specific site information in the sacred land file does not indicate the absence of cultural resources in the Project area.”

Based on the requirements of Public Resources Code (PRC) Section 21084.3 (see Section 4.4.3 – Regulatory Setting below), the County updated the tribal consultation in 2017. The County sent letters to the Native American tribes provided by the Native American Heritage Commission as having an interest in the proposed Project vicinity. The letter included a Project description and a map of the Project site. The County also sent the 2007 Archeo-Tec report to the Wilton Rancheria,

who requested by letter (dated June 16, 2017) information regarding cultural resources studies completed for the Project. No response was received at the time this Draft EIR was prepared.

Archaeological Surface Reconnaissance

Two Archeo-Tec archaeologists trained in the identification of prehistoric and historic-period resources surveyed the Project site on May 2nd and 3rd, 2007. The Project site was divided into four arbitrary “quadrants” to facilitate pedestrian transects. Identified as Q1 through Q4 on a survey map, the findings of the survey are described by quadrant below. The most prominent hill on the Project site is Vine Hill. The steepest flanks of Vine Hill could not be surveyed due to excessive slope. In addition, the pond and several other areas could not be surveyed due to standing water. Areas not surveyed can be reasonably assumed not to contain historical resources, based on previous studies consulted and surveys of other areas conducted.

Q1 Survey

Q1 is the northwest quadrant, which was surveyed in 10-meter intervals in a northwest/southeast direction. The quad is sloped to the northeast at approximately 10 to 30 degrees. Surface visibility was poor at the time of the survey due to thick vegetation consisting of tall grass, weeds and patches of stinging nettles. The soil is hard-packed grey silty clay. Evidence of disturbance in this area was observed in the form of bulldozer push piles containing large sandstone boulders. Graded road cuts were identified parallel to the fence line and at the base of the hill. No sites or cultural deposits were encountered in this quadrant.

Q2 Survey

Quadrant Q2, the northeast quadrant, was surveyed in a north/south direction. This quad is in a roughly level area and is dominated by a large pond. When surveying near the north edge of the pond, the transects were changed to an east/west direction. The vegetation around the pond is very thick and included wild mustard, horsetails and papyrus reeds. The soil is hard-packed grey silty clay. Numerous bulldozer push piles were also observed in this quad, along with a modern trash deposit in the northwest corner. Two major underground gas lines are located in the quad and graded road cuts are located parallel to the fence line. No sites or cultural deposits were encountered in this quadrant.

Q3 Survey

The Q3 southeast quadrant was surveyed in a northeast/southwest direction. This quad is in a level area east of Vine Hill and is bisected by a large water channel. The vegetation is very dense along the channel but thins out to knee-high grass. Similar to the other quadrants, the surface soils consist of hard-packed grey silty clay. At the base of the hill, the vegetation is very sparse, with numerous roads and trails crossing the area. Bulldozer push piles were also observed and two major underground gas lines are located in the northeast portion of this quad. No archaeological sites or cultural deposits were encountered.

Q4 Survey

Q4 is the southwest quadrant, which was surveyed in 10-meter intervals in a north/south direction and by topographic methods when necessary. This quad is dominated by the large rounded Vine Hill, which contains soil similar to that on the rest of the site and is covered by knee-high grasses with a small stand of oak trees on the north slope. With slopes on the shoulder of the hill ranging from 35 to 50 degrees, it was not feasible to survey these areas; however, as previously stated, areas not surveyed can be reasonably assumed not to contain historical resources, based on previous studies consulted and surveys of other areas conducted. A USGS survey marker dated 1946 was found upside down at the high point of the hill, next to one of the many road cuts that crisscross the top of the hill. Some of the road cuts have exposed bedrock outcrops of sandstone. Elsewhere, the quad has been very disturbed by numerous bulldozer push piles. No archaeological sites or cultural deposits were encountered in the quadrant.

Pipeline Survey

Much of the pipeline route was obscured by paved or gravel roads, heavy vegetation, and industrial equipment (in the Conco storage yard); all areas of natural soil within the Central Avenue right-of-way were inspected, along with opportunistic inspection of graded cuts, animal burrows, and other areas of natural soil exposure. Buildings and structures adjacent to the pipeline alignment were inspected for indices of historic age.

In general, the pipeline alignment was highly disturbed from construction/installation and maintenance of existing roads, pipelines, and other facilities. Vegetation within the western end of the pipeline alignment on the Seal Island Subdivision property was dense, consisting of shrubs, small trees, grasses and forbs with dense mats of dried oak leaves. The portions of the Central Avenue right-of-way that were not covered by paved or gravel roads contained similar vegetation, although it was possible in areas to scrape away the grasses and leaf litter to make a clear observation of the soil. Pacheco Creek contains dense riparian/wetland vegetation, including reeds, grasses, and forbs. A few broken chunks of concrete, discarded tires, and other pieces of modern trash were observed in this portion of the pipeline alignment. The Conco property was almost entirely surfaced and/or developed, with piled pallets, concrete molds, equipment, tools, and machinery stored within the pipeline alignment along the north side of the existing Contra Costa County Sanitation District easement.

4.4.3 Regulatory Setting

Federal Regulations

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into consideration the potential effects of proposed undertakings on cultural resources listed on or determined eligible for inclusion in the NRHP, and to allow the Advisory Council on Historic Preservation the opportunity to comment on the proposed undertaking. The regulations implementing Section 106 are promulgated by the Secretary of the Interior, as codified in Title 36

Code of Federal Regulations (CFR) Part 800. Section 106 requirements apply to properties not formally determined eligible, but which are considered to meet eligibility requirements. Archaeological resources are typically considered eligible for inclusion in the NRHP because of the information they have or may be likely to convey. Intensity of impacts to archaeological resources relates to the importance of the information they contain and the extent of the disturbance or degradation. Determining the NRHP eligibility of a site or district is guided by the specific legal context of the site's significance as set out in 36 CFR Section 60.4. The NHPA authorizes the Secretary of the Interior to expand a National Register of districts, sites, buildings, structures and objects of significance in American history, architecture, archaeology, engineering and culture. A property may be listed in the NRHP if it meets criteria for evaluation as defined in 36 CFR Section 60.4. Section 110(d)(6)(A) of the NHPA allows properties of traditional religious and cultural importance to a tribe to be determined eligible for inclusion in the NRHP. The quality of significance in American history, architecture, archaeology, engineering and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

- That are associated with events that have made a significant contribution to the broad patterns of our history; or
- That are associated with the lives of persons significant in our past; or
- That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- That have yielded, or may be likely to yield, information important in prehistory or history.

The Project site was surveyed for cultural and historically significant resources, none of which were determined eligible for the NRHP.

California State Regulations

The State of California consults on implementation of the National Historic Preservation Act (NHPA) of 1966, as amended, and also oversees statewide comprehensive cultural resource surveys and preservation programs. The California Office of Historic Preservation, as an office of the California Department of Parks and Recreation, implements the policies of the NHPA statewide. The Office of Historic Preservation also maintains the California Historical Resources Inventory. The State Historic Preservation Officer is an appointed official who implements historic preservation programs within the state's jurisdictions.

California Register of Historic Resources

The California Office of Historic Preservation (OHP) administers the CRHR, which was established in 1992 through amendments to the Public Resources Code (PRC), to be used by state and local agencies, private groups, and citizens to identify the state's historical resources and to indicate what properties are to be protected from substantial adverse change. The CRHR includes resources that have been formally determined eligible for, or listed in, the NRHP, State Historical

Landmark Number 770 or higher, Points of Historical Interest recommended for listing by the State Historical Resources Commission (SHRC) for listing, resources nominated for listing and determined eligible in accordance with criteria and procedures adopted by the SHRC, and resources and districts designated as city or county landmarks when the designation criteria are consistent with CRHR criteria. PRC Section 5024.1 requires evaluation of historical resources to determine their eligibility for listing on the CRHR. The criteria for listing resources on the CRHR were expressly developed to be in accordance with previously established criteria developed for listing in the NRHP, which is described above. As defined by Section 15064.5(a)(3)(A-D) of the CEQA Guidelines, a resource shall be considered historically significant if the resource meets the following criteria:

- It is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- It is associated with the lives of persons important in our past;
- It embodies the distinctive characteristics of a type, period, region or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- It has yielded, or may be likely to yield, information important in prehistory or history. (Criterion D is usually applied only to archaeological sites, rather than in the evaluation of most historic architectural structures, see below.)

Automatic CRHR listings include NRHP listed and determined eligible historic properties (either by the Keeper of the NRHP or through a consensus determination on a project review); State Historical Landmarks from number 770 onward; Points of Interest nominated from January 1998 onward. Landmarks prior to 770 and Points of Historical Interest may be listed through an action of the SHRC (CAL/OHP ca. 1999b).

The Project area was surveyed for cultural and historically significant resources. None of the sites within the Project area have been determined eligible for the CRHR.

California Environmental Quality Act

The California Environmental Quality Act (CEQA), as codified in PRC Section 21000 et seq., is the principal statute governing the environmental review of projects in the state. CEQA requires lead agencies to determine if a project would have a significant effect on historical resources, including archaeological resources. The CEQA Guidelines define a historical resource as: (1) a resource in the California Register; (2) a resource included in a local register of historical resources, as defined in PRC Section 5020.1(k) or identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g); or (3) any object, building, structure, site, area, place, record, or manuscript that a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California, provided the lead agency's determination is supported by substantial evidence in light of the whole record.

CEQA requires lead agencies to determine if a project would have a significant effect on important archaeological resources, either historical resources or unique archaeological resources. If a lead agency determines that an archaeological site is a historical resource, the provisions of Public Resources Code Section 21084.1 would apply, and CEQA Guidelines Sections 15064.5(c) and 15126.4 and the limits in Public Resources Code Section 21083.2 would not apply. If a lead agency determines that an archaeological site is an historical resource, the provisions of PRC Section 21084.1 and CEQA Guidelines Section 15064.5 would apply. If an archaeological site does not meet the CEQA Guidelines criteria for a historical resource, then the site may meet the threshold of PRC Section 21083 regarding unique archaeological resources. A unique archaeological resource is “an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria.

- Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
- Has a special and particular quality such as being the oldest of its type or the best available example of its type.
- Is directly associated with a scientifically recognized important prehistoric or historic event or person” (PRC Section 21083.2 [g]).

The CEQA Guidelines note that if a resource is neither a unique archaeological resource nor a historical resource, the effects of the project on that resource shall not be considered a significant effect on the environment (CEQA Guidelines Section 15064[c][4]).

Assembly Bill 52

In September 2014, the California Legislature passed Assembly Bill (AB) 52, which added provisions to the PRC regarding the evaluation of impacts on tribal cultural resources under CEQA, and consultation requirements with California Native American tribes. In particular, AB 52 now requires lead agencies to analyze project impacts on tribal cultural resources separately from archaeological resources (PRC Section 21074; 21083.09). PRC Section 21074 defines tribal cultural resources as follows:

a) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

- 1) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
- 2) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this

paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape. A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “non-unique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

AB 52 also requires lead agencies to engage in additional consultation procedures with respect to California Native American tribes (PRC Section 21080.3.1, 21080.3.2, 21082.3). Specifically, PRC Section 21084.3 states:

- a) Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.
- b) If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:
 - 1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - 2) Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - A. Protecting the cultural character and integrity of the resource.
 - B. Protecting the traditional use of the resource.
 - C. Protecting the confidentiality of the resource.
 - 3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - 4) Protecting the resource.

Further, AB 52 protects tribal cultural resources by requiring that lead agencies seek tribal consultation prior to the release of any CEQA documentation. Lead agencies must notify tribes traditionally and culturally affiliated with a potential project area within 14 days of a development application being complete. Upon this initial notification, tribes would confirm consultation within 30 days of notification if consultation is deemed necessary. In addition, the Office of Planning and Research updated Appendix G of the CEQA Guidelines to provide sample questions regarding impacts to tribal cultural resources (PRC Section 21083.09).

Other California Laws and Regulations

The disposition of Native American burials is governed by Section 7050.5 of the California Health and Safety Code and PRC Sections 5097.94 and 5097.98 and fall within the jurisdiction of the NAHC.

The Project will follow the procedures required by the California Health and Safety Code as outlined below in Impact CUL-1 and Mitigation Measures CUL-1a and CUL-1b if any Native American remains are uncovered during Project construction. The Project would therefore be consistent with these requirements.

Local Plans and Policies

Contra Costa County General Plan

The *Contra Costa County General Plan* (General Plan) contains goals and policies that could be applicable to the Project. These goals and policies, primarily located in Open Space Element policies 9-32 through 9-34, are summarized as follows:

- To identify and preserve important archaeological and historic resources within the County.
- To preserve areas with identifiable and important archaeological or historic significance.

The Project would be in compliance with General Plan policies related to cultural resources.

4.4.4 Significance Criteria

Based on Appendix G of the CEQA *Guidelines*, implementation of the Project would have a significant effect on cultural resources if it would:

- a) Cause a substantial adverse change in the significance of an historical resource as defined in Section 15064.5;
- b) Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5;
- c) Disturb any human remains, including those interred outside of formal cemeteries; or
- d) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Section 21074.

Section 15064.5 refers to Public Resources Code Section 21083.2 for a definition of a unique archaeological resource, which means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

- it contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information;

- it has a special and particular quality such as being the oldest of its type or the best available example of its type; or
- it is directly associated with a scientifically recognized important prehistoric or historic event;
- has yielded, or may be likely to yield, information important in prehistory or history.²

PRC Section 21074 defines a tribal cultural resource as sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historical Resources, included in a local register of historical resources, or determined by the lead agency to be significant.

Analysis Methodology

This section assesses potential impacts to cultural resources as a result of the implementation of the Project based on data from the cultural resources inventory completed by the archaeological consulting firm Archeo-Tec, Inc., updated by ESA, as well as information presented in the *General Plan*. Archeo-Tec and ESA conducted archival records searches at the Northwest Information Center at Sonoma State University to review all archaeological studies and recorded sites within a 0.5-mile radius of the Project site. Archeo-Tec consulted with the staff of the Native American Heritage Commission in Sacramento to determine whether any portion of the Project property may encroach upon any sites deemed sacred by members of the local Native American Community. The County initiated consultation efforts with local Native American tribes who might have interest in the Project site. Two Archeo-Tec archaeologists trained in the identification of prehistoric and historic period resources conducted a surface reconnaissance of the Project site to search for signs of cultural deposits. An ESA archaeologist conducted a survey of the pipeline alignment that would connect to the Contra Costa Water District water supply.

Topics with No Impact or Otherwise Not Addressed in this EIR

The Project site contains no historical resources on the Project site or in the vicinity of the Project's off-site improvements (e.g., Central Avenue and Palms Drive improvements, installation of the Project waterline) that would be affected significantly by Project-related development, including off-site infrastructure, and therefore there are no historical resources to which the Project could cause a substantial adverse change (**Criterion a**).

² Public Resources Code, Section 21083.2(g).

4.4.5 Impact Analysis

Archaeological Resources, Human Remains, and Tribal Cultural Resources

Impact CUL-1: The Project would involve extensive subsurface disturbance that could potentially encounter and damage previously undiscovered archaeological resources, human remains, and tribal cultural resources. (Criteria b, c and d) (*Potentially Significant prior to Mitigation*)

Although no recorded prehistoric or historic archaeological sites or tribal cultural resources were identified on the Project site or in the vicinity of off-site Project improvements, the inadvertent discovery of archaeological resources, human remains, both of which can be considered tribal cultural resources, cannot be entirely discounted. Impacts to previously undiscovered archaeological resources, human remains, or tribal cultural resources would be a potentially significant impact. This impact would be reduced to a less-than-significant level by implementation of Mitigation Measure CUL-1a and CUL-1b. These measures would ensure that proper procedures are followed in the event of a find, including stopping work in the vicinity and contacting a qualified archaeologist, or the County Coroner and the Native American Heritage Commission, as applicable.

Mitigation Measure CUL-1a: If prehistoric or historic-period archaeological resources are encountered during Project implementation, including ground disturbance associated with project construction, all construction activities within 100 feet shall halt, and a qualified archaeologist, defined as an archaeologist meeting the U.S. Secretary of the Interior’s Professional Qualification Standards for Archeology, shall inspect the find within 24 hours of discovery and notify the County of their initial assessment. Prehistoric archaeological materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or toolmaking debris; culturally darkened soil (“midden”) containing heat-affected rocks, artifacts, or shellfish remains; and stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered stone tools, such as hammerstones and pitted stones. Historic-period materials might include building or structure footings and walls, and deposits of metal, glass, and/or ceramic refuse.

If the County determines, based on recommendations from a qualified archaeologist and a Native American representative (if the resource is Native American-related), that the resource may qualify as a historical resource or unique archaeological resource (as defined in CEQA Guidelines Section 15064.5) or a tribal cultural resource (as defined in PRC Section 21080.3), the resource shall be avoided if feasible. If avoidance is not feasible, the County shall consult with appropriate Native American tribes (if the resource is Native American-related), and other appropriate interested parties to determine treatment measures to avoid, minimize, or mitigate any potential impacts to the resource pursuant to PRC Section 21083.2, and CEQA Guidelines Section 15126.4. This shall include documentation of the resource and may include data recovery (according to PRC Section 21083.2), if deemed appropriate, or other actions such as treating the resource with culturally appropriate dignity and protecting the cultural character and integrity of the resource, determined by a qualified professional or California Native American tribe, as is appropriate (according to PRC Section 21084.3). All significant cultural materials

recovered shall, at the discretion of the consulting professional, be subject to scientific analysis, professional museum curation, and documentation according to current professional standards.

In considering any suggested mitigation proposed by the consulting professional to mitigate impacts to cultural resources, the County shall determine whether avoidance is feasible in light of factors such as the nature of the find, project design, costs, and other considerations.

If avoidance is infeasible, other appropriate measures, such as data recovery, shall be instituted. The resource shall be treated with the appropriate dignity, taking into account the resource's historical or cultural value, meaning, and traditional use, as determined by a qualified professional or California Native American tribe, as is appropriate. Work may proceed on other parts of the project site while mitigation for cultural resources is carried out. All significant cultural materials recovered shall, at the discretion of the consulting professional, be subject to scientific analysis, professional museum curation, and documentation according to current professional standards. At the County's discretion, all work performed by the consulting professional shall be paid for by the proponent and at the County's discretion, the professional may work under contract with the County.

Mitigation Measure CUL-1b: In the event of discovery or recognition of any human remains during construction activities, the following steps shall be taken:

1. There shall be no further excavation or disturbance of the location where human remains are found or within 100 feet until:
 - A. The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and
 - B. If the coroner determines the remains to be Native American:
 - (1) The coroner shall contact the Native American Heritage Commission within 24 hours;
 - (2) The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American;
 - (3) The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98; or
2. Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:

- A. The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the Commission;
- (1) The identified descendant fails to make a recommendation; or
 - (2) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

Significant after Mitigation: Less than Significant.

Cumulative Impacts

Impact C-CUL-1: The Project, in conjunction with cumulative development, could contribute to cumulative impacts on cultural resources. (Criteria b, c and d) (*Less than Significant, No Mitigation Required*)

Geographic Context

The geographic area considered for the cumulative effects of cultural resources is generally the Vine Hill/Pacheco Boulevard area.

Cumulative Analysis

No significant archaeological resources are known to exist on the Project site or in off-site areas where Project-related improvements will be undertaken, and archival research performed as background to this EIR did not identify any recorded archaeological sites in the Project site or in the relevant off-site areas. As noted above, while there remains some potential for buried cultural resources from historic, protohistoric, or prehistoric eras to be encountered during ground-disturbing activities, implementation of Mitigation Measure CUL-1a and 1b would reduce any potential impacts to such resources to less-than-significant levels.

With respect to cumulative impacts, the Palms 10 subdivision is located within close proximity to the Project site, but impacts to cultural resources are generally site specific and do not cumulate. As provided in Section 15130 of the *CEQA Guidelines*, an EIR may determine that a Project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact. With implementation of the mitigations measures identified in this analysis, the proposed Project would not result in a considerable contribution to any potential cumulative effect on cultural resources, and implementation of Mitigation Measures CUL-1a and 1b would satisfy this criterion. Therefore, although no

cumulative impacts to cultural resources have been identified for the proposed Project, the mitigation for potential project impacts to cultural resources would also serve as mitigation ensuring there was no considerable contribution to a potential cumulative impact to cultural resources.

Mitigation: None required.

References - Cultural Resources

Archeo-Tec, Inc., *Phase I Cultural Resources Assessment Report for the Bayview Residential Subdivision Project, Martinez, Contra Costa County, California*, Prepared for Herring and Associates, El Cerrito, CA, May 4, 2007.

Contra Costa County, *Contra Costa County General Plan 2005 - 2020*, January 18, 2005.

Environmental Science Associates (ESA), Northwest Information Center of the California Historical Resources Information System at Sonoma State University (File No. 11-0061), July 2011.

_____, Northwest Information Center of the California Historical Resources Information System at Sonoma State University (File No. 17-1271), October 30, 2017.

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