

**DOCKETED**

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## 4.5 CULTURAL RESOURCES

The discussion in this section is based in part on an Archaeological Resources Assessment prepared for the project by PaleoWest, LLC in February 2022. A copy of the report will be docketed with the Commission under a Request for Confidentiality.

### 4.5.1 Environmental Setting

The project site is located in Santa Clara Valley, where Native American occupation extended over 5,000 to 8,000 years and possibly longer. Before European settlement, Native Americans resided in the area that encompasses the project site. The South Bay Area's favorable environment during the prehistoric period included alluvial plains, foothills, many water courses, and bay margins that provided an abundance of wild food and other resources.

#### 4.5.1.1 *Regulatory Framework*

##### **Federal and State**

##### National Historic Preservation Act

Federal protection is legislated by the National Historic Preservation Act of 1966 (NHPA) and the Archaeological Resource Protection Act of 1979. These laws maintain processes for determination of the effects on historical properties eligible for listing in the National Register of Historic Places (NRHP). Section 106 of the NHPA and related regulations (36 Code of Federal Regulations [CFR] Part 800) constitute the primary federal regulatory framework guiding cultural resources investigations and require consideration of effects on properties that are listed or eligible for listing in the NRHP. Impacts to properties listed in the NRHP must be evaluated under CEQA.

##### California Register of Historical Resources

The California Register of Historical Resources (CRHR) is administered by the State Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and affords protections under CEQA. Under Public Resources Code Section 5024.1(c), a resource may be eligible for listing in the CRHR if it meets any of the NRHP criteria.<sup>1</sup>

Historical resources eligible for listing in the CRHR must meet the significance criteria described previously and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. A resource that has lost its historic character or appearance may still have sufficient integrity for the CRHR if it maintains the potential to yield significant scientific or historical information or specific data.

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<sup>1</sup> California Office of Historic Preservation. "CEQA Guidelines Section 15064.5(a)(3) and California Office of Historic Preservation Technical Assistance Series #6." Accessed August 31, 2020. <http://www.ohp.parks.ca.gov/pages/1069/files/technical%20assistance%20bulletin%206%202011%20update.pdf>.

The concept of integrity is essential to identifying the important physical characteristics of historical resources and, therefore, in evaluating adverse changes to them. Integrity is defined as “the authenticity of a historical resource’s physical identity evidenced by the survival of characteristics that existed during the resource's period of significance.” The processes of determining integrity are similar for both the CRHR and NRHP and use the same seven variables or aspects to define integrity that are used to evaluate a resource's eligibility for listing. These seven characteristics include 1) location, 2) design, 3) setting, 4) materials, 5) workmanship, 6) feeling, and 7) association.

California Native American Historical, Cultural, and Sacred Sites Act

The California Native American Historical, Cultural, and Sacred Sites Act applies to both state and private lands. The act requires that upon discovery of human remains, construction or excavation activity must cease and the county coroner be notified.

Public Resources Code Sections 5097 and 5097.98

Section 15064.5 of the CEQA Guidelines specifies procedures to be used in the event of an unexpected discovery of Native American human remains on non-federal land. These procedures are outlined in Public Resources Code Sections 5097 and 5097.98. These codes 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 resolve disputes regarding disposition of such remains.

Pursuant to Public Resources Code Section 5097.98, in the event of human remains discovery, no further disturbance is allowed until the county coroner has made the necessary findings regarding the origin and disposition of the remains. If the remains are of a Native American, the county coroner must notify the NAHC. The NAHC then notifies those persons most likely to be related to the Native American remains. The code section also stipulates the procedures that the descendants may follow for treating or disposing of the remains and associated grave goods.

**Envision San José 2040 General Plan**

The General Plan includes policies for the purpose of avoiding or mitigating impacts resulting from planned development projects with the City. The following policies are specific to cultural resources and are applicable to the proposed project.

**Envision San José 2040 Relevant Cultural Resources Policies**

Policies	Description
Policy ER-10.1	For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.

- Policy ER-10.2 Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
- Policy ER-10.3 Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.
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### **City of San José Historic Resources Inventory (HRI)**

The HRI is an inventory of San José’s historically and architecturally significant buildings. According to the City of San José’s Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code), a resource qualifies as a City Landmark if it has “special historical, architectural, cultural, aesthetic or engineering interest or value of an historic nature” and is one of the following resource types:

1. An individual structure or portion thereof;
2. An integrated group of structures on a single lot;
3. A site, or portion thereof; or
4. Any combination thereof.

No City Landmarks are located in the project vicinity.<sup>2</sup>

#### **4.5.1.2 Existing Conditions**

##### **Prehistoric and Historic Resources**

Cultural resources are evidence of past human occupation and activity and include both historical and archaeological resources. These resources may be located above ground or underground and have significance in the history, prehistory, architecture, architecture of culture of the nation, State of California, or local or tribal communities.

Prehistoric resources are resources that have significance in prehistory, which is defined as events of the past occurring prior to advent of written records. Historic resources are generally 50 years or older in age and include, but are not limited to, buildings, districts, structures, sites, objects and areas. Archaeological resources are resources associated with human activity in the past and encompass both prehistoric and historic resources.

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<sup>2</sup> City of San Jose. Historic Resource Inventory. Available at: <https://www.arcgis.com/apps/webappviewer/index.html?id=b2d7cc355a86493c8da904b8c2fc3e3e>. Accessed March 3, 2022.

According to the Santa Clara County Planning Office's Interactive Property Profile Map, the existing building at 1849 Fortune Drive was constructed in 1982 and the existing building at 2400 Ringwood Avenue was constructed in 1997.<sup>3</sup> While the modern study area is characterized by light industrial and commercial buildings, the project area is within the region of the historic greater El pueblo de San José de Guadalupe, founded in 1777.

A Records Search completed by PaleoWest indicated that there is one previously identified informal<sup>4</sup> cultural resource within the project site and four previously identified formal cultural resources within the 0.25-mile search radius completed for the project. Although no formal cultural resources have been previously identified on the project site, the Archaeological Resources Assessment prepared by PaleoWest concluded that the site has a moderate sensitivity for prehistoric archaeological resources based on the proximity to water sources and historic resources recorded in the area. Additionally, according to the City of San José Public GIS Viewer, the project site is within an archaeologically sensitive area.

### Windshield and Pedestrian Surveys

In November 2021, intensive windshield and pedestrian surveys of both the project site and the proposed transmission line route were completed by an architectural historian and an archeologist from PaleoWest. During the surveys, exposed ground surface and building exteriors within the project site and proposed transmission line route were examined for the presence of historic-era or prehistoric site indicators. No evidence of historic or prehistoric resources were observed during the surveys.

### **4.5.2 Impact Discussion**

For the purpose of determining the significance of the project's impact on cultural resources, would the project:

- a) Cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?
- c) Disturb any human remains, including those interred outside of dedicated cemeteries?

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<sup>3</sup> Santa Clara County Planning Office. Interactive Property Profile Map. Accessed February 7, 2022. <https://sccplanning.maps.arcgis.com/apps/webappviewer/index.html?id=fb3af8ce73b6407c939e1ac5f092bb30>

<sup>4</sup> The informal resource, which appeared to have been moved from another location, was recorded in 1981 during a cultural resource investigation. The cultural resource investigation was unsuccessful in locating evidence that could attribute the resource to a documented site and, as a result, it does not have an associated resource record.

#### 4.5.2.1 *Project Impacts*

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**a) Would the project cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5?**

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Generally, a resource is considered to be historically significant by the City of San José if it is listed or meets the criteria for listing on the NRHP, CRHR, or as a City Landmark on the City's Historic Resources Inventory.

Based on the Archaeological Resource Assessment of the project site, both 1849 Fortune Drive and 2400 Ringwood Avenue are not listed nor eligible to be listed on the NRHP or the CRHR. According to the Santa Clara County Planning Office's Interactive Property Profile Map, the existing building at 1849 Fortune Drive was constructed in 1982 and the existing building at 2400 Ringwood Avenue was constructed in 1997.<sup>5</sup> Therefore, both buildings are less than 45 years old and are not currently eligible for inclusion on the CRHR given they are less than 50 years of age and are of a common or modern architectural style. Development of the project site would not physically damage or materially impair the integrity of any historic building.

Additionally, PaleoWest did not observe any evidence of prehistoric or historic resources along the proposed transmission line. Therefore, implementation of the proposed project would have a less than significant impact on designated or eligible historic structures. **(Less than Significant Impact)**

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**b) Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?**

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Although the site contains artificial fill (the project site is underlain by 1.5 to 4.5 feet of undocumented fill), the project would include disturbance of native soils for trenching, site grading, and other construction activities. The Native American Heritage Commission and Native American contacts were consulted during the development of the Archaeological Survey Report and no specific Native American resource were identified within or adjacent to the study area. While there are no recorded archaeological or historic sites on the project site, there is a potential for buried archaeological resources to occur on the site. The following Applicant Proposed Mitigation Measure, which is a standard permit condition for the City of San José, shall be implemented to ensure the proposed development does not impact prehistoric or historic resources:

**MM CUL-1:** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of PBCE or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological

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<sup>5</sup> Santa Clara County Planning Office. Interactive Property Profile Map. Accessed February 7, 2022. <https://sccplanning.maps.arcgis.com/apps/webappviewer/index.html?id=fb3af8ce73b6407c939e1ac5f092bb30>

resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Supervising Environmental Planner and Historic Preservation Officer of the Department of PBCE and the Northwest Information Center (if applicable). Project personnel should not collect or move any cultural materials.

With implementation of MM CUL-1, the proposed project would avoid demolition, substantial alteration, or relocation of an eligible resource. Therefore, the project would not cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5. **(Less than Significant Impact with Mitigation Incorporated)**

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**c) Would the project disturb any human remains, including those interred outside of dedicated cemeteries?**

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Although the site contains artificial fill (the project site is underlain by 1.5 to 4.5 feet of undocumented fill), the project would include disturbance of native soils for trenching, site grading, and other construction activities. The Native American Heritage Commission and Native American contacts were consulted during the development of the Archaeological Survey Report and no specific Native American resource were identified within or adjacent to the study area. While there are no recorded archaeological or historic sites on the project site, there is a potential for human remains to occur on the site. Consistent with General Plan policy ER-10.2 and standard permit conditions for the City of San José, the following Applicant Proposed Mitigation Measure would be implemented to ensure human remains would not be disturbed:

**MM CUL-2:** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of PBCE or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner shall make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner shall contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD shall inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the

Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

With implementation of the identified MM CUL-2, the proposed project would ensure human remains are not disturbed. **(Less than Significant Impact with Mitigation Incorporated)**

#### 4.5.2.2 *Cumulative Impacts*

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##### **Would the project result in a cumulatively considerable contribution to a significant cumulative cultural resources impact?**

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The geographic area for cultural resources is the project site and adjacent parcels as cultural resource impacts are typically localized and generally limited to the immediate area in which a given cultural resources is located.

The cumulative projects analyzed under this project may require excavation and grading or other activities that may affect unknown prehistoric cultural resources and/or historic resources. Other projects in the City of San José may also have cultural resources, irrespective of their designation as such on local, state, or federal registers. Any excavation or grading activities could affect these known and unknown cultural resources. Therefore, the City has adopted standard conditions that will be implemented by all projects to reduce potential impacts to cultural resources. Project-level analyses will determine the necessity of additional mitigation measures to reduce localized and site-specific impacts to these resources.

#### **Historic Resources**

As discussed under Impact CUL-a, the project site is not classified as a historic resource nor is it eligible to be listed on the CRHR, NRHP. For this reason, the project would not contribute to a significant cumulative impact on historic resources. **(Less than Significant Cumulative Impact)**

#### **Archaeological Resources**

The cumulative projects (including the proposed project) would be required to implement General Plan policies and standard permit conditions to reduce impacts to archaeological resources (if encountered) to a less than significant level. The project includes Applicant Proposed Mitigation Measure CUL-1 in order to ensure the proposed development does not impact prehistoric or historic resources. As concluded in the General Plan EIR, future development under the General Plan, in

conformance with existing policies and regulations, would not result in significant cumulative impacts to archaeological resources.<sup>6</sup> **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

### **Human Remains**

Build out of the General Plan, including the proposed project and cumulative projects, would be required to implement General Plan policy ER-10.2 to reduce impacts to human remains (if encountered) to a less than significant level. The project includes Applicant Proposed Mitigation Measure CUL-2 in order to ensure human remains would not be disturbed. As concluded in the General Plan EIR, future development under the General Plan, in conformance with existing policies and regulations, would not result in significant cumulative impacts to human remains.<sup>7</sup> **(Less than Significant Cumulative Impact)**

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<sup>6</sup> City of San José. *Envision San José 2040 General Plan Integrated Final Program Environmental Impact Report*. September 2011.

<sup>7</sup> Ibid.