

7 CULTURAL RESOURCES AND TRIBAL CULTURAL RESOURCES

This chapter provides an evaluation of potential effects on cultural resources and tribal cultural resources associated with the proposed Oliveira Dairy Expansion project. As established in the Initial Study (IS) for the proposed project (see Appendix A, *Notice of Preparation and Initial Study*), construction and operation of the Oliveira Dairy Expansion project could result in significant impacts to cultural resources, tribal cultural resources, and human remains that may exist in the subsurface portions of the project site that would be converted from cropland to active dairy facilities. The following evaluation implements, and is consistent with, mitigation measures and study protocols adopted by Merced County in its certification of the 2030 Merced County General Plan Environmental Impact Report (EIR) in addition to the EIR for Revisions to the Animal Confinement Ordinance (ACO) and its approval of the ACO.

Cultural resources are the remains and sites associated with human activities, and include prehistoric and ethnohistoric¹ Native American archaeological sites, historic archaeological sites, historical buildings, and elements or areas of the natural landscape that have traditional cultural significance. They consist of both surface and subsurface artifacts, structures, or features. When cultural resources are considered in the context of their natural surroundings or the rock strata (layers) in which they are found, they may contribute valuable information to the archaeological or historic record. Cultural resources are a nonrenewable resource that, if properly managed, can increase the knowledge and understanding of past cultures and events.

Native American cultural resources may also have sacred values that can only be identified through coordination and input from local Native Americans. Under Public Resources Code (PRC) Section 5097.9 *et seq.*, any public agency is prohibited from interfering with the free expression or exercise of Native American religion or causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property. Under PRC Section 5097.94, lead agencies are required to consider the effects of projects on tribal cultural resources, and to conduct consultation with federally and non-federally recognized Native American Tribes who are traditionally and culturally affiliated with the geographic area of the proposed project, and who have requested such consultation in writing.

7.1 ENVIRONMENTAL SETTING

7.1.1 METHODOLOGY

Dr. L. Kyle Napton conducted a cultural resources assessment for the Oliveira Dairy Expansion project area to identify any cultural resources that occur within and immediately adjacent to the project site and area of potential effect. The area of potential effect (APE) consists of a seven-acre portion of the project site that is currently in agricultural use and was cropped in corn at the time of the survey (June 2018). Non-privileged results of the assessment are detailed in the *Cultural Resources Investigations of the Proposed Oliveira Dairy Expansion Project Area, Merced County, California* (Napton 2018), included as Appendix J of this EIR.

¹ Ethnohistory is the study of cultures and indigenous peoples' customs by examining historical records as well as other sources of information on their lives and history.

The cultural resources assessment consists of the following four components:

- (1) background research, including an examination of existing literature and principal archaeological, ethnographic, and historical databases, to determine the sensitivity of the proposed project area for cultural resources;
- (2) a record search of the California Historical Resources Information Systems (CHRIS) of the State Office of Historic Preservation to identify known cultural resources within or near to the proposed project area;
- (3) contact with the Native American Heritage Commission, (a) to request that they examine their Sacred Lands Files with the respect to the proposed project area, and (b) to request a current list of Native American tribal representatives who may have concerns regarding the proposed project, and
- (4) a field visit to the project site, in addition to preparation of a description of the results of the cultural resources investigations.

The terms of PRC Section 5097.94 (Assembly Bill 52) regarding tribal consultation require that tribes that wish to engage in consultation must have registered with the County. Contact was made with the Merced County Department of Community and Economic Development to determine if any tribes that are traditionally and culturally affiliated to the geographic area of the proposed project have requested consultation. As of the time of writing of this EIR, no tribes had contacted the County to request such consultation (Guerrero, pers. comm. 2018).

Prehistoric resources are those sites and artifacts associated with the indigenous, non-Euroamerican population, generally prior to contact with people of European descent. Historical resources include structures, features, artifacts, and sites that date from Euroamerican settlement of the region. The primary cultural resource issue evaluated in this chapter includes the possible loss of important historic, prehistoric, and other tribal cultural resources.

7.1.2 PROJECT SETTING

HISTORIC AND EXISTING USE

The original vegetation in this part of the Central Valley consisted primarily of native brush-grass and oak parkland or savanna in addition to well-developed riparian zones along the San Joaquin River and its tributaries, including the Merced River. The environmental setting of the project area is typical of the Lower Sonoran Zone, and features agricultural uses, including row crops, orchards, and vineyards. Confined animal facilities and their associated residences are predominant in the immediate vicinity of the project site.

The existing Oliveira Dairy is located on approximately 22 acres of a farm totaling approximately 290 acres in an unincorporated area of Merced County. The project site is located on the southwest corner of West Oak Avenue and North Gurr Road in the Merced area of the county, within California's Great Central Valley (see Chapter 3, *Project Description*, for additional details of the project). South Slough, a tributary of Bear Creek, is located approximately 0.25 miles north of the project site.

The Bureau of Land Management General Land Office Records, Section 32, indicate that there were no cultural features when the area was surveyed in 1853. The project site has been under cultivation since 1970. The proposed construction area has been leveled to agricultural grade and at the time of the survey was cropland (cornfield). (Napton 2018)

PALEONTOLOGICAL SETTING AND GEOLOGICAL FEATURES

Paleontological resources are the trace remains of plants and animals. These resources include actual bones, shells, or other organic remains; impressions, casts, or molds, mineral replacement of organisms (fossils), or evidence of the previous existence of creatures, such as trackways, trails, or burrows.

Generally, the area within Merced County is covered by an extensive layer of marine and continental eroded materials that has buried fossil-bearing formations over the course of many centuries. However, the extensive river outwash deposits along the Merced and San Joaquin rivers are areas where remains of Pleistocene and Tertiary plants and animals might be found. The project area is not known to have produced significant paleontological resources, although fossils have been found along Black Rascal Creek, northeast of the City of Merced.

ARCHAEOLOGICAL SETTING

Archaeological resources include material remains of human life and culture in the past, such as graves, buildings, tools, and pottery. Early archaeological investigations in the Central Valley focused on the study of single sites, and few reports describe broad-based regional areas. Archaeological investigations specific to the Central Valley that included sites in Merced County were conducted as early as 1941. Countywide investigations were conducted beginning in the early 1980s. Collectively, these archaeological investigations led to the identification of three major prehistoric cultural phases in the Central Valley: the Windmill, the Consumnes, and the Hotchkiss.

In general, the archaeology of Merced County has not been reviewed comprehensively. A pioneer archaeological survey that included some Merced County sites was undertaken in 1941, and archaeological investigations have been conducted along the Merced River from Yosemite National Park downstream to the confluence of the Merced and San Joaquin. In western Merced County, research in the Pacheco Pass – San Luis Reservoir area was done prior to construction of the San Luis Dam. No formal systematic archaeological investigations have been conducted on or near the proposed project area, but prehistoric archaeological resources exhibiting Native American inhumations have been identified near the Merced River in the far western portion of Merced County.

ETHNOGRAPHIC SETTING

The project area is located within the former territory of the Penutian-speaking Yokuts, a tribe that at the time of contact occupied an area extending east from the crest of the Coast (Diablo) Range well into the foothills of the Sierra Nevada, north to the American River, and south to the upper San Joaquin River. The Yokuts spread from the Sierra Nevada foothills into the Central Valley about 500 years ago. The Northern Valley Yokuts formerly occupied the territory in which the proposed project is located. The project site is near the area ascribed to the *Ausumne* group of the Northern Valley Yokuts. While cultural studies mention Yokuts along the Merced River, there is no information regarding Native American occupation of specific locations. Given the ethnographic

literature pertaining to the project region, including early ethnographic documentation, imperishable features and artifacts may be found during cultural resource reconnaissance of the areas in Merced County.

HISTORICAL SETTING

Historic cultural resources cover a wide range of artifacts, buildings, roads, settlements, and other features of the built environment. Regionally, the historical setting dates to when the Spanish entered California in the 1700s and rapidly spread northward along the coast. The Spanish presence in the Central Valley, however, was limited to occasional forays in search of fugitive missionized Native Americans. American exploration of the Central Valley began with the arrival of explorers and traders, including Jedediah Smith, Ewing Young, and J. R. Walker. In 1844, John Frémont and his party, heading south, crossed present-day Merced County. Following John Marshall's discovery of gold in the tailrace of Sutter's Mill in January of 1848, miners flocked to California. News of the find brought thousands to the Valley en route to the adjacent Sierra Nevada "Mother Lode" region. One of the indirect consequences of the Gold Rush was the presence in the Central Valley of ferry operators, storekeepers, innkeepers, and others who supplied miners with goods and services.

During the 1850s, the more productive parts of the Central Valley were settled. The first Legislature created the structure of the new state. Mariposa County was the largest county, covering one fifth of the state's area. In 1855, a reapportionment of Mariposa County resulted in the creation of Merced County. In 1872, the City of Merced was selected as the county seat, and the Central Pacific Railroad entered the county. The railroad connected the San Joaquin Valley with markets in the north and south, and importantly, the east. By 1874, much of Merced County was under cultivation. Controlled irrigation and the impoundment of floodwaters developed in the Central Valley, so by 1888, most of the Valley floor was broken up into numerous small farms. The Valley began to take on its present densely settled, highly productive form. U.S. Route 99 was paved through the county in about 1913, later resulting in an expanded network of paved roads, which represent the on-going trend toward increased urbanization, urban centers, and reductions in the amount of agricultural land.

The dairy industry was introduced to the county in the late 1850s. By the 1970s, there were more than 2,500 commercial dairies, 17 milk product plants, and milk cows that produced dairy products valued at \$39,564,000. Today, Merced County continues to be an important contributor to the livestock and farming industries in California. In 2016, Merced County's dairy industry products produced \$939,042,000 in revenue, the leading agricultural commodity in the county (Merced Agricultural Commissioner 2016).

RECORDS SEARCH

Records of the known cultural resources found in Merced County are included in the files of the Office of Historic Preservation, California Historical Resources Information System. The Central California Information Center (CCIC) located at California State University, Stanislaus, locally administers these records. A CCIC Records Search reported that no formal survey has been reported for the project area, but four previous investigations have been conducted in the general vicinity of the project area.

Overall, the results of the literature search indicate that the project area is within the "Merced Irrigation District." This large, 900 square-mile District, including a system of laterals, has not been

formally recognized by the State Historic Resources Commission nor the California Register of Historical Resources. An unnamed lateral south of the project site may relate to the system, but it is not located within the specific project expansion area, nor is it considered eligible for the National Register of Historic Places or the California Register of Historic Resources.

The results of the literature search and the general pattern of historical occupation of the Central Valley suggest that the proposed project is located in a low to moderately sensitive area regarding the possible presence of cultural resources, including prehistoric and historic archaeological sites. The general vicinity of the project area has been under cultivation for many years, but this does not preclude the possibility that prehistoric and historic remains may be found below the plow zone.

NATIVE AMERICAN CONSULTATION

In order to assess the cultural resources potential of certain project areas it is necessary to consult with Native Americans by contacting the Native American Indian community. The Native American Heritage Commission (NAHC), in Sacramento, was contacted to request an examination of their Sacred Lands Files to determine whether the project is located on sacred land. Consultation also involved requesting a current list of Native American tribal representatives who may have concerns regarding the proposed project. A letter was mailed to each person on the NAHC list, and no comments were received as of the date of publication of this EIR (Guerrero, pers. comm. 2019).

FIELD SURVEY RESULTS

Field inspection for the proposed project was completed on June 19, 2018 by a principal investigator and experienced field technician to determine whether the site contains cultural resources. The site of proposed construction had been planted in corn, and was inspected by pedestrian survey. Inspection disclosed no evidence of prehistoric or historic cultural resources anywhere within the proposed dairy expansion site. (Napton 2018)

7.2 REGULATORY FRAMEWORK

The cultural resources regulatory setting includes the following federal, state, and local regulations.

FEDERAL REGULATIONS

National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.). The National Historic Preservation Act (NHPA) is a federal law created to avoid unnecessary harm to historic properties. The NHPA includes regulations that apply specifically to federal land-holding agencies, but also includes regulations (Section 106) that pertain to all projects funded, permitted, or approved by any federal agency that have the potential to affect historical and cultural resources. The proposed project is privately funded; since no federal funds are involved in the proposed project, the NHPA in addition to the National Environmental Policy Act of 1969 (NEPA) (16 U.S.C. 4321, and 4331-4335) are not expected to apply to this project.

American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996 and 1996a). The American Indian Religious Freedom Act and the Native American Graves and Repatriation Act of 1990 (25 U.S.C. 3001 et seq.) establish that traditional religious practices and beliefs, sacred sites, and the use of sacred objects shall be protected and preserved.

STATE REGULATIONS

California Environmental Quality Act (Public Resources Code Section 21000 et seq.). The California Environmental Quality Act (CEQA) provides direction on determining the significance of impacts to archaeological and historical resources. PRC Section 21083.2 and Section 15064.5 of the State CEQA Guidelines require that lead agencies determine whether projects may have a significant effect on archaeological and historical resources. This determination applies to those resources that meet significance criteria qualifying them as “unique” or “important,” on the California Register of Historic Resources (CRHR), or determined eligible for listing on the CRHR. Potential eligibility is also based on the integrity of the resource. Integrity is defined as the retention of the resources’ physical condition that existed during its period of significance. It is determined through careful consideration of a resource’s design, workmanship, materials, location, feeling, and association to important events in history.

California Register of Historical Resources. The CRHR is restricted to properties that are to be protected from substantial adverse change (PRC Section 5024.1). The CRHR lists properties that have been formally determined to be eligible for listing in the National Register of Historic Places, State Historical Landmarks, and listed as eligible as Points of Historical Interest. All other resources require nomination in order to be included on the Register.

California Public Resources Code Section 5097. Part of the Native American Historic Resource Protection Act, PRC Section 5097 specifies the archaeological, paleontological, and historical and sacred site procedures that must occur both prior to and during construction of any major public works project on state or public lands. It describes the procedures in the event there is a discovery of human remains.

California Public Resources Code Section 5097.94. Assembly Bill (AB) 52 was approved in September 2014, amending PRC Section 5097.94, and adding to sections of the code relating to Native Americans. AB 52 requires lead agencies to consider the effects of projects on tribal cultural resources, and to conduct consultation with federally and non-federally recognized Native American Tribes early in the environmental planning process. AB 52 states that the lead agency must consult with California Native American Tribes who are traditionally and culturally affiliated with the geographic area of the proposed project, and who have requested such consultation in writing.

California Health and Safety Code Sections 7050.5 - 7055. Division 7 of the Health and Safety Code governing dead bodies states that the disturbance of Native American cemeteries is a felony. It requires that construction or excavation must be stopped in the vicinity of discovery of human remains until the County Coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the California Native American Heritage Commission.

Executive Order B-64-80. Executive Order B-64-80 directs state agencies to identify, inventory, preserve, and maintain cultural resources under their jurisdiction.

LOCAL POLICIES

Merced County General Plan. The Merced County 2030 General Plan contains the following and policies related to cultural resources:

Policy RCR-2.5: Human Remains Discovery

Require that, in the event of the discovery of human remains on any project construction site, all work in the vicinity of the find will cease and the County Coroner and Native American Heritage Commission will be notified.

Policy RCR-2.10: Tribal Consultation

Consult with Native American tribes regarding proposed development projects and land use policy changes consistent with Planning and Zoning Law at Government Code Section 65351, and the OPR Tribal Consultation Guidelines (2005).

These policies, and their relevance to the proposed project, are further discussed in Section 7.3, *Environmental Effects*, below, in addition to Table 11-1 in Chapter 11, *Land Use Compatibility*.

Merced County Animal Confinement Ordinance. The revised ACO does not address the protection of cultural resources. However, Merced County requires that all new animal confinement facilities obtain an Administrative Permit or a Conditional Use Permit. Both of these permits are discretionary and require that the County comply with the requirements of CEQA in an environmental review process. To address potential impacts to cultural resources, the EIR prepared for the revised ACO contains mitigation measures to be implemented during environmental review of animal confinement facility projects such as the Oliveira Dairy Expansion project. Mitigation measures adopted as policy in the EIR for the ACO include:

- Consultation with listed Native Americans regarding the identification and locations of known and unknown cultural resources and traditional cultural properties;
- Assessment of identified cultural resources by a qualified archaeologist;
- Evaluation of the resource according to CEQA significance criteria and preparation of a mitigation plan in accordance with appropriate guidelines and consultation with listed Native Americans;
- Suspension of work if archaeological resources are encountered at any site of an animal confinement facility during construction until the County complies with above listed measures.

These policies in addition to Merced County's Standard Conditions for Private Projects (see Chapter 4, *Introduction to the Environmental Analysis*) were considered in the evaluation of the proposed project and the formulation of appropriate mitigation measures below.

7.3 ENVIRONMENTAL EFFECTS

7.3.1 SIGNIFICANCE CRITERIA

The project was evaluated in terms of findings of significance defined in State CEQA Guidelines Section 15065, and Appendix G of the State CEQA Guidelines Section V, *Cultural Resources*, Section VII, *Geology and Soils*, and Section XVIII, *Tribal Cultural Resources*. A project would normally result in a significant impact if the proposed project would:

- Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5. (*V.a*)
- Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5. (*V.b*)
- Disturb any human remains, including those interred outside of formal cemeteries. (*V.c*)
- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. (*VII.f*)

For Tribal Cultural Resources, a project would normally result in a significant impact if the proposed project would cause a substantial adverse change in the significance of a tribal cultural resource as defined in PRC 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 America tribe, and 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 2010.1(k), or (*XVIII.a.i*)
- 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. (*XVIII.a.ii*)

Pursuant to Section 15064.5 of the CEQA Guidelines, a historical resource is presumed significant if it is listed on the CRHR, or has been determined to be eligible for listing by the State Historical Resources Commission. A historical resource may also be considered significant if the lead agency determines, based on substantial evidence, that the resource meets the criteria for inclusion in the CRHR.

Section 15064.5(b) of the CEQA Guidelines further provides standards for determining what constitutes a “substantial adverse change” that must be considered a significant impact on a historic resource. A “substantial adverse change” means “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” Material impairment means demolishing or altering “in an adverse manner those characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in, the California Register of Historical Resources.”

The section further states that archaeological resources not otherwise determined to be historical resources may be significant if they are unique. Pursuant to PRC Section 21083.2, a unique archaeological resource is defined as 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 one of the following criteria:

- Contains information needed to answer important scientific questions and 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; or
- Is directly associated with a scientifically recognized important prehistoric or historic event or person.

According to Section 15064.5 of the CEQA Guidelines, all human remains are significant.

A non-unique archaeological resource means an archaeological artifact, object, or site that does not meet the above criteria. A non-unique archaeological resource need be given no further consideration under CEQA.

7.3.2 ENVIRONMENTAL IMPACTS

This impact analysis is based on:

- a review of published information and reports regarding cultural resources within the boundaries of the Oliveira Dairy Expansion project area;
- data obtained from the field investigations conducted for the proposed project area,
- consultation with the NAHC and Native American tribal representatives;
- analysis of federal, state, and local regulations pertaining to cultural resources; and
- changes that would occur to cultural resources as a result of the proposed Oliveira Dairy Expansion project.

Impact CUL-1: Cause a substantial adverse change in the significance of a historical, archaeological, or paleontological resource, or a unique geological feature (Criteria V.a/b, VII.f)

Construction of the proposed dairy facilities could result in substantial adverse changes to the significance of historical, archaeological, or paleontological resources within the project area. Because ground-disturbing activities could affect unidentified remains of subsurface historic, archaeological, or paleontological resources, this would be a significant impact.

The cultural resources assessment (Napton 2018) documents the research completed prior to conducting field evaluations at the project site. The research included: an examination of existing literature and historical databases for the proposed project area; a record search of the CHRIS database; consultation with the Native American Indian community; and a field visit to the project site. No previously identified prehistoric sites or sacred lands were identified, and no historic sites were identified on the project site. The project area was determined to be low to moderately sensitive for prehistoric or historic cultural resources.

An assessment of cultural resources in the project area known to be protected or sacred by the Native American Indian community was completed through consultation with the NAHC, Sacramento. The NAHC was contacted to request an examination of their Sacred Lands Files to determine whether the project is located on sacred land. Consultation also involved requesting a current list of Native American tribal representatives who may have concerns regarding the proposed project. A letter was mailed to each person on the NAHC list. As of preparation of the EIR (January 2019), no correspondence was received from Native American tribal representatives regarding the proposed project.

The proposed project includes the removal and/or relocation of some existing facilities, and the construction of new supporting buildings and structures within the area of active dairy facilities. With construction of the proposed facilities, approximately seven acres of cropped acreage would be converted to active dairy facilities. During the field investigation, no evidence of prehistoric or historic cultural resources or remains was observed during surface inspection. Still, many areas that have been plowed for years may nevertheless contain intact archaeological remains or paleontological resources beneath the plow zone, a situation demonstrated at several Central Valley localities.

The entire project area has been highly modified by agriculture, reducing the probability of finding paleontological sites, and is not within an area where paleontological resources would likely be exposed. The project area also lacks any unique geologic features, since the project area consists of flat and graded agricultural fields. The results of the literature search and the general pattern of historical occupation of the Central Valley suggest that the proposed project is located in a low to moderately sensitive area regarding the possible presence of cultural resources, including prehistoric and historic archaeological sites.

All aspects of the cultural resources assessment of the proposed Oliveira Dairy Expansion project site indicate that no known cultural or paleontological resources are present within the project area. Therefore, the project would have no adverse effects on known historic, cultural, or paleontological resources. Also, because the project area lacks any unique geologic features, the proposed project would not adversely affect these resources. However, previously unidentified historic, archaeological, or paleontological resources may remain buried below the plow zone, which could be disturbed by project construction activities. This impact would be significant.

Significance of Impact: Significant.

Mitigation Measure CUL-1:

The project applicant and construction contractor shall implement measures to address discovery of unanticipated buried cultural or paleontological resources. If buried cultural resources such as chipped or ground stone, midden deposits, historic debris, building foundations, or paleontological resources are inadvertently discovered during ground-disturbing activities, work shall stop in that area and within 100 feet of the find until a qualified archaeologist or paleontologist can assess the significance of the find and, if necessary, develop responsible treatment measures in consultation with Merced County and other appropriate agencies. Measures must result in the avoidance, preservation, or recordation of the resource.

Environmental Effects of Measure: If any cultural resources are discovered during construction of the Oliveira Dairy Expansion project, implementation of Mitigation Measure CUL-1 would protect these archaeological, historic, and paleontological resources, and would trigger additional

mitigation for effects to such resources. All physical improvements or activities that could result in changes to the physical environment required by these measures would be located within the project site, and no additional impacts beyond those identified for such development in Chapters 5 through 11 of this Draft EIR would occur.

Significance after Mitigation: Implementation of Mitigation Measure CUL-1 would provide protection of archaeological, historic, and paleontological resources, and would ensure that these features are protected, preserved, and/or documented by requiring the project applicant and construction contractor to implement measures that address the discovery of unanticipated buried cultural or paleontological resources. Therefore, this impact would be less than significant after implementation of Mitigation Measure CUL-1.

Implementation/Monitoring: Implementation of this mitigation measure would be the responsibility of the project applicant/construction contractor and Merced County Community and Economic Development Department. That department shall monitor for compliance. Implementation of CUL-1 would occur during project construction.

Impact CUL-2: *Result in the accidental discovery and disturbance of human remains (Criterion V.c)*

Construction activities associated with the Oliveira Dairy Expansion project could result in the accidental discovery of human remains. Because ground-disturbing activities could result in the disturbance of human remains, this would be a significant impact.

Cultural resource investigations did not identify any human remains within the project area. Even though no remains have been discovered during previous disturbance of the project site, currently unknown remains could be disrupted by construction operations that involve the removal of vegetation and the excavation or disturbance of subsurface layers. As a result, the potential for the accidental discovery and disturbance of human remains would result in a significant impact.

Significance of Impact: Significant.

Mitigation Measure CUL-2a:
Implement Mitigation Measure CUL-1.

Mitigation Measure CUL-2b:

The project applicant and construction contractor shall implement a plan to address discovery of human remains. If remains of Native American origin are discovered during proposed project construction, it shall be necessary to comply with state laws concerning the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (NAHC). If any human remains are discovered or recognized in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

- The County coroner has been informed and has determined that no investigation of the cause of death is required; and

- If the remains are of Native American origin:
 - ✓ The most likely descendants of the deceased Native Americans (identified by the NAHC) has made a recommendation to the landowner or 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 PRC 5097.98; or
 - ✓ The NAHC has been unable to identify a descendant, or the descendant failed to make a recommendation within 24 hours after being notified.

According to the California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact the NAHC.

Environmental Effects of Measure: If any human remains are discovered during construction of the proposed Oliveira Dairy Expansion project, implementation of Mitigation Measure CUL-2 would protect these remains, and would trigger additional mitigation for effects to such resources. All physical improvements or activities that could result in changes to the physical environment required by these measures would be located within the project site, and no additional impacts beyond those identified for such development in Chapters 5 through 11 of this Draft EIR would occur.

Significance after Mitigation: Implementation of Mitigation Measure CUL-2 would provide protection of human remains, and would ensure that any remains are protected, handled according to state law, and treated with appropriate respect. Therefore, this impact would be less than significant after implementation of Mitigation Measure CUL-2.

Implementation/Monitoring: Implementation of this mitigation measure would be the responsibility of the project applicant/construction contractor and Merced County Community and Economic Development Department. That department shall monitor for compliance. Implementation of CUL-2 would occur during project construction.

Impact CUL-3: *Cause a substantial adverse change in the significance of a tribal cultural resource (Criteria XVIII.a.i/a.ii)*

Ground-disturbing construction activities associated with the Oliveira Dairy Expansion project would not result in a substantial adverse change in the significance of a tribal cultural resource since no tribal cultural resources were identified on the project site, and no Native American tribes requested consultation. This would be a less-than-significant impact.

The Native American Heritage Commission was contacted to conduct a record search of the Sacred Lands File, and to request a listing of Native American tribes who may have concerns with the proposed project. A letter was sent to each listed tribe to inform them that cultural resources investigations were taking place, and to request any information on Native American concerns the tribe may have in reference to the proposed project. The records search of the Sacred Lands File produced negative results. As of preparation of the EIR (January 2019), no Native American tribes

have requested in writing that Merced County consult with them early in the environmental planning process in accordance with AB 52 (Guerrero, pers. comm. 2018).

Because there have been no responses to the letter informing the Native American tribes that a Cultural Resources Investigation was to take place, the Sacred Lands File produced negative results, and no requests have been received by the County from Native American representatives to consult on projects proposed for their geographic area, the County's obligations under AB 52 and the implementing requirements of the Public Resources Code have been satisfied. As a result, this potential impact would be less than significant.

Significance of Impact: Less than significant.

Mitigation Measure CUL-3: None required.

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REFERENCES: CULTURAL RESOURCES

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