

3.6 CULTURAL RESOURCES

This section evaluates the proposed project's impacts on cultural and paleontological resources. Cultural resources are sites, buildings, structures, objects and districts that have traditional, cultural or scientific value. Paleontological resources, as a subset of cultural resources, are the fossilized remains of prehistoric plant and animal life (Society for Vertebrate Paleontology, 1995). The California Environmental Quality Act (CEQA) requires that effects on cultural and paleontological resources by discretionary projects be considered in the planning process.

This section contains: (1) a summary of the project area's cultural and paleontological settings; (2) an overview of the legislative context for cultural and paleontological resources in the City of Lafayette (City); (3) a summary of the results of the cultural and paleontological resources study conducted in support of this EIR; and (4) a discussion of potential impacts on cultural and paleontological resources and recommended mitigation measures to reduce, where possible, such impacts to less than significant levels.

3.6.1 Environmental Setting

The following describes the cultural and paleontological settings of the project area. The cultural setting provides an overview of human activity in the vicinity of the project area from prehistoric times through today. The paleontological setting provides an overview of the project area's geological and paleontological conditions.

3.6.1.1 Prehistory

The Paleo-Archaic-Emergent cultural sequence developed by Frederickson (1974) is commonly used to interpret the prehistoric occupation of central California. The sequence is broken into three broad periods: the Paleoindian Period (10,000-6000 B.C.); the three-staged Archaic Period, consisting of the Lower Archaic (6000-3000 B.C.), Middle Archaic (3000-1000 B.C.), and Upper Archaic (1000 B.C.-A.D. 500); and the Emergent Period (A.D. 500-1800).

The Paleo Period began with the first entry of people into California, who probably subsisted mainly on big game and minimally processed plant foods, and had no trade networks. The Archaic period is characterized by increased use of plant foods, elaboration of burial and grave goods, and increasingly complex trade networks (Bennyhoff and Frederickson, 1994; Moratto, 1984). The Emergent Period is marked by the introduction of the bow and arrow, the ascendance of wealth-linked social status, and the elaboration and expansion of trade networks, signified in part by the appearance of clam disk bead money (Moratto, 1984).

Archaeological excavations at sites in the region show evidence of Native American occupation, starting at approximately 2000 B.C. and continuing to Euro-American exploration of the San Francisco Bay Area beginning with Gaspár de Portolá's expedition in 1769 (Garcia and Associates, 2004). Excavations were conducted in 1963 at CA-CCO-309, the "Rossmoor" or "Saklan" village site, a large prehistoric archaeological site in Tice Valley, approximately one half-mile east of the project area. This site was occupied between A.D. 1500 and 1770 and consisted of a "medium-sized community inhabited year-round" (Garcia and Associates, 2004).

3.6.1.2 Ethnography

The project area is situated on the boundary of two Native American groups: the Bay Miwok on the east (Levy, 1978a:399) and the Ohlone on the west (Levy, 1978b:485). CA-CCO-309, an archaeological site associated with the Bay Miwok, is in Tice Valley (Garcia and Associates, 2004), approximately one-half mile east of the project area. Because of the proximity of CA-CCO-309, it is very likely that the project area was occupied or utilized by Bay Miwok people. In addition, Milliken (1995:253) states that the hills east of Oakland were inhabited by the Bay Miwok.

Linguistic and archaeological evidence indicates the Bay Miwok linguistic group was driven from north of Suisun Bay into eastern Contra Costa County by the intruding Patwin around 700 A.D. (Stewart, 1982; Bennyhoff, 1994; Moratto, 1984). The Walnut Creek area was within the territory of the Bay Miwok when the Spanish explored and began to occupy the San Francisco Bay Area in the late 1700s.

Little is known about the culture of the Bay Miwok because of early population decimation by introduced diseases such as measles and tuberculosis, and by relocation to Spanish missions. Many died in the missions or were consolidated with other Native American groups. The Bay Miwok economy appears to have been based on fishing, gathering and hunting. A diversity of resources, including acorns, various seeds, salmon, deer, rabbits, insects and quail, was provided by adjoining lands and freshwater creeks (Levy, 1978). It is likely the Bay Miwok lived in conical tule thatch houses, like those of the neighboring Plains Miwok of the Sacramento Valley.

Politically, the Bay Miwok were organized into groups called tribelets. A tribelet constituted a sovereign nation that held a defined territory and exercised control over its resources. A tribelet was also a unit of linguistic and ethnic differentiation (Levy, 1978). At the time of the arrival of the Spanish, an estimated 1,700 Bay Miwok were living in five tribelets in northeastern Contra Costa County (Levy, 1978:401). There have been different interpretations of the locations of Bay Miwok villages, but the latest scholarship indicates that the tribelet Saclan was located near the modern city of Walnut Creek (Levy, 1978:399).

3.6.1.3 History

Contra Costa County history began with the arrival of the Fages-Crespí expedition in 1772, which expanded the exploration initiated by the Spanish in the Bay Area in 1769. The Mission and the Presidio of San Francisco were established in 1776, and Mission San Jose was established in 1797 (Milliken, 1995b). The Bay Miwok were missionized early on, and by 1827 virtually all had been absorbed into either the San Francisco or the San Jose missions (Milliken, 1995). The Spanish, however, showed little interest in the Contra Costa (“other shore”), and established neither settlement nor outpost there.

After the independence of Mexico from Spain in 1821, tracts of land called ranchos were granted to citizens in Mexican California. The project area is within the boundaries of the Rancho Laguna de los Palos Colorados, which was granted to Joaquin Moraga and Juan Bernal in 1835.

During the years following the Gold Rush, agriculture became increasingly important in California and the site of the future Walnut Creek became a farming and commercial center (Garcia and Associates, 2004). During the 1850s, redwood logging operations began in Canyon and Moraga. Lafayette began as a rest stop for crews transporting redwood lumber from these points to San Francisco (City of Lafayette, 2005). Walnut Creek and Lafayette experienced steady growth during the later decades of the 1800s.

Rapid residential growth occurred in both cities during the years after World War II (City of Walnut Creek, 2004; City of Lafayette, 2005).

3.6.2 Regulatory Setting

3.6.2.1 California Environmental Quality Act

CEQA applies to all discretionary projects undertaken or subject to approval by the state's public agencies (California Code of Regulations [CCR] Title 14(3) Section [§] 15002(i)). CEQA states that it is the policy of the State of California to “take all action necessary to provide the people of this state with... historic environmental qualities...and preserve for future generations examples of the major periods of California history.” (Public Resources Code [PRC] §21001(b), (c)) Under the provisions of CEQA, “A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (CCR Title 14(3) §15064.5(b))

CEQA defines an “historical resource” as a resource that meets one or more of the following criteria:

- Eligible for listing in the California Register of Historic Resources (California Register);
- Listed in a local register of historical resources (as defined at PRC §5020.1(k));
- Identified as significant in a historical resource survey by meeting the requirements of PRC §5024.1(g); or
- Determined to be a historical resource by a project's lead agency (CCR Title 14(3) §15064.5(a)).

A historical resource consists of “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 . . . Generally, a resource shall be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources.” (CCR Title 14(3) §15064.5(a)(3))

CEQA requires that historical resources and unique archaeological resources be taken into consideration during the CEQA planning process (CCR Title 14(3) §15064.5; PRC §21083.2). Adverse effects on the significance of historical resources must be avoided or the effects mitigated (CCR Title 14(3) §15064.5(b)(4)). The significance of an historical resource is materially impaired when a project demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for the California Register of Historical Resources. If there is a substantial adverse change in the significance of a historical resource, the preparation of an EIR may be required (CCR Title 14(3) §15065(a)).

If the cultural resource in question is an archaeological site, CEQA (CCR Title 14(3) §15064.5(c)(1)) requires that the lead agency first determine whether the site is an historic resource as defined in CCR Title 14(3) §15064.5(a). If it is listed or eligible for listing in the California Register, potential adverse impacts must be considered in the same manner as a historical resource (California Office of Historic Preservation, 2001a:5). If the archaeological site does not qualify as an historical resource, but does qualify as a unique archaeological site, then the archaeological site is treated in accordance with PRC §21083.2 (CCR Title 14(3) §15069.5(c)(3)). In practice, most archaeological sites that meet the

definition of a unique archaeological resource will also meet the definition of an historical resource (Bass, Herson, and Bogdan, 1999:105).

CEQA defines a “unique archaeological resource” as an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

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

Paleontological resources consist of fossils and fossiliferous deposits. CEQA requires that a determination be made as to whether a project would directly or indirectly destroy a unique paleontological resource or site or unique geological feature (*CEQA Guidelines* Appendix G(v)(c)). If an impact is significant, CEQA requires feasible measures to minimize the impact (CCR Title 14(3) §15126.4 (a)(1)).

The Society of Vertebrate Paleontology has identified vertebrate fossils, their taphonomic and associated environmental indicators, and fossiliferous deposits as significant nonrenewable paleontological resources. Botanical and invertebrate fossils and assemblages may also be considered significant resources (Conformable Impact Mitigation Guidelines Committee, 1995).

3.6.2.2 California Register of Historical Resources

The California Register is a guide to cultural resources that must be considered when a government agency undertakes a discretionary action subject to CEQA. The California Register helps government agencies identify, evaluate and protect California’s historical resources (California Office of Historic Preservation 2001b:1), and indicates which properties are to be protected from substantial adverse change (PRC §5024.1(a)). Any resource listed in, or eligible for listing in, the California Register is to be considered during the CEQA process (California Office of Historic Preservation, 2001b:4).

A cultural resource is evaluated under four California Register criteria to determine its historical significance. A resource must be significant at the local, state or national level in accordance with one or more of the following criteria:

- Is associated with events that have made a significant contribution to the broad pattern of California’s history and cultural heritage;
- Is associated with the lives of persons important in our past;
- 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
- Has yielded, or may be likely to yield, information important in prehistory or history.

In addition to meeting one or more of the above criteria, the California Register requires that sufficient time must have passed to allow a “scholarly perspective on the events or individuals associated with the

resource.” Fifty years is used as a general estimate of the time needed to understand the historical importance of a resource (California Office of Historic Preservation, 1999:3). The California Office of Historic Preservation recommends documenting, and taking into consideration in the planning process, any cultural resource that is 45 years or older (California Office of Historic Preservation, 1995:2).

The California Register also requires a resource to possess integrity, which 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. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association.” (California Office of Historic Preservation, 1999:2)

Resources that are significant, meet the age guidelines, and possess integrity are generally considered eligible for listing in the California Register.

3.6.2.3 California Public Resources Code

The PRC prohibits excavation or removal of any “vertebrate paleontological site...or any other archaeological, paleontological or historical feature, situated on public lands, except with express permission of the public agency having jurisdiction over such lands.” Public lands are defined to include lands owned by or under the jurisdiction of the state or any city, county, district, authority or public corporation, or any agency thereof. Section 5097.5 states that any unauthorized disturbance or removal of archaeological, historical, or paleontological materials or sites located on public lands is a misdemeanor.

3.6.2.4 California Health and Safety Code

The California Health and Safety Code states that, in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the remains are discovered has determined whether or not the remains are subject to the coroner’s authority. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods.

3.6.2.5 City of Lafayette General Plan

The Land Use Element of the City of Lafayette *General Plan (General Plan)* addresses issues associated with the preservation of cultural resources. The Land Use Element contains goals, policies and programs that serve to protect historic resources with significance in the community.

3.6.2.6 City of Lafayette Municipal Code

The City of Lafayette Municipal Code contains provisions governing the designation and protection of historical landmarks. Chapter 6-21 (Historical Landmarks) of Part 4 (Special Land Use Regulations) of Title 6 (Planning and Land Use) outlines the process for designating landmarks and regulating environmental changes that may destroy a landmark or adversely affect its historical qualities.

3.6.3 Study Results

A cultural and paleontological resources study of the project area was conducted in support of this EIR. The purpose of the study was to: (1) identify cultural resources that may meet the CEQA definition of an historical or archaeological resource and may be affected by the proposed project; and (2) identify paleontological resources that may be significant and may be affected by the project. For additional details about the methods, results, and recommendations of the study. Refer to the technical report contained in Appendix C of this EIR.

The cultural resources study consisted of background research, including a records search and a literature review; consultation with potentially interested parties; and a field survey. No cultural resources were identified by this study. No further study for cultural resources is recommended.

The paleontological study consisted of a fossil locality search, literature review, and field survey. A fossil locality was identified in the project area, and there is a possibility of encountering similar fossils elsewhere in the project area. The study recommended that a qualified paleontologist monitor ground-disturbing activities and that a paleontological monitoring plan be developed prior to such project activities.

3.6.4 Environmental Analysis

3.6.4.1 Thresholds of Significance

The proposed project would have a significant impact if it would:

- Cause a substantial adverse change in the significance of a historical resource;
- Cause a substantial adverse change in the significance of an archaeological resource;
- Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or
- Disturb any human remains, including those interred outside formal cemeteries.

3.6.4.2 Potential Impacts and Mitigation

Potential Impact 3.6-1: Would the proposed project cause a substantial adverse change in the significance of a historical or archaeological resource? (Potentially Significant Impact)

The cultural and paleontological resources study prepared for the project did not identify any archaeological deposits in the project area. However, the possibility that unidentified archaeological deposits exist and may be damaged during project activities cannot be discounted. If such unidentified deposits qualify as an historical or unique archaeological resource, disturbance resulting from construction activity may result in a significant impact to cultural resources. Mitigation Measure 3.6-1 would reduce this impact to a less than significant level.

Mitigation Measure 3.6-1: If a deposit of prehistoric or historical archaeological material(s) is encountered during project activities, the City Planning Services Division shall be contacted immediately and all work within 50 feet of the discovery shall be redirected. A qualified archaeologist shall be contacted to evaluate the find(s) and make recommendations. It is recommended that any adverse impacts to such deposits be avoided by project activities. If impacts on such deposits cannot be avoided, they shall be evaluated for their eligibility for listing

in the California Register (i.e., it shall be determined whether they qualify as historical or unique archaeological resources under CEQA). If the deposits are not eligible, avoidance is not necessary. If the deposits are eligible, they shall be avoided, if feasible; if avoidance is not feasible, the adverse effects shall be mitigated. Mitigation may include, but is not limited to, thorough recording on Department of Parks and Recreation Form 523 (DPR 523) and/or data recovery excavation. If data recovery excavation is selected, the excavation must be guided by a data recovery plan prepared and adopted prior to beginning the recovery work, and a report of findings shall be submitted to the Northwest Information Center (NWIC). (CCR Title 14(3) §15126.4(b)(3)(C))

Potential Impact 3.6-2: Would the proposed project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? (Potentially Significant Impact)

Background research clearly indicates that the project area is sensitive for paleontological resources. Project implementation may destroy paleontological resources. Mitigation Measure 3.6-2 would reduce impacts on paleontological resources to less than significant levels.

Mitigation Measure 3.6-2: Because of the high potential for project construction damaging paleontological resources, paleontological monitoring shall be conducted. To guide the monitoring, a qualified paleontologist shall prepare a paleontological monitoring plan prior to any ground-disturbing activities. The monitoring plan shall take into account the specific details of project construction plans, relevant paleontological and geological literature, and geotechnical studies in coordination with, as appropriate, limited subsurface investigations. Prior to issuance of a grading permit, the monitoring plan shall be submitted to the Planning Services Division for review and approval. Monitoring shall be conducted in accordance with the recommendations of the monitoring plan. After completion of project construction, a final report shall be prepared to document the methods and findings of the monitoring paleontologist and submitted to the project sponsor and the City of Lafayette.

Potential Impact 3.6-3: Would the proposed project disturb any human remains, including those interred outside formal cemeteries? (Potentially Significant Impact)

The cultural and paleontological resources study did not identify human remains in the project area and it is not anticipated that any human remains would be encountered during project activities. However, the possibility that unidentified human remains exist and may be damaged by project activities cannot be discounted. If such unidentified human remains exist and are damaged by project activities, a significant impact on cultural resources may result. Mitigation Measure 3.6-3 would reduce this impact to a less than significant level.

Mitigation Measure 3.6-3: If human remains are encountered, work within 50 feet of the discovery shall be redirected and the County Coroner notified immediately, pursuant to Section 5070.5 of the California Health and Safety Code. At the same time, an archaeologist shall be contacted to assess the situation and the City Planning Services Division shall be notified. If the human remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods.

Upon completion of the assessment, the archaeologist shall prepare a report documenting the methods and results of the analysis, and provide recommendations for the treatment of the human

remains and any associated cultural materials, as appropriate and in coordination with the recommendations of the MLD. The report shall be submitted to the project sponsor, the City of Lafayette and the Northwest Information Center (NWIC).