

## 4.15 Tribal Cultural Resources

This section describes the tribal cultural resources setting for the proposed 123 Independence Drive Residential Project (project; proposed project) site and region, identifies associated regulatory requirements, evaluates potential impacts, and identifies mitigation measures to be implemented during project construction to avoid or minimize potential effects to tribal cultural resources.

As discussed in Chapter 2, Introduction, and Chapter 4, Environmental Analysis, two Notices of Preparation (NOPs) were circulated for this environmental impact report (EIR), one in January and February 2021, and one in September and October 2021. One verbal comment was received at the January 2021 scoping session raising concern that cultural and tribal resources may not have been evaluated prior to construction of the existing buildings within the project site. The Native American Heritage Commission (NAHC) submitted written responses to both NOPs describing state regulations regarding Native American consultation requirements and evaluation of cultural and tribal resources. Both NOPs and the comments received in response to them are provided in Appendix A of this EIR.

The primary sources reviewed to prepare this section include the City of Menlo Park (City) General Plan (City of Menlo Park 2016a), the ConnectMenlo General Plan Update EIR (City of Menlo Park 2016b), and the Phase I Archaeological Assessment prepared for the project by Albion in March 2020 (Appendix E1).

### 4.15.1 Environmental Setting

The project site, and its surrounding area, has been developed since the 1960s. The project site currently features office and industrial uses and includes one building that has retained its original scale since the 1960s (Appendix E2). Implementation of the project would require the demolition of existing buildings as well as grading the entire project site and importing fill soil to raise the site elevation sufficient to ensure that ground-level residential units are 2 feet above the Federal Emergency Management Agency floodplain, per the requirements of Menlo Park Municipal Code (Section 16.45.130[4]).

A detailed discussion of the archaeological setting and cultural context for the project area is provided in Section 4.4, Cultural Resources. The following discussion provides additional information regarding the tribal cultural resource context of the region.

CEQA defines a tribal cultural resource as a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either included in or determined eligible for inclusion in the California Register of Historic Resources (CRHR) or a qualifying local historical register or determined by the lead agency to be significant pursuant to the criteria for listing in the CRHR, based on substantial evidence (Public Resources Code Section 20174[a]). A cultural landscape that meets this definition is a tribal cultural resource to the extent that the landscape is geographically defined in terms of size and scope (Section 20174[b]). A historical resource or archaeological resource that meets this definition may also be a tribal cultural resource (Section 20174[c]). As discussed in Section 4.4, Cultural Resources, no archaeological or historic resources have been identified within the project site, but there is a potential for archaeological resources to be encountered during excavation and grading activities that would occur as part of project construction.

The following tribes are traditionally and culturally affiliated with the project region:

- Amah Mutsun Tribal Band;

- Costanoan Rumsen Carmel Tribe;
- Indian Canyon Mutsun Band of Costanoan;
- Muwekma Ohlone Indian Tribe of the San Francisco Bay Area
- Ohlone Indian Tribe
- Wuksache Indian Tribe/Eshom Valley Band; and
- Tamien Nation

The Bayfront Area of Menlo Park has been identified as archaeologically sensitive. The ConnectMenlo EIR notes that “artifacts from the lives of these early residents of what is now Menlo Park are still being discovered today. As recently as 2012, Native American remains were found at a construction site along Willow Road, in Menlo Park. Additionally, Native American remains were found at the Prologis commercial development site in the Bayfront Area” (City of Menlo Park 2016b). In addition, archival record searches indicate that there is a previously recorded multi-component (historic and pre-European contact) archaeological resource, referred to as the Hiller Mound, located within the Willow Village project site approximately 1.5 miles east of the proposed project. The Willow Village Final EIR identifies that Basin Research Associates (Basin) prepared a Cultural Resources Assessment Report for that project, which included archival records reviews, literature review, and an enhanced archaeological identification program involving subsurface probing. Basin reported that the Hiller Mound has been extensively studied. The central portion of the resource site, referred to as the Core, represents the most archaeologically intact component of the resource. The Perimeter component is characterized by the presence of alluvial midden which reflects archaeological material has been displaced from the Core through erosion, slope wash, and leveling of the Core that occurred during prior development activities at the site. Basin also noted that Native American remains were encountered at the Willow Village site during construction activities that occurred in 2017 (City of Menlo Park 2022).

Three of the Native American tribes that are traditionally and culturally affiliated with the project region requested consultation with the City in regards to the Willow Village project. Through that consultation process, the Tamien Nation identified that they recognize various mounds across the Bay Area region, including the Hiller Mound, as comprising an ethnographic landscape, which is a type of cultural landscape that can range from contemporary settlements to religious sacred sites or geological landforms that exhibit importance to the culture (City of Menlo Park 2022).

### Native American Resources

In compliance with the Native American Historic Resource Protection Act, which was adopted under Assembly Bill (AB) 52 in 2015, notification letters and the NOPs for this EIR were sent to all tribal representatives including in the NAHC-provided list of recommended tribal contacts for the project area. The notification letters included a brief project description and invitation to provide information and/or request consultation with the City regarding the potential for the project to affect tribal cultural resources. The City has not received any responses to the notification letters.

### Project Site

The project site is approximately 7 feet above mean sea level and relatively flat. Flood Slough is approximately 884 feet northwest of the site; Ravenswood Slough is 0.5 miles east of the site. Soils in the project area are characterized as Urban land Orthents, reclaimed complex, 0–2 percent slopes, which occurs in areas that were once part of the San Francisco Bay and adjacent tidal flats (Appendix E1). Urban land soils generally consist of deep, poorly drained fill. However, the underlying landform includes Holocene alluvial soils, which indicates there is potential for buried archaeological deposits beneath the fill soils (Appendix E1).

## Records Search

Albion’s investigation included a background records search at the Northwest Information Center of the California Historical Resources Information System at Sonoma State University. The records search results identified that one archaeological study was previously conducted within the project site that did not identify any archaeological resources, and 13 studies have been conducted within a 0.25-mile radius of the site, resulting in recordation of one prehistoric period resource and four historic period resources (Appendix E1).

## 4.15.2 Regulatory Framework

### Federal Regulations

Federal regulations that address protection of Native American and historic resources are described in Section 4.4.

### State Regulations

#### Native American Historic Resource Protection Act

The Native American Historic Resource Protection Act (AB 52), which went into effect July 1, 2015, establishes that Tribal Cultural Resources must be considered under the California Environmental Quality Act (CEQA) and defines a lead agency’s requirements for notification and consultation with California Native American tribes.

Public Resource Code (PRC) Section 21074 states:

- a) “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 California Register of Historical Resources.
    - B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
  - 2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.
- b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
- c) A historical resource described in PRC Section 21084.1, a unique archaeological resource as defined in subdivision (g) of PRC Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of PRC Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

Under AB 52, lead agencies must notify all California Native American tribes that are traditionally and culturally affiliated with the project area and that have requested formal notification. The notification requirement extends to tribes that are not federally recognized, and notification must occur at the onset of a project, which is typically

considered to be when an NOP is released. After notification, tribes may request to engage in consultation with the Lead Agency. If it is determined that a substantial adverse change to a tribal cultural resource would result from a project, the tribal consultation can include development of mitigation measures and/or project alternatives that could reduce or avoid those impacts.

All tribes identified on the NAHC official SB 18 California Tribal Consultation List were notified of this project under both SB 18 and AB 52 in January 2020. No tribes requested consultation. The revised NOP was also sent to these tribes in September 2021. The City has not received any tribal responses to the AB 52 notifications or the NOPs.

### California Environmental Quality Act

As discussed above, the Native American Historic Resource Protection Act amended CEQA to require public agencies to consider the effects of their actions on tribal cultural resources. CEQA also requires that public agencies avoid damaging effects to any tribal cultural resource, when feasible. If the lead agency determines that a project may cause a substantial adverse change in a tribal cultural resource, and measures are not otherwise identified in the consultation process, state law provides mitigation measures that may be considered to avoid or minimize the significant adverse impacts. These include:

- Avoidance and preservation in place, including incorporation of the resource into open spaces, parks, or green spaces;
- Treating the resource with appropriate dignity, including protecting the cultural character and integrity of the resource, protecting the traditional use of the resource, and protecting the confidentiality of the resource;
- Establishing conservation easements or other interests in real property with culturally appropriate management criteria for purposes of preserving or utilizing the resource in place; or
- Otherwise protecting the resource.

### Additional State Regulations

Additional state regulations that address protection of Native American and historic resources are described in Section 4.4.

### Regional and Local Regulations

Regional and local regulations that address protection of Native American and historic resources are described in Section 4.4.

## 4.15.3 Thresholds of Significance

The significance criteria used to evaluate the project impacts to tribal cultural resources are based on Appendix G and Section 15130 of the CEQA Guidelines. A significant impact related to tribal cultural resources would occur if the project would:

- A. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is: (i); listed or eligible for listing in the

California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code Section 5020.1(k); or (ii) 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 PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

- B. Make a cumulatively considerable contribution to a significant cumulative impact related to tribal cultural resources.

## 4.15.4 Impacts and Mitigation Measures

### Methodology

A Phase I Archaeological Assessment was prepared for the project (Appendix E1). As stated in Section 4.15.1, Environmental Setting, this investigation included a background records search at the Northwest Information Center of the California Historical Resources Information System at Sonoma State University. The records search included a review of the information center’s mapped prehistoric, historical, and built-environment resources, Department of Parks and Recreation Site Records, technical reports, historical maps, and local inventories. Additional consulted sources included the NRHP, CRHR, and listed Office of Historic Preservation Archaeological Determinations of Eligibility, California Points of Historical Interest, and California Historical Landmarks. The records search results identified that one archaeological study was previously conducted within the project site that did not identify any archaeological resources, and 13 studies have been conducted within a 0.25-mile radius of the site, resulting in recordation of one pre-historic period resource and four historic period resources (Appendix E1).

In January 2020, Albion completed a pedestrian survey of the project site and Native American outreach under the Native American Historic Resource Protection Act. The City also provided notification to NAHC-listed traditionally culturally affiliated Native American tribes pursuant to AB 52 in January 2020, at the time of public circulation of the NOP for this EIR, and sent a second notification along with the revised NOP to the same Native American tribes in September 2021. The notification letters included a brief project description and invitation to provide information and/or request consultation with the City regarding the potential for the project to affect tribal cultural resources. The City has not received any responses to the notification letters or any Native American tribal responses to the NOPs.

Albion’s visual inspection of the project site revealed no evidence of intact precolonial or historic-era archaeological deposits. However, there is minimal soil visibility at the site due to the existing buildings and paving. Albion’s background research conducted for the site suggests that, due to past dynamic geological processes, the area holds a moderate to high potential to contain buried archaeological deposits.

### Project Impacts

Impact 4.15-1            Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- (i) listed or eligible for listing in the California Register of Historical Resources, or in the local register of historical resources as defined in Public Resources Code Section 5020.1(k); or,

- (ii) 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 PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

As previously described in Section 4.15.2, Regulatory Framework, a tribal cultural resource is defined under Native American Historic Resource Protection Act (AB 52) as a site, feature, place, cultural landscape that is geographically defined in terms of size and scope, sacred place, or object with cultural value to a California Native American tribe that are either included or eligible for inclusion in the CRHR or included in a local register of historical resources, or if the City of Menlo Park, acting as the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a tribal cultural resource.

Preparation of the Phase I Archaeological Investigation (Appendix E1) included a Sacred Lands File records search for the project site. This search failed to indicate the presence of Native American cultural resources within the project area or within one-half mile of the project area. Albion also conducted Native American tribal outreach and no responses to these outreach efforts were received.

As discussed above, in compliance with AB 52, the City provided formal notification of the proposed project to all tribes listed on the NAHC official SB 18 California Tribal Consultation List that have requested notification of projects subject to CEQA review. The City provided notification to these tribes in January 2020 and stated that tribes had 30 days to request consultation, in accordance with the timelines established in AB 52. A second notification along with the revised NOP was also sent to these tribes in September 2021. The City has not received any tribal responses to the AB 52 notifications or the NOPs. Thus, no tribes have requested participation in the consultation process, and no tribes have identified any tribal cultural resources in the project site or vicinity. As discussed in Impact 4.4-3, the project site is not known to contain any human remains, but compliance with Health and Safety Code Section 7050.5 in the event that any are encountered would ensure that such discoveries are appropriately evaluated and treated.

As discussed above, there are no known cultural resources within the project site and no known tribal cultural resources within the site or project vicinity. However, there is a potential for unknown tribal cultural resources to be encountered during construction, similar to the potential for unknown cultural resources to be encountered during construction as discussed in Impact 4.4-2. Thus, this impact is **potentially significant** because the project could cause a substantial adverse change in the significance of such a resource.

### Mitigation Measures

Implementation of Mitigation Measure (MM) 4.15a would ensure that any potential tribal cultural resources encountered during project construction would be protected from further impacts until they have been evaluated by a qualified professional and a determination is made as to the treatment measures that can be implemented to avoid adverse effects to such resources prior to continuance of construction activities in the vicinity of the resource. This would reduce the project's impacts to tribal cultural resources to a **less-than-significant** level.

MM 4.15a      **Unanticipated Discovery of Tribal Cultural Resources.** In the event that resources with potential to meet the definition of a "Tribal Cultural Resource" (archaeological sites, features, or artifacts of Native American origin or association) are exposed during construction activities, the City shall be immediately notified and all construction work occurring within 50 feet of the find shall immediately stop until the find is assessed by a qualified archaeologist. A report documenting the resource

assessment shall be submitted to the City. The City shall review this information to assess if the resource has potential to meet the definition of a Tribal Cultural Resource and, if appropriate, contact and/or provide a designated individual the authority to notify traditionally and culturally affiliated Native American tribes. The tribes shall be provided a reasonable time to provide comment and recommend treatment of the find. The City shall review these recommendations and, if they are confirmed to be reasonable and appropriate, they shall be implemented by the contractor. All management strategies shall occur in compliance with cultural resources mitigation and pertinent regulatory conditions. Treatment for tribal cultural resources would be consistent with PRC Section 21084.3(b), which recommends (1) avoidance and preservation of the resources in place, including 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; (2) treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including the following: (a) protecting the cultural character and integrity of the resource, (b) protecting the traditional use of the resource, and (c) protecting the confidentiality of the resource; (3) 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; or (4) protecting the resource.

## Cumulative Impacts

The geographic scope or cumulative context for evaluation of potential cumulative impacts on tribal cultural resources is San Mateo County and adjacent areas of Santa Clara County because these areas are included in the traditional territory of the Native American tribes that are traditionally and culturally affiliated with the project region. Tribal cultural resources are unique and non-renewable; thus, all adverse effects or negative impacts erode a dwindling resource base. Effects to tribal cultural resources within the City could combine with effects to other tribal cultural resources in the region to further erode the cultural context of the area. Thus, this cumulative impact analysis for cultural resources relies on projected plans for development in the City of Menlo Park, the 19 other incorporated cities within San Mateo County, and the City of East Palo Alto, consistent with CEQA Guidelines Section 15130(b)(1)(B).

Impact 4.15-2            Would the project make a cumulatively considerable contribution to a significant cumulative impact related to tribal cultural resources?

Although there are no known cultural or tribal cultural resources within or adjacent to the project site, the project region is considered archaeologically sensitive, as discussed further below. Thus, there is a potential for tribal cultural resources to be encountered during construction and for the project to cause a substantial adverse change in the significance of such a resource.

Archaeological evidence suggests that San Mateo County has been inhabited dating to more than 5,500 years before present time. Background research has identified a number of historical archaeological sites, prehistoric archaeological sites, and historic buildings and structures throughout the County while recent consultations between Native American tribes and local governments have identified several tribal cultural resources in the region. Urban development throughout San Mateo County and adjacent areas of Santa Clara County has likely impacted a number of known and unknown historic and prehistoric sites, including tribal cultural resources. It is reasonable to assume that present and future development would continue to have an impact on known and unknown tribal cultural resources throughout the region. The potential for adverse effects to tribal cultural

resources can be lessened through the notification and consultation process defined in CEQA as well as implementation of appropriate and effective mitigation development in consultation with Native American tribes and in compliance with applicable federal, state, and local laws that protect these resources in most instances. However, the cumulative loss of tribal cultural resources from present and future development within San Mateo County and adjacent areas of Santa Clara County is considered a potentially significant cumulative impact.

Further, as discussed in Section 4.15.1, the Bayfront Area of the City of Menlo Park has been identified as archaeologically sensitive, and there are known cultural resources, human remains, and tribal cultural resources in this portion of the City as well as throughout the region overall.

The analysis in the ConnectMenlo EIR found that the future development anticipated under the General Plan has the potential to cumulatively impact cultural resources (and by extension tribal cultural resources) but that such impacts would be reduced to less-than-significant levels with implementation of mitigation measures CULT-2a (which addresses unanticipated discovery of subsurface cultural resources during construction), CULT-2b (which addresses Native American consultation), and CULT-4 (which addresses unanticipated discovery of human remains during construction) and compliance with applicable federal, state, and local regulations, including applicable City General Plan goals and policies. These regulations were found to protect tribal cultural resources by providing for early detection of potential conflicts between development and resource protection and preventing or minimizing material impairment of the ability of archaeological deposits to convey their significance through excavation or preservation. Thus, the analysis in the ConnectMenlo EIR concluded that ongoing development within the City would not create or contribute to a cumulative impact on cultural resources (Menlo Park 2016b).

While the proposed project would increase the total development density and intensity compared to the amount of development evaluated in the ConnectMenlo EIR, the project would not expand the footprint of development relative to the General Plans of San Mateo County and each of the incorporated cities included in the geographic scope of this analysis, and relative to the Santa Clara County General Plan. Further, the project, like the development analyzed in the ConnectMenlo EIR, would undertake mitigation designed to minimize or eliminate impacts to tribal cultural resources. Thus, the analysis and conclusions of the ConnectMenlo EIR regarding cumulative impacts to cultural resources remain applicable to the proposed project, which would not create or make a cumulatively considerable contribution to any significant cumulative impact on tribal cultural resources from prior and existing development. As discussed above and evaluated in Appendices E1 and E2, the project site does not contain any known cultural, tribal cultural, historic, or archaeological resources or human remains, although archaeological resources and human remains could be present below-ground. The project would be required to comply with the City's General Plan implementation measures related to the preservation of cultural and tribal cultural resources as described in Mitigation Measures 4.4a and 4.4b and Health and Safety Code Section 7050.5 related to unearthing human remains. Project-specific mitigation for cultural resources would apply as MM 4.4a and MM 4.4b, which require additional subsurface investigation and prescribe management strategies to be implemented in the event unanticipated cultural resources or human remains are encountered. In addition, MM 4.15a stipulated above would be implemented in the event that these unanticipated finds have potential to meet the definition of a tribal cultural resource, including notification of traditionally and culturally affiliated Native American tribes and engaging with designated tribal representatives to develop an appropriate and respectful management approach. Directly including traditionally culturally affiliated tribes will help ensure that the project would not result in any significant direct adverse effects tribal cultural resources, and therefore the project would not make a cumulatively considerable contribution to a significant cumulative impact related to cultural or tribal cultural resources. Therefore, in combination with past, present, and reasonably foreseeable projects, the project would result in a **less-than-significant** cumulative impact with respect to cultural resources.

## Mitigation Measures

Implementation of MMs 4.4a, 4.4b, and 4.15a and compliance with Health and Safety Code Section 7050.5 would reduce the project's impacts to tribal cultural resources to a less-than-significant level and would ensure that the project would not make a cumulatively considerable contribution to any significant cumulative impact to tribal cultural resources. No additional mitigation measures are required.

### 4.15.5 References Cited

City of Menlo Park. 2016a. *General Plan*. Adopted November 19, 2016. [https://www.menlopark.org/DocumentCenter/View/15013/Land-Use-and-Circulation-Element\\_adopted-112916\\_final\\_figures?bidId=](https://www.menlopark.org/DocumentCenter/View/15013/Land-Use-and-Circulation-Element_adopted-112916_final_figures?bidId=).

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