

## CULTURAL AND TRIBAL CULTURAL RESOURCES

### 4.4 CULTURAL AND TRIBAL CULTURAL RESOURCES

This chapter describes the existing cultural and tribal cultural resources in the Specific Plan Area and evaluates the potential environmental consequences of future development that could occur by adopting and implementing the proposed project. This chapter provides a summary of the relevant regulatory setting necessary to evaluate potential environmental impacts resulting from the proposed project, describes potential impacts, and discusses existing and proposed goals, policies, and implementation programs and zoning regulations that would avoid or reduce those potential impacts.

#### 4.4.1 ENVIRONMENTAL SETTING

##### 4.4.1.1 REGULATORY FRAMEWORK

This section describes the existing federal, State, and local policies and regulations that apply to cultural resources in the City of Hayward.

#### Federal Regulations

##### *National Historic Preservation Act*

The National Historic Preservation Act of 1966 established the National Register of Historic Places (National Register) as the official designation of historical resources, including districts, sites, buildings, structures, and objects. For a property to be eligible for listing in the National Register, it must be significant in American history, architecture, archaeology, engineering, or culture, and must retain integrity in terms of location, design, setting, materials, workmanship, feeling, and association. Resources less than 50 years in age, unless of exceptional importance, are not eligible for the National Register. Though a listing in the National Register does not prohibit demolition or alteration of a property, the California Environmental Quality Act (CEQA) requires the evaluation of project effects on properties that are listed in the National Register.

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

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

##### *Paleontological Resources Preservation Act*

The federal Paleontological Resources Preservation Act of 2002 limits the collection of vertebrate fossils and other rare and scientifically significant fossils to qualified researchers who have obtained a permit from the appropriate state or federal agency. Additionally, it specifies these researchers must agree to donate any materials recovered to recognized public institutions, where they will remain accessible to the

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public and to other researchers. This Preservation Act incorporates key findings of a report, *Fossils on Federal Land and Indian Lands*, issued by the Secretary of Interior in 2000, which establishes that most vertebrate fossils and some invertebrate and plant fossils are considered rare resources.<sup>1</sup>

### State Regulations

#### *California Register of Historic Resources*

California Code of Regulations (CCR) Title 14, Chapter 11.5, Section 4850 creates the California Register of Historical Resources (California Register) which is maintained by the California Department of Parks and Recreation Office of Historic Preservation. Historic properties listed, or formally designated for eligibility to be listed, on the National Register are automatically listed on the California Register. State Landmarks and Points of Interest are also automatically listed. The California Register can also include properties designated under local preservation ordinances or identified through local historical resource surveys.

The criteria for inclusion on the California Register (CCR Section 4852[a]) are listed below:

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

In addition to meeting one or more of the above criteria, eligibility for the California Register requires that a resource retains sufficient integrity to convey a sense of its significance or importance. Seven elements are considered key in considering a property's integrity; location, design, setting, materials, workmanship, feeling, and association.

#### *California Environmental Quality Act*

California State law also provides for the protection of cultural resources by requiring evaluations of the significance of prehistoric and historic resources identified in documents prepared consistent with CEQA. The CEQA Statute is contained in Public Resources Code (PRC) 21000 to 2117 and the CEQA Guidelines are contained in CCR, Title 14, Division 6, Chapter 3, Sections 15000 to 15387.

Under CEQA, a cultural resource is considered a "historical resource" if it meets any of the criteria found in Section 15064.5(a) of the CEQA Guidelines. Criteria identified in the CEQA Guidelines are similar to those described under the National Historic Preservation Act. Under CEQA, the lead agency determines

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<sup>1</sup> U.S. Department of the Interior. *Fossils on Federal & Indian Lands, Report of the Secretary of the Interior*, May 2000. [http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning\\_and\\_Renewable\\_Resources/coop\\_agencies/paleontology\\_library/paleon\\_legis.Par.15714.File.dat/fossil.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/coop_agencies/paleontology_library/paleon_legis.Par.15714.File.dat/fossil.pdf), accessed January 24, 2018.

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whether projects may have a significant effect on archaeological and historical resources. CEQA Guidelines Section 15064.5 defines what constitutes a historical resource, including: (1) a resource determined by the State Historical Resources Commission to be eligible for the California Register of Historical Resources (including all properties on the National Register), as described above; (2) a resource included in a local register of historical resources, as defined in PRC Section 5020.1(k); (3) a resource identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g); or (4) any object, building, structure, site, area, place, record, or manuscript that the City determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California, provided the City's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered to be historically significant if it meets the criteria for listing on the California Register.

If the lead agency determines that a project may have a significant effect on a historical resource, the project is determined to have a significant effect on the environment, and these effects must be addressed. However, no further environmental review needs to be completed if, under the qualifying criteria, a cultural resource is not found to be a historical resource or unique archaeological resource.

### *State Historical Building Code*

The State Historical Building Code provides alternative building regulations and building standards for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of buildings or structures designated as historic buildings. These regulations are intended to facilitate the restoration or change of occupancy so as to preserve their original or restored architectural elements and features, to encourage energy conservation and enable a cost-effective approach to preservation, and to provide for the safety of the building occupants.

### *Public Resources Code Section 5097.5*

California PRC Section 5097.5 prohibits “knowing and willful” excavation or removal of any “vertebrate paleontological site...or any other archaeological, paleontological or historical feature, situated on public lands, except with express permission of the public agency having jurisdiction over such lands.” Public lands are defined to include lands owned by or under the jurisdiction of the State or any city, county, district, authority, or public corporation, or any agency thereof.

### *State Laws Pertaining to Human Remains*

Section 7050.5 of the California Health and Safety Code states that in the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the remains are discovered has determined whether or not the remains are subject to the coroner’s authority. If the human remains are determined to be of Native American origin, the county coroner must contact the California Native American Heritage Commission (NAHC) within 24 hours of this identification. An NAHC representative will then identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. In addition, CEQA Guidelines Section

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15064.5 specifies the procedures to be followed in case of the discovery of human remains on non-federal land. The disposition of Native American burials falls within the jurisdiction of the NAHC.

### *Senate Bill 18*

Senate Bill (SB) 18, signed into law in September 2004, requires local (city and county) governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places through local land use planning. This legislation, which amended Sections 65040.2, 65092, 65351, 65352, and 65560, and added Sections 65352.3, 65352.4, and 65562.5 to the Government Code; also requires the Governor's Office of Planning and Research (OPR) to include in the General Plan Guidelines advice to local governments for how to conduct these consultations.

The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to cultural places. The consultation and notice requirements apply to adoption and amendment of both general plans (Government Code Section 65300 et seq.) and specific plans (Government Code Section 65450 et seq.). Specifically, Government Code Section 65352.3 requires local governments, prior to making a decision to adopt or amend a general plan, to consult with California Native American tribes identified by the NAHC for the purpose of protecting or mitigating impacts to cultural places. As previously discussed, the NAHC is the State agency responsible for the protection of Native American burial and sacred sites.

### *Assembly Bill 52*

The Native American Historic Resource Protection Act (Assembly Bill 52 or AB 52), which went into effect July 1, 2015, sets forth a proactive approach intended to reduce the potential for delay and conflicts between Native American and development interests. AB 52 adds "tribal cultural resources" (TCR) to the specific cultural resources protected under CEQA, and requires lead agencies to notify relevant tribes about development projects. It also mandates lead agencies to consult with tribes if requested by the tribe, and sets the principles for conducting and concluding consultation. In response to AB 52, the City has not received any request from any Tribes in the geographic area with which it is traditionally and culturally affiliated with or otherwise to be notified about projects in the City of Hayward.

Projects subject to AB 52 are those that file a notice of preparation for an EIR or notice of intent to adopt a negative or mitigated negative declaration on or after July 1, 2015. As of July 1, 2016, the Governor's OPR developed guidelines and the NAHC informed tribes which agencies are in their traditional area. In response to these guidelines, a discussion of impacts to TCRs has been added to Section 4.4.2, Standards of Significance, further in this chapter.

Under AB 52, a TCR is defined as a site, feature, place, cultural landscape (must be geographically defined in terms of size and scope), sacred place, and object with cultural value to a California Native American tribe that are either included or eligible for inclusion in the California Register of Historic Resources or

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included in a local register of historical resources. Or the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a TCR.<sup>2</sup>

### Local Regulations

#### *Looking Forward Hayward 2040 General Plan*

The City of Hayward 2040 General Plan, adopted in July 2014, includes goals, policies, and programs intended to avoid or reduce impacts on cultural and tribal cultural resources in the Land Use (LU) and Natural Resources (NR) Elements. As described in the General Plan EIR, in most cases, no one goal, policy, or implementation program itself is expected to completely avoid or reduce an identified potential environmental impact.<sup>3</sup> However, the collective, cumulative mitigating benefits of the policies listed below are intended to reduce impacts to cultural resources. Specific goals and policies are described in Section 4.4.3, Impact Discussion, to demonstrate how the policy would avoid or reduce the impact.

The following goals and policies are relevant to the analysis of potential impacts to cultural and tribal cultural resources within the Specific Plan Area:

- **Goal LU-1:** Promote local growth patterns and sustainable development practices that improve quality of life, protect open space and natural resources, and reduce resource consumption, traffic congestion, and related greenhouse gas emissions.
  - **Policy LU-1.7 Design Guidelines:** The City shall maintain and implement commercial, residential, industrial, and hillside design guidelines to ensure that future development complies with General Plan goals and policies.
- **Goal LU-2:** Revitalize and enhance Hayward’s Priority Development Areas to accommodate and encourage growth within compact, mixed-use, and walkable neighborhoods and districts that are located near the city’s job centers and regional transit facilities.
  - **Policy LU-2.4 Downtown Retail Frontages:** The City shall require retail frontages and storefront entrances on new and renovated buildings within the “retail core” of Downtown Hayward, which includes properties along:
    - “A” Street between Mission Boulevard and Foothill Boulevard
    - “B” Street between Watkins Street and Foothill Boulevard
    - “C” Street between Mission Boulevard and Foothill Boulevard
    - Main Street between “A” Street and “C” Street
    - Mission Boulevard between “A” Street and “C” Street
    - Foothill Boulevard between “C” Street and City Center DriveThis policy does not apply to historic buildings that were originally designed without a retail frontage or storefronts.
- **Goal LU-3:** Create complete neighborhoods that provide a mix of housing options and convenient access to parks, schools, shopping, jobs, and other community amenities.

<sup>2</sup> Public Resources Code (PRC) Sections 21074(a)(1) and (2).

<sup>3</sup> City of Hayward, 2014, City of Hayward 2040 General Plan certified EIR, State Clearinghouse Number 2013082015.

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- **Policy LU-3.7 Infill Development in Neighborhoods:** The City shall protect the pattern and character of existing neighborhoods by requiring new infill developments to have complimentary building forms and site features.
- **Goal LU-8:** Preserve Hayward’s historic districts and resources to maintain a unique sense of place and to promote an understanding of the regional and community history.
  - **Policy LU-8.1 Value of Historic Preservation:** The City shall recognize the value and co-benefits of local historic preservation, including job creation, economic development, increased property values, and heritage tourism.
    - **Implementation Program LU-13 Certified Local Government Program:** The City shall coordinate with the State Historic Preservation Office to initiate and complete the process for becoming a Certified Local Government under the National Parks Service historic preservation program.
  - **Policy LU-8.2 Value of Historic Preservation:** The City shall strive to enhance its local historic preservation programs to qualify for additional preservation grants and financing programs.
    - **Implementation Program LU-14 Historic Districts Strategy:** The City shall prepare and submit applications to the State Historic Preservation Office to establish National Park Service Historic Districts for the Upper “B” Street neighborhood; “B” Street Historic Streetcar District; Prospect Hill Neighborhood; and the Downtown Historic District.
    - **Implementation Program LU-17 Historic Preservation Resource Center:** The City shall prepare and maintain a web-based resource center to promote Hayward’s local historic resources and to provide resources and incentives to encourage historic preservation.
  - **Policy LU-8.3 Historic Preservation Ordinance:** The City shall maintain and implement its Historic Preservation Ordinance to safeguard the heritage of the City and to preserve historic resources.
  - **Policy LU-8.4 Survey and Historic Reports:** The City shall maintain and expand its records of reconnaissance surveys, evaluations, and historic reports completed for properties located within the City.
  - **Policy LU-8.5 Flexible Land Use Standards:** The City shall maintain flexible land use standards to allow the adaptive reuse of historic buildings with a variety of economically viable uses, while minimizing impacts to the historic value and character of sites and structures.
  - **Policy LU-8.6 Historic Preservation Standards and Guidelines:** The City shall consider *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* when evaluating development applications and City projects involving historic resources, or development applications that may affect scenic views or the historic context of nearby historic resources. *[Note: Already in the Historic Preservation]*
  - **Policy LU-8.7 Historic Districts:** The City shall encourage the establishment of National Park Service Certified Historic Districts to encourage the preservation of Hayward’s historic neighborhoods and districts, and to qualify property owners for the Federal Preservation Tax Incentives Program.
  - **Policy LU-8.8 Marks Historic Rehabilitation District:** The City shall maintain the current Marks Historic Rehabilitation District for Downtown Hayward to issue tax-exempt revenue bonds for financing the rehabilitation of historic structures.

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- **Policy LU-8.9 State Historic Building Code:** The City shall promote the use of the State Historic Building Code to facilitate the reuse and conversion of historic buildings to alternative uses.
  - **Implementation Program LU-15 State Historic Building Code:** The City shall develop and adopt an ordinance to allow the use of the State Historic Building Code for the rehabilitation of historic resources.
- **Policy LU-8.10 Mills Act:** The City shall participate in the California Mills Act Property Tax Abatement Program to provide property owners of historic resources an economic incentive (property tax relief) to restore, preserve, and maintain qualified historic properties.
  - **Implementation Program LU-16 Mills Act Program:** The City shall develop and adopt a California Mills Act Property Tax Abatement Program.
- **Policy LU-8.11 Federal Historic Preservation Tax Incentives:** The City shall promote the use of the Federal Historic Preservation Tax Incentives Program to encourage the rehabilitation of income-producing historic structures in Hayward.
- **Policy LU-8.12 Federal Historic Preservation Tax Credit Program:** The City shall promote the Federal Historic Preservation Tax Credit Program to encourage the charitable contribution of historic resources and the establishment of conservation easements for historic preservation purposes.
- **Policy LU-8.13 Planning Study Considerations:** The City shall consider historical and cultural resources when developing planning studies and documents.
- **Policy LU-8.14 Demolition of Historic Resources:** The City shall prohibit the demolition of historic resources unless one of the following findings can be made:
  - The rehabilitation and reuse of the resource is not structurally or economically feasible.
  - The demolition is necessary to protect the health, safety, and welfare of the public.
  - The public benefits of demolition outweigh the loss of the historic resource.
- **Goal NR-7:** Identify, honor, and protect historically significant paleontological resources so they can be scientifically studied and preserved for current and future generations.
  - **Policy NR-7.1 Paleontological Resource Protection:** The City shall prohibit any new public or private development that damages or destroys a historically- or prehistorically-significant fossil, ruin, or monument, or any object of antiquity.
  - **Policy NR-7.2 Paleontological Resource Mitigation:** The City shall develop or ensure compliance with protocols that protect or mitigate impacts to paleontological resources, including requiring grading and construction projects to cease activity when a paleontological resource is discovered so it can be safely removed.

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### *Hayward Municipal Code*

#### Historic Preservation Ordinance

The care of historic structures in Hayward is guided by the Historic Preservation Ordinance of the Hayward Municipal Code (HMC).<sup>4</sup> The ordinance covers structures, districts, and neighborhoods that contribute to the cultural and aesthetic heritage of Hayward. It also provides regulations regarding the alteration, demolition, and maintenance of significant historic structures. The ordinance requires development projects and building permit applications involving structures that are at least 50 years old, or are located within a historic district, to follow certain steps in the development review process to determine if a historical alteration permit and/or historical resource demolition or relocation permit is required. Residential properties developed pursuant to a tentative tract map after 1946 are exempted from requiring historical permits. The Historic Preservation Ordinance also protects unknown archaeological sites and resources, including undocumented human remains and those resources specifically of significance to Native Americans, within its purview.

#### **4.4.1.2 EXISTING CONDITIONS**

This section provides an overview of the history of Hayward and of resources of historical, archeological, and paleontological significance that may be affected by the proposed project. Information in this section is taken in part from the *Existing Conditions and Opportunities Analysis* prepared for the Specific Plan Area, which includes a *Historic Context Statement Update* for the Specific Plan Area. This report is included as Appendix B of this Draft EIR. Additionally, information in this section is also derived from the *General Plan Background Report* prepared by City of Hayward in 2013. This report is available at the City of Hayward 2040 General Plan website (<http://www.hayward-ca.gov/GENERALPLAN/>). Copies of the Background Report may be viewed during regular business hours (8:00 a.m. to 5:00 p.m., Monday through Thursday, and 8:00 a.m. to noon on Friday) at the City of Hayward Development Services Department Permit Center, 777 B Street, Hayward, CA 94541.

### **Historic Setting**

Three main groups occupied the eastern San Francisco Bay before statehood was ratified in 1850. These groups are the Ohlone tribes, the Spanish military and missionaries (1769 to 1821), and the Mexican Californios (1822 to 1848). Not much of the architectural record remains for any of these groups in the Specific Plan Area. Historic accounts suggest that the Native Americans may have had a village site along San Lorenzo Creek as well as temporary camps in its vicinity. Diaries from Spanish expeditions recorded a campsite at the Arroyo de la Harina, along San Lorenzo Creek in the vicinity of present-day downtown Hayward. Much of the Spanish mission system properties located in the greater Bay Area extended into the Hayward area. There are no existing buildings in the Hayward area from this era. Several archeological sites have been identified, but for the protection of the resources, their locations are not identified in this document.

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<sup>4</sup> City of Hayward Municipal Code, Chapter 10, Planning, Zoning, and Subdivisions, Article 11, Historic Preservation Ordinance, Section 10-11.010, Purpose.

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Throughout the American Period (1848 to present), Hayward has developed through a variety of means and circumstances over its 150-year history. The modern City of Hayward had its origins in the 1850s, during the Gold Rush. In 1854 a map was surveyed for a town, which would later become Hayward, that covered about 28 blocks near Mexican colonist Guillermo Castro's adobe, which is a site now occupied by Hayward's Historic City Hall. The settlement that grew up around William Hayward's general store and lodging house (Hayward's Hotel), at present-day A and Main Streets, was eventually called Hayward. Farming and salt production were the major economic activities during the mid-nineteenth century. In 1865 a local railroad line began service between Hayward and Alameda, where trains connected with ferries to San Francisco and in 1869 transcontinental trains began running through Hayward. No known representative buildings from this period exist within the Specific Plan Area. However, the Lone Tree cemetery, established in 1868, is still present. A number of Hayward Pioneers, including William Hayward, are buried here.

Hayward was incorporated in 1876 and primarily grew through subdivision and annexation. This process occurred slowly through the first half of the 20th century and accelerated at an exponential pace after World War II. The 1949 expansion of First Street and creation of Foothill Boulevard (State Highway 238) through the city's downtown core was a major change to the area's physical fabric and established development patterns focused on the automobile. Additional major roadway changes occurred between 1961 and 2013 that continued the automobile-oriented trend, including the 238 Mission Corridor Improvement Project that resulted in the "Loop" of one-way streets through downtown Hayward. By 1972 the Hayward Downtown BART station was opened to the public, connecting to the system-wide BART stations in the greater Bay Area. Under current conditions the city's historic retail core remains evident through historic commercial and mixed-use buildings along B Street between Mission and Foothill Boulevards in the Specific Plan Area. Early commercial buildings dominate the blocks between A Street and C Street, and Mission Boulevard and Foothill Boulevard. The Loop and Hayward Downtown BART station also continue to be dominating transportation features in the Specific Plan Area.

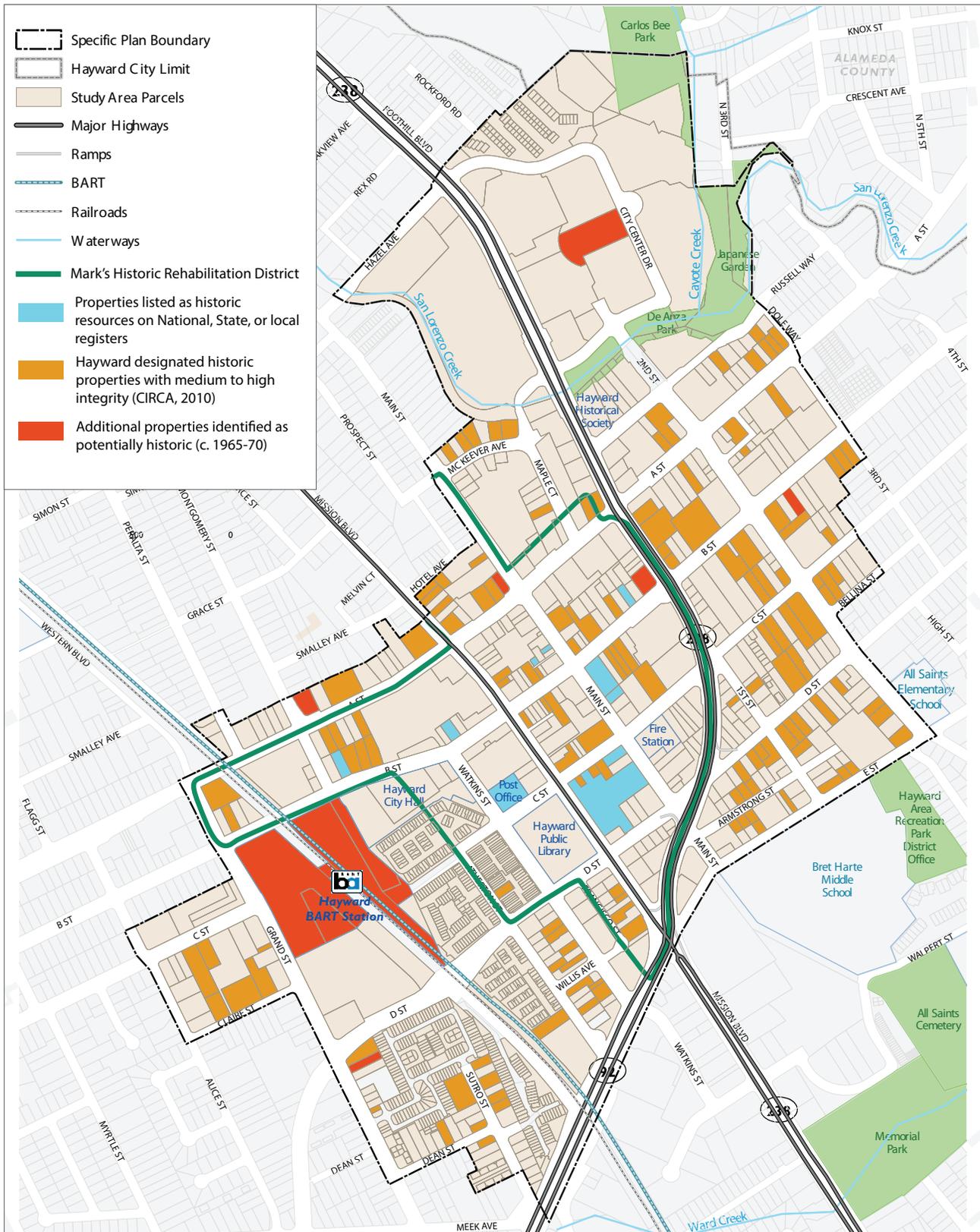
### Historic Structures in the Specific Plan Area

The historical structures within the Specific Plan Area are shown on Figure 4.4-1. Structures are categorized as properties listed on National, State or local historic resource registers; Hayward-designated historic properties with medium to high integrity; or properties identified as potentially historic. The majority of downtown historic structures are Hayward-designated structures, with approximately 140 sites dispersed throughout the Specific Plan Area. Additionally, there are 10 properties listed on National, State, or local registers that are primarily located along B and C Street, between Watkins Street and Foothill Boulevard. There are seven potentially historic sites, including the Hayward BART Station.

### Historic Districts in the Specific Plan Area

Marks Historic Rehabilitation District (Marks District), adopted by the City of Hayward in 1992, pursuant to the Marks Historic Rehabilitation Act of 1976, is the only historic district officially designated by the City. The B Street Historic Streetcar District and the Upper B Street Historic District have been identified as potential historic districts in the Specific Plan Area. Additionally, the proposed Prospect Hill Historic District, while not in the Specific Plan Area, is located just northeast of the Specific Plan Area. All of these districts have local significance.

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Source: Hayward Downtown Specific Plan, Existing Conditions and Opportunities Analyses, October 2015.

Figure 4.4-1  
Historical Structures in the Specific Plan Area

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### *Marks Historic Rehabilitation District*

The designation of the Marks District was part of a larger effort aimed at downtown revitalization and historic preservation. At that time the City also initiated a *Downtown Retrofit and Revitalization Program* to upgrade historic buildings and revitalize the historic downtown core. As shown on Figure 4.4-1, the Marks District is bounded on the east by Foothill Boulevard, from A Street south to Jackson Street. The western boundary is defined by Francisco and Atherton Streets, then extending westward across the Bart tracks to Grand Street to include a number of properties between A and B Streets. The northern boundary is irregular and includes properties on either side of Mission Boulevard up to McKeever Avenue. The boundary encompasses the historic commercial and civic core of Hayward and includes portions of downtown residential neighborhoods. The area has over 200 principal structures and various accessory buildings. Large portions of some commercial blocks have been cleared for parking.

Today, the city's historic retail core remains evident through historic commercial and mixed-use buildings along B Street between Mission Boulevard and Foothill. Early commercial buildings dominate the blocks between A and C Streets, and Mission and Foothill Boulevards. Later commercial buildings, constructed through the 1950s and 1960s, line Foothill Boulevard between Mission Boulevard and A Street. Historic civic buildings are located south of C Street, between Watkins and Main Street. Remnants of the B Street residential corridor are also contained within the district boundaries between Grand and roughly Atherton Streets. Mixed commercial and residential portions of the district are also found along Mission Boulevard and Prospect Terrace in the northern part of the district and south of D Street in the southern portion of the district.

### *Upper B Street Historic District*

The boundaries of the proposed Upper B Street Historic District were originally defined as part of the *Neighborhood Plan Study*, completed with the assistance of the Hayward Area Historical Society in the early 1990s. The full Upper B Street Study Area boundary for that project encompassed a much larger area bordered roughly by E Street to the south, 2nd Street to the west, San Leandro Creek to the north, and the Upland Way and Marolyn Court subdivisions to the east. There are several potentially historic properties within the area.

The Upper B Street Historic District encompasses a notable concentration of late 19th and early 20th century residential properties in a variety of architectural styles representative of that period of development. The area contains some of the City's first residential tracts, and remains as a noteworthy example of residential development in pre-World War II Hayward. The neighborhood is also associated with Hayward's early Portuguese community, many of whose members settled in the neighborhood because of its proximity to All Saints Church, the IDES Hall, and the downtown commercial district.

Lands in the area of the proposed historic district are reflective of early residential development and were home to some of Hayward's initial settlers. Located near the emerging downtown core of Hayward, the neighborhood offered convenient proximity for residents to local shops and passenger rail lines. The Upper B Street Neighborhood today is comprised primarily of residential and commercial uses. Small (mostly one-story) office buildings and neighborhood commercial businesses are concentrated primarily along B Street, and residential development (both single- and multifamily) dominates the remainder of

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the neighborhood. The blocks between downtown Hayward and Fourth Street contain some of the earliest residential development in the city.

Interspersed among the earlier residences are medium- to high-density residential uses and some commercial businesses. The portion of the neighborhood from Fourth Street to about Seventh Street also includes early single-family development. Over time, many lots within the neighborhood have had additional dwelling units added in back.

### *B Street Historic Streetcar District*

The proposed B Street Streetcar Historic District encompasses residential properties along B Street between Watkins Street to the east and Meekland Avenue to the west. Properties are located primarily along the north side of B Street, with exception of the blocks between Grand and Myrtle Streets where properties on both sides of the street are included. The neighborhood is characterized by its linear arrangement, remarkable tree canopy, and by a variety of late 19<sup>th</sup> and early 20<sup>th</sup> century residences. Some notable ca.1940 and ca.1950 infill residences are also present. Most lots have had secondary residential units added in back, though overall the neighborhood retains a good degree of its historic residential character.

Construction on the Hayward Horse Car Transit Company line began in 1890 and was completed in February 1891. In 1902 it was absorbed, like many other local streetcar lines, into Borax Smith's Oakland Transit Consolidated (a.k.a. the Key System). By 1909 it was the last horse drawn line in the East Bay. It was abandoned in April of that year in favor of the electric streetcar. Today, modest houses from the late 19<sup>th</sup> and early 20<sup>th</sup> centuries line B Street between downtown and Cannery Park, marking the remnants of this early streetcar route.

The earliest residences are shown east of Soto Street (Montgomery Street today), along the north side of B Street in 1893. Residential development along lower B Street—stretching to the site of the Hunt Brothers' Cannery—is shown as early as 1899 on United States Geological Survey maps of Hayward. The 1907 Sanborn map and a 1915 United States Geological Survey map indicate that residential development was primarily concentrated along the north side of B Street for the first decade or so of the district's development. By 1923, however, one- and two-story single family dwellings had been constructed along the both sides of B Street from Watkins Street to Front Street, though the area of primary concentration was between Grand and Myrtle Streets. The district was fully developed by the 1950s and served by the Luther Burbank Grammar School located on the block bound by Myrtle, Filbert, B, and C Streets.

### *Prospect Hill Historic District*

The proposed Prospect Hill Historic District encompasses properties along both sides of Prospect Street from Rose Street at the north, and extends southeast to include a group of cottages along the north side of Hotel Avenue. This boundary then turns north again, running along the west side of Prospect Terrace to Warren Avenue, where it extends east to include properties along both sides of Main Street up to Hazel Avenue/Simon Street. The neighborhood is characterized by its hilltop location, with views overlooking the city in all directions; a variety of mature trees and other plantings; moderate setbacks and narrow

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sidewalks; and a variety of architectural styles including Victorian cottages and Shingle, Spanish Eclectic, Tudor, Craftsman, Mission Revival, Moderne, and Colonial Revival style residences. Some notable circa 1940 and circa 1950 modernist and ranch style residences are also present.

### Archeological Resources

Archaeological resources may be considered to be either “unique archaeological resources” or “historical resources” as defined by CEQA and described previously under subheading “California Environmental Quality Act.” CEQA Section 21083.2, defines a “unique archaeological resource” as an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it:

- Contains information needed to answer important scientific research questions, and there is a demonstrable public interest in that information;
- Has a special and particular quality, such as being the oldest of its type or the best available example of its type; and/or
- Is directly associated with a scientifically recognized important prehistoric or historic event or person.

Based on the historic setting previously described, there is potential for archeological resources to exist in undisturbed soils in the Specific Plan Area.

### Paleontological Resources

Paleontological resources, or fossils, are any evidence of past life, including remains, traces, and imprints of once-living organisms preserved in rocks and sediments, and provide information about the history of life on earth dating back billions of years. According to the Society of Vertebrate Paleontology, significant paleontological resources include fossils of identifiable vertebrate fossils, large or small, uncommon invertebrate, plant, and trace fossils. Fossils are nonrenewable paleontological resources that are afforded protection by federal, State, and local environmental laws and regulations (Paleontological Resources Preservation Act). Accordingly, the potential of a particular area to produce a valuable paleontological resource is largely dependent on the geologic age and origin of the underlying rocks.

The natural geology of the city is comprised of Quaternary sedimentary deposits which are from the most recent geologic periods (i.e., Holocene, Pleistocene) dating back to 1.6 million years ago. Some of eastern Hayward is located on Mesozoic sedimentary rocks from the Mesozoic period dating back to 245 million years ago, when dinosaurs roamed the earth. Both types of geologic rocks may contain fossils of flora and fauna, particularly marine species.

A search of the University of California Museum of Paleontology, University of California, Berkeley Database identified 1,563 paleontological resources in Alameda County. Five of these resources were discovered within the city, including four mammalian fossils (e.g., bison, prehistoric horse) and one gastropod fossil (i.e., marine snail) from the Quaternary period. The Bison fossil was discovered near Interstate 880 (I-880), the two prehistoric horse fossils were discovered in the Hayward gravel pit, the marine snail was discovered at Hayward Landing, and an additional unidentified mammalian fossil was

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discovered near the Hayward Motel. Additionally, the Paleobiology Database identified 12 paleontological resources in Alameda County, none of which are located in the city.

### 4.4.2 STANDARDS OF SIGNIFICANCE

Implementation of the proposed project would result in a significant cultural and tribal cultural resources impact if it would:

1. Cause a substantial adverse change in the significance of a historical resource as defined in 15064.5.
2. Cause a substantial adverse change in the significance of an archeological resource pursuant to 15064.5.
3. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.
4. Disturb any human remains, including those interred outside of formal cemeteries.
5. Cause a substantial adverse change in the significance of a Tribal Cultural Resource, defined in Public Resources Code 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:
  - Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
  - 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 Public Resource Code Section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance to a California Native American tribe

### 4.4.3 IMPACT DISCUSSION

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<b>CULT-1</b>	<b>Implementation of the proposed project would not cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines Section 15064.5.</b>
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The types of cultural resources that meet the definition of historical resources under CEQA Section 21084.46 generally consist of districts, sites, buildings, structures, and objects that are significant for their traditional, cultural, and/or historical associations. Under CEQA, both prehistoric and historic-period archaeological sites may qualify based on historical associations.<sup>5</sup> As such, the two main historical resources that are subject to impact, and that may be impacted by future development allowed from implementation of the proposed Specific Plan, are historical architectural resources and historical archaeological deposits. The following impact discussion focuses on impacts to historical architectural

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<sup>5</sup> California Code of Regulations, Title 14, Chapter 3, Section 15064.5(c), Determining the Significance of Impacts on Historical and Unique Archaeological Resources.

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resources. Impacts to archaeological resources are addressed under impact discussion CULT-2, and human remains are addressed in impact discussion CULT-4.

As shown on Figure 4.4-1 under Section 4.4.1.2, Existing Conditions, there are several recognized historic properties in the Specific Plan Area where new development potential would occur under the proposed land uses changes. Accordingly, future development throughout the 2040 buildout horizon could have the potential to impact historical architectural resources if historical buildings are demolished or materially altered to allow new development.

Even if the historical resources were retained, future development under the proposed Specific Plan could impair the historic integrity of historical resources in question if the new construction were incompatible with the site relationships that characterize the existing property (for example, new construction which extends to all property lines where the historical pattern is to have setbacks) or if the massing (height and bulk) of the new construction were incompatible with the historical resource. Lastly, the design characteristics and materials of the new construction could cause an impact on adjoining or nearby historical buildings (for example, a flat-roofed building with aluminum windows and a rain-screen wall finish next to a gable-roofed building with period-revival stucco walls).

However, future development would be required to comply with existing General Plan policies listed above in Section 4.4.1.1, Regulatory Framework, as applicable, that require local planning and development decisions to consider impacts to historic resources, including the preservation of historic resources and the integrity of historic districts. Specific policies that protect historic resources include the following: Policy LU-1.7 requires the City to maintain and implement commercial, residential, industrial, and hillside design guidelines to ensure that future development complies with General Plan goals and policies; Policy LU-2-4, which requires retail frontages and storefront entrances on new and renovated buildings within the “retail core” of Downtown Hayward specifically does not apply to historic buildings that were originally designed without a retail frontage or storefront; and Policy LU-3.7 requires the City to protect the pattern and character of existing neighborhoods by requiring new infill developments to have complimentary building forms and site features.

Goal 8 specifically calls for the City to preserve Hayward’s historic districts and resources to maintain a unique sense of place and to promote an understanding of the regional and community history. There are many policies and implementation programs that support the achievement of this goal. Policy LU-8.3 requires the City to maintain and implement its Historic Preservation Ordinance (HMC Section 10-11.010) to safeguard the heritage of the City and to preserve historic resources. Policy LU-8.4 requires the City to maintain and expand its records of reconnaissance surveys, evaluations, and historic reports completed for properties located within the City. Policy LU-8.5 requires the City to maintain flexible land use standards to allow the adaptive reuse of historic buildings with a variety of economically viable uses, while minimizing impacts to the historic value and character of sites and structures. Policy LU-8.6 requires the City to consider *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* when evaluating development applications and City projects involving historic resources, or development applications that may affect scenic views or the historic context of nearby historic resources, which is already part of the Historic Preservation Ordinance. Policy LU-8.9 requires to the City to promote the use of the State Historic Building Code to facilitate the reuse and conversion of historic buildings to alternative uses and is

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supported by Implementation Program LU-15, which requires the City to develop and adopt an ordinance to allow the use of the State Historic Building Code for the rehabilitation of historic resources. Policy LU-8.10 requires the City to participate in the California Mills Act Property Tax Abatement Program to provide property owners of historic resources an economic incentive (property tax relief) to restore, preserve, and maintain qualified historic properties. Policy LU-8.11 and LU-8.12 requires the City to promote the use of the Federal Historic Preservation Tax Incentives Program Federal Historic Preservation Tax Credit Program to encourage the rehabilitation of income-producing historic structures and encourage the charitable contribution of historic resources and the establishment of conservation easements for historic preservation purposes, respectively. Policy LU-8.14 requires the City to prohibit the demolition of historic resources unless the rehabilitation and reuse of the resource is not structurally or economically feasible, the demolition is necessary to protect the health, safety, and welfare of the public, or the public benefits of demolition outweigh the loss of the historic resource.

Policy LU-8.13 requires the City to consider historical and cultural resources when developing planning studies and documents. Consistent with this policy, the City prepared the *Historic Context Statement Update* for the Specific Plan Area (see Appendix B of this Draft EIR) as part of preparing the proposed Specific Plan. A historic context statement enables the assessment of a property's historic significance by creating a framework against which to objectively qualify its relationship to larger historic themes and events. Once this framework has been adopted, qualified historical professionals can then use the *Historic Context Statement Update* as a basis for the completion of historical evaluations for future development projects in the Specific Plan Area. Such evaluations encompass the following:

- Evaluate a property's historic significance including its associative value and context utilizing national, state and local criteria and status codes.
- Evaluate a property's integrity and identify character-defining features.
- Establish periods of significance based on substantiated documentation.
- Determine which Standard of the *Secretary of the Interior's Standard for the Treatment of Historic Properties* will be followed for proposed changes (Preservation, Rehabilitation, Restoration, or Reconstruction.)
- Review proposed changes for consistency with the selected Standard to meet the criteria and requirements of the California Environmental Quality Act (CEQA) to avoid a substantial adverse impact.

The City's historical evaluation of a resource in the Specific Plan Area would use the *Historic Context Statement Update* as a tool for understanding where the site of future development's significance lies within the larger municipal historical timeline. The *Historic Context Statement Update* provides the City identified areas of significance in the Specific Plan Area. The *Historic Context Statement Update* is the foundation for decisions about identification, evaluation, registration and treatment of historic properties in the Specific Plan Area.

With respect to historic districts, Policy LU-1.8 requires the City to recognize the value and co-benefits of local historic preservation, including job creation, economic development, increased property values, and heritage tourism. Implementation Program LU-13 requires the City to coordinate with the State Historic

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Preservation Office to initiate and complete the process for becoming a Certified Local Government under the National Parks Service historic preservation program. Policy LU-8.2 requires the City to strive to enhance its local historic preservation programs to qualify for additional preservation grants and financing programs. Implementation Program LU-14 requires the City to prepare and submit applications to the State Historic Preservation Office to establish National Park Service Historic Districts for the Upper “B” Street neighborhood; “B” Street Historic Streetcar District; Prospect Hill Neighborhood; and the Downtown Historic District. Policy LU-8.7 requires the City to encourage the establishment of National Park Service Certified Historic Districts to encourage the preservation of Hayward’s historic neighborhoods and districts, and to qualify property owners for the Federal Preservation Tax Incentives Program. Policy LU-8.8 requires the City to maintain the current Marks Historic Rehabilitation District for Downtown Hayward to issue tax-exempt revenue bonds for financing the rehabilitation of historic structures.

Future development would also be required to comply with existing design standards of the *Hayward Design Guidelines*, which requires local planning and development decisions to consider impacts to historic resources.

Under the proposed Specific Plan, the Land Use vision includes enhancing the existing historic character of the Specific Plan Area. Specifically, form and intensity standards for Downtown Core placetype would include new buildings to be limited to up to seven stories tall to reduce perceived building bulk, mass, and height from the street and remain compatible with the existing historic structures. Similarly, the Station Plaza placetype would preserve the existing two-story historic houses to accommodate a variety of residential, retail, and service areas. In addition, the proposed Specific Plan contains goals, policies, and programs that require additional local planning and development decisions to consider impacts to historic resources from development in the Specific Plan Area. The following Specific Plan goals and policies would serve to minimize potential adverse impacts on the visual character of the Specific Plan Area:

- **Goal 2 Community Design (CD):** Downtown is a beautiful, safe, and high-quality pedestrian-oriented environment for all ages to enjoy day or night, with sufficient and attractive lighting, sidewalk amenities, landscaping, and inviting ground floor frontages.
  - **Policy CD 2 Coordinate Public and Private Investments:** Coordinate public and private investment to improve the quality and appearance of new and existing structures and streetscapes.
  - **Policy CD 3 Cultural and Historic Heritage:** Celebrate, preserve, and enhance the cultural heritage and historic charm of Downtown to create a unique sense of place.
  - **Policy CD 6 Public Art:** Promote the creation and funding of public art that contributes to the cultural experience of visiting the Downtown.
    - **Program CD 8:** Promote historic resources through programs and signage as part of the Downtown marketing campaign. The Hayward Development Services-Planning Division and the City Mangers Office-Economic Development Division would be responsible for implementing this program.
    - **Program CD 12:** Develop an adaptive reuse incentive program that provides property owners with a streamlined entitlement review process and/or relaxed zoning requirements, such as parking and density requirements, to encourage the adaptive reuse or sensitive additions over wholesale demolition for buildings not designated as Historic Resources, but that

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- contribute to the Plan Area’s cultural heritage. The Hayward Development Services-Planning Division would be responsible for implementing this program.
- **Program CD 13:** Conduct a historic resource survey for portions of Downtown that were not surveyed as part of the Marks Historic Rehabilitation District or the Upper B Street Neighborhood Plan to ensure that the historical significance of Plan Area buildings are adequately documented. The Hayward Development Services-Planning Division would be responsible for implementing this program.
  - **Program CD 14:** Compile and publish findings from historic resource surveys conducted for the Plan Area to a web-based resource center available to the public. The Hayward Development Services-Planning Division and the City Mangers Office-Economic Development Division would be responsible for implementing this program.
  - **Program CD 16:** Designate landmark-worthy and contributing properties that have yet to be formally designated as Historic Resources. The Hayward Development Services-Planning Division would be responsible for implementing this program.
  - **Program CD 21:** Encourage relocation of historic structures as much as possible before allowing demolition. The Hayward Development Services-Planning Division would be responsible for implementing this program.
  - **Program CD 25:** Continue to implement, and modify as needed, regulatory controls and incentives that protect designated Historic Resources from demolitions or inappropriate alterations that compromise integrity. The Hayward Development Services-Planning Division would be responsible for implementing this program.
  - **Program CD 26:** Continue to support and promote funding programs for the rehabilitation of designated Historic Resources, including the Mills Act program, the use of Federal Historic Preservation Tax Incentives and Credits, and the historic easement program in coordination with local historic preservation nonprofit organizations. The Hayward Development Services-Planning Division and Library and Community Services Department would be responsible for implementing this program.

Furthermore, with respect to the new development potential in the Specific Plan Area where more intense development and increased height is being considered, the proposed project includes zoning regulations that include design standards and compliance with the City’s architectural control process (i.e., Site Plan Review), which are intended to reduce potential impacts to historic districts from future development under the proposed project. The design standards control the appearance of development, including aspects such as lot size, building mass and scale, the building’s relationship to the street, ground-floor exterior, public and private open space, sidewalks, building projections and facades, roof planes, and upper-story stepbacks. In addition, the design standards include requirements for trash and storage and associated screening, and requirements for durable and high-quality building materials. The design standards ensure that the development within the proposed Downtown zoning districts results in the same high-quality design. The primary purpose of the proposed design standards is to promote complementary uses and appearance in the Specific Plan Area. The proposed zoning regulations also require a Major Site Plan application for a future project impacting or adjacent to a historic, archaeological, or environmentally sensitive feature (e.g., creek). The Site Plan Review and the

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requirements for the Major Site Plan application would reduce potential impacts to historic districts of future development in the Specific Plan Area.

In summary, compliance with existing General Plan and proposed Specific Plan goals, policies, and programs and Zoning Code Update, impacts to historic resources would be *less than significant*.

**Significance without Mitigation:** Less than significant.

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**CULT-2            Implementation of the proposed project would not cause a substantial adverse change in the significance of an archeological resource pursuant to CEQA Guidelines Section 15064.5.**

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Archaeological deposits that meet the definition of historical resource under CEQA Section 21084.1 or CEQA Guidelines Section 15064.5 could be present within the Specific Plan Area and could be damaged or destroyed by ground-disturbing construction activities (e.g., site preparation, grading, excavation, and trenching for utilities) associated with future development in the Specific Plan Area resulting from implementation of the proposed Specific Plan. Should this occur, the ability of the deposits to convey their significance, either as containing information about prehistory or history, or as possessing traditional or cultural significance to Native American or other descendant communities, would be materially impaired.

As described in Section 4.4.1.2, Existing Conditions, archival research revealed that there are several archeological sites in Hayward that have been identified and based on the historic setting previously described, there is potential for archeological resources to exist in undisturbed soils in the Specific Plan Area. Note that impacts to human remains are addressed below under impact discussion CULT-4.

While it is highly improbable that archaeological deposits associated with the historic period of Hayward and Native American prehistoric archeological sites exist on the locations identified for future development in the Specific Plan Area, because these locations are concentrated on sites either already developed, and/or in close proximity to existing development, where development will have a lesser impact on historical archeological resources. Additionally, the General Plan Land Use (LU) Element contains goals, policies, and programs that would require local planning and development decisions to consider impacts to archeological resources. Goal 8 specifically calls for the City to preserve Hayward's historic districts and resources to maintain a unique sense of place and to promote an understanding of the regional and community history. Policy LU-8.3 requires the City to maintain and implement its Historic Preservation Ordinance (HMC Section 10-11.010) to safeguard the heritage of the City and to preserve historic resources. Policy LU-8.4 requires the City to maintain and expand its records of reconnaissance surveys, evaluations, and historic reports completed for properties located within the City. Implementation of these policies would ensure that archaeological resources are professionally documented to enable their protection. The City Historic Preservation Ordinance of the HMC details these requirements for archaeological sites and resources, including those resources specifically of significance

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to Native Americans.<sup>6</sup> Policy LU-8.13 requires the City to consider historical and cultural resources when developing planning studies and documents. As described in impact discussion CULT-1, application of the *Historic Context Statement Update* for the Specific Plan Area would be used as a tool for understanding where the site of future development's significance lies within the larger municipal historical timeline.

Furthermore, the proposed zoning regulations that would be adopted as part of the proposed project also require a Major Site Plan application for a future project impacting or adjacent to a historic, archaeological, or environmentally sensitive feature (e.g., creek). Implementation of this proposed regulation would ensure that archaeological sites and resources would be protected.

Compliance with existing federal, State, and local laws and regulations, and the existing General Plan and Zoning Code and the proposed zoning regulations would protect recorded and unrecorded archaeological deposits in the Specific Plan Area by providing for the early detection of potential conflicts between development and resource protection, and by preventing or minimizing the material impairment of the ability of archaeological deposits to convey their significance through excavation or preservation.

**Significance without Mitigation:** Less than significant.

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<b>CULT-3</b>	<b>Implementation of the proposed project would not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.</b>
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As described in Section 4.4.1.2, Existing Conditions, no known fossils or unique paleontological resources or unique geologic features are present in the Specific Plan Area however, geological formations underlying the soils in the Specific Plan Area have the potential for containing paleontological resources (i.e., fossils). There could also be fossils of potential scientific significance in other geological formations that are not recorded in the database.<sup>7</sup> It is possible that ground-disturbing construction associated with future development as a result of implementation of the proposed Specific Plan could reach significant depths below the ground surface. Should this occur, damage to, or destruction of, paleontological resources could result, which would prevent the realization of their scientific data potential through documentation and analysis.

Similar to unknown archeological resources addressed in impact discussion CULT-2, it is also highly improbable that paleontological deposits exist on the locations identified for future development in the Specific Plan Area, because these locations are concentrated on sites either already developed, and/or in close proximity to existing development, where development will have a lesser impact on paleontological resources. Additionally, the General Plan Natural Resources (NR) Element contains goals, policies, and programs that would require local planning and development decisions to consider impacts to

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<sup>6</sup> City of Hayward Municipal Code, Chapter 10, Planning, Zoning, and Subdivisions, Article 11, Historic Preservation Ordinance, Section 10-11-150, Conditions of Approval for Development Projects Located within Archaeologically Sensitive Areas, and/or within or Adjacent to Known Archaeological Sites.

<sup>7</sup> University of California Museum of Paleontology. University of California, Berkeley. Specimen Search accessible online at <https://ucmpdb.berkeley.edu/> and the Paleobiology Database accessible online at <https://paleobiodb.org/#/>.

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paleontological resources. Specifically Goal NR-7 states that the City would identify, honor, and protect historically significant paleontological resources so they can be scientifically studied and preserved for current and future generations. Policy NR-7.1 requires the City to prohibit any new public or private development that damages or destroys a historically- or prehistorically-significant fossil, ruin, or monument, or any object of antiquity and Policy NR-7.2 requires the City to develop or ensure compliance with protocols that protect or mitigate impacts to paleontological resources, including requiring grading and construction projects to cease activity when a paleontological resource is discovered so it can be safely removed.

Compliance with existing federal, State, and local laws and regulations discussed in Section 4.4.1.1, Regulatory Framework, and the aforementioned General Plan policies listed above would protect unrecorded paleontological resources or unique geological features in the Specific Plan Area by providing for the early detection of potential conflicts between development and resource protection, and by preventing or minimizing the material impairment of the ability of paleontological resources or unique geological features to convey their significance through excavation or preservation.

**Significance without Mitigation:** Less than significant.

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### **CULT-4 Implementation of the proposed project would not disturb any human remains, including those interred outside of formal cemeteries.**

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As described in Section 4.4.1.2, Existing Conditions, archival research revealed that there are several archeological sites in Hayward that have been identified, and based on the historic setting previously described, there is potential for human remains associated with pre-contact archaeological deposits that could exist in the Specific Plan Area and could be encountered at the time potential future development occurs. However, any human remains encountered during ground-disturbing activities associated with future development under implementation of the proposed Specific Plan would be subject to federal, State, and local regulations, such as the California Health and Safety Code Section 7050.5, Public Resources Code Section 5097.98, and the California Code of Regulations Section 15064.5(e) (CEQA), which state the mandated procedures of conduct following the discovery of human remains. According to the provisions in CEQA, if human remains are encountered at the site, all work in the immediate vicinity of the discovery shall cease and necessary steps to ensure the integrity of the immediate area shall be taken. The Alameda County Coroner shall be notified immediately. The Coroner shall then determine whether the remains are Native American. If the Coroner determines the remains are Native American, the Coroner shall notify the NAHC within 24 hours, who will, in turn, notify the person the NAHC identifies as the MLD of any human remains. Further actions shall be determined, in part, by the desires of the MLD. The MLD has 48 hours to make recommendations regarding the disposition of the remains following notification from the NAHC of the discovery. If the MLD does not make recommendations within 48 hours, the owner shall, with appropriate dignity, reinter the remains in an area of the property secure from further disturbance. Alternatively, if the owner does not accept the MLD's recommendations, the owner or the descendent may request mediation by the NAHC. In addition, the General Plan Land Use (LU) Element includes goals, policies to protect cultural resources, including unknown human remains. Specifically, Policy LU-8.3 requires the City to maintain and implement its Historic Preservation Ordinance to safeguard the heritage of the City and to preserve historic resources. Implementation of this policy

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would ensure that archaeological sites and resources will be protected. The Historic Preservation Ordinance of the HMC includes archaeological sites and resources, including undocumented human remains and those resources specifically of significance to Native Americans, within its purview.<sup>8</sup> Additionally, Policy LU-8.4 requires the City to maintain and expand its records of reconnaissance surveys, evaluations, and historic reports completed for properties located within the city. Implementation of this policy would ensure that archaeological resources are professionally documented to enable their protection. The City Historic Preservation Ordinance of the HMC details these requirements for archaeological sites and resources, including undocumented human remains and those resources specifically of significance to Native Americans.<sup>9</sup>

Therefore, with the mandatory regulatory procedures and compliance with the existing General Plan policies and the Historic Preservation Ordinance described above, potential impacts related to the potential discovery or disturbance of any human remains accidentally unearthed during construction activities associated with future development as a result of implementation of the proposed Project would be *less than significant*.

**Significance without Mitigation:** Less than significant.

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**CULT-5      Implementation of the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Sections, 21074, 5020.1(k), or 5024.1.**

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A tribal cultural resource is defined as a site, feature, place, cultural landscape (must be geographically defined in terms of size and scope), sacred place, or object with cultural value to a California Native American tribe that is either included or eligible for inclusion in the California Register, or included in a local register of historical resources, or if the City of Hayward, acting as the lead agency, supported by substantial evidence, chooses at its discretion to treat the resources as a tribal cultural resource.

As discussed under impact discussions CULT-2 and CULT-4, impacts from future development in the Specific Plan Area could impact unknown archaeological resources including Native American artifacts and human remains, which could be recognized as tribal cultural resources. As shown in impact discussions CULT-2 and CULT-4, the current General Plan and Zoning Code as well as the proposed project, include goals, policies, implementation programs, and development standards that would ensure impacts to unknown archeological resources, including those of importance to Native Americans

Therefore, compliance with existing federal, State, and local laws and regulations, and adoption of the proposed project, would protect any unrecorded tribal cultural resources that may be unearthed from future development in the Specific Plan Area as a result of implementation of the proposed Specific Plan

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<sup>8</sup> City of Hayward Municipal Code, Chapter 10, Planning, Zoning, and Subdivisions, Article 11, Historic Preservation Ordinance, Section 10-11-150, Conditions of Approval for Development Projects Located within Archaeologically Sensitive Areas, and/or within or Adjacent to Known Archaeological Sites.

<sup>9</sup> City of Hayward Municipal Code, Chapter 10, Planning, Zoning, and Subdivisions, Article 11, Historic Preservation Ordinance, Section 10-11-150, Conditions of Approval for Development Projects Located within Archaeologically Sensitive Areas, and/or within or Adjacent to Known Archaeological Sites.

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by providing for the early detection of potential conflicts between development and resource protection, and by preventing or minimizing the material impairment of the ability of archaeological deposits to convey their significance through excavation or preservation. Accordingly, impacts to tribal cultural resources would be *less than significant*.

**Significance without Mitigation:** Less than significant.

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