

5. Environmental Analysis

5.8 TRIBAL CULTURAL RESOURCES

Tribal Cultural Resources (TCR) include landscapes, sacred places, or objects with a cultural value to a California Native American tribe. This section of the Draft Environmental Impact Report (EIR) evaluates the potential for the proposed project to impact TCRs in Fontana. Potential impacts to other cultural resources (i.e., historic, archaeological, and disturbance of human remains) are evaluated in Section 5.3, *Cultural Resources*.

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

- *Cultural and Paleontological Resources Assessment for the Fontana Campus Master Plan Environmental Impact Report Project, City of Fontana, San Bernardino County, California*, Cogstone, November 2021. (Appendix G)

A complete copy of this study is in Appendix G of this Draft EIR.

5.8.1 Environmental Setting

5.8.1.1 REGULATORY BACKGROUND

Federal

Archaeological Resources Protection Act

The Archaeological Resources Protection Act (US Code, Title 16, Sections 470aa–mm) became law on October 31, 1979, and has been amended four times. It regulates the protection of archaeological resources and sites that are on federal and Indian lands.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (US Code, Title 25, Sections 3001 et seq.) is a federal law passed in 1990 that established 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

California Public Resources Code

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

PRC Sections 5097.9 to 5097.991 protect Native American historical and cultural resources and sacred sites and identify the powers and duties of the NAHC. They also require notification to descendants regarding Native American human remains and provide for treatment and disposition of human remains and associated grave goods.

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California Health and Safety Code

California Health and Safety Code Section 7050.5 requires that if human remains are discovered on the project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation into 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 for the excavation, or to his or her authorized representative. If the coroner determines that the remains are not subject to his or her authority and recognizes or has reason to believe the human remains are those of a Native American, he or she shall contact, by telephone within 24 hours, the NAHC.

California Register of Historical Resources

The California Register of Historical Resources is the state version of the National Register of Historic Places (see also Section 5.3, *Cultural and Paleontological Resources*). It was enacted in 1992 and became official January 1, 1993. The California Register was established to serve as an authoritative guide to the state's significant historical and archaeological resources. Resources that may be eligible for listing include buildings, sites, structures, objects, and historic districts. According to subsection (c) of PRC Section 5024.1, a resource may be listed as a historical resource in the California Register if it meets any of the four National Register criteria.

California Senate Bill 18

Native American prehistoric, archaeological, cultural, spiritual, and ceremonial 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 was signed into law September 2004 and went into effect on March 1, 2005. It placed new requirements on local governments for developments within or near "traditional tribal cultural places" (TTCP). SB 18 requires local jurisdictions to provide opportunities for the involvement of California Native American tribes in the land planning process for the purpose of preserving traditional cultural places. The Final Tribal Guidelines recommend that the NAHC provide written information as soon as possible but no later than 30 days after receiving a request 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 to determine whether the project would have an adverse impact on the TTCP. There is no statutory limit on the consultation duration. Forty-five days before the action is publicly considered by the local government council, the local government refers action to agencies, following the CEQA public review time frame. The CEQA public distribution list may include tribes listed by the NAHC who have requested consultation, or it may not.

SB 18 is triggered before the adoption, revision, amendment, or update of a city's or county's general plan. Because the proposed project does not require these discretionary actions from the City of Fontana, the proposed project is not subject to SB 18.

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 TCR into the CEQA process. It requires that impacts to TCRs be

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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 an ND or MND are subject to AB 52.

Under AB 52, TCR is defined sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources. Or the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a historical resource.

AB 52 requires consultation with tribes at an early stage to determine whether the project would have an adverse impact on TCRs and to define mitigation to protect them. 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. The tribes have 30 days after receiving the notification to respond if they wish to engage in consultation. The lead agency must initiate consultation within 30 days of receiving the request from a tribe.

AB 52 requires that the California Native American tribes first need to formally request to be notified of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe. The District did not receive formal requests from any of the tribes.

5.8.1.2 EXISTING CONDITIONS

A sacred lands file search was conducted by the NAHC for the project site. The NAHC responded on September 2, 2021, and indicated that there are no sacred lands or resources known within the project site (Cogstone 2021). Additionally, the NAHC identified the following 12 local Native American individuals/organizations that may have knowledge of cultural resources and/or sacred lands within or near the project site:

- Agua Caliente Band of Cahuilla Indians
- Gabrieleno Band of Mission Indians – Kizh Nation
- Gabrieleno/Tongva San Gabriel Band of Mission Indians
- Gabrielino/Tongva Nation
- Gabrielino Tongva Indians of California Tribal Council
- Gabrielino-Tongva Tribe
- Morongo Band of Mission Indians
- Quechan Tribe of the Fort Yuma Reservation
- San Manuel Band of Mission Indians
- Santa Rosa Band of Cahuilla Indians
- Serrano Nation of Mission Indians
- Soboba Band of Luiseno Indians

PlaceWorks sent query letters via email to the 12 tribes, providing location of the project and asking for information about potential resources at or near the project site. The query letters also indicated that although

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no tribes have formally submitted a written request to be notified of projects within the District's jurisdiction pursuant to AB 52, the District is willing to meet and consult with the tribe if requested. Responses were received from the Agua Caliente Band of Cahuilla Indians and Quechan Tribe of the Fort Yuma Reservation indicating that the project site is not within their tribe's traditional use area and they have no comments on the project. A response was also received from the San Manuel Band of Mission Indians indicating that the project site is in close proximity to previously identified tribal cultural resources site and they would like to consult with the District.

5.8.2 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 § 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.

5.8.3 Plans, Programs, and Policies

Plans, programs, and policies (PPP), including applicable regulatory requirements and conditions of approval for tribal cultural resources, are identified below.

PPP TCR-1 Pursuant to California Health and Safety Code Section 7050.5, if human remains are discovered on the project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation. 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 the NAHC by telephone within 24 hours.

PPP CUL-1 All construction activities will be conducted in accordance with Section 7050.5 of the California Health and Safety Code regarding the potential discovery of human remains. In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the County Coroner has been contacted.

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If applicable, the Native American Heritage Commission will be responsible for designating the most likely descendant (MLD), as required by Section 5097.98 of the California Public Resources Code. If the landowner rejects the recommendations of the MLD, the burial location would be determined in compliance with California Public Resources Code, Section 5097.98.

5.8.4 Environmental Impacts

5.8.4.1 IMPACT ANALYSIS

The following impact analysis addresses the thresholds of significance; the applicable thresholds are identified in brackets after the impact statement.

Impact 5.8-1: **The proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 21074 and that is listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k). [Threshold TCR-1.i]**

The project site is currently vacant and there is no cultural resource on-site that is listed or eligible for listing in the California Register (Cogtone 2021). One historic resource from the early 1950s, a concrete slab foundation (20211005.SD.001) containing five troughs, was identified within the project site. But this find was determined to be ineligible under California Register criteria. No tribal cultural resource, as defined in PRC Section 21074, was identified within the project site. Therefore, no impact would occur.

Level of Significance Before Mitigation: No impact.

Impact 5.8-2: **The proposed project would cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency to be significant pursuant to criteria in Public Resources Code section 5024.1(c). [Threshold TCR-1.ii]**

The project site is vacant without any above-grade structures and is surrounded by commercial and residential uses to the north and east, and vacant lands to the west and south. The NAHC's sacred lands file search result was negative. Twelve tribes were contacted for information related to TRCs in the project site. A TCR is a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either in or eligible for inclusion in the California Register of Historical Resources or is a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a TCR (PRC Sections 21074[a][1], [2]). Out of the 12 tribes that received inquiries about the proposed project, 3 responded—the Agua Caliente Band of Cahuilla Indians, the Quechan Tribe of the Fort Yuma Reservation, and the San Manuel Band of Mission Indians. The Quechan Tribe of the Fort Yuma Reservation and the Agua Caliente Band of Cahuilla Indians indicated that they have no comments. The San Manuel Band of Mission Indians indicated that in the review of their files, the project site is northwest of the Serrano Village site where several archaeological isolates have been identified. They indicated that the project site is of great concern to them, and they would like to consult with the District. The District initiated the requested consultation, stating in an email on December 17, 2021, that the San Manuel Band of Mission Indians did not submit a formal

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request to be notified of the District's projects per AB 52, but the District would like to meet with the tribe in the interest of cooperation and full disclosure. On April 1, 2022, in an email to Ryan Nordness of San Manuel Band of Missions Indians, the District sent a Cultural Resources report prepared for the project site and an available version of the Cultural Resources and Tribal Cultural Resources sections of the Draft EIR with mitigation measures for review and comment and requested that the tribe provide some available dates and times for the consultation. The tribe confirmed receipt of the District's email and the District addressed their concern via email correspondence in April 2022. The San Manuel Band of Mission Indians requested that the District provide a mitigation measure language pertaining to the inadvertent discovery of human remains, which was already included as part of the existing regulatory requirements under PPP CUL-1. In an email dated April 18, 2022, Mr. Nordness of the San Manuel Band of Mission Indians indicated that the District's response is sufficient and concluded the consultation. No further consultation is required per AB 52.

As discussed in Section 5.3, *Cultural Resources*, for Impact 5.3-2, based on the history of ground disturbance, the results of the pedestrian survey and the cultural records search, and the negative sacred lands file search from the NAHC, the Cultural and Paleontological Resources Assessment concluded that the project site has low sensitivity for archaeological resources. However, during ground-disturbing activities, previously unidentified archaeological and/or TCR could be encountered. The San Manuel Band of Mission Indians commented that there are nearby archaeological sites and ground-disturbing activities could potentially unearth subsurface TCRs. The disturbance of these TCRs could cause a substantial adverse change in the significance of the resource(s) if not mitigated.

Level of Significance Before Mitigation: Potentially significant impact.

5.8.5 Cumulative Impacts

TCRs may be found throughout Fontana, but information about them is much more difficult to obtain than for most archaeological resources. Identification of TCRs requires coordination with Native American tribes, and their precise location is often difficult to determine because they may only be documented through the oral history of the tribe. As with the proposed project, each cumulative project from the cumulative projects list (see Draft EIR Chapter 4, *Environmental Setting*, Table 4-1, *Cumulative Development Land Use Summary*) is required to comply with AB 52 and PRC Section 21083.2(i), which addresses accidental discoveries of archaeological sites and resources, including tribal cultural resources; therefore, any discoveries of TCRs caused by the project or related projects would be mitigated to a less than significant level. Therefore, project impacts would not be cumulatively considerable.

5.8.6 Level of Significance Before Mitigation

The following impact would be less than significant: 5.8-1.

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

- **Impact 5.8-2** Project implementation could result in an adverse change in Native American resources during ground disturbing construction activities.

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5.8.7 Mitigation Measures

Impact 5.8-2

Mitigation Measure CUL-1 and PPP CUL-1 in Section 5.3, *Cultural Resources*, would also reduce impacts to TCR. In addition, the following mitigation measure is specific to potential TCR impacts of the proposed project.

TCR-1 During grading and site preparation activities, the construction contractor retained by the Chaffey Community College District (District) shall monitor all construction activities. In the event that any pre-contact and/or historic-era cultural resources are inadvertently unearthed, work shall be halted immediately within 60 feet of the discovery and the construction contractor shall inform the project manager of the District. Construction activities may continue in other areas. As detailed in Mitigation Measure CUL-1, the District shall retain a qualified archaeologist that meets the Secretary of the Interior's Standards and Guidelines for Professional Qualifications in Archaeology to analyze the significance of the discovery. Additionally, the San Manuel Band of Missions Indians Cultural Resources Department (SMBMI) shall be contacted, and be provided information regarding the nature of the find, so as to provide Tribal input with regards to significance and treatment. If the resources are Native American in origin and deemed significant as defined by CEQA Guidelines, a cultural resources monitoring and treatment plan shall be prepared by a qualified archaeologist in coordination with SMBMI and all subsequent finds shall be subject to the plan. The plan shall allow for a monitor to be present that represents SMBMI for the remainder of the project development, should SMBMI elect to place a monitor on-site. The plan will outline the treatment plan for the find to retain it/them in the form and/or manner the Tribe deems appropriate for educational, cultural and/or historic purposes.

The District shall disseminate any and all archaeological/cultural documents created as part of the proposed project (isolated records, site records, survey reports, testing reports, etc.) to SMBMI and the District shall, in good faith, consult with SMBMI through the project development. Preservation in place (i.e., avoidance) is the preferred manner of treatment.

5.8.8 Level of Significance After Mitigation

Because the proposed project would require ground-disturbing activities for construction, there is potential to uncover TCRs. Mitigation Measure TCR-1 would reduce potential impacts associated with tribal cultural resources to a level that is less than significant. Mitigation Measure CUL-1 will also require inadvertent discovery of cultural resources to be evaluated by a qualified archaeologist and a formal treatment plan to be developed. Therefore, no significant unavoidable adverse impacts relating to tribal cultural resources remain.

5.8.9 References

Cogstone. 2021, November. Cultural and Paleontological Resources Assessment for the Fontana Campus Master Plan Environmental Impact Report Project, City of Fontana, San Bernardino County, California. DEIR Appendix G.

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