

## Master Response 9: Wiyot Cultural Resources

This master response addresses the issues comments raise with respect to archaeological investigations of Wiyot Tribe ethnographic villages and burial sites potentially present on or near the project site.

The Draft EIR addresses this topic area in Chapter IV.E, Cultural Resources. The Ethnographic Setting is described on page IV.E-1 of the Draft EIR, and more specifically under Impact E-2 (archaeological resources). This master response addresses all or part of the following comments: 9-12, 11-1, 11-2, 16-142, 25-15, 27-1, 27-2, 27-3, 27-4, 27-5, 27-6, 27-7, 27-8, 27-9, 31-6, 32-8, 33-7, 36-3, 40-8, 50-6, 58-17, 58-18, 62-2, 62-3, 68-11, 69-1, 69-2, 69-3, 69-4, 69-5, 69-6, 69-7, 69-8, 69-9, 69-10, 69-11, 69-12, 69-13, 69-14, 69-15, 69-17, 75-9, 84-11, 84-15, 95-20, 97-1, 97-3, 102-2, 104-4, 109-9, 110-16, 113-4, 117-13, 126-14, 127-1, 127-2, 127-3, 127-4, 127-5, 134-4, 148-4, 150-1, 155-2, 156-1, 159-1, 160-4, and 162-3.

Comments suggest that an archaeological investigation should be performed prior to project approval and that mitigation in the Draft EIR are not sufficient. Comments specifically state that:

- Due to the high sensitivity of buried resources, it is imperative that all appropriate measures be taken to locate these resources prior to project implementation.
- While monitoring and data recovery may be acceptable as mitigation for potential inadvertent discovery of unknown sites, it would not necessarily be an acceptable method for mitigation of the potential impacts to known sites.
- Subsurface investigation for the presence of cultural materials should occur before any project-related ground-disturbing activity.
- The EIR should address what is being done to protect the Wiyot artifacts and villages.

### Response

This master response addresses the issues raised by comments regarding potential impacts to prehistoric (i.e., Native American) archaeological resources on the project site. As discussed in the Draft EIR Chapter IV.E, two Native American ethnographic villages are reported to be within or near the project site.

As noted in the Draft EIR, page IV.E-10, the Marina Center project would have a significant effect on archaeological resources if the project would:

- Cause a substantial adverse change in the significance of a “historical resource” or a “unique archaeological resource,” as those resources are defined in Section 15064.5 of the CEQA Guidelines and Section 21083.2(g) of the Public Resources Code; or
- Disturb any human remains, including those interred outside of formal cemeteries.

A prehistoric archaeological resource is presumed to be “historically significant” if the resource is either listed, eligible for listing, or otherwise meets the criteria for listing in the California

Register of Historical Resources (e.g., it is archaeologically significant and is “associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage” or “[h]as yielded, or may be likely to yield, information important in prehistory or history,” among other criteria). (CEQA Guidelines Sections 15064.5(a)(1)-(a)(3).)

“Unique archaeological resources,” on the other hand, are separately classified and are considered significant if those resources satisfy the criteria under Section 21083.2(g) of the Public Resources Code (e.g., it is an “artifact, object, or site about which it can be clearly demonstrated . . . there is a high probability that it . . . [c]ontains information needed to answer important scientific research questions,” among other criteria.) (CEQA Guidelines Sections 15064.5(c)(1)-(c)(3).)

CEQA and the Guidelines specify measures that can be taken to investigate and mitigate the discovery of human remains or “historically significant” or “unique” archaeological resources. (See, e.g., Pub. Res. Code, Section 21083.2(b)-(f); CEQA Guidelines Sections 15064.5(b)(3)-(4), (e)(1)-(2), (f).) Aside from those measures and the general obligations to evaluate impacts and adopt effective mitigation, however, further subsurface investigation is not required prior to certification of the EIR.<sup>8</sup> Indeed, without final site design, further subsurface investigations could potentially disturb areas that would not otherwise be disturbed by the proposed project.

For this EIR, Roscoe & Associates conducted a cultural resources investigation for the project site, which identified one, and perhaps two, Wiyot village sites within or near the project site. As noted in the Draft EIR, much of the past reporting and documentation on these village sites was spotty and imprecise, and changes in the physical landscape have made it difficult to confirm whether both villages existed in the immediate project area, and whether they were entirely within or entirely outside of the project boundary. No evidence of the villages or other prehistoric indicators were found on the surface of the project site during onsite field assessments, although such evidence was difficult to discern because the site is highly disturbed. Since the existence and precise location of these village sites could not be ruled out, discrete areas within the project site were identified as highly sensitive for prehistoric occupation. The Draft EIR also notes that there “remains a possibility that previously unknown significant deposits may be encountered during development especially at depths below approximately 5 to 8 feet.” Thus, while the two village sites have been documented in the general area, it is entirely uncertain whether those sites or related archaeological materials occur within the project site. It is also uncertain whether, if found, the materials would be deemed archaeologically significant.

Not all project activity has the potential to effect archaeological resources, particularly since most of the site – including the area delineated as culturally sensitive – contains as much as 5 to 8 feet of fill material overlying the historical, natural ground level. Depending on the specific area, any ground disturbing activities limited to the first 4 to as much as 7 feet in some areas would have no likely affect whatever on prehistoric archaeological resources. For example, the Supplemental Interim Remedial Action Plan (SIRAP) for Phase 1 proposes to excavate and remove soil and

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<sup>8</sup> See, e.g., *Society for California Archeology v. County of Butte* (1977) 65 Cal.App.3d 832, 838 (rejecting the notion that a lead agency must conduct every archaeological test and perform all research, study and experimentation recommended to it – including recommended “test excavations” or “sub-surface reconnaissance and laboratory analysis” – before the agency can approve the project).

dispose soils off-site. Generally, the SIRAP excavation activities would entail scraping the top six inches of soil within the existing ditches onsite; excavation to a depth of approximately 7 feet would only occur within a small and discrete location within the area identified as highly sensitive in the northeast corner of the site. Clean material would be imported to the site and placed over most of the site. So for the majority of the site, Phase 1 of the project is not anticipated to impact archaeological resources. Special considerations would be given to those discrete areas designated for excavation below the fill level, and within the limited areas already identified as “culturally sensitive.”

Several comments state that monitoring is the sole mitigation strategy for the project. To clarify, monitoring is not the sole mitigation strategy for the proposed project. Mitigation Measure E-2a, for example, dictates a number of steps that the Project Applicant must follow if archaeological materials are found, including ceasing construction activities, conducting an independent review of the find by a qualified archaeologist, and then implementing one or a combination measures (e.g., “removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.”). (Draft EIR, pages IV.E-17 and -18.) Given the possibility that no archaeologically significant materials will be found during project construction or monitoring, as well as the fact that any materials found would be protected through the treatment measures required under Mitigation Measures E-2a and E-2b, no further mitigation is required and the project is expected to have a less-than-significant impact on archaeological resources. In consideration of suggestions by commenters, Mitigation Measures E-2a and E-2b on Draft EIR pages IV.E-17 and -18 have been revised to clarify and strengthen the protections for archaeological resources during all phases of the project. Please also see Chapter 2, Errata, under Staff-Initiated Changes to the Draft EIR.

**Mitigation Measure E-2a:** The following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site and in the geographic areas specifically delineated as “highly sensitive” in the reported entitled *A Cultural Resources Investigation of the Proposed Balloon Tract Development* (May, 2006) prepared by Roscoe & Associates:

- (i) Prior to ground-disturbing activities associated with implementation of the project, a qualified archaeological consultant shall prepare and conduct a subsurface archaeological resources investigation in consultation with the appropriate Native American group(s) to determine the presence or absence of archaeological resources in those specific locations predetermined to be culturally sensitive (Roscoe et al., 2006). The investigation shall be conducted based on a subsurface strategy prepared by the archaeological consultant, which shall prescribe the trenching and/or boring locations and expected depths of exploration reasonably necessary to discover significant archaeological resources if present. The subsurface strategy, in turn, should rely on an examination of extant soil boring logs and other data from the project area by a qualified geoarcheologist for an analysis of depths of artificial fill and other information that may be pertinent to the discovery of significant archaeological resources. In Phase 1 of the project (remediation and wetland restoration), this investigation may proceed in conjunction with the soils excavation

conducted for the remediation plan. An archaeological consultant shall be present at all times during the subsurface investigation.

- (ii) If archaeological materials are discovered during the subsurface archaeological resources investigation, the archaeologist shall evaluate whether or not the archaeological materials are deemed “historically significant” or “unique” under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3). If the find is determined to be historically significant or unique, a treatment and monitoring plan shall be developed by the professional archeologist and implemented by the Project Applicant to avoid or mitigate any significant adverse affects to the resource. A treatment plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: (a) recovery of the object or feature and the preservation of any data available for scientific study; (b) modification to the land-use plan or construction methods to avoid the object or feature; (c) placement of soil sufficient to protect the integrity of the feature or object; and/or (e) permanent protection of the feature through the conveyance of a conservation easement. The archaeologist shall determine the extent of monitoring based on the findings of the investigation. The treatment and monitoring plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment plan.
- (iii) If no “historically significant” or “unique” archaeological resources are discovered during excavation monitoring or pre-construction investigations, the Project Applicant shall implement Mitigation Measure E-2b for ground-disturbing activities within the areas specifically delineated as “highly sensitive” in the above-referenced Cultural Resources Investigation.

**Mitigation Measure E-2b:** Except for monitoring that is required under the treatment and monitoring plan in Mitigation Measure E-2a(ii), the following measures shall be required for each phase of development that involves construction or other ground-disturbing activities to occur to a surface depth below historical fill on the site but outside the geographic areas specifically delineated as “highly sensitive” in the above-referenced Cultural Resources Investigation:

- (i) Workers involved in ground-disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources.
- (ii) If archaeological artifacts or other archaeological materials are discovered onsite during construction, all construction activities within 100 feet of the find shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review to evaluate whether or not the archaeological materials would be considered “historically significant” or “unique” under the criteria set forth under Public Resources Code section 21083.2(g) and CEQA Guidelines sections 15064.5(a) and 15064.5(c)(1)-(3).

- (iii) If the find is determined to be significant or unique, a treatment or protection plan shall be developed by the professional archeologist in consultation with the appropriate Native American group(s), and the plan shall be implemented by the Project Applicant. A protection plan for either unique or historically significant archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, or deeding the site as a permanent conservation easement. The protection plan shall also satisfy and be consistent with the treatment parameters set forth in Section 21083.2 of the Public Resources Code or Sections 15064.5(b)(3) or 15126.4(b) of the CEQA Guidelines, as applicable. An archaeological consultant shall monitor implementation of the treatment and monitoring plan and shall conduct the monitoring specified in that plan.
- (iv) If archaeological materials are discovered and construction activities are halted, those construction activities may resume immediately upon a determination that the archaeological material is not significant or unique or a treatment or protection plan is prepared and initiated.

~~**Mitigation Measure E-2a:** For construction in the geographic areas described below workers involved in ground disturbing activities shall be trained by a professional archaeologist in the recognition of archaeological resources (e.g., historic and prehistoric artifacts typical of the general area), procedures to report such discoveries, and other appropriate protocols to ensure that construction activities avoid or minimize impacts on potentially significant cultural resources. In addition, a Native American representative shall be present to monitor coring activities. If an archaeological artifact or other archaeological remains are discovered on site during construction, all construction activities shall be halted and a qualified archaeologist shall be summoned within 24 hours to conduct an independent review of the site. If the find is determined to be significant, adequate time and funding shall be devoted to conduct data recovery excavation.~~

~~Protection plans for either unique archaeological resources or culturally important archaeological resources shall include, at a minimum, one or some combination of the following: removing the object or feature, planning the construction around the object or feature, capping the object or feature with a layer of soil sufficient to protect the integrity of the feature or object, and/or deeding the site as a permanent conservation easement.~~

~~Geographic areas subject to this mitigation measure are:~~

- ~~1. East of Commercial Street.~~
- ~~2. Within 100 feet of the common property line between the Balloon Track and those properties fronting Broadway that are not a part of the project (e.g., Nilsen's and Bob's Fine Cars).~~
- ~~3. The southeast corner of the property east of the proposed garden area of Anchor 1 and south of Bob's Fine Cars.~~

~~**Mitigation Measure E-2b:** If human remains are discovered during project construction, all work shall cease within the area until the coroner for Humboldt County is informed and determines that no investigation of the cause of death is required and, if the remains are~~

determined to be of Native American origin, the descendants of the deceased have made a recommendation to the landowner on how they would like to proceed in handling the deceased and the accompanying grave goods. If there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the California Native American Heritage Commission. If human remains will be removed from the site, the removal shall be done by archaeologists working by hand.

**Mitigation Measure E-2c:** If human remains are discovered during project construction, all work shall cease within 100 feet of the find until the coroner for Humboldt County is informed and determines that no investigation of the cause of death is required and, if the remains are determined to be of Native American origin, the coroner shall notice the California Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall assign the most likely descendant. The most likely descendent shall be consulted and provided the opportunity to make recommendations to the landowner concerning the means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods, all in accordance with Health & Safety Code section 7050.5, CEQA Guidelines section 15064.5(e), and Public Resources Code section 5097.98. If the human remains are determined to be of Native American origin, a qualified archaeologist shall be summoned within 48 hours to conduct an independent review to evaluate whether the remains belong to a single individual or multiple individuals. If the latter, and if there are six or more Native American burials on the site, the site shall be identified as a Native American cemetery and all work on the site within 100 feet of any burial site must cease until recovery or reburial arrangements are made with the descendants of the deceased or, if there are no descendants of the deceased, with the NAHC.

In addition, references to Mitigation Measures E-2a and E-2b on Draft EIR pages IV.E-19 and IV.E-20 (twice on each page) have been revised as follows:

...Mitigation Measures E-2a and ~~E-2b~~ through E-2c...

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## Reference – Master Responses

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