

4.4 Cultural Resources

This section describes the existing cultural resources conditions of the proposed 123 Independence Drive Residential Project (project; proposed project) site, identifies associated regulatory requirements, evaluates potential impacts, and identifies mitigation measures related to implementation of the proposed project.

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), the Phase I Archaeological Assessment prepared for the project by Albion in March 2020 (Appendix E1), and the Historical Resources Technical Report prepared for the project by Dudek in March 2021 (Appendix E2).

4.4.1 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]).

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).

Prehistory Background

As discussed in the Phase I Archaeological Assessment for the project (Appendix E1), archaeological research in the San Francisco Bay Area (Bay Area), including San Mateo County, began in the early twentieth century. As research techniques evolved and research efforts led to a greater understanding of the region’s cultural history, a detailed chronology of patterns of Native American occupation and cultural adaptation was developed. The following discussion summarizes the current understanding of the archaeology of California and the Bay Area, as presented in the Phase I Archaeological Assessment.

Early Period (ca. 3500 to 600 BC)

Artifacts from the Early Period include various types of projectile points, shell beads, and ground stone implements that suggest hunting, fishing, and plant gathering constituted the major subsistence regimes in the region. The gathering of shellfish (especially mussels) was also an important subsistence activity for coastal peoples. In addition, obsidian has been found at Early Period sites, suggesting an east-west trade pattern that resulted in obsidian from sources in the eastern Sierras ending up in coastal and inland sites in central California.

Middle Period (ca. 600 BC to AD 1000)

Artifacts from this period are similar to the Early Period, with comparable profiles of flaked stone and ground stone implements. However, the artifacts indicate a greater diversification of subsistence than the previous period, with heavier reliance on small terrestrial animals (e.g., rabbits and sea otters) in addition to the typical foods like acorns, hard seeds, and fish. Artifacts also indicate increased storage of food items, which may have supported an increasing degree of sedentism, as well as increasingly gender-specific work.

Meganos Aspect

Many archaeologists suggest that the Middle Period also saw a distinct cultural pattern emerge along the southern and eastern ends of San Francisco Bay (the Bay), called the Meganos Aspect. It is thought that this cultural pattern may indicate an intrusion of peoples moving into the area from the south and east, which resulted in two different ethnic groups occupying the Bay Area as the forerunners of the Ohlone and the Meganos culture. Cultural traits associated with the Meganos Aspect are exemplified by changes in burial patterns and traditions.

Albion describes that “Mortars and pestles suggest a reliance on vegetal resources, especially acorns. Flaked lithic technologies are considered rare at Meganos Aspect sites, though faunal assemblages indicate that the hunting of large mammals (e.g., deer, elk) was important. A number of archaeologists have also argued that this intrusion may have led to violent conflict between Meganos peoples and the older inhabitants of the Bay Area.”

Middle/Late Transition Period (ca. AD 1000 to AD 750)

Although this period is relatively brief, it has been identified as a distinct period because of sharp contrasts in geologic and climactic conditions that influenced settlement patterns in the region. The period coincides with a geologic interval known as the Medieval Climatic Anomaly, which involved a period of severe drought and accelerated aridity. It is thought that the climatic changes could have resulted in a less stable and reliable resource base, which would have contributed to populations returning to a pattern of more frequent movement rather than the increased sedentism of the Middle Period. Changes in the subsistence patterns are also indicated, including increased reliance on terrestrial ungulates, intensification in fishing and other aquatic resources, and a shift toward lower-ranked resources. The archaeological record provides evidence of this in the “disappearance of stemmed points and the abrupt appearance of small, leaf-shaped and double side-notched projectile points.” In addition, there appears to have been increased use of the bow and arrow and emergence of new fishing technologies, such as circular fishhooks and notched stone sinkers.

Late Period (ca. AD 750 to AD 1750)

During this period, there was a continuing trend of changes in social and economic characteristics, with increased seasonal sedentism as indicated by evidence of semi-permanent village sites. This includes a continuing

intensification of resources, with reliance on acorns, seeds, and other lower-ranked vegetal foods, small terrestrial mammals (e.g., rabbits and rodents), birds, and aquatic resources (especially small, schooling fishes). This is shown by an increase in the frequency of small projectile points and a decrease in the frequency of milling slabs compared to earlier periods. Use of sea otters become especially important, with evidence that trade of pelts became an important economic activity. It is also believed that there was a decrease in long distance trade due to declines in obsidian densities, with an increase in local trade of shell beads.

Ethnohistoric (post-AD 1750)

At the time of Spanish contact, Native American groups residing in the southern Bay Area were organized under a tribelet system where villages were autonomous political units. Native American inhabitants of the Bay Area and vicinity came to be known by Spanish explorers as Costanoans, although present-day descendants of those earlier inhabitants prefer to be referred to as Ohlone. Both terms refer to the language group spoken by the people, rather than a tribal name. The Ohlone inhabited the San Francisco Peninsula, the East Bay to the Delta, and south past Santa Clara Valley to the coast of the Monterey Bay.

The Ohlone exploited all of the regional habitats including bay marshes, valley grasslands, mountainous uplands and open coastal environs. They relied on a wide range of natural resources, including elk, pronghorn, deer, sea mammals, salmon, trout, shellfish, ducks, geese, acorns, seeds, grasses, and roots. During the ethnohistoric period, the trend towards more local trade appears to have increased, based on increased frequency of shell bead artifacts.

Evidence of Ohlone villages has been identified throughout the Bay Area, including many sites within San Mateo County. The San Francisquito Creek and associated watershed contains a number of approximately 90 archaeological sites and resources, including 50 major village sites (Appendix E1). Research at these sites has yielded artifacts that include human burials, shell beads, projectile points, flaked and ground stone tools, notched stone net weights, mortars and pestles, fire-cracked rocks, charmstones, eccentric crescents, and an array of bone tools.

Historic Background

Native American History and European Settlement Periods

As described in the project's Historical Resources Technical Report (Appendix E2), Post-Contact history for the State of California is generally divided into three periods: the Spanish Period (1769–1821), which began with Establishment in 1769 of a settlement at San Diego and the founding of Mission San Diego de Alcalá; the Mexican Period (1821–1848), which began with Mexico's independence from Spain in 1821, and the American Period (1846–present), which began with the signing of the Treaty of Guadalupe Hidalgo in 1848, ending the Mexican–American War and resulting in California becoming a territory of the United States.

The Spanish period was defined by the goal of King Calos of Spain to construct Missionary churches along the coast of Alta California and convert the local Native Americans into Catholics and thus subjects of the Spanish crown. As reported in the project's Historic Resources Technical Report (Appendix E2), "The area that would become Menlo Park was located between two missions: San Francisco del Asís founded in 1776 and Santa Clara de Asís founded in 1777. In 1795, the Spanish government granted the land that currently includes Menlo Park to Captain Don Dario Arguello, the ninth governor of Alto California. The land was named Rancho de las Pulgas and encompassed 35,240 acres stretching from San Mateo Creek to the north, San Francisquito Creek to the south, bay marshland to the east, and Cañada Road to the west."

Over time, the Argüello family lost much of the original Rancho, which allowed new settlers to occupy the area (City of Menlo Park 2016a). This included Irish immigrants Dennis Oliver and Daniel McGlynn, who established farms and built two houses with a common entrance. In August 1854, the men erected an arched wooden gate with the name of their estate, “Menlo Park,” in tribute to the village where they were born, Menlough, County Galway, Ireland (Appendix E2).

Incorporation as a City

After McGlynn and Oliver settled in Menlo Park, the area became a vacation destination for the upper class of San Francisco. Through 1863 and 1864, the railroad connected from San Francisco to San Jose, making Menlo Park easily accessible from both San Francisco and San Jose. Menlo Park emerged into a growing town and sought to be incorporated as a city in order to respond to the demand of infrastructure. Menlo Park incorporated in 1874 as an effort to bring about improvements such as the surfacing of Middlefield Road. However, once the desired improvements were completed local leaders ceased to meet, and the incorporation lapsed in 1876 (City of Menlo Park 2016a).

The history of Menlo Park and other communities within the San Francisco Peninsula was strongly influenced by the opening of Stanford University in 1891 and the opening of Camp Fremont, a training ground for U.S. soldiers preparing to fight during World War I. The growth of Stanford University, the research and business it generated, as well as the population increase associated with Camp Fremont contributed to the City’s development. After the end of World War I, Camp Fremont closed and later became the Veterans Medical Center. The closure of the camp returned the town to more incremental growth but left behind a number of new businesses and improvements (City of Menlo Park 2016a).

The Modern Era

Between 1920 and 1930, Menlo Park’s transportation infrastructure and residential neighborhoods expanded. In 1927, the same year as the official incorporation of City of Menlo Park (the City), the original Dumbarton Bridge opened, creating a new link between the East Bay and the Peninsula. Between 1929 and 1931 the Bayshore Highway (now US 101) was constructed and expanded to Menlo Park (City of Menlo 2016a). By the late 1930s El Camino Real was paved and widened from two lanes to four. Also, during this time the Belle Haven neighborhood was constructed as a low-income housing development; however, the neighborhood was not complete until after the Great Depression in the 1950s.

In 1946, the Stanford Research Institute was established, making the City of Menlo Park a center of research and innovation. Although the Stanford Research Institute separated from Stanford University and changed its name to SRI International in 1970, this institution is still headquartered in the City and has contributed to innovations ranging from the computer mouse to the 9-1-1 emergency call system (City of Menlo Park 2016a).

The 1950s brought increased industrial development to the City of Menlo Park near the San Francisco Bay. Job opportunities in the study area led to an increasingly diverse population in the City, especially in the areas between US 101 and the Bay. Today, the Belle Haven neighborhood is a focal point for the City’s Latino, African American, and Pacific Islander communities. The expansion of the Silicon Valley economy in the 1980s and 1990s made the City of Menlo Park and the entire San Francisco Peninsula increasingly popular and expensive places to live. The “Dot-Com Boom” in the late 1990s drove up demand for housing in the City and similar areas with good schools, convenient access to job centers, and high quality of life. Although the recessions that began in 2001 and more recently in 2008 slowed or even temporarily reversed regional job growth, the City of Menlo Park has remained a

highly desired community. The latest and ongoing economic expansion has brought new growth and real estate demand to the City. The Bayside campus that once hosted Sun Microsystems is now occupied by Facebook, one of the world's leading technology firms, which continues to grow its headquarters and build additional office facilities in the city.

Historical Resources

Chapter 4, Cultural Resources, of the ConnectMenlo EIR (City of Menlo Park 2016b) identifies existing historic resources obtained from archival research that included a review of the Menlo Park Historical Association, a Historic Resources Report prepared by Knapp Architects in February 2013 for the City of Menlo Park Housing Element Update, General Plan Consistency Update, and Zoning Ordinance Amendments Environmental Assessment. In addition, the ConnectMenlo EIR reviewed the current listing of properties on the National Register of Historic Places (NRHP), California Historical Landmarks, California Register of Historical Resources (CRHR), and California Points of Historical Interest as listed in the 2012 Office of Historic Preservation's Historic Property Directory that was conducted in preparation of the 2015 ConnectMenlo Existing Conditions Report. The City includes two H-zoned sites, one California Historical Landmark, two NRHP California Historical Landmarks, one NRHP California Point of Historical Interest, and two California Points of Historical Interest. The historical resources are listed in ConnectMenlo EIR, Table 4.4-1 Designated Historical Resources in the Study Area, page 4.4-8 (City of Menlo Park 2016b).

Flood Park is listed as a California Point of Historical Interest by the County of San Mateo Parks Department. In the early 1930s, funds became available for San Mateo County to purchase 21-acre parcel of the James Clair Flood estate. Around 1936, the Work Progress Administration, in an effort to provide work for those without jobs in the Great Depression, constructed an administration building, a swimming pool, the maintenance area, the caretaker's residence, two restrooms and the picnic sites in the park. The baseball and softball fields, tennis courts, and parking were added in the early 1950s (County of San Mateo Parks Department n.d.).

Archaeological Resources

Archaeological resources may be considered to be either "unique archaeological resources" or "historical resources" as defined by the California Environmental Quality Act (CEQA; California Public Resources Code [PRC], Section 12000 et seq.) and described further under the "California Environmental Quality Act" subheading. CEQA Section 21083.2 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:

- 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; and/or
- Is directly associated with a scientifically recognized important prehistoric or historic event or person.

Future development under the proposed project would occur on developed or highly disturbed sites in the study area; however, there is potential for archaeological resources to exist.

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 pre-historic period resource and four historic period resources (Appendix E1).

Historic Resources Evaluation

Dudek completed a Historic Resources Technical Report for the project site in March 2021 (Appendix E2). The analysis included a pedestrian survey of the project site by a qualified architectural historian; building development and archival research, including review of the California Office of Historic Preservation's Built Environment Resource Directory for San Mateo County; development of an appropriate historic context for the project site; and recordation and evaluation of six office and light industrial properties over 45 years old for historical significance and integrity in consideration of NRHP, CRHR, and City of Menlo Park designation criteria and integrity requirements.

The Historic Resources Technical Report concludes that the five office and light industrial properties that comprise the project site and one adjacent property that supports a building that is over 45 years old do not appear eligible under any NRHP, CRHR, or City of Menlo Park designation criteria due to a lack of significant historical associations and architectural merit. Therefore, the project site properties and adjacent property are not historical resources under CEQA.

4.4.2 Regulatory Framework

Federal Regulations

National Historical Preservation Act

The NRHP was established in 1966 under the National Historical Preservation Act. The NRHP serves as an official federal list of cultural resources that have been nominated by state offices for their historical significance at the local, state, and national level. Any properties that are listed or eligible for listing in the NRHP must meet certain criteria for historical significance and possess integrity in form, location, and setting. Under Section 106, federal agencies are required to consider the effects of their actions, or those they fund or permit, on properties that are listed or may be eligible for listing. The regulations in Title 36 of the Code of Federal Regulations, Section 60.4, describe the criteria to evaluate cultural resources for inclusion in the NRHP. Properties may be listed in the NRHP if they meet the following eligibility requirements:

1. The property is at least 50 years old (however, properties under 50 years of age that are of exceptional importance or are contributors to a district can also be included in the NRHP);
2. It retains integrity of location, design, setting, materials, workmanship, feeling, and associations; and
3. It possesses at least one of the following characteristics:

Criterion A: Is associated with events that have made a significant contribution to the broad patterns of history (events).

Criterion B: Is associated with the lives of persons significant in the past (persons).

Criterion C: Embodies the distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values; or represents a significant, distinguishable entity whose components may lack individual distinction (architecture).

Criterion D: Has yielded, or may be likely to yield, information important in prehistory or history (information potential).

A project is considered to have a significant impact when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. No historic properties, buildings or resources eligible for listing in the NRHP are known to exist on the project site or adjacent areas that would be disturbed during project construction.

The Department of the Interior has established Standards and Guidelines for Archaeology and Historic Preservation. These standards and guidelines are not regulatory and do not set or interpret agency policy. According to Section 15064.5(b)(3) of the CEQA Guidelines (14 CCR 15000 et seq.), a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Weeks and Grimmer 1995) shall be considered as mitigated to a level of less than a significant impact on a historical resource.

American Indian Religious Freedom Act and Native American Graves and Repatriation Act

The American Indian Religious Freedom Act recognizes that Native American religious practices, sacred sites, and sacred objects have not been properly protected under other statutes. It establishes as national policy that traditional practices and beliefs, sites (including right of access), and the use of sacred objects shall be protected and preserved. Additionally, Native American remains are protected by the Native American Graves and Repatriation Act of 1990.

State Regulations

California Register of Historical Resources

All properties in California that are listed in or formally determined eligible for listing in the NRHP are eligible for listing in the CRHR. The CRHR is a listing of State of California resources that are significant in the context of California's history. It is a statewide program with a scope and criteria for inclusion similar to those used for the NRHP. In addition, properties designated under municipal or county ordinances are also eligible for listing in the CRHR. A historic resource must be significant at the local, state, or federal level under one or more of the criteria defined in the California Code of Regulations Title 15, Chapter 11.5, Section 4850 to be included in the CRHR. Any resource that meets the CRHR criteria is considered a significant historical resource under CEQA.

A building, site, structure, object, or historic district may be considered potentially eligible for listing in the CRHR if it meets any of the four criteria listed below and retains integrity:

1. Is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.
2. Is associated with the lives of persons important to local, California, or national history.
3. Embodies the distinctive characteristics of a type, period, region, or method of construction; represents the work of an important creative individual; or possesses high artistic values.
4. Has yielded or may be likely to yield information important to the prehistory or history of the local area, California, or the nation.

Integrity is the authenticity of a historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance. Historical resources eligible for listing in the CRHR must retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. Historical resources that have been rehabilitated or restored may be evaluated for listing. The CRHR includes resources listed in or formally determined eligible for listing in the NRHP, as well as some California State Landmarks and Points of Historical Interest.

California Environmental Quality Act

CEQA requires public agencies to consider the effects of their actions on both "historical resources" and "unique archaeological resources." Pursuant to the California PRC Section 21084.1, a "project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment." PRC 21083.2 requires agencies to determine whether proposed projects would have effects on "unique archaeological resources."

Historical Resources

"Historical resource" is a term of art with a defined statutory meaning (see PRC 21084.1 and 14 CCR 15064.5[a] and 15064.5[b]). Under CEQA, a cultural resource is considered a "historical resource" if it meets any of the criteria found in Section 15064.5(a) of the CEQA Guidelines:

- (1) a resource determined by the State Historical Resources Commission to be eligible for the CRHR (including all properties on the NRHP), as described above;
- (2) a resource included in a local register of historical resources, as defined in PRC Section 5020.1(k);
- (3) a resource identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g), will be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant; or
- (4) any object, building, structure, site, area, place, record, or manuscript that the City 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 City's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered to be historically significant if it meets the criteria for listing on the CRHR.

The fact that a resource is neither listed in nor determined to be eligible for listing in the CRHR, not included in a local register of historical resources (pursuant to PRC Section 5020.1[k]), nor identified in a historical resources survey (meeting the criteria in PRC Section 5024.1[g]) does not preclude a lead agency from determining that the resource may be a historical resource as defined in PRC Sections 5020.1(j) or 5024.1. If the lead agency determines that a project may have a significant impact on a historical resource, the project is determined to have a significant effect on the environment, and these effects must be addressed. However, no further environmental review need be completed if, under the qualifying criteria, a cultural resource is not found to be a historical resource or unique archaeological resource.

A proposed project that would cause a substantial adverse change in the significance of a historical resource is considered to have a significant impact. A “substantial adverse change” in the significance of a historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historical resource would be materially impaired (14 CCR 15064.5[b][1]). In turn, the significance of a historical resource is materially impaired when a project demolishes or alters the physical characteristics that convey a resources historical significance such that it would no longer be eligible for listing in the CRHR and/or a local register of historic resources.

Unique Archeological Resources

CEQA also distinguishes between two classes of archaeological resources: archaeological sites that meet the definition of a historical resource, as described above, and “unique archaeological resources.” PRC Section 21083.2(g) states that “unique archaeological resource” means 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 one or more 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 or 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.

CEQA Guidelines Section 15064.5(c) provides specific guidance on the treatment of archaeological resources, depending on whether they meet the definition of a historical resource or a unique archaeological resource. If the site meets the definition of a unique archaeological resource, it must be treated in accordance with the provisions of PRC Section 21083.2.

CEQA Guidelines Section 15064.5(e) requires that excavation activities be stopped whenever human remains are uncovered and that the county coroner be called in to assess the remains. If the county coroner determines that the remains are those of Native Americans, the Native American Heritage Commission must be contacted within 24 hours. At that time, the lead agency must consult with the appropriate Native Americans, if any, as identified in a timely manner by the NAHC. Section 15064.5 of the CEQA Guidelines directs the lead agency (or sponsor), under certain circumstances, to develop an agreement with the Native Americans for the treatment and disposition of the remains.

State Historical Building Code

The State Historical Building Code provides alternative building regulations and building standards for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of buildings or structures

designated as historic buildings. These regulations are intended to facilitate the restoration or change of occupancy so as to preserve their original or restored architectural elements and features, to encourage energy conservation and enable a cost-effective approach to preservation, and to provide for the safety of the building occupants.

Public Resources Code Section 5097.5

PRC Section 5097.5 prohibits “knowing and willful” 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.

State Laws Pertaining to Human Remains

California law protects Native American burials, skeletal remains, and associated grave goods, regardless of their antiquity, and provides for the sensitive treatment and disposition of those remains. California Health and Safety Code Section 7050.5 requires that if human remains are discovered in any place other than a dedicated cemetery, no further disturbance or excavation of the site or nearby area reasonably suspected to contain human remains shall occur until the county coroner has examined the remains and determined whether they are subject to the coroner’s authority. If the human remains are determined to be of Native American origin, the county coroner must contact the California NAHC within 24 hours of this identification. An NAHC representative will then identify a Native American Most Likely Descendant to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. In addition, PRC Section 5097.98 and CEQA Guidelines Section 15064.5 specify the procedures to be followed in case of the discovery of human remains on non-federal land. The disposition of Native American burials falls within the jurisdiction of the NAHC.

Regional and Local Regulations

City of Menlo Park General Plan

The City of Menlo Park General Plan (City of Menlo Park 2016a) contains the following goals and policies applicable to consideration of the project’s potential effects on cultural resources.

Land Use Element

Goal LU-7: Promote the implementation and maintenance of sustainable development, facilities and services to meet the needs of Menlo Park’s residents, businesses, workers, and visitors.

Policy LU-7.8: Cultural Resource Prevention. Promote preservation of buildings, objects, and sites with historic and/or cultural significance.

Open Space and Conservation Element

Goal OSC-3: Protect and enhance historic resources.

Policy OSC-3.1: Prehistoric or Historic Cultural Resources Investigation and Preservation. Require significant historic or prehistoric artifacts be examined by a qualified consulting archaeologist or

historian for appropriate protection and preservation, and to ensure compliance with local, state, and federal regulations.

Policy OSC-3.3: Archaeological and Paleontological Resources Protection. Protect prehistoric or historic cultural resources either on site or through appropriate documentation as a condition of removal. Require that when a development project has sufficient flexibility, avoidance and preservation of the resource shall be the primary mitigation measure, unless the city identifies superior mitigation. If resources are documented, undertake coordination with descendants and/or stakeholder groups, as warranted.

Policy OSC-3.4: Prehistoric and Historic Cultural Resources Found During Construction. Require that cultural resources, including archaeological or paleontological resources, are uncovered during grading or other on-site excavation activities, construction shall stop until appropriate mitigation is implemented.

Policy OSC-3.5: Consultation with Native American Tribes. Consult with those Native American tribes with ancestral ties to the Menlo Park city limits regarding General Plan Amendments and land use policy changes.

Policy OSC-3.6: Identification of Potential Historic Resources. Identify historic resources for the historic district in the Zoning Ordinance and require design review of proposals affecting historic buildings.

4.4.3 Thresholds of Significance

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

- A. Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5.
- B. Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5.
- C. Disturb any human remains, including those interred outside of formal cemeteries.
- D. Make a cumulatively considerable contribution to a significant cumulative impact related to cultural resources.

4.4.4 Impacts and Mitigation Measures

Methodology

As stated in Section 4.4.1, Environmental Setting, 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 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 Native American tribes under AB 52 in January 2020, at the time of public circulation of the NOP for this EIR, and sent 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.

Dudek's Historic Resources Technical Report (Appendix E2) also involved background research and a pedestrian survey of the project site. Each building was documented with notes and photographs, specifically noting character-defining features, spatial relationships, and observed alterations. The Historic Resources Technical Report concluded that none of the buildings within the project site are historic resources and that the adjacent building that is at least 45 years of age is also not a historic resource.

Project Impacts

Impact 4.4-1 Would the project cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5?

Consistent with the ConnectMenlo Final EIR Mitigation Measure CULT-1, Dudek completed a site-specific historic resources evaluation for the project site because the five existing buildings within the site and one adjacent building are more than 45 years old. The evaluation of the existing buildings located on the project site that are proposed to be demolished and the adjacent property was conducted by Dudek's architectural historian Sarah Corder, MFA, who meets the Secretary of the Interior's Professional Qualification Standards for architectural history. The Historic Resources Technical Report (Appendix E2) found that none of the six properties evaluated appear to be eligible for listing in the NRHP or the CRHR and none meet the City's criteria for identifying a historic resource.

Additionally, while there are identified historic properties within the City, none of these are located within the Bayfront Area or within the immediate project vicinity (Menlo Park 2016b). Therefore, the proposed project would have **no impact** because it would not cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5

Mitigation Measures

No mitigation measures are required.

Impact 4.4-2 Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5?

As discussed in Section 4.4.1, Environmental Setting, there are no known resources eligible for listing in the NRHP or CRHR that exist in the project area. The records search prepared for the proposed project identified that one archaeological study was previously conducted within the project site that did not identify any archaeological resources, and that 13 studies have been conducted within a 0.25-mile radius of the site which resulted in recordation of one pre-historic period resource and four historic period resources, none of which are within or adjacent to the project site (Appendix E1).

However, Albion's investigation of the project site indicates that potentially significant cultural materials may be located in the project area. If such resources are uncovered during construction and are eligible for listing in the NRHP or CRHR or otherwise meet the definitions and standards of significant archaeological resources under CEQA, disturbance to those resources would result in a **potentially significant** impact. Thus, mitigation is required.

Mitigation Measures

Implementation of Mitigation Measures 4.4a and 4.4b would reduce this impact to a **less-than-significant** level by ensuring that additional sub-surface investigation is conducted after existing buildings are demolished and paving on the site is removed and prior to excavation, grading, and trenching, consistent with the recommendation in the Phase I Archaeological Assessment (Appendix E1), and that any unanticipated archaeological deposits that may be encountered during construction are evaluated by a qualified archaeologist.

MM 4.4a **Extended Phase I Investigation.** Prior to issuance of a demolition permit, the City shall verify that the project sponsor has retained a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, to develop and implement an Extended Phase I Archaeological Assessment of the project site to test for buried archaeological deposits to the depth of the project's grading, trenching, and excavation. This Extended Phase 1 Assessment shall include subsurface testing of the project site through mechanical trenching to allow the archaeologist to observe subsurface conditions and locate any buried cultural deposits, features or artifacts. Following demolition of existing buildings and removal of pavement and other impervious surfaces at the project site and prior to commencement of grading, trenching, and excavation, the Extended Phase I Assessment shall be completed, and the archaeologist shall document any findings and subsurface conditions in an Extended Phase 1 report which shall be submitted to the City. If the Extended Phase I Investigation identifies archaeological resources, the archaeologist shall evaluate the find to determine its significance under CEQA (14 CCR 15064.5[f]; Public Resources Code Section 21082), consistent with MM 4.4b.

MM 4.4b **Unanticipated Discovery of Archaeological Resources.** In the event that archaeological resources (sites, features, or artifacts) are exposed during construction activities for the proposed project, all construction work occurring within 50 feet of the find shall immediately stop until a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, can evaluate the significance of the find and determine whether or not additional study is warranted. Construction activities may not resume in the area immediate to the discovery until authorized by the archaeologist. Depending upon the significance of the find under CEQA (14 CCR 15064.5[f]; Public Resources Code Section 21082), the archaeologist may simply record the find and allow work to continue. If the discovery proves significant under CEQA, additional work such as preparation of an archaeological or tribal cultural treatment plan, testing, or data recovery would be warranted. Examples of treatment for archaeological resources, in no order of preference, may include, but are not limited to, any of the following: (1) avoiding the resource, (2) establishing a

permanent conservation easement over the resource, (3) capping or covering archaeological site with a layer of soil before building on the site, and (4) having parks, greenspace, or other open space incorporate the archaeological site. Excavation and curation shall be the last considered treatment for archaeological resources.

Impact 4.4-3 Would the project disturb any human remains, including those interred outside of formal cemeteries?

There is no evidence that human remains are present within the project site. However, the ConnectMenlo Final EIR determined that human remains associated with pre-contact archaeological deposits could exist within the City and could be encountered during ground-disturbing activities associated with development and redevelopment projects. As noted above, the ConnectMenlo EIR notes that Native American remains were encountered during two construction projects in the Bayfront area as recently as 2012 (City of Menlo Park 2016b). Therefore, the excavation, grading and trenching activities necessary to implement the proposed project have the potential to disturb human remains interred outside of formal cemeteries.

A significant impact to cultural resources could occur if Native American human remains are disturbed during construction. However, in the event that human remains are encountered, construction contractors would be required to comply with California Health and Safety Code Section 7050.5 and PRC Section 5097.98, which define required notification and evaluation procedures, as described in Section 4.4.2, Regulatory Framework. This includes stopping all ground disturbance at and surrounding to the discovery notifying the County Coroner who must notify the NAHC if the remains are thought to be Native American, and the NAHC notifying a Most Likely Descendant for evaluation and recommendations on treatment. Compliance with Health and Safety Code Section 7050.5 would help reduce the potential impact to human remains because it would protect Native American burials, skeletal remains, and associated grave goods, and require sensitive treatment and disposition of those remains. Thus, potential impacts associated with discovery of human remains would remain **less than significant**.

Mitigation Measures

No mitigation measures are required.

Cumulative Impacts

The geographic scope or cumulative context for evaluation of potential cumulative impacts on cultural resources is San Mateo County and adjacent areas of Santa Clara County. While project specific impact analysis for cultural resources necessarily includes separate analyses for historical, archaeological and human remains, the cumulative analysis combines these resources into a single, non-renewable resource base and considers the additive effect of project-specific impacts to significant regional impacts on cultural resources. 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 4.4-4 Would the project make a cumulatively considerable contribution to a significant cumulative impact related to cultural resources?

All cultural resources and human remains are unique and non-renewable; thus, all adverse effects or negative impacts erode a dwindling resource base. For example, the loss of any one archaeological site or historical site

affects all others in a region because these resources are best understood in the context of the entirety of the cultural system of which they are a part. Although there are no known 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 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. 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. It is reasonable to assume that present and future development would continue to have an impact on known and unknown cultural, historical, and archaeological resources throughout the region. Proper planning and appropriate mitigation can help to capture and preserve knowledge of such resources and can provide opportunities for increasing our understanding of the past environmental conditions and cultures by recording data about sites discovered and preserving artifacts found. Federal, state, and local laws are also in place, as discussed above, that protect these resources in most instances. However, the cumulative loss of cultural, historic, and archaeological resources from present and future development within San Mateo County and adjacent areas of Santa Clara County would be considered a potentially significant cumulative impact.

Further, the Bayfront Area of the City 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).

The analysis in the ConnectMenlo EIR found that the future development anticipated under the General Plan has the potential to cumulatively impact cultural resources but that such impacts would be reduced to less-than-significant levels with implementation of mitigation measures and compliance with applicable federal, state, and local regulations. 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 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 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, historic, or archaeological resources or human remains, although archaeological resources and human remains could be present below-ground. The project is required to comply with the City’s General Plan implementation measures related to the preservation of cultural resources as described in Mitigation Measures 4.4a and 4.4b and the Health and Safety Code Section 7050.5 related to unearthing human remains. Under these requirements, any resources that may be uncovered during construction would be required to be evaluated and where a resource is significant, it must be preserved in place unless preservation in place is infeasible, in which case archaeological resources may be carefully excavated subject to an approved data recovery plan. This would ensure that the project

would not result in any significant direct adverse effects to cultural resources because all of the important information that a resource can provide would be retained, and therefore the project would not make a cumulatively considerable contribution to a significant cumulative impact related to 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 Mitigation Measures 4.4a and 4.4b and compliance with Health and Safety Code Section 7050.5 would reduce the project's impacts to 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 on cultural resources. No additional mitigation measures are required.

4.4.5 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=.
- City of Menlo Park. 2016b. *ConnectMenlo: General Plan Land Use and Circulation Elements and M-2 Area Zoning Update EIR*. SCH No. 2015062054. Prepared by PlaceWorks for the City of Menlo Park. Draft EIR dated June 1, 2016 and Final EIR dated October 10, 2016. <https://beta.menlopark.org/Government/Departments/Community-Development/Planning-Division/Comprehensive-planning/ConnectMenlo/Environmental-Impact-Report>.
- County of San Mateo Parks Department. n.d. "Flood Park History." Accessed January 13, 2022. <https://parks.smcgov.org/flood-park-history>.
- Weeks, K.D., and A.E. Grimmer. 1995. *The Secretary of the Interior's Standards for the Treatment of Historic Properties: With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*. Washington, DC: U.S. Department of the Interior, National Park Service.