

5. Environmental Analysis

5.15 TRIBAL CULTURAL RESOURCES

This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for implementation of the Ontario Ranch Business Park Specific Plan project (proposed project) to impact tribal cultural resources in the City of Ontario. Tribal cultural resources include landscapes, sacred places, or objects with cultural value to a California Native American Tribe. Other potential impacts to cultural resources (i.e., prehistoric, historic, and disturbance of human remains) are evaluated in Section 5.5, *Cultural Resources*, and impacts to paleontological resources are addressed in Section 5.6, *Geology and Soils*.

The analysis in this section is based in part on the following information:

- *Cultural and Paleontological Resources Assessment Ontario Ranch Commerce Center, City of Ontario, San Bernardino, California*, Material Culture Consulting, September 2018.
- NONCONFIDENTIAL - Cultural and Paleontological Resources Survey Results for the Ontario Ranch Business Park Off-sites, in the City of Ontario, San Bernardino County, California, Material Cultural Consulting, November 26, 2019 (Appendix E2).

This report is provided in DEIR Appendices E1 and E2.

5.15.1 Environmental Setting

5.15.1.1 REGULATORY BACKGROUND

Federal

Archaeological Resources Protection Act

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites that are on federal lands and Indian lands.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act is a federal law passed in 1990 that provides a process for museums and federal agencies to return certain Native American cultural items, such as human remains, funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants and culturally affiliated Indian tribes.

State

Public Resources Code

Archaeological resources are protected pursuant to a wide variety of state policies and regulations enumerated under the California Public Resources Code. In addition, cultural resources are recognized as a non-renewable resource and therefore receive protection under the California Public Resources Code and CEQA.

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- **California Public Resources Code 5097.9–5097.991** provides protection to Native American historical and cultural resources, and sacred sites and identifies the powers and duties of the Native American Heritage Commission (NAHC). It also requires notification to descendants of discoveries of Native American human remains and provides for treatment and disposition of human remains and associated grave goods.
- **California Public Resources Code 5097.9** states that no public agency or private party on public property shall “interfere with the free expression or exercise of Native American Religion.” The code further states that:

No such agency or party [shall] cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine... except on a clear and convincing showing that the public interest and necessity so require. County and city lands are exempt from this provision, except for parklands larger than 100 acres.

Health and Safety Code

The discovery of human remains is regulated per California Health and Safety Code Section 7050.5, which 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...until the coroner...has determined...that the remains are not subject to...provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible.... The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and...has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

Senate Bill 18

Existing law provides limited protection for Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places. These places may include sanctified cemeteries, religious, ceremonial sites, shrines, burial grounds, prehistoric ruins, archaeological or historic sites, Native American rock art inscriptions, or features of Native American historic, cultural, and sacred sites.

Senate Bill 18 on Traditional Tribal Cultural Places was signed into law in September 2004 and went into effect on March 1, 2005. It places requirements upon local governments for developments within or near traditional tribal cultural places (TTCP). SB 18 requires local jurisdictions to provide opportunities for involvement of California Native Americans tribes in the land planning process for the purpose of preserving traditional tribal cultural places. The Final Tribal Guidelines recommend that the NAHC provide

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written information as soon as possible but no later than 30 days after receiving notice of the project to inform the lead agency if the proposed project is determined to be in proximity to a TTCP and another 90 days for tribes to respond to a local government if they want to consult with the local government to determine whether the project would have an adverse impact on the TTCP. The CEQA public distribution list may include tribes listed by the NAHC who have requested consultation, or it may not. If the NAHC, the tribe, and interested parties agree upon the mitigation measures necessary for the proposed project, it would be included in the project's EIR.

SB 18 requires a city or county to consult with the NAHC and any appropriate Native American tribe for the purpose of preserving relevant TTCP prior to the adoption, revision, amendment, or update of a city's or county's general plan. Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, the Final Tribal Guidelines advise that SB 18 requirements extend to specific plans as well, since state planning law requires local governments to use the same process for amendment or adoption of specific plans as general plans (defined in Government Code Section 65453). In addition, SB 18 provides a new definition of TTCP, requiring a traditional association of the site with Native American traditional beliefs, cultural practices, or ceremonies or the site must be shown to actually have been used for activities related to traditional beliefs, cultural practices, or ceremonies. Previously, the site was defined to require only an association with traditional beliefs, practices, lifeways, and ceremonial activities. In addition, SB 18 law also amended Civil Code Section 815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements for the purpose of protecting their cultural places.

Assembly Bill 52

The Native American Historic Resource Protection Act (AB 52) took effect July 1, 2015 and incorporates tribal consultation and analysis of impacts to tribal cultural resources (TCRs) into the CEQA process. It requires TCRs to be analyzed like any other CEQA topic and establishes a consultation process for lead agencies and California tribes. Projects that require a Notice of Preparation of an EIR or Notice of Intent to adopt a ND or MND are subject to AB 52. A significant impact on a TCR is considered a significant environmental impact, requiring feasible mitigation measures.

TCRs must have certain characteristics:

- 1) Sites, features, places, cultural landscapes (must be geographically defined), sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historic Resources or included in a local register of historical resources. (PRC § 21074(a)(1))
- 2) The lead agency, supported by substantial evidence, chooses to treat the resource as a TCR. (PRC § 21074(a)(2))

The first category requires that the TCR qualify as a historical resource according to PRC Section 5024.1. The second category gives the lead agency discretion to qualify that resource—under the conditions that it supports its determination with substantial evidence and considers the resource's significance to a California tribe. The following is a brief outline of the process (PRC Sections 21080.3.1–3.3).

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- 1) A California Native American tribe asks agencies in the geographic area with which it is traditionally and culturally affiliated to be notified about projects. Tribes must ask in writing.
- 2) Within 14 days of deciding to undertake a project or determining that a project application is complete, the lead agency must provide formal written notification to all tribes who have requested it.
- 3) A tribe must respond within 30 days of receiving the notification if it wishes to engage in consultation.
- 4) The lead agency must initiate consultation within 30 days of receiving the request from the tribe.
- 5) Consultation concludes when both parties have agreed on measures to mitigate or avoid a significant effect to a TCR, or a party, after a reasonable effort in good faith, decides that mutual agreement cannot be reached.
- 6) Regardless of the outcome of consultation, the CEQA document must disclose significant impacts on TCRs and discuss feasible alternatives or mitigation that avoid or lessen the impact.

5.15.1.2 ETHNOGRAPHY

The following information is summarized from the cultural resources assessment prepared for the proposed project (Appendix E1 of this DEIR).

The territory of the Gabrielino at the time of Spanish contact covered much of current-day Los Angeles and Orange Counties and extended into the western part of San Bernardino County. The southern extent of this culture area is bounded by Aliso Creek, the eastern extent is located east of present-day San Bernardino along the Santa Ana River, the northern extent includes the San Fernando Valley, and the western extent includes portions of the Santa Monica Mountains. The Gabrielino also occupied several Channel Islands including Santa Barbara Island, Santa Catalina Island, San Nicholas Island, and San Clemente Island. Because of their access to certain resources, including a steatite source from Santa Catalina Island, this group was among the wealthiest and most populous aboriginal groups in all of southern California. Trade of materials and resources controlled by the Gabrielino extended as far north as the San Joaquin Valley, as far east as the Colorado River, and as far south as Baja California.

The Gabrielino lived in permanent villages and smaller, resource-gathering camps occupied at various times of the year depending upon the seasonality of the resource. Larger villages were comprised of several families or clans, while smaller, seasonal camps typically housed smaller family units. The coastal area between San Pedro and Topanga Canyon was the location of primary subsistence villages, while secondary sites were located near inland sage stands, oak groves, and pine forests. Permanent villages were located along rivers and streams, as well as in sheltered areas along the coast. As previously mentioned, the Channel Islands were also the locations of relatively large settlements.

The Gabrielino tribe carried out food exploitation strategies that utilized local resources ranging from plants to animals; coastal resources were also exploited. Rabbit and deer were hunted and acorns, buckwheat, chia, berries, fruits and many other plants were collected. Artifacts associated with their occupations include a wide

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array of chipped stone tools including knives and projectile points, wooden tools like digging sticks and bows, and ground stone tools like bedrock and portable mortars, metates and pestles. Local vegetation was used to construct shelters as well as for medicinal purposes. Cooked foods were prepared on hearths. Acorns were one of the most important food resources utilized by the Gabrielino and other Native American groups across California. The acorns were ground into a fine powder in order to make an acorn mush or gruel. A dietary staple, acorns provided a large number of calories and nutrients. The ability to store and create stockpiles in case of lean times also contributed to the importance of acorns as a vital natural resource. Much of the material evidence available to archaeologists concerning the Gabrielino is a result of tools and technologies related to their subsistence activities.

The social structure of the Gabrielino is little known; however, there appears to have been at least three social classes: 1) the elite, which included the rich, chiefs, and their immediate family; 2) a middle class, which included people of relatively high economic status or long established lineages; and 3) a class of people that included most other individuals in the society. Villages were politically autonomous units comprised of several lineages. During times of the year when certain seasonal resources were available, the village would divide into lineage groups and move out to exploit them, returning to the village between. Each lineage had its own leader, with the village chief coming from the dominant lineage. Several villages might be allied under a paramount chief. Chiefly positions were of an ascribed status, most often passed to the eldest son. Chiefly duties included providing village cohesion, leading warfare and peace negotiations with other groups, collecting tribute from the village(s) under his jurisdiction, and arbitrating disputes within the village(s). The status of the chief was legitimized by his safekeeping of the sacred bundle, a representation of the link between the material and spiritual realms and the embodiment of power. Shamans were leaders in the spirit realm. The duties of the shaman included conducting healing and curing ceremonies, guarding of the sacred bundle, locating lost items, identifying and collecting poisons for arrows, and making rain. Marriages were made between individuals of equal social status and, in the case of powerful lineages, marriages were arranged to establish political ties between the lineages. Men conducted the majority of the heavy labor, hunting, fishing, and trading with other groups. Women's duties included gathering and preparing plant and animal resources, and making baskets, pots, and clothing. The name "Gabrielino" is Spanish in origin and was used in reference to the Native Americans associated with the Mission San Gabriel. It is unknown what these people called themselves before the Spanish arrived, but today they call themselves "Tongva", meaning "people of the earth."

5.15.1.3 EXISTING CONDITIONS

The project site contains an operational dairy farm, Legend Dairy Farms, and two single-family residences. The entire project area has been repeatedly and significantly altered and disturbed by over 80 years of agricultural/dairy operations. Surrounding land uses directly adjacent to the project site include agricultural uses to the north and east, public uses for the Chino Airport to the south, and a residential neighborhood located directly west across Euclid Avenue.

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5.15.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- TCR-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:
- i) 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
 - ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

5.15.3 Plans, Programs, and Policies

- PPP TCR-1 The project is required to comply with CEQA Guidelines Section 15064.5, Public Resources Code Sections 21083.2 and 5097.9, and Health and Safety Code Section 7050.5, to properly recover and evaluate any TCRs, if encountered.

5.15.4 Environmental Impacts

5.15.4.1 METHODOLOGY

Cultural Resources Records Search

On July 25, 2018, Allison Hill, Material Cultural Consulting (MCC) Archaeologist and cross-trained Paleontologist, conducted a search of the California Historical Resource Information System (CHRIS) at the South Central Coast Information Center (SCCIC), located at the California State University, Fullerton, Orange County. The search covered any previously recorded cultural resources and investigations within a one mile radius of the Specific Plan area. The CHRIS search also included a review of the National Register of Historic Places (NRHP), the California Register of Historical Resources (CRHR), the California Points of Historical Interest list, the California Historical Landmarks list, the Archaeological Determinations of Eligibility list, and the California State Inventory of Historic Resources.

Sacred Lands File Search and Native American Consultation

MCC requested a search of the Sacred Lands File from the Native American Heritage Commission (NAHC) on July 24, 2018. The Commission responded on July 25, 2018, stating that there are no known sacred lands within a one mile radius of the Specific Plan area. The NAHC requested that 20 Native American tribes or individuals be contacted for further information regarding the general vicinity. MCC subsequently sent letters

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on August 1, 2018 to the 20 Native American contacts, requesting any information related to cultural resources or heritage sites within or adjacent to the Specific Plan Area. Additional attempts at contact by letter, email, or phone call were made on August 10, 22, and 23, 2018.

On March 13, 2019, the City of Ontario conducted Native American consultation per SB 18 and AB 52 requirements. Each Native American group or individual listed was sent a project notification letter and map and was asked to convey any knowledge regarding prehistoric or Native American resources (archaeological sites, sacred lands, or artifacts) located within the study area or surrounding vicinity. The letter included the study area location and a brief description of the proposed project. Tribes contacted for purposes of the sacred lands file search and Native American consultation are provided under Impact 5.15-1, below.

Pedestrian Field Survey

Allison Hill, MCC Archaeologist and cross-trained Paleontologist, conducted a survey of the proposed Specific Plan area on July 27, 2018. The survey consisted of walking in parallel transects spaced at approximately 15-meter intervals over the parcels, while closely inspecting the ground surface. All undeveloped areas were examined for artifacts (e.g., flaked stone tools, tool-making debris, stone milling tools or fire-affected rock), soil discoloration that might indicate the presence of a cultural midden, soil depressions and features indicative of the former presence of structures or buildings (e.g., postholes, foundations), or historic-era debris (e.g., metal, glass, ceramics). The type of sediment and land formations were also noted in order to assess the potential for paleontological sensitivity. Existing ground disturbances (e.g. cutbanks, ditches, animal burrows, etc.) were also visually inspected to get a sense of subsurface deposits and soil horizons. Representative photographs were taken of the entire study area.

5.15.4.2 IMPACT ANALYSIS

The following impact analysis addresses thresholds of significance for which the Initial Study disclosed potentially significant impacts. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.15-1: Grading activities have the potential to encounter unknown, buried tribal cultural resources. [Threshold TCR-1(i)(ii)]

As previously stated, TCRs are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that is either eligible or listed in the California Register of Historical Resources or local register of historical resources (Public Resources Code Section 21074).

Conducting consultation early in the CEQA process allows tribal governments, public lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to TCRs, and reduce the potential for delay in the environmental review process. The intent of the consultations is to provide an opportunity for interested Native American contacts to collaborate with the City during the project approval process to identify and protect TCRs.

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Sacred Lands File Search

As stated, a Sacred Lands File search was conducted by NAHC to determine if any sacred lands or traditional cultural properties had been identified near the project site. The NAHC's Sacred Lands File record search found no record of tribal resources on or within one mile of the project site (see Appendix E1). The proposed project would not impact any known tribal cultural resource that is listed or eligible for listing.

MCC requested further information from 20 Native American tribes or individuals, as requested by NAHC. Of the 20 tribes or individuals, 18 had no response or stated that the project site is outside the tribe's ancestral territory and/or areas of tribal affiliation or interest. Two tribes responded by phone, as follows:

- On August 30, 2018, Mr. Anthony Morales, Chairperson of the Gabrieleno/Tongva San Gabriel Band of Mission Indians informed MCC that the project is in the vicinity of important prehistoric and historic tribal routes and water sources. The tribe indicated that the heightened sensitivity warrants archaeological and Tribal monitoring by their tribe.
- Mr. Andrew Salas, Chairperson of the Gabrieleno Band of Mission Indians-Kizh Nation, indicated on August 22, 2018, that the project is located in a culturally sensitive area that is part of the Gabrieleno Band of Mission Indians-Kizh Nation ancestral territory. Based on traditional and historical information, Mr. Salas recommends both archaeological and Tribal monitoring for the project. In addition, Mr. Salas requested that MCC include in this report that: the Gabrieleno Band of Mission Indians-Kizh Nation would like to be the primary tribe to consult on the project because the project is located in their ancestral territory; that they wish to be in contact with the lead agency for consultation; and that they would like to draft mitigation language for tribal cultural resources as Mr. Salas anticipates encountering prehistoric and historic cultural resources.

SB 18 and AB 52 Consultation

In accordance with SB 18 and AB 52, the City notified local tribes identified about the proposed project on March 22, 2019, to determine the potential for TCRs on-site and to determine if local knowledge of TCR is available about the project site and surrounding area. It should be noted that the approved Native American lists for SB 18 and AB 52 consultations are not the same as the tribes and individuals identified on NAHC's Sacred Lands File list. The following Tribes were notified:

SB 18 Consultation

- Gabrieleno Band of Mission Indians – Kizh Nation, Andrew Salas, Chairman
- Gabrieleno/Tongva San Gabriel Band of Mission Indians, Anthony Morales, Chief
- Gabrielino Tongva Indians of California Tribal Council, Robert Dorame, Chairperson
- Gabrielino/Tongva Nation, Sandonne Goad, Chairperson
- Gabrielino-Tongva Tribe, Charles Alvarez
- Morongo Band of Mission Indians, Robert Martin, Chairperson
- San Fernando Band of Mission Indians, Donna Yocum, Chairperson
- San Manuel Band of Mission Indians, Lee Clauss, Director of Cultural Resources

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- Serrano Nation of Mission Indians, Goldie Walker, Chairperson
- Soboba Band of Luiseno Indians, Joseph Ontiveros, Cultural Resources Director

AB 52 Consultation

- Gabrieleno Band of Mission Indians – Kizh Nation, Andrew Salas, Chairman
- Gabrieleno/Tongva San Gabriel Band of Mission Indians, Anthony Morales, Chief
- San Manuel Band of Mission Indians, Cultural Resources Director
- Soboba Band of Luiseno Indians, Joseph Ontiveros, Cultural Resources Director

No tribes responded to the request for Native American consultation. Further, the entire Specific Plan area has been repeatedly and significantly altered and disturbed by over 80 years of agricultural/dairy operations. Based on the records search and previous disturbance associated with agricultural operations, the potential to uncover TCRs for the site is low. However, despite actions taken to ensure that all TCRs are located prior to construction, including record searches and field surveying, there still remains the possibility based on the responses from the Sacred Lands File consultations that undiscovered, buried TCRs might be encountered during ground-disturbing activities, such as excavation and grading. A substantial adverse change in the significance of discovered resource(s) could occur if not mitigated.

Level of Significance before Mitigation: Impact 5.15-1 would be potentially significant.

5.15.5 Cumulative Impacts

Cumulative impacts to TCRs would occur when the impacts of the project, in conjunction with other projects and development in the region, result in multiple and/or cumulative impacts to TCRs in the area. The cultural records search identified six previously recorded cultural resources within one mile of the project area. No previously recorded fossil localities are located within one mile radius of the project area, and no sacred sites are documented within or adjacent to the project area. However, it is possible that buried prehistoric artifacts or TCRs could be present within the area. The proposed project includes mitigation to ensure proper identification, treatment, and preservation of TCRs. Implementation of these measures would reduce the potential for the project's adverse impacts on TCRs. Each future project considered for approval by the City of Ontario would be required to include mitigation measures to protect resources if they are uncovered during grading activities. The project would not combine with other projects in the region to create a cumulative impact to TCRs. Therefore, cumulative impacts to TCRs would be less than significant.

5.15.6 Level of Significance Before Mitigation

Without mitigation, the following impacts would be **potentially significant**:

- **Impact 5.15-1** Grading activities have the potential to encounter unknown, buried tribal cultural resources.

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5.15.7 Mitigation Measures

Impact 5.15-1

TCR-1 Prior to commencement of any excavation activities, the project developer shall retain a Native American Monitor of Gabrieleño Ancestry to:

- Conduct a Native American Indian Sensitivity Training for construction personnel. The training session shall include a handout and focus on how to identify Native American resources encountered during earthmoving activities and the procedures followed if resources are discovered, the duties of the Native American Monitor of Gabrieleño Ancestry, and the general steps the Monitor would follow in conducting a salvage investigation.
- Monitor all project-related, ground-disturbing construction activities (e.g., pavement removal, auguring, boring, grading, excavation, potholing, trenching, and grubbing) of previously undisturbed native soils to a maximum depth of 30 feet below ground surface. At their discretion and expense, a Native American Monitor of Gabrieleño Ancestry can be present during the removal of dairy manure to native soil.

5.15.8 Level of Significance After Mitigation

Implementation of Mitigation Measure TCR-1 would ensure the project applicant and construction contractors are aware of potential TCRs onsite and have specified procedures to implement to ensure these potentially uncovered resources are not damaged during grading and construction activities. The mitigation measure would ensure that qualified archaeologist would consult with a Native American monitor if TCRs are encountered and resources are properly treated. With mitigation impacts would be less than significant.

5.15.9 References

Material Culture Consulting (MCC). 2018, September. Cultural and Paleontological Resources Assessment Ontario Ranch Commerce Center.