

4.6 TRIBAL CULTURAL RESOURCES

This section describes the existing setting for tribal cultural resources, identifies associated regulatory requirements, evaluates potential impacts, and establishes mitigation measures related to implementation of the Alta Oceanside project (proposed project). The following analysis is based on the Cultural Resources Inventory Report prepared for the proposed project by Dudek in 2019 as well as Assembly Bill (AB) 52 consultation between the City and tribes. The Cultural Resources Inventory Report is included as Appendix C of this EIR.

4.6.1 Existing Conditions

4.6.1.1 Setting

Refer to Section 4.2, Cultural Resources, and Appendix C of this EIR for a full discussion regarding the existing cultural and historical setting of the proposed project. In summary, the City area includes traditional cultural boundaries of the Luiseño and Kumeyaay Native American tribal groups. Dudek conducted a South Coast Information Center (SCIC) records search that identified 29 cultural resources recorded within the one-mile search radius surrounding the site.

Tribal Coordination and Consultation

Coordination

Native American Cami Mojado representing the San Luis Rey Band of Mission Indians, was contacted on January 28, 2017, concerning the newly discovered isolate. Per this coordination, it was determined that the current disturbed site conditions negate the possible effectiveness of limited shovel test excavations considering resources may have been locally scattered by previous activities at the site. Therefore, site test pits were not completed to determine the existence of subsurface deposits.

Sacred Lands File Search

A search of the Native American Heritage Commission (NAHC) Sacred Lands File (SLF) search was conducted for the project APE on January 28, 2019 (Appendix C). The NAHC responded stating that sites have been located within the project APE, and advised that the San Luis Rey Band of Mission Indians and the La Jolla Band of Luiseño Indians be contacted.

The NAHC response letter also included a list of other Native American group representatives who should be contacted for information about these sites. Outreach letters were mailed on January 29, 2019, to all Native American group representatives included on the NAHC contact list (Appendix C). These letters contain a brief description of the planned project, reference maps, and a summary of the NAHC SLF search results. To date, three responses to the SLF search requests have been received for the current proposed project.

On February 6, 2019 the Tribal Historic preservation office for the Agua Caliente Band of Cahuilla Indians responded to the SLF search request, stating that the project is out of their Tribe's Traditional Use Area and therefore they defer to other tribes in the area once formal government-to-government consultation is initiated by the lead agency for this project.

A second response from the San Luis Rey Band of Mission Indians was received on March 12, 2019 regarding the SLF search. In this response the San Luis Rey Band of Mission Indians (the Tribe) has intimate knowledge about any discoveries made throughout the project area and is aware of cultural resource sites within close proximity to the proposed project. The Tribe urges caution in assessing the land encompassing the project for any ground disturbing purposes, as well as incorporating the presence of a Luiseño Native American monitor during all ground disturbing activities (including but not limited to any and all boring activities) and cultural resource assessment surveys.

The third response to the project SLF search request was received on March 18, 2019, from Ray Teran, resources management, representing the Viejas Band of Kumeyaay Indians. Mr. Teran states that, for the Alta Oceanside project, Viejas recommends that the San Pasqual Band of Mission Indians be notified of the project, they request that all NEPA/CEQA/NAGPRA laws be followed, and that San Pasqual be notified of any project changes and updates.

Consultation

To date, the City has received one request for consultation pursuant to Assembly Bill (AB) 52. This request was formally made by the Rincon Band of Luiseño Indians and the City responded to the tribe's request for consultation under AB 52. The Agua Caliente Band of Cahuilla Indians submitted a letter in response to the City's AB 52 notification letter and indicated that this project is not located within the Tribe's Traditional Use Area and therefore, defer to other tribes in the area; the Agua Caliente Band of Cahuilla Indians did not request consultation with the City. Consultation is ongoing.

The City received a request for consultation pursuant to State Bill (SB) 18 from the Pechanga Band of Luiseño Indians on October 4, 2019. The project is not subject to SB 18 as it does not propose a General Plan, General Plan Amendment, Specific Plan, Specific Plan Amendment, or Open Space Element for adoption. It is assumed that the reference to SB 18 is an error and the requested consultation is pursuant to AB 52. The Pechanga Band of Luiseño Indians requests to be added to the distribution list for public notices for public hearings, approvals and circulation of all documents, including environmental review documents, archeological reports, and all documents pertaining to this project. The Pechanga Band of Luiseño Indians asserts that the project area is part of 'Atáaxum (Luiseño), and therefore the Tribe's, aboriginal territory as evidenced by the existence of 'Atáaxum place names, tóota yixélval (rock art, pictographs, petroglyphs), and an extensive Luiseño artifact record in the vicinity of the project. Tribal consultation is ongoing.

Tribal Cultural Resources

Dudek conducted a South Coast Information Center (SCIC) records search that indicate no previously recorded cultural resources are located within the project area of potential effects (APE). As indicated above and detailed in Section 4.2 and Appendix C, the records indicate that 29 cultural resources have been recorded within the one-mile search radius surrounding the site. One newly identified isolated prehistoric cultural resource was identified during the pedestrian survey; a single prehistoric grey-green volcanic flaked stone tool, identified as AO-Iso-001. Isolates are not “unique” resources under CEQA, and are not eligible for CRHR listing.

Overall, no known significant tribal cultural resources have been identified on the site. However, there is potential for subsurface tribal resources to be present based on the location of an isolate on the surface and consultation with the San Luis Rey Band of Mission Indians.

4.6.2 Regulatory Setting

State

California Register of Historical Resources and the California Environmental Quality Act

CEQA requires that all private and public activities not specifically exempted be evaluated against the potential for environmental damage, including effects to historical resources. Historical resources are recognized as part of the environment under CEQA. The act defines historical resources as “any object, building, structure, site, area, or place that is historically significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California” (California Public Resources Code, Section 5020.1[j]).

Lead agencies have a responsibility to evaluate historical resources against the California Register of Historical Resources (CRHR) criteria prior to making a finding as to a proposed project’s impacts to historical resources. Mitigation of adverse impacts is required if the proposed project will cause substantial adverse change. Substantial adverse change includes demolition, destruction, relocation, or alteration such that the significance of a historical resource would be impaired. While demolition and destruction are fairly obvious significant impacts, it is more difficult to assess when change, alteration, or relocation crosses the threshold of substantial adverse change. The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of a historical resource that convey its historical significance (i.e., its character-defining features) is considered to materially impair the resource’s significance. The CRHR is used in the consideration of historical resources relative to significance for purposes of CEQA. The CRHR includes resources listed in or formally determined eligible for listing in the National Register of Historic Places (NRHP) and some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical

resources inventory may be eligible for listing in the CRHR, and are presumed to be significant resources for purposes of CEQA unless a preponderance of evidence indicates otherwise.

Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the CRHR (California Public Resources Code, Section 5024.1; 14 CCR 4852), which include the following:

- It 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; or
- It is associated with the lives of persons important to local, California, or national history; or
- It 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; or
- It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Senate Bill 18

The Traditional Tribal Cultural Places Bill of 2004 (SB 18) requires local governments to consult with Native American tribes during the project planning process. The intent of this legislation is to encourage consultation and assist in the preservation of “Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance” (County of San Diego 2007). The purpose of this consultation is to protect the identity of the cultural place and to develop appropriate and dignified treatment of the cultural resource. The consultation is required whenever a General Plan, General Plan Amendment, Specific Plan, Specific Plan Amendment, or Open Space Element is proposed for adoption. As part of the planning process, California Native American tribes must be given the opportunity to consult with the lead agency for the purpose of preserving, mitigating impacts to, and identifying cultural places.

Assembly Bill 52

AB 52, which took effect July 1, 2015, establishes a consultation process between California Native American tribes and lead agencies in order to address tribal concerns regarding project impacts and mitigation to tribal cultural resources (TCRs). Public Resources Code, Section 21074(a) defines TCRs and states that a project that has the potential to cause a substantial adverse change to a TCR is a project that may have an adverse effect on the environment. A TCR is defined as a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either (1) listed or eligible for listing in the CRHR or a local register of historical resources, or (2) determined by a lead agency to be a TCR.

Native American Historic Resource Protection Act

State law addresses the disposition of Native American burials in archaeological sites, and protects such remains from disturbance, vandalism, or inadvertent destruction; establishes procedures to be implemented if Native American skeletal remains are discovered during construction of a project; and establishes the NAHC to resolve disputes regarding the disposition of such remains. In addition, the Native American Historic Resource Protection Act (PRC Section 5097 et seq.) makes it a misdemeanor punishable by up to one year in jail to deface or destroy a Native American historic or cultural site that is listed or may be eligible for listing in the California Register of Historical Resources.

California Native American Graves Protection and Repatriation Act

The California Native American Graves Protection and Repatriation Act (California Repatriation Act) (25 U.S.C., Chapter 32), enacted in 2001, requires all state agencies and museums that receive state funding and that have possession or control over collections of human remains or cultural items, as defined, to complete an inventory and summary of these remains and items on or before January 1, 2003, with certain exceptions. The California Repatriation Act also provides a process for the identification and repatriation of these items to the appropriate tribes.

California Health and Safety Code Section 7050.5

California law protects Native American burials, skeletal remains, and associated grave goods, regardless of their antiquity, and provides for the sensitive treatment and disposition of those remains. California Health and Safety Code Section 7050.5 requires that if human remains are discovered in any place other than a dedicated cemetery, no further disturbance or excavation of the site or nearby area reasonably suspected to contain human remains can occur until the County Coroner has examined the remains (Section 7050.5b). If the coroner determines or has reason to believe that the remains are those of a Native American, the coroner must contact the NAHC within 24 hours (Section 7050.5c). The NAHC will notify the most likely descendant, and with the permission of the landowner, the most likely descendant may inspect the site of discovery. The inspection must be completed within 24 hours of notification of the most likely descendant by the NAHC. The most likely descendant may recommend means of treating or disposing of, with appropriate dignity, the human remains and items associated with Native Americans.

4.6.3 Thresholds of Significance

The significance criteria used to evaluate the project impacts to traffic and circulation are based on Appendix G of the CEQA Guidelines. According to Appendix G of the CEQA Guidelines, a significant impact related to traffic and circulation would occur if the proposed project would:

1. 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:
 - a. 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
 - b. 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 Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

4.6.4 Impacts Analysis

Would the project 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:

- a. *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)?*

No historical resources, as defined by PRC Section 5020.1(k), are present within areas that will be impacted by the project. As discussed in Section 4.2, Cultural Resources, six historical-era structures are present on the proposed project site but are not eligible for local listing under the City's Historic Preservation Ordinance. Additionally, 154 previously recorded historic addresses are within one mile of the proposed project site, however none are within the proposed project's area of potential effect (APE) or are adjacent to the APE. Therefore, the proposed project would have a **less than significant impact** on historical tribal cultural resources.

- b. *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 Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?*

As indicated in Sections 4.6.1, consultation and coordination has been initiated with various tribes to identify any potential tribal cultural resources located on the site or in the project vicinity. Consultation with tribal representatives has identified that the project area

is potentially a part of 'Atáaxum (Luiseño) and there is an extensive Luiseño artifact record in the vicinity of the project as discussed in Section 4.6.1.1 above. Outside of the AB 52 consultation process, the San Luis Rey Band of Mission Indians was also consulted regarding the isolate located on-site and the potential for subsurface tribal cultural resources. Considering this information, there is potential for the discovery of unknown tribal cultural resources during proposed grading activities. Thus, the project would have a **potentially significant impact** to tribal cultural resources.

4.6.5 Mitigation Measures

In addition to MM-CUL-1, the following shall be implemented:

MM-TCR-1 An appropriate approach to potential impacts to Tribal Cultural Resources (TCRs) (as defined by PRC Section 21074) is developed in response to the identified presence of a TCR by California Native American Tribes through the process of consultation. While no TCRs have been identified that may be affected by the project, the following approach for the inadvertent discovery of TCRs has been prepared to ensure there are no impacts to unanticipated resources.

The City shall require that a Native American and archaeological monitor are present during ground-disturbing activities with the greatest potential to encounter Native American cultural resources, consistent with, and as required by MM-CUL-1.

The archaeological and Native American monitors shall have the authority to temporarily halt work to inspect areas as needed for potential cultural material or deposits. Should a potential TCR be inadvertently encountered, all construction work involving ground-disturbance occurring within 50 feet of the find shall immediately stop and the City notified. If the unanticipated resource is archaeological in nature, appropriate management requirements shall be implemented as outlined in MM-CUL-1. Ground disturbance in this area shall not commence until the qualified archaeological principal investigator, meeting the Secretary of the Interior's Professional Qualification Standards, can evaluate the significance of the find and determine whether or not additional study is warranted. The 50 foot buffer may be adjusted based on the recommendation of the qualified archaeological principal investigator. Should it be required, temporary flagging may be installed around this resource in order to avoid any disturbances from construction equipment. Depending upon the significance of the find under CEQA (14 CCR 15064.5(f); PRC Section 21082), the archaeological monitor in correspondence with the qualified archaeological principal investigator may simply be required to record the find to appropriate standards (thereby addressing any data potential).

If the qualified archaeological principal investigator observes the discovery to be potentially significant under City, CEQA or Section 106 of the NHPA, additional efforts such as preparation of an archaeological treatment plan, testing, and/or data recovery may be warranted prior to allowing construction to proceed in this area. The feasibility for avoidance of any identified resource will also be discussed with the City. The City shall be notified of any identified Native American cultural resource, regardless of significance, and provided the opportunity to provide management recommendations prior to moving forward in construction in areas that might disturb the identified resource. If the City determines through consultation with NAHC-listed representatives that the potential resource appears to be a tribal cultural resource (as defined by PRC Section 21074), any affected tribe shall be provided a reasonable period of time to conduct a site visit and make recommendations regarding future ground disturbance activities as well as the treatment and disposition of any discovered tribal cultural resources. Depending on the nature of the potential resource and Tribal recommendations, review by a qualified archaeologist may be required. Implementation of proposed recommendations will be made based on the determination of the City that the approach is reasonable and feasible. All activities shall be conducted in accordance with regulatory requirements.

4.6.6 Level of Significance After Mitigation

Impacts to tribal cultural resources would be less than significant, with incorporation of MM-TCR-1 and MM-CUL-1.