

**APPENDIX D:
CULTURAL RESOURCES DATA**

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March 11, 2022

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RE: *Cultural Resources Records Search and Data Gathering Summary for the Los Banos General Plan Environmental Impact Report (EIR) Project, Merced County*

Greetings,

The purpose of this letter report is to relay information that ECORP Consulting, Inc. gathered to inform the cultural resource sensitivity of the City of Los Banos General Plan Environmental Impact Report (EIR) Area (Figure 1). ECORP reviewed current laws and regulations regarding cultural resources that may apply to the City and available literature, current cultural sources, lists, and databases to gather the requisite information to inform the EIR.

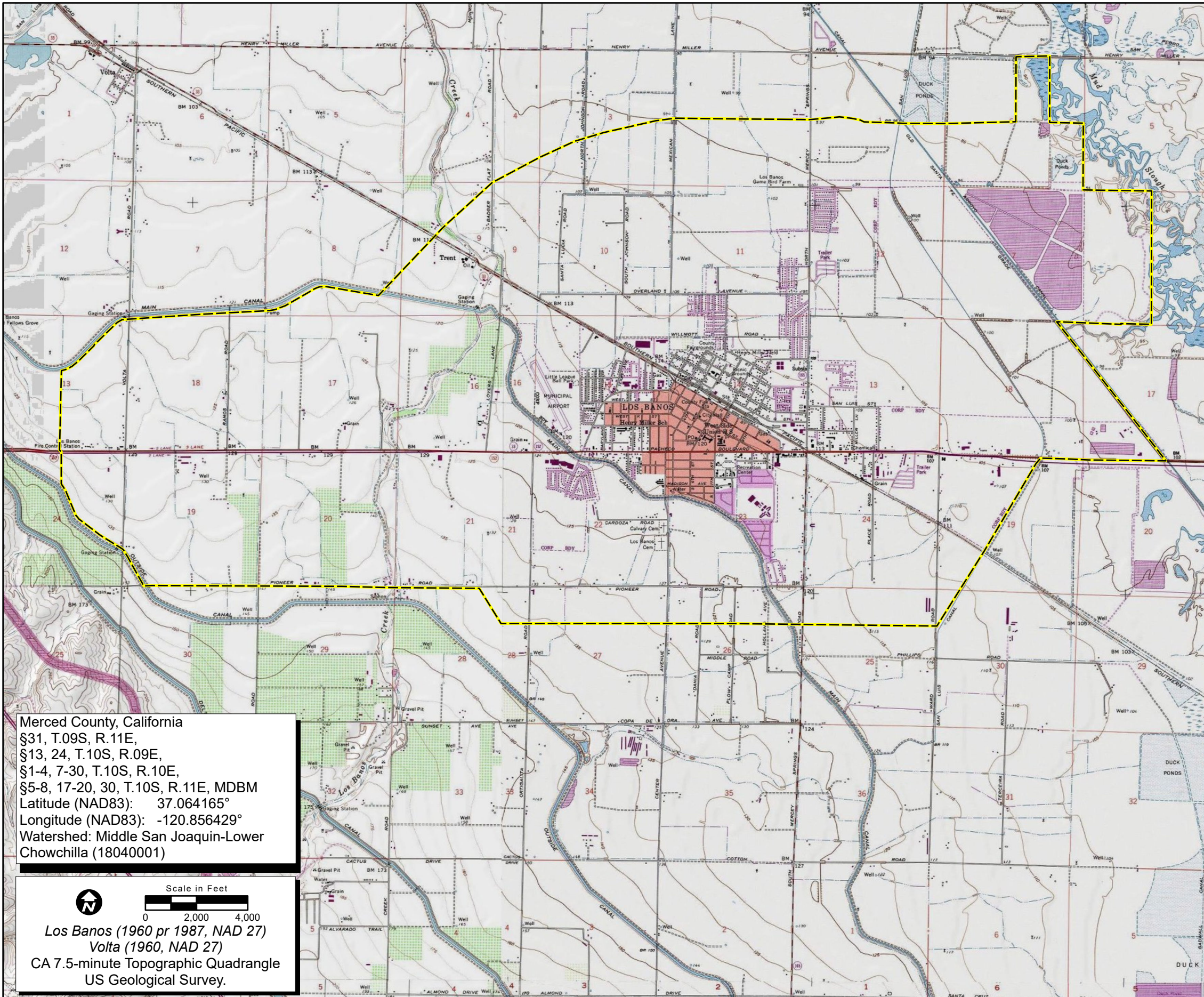
The purpose of this letter report is to provide an overview of cultural resources in the City, including an overview of the pre-contact (prehistoric) era and historic era cultural setting of the City, a discussion of federal, state, and local regulations pertaining to the management of cultural resources, the known cultural resources within the City limits, and a discussion of the types of cultural resources likely to be encountered during future planning and projects.

Registered Professional Archaeologist (RPA) Brian S. Marks, Ph.D. and architectural historian Jeremy Adams, M.A. supervised all work completed for this review. Dr. Marks meets the Secretary of the Interior's Professional Qualification Standards (PQS) for historic and prehistoric archaeology. Jeremy Adams meets the PQS for history and architectural history.

METHODS

Records Search and Literature Review

ECORP reviewed the current laws and regulations regarding cultural resources at the federal, state, and local level. This includes cultural resources laws at the federal level in U.S. Government Codes (USC) and Code of Federal Regulations (CFR), the California Public Resources Code (PRC), the City of Los Banos Municipal Code, and any existing guiding policies and implementing actions in the current Los Banos 2030 General Plan.



Map Contents

EIR Study Area - 14,559.1 ac.

Sources: ESRI, USGS

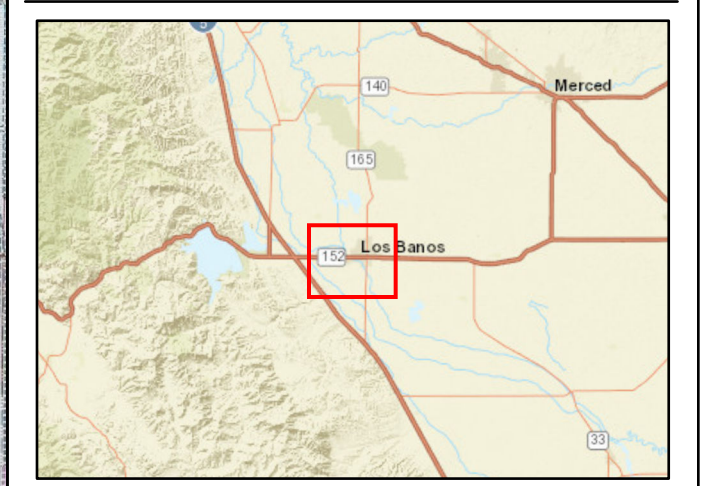


Figure 1. Project Location and Vicinity

Location: N:\2021\2021-293 Los Banos General Plan Update\WAPS\Location_Vicinity\LBGP_LnV.aprx - LBGPO_LnV_20220119 (klumquist - 1/19/2022)

The Central California Information Center (CCIC) of the California Historical Resources Information System (CHRIS) at California State University, Stanislaus completed the records search for the Area of Potential Effects on January 21, 2022 (Southern San Joaquin Valley Information Center search #12054I, provided as Attachment A). The purpose of the records searches was to determine the extent of previous cultural surveys and studies conducted within the limits of the Los Banos General Plan Area and what previously documented, pre-contact or historic archaeological sites, architectural resources, or traditional cultural properties exist within this area.

In addition to the official records and maps for archaeological sites and surveys in Merced County, ECORP reviewed the following historic references: Built Environment Resource Directory for Madera County (California Office of Historic Preservation [OHP] 2020); Historic Property Data File for Madera County (OHP 2012); *The National Register Information System* (National Park Service [NPS] 2022); *Office of Historic Preservation, California Historical Landmarks* (OHP 2020); *California Historical Landmarks* (OHP 1996 and updates); California Points of Historical Interest (OHP 1992 and updates); *Directory of Properties in the Historical Resources Inventory* (1999); *Caltrans Local Bridge Survey* (Caltrans 2019); *Caltrans State Bridge Survey* (Caltrans 2018); and *Historic Spots in California* (Kyle 2002).

Other references examined include historic General Land Office (GLO) land patent records (Bureau of Land Management [BLM] 2022). ECORP sent a request for a review of the Sacred Lands File of the Native American Heritage Commission on January 30, 2022. ECORP reviewed historic maps and aerial photographs of the area for general information on how the landscape of the City evolved historically.

CULTURAL SETTING

Local Pre-Contact History

Los Banos is set within an area that was occupied for thousands of years before European Contact. The earliest human occupations in the region date to the Middle Pacific period around 1000 B.C., represented by the Crane Flat phase of the Yosemite Complex located approximately 70 miles northeast of Los Banos (Bennyhoff 1956; Fitzwater 1962; Riley 1984). This phase is distinguished by projectile dart points made from obsidian, a tool-making stone which was readily available from this area (Doolittle 2002). Groundstone items consist of manos and metates with little evidence of the use of mortars or pestles. Fifty miles to the east, in the Buchanan Reservoir area, a contemporary sequence called the Chowchilla phase is also identified as the beginning of the cultural sequence with similar projectile points, including forms with contracting stemmed and concave base types (Moratto 1972). A few large settlements have been documented along the Chowchilla River from this period, giving the phase its name. Unlike the Crane Flat phase, the Chowchilla phase sites have produced cobble mortars with simple cylindrical pestles. Funerary practices include extended and semi-extended burials with abundant grave goods that include shell beads and ornaments and ochre staining (Doolittle 2002).

In the Late Pacific period, the Yosemite Complex sites exhibit smaller and lighter projectile points, and also the use of bedrock mortar technology. This period is divided into Tamarack and Mariposa phases. The Tamarack phase is earlier, yields the earliest arrow-sized points in the area, and marks the inception of bedrock mortar technology. The Mariposa Phase, beginning around 1500 B.C., is linked with the

ethnographic Miwok culture. This phase yield smaller projectile points of triangular and side-notched form and more refined mortars and pestles. Bedrock mortar sites from the Mariposa phase can contain hundreds of depressions reflecting intensification of acorn processing and larger population (Doolittle 2002).

Similarly, the Buchanan Reservoir area in the Late Period is reflected by two comparable phases; the Raymond and Madera phases. The Raymond phase is the earlier of the two and is characterized by smaller, arrow-sized points similar to Great Basin Rose Springs and Eastgate types. Some projectile points have contracting stems comparable to northern California Gunther types. Burials from this phase are generally tightly flexed with few grave goods, some of which display evidence of violent death. Cobble mortars and pestles are still being used with little use of bedrock mortars. The succeeding Madera phase, beginning around A.D. 1500, is marked by a rise in population and more stability. Smaller projectile points become more common, similar to the Mariposa phase of the Yosemite Complex, and mark the appearance of new artifact types, such as steatite beads and bowls, bedrock mortars, shaft straighteners, and pendants. Funerary customs also become more differentiated, possibly reflecting a hierarchy of social class. Flexed burials may have been associated with low status individuals, whereas cremation may have been reserved for high-status ones. The use of sweathouses and ceremonial assembly chambers are also documented from the Madera phase (Doolittle 2002).

Although the Yosemite Valley Complex and Buchanan Reservoir area are associated, respectively, with Central and Southern Sierra Miwok/Foothill Yokuts peoples, the relative proximity of these cultural phases to the Los Banos area provide a broad scope of the types of cultural remains that can be expected to occur within the Los Banos area, which falls within the Northern Valley Yokuts territory.

Ethnography

Ethnographically, present-day Los Banos lies in Northern Valley Yokuts territory; bounded to the north by Bay and Plains Miwok, to the west by the Costanoan, to the east by the northern, Central, and Southern Miwok, and to the south by the Southern Valley Yokuts. The San Joaquin River forms the central spine of the Northern Valley Yokuts territory that runs north collecting water from primary drainages that flow southwest from the Sierra Nevada. Within the territory, Los Banos lies in an area dominated ethnographically by the Nopchinchí Tribelet, who inhabited the area west of the San Joaquin River near Las Banos Creek and Little Panoche Creek. The environment consisted of marshland flanking rivers and streams separated by more arid plains with sparse vegetation. Despite the hot summers of the Central Valley, the abundance of animal life made settlement attractive in the region. Rivers were well stocked with fish, mussels, and pond turtles, with migratory birds nesting along riverbanks. Elk and pronghorn sheep roamed the plains and edges of the marshland, while smaller mammals were omnipresent and included jackrabbits, ground squirrels, and quail (Wallace 1978).

Archaeological evidence indicates that the Yokuts were relative latecomers to the region, moving northward from the main bend in the San Joaquin River and displacing Costanoans and Miwok in their path. The Northern Valley Yokuts were firmly established by the time of early nineteenth century when Spanish expeditions were making exploratory incursions into the interior of California. By this time, the population is estimated as 30,000, with the main concentrations along the San Joaquin River and its main

tributaries. They were organized in territorial tribelets of up to 300 people. Gathering parties left the villages seasonally to collect seeds and acorns. Acorn processing and fishing were the main subsistence activities, followed by hunting for fowl. Hunting for elk and antelope appears to have been less common. Some burning of meadows was practiced to increase the harvest of seeds (Wallace 1978).

Acorn processing was a time-consuming and important activity centered on individual or groups of oak trees that could yield hundreds of pounds of acorns. Tule roots were also harvested and ground into meal. The Yokuts lived in permanent villages on mounds along the river. Structures with round to oval, hard-packed dirt floors sunk 2 feet below ground surface have been documented in Merced and Fresno counties. These have been interpreted as single family dwellings constructed with light wooden poles joined at the top and covered with tule mats. Sweathouses and ceremonial assembly chambers have also been documented in Northern Valley Yokuts territory (Wallace 1978).

Technological skills included basket making and production of ground stone items like mortars and pestles used in acorn processing. Lithic technology consisted of projectile points, knives, scrapers, and expedient tools like hammer stones and choppers. Lithic materials used for these items included chert, jasper, chalcedony, and obsidian. Funerary customs included flexed inhumation burial or cremation; the latter used for tribesmen who died away from home or for shamans or high-status individuals (Wallace 1978).

The Northern Valley Yokuts first encountered Spanish exploratory missions in the early 1800s. The biggest impact to Yokuts culture came with the start of the mission system in the first quarter of the 19th century when large numbers of Yokuts peoples were taken to the San José, Santa Clara, Soledad, San Juan Bautista, and San Antonio missions. At approximately 40 miles southwest of Los Banos, San Juan Bautista is the closest mission to the area. The succeeding period is characterized by Neophytes running away from the harsh mission system and being pursued by punitive expeditions. Bands of ex-mission Indians allied with unconverted groups began to raid mission territories, stealing herds and horses for meat. These raids continued into the Mexican Period, which was marked by a drastic decline of the native population particularly from a malaria epidemic in 1833 (Wallace 1978).

The American Period after 1848 marked a further decline in the native population in Northern Yokuts territory. The native groups were first subjected to gold prospectors passing through their territory bringing with them a new wave of diseases. Finally, these loose groups were pushed aside by settlers who decided to farm in the Central Valley (Wallace 1978).

History

The first significant European settlement of California began during the Spanish Period (1769 to 1821) when 21 missions and 4 presidios were established between San Diego and Sonoma. Although located primarily along the coast, the missions dominated the majority of the California region during this period. The purpose of the missions and presidios was to establish Spanish economic, military, political, and religious control over the Alta California territory. This included the forced conversion of the Native population to Spanish colonial society and Catholicism, which often consisted of subjugating Indians into a life of servitude to Spanish citizens (Castillo 1978; Cleland 1941). The nearest mission to Los Banos was San Juan Bautista, approximately 40 miles to the southwest.

The Mexican Period (1821 to 1848) began with the success of the Mexican Revolution in 1821, but changes to the mission system were slow to follow. When secularization of the missions occurred in the 1830s, the vast land holdings of the missions in California were divided into large land grants called *ranchos*. The Mexican government granted ranchos throughout California to Spanish and Hispanic soldiers and settlers (Castillo 1978).

In 1848, the Treaty of Guadalupe Hidalgo ended the Mexican-American War and marked the beginning of the American Period (1848 to present). The discovery of gold the same year initiated the 1849 California Gold Rush, bringing thousands of miners and settlers to California.

The first European incursions into the San Joaquin Valley were the result of punitive expeditions to recover stolen horses and to seek retribution on Native American individuals who had raided European settlements. The first Spanish expedition to reach Merced was led by Lieutenant Gabriel Moraga in 1806 with a force of 30 men. These expeditions continued through the Mexican Period by which time neophytes and unconverted natives had formed loose tribelets and improved their raiding techniques (Outcalt 1925).

The first Americans in the region were made up of teams of trappers led in 1827 by Jedediah Smith and followed by a party led by Ewing Young in 1829. The Hudson Bay Company also sent a number of trapping expeditions, including one led by Peter Ogden, to California during this period that were successful in procuring beaver furs and antelope skins. In 1844, General John C. Fremont crossed into the Central Valley and returned the following year with Kit Carson and Joseph Walker.

During this period of Mexican rule in California, the governor could authorize large land grants to citizens for farming and cattle grazing. At the start of the American Period in 1848, American settlers started to arrive in the valley looking for farmland. Land was available for as little as 0.50 to \$1.50 an acre (Merced Chamber of Commerce 2006). The Gold Rush era resulted in increased population and settlements in the San Joaquin Valley since the region was a natural transportation corridor that provided goods for miners. The 1850s was a period of abundant wheat harvests and the spread of open cattle grazing in the valley. Notable among these cattlemen were Henry Miller and Charles Lux, whose ranch covered more than one million acres in the Los Banos area in the 1860s. The coexistence of farmland and open grazing led to conflicts between farmers and ranchers when cattle would stray onto cultivated fields. In 1870, the Trespass Law or *No Fence Law* was applied to the part of Merced County east of the San Joaquin River, which prevented the trespassing of animals on private property and so ended unrestricted cattle ranging (Outcalt 1925). Four years later a fence law was adopted forcing ranchers to enclose their fields to prevent further conflicts (City of Merced 2001).

When California was divided into 27 counties in 1850, Los Banos fell under Mariposa County which was then further divided, in 1855, into 10 other counties including Merced County. The construction of the Southern Pacific Railroad through the Valley in 1872 (Mullaly and Petty 2002) led to the growth of Merced (located on the railroad route) which superseded the town of Snelling (not on the railroad route) as the county seat in 1872 (City of Merced 2001).

The Los Banos area was colonized by many Spanish and Portuguese explorers, immigrants, and missionaries. Spanish missionary Padre Felipe Arroyo de la Cuesta would make trips from Mission San

Juan Bautista to the Yokuts territory. It was during one of these trips that the Padre discovered pools of water between the rocks in a creek bed that flowed down into the San Joaquin Valley. He called the area *Los Banos*, which meant *The Baths* for these pools. Reports of these baths eventually led to the local ranchers naming the creek *El Arroyo de Los Banos del Padre Arroyo*. This name was eventually simplified to *Los Banos Creek* (Outcalt 1925; Gudde 1969).

In the 1850s, Uriah Wood settled in the area that was to become Los Banos. Wood was originally from New York but came to California from Illinois. By 1859 Wood had a two-room cottage and worked in various occupations but was often paid in cattle. He exchanged and sold cattle and land and eventually accumulated over 5,000 acres with all the real estate incorporated under The Uriah Wood Company (Sawyer 1922). Wood received the majority of the land officially in 1868 through 11 state volume patents issued under the Land Act of 1820 (BLM 2022). Wood remained in the area with his four sons and his wife Phoebe L. Smith, until the family moved to San Jose in 1885 (Sawyer 1922).

Pioneers W.J. Stockton and Charles W. Smith came to Los Banos in 1872 and 1874 respectively and wrote extensively about the early days of the town, then known as Los Banos Village. Stockton came to Los Banos to build a house, and at the time there were few small buildings and a grocery store that doubled as post office. By 1881 the town had gained a hotel, blacksmith shop, a barn, and two smaller buildings. However, the town center moved a few miles west to the location of where the railroad came through in the later 1880s, and the original location came to be referred to as *Old Los Banos*. Los Banos was one of only two towns on the west side of the Sierra Nevada in the lower central valley during this time – the other being Hill's Ferry. Other nearby towns such as Dogtown began to crop up after 1874 when an irrigation canal was complete and brought sufficient water to the area. The majority of the surrounding lands were used as stock ranches for cattle and sheep (Outcalt 1925).

Henry Miller, a prominent California rancher and agriculture baron, also settled in the area in the 1860s. Ranching and farming became the main industry in the Los Banos area, facilitated by irrigation systems using water from the local rivers and creeks and called for by the success of the wheat exported from the area to places as far off as England. By 1871, Henry Miller formed the San Joaquin and Kings River Canal and Irrigation Company to continue to get water to support his cattle empire. Miller was one of ten men who bought the water rights from a canal that siphoned water from the junction of the San Joaquin River and Fresno Slough (Outcalt 1925). He began introducing agricultural crops such as cotton, rice, and alfalfa to the area (City of Los Banos 2021).

Miller started an annual May Day celebration in 1877 to celebrate the completion of another canal, which also happened to occur on Miller's Birthday. The celebration became an established custom in Los Banos, on which day they celebrated Miller himself as much as the May Day holiday. Miller emigrated to New York from Germany in 1827 and ran a successful butcher business there until he was said to have made \$30,000 by the age of 18. He was said to have returned to Germany but later fell ill and lost money in business dealings when he emigrated again to Panama. He came to San Francisco in 1850 and started working his way again as a butcher and began building his cattle empire shortly after. His work building canals accredited him with helping expand the wealth and influence of Los Banos as a city and all its citizens. He was said to have been gracious with his wealth, never calling in a debt on anyone who could not pay it, and settling outstanding mortgage and other bills for pennies on the dollar (Outcalt 1925). This

allowed the town and its residents to thrive and prosper, and Los Banos continued to thrive as an agricultural center through the twenty first century and remains an agricultural center to this day due in large part to Miller.

RESULTS

Laws and Regulations

This section presents federal, state, and local laws and regulations pertaining to cultural resources and Native Americans. The following terms are re-occurring and referenced throughout this section:

- *Cultural resource* is the term used to describe several different types of properties: pre-contact (prehistoric) and historic archaeological sites, buildings, objects, structures, and districts or any other physical evidence associated with human activity considered important to a culture or a community for scientific, traditional, or religious reasons.
- *Historic Property*: Federal regulations (36 CFR 800) define a historic property as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP). This term includes artifacts, records, and remains that are related to and located within such properties. The term also includes properties of traditional religious and cultural importance to Native American tribes or Native Hawaiian organizations and that meet NRHP criteria.
- *Historical Resource*: The California Environmental Quality Act (CEQA) Guidelines Section 15064.5(a) define a historical resource as a resource listed in the California Register of Historical Resources (CRHR) or determined to be eligible for listing in the CRHR by the State Historical Resources Commission, a resource included in a local register of Historical Resources, or identified as significant in a Historical Resource survey meeting the requirements of PRC Section 5024.1(g), or any object, building, structure, site, area, place, record, or manuscript that 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.
- *Unique Archaeological Resource*: CEQA defines this term 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.
 - Is directly associated with a scientifically recognized important prehistoric or historic event or person.

- *Tribal Cultural Resource*: CEQA defines Tribal Cultural resources as sites, features, places, cultural landscapes (geographically defined in terms of the size and scope), sacred places, and objects with cultural value to a California Native American tribe that are included or determined to be eligible for inclusion in the CRHR; and/or included in a local register of historical resources; and/or a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant.

These resource types will be further discussed in terms of the specific laws that define them in this section.

Federal Regulations

National Historic Preservation Act

The National Historic Preservation Act defines the responsibilities of federal agencies to protect and preserve Historic Properties. Sections 106 and 110 include specific provisions for the identification and evaluation of these properties for inclusion in the NRHP, such as consulting with interested parties that often include local Native American tribes.

Section 106 requires federal agencies, or those they fund or permit, to consider the effects of any of their undertakings (e.g., projects, activities, or programs) on properties that may be eligible for listing or that are listed in the NRHP (i.e., Historic Properties). Regulations implementing Section 106 (36 CFR 800) lay out procedures for federal agencies to meet their Section 106 responsibilities. Although compliance with Section 106 is the responsibility of the lead federal agency, the work necessary to comply may be undertaken by others.

To determine whether an undertaking could affect Historic Properties, cultural resources, including archaeological, historical, and architectural properties, must be inventoried and evaluated for listing in the NRHP.

The Section 106 process generally follows the basic steps listed below, although all steps may not be necessary in each case.

- Once an undertaking is established, initiate consultation with the appropriate parties and plan to involve the public.
- Identify Historic Properties and determine whether your undertaking has potential to affect them.
- Assess effects of the undertaking on Historic Properties to determine if effects are adverse.
- Consult with the State Historic Preservation Officer (SHPO) regarding the identification of Historic Properties, any effects the undertaking may have on Historic Properties, and whether these effects will be adverse.
- Notify all consulting parties (e.g., Native American or Native Hawaiian tribes and members of the public) of the determinations regarding potential adverse effects to Historic Properties. Any disagreements should be resolved through consultation.

- Consult on ways to modify the undertaking to avoid, minimize, or resolve adverse effects on Historic Properties.
- If needed, come to an agreement on measures and steps to resolve adverse effects through the adoption of either a Memorandum of Agreement (MOA) or, for larger or phased undertakings, a Programmatic Agreement (PA). These are agreement documents that outline the agreed-upon measures to resolve adverse effects.
- Proceed in accordance with the MOA or PA, if executed.

If all parties agree that there are no Historic Properties identified, or that the undertaking will not have an adverse effect on Historic Properties, an MOA or PA may not be necessary. Regardless, each step of this process should be documented for proof of compliance with the Section 106 process.

Federal Historic Significance Criteria

For federal projects, cultural resource significance is evaluated in terms of eligibility for listing in the NRHP. Structures, sites, buildings, districts, and objects more than 50 years of age can be listed in the NRHP as significant Historic Properties; however, properties less than 50 years of age that are of exceptional importance or are contributors to a historic district can also be included in the NRHP. The NRHP is administered by the NPS and includes listings of buildings, structures, sites, objects, and districts that possess historic, architectural, engineering, archaeological, or traditional cultural significance at the national, state, or local level.

Criteria for listing in the NRHP are outlined in 36 CFR 60.4 and are rooted in the notion that the quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and that:

- A. are associated with events that have contributed to the broad pattern of our history;
- B. are associated with the lives of people significant in our past;
- C. embody the distinct characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. have yielded, or are likely to yield, information important in prehistory or history (36 CFR 60.4).

Through amendments to the NRHP in 1992 and their implementing regulations, federal responsibilities for consultations with interested parties, and especially with Indigenous tribes, during the Section 106 process were expanded. The result has been a more focused effort by federal agencies to involve interested parties in identifying Historic Properties of cultural significance and, if warranted, in considering effects that may result from a federal undertaking.

Traditional Cultural Properties (TCPs) are often identified as resources during these consultation efforts. TCPs are tangible cultural properties that have historical and ongoing significance to living communities,

as evidenced in their traditional cultural practices, values, beliefs, and identity. A TCP must still meet one of the four criteria outlined in 36 CFR Part 60.4, described previously, and must retain integrity. A TCP is simply a different way of grouping or looking at historic resources, emphasizing a place's value and significance to a living community.

As such, the NRHP guidelines describe the types of cultural significance for which properties may be eligible for inclusion in the NRHP. A property with traditional cultural significance will be found eligible for the NRHP because it is associated with cultural practices or beliefs of a living community that are:

- A. rooted in that community's history, and
- B. important in maintaining the continuity of the cultural identity of the community.

This type of significance is grounded in the cultural patterns of thought and behavior of a living community and refers specifically to the association between their cultural traditions and a historic property.

State Regulations

California Environmental Quality Act

CEQA was passed in 1970 to institute a statewide policy of environmental protection. It requires that public agencies that finance or approve public or private projects must consider the impacts of their actions on the environment, of which, Historical Resources, Unique Archaeological Resources, and Tribal Cultural Resources are a part. 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 21084.1). Section 21083.2 requires agencies to determine whether proposed projects would have effects on Unique Archaeological Resources, and Section 21074(a)(1) concerns effects to Tribal Cultural Resources.

CEQA requires that if a project would result in significant impacts on cultural resources that are important or significant, alternative plans or measures must be considered to lessen or mitigate such impacts. Prior to the development of mitigation measures, the importance of cultural resources must be determined. The steps that are generally taken in a cultural resources investigation for CEQA compliance are as follows:

- identify cultural resources in a project area;
- if cultural resources exist in the footprint of a project, evaluate the significance of resources;
- if significant resources are determined to exist, evaluate the potential impacts of a project on these resources; and
- develop and implement measures to mitigate the impacts of the project only on *significant* resources, namely Historical Resources, Unique Archaeological Resources, and Tribal Cultural Resources.

Historical Resource is a term with a defined statutory meaning (PRC Section 21084.1). Under CEQA Guidelines Section 15064.5(a), Historical Resources include the following:

- A resource listed, or determined to be eligible for listing, in the CRHR by the State Historical Resources Commission (PRC Section 5024.1).
- A resource included in a local register of Historical Resources, as defined in PRC Section 5020.1(k), or 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.
- Any object, building, structure, site, area, place, record, or manuscript that 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 may be considered a historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource will be considered by the lead agency to be *historically significant* if the resource meets the criteria for listing in the CRHR (PRC Section 5024.1), including the following:
 1. is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
 2. is associated with the lives of persons important in our past;
 3. embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
 4. has yielded, or may be likely to yield, information important in prehistory or history.

The fact that a resource is not listed or 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)), or 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 Section 5020.1(j) or 5024.1.

Historical Resources are usually 45 years or older and must meet at least one of the criteria for listing in the CRHR described previously, in addition to maintaining a sufficient level of integrity.

In addition, CEQA requires lead agencies to determine if a proposed project would have a significant effect on Unique Archaeological Resources. If an archaeological site does not meet the CEQA Guidelines criteria for a Historical Resource, then the site may meet the threshold of PRC Section 21083.2 regarding Unique Archaeological Resources.

The CEQA Guidelines note that if a resource is neither a Unique Archaeological Resource nor a Historical Resource, the effects of the project on that resource shall not be considered a significant effect on the environment (14 California Code of Regulations Section 15064[c][4]). Considerations under CEQA for Tribal Cultural Resources are discussed below.

California Health and Safety Code Section 7050.5(b) and CEQA Section 15064.5

Section 7050.5(b) of the California Health and Safety Code specifies protocol when human remains are discovered during activities involving ground disturbance. If human remains are discovered or identified in any location other than a dedicated cemetery, there should be no further disturbance or excavation nearby until the county coroner has determined the area is not a crime scene that warrants further investigation into the cause of death and made recommendations to the persons responsible for the work in the manner provided in Section 5097.98 of the PRC. This section provides guidance for proceeding when human remains associated with Native American burials and associated items are encountered.

CEQA Guidelines Section 15064.5(e) requires that excavation activities stop whenever human remains are uncovered during a project or activity, and that the county coroner be called in to assess the remains. If the county coroner determines that the remains are Native American, the Native American Heritage Commission (NAHC) must be contacted within 24 hours. At that time, the lead agency must consult with the appropriate Native American descendants, if any, as identified by the NAHC. Under certain circumstances, the lead agency (or applicant), is required to develop an agreement with the Native American descendants for the treatment and disposition of the remains.

In addition to the mitigation provisions pertaining to accidental discovery of human remains, Section 15064.5(f) of the CEQA Guidelines also requires that a lead agency make provisions for the accidental discovery of historical or archaeological resources, generally. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be a Historical Resource or Unique Archaeological Resource, avoidance measures should be implemented, or appropriate mitigation should be available.

Public Resources Code Section 5097.9

PRC Section 5097.9 states that no public agency or private party on public property shall interfere with the free expression or exercise of Native American Religion. The code further states that:

...nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

County and city lands are exempt from this provision, except for parklands larger than 100 acres.

Government Code 65352.3-5 (Senate Bill 18), Local Government – Tribal Consultation

California Government Code Section 65352.3-5, formerly known as Senate Bill (SB) 18, states that prior to the adoption or amendment of a city or county's general plan, or specific plans, the city or county shall consult with California Native American tribes that are on the contact list maintained by the NAHC. The intent of this legislation is to preserve or mitigate impacts on places, features and objects, as defined in PRC 5097.9 and PRC 5097.993, that are located within the city or county's jurisdiction. The bill also states that the city or county shall protect the confidentiality of information concerning the specific identity, location, character and use of those places, features and objects identified by Native American

consultation. Government Code 65362.3-5 applies to all general and specific plans and amendments proposed after March 1, 2005.

Assembly Bill 52

Effective July 1, 2015, Assembly Bill (AB) 52 amended CEQA to require that: (1) a lead agency provide notice to those California Native American tribes that requested notice of projects proposed by the lead agency; and (2) the lead agency consult with any tribe that responded to the project notice within 30 days of receipt with a request for consultation. Topics that may be addressed during consultation include Tribal Cultural Resources, the potential significance of project impacts, the type of environmental document that should be prepared, and possible mitigation measures and project alternatives.

A California Native American tribe is defined as "...a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of the Statutes of 2004." This includes both federally and non-federally recognized tribes.

Section 21074(a) of the PRC defines Tribal Cultural Resources for the purpose of CEQA as:

- (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.

Because criteria A and B also meet the definition of a Historical Resource under CEQA, a Tribal Cultural Resource may also require additional consideration as a Historical Resource. Tribal Cultural Resources may or may not exhibit archaeological, cultural, or physical indicators.

Recognizing that California tribes are experts in their tribal cultural resources and heritage, AB 52 requires that CEQA lead agencies provide tribes that request notification an opportunity to consult at the commencement of the CEQA process to identify Tribal Cultural Resources. Furthermore, because a significant effect on a Tribal Cultural Resource is considered a significant impact on the environment under CEQA, consultation is used to develop appropriate avoidance, impact minimization, and mitigation measures.

Assembly Bill 168

AB 168 was signed in 2020 and extends the responsibility of a development proponent to consult with Native American tribes to streamlined ministerial approvals for affordable multifamily housing developments under SB 35. A development with streamlined ministerial approval under SB 35 is not subject to CEQA, allowing for such developments to occur without going through a CEQA review or screening process to determine if they would affect Tribal Cultural Resources.

AB 168 requires a development proponent to submit notice of its intent to apply for streamlined approval to the local government prior to the actual application submittal. The local government is then required to provide formal notice to each California Native American tribe that is culturally affiliated with the geographic area of the proposed development and to engage in a *scoping consultation* regarding the potential effects the proposed development could have on a potential Tribal Cultural Resource (California Code Section 65913.4(b)).

The scoping consultation must commence within 30 days after the proponent submits a notice of intent to apply for ministerial approval and concluded before the proponent can submit the application.

This bill deems a project ineligible for the streamlined, ministerial approval process and require it be subject to CEQA if:

- (A) the site of the proposed development is a Tribal Cultural Resource that is on a national, State, tribal, or local historic register list;
- (B) the local government and the California Native American tribe do not agree that no potential Tribal Cultural Resource would be affected by the proposed development; or
- (C) the local government and California Native American tribe find that a potential Tribal Cultural Resource could be affected by the proposed development and the parties do not document an enforceable agreement regarding the methods, measures, and conditions for treatment of those tribal cultural resources, as provided.

Local Regulations

The Los Banos 2030 General Plan has a guiding policy for consideration of cultural and archaeological resources in Los Banos General Plan Area, which comes with a set of implementing actions. These are as follows:

- Guiding Policy POSR-G-12: Identify and preserve the archaeological and historic resources that are found within the Los Banos Planning Area.
- Implementing Action POSR-I-37: Require that new development analyze and avoid any potential impacts to archaeological, paleontological, and designated historic resources by:
 - Requiring a record search at the Central California Information Center located at California State University Stanislaus and other appropriate historical repositories for development proposed in areas that are considered archaeologically sensitive;

- Studying the potential effects of development and construction (as required by CEQA);
 - Requiring pre-construction field surveys (where appropriate) and monitoring during any ground disturbance for all development in areas of historical and archaeological sensitivity; and
 - Implementing appropriate measures or project alternatives to avoid identified significant impacts to historical resources. Where such impacts are unavoidable, document the structure(s) in accordance with the National Park Service’s Historic American Building Survey/Historic American Engineering Record (HABS/HAER). Such affects would still be considered significant.
- Implementation Action POSR-I-38: Retain a qualified architectural historian to undertake an inventory of historic resources to determine sites or buildings of federal, State, or local historic significance.
 - Implementation Action POSR-I-39: Promote the registration of historic sites, buildings, and structures in the National Register of Historic Places, and inclusion in the California Inventory of Historic Resources.
 - Implementation Action POSR-I-40: Update the City’s building regulations to implement the State Historic Building Code for alterations to designated historic properties.
 - Implementation Action POSR-I-41: Require applicants of major development projects to consult with Native American representatives regarding cultural resources to identify locations of importance to Native Americans, including archeological sites and traditional cultural properties.

Records Search and Literature Review

The CCIC returned results of the Records Search on January 21, 2022. The records search consisted of a review of previous research and literature, records on file with the CCIC for previously recorded resources, and historical aerial photographs and maps of the vicinity. According to the records search data, approximately 35 percent of the Los Banos General Plan Area has been studied for cultural resources. This information is important because the sensitivity assessment is largely based on the amount and types of cultural resources that were previously identified in past studies; therefore, the accuracy of the sensitivity assessment increases with the coverage of previous cultural surveys within the Los Banos General Plan Area.

Known Cultural Resources

Information from the CCIC Records search provided the basis for the general cultural resources sensitivity assessment of the Los Banos General Plan Area. The CHRIS records search identified a total of 77 cultural resources within the Los Banos General Plan Area. These included pre-contact and historic-era archaeological resources, built environment resources, and resources that include both archaeological and built environment components.

Archaeological Resources

Of the 16 archaeological sites previously recorded in the Los Banos General Plan Area, 11 sites are either pre-contact archaeological resources or include a pre-contact archaeological component. There are five sites that are solely historic period, two of which also have a built environment component. According to the OHP, none of the archaeological sites are listed on or have been formally recommended eligible for listing on the NRHP. The most current Archaeological Determinations of Eligibility listing dates to 2012.

Pre-Contact Archaeological Resources

Previous studies in the general region provide reasonable expectations for the range of archaeological property types likely to occur in Los Banos General Plan Area. Pre-contact site types include habitation sites, limited occupation sites, lithic reduction stations, and burial locations. Isolated artifacts are where pre-contact artifacts are found alone, outside of a larger site. Sites may fall into more than one category. For example, habitation sites may be associated burial locations. Therefore, sites may be classified as more than one site type.

Habitation sites are locations of long-term occupation. These sites were typically located near ponds, streams, and springs surrounding Mud Slough in the eastern portion of the City. The parts of the Los Banos General Plan Area that lie closest to Los Banos Creek have largely not been previously studied. Habitation sites are characterized by midden deposits, a variety of artifacts (e.g., flaked-stone debitage, bifaces, unifaces, other flaked-stone tools, ground-stone implements and fire-affected rock), house pits, and sometimes include burials.

Lithic scatters are collections of flaked- or ground-stone debris, including tools and debitage that relate to post-quarry reduction and tool manufacturing efforts. They are perceived primarily as daily or overnight task-oriented camps where a limited range of activities was conducted.

Isolated artifacts are the most abundant pre-contact resource type found in the Los Banos General Plan Area. Five of the pre-contact resources recorded were isolated groundstone or lithic artifacts that ECORP previously identified, albeit in the eastern portion of the Plan Area. In the western portion of the Plan Area closest to Los Banos Creek, previous studies identified only historic-period ranch complexes. This indicates that although there is a pre-contact presence throughout the Los Banos General Plan Area, subsequent disturbance from years of colonization and development has displaced the remnants of these sites and removed them from their original depositional context in the east, or has removed them altogether in the west.

Other site types found in the area include lithic scatters and habitation sites. Two simple lithic scatters are located near Mud Slough; a habitation site that includes lithic scatter components was discovered near the southern portion of the marshy area near Mud Slough, and two large habitation sites that include house pits and burials were discovered south of Mud Slough, in the southeastern portion of the Plan Area.

The overall pre-contact archaeological sensitivity of the Los Banos General Plan Area is generally considered high, particularly in the eastern half in areas near water sources such as ponds and marshes.

This pattern is expected to be similar in areas that have not been subject to previous study. In particular, the area around and to the south of Mud Slough is rich in archaeological resources. Pre-contact archaeological sites are often located along riverbanks in the San Joaquin Valley, although they usually are found on natural rises that protected the inhabitants from frequent floods. Sites along the San Joaquin River and Los Banos Creek in Merced County do exist, and the possibility remains that additional pre-contact deposits may be buried in similar locations, in natural buried contexts (such as under alluvial deposits), as well as cultural buried contexts (such as below constructed levees or mixed in as a portion of levee fill material).

Historic-Period Archaeological Resources

Historic site types include old transportation corridors and alignments, remnants of activities associated with historic homesteading, ranching and agriculture, mining, and commerce. The overall historic archaeological sensitivity of the Los Banos General Plan Area is generally considered moderately high in those areas where historic records indicate transportation routes, agricultural settlements, and mining occurred.

Built Environment

Historic cultural resources generally include buildings, roads, trails, bridges, canals, and railroads usually associated with the time period beginning with the first EuroAmerican contact. Because settlement of the Los Banos General Plan Area dates to the 1880, after the railroad spurred the relocation of the City from its original site, the City is rich in historic cultural resources. In general, concentrations of historic resources in the City are expected to occur adjacent to transportation corridors (e.g., historic highways, railroads, navigable waterways), on historic ranches, in areas of historic rock, soil, mineral and timber extraction, and within historic neighborhoods and business districts.

Historic Properties in State Database and the Built Environment Resources Directory

The Historic Property Data File Historic Resources Inventory and the Built Environment Resource Directory, maintained by the State Office of Historic Preservation, identifies recorded properties and whether those properties are considered eligible or ineligible for listing in the NRHP. The listing for Merced County included three resources within the Los Banos General Plan Area:

- The Canal Farm Inn;
- Los Banos the settlement; and
- Los Banos Creek (the site of the original town in the southwestern portion of the Los Banos General Plan Area).

As noted previously, properties listed or found eligible for listing on the NRHP are also automatically eligible for the CRHR.

The Built Environment Resource Directory (BERD) provides information regarding non-archaeological resources in the OHP's Inventory. The listing for Los Banos indicates that 56 built environment resources have been inventoried at some level. Thirty-seven of these 56 resources were also included in the CHRIS

database. Of these 56 resources, five are on or have been determined eligible for listing on the NRHP and are automatically eligible for the CRHR:

- BRIDGE #39-200, The Delta Mendota Canal Bridge;
- The Old Bank Building/Bank of Los Banos Building, 836 6th Street;
- The Church of St. Joseph, 1109 K Street;
- Fegundo's Barn, 20180 South Mercy Springs Road; and
- 65918 State Route 152, 637 State Route 152.

Only the Old Bank Building and the Church of St. Joseph are currently listed. Eligibility status listed in the BERD is current as of 2021.

California State Historical Landmarks

The State of California officially began commemorating sites important to the history of the state in 1932. Originally, the California Historical Landmarks emphasized well-known places and events, including the missions, early settlements, and the Gold Rush. Over the years, the program has been refined to include only those sites that are of statewide historical importance and must be the first, last, only, or most significant of a type in a large geographical area.

The following lists two resources in the Los Banos General Plan Area that the state has designated as California Historical Landmarks:

- Los Banos (Landmark No. 550), Los Banos Park, 803 E Pacheco Blvd, Los Banos; and
- Canal Farm Inn (Landmark No. 548), 1460 E Pacheco Blvd, Los Banos.

CONCLUSIONS AND RECOMMENDATIONS

The Los Banos General Plan Area is a town with a historic past, and there are known historic-period buildings and structures in the City limits. The townsite itself is designated as a California Historic Landmark. Cultural resources sensitivity will be highest in these areas of known and visible resources.

The Los Banos General Plan Area has moderate to high pre-contact archaeological sensitivity along the eastern portion of the Plan Area near and south of Mud Slough and its marshes and tributaries. There is a moderate pre-contact archaeological sensitivity in open space areas near waterways, such as Los Banks Creek, and low pre-contact archaeological sensitivity in areas that are highly developed, contain many buildings and structures, and are along heavily trafficked transportation corridors.

The Los Banos General Plan Area has moderate to high historic-era archaeological sensitivity around the historic downtown center, within the vicinity of the building and structures listed as landmarks or as on or eligible for the National Register, and in older neighborhoods and near historic transportation corridors. There is a moderate historic-era sensitivity in open areas that were historically used as farms and ranches in the western half of the Plan Area. There is low historic-era archaeological sensitivity in the sections of

the City that have been established more recently, such as the developments around the outskirts of the historic downtown and residential areas.

ECORP recommends the City follow established technical procedures for the identification of cultural resources for any future projects within the limits of the Los Banos General Plan Area, to assure that any impacts or affects to Historic Properties or Historical Resources are taken into account in the planning phases of any future project. If you have any questions or would like to discuss these results in further detail, please contact the undersigned at bmarks@ecorpconsulting.com or by phone at 916-782-9100.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Marks', with a stylized flourish at the end.

Brian Marks, Ph.D., RPA
Senior Archaeologist

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LIST OF ATTACHMENTS

Attachment A – Southern San Joaquin Valley Information Center Records Search

Southern San Joaquin Valley Information Center Records Search



CENTRAL CALIFORNIA INFORMATION CENTER

California Historical Resources Information System
Department of Anthropology – California State University, Stanislaus
One University Circle, Turlock, California 95382
(209) 667-3307

Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus & Tuolumne Counties

Date: 1/21/2022

Records Search File No.: 12054I

Access Agreement: #34

Project: Los Banos General Plan

Theadora Fuerstenberg
ECORP Consulting, Inc.
2525 Warren Drive
Rocklin, CA 95677
916-782-9100 tfuerstenberg@ecorpconsulting.com

Dear Ms. Fuerstenberg:

The Central California Information Center received your record search request for the project area referenced above, located on the Los Banos and Volta 7.5’ quadrangled in Merced County. The following reflects the results of the records search for the project study area and radius:

As per data currently available at the CCalC, the locations of resources/reports are provided in the following format: custom GIS maps GIS Data/shape files hand-drawn maps

Summary Data:

Resources within the project area:	58: See Resource Database List attached
Resources within the 1/4-mile radius:	NA
Reports within the project area:	55: See Report Database List attached
Reports within the 1/4-mile radius:	NA

- Resource Database Printout (list):** enclosed not requested nothing listed
- Resource Database Printout (details):** enclosed not requested nothing listed
- Resource Digital Database Records:** enclosed not requested nothing listed
- Report Database Printout (list):** enclosed not requested nothing listed
- Report Database Printout (details):** enclosed not requested nothing listed
- Report Digital Database Records:** enclosed not requested nothing listed
- Resource Record Copies:** enclosed not requested nothing listed
- Report Copies:** enclosed not requested nothing listed
- OHP Historic Properties Directory: New Excel File: Built Environment Resource Directory (BERD)**

Dated 11/17/2021

Not all resources listed in the BERD are mapped in GIS, nor do we have records on file for them; if you identify additional resources in the BERD that you may need copies of, contact the IC.

Resources listed with GIS data and records on file:

P-24-000082, 97, 434, 623, 725, 1732, 1831, 2053 through 2067, 2069, 2070, 2076 through 2080, 2094, 2096, 2098 through 2103

enclosed not requested nothing listed

Archaeological Determinations of Eligibility: enclosed not requested nothing listed

CA Inventory of Historic Resources (1976): enclosed not requested nothing listed

P-24-000640 (CHL 548), P-24-000641 (CHL 550)

Caltrans Bridge Survey: enclosed not requested nothing listed

Ethnographic Information: enclosed not requested nothing listed

Historical Literature: enclosed not requested nothing listed

Historical Maps: enclosed not requested nothing listed

Local Inventories: enclosed not requested nothing listed

GLO and/or Rancho Plat Maps: enclosed not requested nothing listed

Shipwreck Inventory: not available at CCIC; please go to

http://shipwrecks.slc.ca.gov/ShipwrecksDatabase/Shipwrecks_Database.asp

Soil Survey Maps: not available at CCIC; please go to

<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

Please forward a copy of any resulting reports from this project to the office as soon as possible. Due to the sensitive nature of archaeological site location data, we ask that you do not include resource location maps and resource location descriptions in your report if the report is for public distribution. If you have any questions regarding the results presented herein, please contact the office at the phone number listed above.

The provision of CHRIS Data via this records search response does not in any way constitute public disclosure of records otherwise exempt from disclosure under the California Public Records Act or any other law, including, but not limited to, records related to archeological site information maintained by or on behalf of, or in the possession of, the State of California, Department of Parks and Recreation, State Historic Preservation Officer, Office of Historic Preservation, or the State Historical Resources Commission.

Due to processing delays and other factors, not all of the historical resource reports and resource records that have been submitted to the Office of Historic Preservation are available via this records search. Additional information may be available through the federal, state, and local agencies that produced or paid for historical resource management work in the search area. Additionally, Native American tribes have historical resource information not in the CHRIS Inventory, and you should contact the California Native American Heritage Commission for information on local/regional tribal contacts.

Should you require any additional information for the above referenced project, reference the record search number listed above when making inquiries. Requests made after initial invoicing will result in the preparation of a separate invoice.

Thank you for using the California Historical Resources Information System (CHRIS).

Note: Billing will be transmitted separately via email by our Financial Services office * (\$1707.55), payable within 60 days of receipt of the invoice.

If you wish to include payment by Credit Card, you must wait to receive the official invoice from Financial Services so that you can reference the CMP # (Invoice Number), and then contact the link below:

<https://commerce.cashnet.com/ANTHROPOLOGY>

Sincerely,

E. A. Greathouse

E. A. Greathouse, Coordinator
Central California Information Center
California Historical Resources Information System

* Invoice Request sent to: ARBilling@csustan.edu, CSU Stanislaus Financial Services

