

2.11 Tribal Cultural Resources

This section of the environmental impact report (EIR) examines the potential for Otay Ranch Village 14 and Planning Areas 16/19 (Proposed Project) to have an adverse effect on tribal cultural resources. This assessment is based on Native American consultation and the Cultural Resources Report prepared by Dudek. The results of the analysis are presented below and included as Appendix 2.5-1 to this EIR, with confidential records and maps on file at the County of San Diego (County), Planning and Development Services, and deposited with the South Coastal Information Center (SCIC).

Following the issuance of the Notice of Preparation (NOP) for the Proposed Project, the lead agency, the County, received comment letters from public entities regarding tribal cultural resources. Comments included a recommendation of consultation with all applicable California Native American tribes per Assembly Bill (AB) 52 and Senate Bill (SB) 18. Commenters also recommended the Proposed Project include a separate tribal cultural resources section in the EIR. The analysis presented in this section addresses these topics.

2.11.1 Existing Conditions

2.11.1.1 Environmental Setting

An initial records search was conducted by staff at the SCIC at San Diego State University in advance of the intensive pedestrian survey. Dudek performed an in-house records search of SCIC records in November 2016 for the Area of Potential Effects (APE) and a 1-mile radius around the APE. The records search involved a review of previously recorded cultural resources, previous cultural resources investigations and their limits within the site, historic addresses, and a historic maps database. Nine previous reports have been conducted within a 1-mile radius of the Project Area. All nine of the previous cultural reports address all or a portion of the APE. The records searches indicate that 94 cultural resources were previously recorded within the records search area. Of these, eight are located outside the APE, 35 are in the APE but outside the Area of Direct Impacts (ADI), and 51 are located in the ADI. These previously recorded resources include 73 archaeological sites, 15 isolates, and six historic structures. These records did not identify the presence of tribal cultural resources.

The Project Area is located in Proctor Valley, a south-sloping valley that encompasses Proctor Valley Road. The Project Area is undeveloped, with on-site elevation ranging between 550 and 1,345 feet above mean sea level. The Project Area is surrounded by San Miguel Mountain to the northwest and the Jamul Mountains immediately to the southeast, with the foothills of these mountains encroaching into the Project Area. The eastern portions of Planning Area 16 are located in the foothills of the Jamul Mountains and contain the highest elevations.

The predominant natural vegetation communities of the region are chaparral and coastal sage scrub, non-native grassland, and limited amounts of wetland. In the general region, much of the natural vegetation in low-lying areas has been displaced by modern land uses for grazing and orchards. However, the steep mountain slopes harbor relatively intact, dense desert scrub and juniper woodland communities, such as those currently present. These vegetation communities have been in place since the early Holocene when the climate became somewhat warmer and drier (Axelrod 1978).

2.11.1.2 Methodology

The presence and significance of existing tribal cultural resources associated with the Proposed Project was determined using the methodologies outlined below. These methods included a records search, a cultural resources inventory, correspondence with the Native American Heritage Commission (NAHC), and government consultation conducted by the County.

Archaeological site record and archival research was conducted at the SCIC for the Project Area and immediate vicinity (1-mile radius). The site record and archival research consisted of reviews of archaeological site records and previous cultural studies.

Various maps, including Proposed Project maps and United States Geological Survey quadrangle maps, were reviewed to identify tribal cultural resources that had been previously recorded in the vicinity of the Project Area.

An intensive pedestrian field survey (Phase I) was conducted on February 11, 2015, for the entire Project Area, which included transect spacing of 20 meters or less with variations in actual survey transect spacing dependent on ground visibility. Areas with dense vegetation required shorter 10-meter transect spacing, and areas with excellent ground visibility at times allowed for a maximum transect width of 20 meters. Native American monitors were present during the survey.

The Phase I inventory identified 109 cultural resources within the study area, 57 of which are located within the ADI. Evaluation efforts were focused on the 55 cultural resources that fall within this area because none of the cultural resources located outside the ADI would be directly or indirectly impacted by the development and would be preserved within the Otay Ranch RMP/Multiple Species Conservation Program (MSCP) Preserve. The 55 evaluated resources consist of 11 isolates, two historic structures, and 42 sites (two isolates identified in the survey were upgraded to sites, based on identification of additional artifacts during the evaluation). A portion of one of the resources located within the ADI was not evaluated because access to the site was not possible at the time of evaluation. The County determined that, in the absence of testing, the eastern portion of site CA-SDI-12397 is archaeologically significant. See Section 2.5, Cultural Resources, for a discussion of required mitigation to address impacts to this resource.

In June 2015, the NAHC was contacted and a search of its Sacred Lands File was requested for (i) data relating to the Proposed Project, and (ii) a list of persons and tribes that may have a significant cultural or religious connection to resources at the Project Area (see Appendix 2.5-1). The request was resubmitted to the NAHC via email on May 9, 2016. Government-to-government consultation was initiated in June 2017 and has been ongoing. All NAHC correspondence and government consultation documents are on file with the County.

2.11.1.3 Records Search Results

According to the records on file at the SCIC, there have been nine cultural resource studies conducted within a 1-mile radius of the Project Area. A total of 94 cultural resources have been documented within 1 mile of the Project Area boundary. Of these, 33 of the previously recorded cultural resources have been identified within the 2,348-acre APE, and 53 are located in the ADI. These previously recorded resources include 73 archaeological sites, 15 isolates, and six historic structures. None of these resources have been identified as tribal cultural resources.

2.11.1.4 Survey Results

The purpose of the cultural resources technical study was to relocate previously recorded resources and identify any new sites. Archaeological fieldwork included the presence of a Native American monitor. No comments were received during the survey or archaeological evaluation that would indicate any of the identified archaeological sites were or could be considered tribal cultural resources as defined under the California Environmental Quality Act (CEQA).

2.11.1.5 Consultation Results

Native American consultation began with corresponding with the NAHC in 2015. The NAHC responded on May 16, 2016, stating that no resources are listed in the Sacred Lands File in this area, but provided contact information for Native American tribes that may have additional information. On July 21, 2016, letters were forwarded to the tribes requesting any information or concerns they may have related to the Proposed Project. This information was provided to the County for their consultation obligations.

Government-to-government consultation pursuant to AB 52 and SB 18 was initiated on June 1, 2017 and June 2, 2017 respectively. Five tribes (Barona, Campo, Jamul, Santa Ysabel, and Viejas) requested consultation. County staff met with all five tribes to discuss Proposed Project components, impacts, and mitigation requirements. In addition, on September 12, 2017, a field visit was conducted with all five tribes, County staff, applicant, and consultants. During consultation meetings and the field visit, it was requested that the tribes provide County staff with any issues or concerns. In addition, it was requested that they identify any tribal cultural

resources that may be present within the APE. To date, no issues have been raised and no information has been provided regarding tribal cultural resources.

2.11.1.6 Regulatory Setting

Federal

There are no federal laws related to tribal cultural resources relevant to the Proposed Project.

State

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, in effect as of July 1, 2015, introduces the tribal cultural resource as a class of cultural resources and additional considerations relating to Native American consultation into CEQA. As a general concept, a tribal cultural resource is similar to the federally defined Traditional Cultural Properties; however, it incorporates consideration of local and state significance and required mitigation under CEQA. A tribal cultural resource may be considered significant if included in a local or state register of historical resources; determined by the lead agency to be significant pursuant to criteria set forth in Public Resources Code (PRC) Section 5024.1; is a geographically defined cultural landscape that meets one or more of these criteria; or is a historical resource described in PRC Section 21084.1, a unique archaeological resource described in PRC Section 21083.2, or is a non-unique archaeological resource if it conforms with the above criteria.

Native American Consultation (SB 18, AB 52)

California AB 52 establishes a consultation process between California Native American tribes and lead agencies to address tribal concerns regarding project impacts to tribal cultural resources

and mitigation for such impacts. PRC Section 21074(a) defines tribal cultural resource and states that a project that has the potential to cause a substantial adverse change to a tribal cultural resource is a project that may have an adverse effect on the environment. A tribal cultural resource is defined as a site, feature, place, cultural landscape, sacred place, and object with cultural value to a California Native American tribe that is either:

- Listed or eligible for listing in the California Register of Historical Resources or a local register of historical resources, or
- Determined by a lead agency to be a tribal cultural resource.

The Local and Tribal Intergovernmental Consultation process, embodied in SB 18, was signed into law in September of 2004 and took effect on March 1, 2005. SB 18 establishes responsibilities for local governments to contact, provide notice to, refer plans to, and consult with California Native American tribes. The purpose of this consultation process is to protect the identity of the cultural place and to develop appropriate and dignified treatment of the cultural place in any subsequent project. 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 application 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.

The County is in the process of conducting formal consultation with Native American tribes under both SB 18 and AB 52 for the Proposed Project. The results of those consultation efforts are provided in Appendix 2.5-1.

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 1 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.

2.11.2 Analysis of Project Effects and Determination as to Significance

According to CEQA (Section 21074):

- (a) Tribal cultural resources are either of the following:
 - (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
 - (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
 - (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
 - (2) 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 Section 5024.1
- (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

- (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resources if it conforms with the criteria of subdivision (a).

Guidelines for the Determination of Significance

For the purposes of this EIR, any of the following will be considered a significant impact to tribal cultural resources:

1. The project, as designed, causes a substantial adverse change in the significance of a tribal cultural resource as defined in PRC, Section 21074, as either a site, feature, place, or 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 PRC, 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 PRC, Section 5024.1(c). In applying the criteria set forth in PRC, Section 5024.1(c), the lead agency shall consider the significance of the resource to a California Native American tribe.
2. The project causes a substantial adverse change in the significance of a tribal cultural resource. This shall include the destruction or disturbance of a tribal cultural resource that is important to local tribal communities.

The significance guidelines listed above have been selected for the following reasons:

The first guideline was selected because CEQA requires that tribal cultural resources be evaluated to determine whether or not a proposed action would have a significant effect. Any project that would have an adverse impact (direct, indirect, and/or cumulative) on a significant tribal cultural resource as defined by these guidelines would be considered to have a significant impact on the environment. The second guideline is included because tribal cultural resources are important to local Native American communities and may include sacred sites and traditional use areas that have been used over multiple generations.

Analysis

One archaeological site (CA-SDI-12397) was determined archaeologically significant in the absence of testing (see Section 2.5 for discussion) under CEQA significance Criterion 4

(scientific data potential; see Section 2.5 for information on Criterion 4). Impacts to a portion of the site, which will occur due to grading improvements to Proctor Valley Road, cannot be avoided and preservation in place is not feasible. No information has been provided indicating that tribal cultural resources are present within the APE. Therefore, because the archaeological site is not a tribal cultural resource, **no impacts** to a tribal cultural resource would occur. As such, implementation of the Proposed Project would have **no impact** on tribal cultural resources.

Similarly, implementation of the Proctor Valley Road North and the Perimeter Trail Options would have **no impact** on tribal cultural resources, since neither of these options would impact a tribal cultural resource based on government-to-government consultation.

However, relative to the Preserve Trails Option, CA-SDI-12373 was determined to be significant under CEQA and eligible for listing in the California Register of Historical Resources and local register for its data potential. Locus A contains a variety and quantity of cultural material that have the potential to answer research questions regarding prehistoric occupation in the area. The site was determined not significant under the Otay Ranch Resource Management Plan, and to date, the site has not been identified by consulting governments as a significant tribal cultural resource. Nonetheless, because the government-to-government consultation has not been concluded, the potential remains that this site could be determined to be a significant tribal cultural resource. Accordingly, impacts would be significant.

Because this site would be located within a trail easement, it would not be directly impacted by grading or other construction activities. As such, it would be preserved in place, and direct impacts would be less than significant. However, potential indirect impacts to the site from looting may occur as a result of introducing trail users near a potentially significant tribal cultural resource. Accordingly, implementation of the Preserve Trails Option would result in **potentially significant indirect effect** to tribal cultural resources (**Impact TRC-1**).

2.11.3 Cumulative Impact Analysis

According to CEQA, the importance of tribal cultural resources is the value of the resource to California Native American tribes culturally affiliated with the Project Area. Therefore, the issue that must be explored in a cumulative analysis is the cumulative loss of tribal cultural resources. For tribal cultural resources that are avoided or preserved through dedication within open space, no impacts would occur. However, if avoidance or dedication of open space to preserve tribal cultural resources is infeasible, those impacts must be considered in combination with tribal cultural resources that would be impacted for other projects included in the cumulative project list.

Cumulative projects located in the region would have the potential to result in a cumulative impact associated with the loss of tribal resources through development activities that could cause a substantial adverse change in the significance of a tribal resource. The cumulative projects are listed in Table 1-7, Cumulative Projects List, and depicted in Figure 1-16, Cumulative Projects, in Chapter 1, Project Description. Any cumulative projects that involve ground-disturbing activities, including the development of land uses as designated under surrounding jurisdictions' general plans, would have the potential to result in significant impacts to tribal resources. There were no cumulative projects that identified tribal cultural resources during Native American consultation. Furthermore, all projects would be regulated by applicable federal, state, and local regulations to avoid the destruction of tribal cultural resources.

As discussed above, no tribal cultural resources have been identified during the cultural evaluation or through government-to-government consultation. As such, no impacts to tribal cultural resources would occur with implementation of the Proposed Project or the Proctor Valley North and Perimeter Trail Options. The Preserve Trails Option would result in potentially significant indirect impacts to a possible tribal cultural resource.

The Proposed Project would not cumulatively contribute to a significant tribal cultural impact. Therefore, cumulative impacts would be **less than significant**.

2.11.4 Significance of Impacts Prior to Mitigation

Based on the analysis above, the Proposed Project would have the following **potentially significant impacts** to tribal cultural resources prior to mitigation:

Impact TCR-1 Implementation of the Preserve Trails Option would result in a potentially significant indirect impact to a possible tribal cultural resource.

2.11.5 Mitigation

The following mitigation measure, if implemented, would reduce the identified significant impact to tribal cultural resources if the Preserve Trails Option is selected:

M-TCR-1 Data Recovery

To mitigate potential indirect impacts to the eastern portion of site CA-SDI-12373, a phased data recovery program shall be implemented by a County of San Diego (County) approved archaeologist prior to granting any easement for trail uses. The phased data recovery (prepared as a separate document) shall involve implementation of surface collection and curation/repatriation of artifacts to prevent looting. All archaeological materials recovered during the data recovery efforts

shall be cleaned, sorted, cataloged, and analyzed following standard archaeological procedures, and shall be documented in a data recovery report. Upon completion of fieldwork, the County-approved archaeologist shall submit a letter report summarizing the field work efforts and stating that the scientifically significant sample of the site has been recovered. Upon approval from the County archaeologist, the trail easement may be granted.

2.11.6 Conclusion

Based on the foregoing analysis and Native American consultation, implementation of the Proposed Project would have **no significant effect** to a tribal cultural resource. If the Preserve Trails Option is selection, implementation of Mitigation Measure M-TCR-1 would reduce potentially significant impacts to **less than significant**.