

DOCKETED

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4.5 Cultural and Tribal Cultural Resources

This section describes the environmental setting and regulatory background and discusses the impacts associated with the construction and operation of the project with respect to cultural and tribal cultural resources.

CULTURAL RESOURCES				
Would the project:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Cause a substantial adverse change in the significance of a unique archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Disturb any human remains, including those interred outside of dedicated cemeteries?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TRIBAL CULTURAL RESOURCES				
Would the project 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:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a. 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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of 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.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Environmental checklist established by CEQA Guidelines, Appendix G.

4.5.1 Environmental Setting

This section considers four broad classes of cultural resources: prehistoric, ethnographic, historic-period, and tribal cultural resources. The next four paragraphs briefly describe these classes of resources. Afterward, the Cultural and Tribal Cultural Resources section presents the environmental setting pertinent to these resources:

- *Prehistoric, ethnographic, and historic contexts*—generally describes who lived in the project vicinity, the timing of their occupation, and what uses they made of the area
- *Methods of analysis*—establishes what kinds of physical traces (cultural and tribal cultural resources) past peoples might have left in the project area, given the project vicinity’s prehistoric, ethnographic, and historic contexts
- *Results* ensuing from those methods—identifies the specific resources present or expectable in the project area
- *Regulatory setting*—presents the criteria for identifying *significant* cultural and tribal cultural resources under the California Environmental Quality Act (CEQA) and other applicable authorities, as well as the criteria for identifying significant impacts on these resources
- *Impacts*—identifies any impacts on cultural and tribal cultural resources, along with the severity of any such impacts
- *Mitigation measures*—proposes measures to avoid, minimize, rectify, reduce, or eliminate, or compensate for, any identified, significant impacts

Prehistoric archaeological resources are those materials relating to Native American occupation and the use of a particular environment. These resources may include sites and deposits, structures, artifacts, rock art, trails, and other traces of Native American activity. In California, the prehistoric period began more than 12,000 years ago and extended through the 18th century until A.D. 1769, when Europeans first settled in California.

Ethnographic resources are those materials important to the heritage of a particular ethnic or cultural group, such as Native Americans or African, European, or Asian immigrants. They may include traditional resource-collecting areas, ceremonial sites, topographic features, value-imbued landscapes, cemeteries, shrines, or neighborhoods and structures. Ethnographic resources are variations of natural resources and standard cultural resources types. They are subsistence and ceremonial locales and sites, structures, objects, and rural and urban landscapes assigned cultural significance by traditional users. The decision to call resources “ethnographic” depends on whether associated peoples perceive them as traditionally meaningful to their identity as a group and the survival of their lifeways.

Historic-period resources are those materials, archaeological and architectural, usually but not necessarily associated with Euro-American exploration and settlement of an area and the beginning of a written historical record. They may include archaeological deposits, sites, structures, trail and road corridors, artifacts, or other evidence of historic human activity. Under federal and state requirements, historic period cultural resources must be 50 years or older to be considered of potential historic importance. A resource less than 50 years of age may be historically significant if the resource is of exceptional importance. The Office of Historic Preservation (OHP 1995, page 2) endorses recording

and evaluating resources 45 years or older to accommodate a five-year lag in the planning process.

Tribal cultural resources are a category of historical resources recently introduced into CEQA by Assembly Bill 52 (Chapter 532, Stats. 2014). Tribal cultural resources are resources that are any of the following: sites, features, places, cultural landscapes, sacred places, or objects that are included in or determined eligible to the California Register of Historical Resources (CRHR) or are included on a local register of historical resources, as defined in Public Resources Code, section 5020.1(k). Tribal cultural resources can be prehistoric, ethnographic, or historic.

Prehistoric Context

The archaeological record in the Santa Clara Valley began about 9,000 years before present (B.P., or before 1950) with the Metcalf Creek Aspect, the local expression of the Millingstone cultural pattern. Archaeological deposits dating to this time contain milling slabs and handstones, and large wide-stemmed and leaf-shaped projectile points. Native people during this period were mobile foragers and burials were typically flexed and placed beneath millingstone cairns. (Milliken et al. 2007, page 114.)

This Early Holocene culture extended until the beginning of the Early Period (circa 5500 B.P.), which exhibits developments in groundstone technology (i.e., replacing millingstones with the mortar and pestle), less movement of entire communities, regional symbolic integration between cultural groups, and increased trade. Also referred to locally as the Sandhill Bluff Aspect, this cultural pattern lasted until circa (ca.) 2500 B.P., when the Lower Middle Period began with a “major disruption in symbolic integration systems.” (Milliken et al. 2007, page 115.) Archaeological assemblages from the Lower Middle Period include more olive snail-shell saucer beads and circular abalone-shell ornaments (and the disappearance of the rectangular shell beads), as well as bone tools and whistles.

The Upper Middle Period began ca. 1520 B.P. with a disruption of the olive snail-shell bead trade network, abandonment of some village sites, and changes in shell bead manufacture. Some South Bay burials from this period were extended rather than flexed burials, and grave goods were lacking. (Milliken et al. 2007, page 116.)

The Late Period began ca. 900 B.P. with groups increasingly intensifying the creation of wealth objects, as seen in burials. Smaller projectile points for use in the bow and arrow emerged during this period and some of the mortuary evidence suggests the introduction of cremation, at least among the wealthiest of individuals. (Milliken et al. 2007, page 117.)

Archaeological research in the project vicinity reveals a rich and lengthy archaeological record. Archaeologists have found numerous buried Native American sites throughout the lower Santa Clara Valley. Rapid development of the valley covered numerous archaeological sites in pavement or with structures (Busby et al. 1996a, pages 2–4; Hylkema 1994, page 252; Parsons and KEMCO 1983, pages 18 and 35). Below even the

archaeological sites capped by the veneer of recent building, the Guadalupe River and smaller streams (Saratoga and San Tomas Aquino creeks) buried generations of Native American sites under layers of silt and clay. As a result, the surface archaeological record of Santa Clara Valley represents only the last 2,000 years of human occupation. The remaining 7,000 years of native history lay anywhere from near surface up to 30 feet below the modern ground surface. (Busby et al. 1996a, pages 2–4; Busby et al. 1996b, page 2; Jones et al. 2007, page 130; Parsons and KEMCO 1983, pages 16, 25–26, 33; Ruby et al. 1992:9, 12, 17–19.)

Ethnographic Context

The Costanoans are the Native Americans who inhabited the Bay Area since time immemorial. The Costanoan designation refers to those who spoke one of eight separate but related languages (Shiple 1978, pages 84, 89). The Costanoan languages are similar to Miwok and are part of the Yok-Utian language family of the Penutian stock (Golla 2007, pages 75–76). Tamyen (Santa Clara Costanoan) was spoken around the southern end of San Francisco Bay and the lower Santa Clara Valley (and was spoken by Costanoans in the project vicinity). (Milliken et al. 2007, Figure 8.1; Shiple 1978, pages 84 and 89.)

Each village was a separate and politically autonomous tribelet, with about 200 people living within each. Tribelets were the basic unit of political organization, with chiefs, either women or men, descended from their patrilineal relative. In the late 1700s, there were two tribelets near the proposed project (project site), San José Cupertino and Santa Clara; both are presumably Tamyen speakers. (Levy 1978, Figure 1.) Kroeber (1976, Figure 42) indicates that two settlements were located within a few miles of the project site on the Guadalupe River, Tamie-n near Santa Clara, and Ulis-tak farther north near the San Francisco Bay.

Like most other Native Americans in California, acorns were the staple food of the Costanoan people in the Santa Clara region. Other nuts, such as buckeye, California laurel, and hazelnuts, were also eaten. The Costanoans set controlled fires to promote the growth of the nuts and seeds upon which they relied. The primary mammals taken by the Costanoan included the black-tailed deer, elk, antelope, grizzly bear, mountain lion, sea lion, and whale. Waterfowl, salmon, steelhead, and lampreys were also important components of the Costanoan diet. (Levy 1978, page 491.)

Thatched, domed houses were the most common type of structure for the Costanoans. Sweathouses along the banks of rivers were also constructed, in addition to dance enclosures and assembly houses. (Levy 1978, page 492.)

Bodies were either buried or cremated on the day of death. The community either buried the deceased's property with the body or destroyed their property. (Kroeber 1976, page 469; Levy 1978, page 490.)

Trade was important for the Costanoan groups, and their primary partners in trade were the Plains Miwok, Sierra Miwok, and Yokuts. The Costanoan provided coastal resources, such as mussels, abalone shell, dried abalone, and salt, to the Yokuts in exchange for piñon pine nuts. The Miwok obtained olive snail shells from the Costanoans. Warfare occurred between Costanoan tribelets as well as the Esselen, Salinan, and Northern Valley Yokuts. (Davis 1961, page 19; Levy 1978, page 488.)

A common archaeological manifestation of a Costanoan village site is the shellmound deposit (Kroeber 1976, page 466). Mussels are the primary shells that constitute these mounds, in addition to other household wastes.

The Spanish established seven missions in Costanoan territory between 1770 and 1797. By 1810, the mission system subsumed the last Costanoan village. Missions in the Bay Area mixed together various language and cultural groups, including the Esselen, Foothill Yokuts, Plains Miwok, Saclan Miwok, Lake Miwok, Coast Miwok, and Patwin. The mission closest to the proposed project area was Santa Clara de Asís, built in 1777. The mission is no longer extant, but the area is still rich in archaeological manifestations from the mission period and before. (Levy 1978, page 486.)

Historic Context

To inform an understanding of the potential significance of built environment resources near the project, a review of the major historical timeline markers for the project area provides context. This subsection offers a brief look at those events and trends in the history of the Santa Clara Valley region that provide that context, especially for the project site:

- Spanish Mission Period
- Mexican Period
- American Period
 - Transportation and Railroads
 - Agriculture and Fruit Industry
 - Post-World War II (WWII) and Silicon Valley
 - San Tomas Aquino Creek
 - Project Site History

Spanish/Mission Period (1769 to 1821)

The Spanish Period hosted several important developments, such as the establishment of Spanish colonial military outposts (presidios), pueblos, and 21 missions throughout Alta California. Nearest to the location of the proposed project were the Santa Clara de Asís Mission (1777), El Pueblo de San José de Guadalupe (1777) and associated Mission (1797), and Santa Cruz Mission (1791). The Spanish government also awarded land grants to soldiers and others and thus began the tradition of large land grants used for

agriculture and livestock. Little remains of the cultural landscape that existed during this time aside from some roads that follow the same early transportation routes (Santa Clara County 2012, pages 22–26).

Mexican Period (1821 to 1848)

Following Mexican independence from Spain in 1821, Mexican Governor Pío Pico granted lands to Mexican settlers, including the former mission lands, whose connection to the government was lost in the Decree of Secularization in 1834. The Mexican governor granted 43 ranchos in the Santa Clara Valley between 1802 and 1845. Local planning agencies lack detailed information on the location and integrity of these early California sites (Santa Clara County 2012, pages 30–32). The project site appears to be within the boundaries of the Rancho Ulistác (USGS 1899). Governor Pío Pico granted the land in 1845 to two Santa Clara Mission Indians: Marcelo Pío and Cristóbal. After the Mexican War (1846–1848), Jacob D. Hoppe obtained title to the rancho. Following Hoppe's death, his heirs divided and sold the land (Oosterhous et al. 2002, page 6). Santa Clara's historic context statement laments that most traces of original haciendas, adobes, and other rancho structures are not discernible in the landscape today and few records exist (Santa Clara County 2012, page 32).

American Period (1848 to Present)

California became the thirty-first state in the Union in 1850. In 1851, Santa Clara College, now Santa Clara University, was founded on the site of the Santa Clara de Asís Mission. The incorporation of the city of Santa Clara followed in 1852. In 1866, the city officially established a gridded street system to accommodate anticipated growth. Today, this area is known as the Old Quad neighborhood. Early industries in the city included wheat production and flour milling, seed and fruit packing, and manufacturing. Leather tanning and wood products were two key industries of the city well into the 20th century. Similarly, seed growing and fruit farming and packing (especially pears, cherries, apricots, and prunes) were mainstays, contributing to the city's exports. (Santa Clara 2010, page 3-2.)

Transportation and Railroads

Railroads played a significant part in the development of the Santa Clara Valley. In 1869, the Western Pacific Railroad completed a rail line from Niles, California, to San Jose, California, effectively connecting San Jose with the Transcontinental Railroad. This opened new markets for the agricultural and manufactured products of the entire Santa Clara Valley. Senator James Fair, a multi-millionaire, envisioned a route from the east side of the San Francisco Bay, south to San Jose, then on to Los Gatos and through the mountains to Felton, ultimately connecting to Santa Cruz. Senator Fair incorporated the South Pacific Coast Railroad in 1876 and immediately began building the segment from Dumbarton in the East Bay to Los Gatos, by way of Santa Clara and San Jose. Following that segment, the rail line passed through the Santa Cruz Mountains to connect with the narrow-gauge railroad at Felton. The Southern Pacific Railroad (SPRR) acquired these rail

lines in 1887 and eventually converted the narrow-gauge lines to standard gauge (Lehmann 2000, pages 31–33).

The SPRR Monterey Division segment from San Francisco to San Jose was originally constructed in 1864 by the San Francisco and San Jose Railroad Company (SFSJRR) and purchased by SPRR in 1869. The SPRR extended the tracks to Gilroy in 1869, then to Hollister in 1871 and Tres Pinos in 1873 (JRP 2002, pages 10–12). This railroad line provided freight and passenger access from San Francisco to the South Bay, San Jose, South County regions and beyond. A 1915 U.S. Geological Survey (USGS) topographic map shows the entire route of the SPRR Santa Cruz and Monterey Divisions from central San Jose through the Santa Cruz Mountains to Santa Cruz and Monterey, respectively, and indicating an ultimate connection to Los Angeles (USGS 1915). The Monterey Division passed adjacent to the project site where the alignment is currently used by Caltrain. The California Department of Transportation (Caltrans) assumed operation of the railroad right-of-way (ROW) from SPRR in 1979, and hence the name “Caltrain” in use today. The Peninsula Corridor Joint Powers Board purchased the ROW from San Francisco to San Jose and obtained trackage rights in the southern section in 1991 (JRP 2002, page 34).

Santa Clara Valley Agriculture and Fruit Industry

Fruit orchards and vegetable farms dominated the Santa Clara Valley from the 1890s to the 1940s. Wheat and flour milling were the first major agricultural activities. In support of the fruit and vegetable industry, canning operations flourished in the northeastern portion of the county. Fruit packing companies were common in the Santa Clara Valley in the first third of the 20th century. Nearly half of the world’s supply of fresh, dried, and canned fruit through the end of WWII originated from the valley. The agricultural-based economy and its support operations were gradually displaced by expanding suburban development, light industrial, and high-tech research and development operations by the 1970s (Fike 2016, page 2).

Post WWII and Silicon Valley

The Santa Clara Valley’s current commercial and industrial operations are indicative of the shift that took place after WWII from agricultural-based businesses to light industrial and ultimately high-tech research and development facilities. The Owens-Corning plant was one of the first new industrial businesses in the Santa Clara Valley and represents the shift toward industrial business in the valley after WWII. A 1949 aerial photograph shows the brand-new plant along Lafayette Street with agricultural uses surrounding it (Draper 1949). The plant remains in that location today. Throughout the valley, residential home developments slowly replaced orchards and agricultural fields. Due to the increased pressure from housing, the city of Santa Clara grew from 6,500 residents in 1940 to 86,000 by 1970 (Fike 2016, page 2). The landscape was forever transformed.

From 1960 to 1980, much of the industrial growth was in the electronics research and manufacturing sectors. The city of Santa Clara is home to Intel, Applied Materials, Sun Microsystems, Nvidia, National Semiconductor, and other high technology companies (Santa Clara 2010, pages 3-3 through 3-6). More recently, Santa Clara has become home to numerous data centers supporting the operations of the high technology companies of the Silicon Valley. This represents yet another contextual shift in the history of the Santa Clara/Silicon Valley.

Project Site

The project site is in the city of Santa Clara, Santa Clara County, California. The site encompasses approximately 6.69 acres and is located at 2590 Walsh Avenue in Santa Clara, California, Assessor's Parcel Number (APN) 216-28-112. The project site is located within Township 6S, Range 1W, Section 33 of the *San Jose West, California* USGS 7.5-minute Topographic Quadrangle Map (Ngo and DePietro 2021, page 3). It is located 3.54 miles south of the San Francisco Bay (TRC 2020, page 5).

The parcel is irregularly shaped and is generally bound to the northwest by a microelectronics testing facility, to the northeast by a software research and development facility, to the south by a railroad line operated by Caltrain, to the east by Walsh Avenue, and to the west by a Silicon Valley Power (SVP) substation. The Vantage Santa Clara Data Center Campus CA1 is located to the east of the site across Walsh Avenue. The closest residential uses are to the south across the railroad ROW (Ngo and DePietro 2021, page 3). The current building on site dates to ca. 1980 to 1982 (Smart Permit 2021; TRC 2020, page 4).

The project site served as farmland from at least 1897 to the 1970s (Ngo and DePietro 2021, pages 17–18). Maps and aerial images indicate that from 1939 to 1968 there existed private residences, agricultural structures, and orchards. A creek historically bisected the project site. The 1953 USGS topographic map labels the creek bisecting the property as Saratoga Creek. Saratoga Creek has had a few names over the years: Campbell's Creek, Sanjon Creek, and Quito Creek. The name was changed to Saratoga Creek sometime after the conclusion of WWII and by 1951 (Hickman 1974, page 11). South of the project site, the creek may have been diverted to join the San Tomas Aquino Creek to the east in the 1950s (Hickman 1974, page 12). Historical aerial images show remnants of the creek still bisecting the project property sometime between 1974 and 1982 (TRC 2020). Both creeks' origins are in the foothills of the South Coast Ranges. Throughout the early 19th century, most creeks originating in the foothills did not maintain a defined channel from the hills to the San Francisco Bay, including San Tomas Aquino Creek and Saratoga Creek (SFEI 2010, pages 13–14). Portions of Saratoga Creek were straightened as early as 1897, especially in the project site area. San Tomas Aquino Creek also appears to have been straightened by 1897 (USGS 1897). Today, a bicycle trail traverses the west side of the channel on a levee. The San Tomas Aquino Creek and bicycle trail are approximately 0.25 mile east of the project site.

Suburban residential development appears southwest of the project site as early as the 1950s. That development continued in the 1960s and 1970s (TRC 2020). By 1974, the property had been cleared of all residences and agricultural uses. The parcel was developed as an industrial property in 1982. Maps and aerial images indicate similar histories on some of the adjacent properties. The existing Caltrain rail alignment to the south dates to 1864 (JRP 2002, page 10), and is identified as the SPRR Monterey Line on topographic maps (TRC 2020, pages 13–16, and 1130 of 1213).

The adjacent parcels are listed in Table 4.5-1 below.

Table 4.5-1 Parcels Adjacent to the Project Site

Address	APN	Description	Year Constructed
2590 Walsh Ave	216-28-112	Project Site, Industrial	ca. 1980–1982
2550 Walsh Ave	216-28-113	Commercial/Office	1980
2565 Walsh Ave/2820 Northwestern Parkway	216-28-132	Commercial/Industrial	unknown
2630 Walsh Ave	216-28-106	Commercial/Office	1977
2705 Bowers Ave	216-28-062	Uranium Substation	1976
N/A	216-28-121	Railroad tracks (SPRR, Caltrain)	1864

Abbreviations: APN = Assessor’s Parcel Number; Ave = Avenue; N/A = not applicable; SPRR = Southern Pacific Railroad

The pedestrian survey completed on March 18, 2021, by the applicant’s consultants (First Carbon Solutions) did not identify any adjacent properties 45 years or older (DayZenLLC 2021e, page 4-46). However, city of Santa Clara building permit records indicate that the Uranium Substation was issued a permit to construct in 1974 and was finished in 1976, making it at least 45 years old (Smart Permit 2021). The route of the SPRR Monterey Line dates to 1864, when it was initially constructed as the San Francisco & San Jose Railroad. The applicant’s consultant prepared a supplemental report at CEC staff’s request to investigate properties within one parcel distance from the project site. Both the Uranium Substation and the railroad tracks were determined to be 45 years or older and were evaluated for their eligibility for the National Register of Historic Places (NRHP), CRHR, and the local city of Santa Clara register (Murray 2021). Methods and results are below.

Methods

Project Area of Analysis

The project area of analysis (PAA) defines the geographic area in which the proposed project has the potential to affect cultural or tribal cultural resources. Effects may be immediate, further removed in time, or cumulative. They may be physical, visual, audible, or olfactory in character. The PAA may or may not be one uninterrupted expanse. It could include the site of the project site, the routes of requisite transmission lines and water and natural gas pipelines, and other offsite ancillary facilities, in addition to one or several discontinuous areas where the project could arguably affect cultural or tribal cultural resources.

CEC staff defines the PAA as comprising the proposed project site, immediately adjacent parcels, and all appurtenant, proposed improvements. The PAA has archaeological, ethnographic, and historic built environment components, as described in the following paragraphs.

CEC staff defines the archaeological component of the PAA as all areas in which the applicant proposes ground disturbance to construct, operate, and decommission the proposed project. This includes building demolition, the proposed building sites, areas slated for concrete and hardscape removal, areas to be filled and graded, staging and laydown areas, installation of underground utilities, subsurface drainage, and installation of two transmission line poles. The applicant proposes demolition and excavation to variable depths. Trench excavations would extend up to 15-feet below grade. Foundation piles for the data center buildings would be augered to depths more than 30-feet below grade. (DayZenLLC 2021e, page 4-67.) Transmission line poles would be installed via truck-mounted auger to a depth of 20–30 feet.

For ethnographic resources, the PAA considers sacred sites, tribal cultural resources, traditional cultural properties (places), and larger areas, such as ethnographic landscapes that can be vast and encompassing, including view sheds that contribute to the historical significance of such resources. The Native American Heritage Commission (NAHC) assists project-specific cultural resources consultants and agency staff in identifying these resources, and consultation with Native Americans and other ethnic or community groups may contribute to defining the PAA. In the case of the proposed project, the immediate environs consist largely of commercial and light industrial buildings, offices, a park, residential areas, and an electrical substation. Staff, therefore, treats the ethnographic component of the PAA as coterminous with the archaeological component.

The project site consists primarily of a pre-existing industrial one-story building, pavement, hardscape, and modest landscape elements, much of which dates to 1980 to 1982. The historic built environment PAA for this project includes the project site and properties within a one-parcel boundary of the project site. This includes all properties directly across Walsh Avenue from the project site.

Literature Review

The literature review for this analysis consisted of a records search at the California Historical Resources Information System (CHRIS), a review of the application for small power plant exemption (SPPE), and an examination of pertinent literature concerning cultural resources in the northern Santa Clara Valley.

The applicant conducted the records search at the Northwest Information Center (NWIC) of the CHRIS on May 5, 2021 (Ngo and DePietro 2021, page 1). The NWIC is the State of California’s official repository of cultural resources records, previous cultural resources studies, and historical information concerning cultural resources for 16 counties, including Santa Clara County. The records search area included the project site and a 0.5-mile buffer around it (Ngo and DePietro 2021, page 1).

CEC staff also examined historic maps and aerial photographs of the PAA and vicinity to identify cultural resources (EDR 2017a, 2017b; Edward Denny & Co. 1913; GLO 1866; TRC 2020; USGS 1897, 1899). These sources depict the historic appearance of the PAA each decade from 1857 through 1980 (excepting the 1870s, 1880s, 1900s, and 1920s). The historic maps studied date to 1897, 1899, 1953, 1961, 1968, 1973, 1980, and 2012, and include the following USGS quadrangles: Palo Alto, San Jose (15-minute series), Cupertino, Milpitas, Mountain View, and San Jose West (7.5-minute series). The historic aerial images studied are: 1939, 1948, 1950, 1956, 1963, 1968, 1974, 1982, 1993, 1998, 2006, 2009, 2012, and 2016.

In addition, CEC staff consulted:

- City of Santa Clara's General Plan 2010–2035 (General Plan), including its Historic Preservation and Resource Inventory (Santa Clara 2010)
- County of Santa Clara Historic Context Statement (Santa Clara County 2012)
- City of Santa Clara's Map Santa Clara tool (Santa Clara 2021).

CEC staff also consulted the NRHP, CRHR, Historic American Building Survey, Historic American Engineering Record, Historic American Landscape Survey, and other repositories of documentation of historical resources.

Tribal Consultation

Applicant's Correspondence

The applicant contacted the NAHC on February 23, and May 5, 2021, to request a list of tribes that might be interested in the project and a search of the Sacred Lands File. The NAHC responded on March 9, and May 21, 2021, providing contact information for 10 representatives of California Native American tribes. These individuals represent:

1. Muwekma Ohlone Indian Tribe of the San Francisco Bay Area
2. North Valley Yokuts Tribe
3. The Ohlone Indian Tribe
4. Amah Mutsun Tribal Band
5. Indian Canyon Mutsun Band of Costanoan
6. Amah Mutsun Tribal Band of Mission San Juan Bautista
7. Wuksache Indian Tribe/Eshom Valley Band
8. Rumsen Am:a Tur:ataj Ohlone
9. Tamien Nation

The applicant sent letters to these tribes on March 10, and May 21, 2021. (Ngo and DePietro 2021, page 21; DayZenLLC 2021e, page 4-46.)

CEC Consultation

CEQA requires lead agencies to consult with all California Native American tribes that have traditional and cultural affiliation with the geographic area of a project and that have previously requested consultation. To invoke an agency's requirement to consult under CEQA, a tribe must first send the lead agency a written request for formal notification of any projects within the geographic area with which they traditionally and culturally affiliate. (Pub. Resources Code, § 21080.3.1(b).) The CEC has a request for formal notification on file from the Wuksache Indian Tribe/Eshom Valley Band, a California Native American tribe that has traditional and cultural affiliation with the geographic area of the proposed project (Woodrow 2016). Accordingly, the CEC's Tribal Liaison mailed a letter (dated July 1, 2021) to the Wuksache Indian Tribe/Eshom Valley Band's chairperson inviting consultation pursuant to Public Resources Code, section 21080.3.1, and providing general information concerning the proposed project. The letter included four figures illustrating the proposed project and its location. (CEC and NAHC 2021, PDF pages 48–55.)

Consistent with the CEC's tribal consultation policy (CEC 2017), CEC staff contacted the NAHC on April 14, 2021, to request a search of the Sacred Lands File and a list of California Native American tribes that might be interested in the proposed project. The NAHC responded on April 28, 2021, and provided a list of nine California Native American tribes to contact (CEC and NAHC 2021, PDF pages 2–3); the listed tribes were the same tribes that the applicant's consultant contacted in March 2021. CEC staff mailed initial consultation letters to these tribes on July 1, 2021 (See CEC and NAHC 2021, PDF pages 4–47). See the following subsection, "Results," for tribal responses and lead agency follow-up.

The CEC also initiated consultation under Public Resources Code, section 21080.3.1, with the Tamien Nation after receiving the tribe's request for formal consultation on September 17, 2021 (see the discussion under "Results").

Archaeological Survey

An archaeologist and a historian from FirstCarbon Solutions conducted an archaeological survey of the project site on March 18, 2021. Where obstructions did not hinder traversing the project site, FirstCarbon Solutions surveyed by walking transects at 5-meter (16-foot) intervals and making observations concerning the ground surface. The surveyors examined all available soil exposures in the project site. (DayZenLLC 2021e, page 4-45.)

Historic Architectural Survey

CEC cultural resources staff conducted an architectural investigation inclusive of the project site and a one-parcel buffer from the proposed project boundaries. Buildings or structures 45 years or older, or considered significant, were identified as part of this effort. Any building or facility constructed in 1976 or earlier, or potentially eligible for the CRHR or local register, was surveyed and evaluated by the applicant's consultant for potential significance (Murray 2021).

Results

Literature Review Results

The NWIC records search identified six previous cultural resources studies conducted within the project site (BioSystems 1989; Carrico et al. 2000; Holson et al. 2002; Jurich and Grady 2011; Nelson et al. 2000; SWCA 2006). Eleven previous cultural resources studies have been conducted within 0.5 mile of the proposed project (Anastasio and Garaventa 1988; Baker 1998; Basin 2009a, 2009b; Busby 1999; Flynn 1979; Hammerle 2015; Hickman 1974; Jones & Stokes 2001; JRP 2002; Nelson et al. 2002). The city of Santa Clara’s Planning website documents additional cultural resources impact analyses within 0.5 mile of the proposed project (Akmenkalns 2020; Guldenbrein 2017; Psota 2016).

The NWIC has no records of previously recorded cultural resources within 0.5 mile of the project site (Ngo and DePietro 2021, page 19). However, the adjacent railroad line (P-43-000928) has been surveyed for infrastructure for the entire Caltrain corridor on the San Francisco Peninsula (Murray 2021, page 9). Staff identified one additional cultural resource that has been previously investigated, the San Tomas Aquino Creek, located approximately 0.25 mile from the project site (Baker 1998). These cultural resources are listed in **Table 4.5-2**.

TABLE 4.5-2. CULTURAL RESOURCES IDENTIFIED IN THE LITERATURE REVIEW

No.	Resource Name	APN	Description, Year Built	Eligibility Status
1.	San Tomas Aquino Creek		Channelized water conveyance structure, 1897	Ineligible
2.	Caltrain/SPRR Tracks (P-43-000928)	216-28-121	1864	Ineligible

Notes: APN = Assessor’s Parcel Number; SPRR = Southern Pacific Railroad

Tribal Consultation Results

The April 28, 2021, search of the Sacred Lands File did not identify Native American cultural resources in the search area (CEC and NAHC 2021, PDF pages 2–3). The applicant did not receive any responses to letters sent to these tribes.

The Wuksache Indian Tribe/Eshom Valley Band has not responded to the CEC’s invitation to consult under Public Resources Code, Section 21080.3.1.

In response to the CEC Tribal Liaison’s letters inviting consultation with California Native American tribes, the Tamien Nation responded by letter on August 6, 2021, specifically requesting consultation about the following topics.

- Recommended mitigation measures
- Significant effects of the project

- Type of environmental review necessary
- Significance of tribal cultural resources, including any regulations, policies, or standards used by the CEC to determine significance of tribal cultural resources
- Significance of the project's impacts on tribal cultural resources
- Project alternatives and/or appropriate measures for preservation or mitigation that we may recommend, including, but not limited to:
 - Avoidance and preservation of the resources in place, pursuant to Public Resources Code section 21084.3, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria;
 - Treating the resources with culturally appropriate dignity considering the tribal cultural values and meaning of the resources, including, but not limited to, the following:
 - Protecting the cultural character and integrity of the resource;
 - Protecting the traditional use of the resource; and
 - Protecting the confidentiality of the resource.
 - Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - Protecting the resource.

Tamien Nation also requested any cultural resources assessments or other assessments that have been completed on all or part of the PAA. ~~Consultation between the CEC and Tamien Nation is ongoing as of the time of this writing; CEC staff will update this results discussion in the final environmental impact report after the consultation concludes~~During the consultation, CEC staff provided Tamien Nation with a Word version of the DEIR's Cultural and Tribal Cultural Resources section. On December 27, 2021, Tamien Nation provided comments and suggested edits to the DEIR section to CEC staff. Tamien Nation's comments solely concerned Mitigation Measure CUL-1. Tamien Nation's comments concerned:

- Identifying Tamien Nation as the Native American monitor for ground-disturbing activities
- Clarifying the scope of monitoring by archaeological and Native American monitors
- Requiring a letter of commitment from the project applicant to deploy archaeological and Native American monitors during construction
- Terminological preferences, such as "Aboriginal ties" instead of "Traditional ties"

- Clarifying and expanding the Native American monitor(s)' role in construction monitoring (to include collaboration on the treatment plan, choice of analytical methods, and determining the disposition of archaeological materials found during construction)
- Protecting confidential cultural resources information provided to the City of Santa Clara
- Requiring Tribal Cultural Resources Sensitivity Training to construction personnel in conjunction with the Workers Environmental Awareness Program-

CEC staff incorporated Tamien Nation's input into Mitigation Measure CUL-1, with the exception of identifying Tamien Nation as the Native American monitor. The CEC is considering whether to exempt the proposed CA3 project from its jurisdiction. Since the City of Santa Clara would ultimately issue the permit for CA3, CEC staff concludes that the choice of monitors should reside with Santa Clara. CEC staff has not successfully solicited further input from Tamien Nation and considers consultation to be concluded.

Archaeological Survey Results

FirstCarbon Solutions found the archaeological PAA to be almost completely covered in pavement, hardscape, buildings, and landscaping. Landscaping offered minimal opportunity to see the ground surface in the archaeological PAA. The surveyors did not identify any archaeological resources in the archaeological PAA.

Historic Architectural Survey Results

The built environment PAA used for this project includes properties within a one-parcel boundary of the project site. The study area was established to analyze the project's potential for impacts to built-environment historical resources. The initial built environment survey and archival search conducted by the applicant did not identify any properties containing buildings or structures 45 years or older within the PAA. CEC staff identified two historic-era resources 45 years or older within the PAA. A subsequent investigation by the applicant's consultant concurred with staff's conclusion (Murray 2021). The two resources 45 years or older are the Caltrain Railroad Tracks (historic SPRR Monterey Line) and the SVP Uranium Substation. Both resources have been surveyed and evaluated by the applicant's consultant (Murray 2021).

Caltrain Railroad Tracks (Historic SPRR Monterey Line, P-43-000928)

The railroad predates the commercial and industrial operations in the area. The Caltrain electrification project has produced numerous studies over time of the Caltrain rail corridor and associated infrastructure. Most of these studies have been prepared by JRP Historical Consulting (JRP) (for example, JRP 2002). Generally, JRP and others have found modern railroad segments do not retain their integrity to the period of significance. Integrity has seven aspects: design, setting, materials, workmanship, feeling, association, and location. While the location of the railroad line has not changed, most railroads undergo maintenance and upgrades of facilities that generally change the design,

materials, and workmanship over time. This railroad does not appear to retain sufficient integrity to its setting, feeling, and association during the period of significance, 1860 to 1873, when SFSJRR and SPRR first operated the passenger and freight line. For the segment adjacent to the project site, the addition of a second track in the early 1900s, replacement of the original rails in the late 1950s, the grade separation at Bowers Avenue, and the addition of electrification equipment in the last decade (Murray 2021, Attachment A) degrade the integrity of the resource. The railroad has changed from its initial use as a passenger and freight line from San Francisco to Monterey and Los Angeles to strictly passenger commuter service on the San Francisco Peninsula, from San Francisco to Gilroy. The lack of integrity to the period of significance makes it ineligible for listing under the NRHP, CRHR, or city of Santa Clara's significance criteria. Thus, the resource does not qualify as a historical resource under CEQA.

Uranium Substation

The SVP Uranium Substation was constructed between 1974 and 1976. Like the neighboring properties, the substation is located on what was farmland until the 1970s. Sited on an irregularly shaped parcel at 2705 Bowers Avenue in the city of Santa Clara, the substation is comprised of utilitarian buildings and structures typical of these kinds of facilities. Clues to its origins in the mid-1970s include the concrete-block utility building with a shed roof and wood-panel fascia evoking the shed style popular in the 1970s, and the north concrete-block entry wall bearing the substation's name in metal lettering. The substation was constructed to support ongoing population and industry growth within the context of a larger electrical system (Murray 2021, Attachment A). While it is associated with the rapid growth of the Santa Clara Valley and the rise of the tech industry in Santa Clara, it is not directly associated with any significant events in the development of the SVP electrical infrastructure (Murray 2021, Attachment A). The Uranium Substation has no significant historical or architectural associations (Murray 2021, page 11). This lack of historical or architectural significance makes it ineligible for listing under the NRHP, CRHR, or city of Santa Clara's significance criteria. Thus, the resource does not qualify as a historical resource under CEQA.

2590 Walsh Avenue

The building located at 2590 Walsh Avenue dates to the early 1980s. It is best described as a single-story office and warehouse structure, designed with a nod to the Spanish Eclectic style of architecture. This is found in the clay tile roof and the predominant arched windows. There is a nearly identical building next door at 2630 Walsh Avenue. The project site is completely developed, consisting of the large office warehouse building bordering Walsh Avenue to the north and parking lots, associated infrastructure, and landscape elements. None of the structures or elements on the project site are 45 years or older in age, and thus, are ineligible for inclusion on the CRHR or the city of Santa Clara's register and do not warrant further consideration as potential historic resources under CEQA.

Archaeological Sensitivity

The application and staff's literature review indicate that the potential for buried archaeological resources to occur in the project vicinity mirrors the high frequency of buried archaeological deposits throughout the Santa Clara Valley (Byrd et al. 2017, page 4-2; Mission College 2019, pages 92–93; Hylkema 1998, page 20). Researchers have identified at least 16 buried prehistoric archaeological sites in the Santa Clara Valley (Rehor and Kubal 2014, page 4-1, Table 4-1). Archaeologists working independently of the present analysis have estimated the PAA's likelihood to contain buried, prehistoric, archaeological resources as moderate (Byrd et al. 2017, Figure 27). The PAA is situated in an area that historically lay near J. Kiefer's barn and house, orchards, natural and channelized forms of present-day Saratoga Creek, roads, and encompassed a residence and part of an adjoining orchard since the middle of the 1800s to about 1968 or 1974. Therefore, buried historic archaeological resources are also expectable in the PAA, below modern construction. (DayZenLLC 2021c; GLO 1866; USGS 1899.)

Regulatory Background

Federal

No federal regulations related to cultural or tribal cultural resources apply to the project.

State

California Environmental Quality Act. Various laws apply to the evaluation and treatment of cultural resources. CEQA requires lead agencies to evaluate cultural resources by determining whether they meet several sets of specified criteria that make such resources eligible to the CRHR. Those cultural resources eligible to the CRHR are historical resources. The evaluation then influences the analysis of potential impacts to such historical resources and the mitigation that may be required to ameliorate any such impacts.

CEQA and the CEQA Guidelines define significant cultural resources under two regulatory definitions: historical resources and unique archaeological resources. A historical resource is defined as a "resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources," or "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," or "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, provided the agency's determination is supported by substantial evidence in light of the whole record." (Cal. Code Regs., tit. 14, § 15064.5(a).) Historical resources that are automatically listed in the CRHR include California historical resources listed in or formally determined eligible for the NRHP and California Registered Historical Landmarks from No. 770 onward (Pub. Resources Code, § 5024.1(d)).

CEQA generally considers a resource historically significant if it meets the criteria for listing in the CRHR. In addition to being at least 45 years old, a resource must meet one or more of the following four criteria (Pub. Resources Code, § 5024.1):

- Criterion 1, is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
- Criterion 2, is associated with the lives of persons important in our past;
- Criterion 3, embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- Criterion 4, has yielded, or may be likely to yield, information important in prehistory or history.

In addition, historical resources must also possess integrity of location, design, setting, materials, workmanship, feeling, and association (Cal. Code Regs., tit. 14, § 4852(c)).

Even if a resource is not listed or determined to be eligible for listing in the CRHR, CEQA requires the lead agency to determine whether the resource is a historical resource as defined in Public Resources Code, sections 5020.1(j) or 5024.1.

In addition to historical resources, archaeological artifacts, objects, or sites can meet CEQA’s definition of a unique archaeological resource even if the resource does not qualify as a historical resource (Cal. Code Regs., tit. 14, § 15064.5(c)(3)). Archaeological artifacts, objects, or sites qualify as unique archaeological resources if it is clearly demonstrable that, without merely adding to the current body of knowledge, there is a high probability that the resource meets any of the following criteria:

1. Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information
1. Has a special and particular quality such as being the oldest of its type or the best available example of its type
2. Is directly associated with a scientifically recognized important prehistoric or historic event or person (Pub. Resources Code, § 21083.2(g).)

To determine whether a proposed project may have a significant effect on the environment, staff analyzes the project’s potential to cause a substantial adverse change in the significance of historical or unique archaeological resources. The magnitude of an impact depends on:

- the historical resource(s) affected;
- the specific historic significance of any potentially impacted historical resource(s);
- how the historical resource(s) significance is manifested physically and perceptually;

- appraisals of those aspects of any historical resource's integrity that figure importantly in the manifestation of the resource's historical significance; and
- how much the impact will change historical resource integrity appraisals.

Title 14, California Code of Regulations, section 15064.5(b) defines a "substantial adverse change" as the "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."

California Native American Tribes, Lead Agency Tribal Consultation Responsibilities, and Tribal Cultural Resources. CEQA provides definitions for California Native American tribes, lead agency responsibilities to consult with California Native American tribes, and tribal cultural resources. A "California Native American tribe" is a "Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004" (Pub. Resources Code, § 21073). Lead agencies implementing CEQA are responsible to consult with California Native American tribes about tribal cultural resources within specific timeframes. If tribal cultural resources could be impacted by a CEQA project, lead agencies are to exhaust the consultation to points of agreement or termination.

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 the Public Resources Code, section 5020.1(k).
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 the Public Resources Code, section 5024.1(c). In applying these criteria, the lead agency shall consider the significance of the resource to a California Native American tribe. (Pub. Resources Code, § 21074(a).)

A cultural landscape that meets the criteria of Public Resources Code, section 21074(a), is a tribal cultural resource to the extent that the landscape is geographically defined in terms of its size and scope (Pub. Resources Code, § 21074(b)). Historical resources, unique archaeological resources, and non-unique archaeological resources, as defined at Public Resources Code, sections 21084.1, 21083.2(g), and 21083.2(h), respectively, may also be tribal cultural resources if they conform to the criteria of Public Resources Code, section 21074(a).

CEQA also states that a project with an impact 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 (Pub. Resources Code, § 21084.2).

Local

City of Santa Clara General Plan. Section 5.6.3 of the city of the General Plan outlines the goals and policies related to archaeological and cultural resources. The applicable goals in this section of the General Plan encourage the protection and preservation of cultural resources, including archaeological and paleontological sites, and encourage appropriate mitigation in the event of discovery during construction.

Relevant policies require protecting historic resources through the avoidance or reduction of potential impacts, using the Secretary of the Interior's Standards for the Treatment of Historic Properties, and using the city's established historic preservation program for ensuring resource evaluation, protection, and integrity (Santa Clara 2010).

Appendix 8.9 of the General Plan, the Historic Preservation and Resource Inventory, established criteria for local significance and included a list of recorded historic properties (Santa Clara 2010). In addition, the city has embedded in its City Code a section on Historic Preservation (Title 18 Zoning, Chapter 18.106, Historic Preservation). The purpose of Chapter 18.106 is "to promote the identification, protection, enhancement and perpetuation of buildings, structures and properties within the City that reflect special elements of the City's social, economical, historical, architectural, engineering, archaeological, cultural, natural, or aesthetic heritage" (Santa Clara 2018). The chapter requires the maintenance of a Historic Resource Inventory.

Appendix 8.9 of the General Plan also identifies significance criteria for local listings. The city of Santa Clara's City Council adopted the Criteria for Local Significance on April 20, 2004 and incorporated the criteria into the General Plan Appendix 8.9. Any building, site, or property in the city that is 50 years old or older and meets certain criteria of architectural, cultural, historical, geographical, or archaeological significance is potentially eligible. The Criteria for Local Significance established in General Plan Appendix 8.9 (Santa Clara 2010) are as follows:

Criterion for Historical or Cultural Significance - To be historically or culturally significant, a property must meet at least one of the following criteria:

1. The site, building or property has character, interest, integrity and reflects the heritage and cultural development of the city, region, state, or nation.
2. The property is associated with a historical event.
3. The property is associated with an important individual or group who contributed in a significant way to the political, social and/or cultural life of the community.

4. The property is associated with a significant industrial, institutional, commercial, agricultural, or transportation activity.
5. A building's direct association with broad patterns of local area history, including development and settlement patterns, early or important transportation routes or social, political, or economic trends and activities. Included is the recognition of urban street pattern and infrastructure.
6. A notable historical relationship between a site, building, or property's site and its immediate environment, including original native trees, topographical features, outbuildings, or agricultural setting.

Criterion for Architectural Significance - To be architecturally significant, a property must meet at least one of the following criteria:

1. The property characterizes an architectural style associated with a particular era and/or ethnic group.
2. The property is identified with a particular architect, master builder, or craftsman.
3. The property is architecturally unique or innovative.
4. The property has a strong or unique relationship to other areas potentially eligible for preservation because of architectural significance.
5. The property has a visual symbolic meaning or appeal for the community.
6. A building's unique or uncommon building materials or its historically early or innovative method of construction or assembly.
7. A building's notable or special attributes of an aesthetic or functional nature. These may include massing, proportion, materials, details, fenestration, ornamentation, artwork, or functional layout.

Criterion for Geographic Significance - To be geographically significant, a property must meet at least one of the following criteria:

1. A neighborhood, group, or unique area directly associated with broad patterns of local area history.
2. A building's continuity and compatibility with adjacent buildings and/or visual contribution to a group of similar buildings.
3. An intact, historical landscape or landscape features associated with an existing building.
4. A notable use of landscaping design in conjunction with an existing building.

Criterion for Archaeological Significance - For the purposes of CEQA, an "important archaeological resource" is one which:

5. Is associated with an event or person of
 - a. Recognized significance in California or American history, or
 - b. Recognized scientific importance in prehistory.
6. Can provide information, which is both of demonstrable public interest, and useful in addressing scientifically consequential and reasonable or archaeological research questions;
7. Has a special or particular quality such as oldest, best example, largest, or last surviving example of its kind;
8. Is at least 100 years old and possesses substantial stratigraphic integrity; or
9. Involves important research questions that historical research has shown can be answered only with archaeological methods.

4.5.2 Environmental Impacts

Cultural Resources CEQA Checklist Questions

a. Would the project cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

Construction

Less Than Significant Impact with Mitigation Incorporated. No historic built environment resources meeting CEQA's criteria for historical resources are located on site or within the PAA. No archaeological or ethnographic resources meeting CEQA's criteria for historical resources occupy the surface of the PAA. Previous studies in the project vicinity, however, indicate that the PAA could harbor buried archaeological or ethnographic resources. The PAA is located between two waterways (Saratoga and San Tomas Aquino creeks) on the former grounds of historic farms. Archaeologists working independently of the present analysis have estimated the PAA's likelihood to contain buried, prehistoric archaeological resources as moderate (Byrd et al. 2017, Figure 27).

The ground disturbance required to build the proposed project would extend into native soils more than 30 feet below grade. Known buried archaeological sites in the Santa Clara Valley are located at depths of 1.0–10.5 feet below grade (Rehor and Kubal 2014, Table 4-1). If such resources were to be damaged during construction, it would be considered a significant impact, particularly since virtually all archaeological sites 5,000 years or older occur only in buried contexts.

This EIR, however, proposes a mitigation measure, **CUL-1**, to reduce the significance of any such impacts on historical resources. **CUL-1** requires qualified professionals to survey the exposed ground surface for cultural resources once the demolition of existing structures is complete. It also requires test excavation to determine the presence or absence of buried cultural resources and describes criteria for avoidance measures and construction monitoring (see **Section 4.5.3: Mitigation Measures**). This measure would reduce impacts to any discovered historical resources to a less-than-significant level.

Operation

No Impact. Ground-disturbing activities are not part of the operational or maintenance profile of the proposed project. Therefore, there would be no impact to historical resources, as described in CEQA Guidelines Section 15064.5.

b. Would the project cause a substantial adverse change in the significance of a unique archaeological resource pursuant to §15064.5?

Construction

Less Than Significant Impact with Mitigation Incorporated. As discussed in the potential construction impacts for CEQA Checklist Question “a” above, mitigation measure **CUL-1** would reduce impacts to unique archaeological resources to a less-than-significant level.

Operation

No Impact. Ground-disturbing activities are not part of the operational or maintenance profile of the proposed project. The operation and maintenance of the proposed project would not require excavation or other ground-disturbance. Therefore, there would be no impact to unique archaeological resources, as described in CEQA Guidelines Section 15064.5.

c. Would the project disturb any human remains, including those interred outside of formal cemeteries?

Construction

Less Than Significant Impact with Mitigation Incorporated. See staff’s response to CEQA Checklist Questions “a” and “b” above for construction. In addition to mitigation measure **CUL-1**, mitigation measure **CUL-2** describes a protocol to minimize or avoid impacts on inadvertently discovered human remains. Combined, mitigation measures **CUL-1** and **CUL-2** would reduce the impacts to human remains to a less-than-significant level.

Operation

No Impact. Ground-disturbing activities are not part of the operational or maintenance profile of the proposed project. Therefore, there would be no impact to human remains during the operation and maintenance of the proposed project.

Tribal Cultural Resources CEQA Checklist Questions

Would the project 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:

- a. 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 Impact. There are no tribal cultural resources listed or eligible for listing in the CRHR or other state registers, NRHP, or local register of historical resources in the PAA, and, therefore, no impacts would occur during construction.

Operation

No Impact. Ground-disturbing activities are not part of the operational or maintenance profile of the proposed project. Impacts on tribal cultural resources listed or eligible for listing in the CRHR or other state registers, NRHP, or local register of historical resources would, therefore, not occur during operation or maintenance.

- b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in Public Resources Code, section 5024.1 (c). In applying the criteria set forth in Public Resources Code, section 5024.1 (c), the lead agency shall consider the significance of the resource to a California Native American tribe?**

Construction

Less Than Significant Impact with Mitigation Incorporated. Although there are no known tribal cultural resources on or directly adjacent to the proposed site, ground-disturbance associated with the proposed project could result in the exposure and destruction of buried, as-yet-unknown prehistoric archaeological resources that could qualify as tribal cultural resources. If these resources were to be exposed or destroyed, it would be a significant impact. Implementation of **CUL-1** and **CUL-2**

would reduce the impacts on buried, tribal cultural resources to a less than significant level (see Cultural Resources CEQA Checklist Questions "a" and "b" above).

Operation

No Impact. Ground-disturbing activities are not part of the operational or maintenance profile of the proposed project. Impacts on tribal cultural resources listed or eligible for listing in the CRHR or other state registers, NRHP, or local registers of historical resources would, therefore, not occur during operation and maintenance.

4.5.3 Mitigation Measures

CUL-1: The following project-specific measures would be implemented during construction to avoid significant impacts to unknown subsurface cultural resources:

- A Secretary of the Interior-qualified archaeologist and a Native American cultural resources monitor shall be on site to monitor all ground-disturbing activity, including the removal of foundations and landscaping, on the project site. The project applicant shall submit the name and qualifications of the selected archaeologist and Native American monitor, along with a signed letter of commitment or agreement to monitor, to the City's Director of Community Development prior to the issuance of a grading permit. Preference in selecting Native American monitors shall be given to Native Americans with:
 - Aboriginal, culturally affiliated ties to the area being monitored.
 - Knowledge of local historic and prehistoric Native American village sites.
 - Knowledge and understanding of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.
 - Ability to effectively communicate the requirements of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.
 - Ability to work with law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.
 - Ability to travel to project sites within traditional tribal territory.
 - Knowledge and understanding of California Code of Regulations, title 14, section 15064.5.
 - Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding of CEQA mitigation provisions.
 - Ability to read a topographical map and be able to locate site and reburial locations for future inclusions in the Native American Heritage Commission's Sacred Lands Inventory.
 - Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.

After the removal of pavement and prior to grading, the archaeologist shall conduct a pedestrian survey over the exposed soils to determine if any surface archaeological manifestations are present.

- After the demolition of the existing building and paved parking lot on the site, a qualified archaeologist with a Native American monitor present shall complete mechanical presence/absence testing for archaeological deposits and cultural materials. In the event any prehistoric site indicators are discovered, additional backhoe testing will be conducted to map the aerial extent and depth below the surface of the deposits. In the event prehistoric or historic archaeological deposits are found during presence/absence testing, the significance of the find will be determined. If deemed significant, a treatment plan will be prepared and provided to the city's Director of Community Development. Where Native American cultural materials are identified, the archaeological monitor will prepare a treatment plan in collaboration with the monitoring California Native American tribe. The key elements of a treatment plan shall include the following:
 - Identify the scope of work and range of subsurface effects (include location map and development plan),
 - Describe the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found),
 - Develop research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information),
 - Detail the field strategy used to record, recover, or avoid the finds (photos, drawings, written records, provenience data maps, soil profiles, excavation techniques, standard archaeological methods) and address research goals.
 - Analytical methods (radiocarbon dating, obsidian studies, bone studies, historic artifacts studies [list categories and methods], packaging methods for artifacts, etc.); the monitoring California Native American tribe shall determine the appropriateness of analytical methods proposed for Native American cultural materials,
 - Report structure, including a technical and layperson's report and an outline of document contents in one year of completion of development (provide a draft for review before a final report),
 - Disposition of the artifacts (the monitoring California Native American tribe will determine the disposition of California Native American cultural materials),
 - Appendices: site records, update site records, correspondence, consultation with Native Americans, etc.

The archaeologist and California Native American monitor will monitor full-time all grading and ground disturbing activities associated with the construction of the proposed project. If the archaeologist and Native American monitor believe that a reduction in monitoring activities is prudent, then a letter report detailing the rationale for making such a

reduction and summarizing the monitoring results shall be provided to the city's Director of Community Development. Department of Recreation 523 forms shall be submitted along with the report for any cultural resources encountered over 50 years old.

- If prehistoric or historic resources are encountered during on-site construction activities, all activity within a 50-foot radius of the find shall be stopped, the city's Director of Community Development shall be notified, and a Secretary of the Interior-qualified archaeologist shall examine the find and record the site, including field notes, measurements, and photography for a Department of Parks and Recreation 523 Primary Record form. The archaeologist shall make a recommendation in collaboration with the monitoring California Native American tribe regarding eligibility for the California Register of Historical Resources, data recovery, curation, or other appropriate mitigation. Ground-disturbance within the 50-foot radius can resume once these steps are taken and the city's Director of Community Development has concurred with the recommendations. Within 30 days of the completion of the construction or cultural resources monitoring, whichever comes first, a report of findings documenting any cultural resource finds, recommendations, data recovery efforts, and other pertinent information gleaned during cultural resources monitoring shall then be submitted to the city's Director of Community Development under confidential cover, along with a report that redacts the location(s) of all cultural resources. Once finalized, this report shall be submitted to the Northwest Information Center at Sonoma State University.
- Prior to and for the duration of ground-disturbance, the project owner shall provide Worker Environmental Awareness Program training to all existing and any new employees. This training should include: a discussion of the applicable laws and penalties under the laws; samples or visual aids of the artifacts that could be encountered in the project vicinity, including what those artifacts may look like partially buried, or wholly buried and freshly exposed; and instructions to halt work in the vicinity of any potential cultural resource discovery, and notify the city-approved archaeologist and Native American cultural resources monitor. The Native American monitor shall provide a Tribal Cultural Resources Sensitivity Training in conjunction with the Worker Environmental Awareness Program.

CUL-2: The project proposes to implement the following measure to ensure the project's impacts to human remains are less than significant:

- If human remains are discovered during the presence/absence testing or excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner will be notified and shall determine whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the coroner will notify the NAHC immediately. Once NAHC identifies the most likely descendants, the descendants will make recommendations regarding proper burial, which will be implemented in accordance with the California Code of Regulations, Title title 14,

section 15064.5(e) of the CEQA Guidelines. All actions taken under this mitigation measure shall comply with the Health and Safety Code, section 7050.5(b).

4.5.4 References

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DECLARATION OF Gabriel Roark

I, Gabriel Roark, declare as follows:

1. I am employed by the California Energy Commission as an Energy Resources Specialist III (Supervisory).
2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.
3. I prepared the staff testimony titled **Update to Section 4.5 Cultural and Tribal Cultural Resources (Archaeology and Ethnography)** for the **CA3 BACKUP GENERATING FACILITY**, attached to this declaration, based on my independent analysis of the Application for Small Power Plant Exemption and supplements thereto, data from reliable documents and sources, and my professional experience and knowledge.
4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issues addressed therein.
5. I am personally familiar with the facts and conclusions related in the testimony and, if called as a witness, could testify competently thereto.
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 07/21/2022 Signed: *Gabriel Roark*

At: Sacramento, California