

CULTURAL AND TRIBAL CULTURAL RESOURCES

4.3 CULTURAL AND TRIBAL CULTURAL RESOURCES

Based on the analysis in the Initial Study (see Appendix A of this Draft EIR) it was determined that construction and operation of the proposed project would not result in significant environmental impacts related to historical resources defined in CEQA Guidelines Section 15064.5 with respect to historic buildings. Therefore, this chapter includes an evaluation of the potential environmental consequences to archeological resources defined in CEQA Guidelines Section 15064.5 and Tribal Cultural Resources (TCR) as defined under Assembly Bill 52 (AB 52). This chapter also describes the environmental setting, including regulatory framework and existing cultural resources on the project site, and identifies mitigation measures, if required, that would avoid or reduce significant impacts.

4.3.1 ENVIRONMENTAL SETTING

4.3.1.1 REGULATORY FRAMEWORK

This section summarizes the existing State regulations that apply to cultural resources. There are no federal, regional, or local policies or regulations regarding this subject.

California Environmental Quality Act

Public Resources Code Section 21083.2 provides for protection of unique archaeological resources. Preservation of unique archaeological sites is the preferred treatment (21083.2[b]); however, if sites are not be preserved in place, mitigation measures shall be required as provided in 21083.2(c).

Public Resources Code Section 21084.1 addresses the issue of historical resources, which includes prehistoric Native American resources, historical-era archaeological deposits, buildings, structures, objects, and districts. Historical resources are defined as resources that are listed in or determined to be eligible for listing in the California Register of Historical Resources. It also includes resources included in a local register of historical resources or otherwise determined to be historically significant under Public Resources Code Section 5024.1.

CEQA Guidelines Section 15064.5 states that a project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment. The CEQA Guidelines define four ways that a property can qualify as a historical resource for purposes of CEQA compliance:

- The resource is listed in or determined eligible for listing in the California Register of Historical Resources, as determined by the State Historical Resources Commission.
- The resource is included in a local register of historical resources, as defined in Public Resources Code Section 5020.1(k), or identified as significant in a historical resource survey meeting the requirements of Public Resources Code Section 5024.1(g), unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

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- The lead agency determines the resource to be significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California, as supported by substantial evidence in light of the whole record.
- The lead agency determines that the resource may be a historical resource as defined in Public Resources Code Sections 5020.1(j) or 5024.1 (CEQA Guidelines Section 15064.5) which means, in part, that it may be eligible for the California Register.

Public Resources Code Section 21083.2 and CEQA Guidelines Sections 15064.5(c), 15064(f), and 15126.4(b) specify lead agency responsibilities to determine whether a project may have a significant effect on unique archaeological resources. If it can be demonstrated that a project will damage a unique archaeological resource, the lead agency may require reasonable efforts for the resources to be preserved in place or left in an undisturbed state. Preservation in place is the preferred approach to mitigation. The Public Resources Code also details required mitigation if unique archaeological resources are not preserved in place.

CEQA Guidelines Section 15064.5(d) and (e) specify procedures to be used in the event of a discovery of Native American human remains on non-federal land. Section 15064.5(d) addresses procedures when an initial study identifies the existence or probable likelihood of Native American human remains within a project area. Section 15064.5(e) provides guidance for accidental discovery of any human remains after a project is already under way. These provisions protect such remains from disturbance, vandalism, and inadvertent destruction, establish procedures to be implemented if Native American skeletal remains are discovered during construction of a project, and establish the Native American Heritage Commission (NAHC) as the authority to identify the Most Likely Descendant (MLD) and mediate any disputes regarding disposition of such remains.

Health and Safety Code Sections 7052 and 7050.5

Section 7052 of the Health and Safety Code states that the disinterment of remains known to be human, without authority of law, is a felony. Section 7050.5 requires that construction or excavation be stopped in the vicinity of discovered human remains until the county coroner can determine whether the remains are those of a Native American. If determined to be Native American, the coroner must contact the NAHC.

Assembly Bill 52

Assembly Bill 52 (AB 52), which took effect on July 1, 2015, amends CEQA and adds standards of significance that relate to Native American consultation and the protection of TCR under CEQA.

Projects subject to AB 52 are those that file a notice of preparation for an EIR or notice of intent to adopt a negative or mitigated negative declaration on or after July 1, 2015. As of July 1, 2016, the Governor's Office of Planning and Research (OPR) developed guidelines and the Native American Heritage Commission (NAHC) informed tribes which agencies are in their traditional area. In response to these guidelines, a discussion of impacts to TCRs has been added to Section 4.3.2, Thresholds of Significance, further in this chapter. A TCR is defined under AB 52 as a site, feature, place, cultural landscape that is geographically defined in terms of size and scope, sacred place, and object with cultural value to a California Native American tribe that are either included or eligible for inclusion in the California Register

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of Historic Resources or included a local register of historical resources, or if the City, acting as the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a TCR.

AB 52 requires the CEQA lead agency to begin consultation with a California Native American Tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the Tribe requests in writing to be informed by the lead agency through formal notification of the proposed projects in the area. The consultation is required before the determination of whether a negative declaration, mitigated negative declaration, or EIR is required. In addition, AB 52 includes time limits for certain responses regarding consultation. CEQA Section 21084.3 has been added, which states that “public agencies shall, when feasible, avoid damaging effects to any tribal cultural resources.” Information shared by tribes as a result of AB 52 consultation shall be documented in a confidential file, as necessary, and made part of a lead agencies administrative record.¹

Public Resources Code Section 5097

Public Resources Code Section 5097 specifies the procedures to be followed in the event of the unexpected discovery of human remains on non-federal public lands. The disposition of Native American burials falls within the jurisdiction of the NAHC, which prohibits willfully damaging any historical or archaeological site or feature on public lands.

4.3.1.2 EXISTING CONDITIONS

This section provides an overview of the history of Cupertino and archeological and historically significant resources that may be affected by the proposed project.

Methods

The cultural resources analysis conducted by Tom Origer & Associates on July 24, 2013 for the General Plan Update EIR consists of archival research at the Northwest Information Center at Sonoma State University, examination of the library and files, field inspection, and contact with the Native American community.²

Records searches were conducted to identify cultural resources within the city. Records searches were conducted at the Northwest Information Center (NWIC) of the California Historical Resources Information System, Sonoma State University, Rohnert Park; and the California NAHC, Sacramento. The NWIC, an affiliate of the State of California Office of Historic Preservation, is the official State repository of cultural resources records and reports for Santa Clara County. The NAHC maintains the Sacred Lands File, which includes the locations of sites with cultural significance to Native American groups.

¹ California Public Resources Code, Section 21074.

² City of Cupertino, certified General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, (December 2014) and approved General Plan Amendment, Housing Element Update, and Associated Rezoning EIR Final Addendum, State Clearinghouse Number 2014032007 (October 2015). See Chapter 4.4, Cultural Resources.

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As part of the records search, the following State and local inventories were reviewed for cultural resources:

- California Inventory of Historic Resources;
- California Historical Landmarks;
- California Points of Historical Interest;
- Directory of Properties in the Historic Property Data File. The directory includes the listings of the National Register of Historic Places, National Historic Landmarks, the California Register of Historical Resources, California Historical Landmarks, and California Points of Historical Interest; and
- Cupertino General Plan.

Publications, maps, historical aerial photographs, including an examination of the library and project files at Tom Origer & Associates, and internet sites were reviewed for archaeological, ethnographic, and historical information about the proposed project site and its vicinity. The purpose of this review was to identify known cultural resources within the city and its surroundings.

Historical Overview

This section describes the prehistory, ethnography, and history of Cupertino as determined by the records searches and literature described above.

Prehistory and Ethnography

Archaeological evidence indicates that human occupation of California began at least 12,000 years ago. Early occupants appear to have had an economy based largely on hunting, with limited exchange, and social structures based on extended family units. Later, milling technology and an inferred acorn economy were introduced. This diversification of economy appears coeval with the development of sedentism,³ population growth, and expansion. Sociopolitical complexity and status distinctions based on wealth are also observable in the archaeological record, as evidenced by an increased range and distribution of trade goods (e.g., shell beads, obsidian tool stone), which are possible indicators of both status and increasingly complex exchange systems.

At the time of European settlement, the Cupertino area was situated within the area controlled by the Tamyen linguistic group of the Ohlone/Costanoan, near the linguistic boundary with the Ramaytush group. The Ohlone/Costanoan hunter-gatherers lived in rich environments that allowed for dense populations with complex social structures.⁴ They settled in large, permanent villages about which were distributed seasonal camps and task-specific sites. Primary village sites were occupied throughout the year and other sites were visited in order to procure particular resources that were especially abundant or available only during certain seasons. Sites often were situated near fresh water sources and in ecotones where plant life and animal life were diverse and abundant.

³ Sedentism means the transition from a nomadic lifestyle to a society which remains in one place.

⁴ Barrett, S, 1908, *The Ethno-Geography of the Pomo and Neighboring Indians*. University of California Publications in American Archaeology and Ethnology Vol. 6, No. 1. University of California Press, Berkeley.

Kroeber, A, 1925, *Handbook of the Indians of California*. Bureau of American Ethnology, Bulletin 78, Smithsonian Institution, Washington, D.C.

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General History

Colonel Juan Bautista de Anza's party passed through the arroyo of San Joseph de Cupertino during exploration in March of 1776. One year later, the first Christian baptisms began in the Santa Clara Valley. Despite rampant disease and humiliation, recruitment escalated at the missions of the San Francisco Bay area. By the end of 1795, all of the Tamyen/Tamien villages had been abandoned and their former inhabitants baptized.

During the 19th century, the area was planted with vineyards and orchards by early European settlers and flourished well enough to draw more settlers to the area. Due to French and European vineyards failing in the late 1870s by *phylloxera*, California vineyards and wines did well, leading small communities to have wide-scale development and expansion. By the 1890s, *phylloxera* had spread from Europe, and the community shifted toward more fruit production.

Before the community at the crossroads of Stevens Creek Road and Saratoga-Sunnyvale Road (De Anza Boulevard) changed their name to Cupertino in 1904, it was known simply as West Side. 'Cupertino' was taken from John T. Doyle's naming his winery Cupertino after the name given to the nearby creek by Petrus Font during De Anza's 1776 expedition.

By the 1920s, Cupertino had a population of about 500, and development of the area centered around the agricultural economy, with a focus on wineries, canneries, and fruit drying and packing facilities. The Permanente Corporation was formed in 1939 to provide cement for the construction of Shasta Dam, with a huge plant and quarry just west of Cupertino. During the war, the plant also made record shipments of cement to the Pacific theatres. As the gateway to the Pacific theatre, the San Francisco Bay area experienced a post-war population boom, which in turn created a need for urban planning. In 1955, Cupertino was incorporated as Santa Clara County's 13th city in part to combat the annexation encroachment by the surrounding cities of Santa Clara, San José, Sunnyvale, and Los Altos.

In the 1960s, Cupertino transitioned from farming to industry and commercial expansion. This transition was done in anticipation, rather than as a reaction. One early successful example of this is the coalition of families that created Vallco park, which currently includes the Vallco Fashion Park.

Today, Cupertino is part of Silicon Valley, a world-renowned high-technology center and is home to many companies at the forefront of innovation.

Project Site Conditions

As stated above, no known cultural resources (i.e., archeological or historical architectural resources) are located on the site. However, development at the project site was completed between 1973 and 1976,⁵ which is within the 45-year age limit established by the State Office of Historic Preservation (OHP) for buildings that may be of historical value.⁶ The existing buildings are not associated with significant cultural

⁵ EBI Consulting, March 4, 2007, Phase I Environmental Site Characterization, The Oaks Shopping Center.

⁶ Public Resources Code Section 5024.1

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events or persons in California's past, and do not have any distinctive historical characteristics, and therefore do not have any qualifying historical value.

Known cultural resources within 1 mile of the project site are the Le Petit Trianon at 21250 Stevens Creek Boulevard, the Gazebo Trim at Memorial Park, Memorial Park, Community Center, Sports Complex, and Engles Grocery "Paul and Eddie's" at 21619 Stevens Creek Boulevard.

Tribal Cultural Resources

The City of Cupertino has not received a request from any Tribes in the geographic area with which it is traditionally and culturally affiliated to be notified about projects in the city nor has the City received any requests for consultation pursuant to CEQA Section 21080.3.1.

4.3.2 THRESHOLDS OF SIGNIFICANCE

An Initial Study was prepared for the proposed project (see Appendix A of this Draft EIR). Based on the analysis contained in the Initial Study and comments received during the scoping process, it was determined that development of the proposed project would not result in significant environmental impacts related to the following significance standard and, therefore, is not discussed in this chapter.

- Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5.

Based on the Initial Study and comments received during the scoping process it was determined that the proposed project could result in a potentially significant cultural and tribal cultural resource impact if it would:

1. Cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5.
2. Disturb any human remains, including those interred outside of formal cemeteries.
3. 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:
 - 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
 - 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 Resource Code Section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance to a California Native American tribe.

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4.3.3 IMPACT DISCUSSION

CULT-1 The proposed project would not cause a substantial adverse change in the significance of an archaeological resource pursuant to section 15064.5.

Historical and pre-contact archaeological deposits that meet the definition of historical resource under CEQA section 21084.1 or CEQA Guidelines section 15064.5 could be present at the project site and could be damaged or destroyed by ground-disturbing construction activities (e.g., site preparation, grading, excavation, and trenching for utilities) associated with development allowed under the proposed project. Should this occur, the ability of the deposits to convey their significance, either as containing information about prehistory or history, or as possessing traditional or cultural significance to Native American or other descendant communities, would be materially impaired.

A cultural resources study was prepared for the General Plan EIR.⁷ The cultural resources study did not identify any known archeological deposits on the project site. The environmental setting of the project location and the surrounding area have not changed since the preparation of the General Plan EIR. Nonetheless, as discussed in the General Plan EIR, while the site is already a developed site, it could still contain subsurface archeological deposits, including unrecorded Native American prehistoric archeological materials. Therefore, any project-related ground-disturbing activities have the potential to affect subsurface prehistoric archaeological resources that may be present, and impacts could be *potentially significant*.

Impact CULT-1: Construction of the proposed project would have the potential to cause a significant impact to an unknown archaeological resource pursuant to CEQA Guidelines Section 15064.5.

Mitigation Measure CULT-1: If any prehistoric or historic subsurface cultural resources are discovered during ground-disturbing (including grading, demolition and/or construction) activities:

- All work within 50 feet of the resources shall be halted, the City shall be notified, and a qualified archaeologist shall be consulted. The contractor shall cooperate in the recovery of the materials. Work may proceed on other parts of the project site while mitigation for tribal cultural resources, historical resources or unique archaeological resources is being carried out.
- The qualified archaeologist shall prepare a report for the evaluation of the resource to the California Register of Historical Places and the City Building Department. The report shall also include appropriate recommendations regarding the significance of the find and appropriate mitigations as follows:
 - If the resource is a non-tribal resource, the archaeologist shall assess the significance of the find according to CEQA Guidelines Section 15064.5.

⁷ City of Cupertino, certified General Plan Amendment, Housing Element Update, and Associated Rezoning EIR, (December 2014) and approved General Plan Amendment, Housing Element Update, and Associated Rezoning EIR Final Addendum, State Clearinghouse Number 2014032007 (October 2015).

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- If the resource is a tribal resource – whether historic or prehistoric – the consulting archaeologist shall consult with the appropriate tribe(s) to evaluate the significance of the resource and to recommend appropriate and feasible avoidance, testing, preservation or mitigation measures, in light of factors such as the significance of the find, proposed project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) may be implemented.
- All significant non-tribal cultural materials recovered shall be, as necessary, and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.

Significance With Mitigation: Less than significant.

CULT-2 The proposed project would not disturb any human remains, including those interred outside of formal cemeteries.

There are no known human remains on the project site; however, the potential to unearth unknown remains during ground disturbing activities associated with the construction of the proposed project could occur. Descendant communities may ascribe religious or cultural significance to such remains and may view their disturbance as an unmitigable impact. Any human remains encountered during ground-disturbing activities associated with the proposed project would be subject to federal, State, and local regulations to ensure no adverse impacts to human remains would occur in the unlikely event human remains are found.

Health and Safety Code Section 7050.5 and the CEQA Guidelines Section 15064.5(e) contain the mandated procedures of conduct following the discovery of human remains. According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Santa Clara County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the Native American Heritage Commission within 24 hours, who would, in turn, notify the person the Native American Heritage Commission identifies as the Most Likely Descendant of any human remains. Further actions shall be determined, in part, by the desires of the Most Likely Descendant. The Most Likely Descendant has 48 hours to make recommendations or preferences regarding the disposition of the remains following allowed access to the project site. If the Most Likely Descendant does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the Most Likely Descendant's recommendations, the owner or the descendent may request mediation by the Native American Heritage Commission.

Therefore, with the mandatory regulatory procedures described above, potential impacts related to the potential discovery or disturbance of any human remains accidentally unearthed during construction activities associated with the proposed project would be *less than significant*.

Significance Without Mitigation: Less than significant.

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CULT-3	The proposed project would not 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: 1) 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 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 Public Resource Code Section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance to a California Native American tribe.
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As discussed under Impacts CULT-1 and CULT-2, no known archeological resources, ethnographic sites, or Native American remains are located on the project site or the location of the off-site construction employee parking and equipment staging area. However, as discussed under Impact CULT-1, the project site could contain undiscovered subsurface archaeological deposits, including unrecorded Native American prehistoric archaeological materials. In addition, as discussed under impact discussion CULT-2, ground-disturbing activities associated with the proposed project have the potential to unearth unknown human remains. Therefore, although no known tribal cultural resources have been identified on the project site, the proposed project has the potential to disturb subsurface deposits possessing traditional or cultural significance to Native American or other descendant communities. This is considered a *potentially significant* impact.

Impact CULT-3: Construction of the proposed project would have the potential to cause a significant impact to an unknown tribal cultural resource as defined in Public Resources Code 21074.

Mitigation Measure CULT-3: Implement Mitigation Measure CULT-1.

Significance With Mitigation: Less than significant.

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4.3.4 CUMULATIVE IMPACTS

CULT-4 The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in cumulative impacts with respect to cultural resources.

Development of the proposed project, in conjunction with buildout of the city and the region, has the potential to adversely affect archeological resources, human remains, and tribal cultural resources through their destruction or disturbance during ground-disturbing activities. Impacts to cultural resources tend to be site specific and are assessed on a site-by-site basis. The significance of the impacts would depend largely on what, if any, cultural resources occur on or near the sites of related projects that are developed in the cumulative setting. Similar to the proposed project, such determinations would be made on a case-by-case basis and, if necessary, the applicants of the related projects would be required to comply with applicable federal, State, and local regulations and implement appropriate mitigation measures. Development of the proposed project would comply with federal and State laws protecting cultural resources. Implementation of Mitigation Measures CULT-1 and CULT-3 identified above would ensure that archaeological resources, if discovered on the project site, are protected and that discovered human remains, and tribal cultural resources are handled appropriately. Thus, given that the proposed project's cultural resources impacts are less-than-significant with mitigation, the proposed project's impacts to cultural resources would not be cumulatively considerable. Therefore, cumulative impacts to cultural resources would be *less than significant*.

Significance Without Mitigation: Less than significant.