

## 1 **3.10 Tribal Cultural Resources**

### 2 **3.10.1 Introduction**

3 This section describes the regulatory and environmental setting for tribal cultural resources in the  
4 vicinity of the Project. It also describes the impacts on tribal cultural resources that would result  
5 from the Project and mitigation measures that would reduce significant impacts, where feasible and  
6 appropriate. Cumulative impacts on tribal cultural resources, in combination with planned,  
7 approved, and reasonably foreseeable projects, are discussed in Section 3.11, *Cumulative Impacts*.

### 8 **3.10.2 Regulatory Setting**

#### 9 **3.10.2.1 Federal**

##### 10 **National Historic Preservation Act (54 United States Code Section 300101 et** 11 **seq.)**

12 National Historic Preservation Act (NHPA) establishes the federal government's policy on historic  
13 preservation, as well as the programs through which this policy is implemented, including the  
14 National Register of Historic Places (NRHP). Under NHPA, significant cultural resources, referred to  
15 as *historic properties*, include any precontact or historic district, site, building, structure, or object  
16 included in, or determined eligible for inclusion in, the NRHP. Historic properties also include  
17 resources determined to be National Historic Landmarks, which are nationally significant historic  
18 places designated by the United States (U.S.) Secretary of the Interior because they possess  
19 exceptional value or quality in illustrating or interpreting U.S. heritage. A property is considered  
20 historically significant if it meets one of the NRHP criteria and retains sufficient historic integrity to  
21 convey its significance. This act also established the Advisory Council on Historic Preservation, an  
22 independent agency responsible for implementing NHPA Section 106 by developing procedures to  
23 protect cultural resources included in, or eligible for inclusion in, the NRHP. Regulations are  
24 published in 36 Code of Federal Regulations (CFR) Parts 60, 63, and 800.

#### 25 **3.10.2.2 State**

##### 26 **California Environmental Quality Act**

27 California Environmental Quality Act (CEQA) requires a lead agency to consider the effects of a  
28 project on historical resources. CEQA Guidelines Section 15064.5 provides specific guidance for  
29 determining the significance of impacts on historical resources. Under CEQA, these resources are  
30 called *historical resources*, whether they are of historic or pre-European contact age. CEQA Section  
31 21084.1 defines historical resources as those resources listed in, or eligible for listing in, the CRHR  
32 or listed in the historical register of a local jurisdiction (county or city), unless the preponderance of  
33 evidence demonstrates that the resources are not historically or culturally significant. NRHP-listed  
34 historic properties in California are considered historical resources for the purposes of CEQA and  
35 listed in the CRHR. The CRHR criteria for listing such resources are based on, and similar to, the  
36 NRHP criteria.

1 The CEQA Guidelines define three ways that a cultural resource may qualify as a historical resource  
2 for the purposes of CEQA review.

- 3 1. The resource is listed in or determined eligible for listing in the CRHR.
- 4 2. The resource is included in a local register of historical resources, as defined in California PRC  
5 Section 5020.1(k), or is identified as significant in a historical resource survey meeting the  
6 requirements of PRC Section 5024.1(g) unless the preponderance of evidence demonstrates that  
7 it is not historically or culturally significant.
- 8 3. The lead agency determines the resource to be significant as supported by substantial evidence  
9 in light of the whole record (14 California Code of Regulations [CCR] 15064.5[a]).

10 According to CEQA, a project that causes a substantial adverse change in the significance of a  
11 historical resource or an archaeological resource has a significant effect on the environment (CEQA  
12 Guidelines Section 15064.5; California PRC Section 21083.2). CEQA defines a *substantial adverse*  
13 *change* as follows (CEQA Guidelines Section 15064.5).

- 14 • Physical demolition, destruction, relocation, or alteration of the resource or its immediate  
15 surroundings such that the significance of a historical resource would be materially impaired; or
- 16 • Demolition or material alteration in an adverse manner of the physical characteristics of an  
17 historical resource that convey its historical significance and that justify its inclusion in, or  
18 eligibility for, inclusion in the CRHR; or
- 19 • Demolition or material alteration in an adverse manner of the physical characteristics that  
20 account for its inclusion in a local register of historical resources pursuant to Section 5020.1(k)  
21 of the PRC or its identification in an historical resource survey meeting the requirements of  
22 Section 5024.1(g) of the PRC, unless the public agency reviewing the effects of the project  
23 establishes by a preponderance of evidence that the resource is not historically or culturally  
24 significant; or
- 25 • Demolition or material alteration in an adverse manner of the physical characteristics of a  
26 historical resource that convey its historical significance and that justify its eligibility for  
27 inclusion in the CRHR as determined by the lead agency.

## 28 California Public Resources Code

29 California Public Resources Code (PRC) Section 5097.5 prohibits excavation or removal of any  
30 "historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site [...] or  
31 any other archaeological, paleontological or historical feature, situated on public lands, except with  
32 express permission of the public agency having jurisdiction over such lands." *Public lands* are  
33 defined to include lands owned by or under the jurisdiction of the state or any city, county, district,  
34 authority, or public corporation, or any agency thereof. California PRC Section 5097.5 states that any  
35 unauthorized disturbance or removal of archaeological or historical materials or sites located on  
36 public lands is a misdemeanor.

37 Tribal cultural resources are defined in PRC Section 21074 as a site, feature, place, cultural  
38 landscape that is geographically defined in terms of the size and scope of the landscape, sacred  
39 place, or object with cultural value to a California Native American tribe and that meets one of the  
40 following requirements.

- 1 • Listed or eligible for listing in the California Register of Historical Resources (CRHR), or in a  
2 local register of historical resources, as defined in PRC Section 5020.1(k); or
- 3 • Determined by the lead agency, in its discretion and supported by substantial evidence, to be a  
4 significant resource pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In  
5 applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency must  
6 consider the significance of the resource to a California Native American tribe.

## 7 **California Health and Safety Code**

8 With respect to the potential discovery of human remains, Section 7050.5 of the California Health  
9 and Safety Code states the following:

- 10 a. Every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any  
11 human remains in or from any location other than a dedicated cemetery without authority of  
12 law is guilty of a misdemeanor, except as provided in Section 5097.99 of the PRC. The provisions  
13 of this subdivision will not apply to any person carrying out an agreement developed pursuant  
14 to subdivision (l) of Section 5097.94 of the PRC or to any person authorized to implement  
15 Section 5097.98 of the PRC.
- 16 b. In the event of discovery or recognition of any human remains in any location other than a  
17 dedicated cemetery, there will be no further excavation or disturbance of the site or any nearby  
18 area reasonably suspected to overlie adjacent remains until the coroner of the county in which  
19 the human remains are discovered has determined, in accordance with Chapter 10  
20 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the California Government  
21 Code, that the remains are not subject to the provisions of Section 27491 of the California  
22 Government Code or any other related provisions of law concerning investigation of the  
23 circumstances, manner and cause of any death, and the recommendations concerning the  
24 treatment and disposition of the human remains have been made to the person responsible for  
25 the excavation, or to his or her authorized representative, in the manner provided in Section  
26 5097.98 of the PRC. The coroner will make his or her determination within two working days  
27 from the time the person responsible for the excavation, or his or her authorized representative,  
28 notifies the coroner of the discovery or recognition of the human remains.
- 29 c. If the coroner determines that the remains are not subject to their authority, and if the coroner  
30 recognizes the human remains to be those of a Native American or has reason to believe that  
31 they are those of a Native American, then they will contact, by telephone, within 24 hours, the  
32 Native American Heritage Commission (NAHC; California Health and Safety Code Section  
33 7050.5).

34 Of particular note to cultural resources is California Health and Safety Code Section 7050.5 (c),  
35 which requires the coroner to contact the NAHC within 24 hours if discovered human remains are  
36 thought to potentially be those of Native American origin. After notification, NAHC will follow the  
37 procedures outlined in PRC Section 5097.98, which include notification of most likely descendants, if  
38 possible, and recommendations for treatment of the remains. Also, knowing or willful possession of  
39 Native American human remains, or artifacts taken from a grave or cairn is a felony under California  
40 State law (PRC Section 5097.99).

## 1       **National Register of Historic Places Criteria for Evaluation**

2       The criteria for evaluation of eligibility for listing on the NRHP are outlined at 36 CFR Part 60.4. A  
3       district, site, building, structure, or object must be at least 50 years old to be eligible for  
4       consideration as a historic property. That district, site, building, structure, or object must retain  
5       integrity of location, design, setting, materials, workmanship, feelings, and association, as well as  
6       meet one of the following criteria to demonstrate its significance in American history, architecture,  
7       archaeology, engineering, and culture. A district, site, building, structure, or object must:

- 8       a.   Be associated with events that have made a significant contribution to the broad patterns of  
9       history; or
- 10      b.   Be associated with the lives of people significant in our past; or
- 11      c.   Embody the distinct characteristics of a type, period, or method of construction, or represent the  
12      work of a master, or possess high artistic values, or represent a significant and distinguishable  
13      entity whose components may lack individual distinction; or
- 14      d.   Have yielded, or may be likely to yield, information important in prehistory or history.

15      A site must have integrity and meet one of the four criteria of eligibility to demonstrate its historic  
16      associations to convey its significance. A property must be associated with one or more events  
17      important in history or prehistory to be considered for listing under Criterion A. Additionally, the  
18      specific association of the property itself must also be considered significant. Criterion B applies to  
19      properties associated with individuals whose specific contributions to history can be identified and  
20      documented. Properties significant for their physical design or construction under Criterion C must  
21      have features with characteristics that exemplify such elements as architecture, landscape  
22      architecture, engineering, and artwork. Criterion D most commonly applies to properties that have  
23      the potential to answer, in whole or in part, important research questions about human history that  
24      can only be answered by the actual physical materials of cultural resources. A property eligible  
25      under Criterion D must demonstrate the potential to contain information relevant to prehistory and  
26      history (U.S. Department of Interior 1990).

27      A district, site, building, structure, or object may also be eligible for consideration as a historic  
28      property if that property meets one or more of the following NRHP Criteria Considerations:

- 29      a.   “a religious property deriving primary significance from architectural or artistic distinction or  
30      historical importance; or
- 31      b.   a building or structure removed from its original location but which is significant primarily for  
32      architectural value, or which is the surviving structure most importantly associated with a  
33      historic person or event; or
- 34      c.   a birthplace or grave of a historical figure of outstanding importance if there is no appropriate  
35      site or building directly associated with his productive life.
- 36      d.   a cemetery which derives its primary significance from graves of persons of transcendent  
37      importance, from age, from distinctive design features, or from association with historic events;  
38      or

- 1 e. a reconstructed building when accurately executed in a suitable environment and presented in a
- 2 dignified manner as part of a restoration master plan, and when no other building or structure
- 3 with the same association has survived; or
- 4 f. a property primarily commemorative in intent if design, age, tradition, or symbolic value has
- 5 invested it with its own exceptional significance; or
- 6 g. a property achieving significance within the past 50 years if it is of exceptional importance.”

## 7 **Assembly Bill 52**

8 Assembly Bill (AB) 52 established policy that “a project with an effect that may cause a substantial  
9 adverse change in the significance of a tribal cultural resource is a project that may have a significant  
10 effect on the environment” under CEQA (per PRC Section 21084.2). AB 52 acknowledges that CEQA  
11 did not previously “directly include California Native American tribes’ knowledge and concerns,”  
12 which resulted in significant impacts on tribal cultural resources and sacred places. To remedy this,  
13 AB 52 established a requirement for a formal consultation process with California Native American  
14 tribes for projects subject to CEQA. AB 52 took effect on July 1, 2015, and Appendix G of the CEQA  
15 Guidelines was updated accordingly. The process for complying requires that California Native  
16 American tribes request lead agencies to notify them of proposed projects. A lead agency that  
17 receives such requests must notify the requesting tribes of new projects within 14 days of  
18 commencing the CEQA process. The tribe must respond to the notice and request consultation  
19 within 30 days of receipt, and the lead agency must initiate consultation within 30 days of receiving  
20 the request. This process is separate from consultation procedures under other state cultural  
21 resources law (PRC Section 21080.3.1).

### 22 **3.10.3 Environmental Setting**

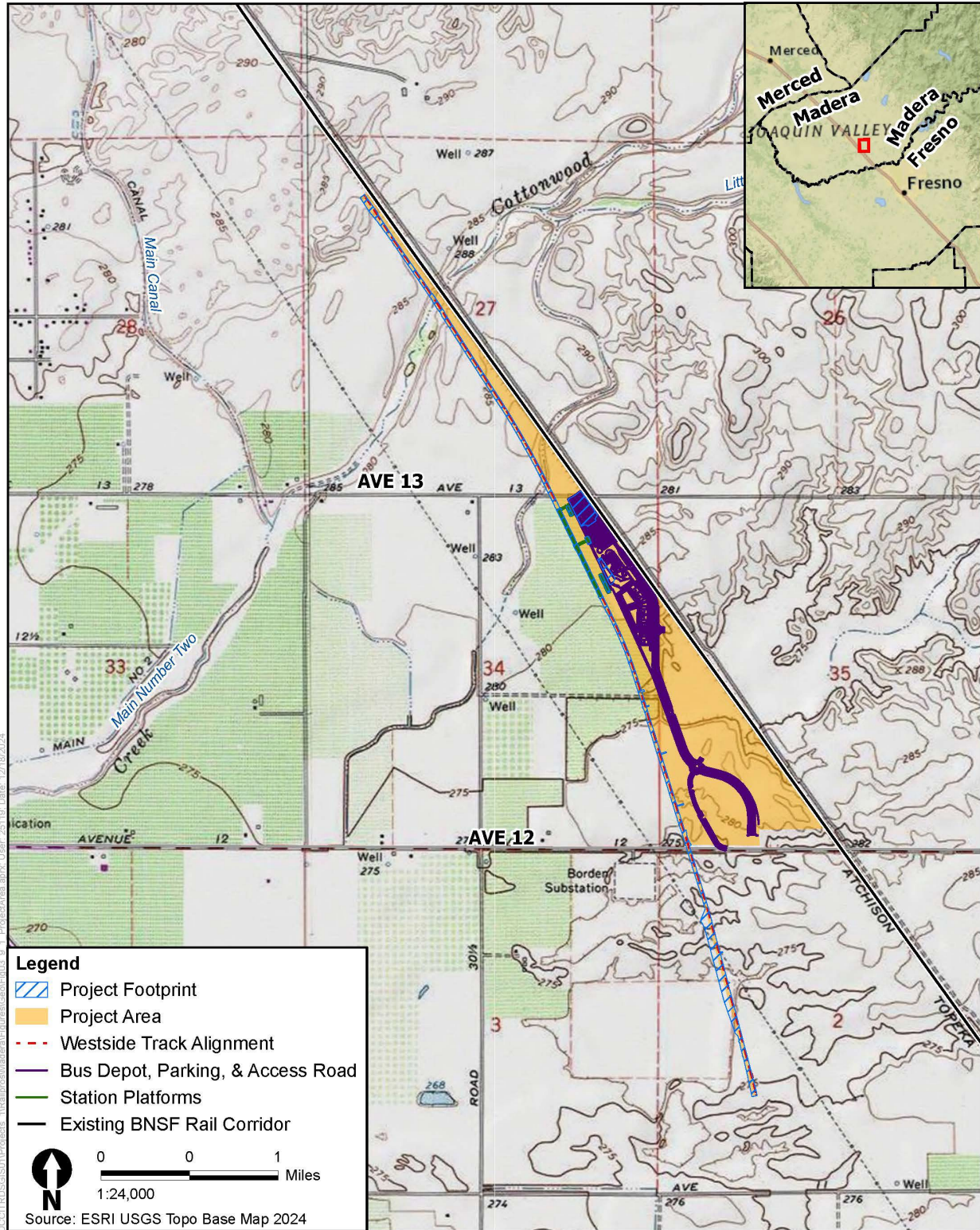
23 The Project is located in Madera County, approximately 1 mile northeast of Madera Community  
24 College and approximately 1 mile north of Avenue 12. The Madera HSR station facilities would be  
25 located within a wedge-shaped site defined by the existing BNFS Railway Stockton Subdivision to  
26 the east and the High-Speed Rail (HSR) corridor (currently under construction) to the west and are  
27 located on land owned by California HSR Authority (the Authority). Some of the Project components  
28 would be located outside of the land owned by the Authority on private property. The landscape  
29 surrounding the Project site is predominantly flat land, with an elevation range between 272 and  
30 293 feet above mean sea level. The Project vicinity consists primarily of agricultural land currently  
31 used for vineyards and orchards, bordered by unpaved public access roads. Cottonwood Creek, a  
32 seasonal creek, intersects the northern portion of the Project area.

33 The legal location of the Project area corresponds to the U.S. Geological Survey Madera and Gregg  
34 7.5-minute quadrangle in Township 11S, Range 18, and Section 21, and Gregg 7.5-minute  
35 quadrangle in Township 11S, Sections 27, 34, and 35, Township 12S, Sections 2 and 3, Range 18E  
36 (USGS 1922, 1946, 1965) (**Figure 3.10-1**). The Project is located in the Great Valley geomorphic  
37 province (California Geological Survey [CGS] 2002). The province is characterized by an alluvial  
38 plain with a continuous deposit of sediment accumulating since the Jurassic period (between 200  
39 and 140 million years old; CGS 2002). The Project Footprint is bordered by coastal mountain ranges  
40 to the west and the Sierra Nevada ranges to the east.



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Figure 3.10-1: Project Footprint



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Source: (CGS, 2002)

## 1 **3.10.4 Impact Analysis**

### 2 **3.10.4.1 Methods for Analysis**

3 The methodology is based on the regional and site-specific information relevant to the Project. The  
4 evaluation of the Project's potential effect on tribal cultural resources within or adjacent to the  
5 Project area stems from the NAHC's Sacred Lands File search results described below.

#### 6 **Native American Heritage Commission Sacred Lands File Search**

7 In November 2023, as part of the research conducted to prepare the Archaeological Survey Report  
8 (ICF 2024), ICF requested a CEQA Tribal Consultation List and a search of the NAHC Sacred Lands  
9 Files on behalf of the San Joaquin Joint Powers Authority (SJJPA), specifically for records regarding  
10 the Project area. The NAHC is the official state repository of Native American sacred location records  
11 in California. In December 2023, a response from the NAHC was received and in part stated, "the  
12 results of the Sacred Lands File check conducted through the Native American Heritage Commission  
13 were negative." The NAHC provided ICF with a list of 16 tribal contacts for Madera County. In  
14 December 2023, SJJPA sent formal consultation opportunity letters pursuant to PRC Section  
15 21080.3.1 to each of the 16 tribal contacts. All tribal consultation under CEQA is being conducted by  
16 SJJPA (the lead agency). Letters containing details about the Project and a location map were sent to  
17 the following 16 tribal contacts.

- 18 1. Tom Zizzo, Tribal Administrator;
- 19 2. Joel Marvin, Vice Chairperson;
- 20 3. Elizabeth Kipp, Chairperson;
- 21 4. Robert Ledger, Chairperson;
- 22 5. Mary Stalter, Environmental/Heritage Manager;
- 23 6. Fred Beihn, Chairperson;
- 24 7. John Murga, Tribal Historian;
- 25 8. Timothy Perez, Tribal Compliance Officer;
- 26 9. Jessica Murga, Tribal Secretary;
- 27 10. Erolinda Perez, Tribal Administrator;
- 28 11. Tracey Hopkins, Chairperson;
- 29 12. Heather Airey, Tribal Historic Preservation Officer;
- 30 13. Sandra Chapman, Chairperson;
- 31 14. Brenda Lavell, Chairperson;
- 32 15. Neil Peyron, Chairperson; and
- 33 16. Kenneth Woodrow, Chairperson.

34 SJJPA is currently conducting AB 52 consultation with interested tribes.

1 **3.10.4.2 Thresholds of Significance**

2 CEQA Guidelines Appendix G (14 CCR Section 15000 et seq.) identifies significance criteria to be  
3 considered for determining whether a project could have significant impacts on tribal cultural  
4 resources. An impact would be considered significant if construction or operation of the Project  
5 would:

- 6 • Cause a substantial adverse change in the significance of a tribal cultural resource, defined in  
7 PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically  
8 defined in terms of the size and scope of the landscape, sacred place, or object with cultural  
9 value to a California Native American tribe, and that is:
  - 10 ○ Listed or eligible for listing in the CRHR, or in a local register of historical resources as  
11 defined in PRC Section 5020.1
  - 12 ○ A resource determined by the lead agency, in its discretion and supported by substantial  
13 evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section  
14 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead  
15 agency must consider the significance of the resource to a California Native American tribe.

16 **3.10.4.3 Impacts and Mitigation Measures**

17 **Project Construction**

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<b>Impact TCR-1</b>	Construction of the Project would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in California Code, PRC Section 21074, as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is: <ul style="list-style-type: none"> <li>I. Listed or eligible for listing in the CRHR, or in a local register of historical resources as defined in PRC Section 5020.1(k).</li> </ul>
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<b>Level of Impact</b>	<b>Less than Significant with Mitigation Incorporated</b>
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19 The Sacred Lands File search conducted by the NAHC did not indicate the presence of Sacred Lands  
20 within the Project area, and the lead agency has not identified any significant archaeological  
21 resources that qualify as tribal cultural resources under CEQA. Based on the record search results  
22 and intensive survey provided in Chapter 3.4, Cultural Resources of this Draft EIR, no precontact  
23 archaeological resources were identified within or in the vicinity of the Project Footprint; therefore,  
24 there is a low probability of significant precontact resources existing within the Project Footprint.  
25 Based on the subsurface sensitivity analysis, most of the Project Footprint has a high sensitivity for  
26 unknown buried archaeological resources, and there is a possibility that unknown buried  
27 archaeological resources may be encountered during ground-disturbing activities. Additionally, such  
28 resources could be eligible for listing in the CRHR or a local register of historical resources. Should  
29 unknown buried archaeological deposits be uncovered during Project construction, and should such  
30 resources qualify as tribal cultural resources under CEQA, then potential disturbance to these  
31 resources would result in a significant impact.



1 Implementation of Mitigation Measure (MM) CUL-1 through MM CUL-3 would reduce potential  
2 impacts to unknown historic or archaeological deposits by requiring staff to complete a Cultural  
3 Resource Awareness Training, stop-work if a tribal cultural resource is encountered, and ensure a  
4 Native American-designated representative would be consulted throughout Project construction.  
5 After implementation of MM CUL-1 through MM CUL-3, impacts would be less than significant  
6 during Project construction.

### 7 **MM CUL-1: Cultural Resources Awareness Training**

8 The Project will retain a qualified archaeologist to carry out all mitigation measures related to  
9 archaeological resources. Prior to the start of any ground-disturbing activities, the SJJPA or its  
10 construction contractor will ensure that the qualified archaeologist has conducted a Cultural  
11 Resources Awareness Training for all construction personnel working on the Project. The training  
12 will include an overview of potential cultural resources that could be encountered during ground-  
13 disturbing activities to facilitate worker recognition, avoidance, and subsequent immediate  
14 notification to the qualified archaeologist for further evaluation and action, as appropriate; and  
15 penalties for unauthorized artifact collecting or intentional disturbance of archaeological resources.  
16 A sign-in sheet will be completed, retained by the Project's construction contractor for the duration  
17 of Project construction to demonstrate attendance at the awareness training, and provided to the  
18 SJJPA on the completion of Project construction.

### 19 **MM CUL-2: Inadvertent Discovery of Archaeological Resource**

20 If archaeological resources are discovered during construction, then all construction will  
21 immediately stop within 100 feet (30 meters) of the discovery, the location of the discovery will be  
22 marked for avoidance, and efforts will be made to prevent inadvertent destruction of the find. The  
23 qualified archaeologist (and a Native American-designated representative, if the resource is Native  
24 American in origin) will evaluate the significance of the resources for CRHR eligibility and  
25 recommend appropriate treatment measures to SJJPA and its construction contractor. Per CEQA  
26 Guidelines Section 15126.4(b)(3)(C), if it is demonstrated that resources cannot be avoided, then  
27 the qualified archaeologist will (in coordination with a Native American-designated representative,  
28 if the resource is Native American-related) develop additional treatment measures in consultation  
29 with SJJPA, which may include data recovery or other appropriate measures. SJJPA will consult with  
30 appropriate Native American representatives in determining appropriate treatment for unearthed  
31 cultural resources if the resources are pre-contact, tribal cultural resources, or Native American in  
32 nature. The qualified archaeologist will prepare a report documenting evaluation and/or additional  
33 treatment of the resource. A copy of the report will be provided to SJJPA. Construction can  
34 recommence based on direction of the qualified archaeologist.

### 35 **MM CUL-3: Inadvertent Discovery of Human Remains**

36 If human remains are uncovered during Project activities, then the SJJPA or its construction  
37 contractor will immediately halt work, contact the Madera County Coroner to evaluate the remains,  
38 and follow the procedures and protocols set forth in CEQA Guidelines Section 15064.5(e). If the  
39 County Coroner determines that the remains are Native American in origin, then the NAHC will be  
40 notified, in accordance with Health and Safety Code Section 7050.5(c) and PRC Section 5097.98. The  
41 NAHC will designate a Most Likely Descendant for the remains, per PRC Section 5097.98, and the  
42 SJJPA or its construction contractor will ensure that the immediate vicinity, according to generally  
43 accepted cultural or archaeological standards or practices, where the Native American human  
44 remains are located is not damaged or disturbed by further activity until the SJJPA has discussed and

1 conferred, as prescribed in PRC Section 5097.98, with the Most Likely Descendant regarding their  
2 recommendation for the disposition of the remains, taking into account the possibility of multiple  
3 humans remains.

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**Impact TCR-2**

Construction of the Project would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- II. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Code Section 5024.1, the lead agency must consider the significance of the resource to a California Native American tribe.

**Level of Impact**

**Less than Significant with Mitigation Incorporated**

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4 The Sacred Lands File search conducted by the NAHC did not indicate the presence of Sacred Lands  
5 within the Project Footprint, and the lead agency has not identified any significant archaeological  
6 resources that qualify as tribal cultural resources under CEQA. However, there is potential for an  
7 unknown tribal cultural resource to be encountered during construction activities. If the lead  
8 agency, in its discretion and supported by substantial evidence, could determine the resources to be  
9 significant pursuant to the criteria set forth in subdivision (c) of PRC Section 5024.1, potential  
10 impacts to the resource(s) would be significant. Implementation of MM CUL-1, CUL-2, and CUL-3  
11 would reduce potential impacts to unknown historic or archaeological deposits by requiring staff to  
12 complete a Cultural Resource Awareness Training, stop-work if a tribal cultural resource is  
13 encountered, and ensure a Native American-designated representative would be consulted  
14 throughout Project construction. After implementation of MM CUL-1 through MM CUL-3, impacts  
15 would be less than significant during Project construction.

16 **Project Operations**

17 Operation of the Project would occur within the boundary of the Project Footprint. Operation  
18 activities associated with the Project would not involve ground-disturbing activities that would  
19 potentially affect tribal cultural resources. Therefore, impacts to tribal cultural resources would be  
20 less than significant during Project operations.