

## 3.16 - Tribal Cultural Resources

### 3.16.1 - Introduction

This section describes the existing tribal cultural resources setting in the region and project area as well as the relevant regulatory setting. This section also evaluates the possible impacts related to tribal cultural resources that could result from implementation of the project. Information in this section is based on initial consultation with the Native American Heritage Commission (NAHC), subsequent consultation with tribal representatives identified by the NAHC who may have interest in or additional information on tribal cultural resources that may be impacted by project development (Appendix D). The following comments were received during the Environmental Impact Report (EIR) scoping period related to tribal cultural resources:

- Requests that local Native American tribes are contacted; and
- Request to discuss compliance with Assembly Bill (AB) 52 and Senate Bill (SB) 18; NAHC recommendations for Cultural Resource Assessments.

### 3.16.2 - Existing Setting

#### Tribal Cultural Resources Components

The term “tribal cultural resources” encompasses tribal cultural resources and burial sites. Below is a brief summary of each component:

- **Tribal Cultural Resources:** Tribal cultural resources include sites, features, places, or objects that are of cultural value to one or more California Native American Tribes.
- **Native American Burial Sites and Cemeteries:** Burial sites and cemeteries are formal or informal locations where human remains have been interred and that are of cultural value to one or more California Native American Tribes.

#### Overall Tribal Cultural Resources Setting

Following is a brief overview of the prehistory and ethnographic background, providing a context in which to understand the background and relevance of sites found in the general project area. This section is not intended to be a comprehensive review of the current resources available; rather, it serves as a general overview. Further details can be found in ethnographic studies, mission records, and major published sources.<sup>1,2,3,4,5,6</sup>

<sup>1</sup> Kroeber, A.L. 1925. Handbook of the Indians of California. Bulletin 78. Bureau of American Ethnology. Washington, D.C. Smithsonian Institution.

<sup>2</sup> Beardsley, R.K. 1948. “Cultural Sequences in Central California Archaeology.” American Antiquity 14:1-28.

<sup>3</sup> Bennyhoff, J. 1950. Californian Fish Spears and Harpoons. Berkeley: University of California Anthropological Records 9(4):295–338.

<sup>4</sup> Chartkoff J.L. and K.K. Chartkoff. 1984. The Archaeology of California. Menlo Park: Stanford University Press.

<sup>5</sup> Moratto, M.J. 1984. California Archaeology. San Diego: Academic Press.

<sup>6</sup> Jones, T.L. and Kathryn A. Klar. 2007. California Prehistory. Lanham: AltaMira Press; Rowman & Littlefield Publishers, Inc.

### **Prehistoric Background**

In general, archaeological research in the greater San Francisco Bay Area has focused on coastal areas, where large shellmounds were relatively easily identified on the landscape. This research and its chronological framework, however, is relevant to and has a bearing on our understanding of prehistory in areas adjacent to the San Francisco Bay Area, including modern Contra Costa County.

The San Francisco Bay Area supported a dense population of hunter-gatherers over thousands of years, leaving a rich a varied archaeological record. The Bay Area was a place of incredible language diversity, with seven languages spoken at the time of Spanish settlement in 1776. The diverse ecosystem of the bay and surrounding lands supported an average of three to five persons per square mile, but reached 11 persons per square mile in the North Bay. At the time of Spanish contact, the people of the Bay Area were organized into local tribelets that defended fixed territories under independent leaders. Typically, individual Bay Area tribelets included 200 to 400 people distributed among three to five semi-permanent villages, within territories measuring approximately 10 to 12 miles in diameter.<sup>7</sup>

Native American occupation and use of the greater Bay Area, including the regions comprising modern Walnut Creek and Pleasant Hill, extends over 5,000 to 7,000 years and may be longer. Early archaeological investigations in Central California were conducted at sites located in the Sacramento-San Joaquin Delta region. The first published account documents investigations in the Lodi and Stockton area. The initial archaeological reports typically contained descriptive narratives with more systematic approaches sponsored by Sacramento Junior College in the 1930s. At the same time, University of California at Berkeley excavated several sites in the lower Sacramento Valley and Delta region, which resulted in recognizing archaeological site patterns based on a variation of intersite assemblages. Research during the 1930s identified temporal periods in central California prehistory and provided an initial chronological sequence. In 1939, researcher Jeremiah Lillard of Sacramento Junior College noted that each cultural period led directly to the next and that influences spread from the Delta region to their regions in Central California.<sup>8</sup> In the late 1940s and early 1950s, researcher Richard Beardsley of the University of California Berkeley documented similarities in artifacts among sites in the San Francisco Bay region and the Delta and refined his findings into a cultural model that ultimately became known as the Central California Taxonomic System (CCTS). This system proposed a uniform, linear sequence of cultural succession.<sup>9</sup>

To address some of the flaws in the CCTS system, D.A. Fredrickson introduced a revision that incorporated a system of spatial and cultural integrative units. Fredrickson separated cultural, temporal, and spatial units from each other and assigned them to six chronological periods: Paleo-Indian (10000 to 6000 before Christ [BC]); Lower, Middle and Upper Archaic (6000 BC to *anno domini* [AD] 500), and Emergent (Upper and Lower, AD 500 to 1800). The suggested temporal ranges are similar to earlier horizons, which are broad cultural units that can be arranged in a temporal

<sup>7</sup> Milliken, Randall et.al. 2007. Punctuated Culture Change in the San Francisco Bay Area, In Prehistoric California: Colonization, Culture, and Complexity, edited by T.L. Jones and K.A. Klar, 99–124. AltaMira Press.

<sup>8</sup> Lillard, J.B. and W.K. Purves. 1936. The Archaeology of the Deer Creek-Cosumnes Area, Sacramento Co., California. Sacramento. Sacramento Junior College, Department of Anthropology Bulletin 1.

<sup>9</sup> Beardsley, R.K. 1948. Cultural Sequences in Central California Archaeology. American Antiquity 14:1–28.

sequence.<sup>10</sup> In addition, Fredrickson defined several patterns—a general way of life shared within a specific geographical region. These patterns include:

- Windmill Pattern or Early Horizon (3000 to 1000 before Common Era [BCE])
- Berkeley Pattern or Middle Horizon (1000 BCE to 500 Common Era [CE])
- Augustine Pattern or Late Horizon (500 CE to historic period)

Brief descriptions of these temporal ranges and their unique characteristics follow.

*Windmill Pattern or Early Horizon (3000 to 1000 BCE)*

Characterized by the Windmill Pattern, the Early Horizon was centered in the Cosumnes district of the Delta and emphasized hunting rather than gathering, as evidenced by the abundance of projectile points in relation to plant processing tools. Additionally, atlatl, dart, and spear technologies typically included stemmed projectile points of slate and chert but minimal obsidian. The large variety of projectile point types and faunal remains suggests exploitation of numerous types of terrestrial and aquatic species.<sup>11</sup> Burials occurred in cemeteries and intra-village graves. These burials typically were ventrally extended, although some dorsal extensions are known with a westerly orientation and a high number of grave goods. Trade networks focused on acquisition of ornamental and ceremonial objects in finished form rather than on raw material. The presence of artifacts made of exotic materials such as quartz, obsidian, and shell indicates an extensive trade network that may represent the arrival of Utian populations into central California. Also indicative of this period are rectangular *Haliotis* and *Olivella* shell beads, and charmstones that usually were perforated.<sup>12</sup>

*Berkeley Pattern or Middle Horizon (1000 BCE to 500 CE)*

The Middle Horizon is characterized by the Berkeley Pattern, which displays considerable changes from the Early Horizon. This period exhibited a strong milling technology represented by minimally shaped cobble mortars and pestles, although metates and manos were still used. Dart and atlatl technologies during this period were characterized by non-stemmed projectile points made primarily of obsidian. Fredrickson suggests that the Berkeley Pattern marked the eastward expansion of Miwok groups from the San Francisco Bay Area. Compared with the Early Horizon, there is a higher proportion of grinding implements at this time, implying an emphasis on plant resources rather than on hunting. Typical burials occurred within the village with flexed positions, variable cardinal orientation, and some cremations. As noted by Lillard, Heizer, and Fenenga, the practice of spreading ground ochre over the burial was common at this time. Grave goods during this period are generally sparse and typically include only utilitarian items and a few ornamental objects. However, objects such as charmstones, quartz crystals, and bone whistles occasionally were present, which suggest the religious or ceremonial significance of the individual.<sup>13</sup> During this period, larger populations are suggested by the number and depth of sites compared with the Windmill Pattern.

<sup>10</sup> Fredrickson, D.A. 1973. Early Cultures of the North Coast of the North Coast Ranges, California. PhD dissertation.

<sup>11</sup> Bennyhoff, J. 1950. Californian Fish Spears and Harpoons. University of California Anthropological Records 9(4):295–338.

<sup>12</sup> Ragir, S.R. 1972. The Early Horizon in Central California Prehistory. Contributions of the University of California Archaeological Research Facility 15. Berkeley, CA.

<sup>13</sup> Lillard, J.B., R.F. Heizer, and F. Fenenga. 1939. An Introduction to the Archaeology of Central California. Sacramento Junior College, Department of Anthropology, Bulletin 2.

According to Fredrickson, the Berkeley Pattern reflects gradual expansion or assimilation of different populations rather than sudden population replacement and a gradual shift in economic emphasis.<sup>14</sup>

*Augustine Pattern or Late Horizon (500 CE to Historic Period)*

The Late Horizon is characterized by the Augustine Pattern, which represents a shift in the general subsistence pattern. Changes include the introduction of bow and arrow technology; and most importantly, acorns became the predominant food resource. Trade systems expanded to include raw resources as well as finished products. There are more baked clay artifacts and extensive use of Haliotis ornaments of many elaborate shapes and forms. According to Moratto, burial patterns retained the use of flexed burials with variable orientation, but there was a reduction in the use of ochre and widespread evidence of cremation.<sup>15</sup> Judging from the number and types of grave goods associated with the two types of burials, cremation seems to have been reserved for individuals of higher status, whereas other individuals were buried in flexed positions. Johnson suggests that the Augustine Pattern represents expansion of the Wintuan population from the north, which resulted in combining new traits with those established during the Berkeley Pattern.<sup>16</sup>

Central California research has expanded from an emphasis on defining chronological and cultural units to a more comprehensive look at settlement and subsistence systems. This shift is illustrated by the early use of burials to identify mortuary assemblages and more recent research using osteological data to determine the health of prehistoric populations. Although debate continues over a single model or sequence for California, the general framework consisting of three temporal/cultural units is generally accepted, although the identification of regional and local variation is a major goal of current archaeological research.

***Ethnographic Background***

The San Francisco Bay Area consisted of several independent tribal territories during the prehistoric and early historic periods. Native Peoples largely spoke dialects of five distinct languages: Costanoan (Ohlone), Bay Miwok, Plains Miwok, Patwin, and Wappo. The project site lies at intersection of several of these groups at different periods in time, however it was largely within the ethnographic and historic boundaries of Bay Miwok speakers, who occupied the eastern portions of Contra Costa County, from Walnut Creek east to the Sacramento-San Joaquin Delta, including the northern slopes of Mount Diablo. Several bands of Miwok are associated with the area, the closest being the Saclan, whose territory extended through the hills east of present-day Rossmoor, Lafayette, Moraga and Walnut Creek.

The foremost political unit of the Miwok was the tribelet; an independent and sovereign nation with defined boundaries and control over the natural resources within those boundaries. As noted by Levy, villages are described as headquarters of a localized patrilineage, and this social organization

<sup>14</sup> Fredrickson, D.A. 1973. Early Cultures of the North Coast of the North Coast Ranges, California. PhD dissertation.

<sup>15</sup> Moratto, M.J. 1984. California Archaeology. San Diego: Academic Press.

<sup>16</sup> Johnson, J.J. 1976. Archaeological Investigations at the Blodgett Site (CA-SAC-267), Sloughhouse Locality, California. Report to the U.S. National Parks Service, Western Regional Office, Tucson, Arizona.

was further prescribed by individual lineage memberships in a moiety. With the notable exceptions of tobacco and dogs, the Eastern Miwok largely lacked cultivated plants or domesticated animals.<sup>17</sup>

All plant foods were naturally occurring and gathered by hand, the most important of which were the seven varieties of acorn used by the Eastern Miwok people. Acorns were usually allowed to ripen and fall off the tree on their own where they would then be collected in large numbers in burden baskets. The acorns were then shelled, placed on an acorn anvil, and struck with a hammer stone to expose the meats within. These meats were ground into a fine meal using a bedrock mortar and cobblestone pestle. The meal was then sifted into a tightly coiled basket, and several applications of water were run through the basket to leach the bitter tannin from the meal. Once dry, the meal could be used in the preparation of acorn soup, mush, biscuits, and bread. For this reason, access to acorns; clean, moving water; and exposed bedrock was particularly important to the Eastern Miwok.

The project site is located to the east of Grayson Creek, formerly known as Pacheco Creek Springs and to the west of Walnut Creek. Watercourses were often a focus of prehistoric occupation in central California with Native American groups exploiting a variety of ecological niches. While this area was within an environmentally advantageous area for Native Americans located between the resources of the San Francisco Bay margin and the foothills and nearby creeks, no known ethnographic settlements are known to have been located within or adjacent to the project site. Prehistoric site types recorded in the general Pleasant Hill area consist of lithic scatters, quarries, habitation sites (including burials), bedrock mortars or other milling feature sites, petroglyph sites, and isolated burial sites. However, none of these resources or the habitation mounds mapped by Whitney in 1873 or recorded by Nels C. Nelson in 1912 are located on or near the project site.

## **Records Searches to Identify Existing Tribal Cultural Resources**

### ***NAHC Sacred Lands File Search and Tribal Correspondence***

On September 10, 2018, FirstCarbon Solutions (FCS) sent a letter to the NAHC in an effort to determine whether any sacred sites are listed on its Sacred Lands File for the project site vicinity. A response was received on September 26, 2018, indicating that the Sacred Lands File failed to indicate the presence of existing Native American cultural resources in the immediate project site vicinity. The NAHC included a list of seven tribal representatives available for consultation. To ensure that all Native American knowledge and concerns over potential tribal cultural resources that may be affected by the project are addressed, a letter containing project information and requesting any additional information was sent to each tribal representative on October 2, 2018.

## **3.16.3 - Regulatory Framework**

### **Federal**

#### ***National Historic Preservation Act***

The National Historic Preservation Act of 1966 (NHPA), as amended, established the National Register of Historic Places (NRHP), which contains an inventory of the nation's significant prehistoric and historic properties. Under the Code of Federal Regulations (CFR) 36 CFR 60, a property is

<sup>17</sup> Levy, R. 1978. Costanoan. In California, edited by Robert F. Heizer, pp. 485–495. Handbook of North American Indians, Vol. 8. W.G. Sturtevant, general editor, Smithsonian Institution, Washington D.C.

recommended for possible inclusion on the NRHP if it is at least 50 years old, has integrity, and meets one of the following criteria:

- It is associated with significant events in history, or broad patterns of events.
- It is associated with significant people in the past.
- It embodies the distinctive characteristics of an architectural type, period, or method of construction; or it is the work of a master or possesses high artistic value; or it represents a significant and distinguishable entity whose components may lack individual distinction.
- It has yielded, or may yield, information important in history or prehistory.

Certain types of properties are usually excluded from consideration for listing in the NRHP, but they can be considered if they meet special requirements in addition to meeting the criteria listed above. Such properties include religious sites, relocated properties, graves and cemeteries, reconstructed properties, commemorative properties, and properties that have achieved significance within the past 50 years.

#### ***Archaeological Resources Protection Act***

The Archaeological Resources Protection Act (ARPA) amended the Antiquities Act of 1906 (16 United States Code [USC] 431–433) and set a broad policy that archaeological resources are important to the nation and should be protected, and required special permits before the excavation or removal of archaeological resources from public or Indian lands. The purpose of ARPA was to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites that are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data that were obtained before October 31, 1979.

#### ***American Indian Religious Freedom Act***

The American Indian Religious Freedom Act (AIRFA) established federal policy to protect and preserve the inherent rights of freedom for Native groups to believe, express, and exercise their traditional religions. These rights include but are not limited to access to sites, use and possession of sacred objects, and freedom to worship through ceremonials and traditional rites.

#### ***Native American Graves Protection and Repatriation Act***

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 sets provisions for the intentional removal and inadvertent discovery of human remains and other cultural items from federal and tribal lands. It clarifies the ownership of human remains and sets forth a process for repatriation of human remains and associated funerary objects and sacred religious objects to the Native American groups claiming to be lineal descendants or culturally affiliated with the remains or objects. It requires any federally funded institution housing Native American remains or artifacts to compile an inventory of all cultural items within the museum or with its agency and to provide a summary to any Native American tribe claiming affiliation.

## State

### **CEQA Guidelines Section 15064.5(a)—CEQA Definition of Historical Resources**

California Environmental Quality Act (CEQA) Guidelines Section 15064.5(a), in Title 14 of the California Code of Regulations, defines a “historical resource” as:

- (1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources.
- (2) A resource included in a local register of historical resources, as defined in Section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements of Section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
- (3) Any object, building, structure, site, area, place, record, or manuscript which 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 may be considered to be an historical resource, provided the lead agency’s determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources.
- (4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to Section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in Section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code Sections 5020.1(j) or 5024.1.

Therefore, under the CEQA Guidelines, even if a resource is not included on any local, State, or federal register, or identified in a qualifying historical resources survey, a lead agency may still determine that any resource is a historical resource for the purposes of CEQA if there is substantial evidence supporting such a determination. A lead agency must consider a resource to be historically significant if it finds that the resource meets the criteria for listing in the California Register of Historical Resources (CRHR).

Archaeological and historical sites are protected pursuant to a wide variety of State policies and regulations, as enumerated in the Public Resources Code. Cultural resources are recognized as nonrenewable resources and receive additional protection under the Public Resources Code and CEQA.

### **CEQA Guidelines Section 15064.5(a)(3)—California Register of Historical Resources Criteria**

As defined by CEQA Guidelines, Section 15064.5(a)(3)(A-D), a resource shall be considered historically significant if the resource meets the criteria for listing on the CRHR. The CRHR and many local preservation ordinances have employed the criteria for eligibility to the NRHP as a model (see

criteria described above under the description of the NHPA), since the NHPA provides the highest standard for evaluating the significance of historic resources. A resource that meets NRHP criteria is clearly significant. In addition, a resource that does not meet NRHP standards may still be considered historically significant at a local or State level.

***California Public Resources Code Section 5024.1—California Register of Historic Resources***

Section 5024.1 of the Public Resources Code states that the CRHR is a guide 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. Administration of the CRHR is to be overseen by the NAHC. Section 5024.1 indicates that the register shall include historical resources determined by the NAHC, according to adopted procedures, to be significant and to meet the criteria in subdivision (c).

***CEQA Guidelines 15064.5(c)—Effects on Archaeological Resources***

CEQA Guidelines state that a resource need not be listed on any register to be found historically significant. CEQA Guidelines direct lead agencies to evaluate archaeological sites to determine if they meet the criteria for listing in the CRHR. If an archaeological site is a historical resource, in that it is listed or eligible for listing in the CRHR, potential adverse impacts to it must be considered. If an archaeological site is considered not to be an historical resource but meets the definition of a “unique archeological resource” as defined in Public Resources Code Section 21083.2, then it would be treated in accordance with the provisions of that section.

***CEQA Guidelines Section 15064.5(d)—Effects on Human Remains***

Native American human remains and associated burial items may be significant to descendant communities and/or may be scientifically important for their informational value. They may be significant to descendant communities for patrimonial, cultural, lineage, and religious reasons. The specific stake of some descendant groups in ancestral burials is a matter of law for some groups, such as Native Americans (CEQA Guidelines § 15064.5(d); Public Resources Code [PRC] § 5097.98). CEQA and other State regulations regarding Native American human remains provide the following procedural requirements to assist in avoiding potential adverse effects on human remains within the contexts of their value to both descendant communities and the scientific community:

- When an initial study identifies the existence or probable likelihood that a project would affect Native American human remains, the lead agency is to contact and work with the appropriate Native American representatives identified through the NAHC to develop an agreement for the treatment and disposal of the human remains and any associated burial items (CEQA Guidelines § 15064.5(d); PRC § 5097.98).
- If human remains are accidentally discovered, the county coroner must be contacted. If the county coroner determines that the human remains are Native American, the coroner must contact the NAHC within 24 hours. The NAHC must identify the most likely descendant (MLD) to provide for the opportunity to make recommendations for the treatment and disposal of the human remains and associated burial items.

- If the MLD fails to make recommendations within 24 hours of notification or the project applicant rejects the recommendations of the MLD, the Native American human remains and associated burial items must be reburied in a location not subject to future disturbance within the project site (PRC § 5097.98).
- If potentially affected human remains or a burial site may have scientific significance, whether or not it has significance to Native Americans or other descendent communities, then under CEQA, the appropriate mitigation of effect may require the recovery of the scientific information of the remains/burial through identification, evaluation, data recovery, analysis, and interpretation (CEQA Guidelines § 15064.5(c)(2)).

### ***California Public Resources Code Section 5097.91—Native American Heritage Commission***

Section 5097.91 of the Public Resources Code established the NAHC, whose duties include the inventory of places of religious or social significance to Native Americans and the identification of known graves and cemeteries of Native Americans on private lands. Under Section 5097.91 of the Public Resources Code, a State policy of noninterference with the free expression or exercise of Native American religion was articulated along with a prohibition of severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites or sacred shrines located on public property. Section 5097.98 of the Public Resources Code specifies a protocol to be followed when the NAHC receives notification of a discovery of Native American human remains from a County Coroner. Section 5097.5 defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historic, or paleontological resources located on public lands.

### ***California Senate Bill 18—Protection of Tribal Cultural Places***

SB 18 (California Government Code § 65352.3) incorporates the protection of California traditional tribal cultural places into land use planning for cities, counties, and agencies by establishing responsibilities for local governments to contact, refer plans to, and consult with California Native American tribes as part of the adoption or amendment of any general or specific plan proposed on or after March 1, 2005. SB 18 requires public notice to be sent to tribes listed on the NAHC SB 18 Tribal Consultation list within the geographical areas affected by the proposed changes. Tribes must respond to a local government notice within 90 days (unless a shorter time frame has been agreed upon by the tribe), indicating whether or not they want to consult with the local government. Consultations are for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code that may be affected by the proposed adoption or amendment to a general or specific plan.

### ***California Assembly Bill 52—Effects on Tribal Cultural Resources***

AB 52 was signed into law on September 25, 2014, and provides that any public or private “project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” Tribal Cultural Resources include “[s]ites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources.” Under prior law, Tribal Cultural Resources were typically addressed under the umbrella of “cultural resources,” as

discussed above. AB 52 formally added the category of “tribal cultural resources” to CEQA, and extends the consultation and confidentiality requirements to all projects, rather than just projects subject to SB 18 as discussed above.

The parties must consult in good faith, and consultation is deemed concluded when either: (1) the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource (if such a significant effect exists); or (2) when a party concludes that mutual agreement cannot be reached. Mitigation measures agreed upon during consultation must be recommended for inclusion in the environmental document. AB 52 also identifies mitigation measures that may be considered to avoid significant impacts if there is no agreement on appropriate mitigation. Recommended measures include:

- Preservation in place
- Protecting the cultural character and integrity of the resource
- Protecting the traditional use of the resource
- Protecting the confidentiality of the resource
- Permanent conservation easements with culturally appropriate management criteria

***California Public Resources Code Section 21074—Effects on Tribal Cultural Resources***

AB 52 amended the CEQA statute to identify an additional category of resource to be considered under CEQA, called “tribal cultural resources,” and added Public Resource Code Section 21074, which defines “tribal cultural resources” as follows:

- (a) “Tribal cultural resources” are either of the following:
  - (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
    - A) Included or determined to be eligible for inclusion in the CRHR.
    - B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
  - (2) 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.
- (b) 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.
- (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique 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).

### 3.16.4 - Impacts and Mitigation Measures

#### Significance Criteria

According to 2019 CEQA Guidelines Appendix G, to determine whether impacts related to cultural resources are significant environmental effects, the following questions are analyzed and evaluated. Would the project:

- a) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:
  - i. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
  - ii. 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 Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

#### Approach to Analysis

This evaluation focuses on whether the project would impact tribal cultural resources. The tribal cultural resources impact analysis is based on information collected from record searches at the NAHC and information from tribal consultation conducted pursuant to AB 52. Impacts are typically associated with construction and/or ground-disturbing activities that have the potential to immediately alter, diminish, or destroy all or part of the character and quality of Native American Artifacts and/or human remains that could be uncovered.

#### Specific Thresholds of Significance

For purposes of this analysis, the following thresholds are used to evaluate the significance of tribal cultural resources materials impacts resulting from implementation of the project:

- Impair a tribal cultural resource's eligibility ability to convey its significance (i.e., affect a resources' inclusion in the NAHC Sacred Lands File) as defined by Public Resources Code Section 21074.
- Physically damage, destroy, or otherwise adversely impact a site, feature, place, or cultural landscape with cultural value to a California Native American tribe and that is a resource determined by Contra Costa County, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. This could include a known or unknown burial site that is of cultural value to a California Native American tribe.

## Impact Evaluation

### ***Significance of Tribal Cultural Resource and Eligibility for California Register Listing***

---

**Impact TRIB-1:** The project would not cause a substantial adverse change in the significance of a Tribal Cultural Resource that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).

---

#### ***Construction***

No listed or potentially eligible tribal cultural resources have been identified within the project site. Specifically, a review of the CRHR, the NAHC Sacred Lands File, a records search conducted at the Northwest Information Center, and a pedestrian survey of the project site failed to identify any listed tribal cultural resources that could be adversely affected by construction of the project. As such, there are no known eligible or potentially eligible tribal cultural resources that could be adversely affected by the project. Therefore, no construction impact related to previously listed tribal cultural resources would occur.

#### ***Operation***

Impacts related to a project's potential to cause a substantial adverse change in the significance of a State listed or eligible tribal cultural resource are limited to construction impacts. No respective operational impacts would occur.

#### ***Level of Significance***

No Impact

### ***Significance of Tribal Cultural Resource and Eligibility as Determined by Lead Agency***

---

**Impact TRIB-2:** The project would not cause a substantial adverse change in the significance of a tribal cultural 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 Public Resources Code Section 5024.1.

---

#### ***Construction***

On September 10, 2018, a letter was sent to NAHC in an effort to determine whether any sacred sites are listed on its Sacred Lands File for the project area. A response was received on September 26, 2018, indicating the search returned negative results for tribal cultural resources in the project site vicinity, and recommended contacting tribal representatives for additional information. The NAHC included a list of seven tribal representatives available for consultation. To ensure that Native American knowledge and concerns over potential tribal cultural resources that could be affected by the project are addressed, a letter containing project information and requesting any additional information was sent to each of the seven tribal representatives on October 2, 2018. On April 1, 2019, the Contra Costa County Department of Conservation and Development notified applicable tribal representatives of an opportunity to consult on the project pursuant to Section 21080.3.1 of the California Public Resources code. On April 10, 2019, a response was received from Ed Silva, Natural Resources Coordinator for Wilton Rancheria. Mr. Silva stated that the only concern the tribe has with the project relates to the potential for Native American Artifacts and/or human remains to

be uncovered during construction-related ground disturbance. Mr. Silva requested Wilton Rancheria be notified in the event such discoveries occur, and that all applicable federal and State laws be followed. No additional responses have been received as of the date of this writing. The correspondence with Mr. Silva is included in Appendix D. Contra Costa County, in its capacity as Lead Agency, has also not identified or determined any known tribal cultural resources to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. As such, no construction impact related to tribal cultural resources would occur.

***Operation***

Impacts related to a project’s potential to cause a substantial adverse change in the significance of a Lead Agency listed or eligible tribal cultural resource are limited to construction impacts. No respective operational impacts would occur.

***Level of Significance***

No Impact

**3.16.5 - Cumulative Impacts**

Given that the project would have no impact on previously recorded or considered known tribal cultural resources, the project could not combine with other cumulative projects to have a cumulative impact related to tribal cultural resources. Therefore, there would be no cumulative tribal cultural resources impact.

***Level of Cumulative Significance***

No Impact

THIS PAGE INTENTIONALLY LEFT BLANK