

2.13 Tribal Cultural Resources

This section evaluates existing conditions for Tribal Cultural Resources (TCR) located within the County, and the potential effects that implementation of the project may have on these resources.

One comment letter regarding cultural resources was received in response to the Notice of Preparation (NOP). The Native American Heritage Commission requested Assembly Bill (AB) 52 and Senate Bill (SB) 18 compliance information; SB 18 and AB 52 compliance is described below. A copy of the NOP and comment letters received in response to the NOP are included in Appendix A of this Draft Supplement to the 2011 General Plan Update (GPU) Program Environmental Impact Report (2011 GPU PEIR) (Draft SEIR).

2.13.1 Existing Conditions

AB 52, signed by the California Governor in September of 2014, establishes a new class of resources under CEQA: “tribal cultural resources.” On July 1, 2015, TCRs were added to the list of resources that require analysis under CEQA. In accordance with AB 52, Native American Tribes culturally affiliated with the Climate Action Plan (CAP) project area have been contacted for input regarding the potential impacts the project would have on tribal cultural resources. In addition, SB 18 (Chapter 905, Statutes of 2004) requires cities and counties to contact, and consult with California Native American tribes prior to amending or adopting any general plan or specific plan, or designating land as open space. Tribal outreach has also been conducted for SB 18 consultation. Although the region is known to contain sensitive TCRs, the consultation did not result in the identification of any known TCRs.

2.13.2 Regulatory Framework

State

The 2011 General Plan Update (GPU) Program EIR (PEIR) described the Regulatory Framework related to tribal cultural places (SB 18) in Chapter 2.5 on page 2.5-21, and this description is hereby incorporated by reference. Since the certification of the 2011 GPU PEIR in August 2011, new State regulations pertaining to TCRs have been adopted and are described below.

CEQA and CEQA Guidelines Update

Effective on July 1, 2015, TCRs were added as a separate environmental topic under CEQA. Pursuant to Public Resources Code (PRC) Section 21074, TCRs are defined as 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:

1. Listed or eligible for listing in the California Register of Historical Resources or a local register of Historical Resources as defined in PRC Section 5020.1(k); or

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 PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the Lead Agency shall consider the significance of the resource to a California Native American tribe.

Assembly Bill 52

Assembly Bill 52 requires lead agencies to provide notice to tribes that are traditionally and culturally affiliated with the geographic area of a project only if they have requested to be notified of projects subject to AB 52. Consultation as defined under AB 52 includes, but is not limited to, discussing the type of environmental review necessary, the significance of TCRs, the significance of the project impacts on the TCRs, and alternatives and mitigation measures recommended by the tribe. Parties must consult in good faith and consultation is deemed concluded when (1) the parties agree to measures to avoid or reduce a significant impact on a TCR (if such a significant impact exists) or (2) when a party concludes that mutual agreement cannot be reached. Further, under AB 52, mitigation measures agreed upon during consultation must be included in the environmental document and, if no formal agreement on the appropriate mitigation has been established, mitigation measures that avoid or substantially lessen potential significant impacts should be implemented.

- Correspondence in compliance with AB 52 and SB 18 is provided in the Confidential Appendix C of this Draft SEIR.

Adopted 2011 GPU Policies

TCRs were added as an environmental topic in 2015; therefore, the 2011 GPU does not contain policies that are specific to TCRs. The following cultural resources policies that were adopted as part of the 2011 GPU are generally related to TCRs and are applicable to the project:

Policy COS-7.4: Consultation with Affected Communities. Require consultation with affected communities, including local tribes to determine the appropriate treatment of cultural resources.

Policy COS-7.6: Cultural Resource Data Management. Coordinate with public agencies, tribes, and institutions in order to build and maintain a central database that includes a notation whether collections from each site are being curated, and if so, where, along with the nature and location of cultural resources throughout the County of San Diego.

Adopted 2011 GPU PEIR Mitigation Measures

The following mitigation measures applicable to cultural resources that were adopted as part of the 2011 GPU PEIR are also related to TCRs and are applicable to the project:

Cul-2.1: Develop management and restoration plans for identified and acquired properties with cultural resources.

Cul-2.2: Facilitate the identification and acquisition of important resources through collaboration with agencies, tribes, and institutions, such as the South Coast Information Center (SCIC), while maintaining the confidentiality of sensitive cultural information.

Cul-2.4: Protect significant cultural resources through regional coordination and consultation with the NAHC and local tribal governments, including SB-18 review.

Cul-2.6: Protect significant cultural resources by facilitating the identification and acquisition of important resources through regional coordination with agencies, and institutions, such as the South Coast Information Center (SCIC) and consultation with the Native American Heritage Commission (NAHC) and local tribal governments, including SB-18 review, while maintaining the confidentiality of sensitive cultural information.

2.13.3 Issues Not Discussed Further

As described in Chapter 1.0, Project Description, in response to litigation and considering legislative changes that have occurred since preparation of the 2012 CAP, the County prepared a new CAP (subject of this Draft SEIR). The CAP and the targets and strategies identified therein necessitate changes to Goal COS-20 and Policy COS-20.1 of the County's General Plan (2011 GPU) and mitigation adopted in the 2011 GPU PEIR, Mitigation Measures CC-1.2, CC-1.7, and CC-1.8 to attain consistency with current legislative requirements. These changes require a General Plan Amendment to the County's General Plan and revision to the associated mitigation monitoring and reporting program (hereafter these two actions collectively refer to as (GPA)) as part of the administrative approval process. The Draft SEIR evaluates the GPA as part of the actions associated with the CAP because the changes reflected in the GPA support and are consistent with implementation of the CAP and its GHG targets and GHG reduction measures. Therefore, the GPA is not addressed as a separate impact discussion below, but its impacts are included within the overall impact analysis of the CAP.

The Draft SEIR also evaluates the impacts associated with the implementation of proposed GHG Threshold, Guidelines for Determining Significance for Climate Change (Guidelines), and the Report Format and Content Requirements. The proposed GHG Threshold requires consistency with the CAP, and is the level below which a project would be determined to result in less-than-significant GHG impacts. To achieve consistency, a project will be required to implement the applicable GHG reduction measures outlined in the CAP. All measures have been evaluated throughout the Draft SEIR. Therefore, adoption of a GHG Threshold that establishes a requirement to be consistent with the CAP, the individual measures of which have been evaluated throughout this Draft SEIR, would not require a separate impact analysis because the impacts of establishing that threshold and what it would take to meet the threshold have been fully evaluated.

The Guidelines would provide direction to project applicants on how a project could achieve consistency with the CAP. The Guidelines are proposed to include a checklist that would require applicants to demonstrate how a project would be consistent with the CAP including through implementation of GHG reduction measures. The specific actions that would result from the Guidelines would be project-specific implementation of

approved GHG reduction measures, the environmental impacts of which have been evaluated throughout this Draft SEIR. Therefore, evaluation of the Guidelines as a separate impact discussion is not provided below.

Finally, the Report Format and Content Requirements document would not result in any physical impact on the environment as it simply details the format for how reports should be written. As a result, this document is also not separately discussed below.

In summary, the GPA, GHG Threshold, Guidelines, and Report Format and Content Requirements are not addressed as a separate impact discussion below. The GPA, GHG Threshold, and Guidelines are combined in the overall impact analysis of the CAP, while the Report Format and Content Requirement document provides technical direction to future project applicants and will not result in any physical impacts.

2.13.4 Analysis of Project and Cumulative Impacts

The project and cumulative impact analysis study area for TCRs was not addressed in the 2011 GPU PEIR because TCRs were not identified as an environmental resource topic until 2015. Similarly, The Padre Dam Municipal Water District Comprehensive Facilities Master Plan PEIR did not evaluate TCRs from the Program because the NOP was issued prior to July 1, 2015 when the topic was included in CEQA as an environmental resource.

The project and cumulative study area for TCRs would be the traditionally affiliated land for any Tribe requesting consultation. For this project, the cumulative area would include the traditional land of the San Luis Rey Band of Mission Indians, the Iipay Nation of Santa Ysabel, and the Rincon Band of Luiseno Indians.

Proposed GHG Reduction Measures

Table 1-1 of the Draft SEIR, provides a list of all the proposed GHG reduction measures and supporting efforts that would be implemented by the CAP. However, only those measures that are relevant to TCRs and could potentially result in a significant impact within the unincorporated County are described and evaluated below. None of the proposed measures indicate where specific improvements would be constructed their size, or specific characteristics. As a program EIR, the Draft SEIR does not, and cannot, speculate on the individual environmental impacts of specific future projects/improvements. However, implementation of all GHG reduction measures and supporting efforts were considered during preparation of the Draft SEIR, to the degree specific information about implementation is known. Consistent with the requirements of CEQA Guidelines Section 15168, this Draft SEIR provides a programmatic discussion of the potential general impacts of implementation of these measures, rather than project-level or site-specific physical impacts of such actions.

Strategy T-2: Shift Towards Alternative Modes of Transportation

Measure T-2.1: Improve Roadway Segments as Multi-Modal. Improve roadway segments, intersections, and bikeways to implement multi-modal enhancements for pedestrian and cyclist comfort and safety along County-maintained public roads by improving 700 centerline miles of roadway segments, including 250 intersections and 210 lane miles of bikeway improvements by 2030 and an additional 500 centerline miles of roadway segments, including 250 intersections and 210 lane miles of bikeway improvements by 2050. This measure would implement roadway improvements to reduce Vehicle Miles Traveled (VMT) by calming traffic and improving the bicyclist and pedestrian infrastructure and would occur as part of resurfacing projects within existing paved areas. Implementation of this measure could result in improvements to existing traffic infrastructure, which may affect TCRs.

Strategy T-4: Invest in Local Projects to Offset Carbon Emissions

Measure T-4.1: Establish a Direct Investment Program. Close the 2030 GHG emissions target gap of 195,514 MTCO₂e through direct investments in local projects that would offset carbon emissions within the unincorporated county by 2030. This measure would result in direct investments for local projects. The specific protocols that would be utilized are not known and evaluation of such actions would be speculative. However, this Draft SEIR conservatively assumes that some construction-related activities may occur with individual project implementation. Please see Chapter 2.7 and Appendix B of this SEIR for additional information on direct investment projects and protocols. Protocols could include the following types of projects:

- Biomass Conversion
- Boiler Efficiency Retrofits
- Wetland Creation
- Forest Restoration
- Compost Additions to Rangeland
- Organic Waste Digestion Capture
- Manure Management
- Building Weatherization Programs
- Urban Forest Management

Supporting Efforts for the Built Environment and Transportation Category

- Collaborate with incorporated cities, California Department of Transportation (Caltrans), and SANDAG to consider additional park-and-ride facilities.
- Collaborate with SANDAG to encourage installation of EV charging stations in new residential and non-residential developments.

Strategy E-2: Increase Renewable Energy Use

Measure E-2.1: Increase Renewable Electricity. Achieve 90% renewable electricity for the unincorporated county by 2030. Implementation of this measure could result in construction of small-scale distributive energy renewable systems, and large-scale photovoltaic solar, photovoltaic concentrator technology, or wind turbines. Construction and operation of this technology could affect TCRs.

Strategy SW-1: Increase Solid Waste Diversion in the Unincorporated County

Measure SW-1.1: Increase Solid Waste Diversion. Achieve 75% solid waste diversion by 2030. Implementation of this measure could result in construction for additional processing capacity for organics processing, which could affect TCRs.

Supporting Effort for the Water and Wastewater Category

Work with the Padre Dam Municipal Water District (MWD) to advance the East County Advanced Water Purification (AWP) Program.

2.13.4.1 Issue 1: Tribal Cultural Resources

Guidelines for Determination of Significance

TCRs are non-renewable and, therefore, cannot be replaced. The project would have a significant effect if it would cause a substantial adverse change in the significance of a TCR, defined in PRC 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 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 subdivision (c) of PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Impact Analysis

2011 GPU PEIR Determination

TCRs were added through AB 52 as a resource subject to review under CEQA, effective July 1, 2015. Therefore, the 2011 GPU PEIR did not evaluate impacts to these resources because it was adopted before this requirement. Similarly, the 2012 Wind Energy Ordinance EIR and the Padre Dam MWD's Comprehensive Facilities Master Plan PEIR did not evaluate impacts to TCRs because requirements were not in place to do so at the time these documents were initiated.

CAP Impact Analysis

GHG Reduction Measures and Supporting Efforts

On January 6, 2017, AB 52 consultation letters were sent to 11 tribes and SB 18 consultation letters were sent to 25 tribes. Four tribes responded by the close of the 30-day response period for AB 52 as defined in PRC Section 21074 and five tribes responded to the SB 18 consultation outreach. The Agua Caliente Band of Cahuilla Indians responded on January 24, 2017 declining consultation and the Pechanga Band of Mission Indians responded on January 30, 2017 also declining consultation. The San Luis Rey Band of Mission Indians responded on January 11, 2017 and the Lipay Nation of Santa Ysabel responded on January 6, 2017; no TCRs were identified during consultation with these Tribes. Consultation was concluded with Santa Ysabel on March 22, 2017 and with San Luis Rey on June 21, 2017. The Rincon Band of Luiseno Indians responded on April 11, 2017 requesting consultation. The County met with Rincon on July 7, 2017 to discuss the project. No issues or concerns were raised by Rincon. Consultation was concluded with Rincon on July 28, 2017.

No known TCRs have been identified during consultation with affiliated tribes. Implementation of GHG reduction measures and supporting efforts listed above would result in the implementation of a variety of measures and strategies to reduce GHG emissions. Some of these measures and strategies would result in the construction of new facilities and infrastructure, the placement of structures, and the excavation of earthen materials. While no TCRs have been identified through consultation with affiliated tribes, it is possible that unknown TCRs may be present and could be adversely affected by implementation of measures and strategies associated with the project. Specific locations for such improvements have not been identified. Future discretionary projects would be required to be evaluated for project-specific impacts under CEQA at the time of application. While adopted 2011 GPU policies and 2011 GPU PEIR mitigation measures require tribal consultation, primarily under SB 18, the policies and mitigation measures do not specifically address TCRs. Regardless, all future development projects would be required to follow County development requirements, including compliance with local policies, ordinances, and applicable permitting procedures related to protection of TCRs. Subsequent discretionary projects would be required to prepare site-specific project-level analysis to fulfill CEQA requirements, which may include additional AB 52 consultation that could lead to the identification of TCRs.

California law recognizes the need to identify and protect TCRs; the procedures for the treatment of Native American resources are contained in California PRC 21081.3.1, which states the following:

- Within 14 days of determining that a project application is complete, or to undertake a project, the lead agency must provide formal notification, in writing, to the tribes that have requested notification of proposed projects in the lead agency's jurisdiction. If it wishes to engage in consultation on the project, the tribe must respond to the lead agency within 30 days of receipt of the formal notification. The lead agency must begin the consultation process with the tribes that have

requested consultation within 30 days of receiving the request for consultation. Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

- Public agencies shall, when feasible, avoid damaging effects to any TCR (PRC Section 21084.3 (a).). If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process, new provisions in the PRC describe mitigation measures that, if determined by the lead agency to be feasible, may avoid or minimize the significant adverse impacts (PRC Section 21084.3 (b)). Examples include:
 - (1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - (2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - (A) Protecting the cultural character and integrity of the resource
 - (B) Protecting the traditional use of the resource
 - (C) Protecting the confidentiality of the resource.
 - (3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - (4) Protecting the resource.

Compliance with California PRC 21080.3.1 would provide an opportunity to avoid or minimize the disturbance of TCRs through tribal consultation and CEQA review procedures. Within the CEQA process, the project-specific impacts would be identified. If a determination is made that potentially significant impacts would result from the implementation of projects implemented under the CAP, then all feasible mitigation would be required to be implemented in accordance with CEQA Guidelines Section 15126.4. While mitigation would be recommended to reduce or avoid a project's impacts to TCRs, it may be infeasible to fully mitigate the impact to a less-than-significant level because of the location, size, and magnitude of the development associated with required measures and supporting efforts. Therefore, the project's impacts to TCRs would be **potentially significant (Impact TCR-1)**.

Cumulative Impacts

Impacts would be cumulative in nature if the project in combination with cumulative development would contribute to the permanent loss of TCRs on a regional scale. CEQA Guidelines Section 15130 describes two methods for establishing the cumulative environment in which the project is to be considered: the use of a list of past, present, and probable future projects; or the use of adopted projections from a general plan, other regional planning document, or a certified EIR for such a planning document. This analysis uses a combination of the list and planning document approach, as described in Chapter 1, Project Description. Physical improvements resulting from implementation of the CAP have the potential to combine with the physical impacts of other past, present, or probable future projects in the County and could result in a cumulative impact based upon proximity and construction schedule. **Table 1-3** in the Project Description contains a list of past, present, and probable future projects that when combined with the project, could result in a cumulatively considerable effect. Cumulative impacts could also result when the physical improvements resulting from implementation of the CAP interact with development associated with build-out of the County's General Plan and potentially increase those impacts resulting in a cumulatively considerable effect.

The cumulative context for TCRs is the ancestral land affiliated with the San Luis Rey Band of Mission Indians, the Lipay Nation of Santa Ysabel, and the Rincon Band of Luiseno Indians. Past development within each of these affiliated areas has resulted in the conversion of undeveloped land to urban land uses, thereby changing the landscape and context in which TCRs exist resulting in an overall reduction in TCRs. This would be a significant cumulative impact. The project in combination with cumulative development could result in new development that could result in adverse impacts to known and unknown TCRs. As described above, while compliance with PRC 21080.3.1 would require tribal consultation and provide an opportunity to avoid or minimize the disturbance of TCRs, because of the location, size, and magnitude of the development associated with required measures and supporting efforts, it may be infeasible to fully mitigate the impact to a less-than-significant level. The project would have potentially significant impacts to TCRs and **would result in a considerable contribution** to a significant cumulative TCR impact (**Impact TCR-2**).

Impact Summary

Compliance with PRC 21080.3.1 would require tribal consultation and provide an opportunity to avoid or minimize project and cumulative impacts to TCRs. However, because the specific location of where measures and strategies of the project would be implemented are not known and because they could be implemented in areas where TCRs are present; project impacts would remain **potentially significant**. Likewise, implementation of the project **would result in a considerable contribution** to a significant cumulative impact.

2.13.5 Mitigation

2.13.5.1 Issue 1: Tribal Cultural Resources

The County shall incorporate the following measures into the CAP mitigation monitoring and reporting program:

CAP Mitigation Measure-M-TCR-1 Facilitate the identification of tribal cultural resources through field studies, collaboration with agencies, tribes, and institutions, such as the South Coastal Information Center, while maintaining the confidentiality of sensitive cultural information.

CAP Mitigation Measure-M-TCR-2 Require development to avoid tribal cultural resources, if feasible. If complete avoidance is not possible, require development to mitigate impacts to tribal cultural resources pursuant to Assembly Bill 52.

CAP Mitigation Measure-M-TCR-3 Support the dedication of easements that protect tribal cultural resources.

CAP Mitigation Measure-M-TCR-4 Protect significant tribal cultural resources through regional coordination and consultation with the Native American Heritage Commission and local tribal governments, including Senate Bill 18 and Assembly Bill 52 consultation.

No other feasible project-related mitigation beyond existing federal and state permitting requirements and compliance with the above mitigation is available and could be applied to individual projects under the CAP. Where a project would comply with existing regulations and above mitigation, it would reduce its project-specific impacts to a less-than-significant level and would reduce its contribution to cumulative impacts such that it would not be considerable. However, because the reduction of impacts to a less-than-significant level cannot be guaranteed, the project would have a **significant and unavoidable impact** and **would result in a considerable contribution** to a significant cumulative impact to TCRs.