

4.16 Tribal Cultural Resources

This section describes the existing setting for Tribal Cultural Resources (TCRs), identifies associated regulatory requirements, evaluates potential impacts, and establishes mitigation measures related to implementation of the Pacifica Project (proposed project or project). This analysis is based on the Negative Cultural Resources Inventory Report prepared for the proposed project (Appendix E), as well as Assembly Bill (AB) 52 consultation between the City of Oceanside (City) and interested tribes.

4.16.1 Existing Conditions

As described in Section 4.4, Cultural Resources, the project site falls within Sections 4 and 33 of Township 10 South, 11 South, Range 4 West of the Morro Hill, California 7.5-minute U.S. Geological Survey Topographic Quadrangle Map. The project site is bound to the north by single-family homes fronting Claire Drive; to the east by single-family homes fronting Roja Drive; to the south by single-family homes fronting North Redondo Drive; and to the west by open space. The San Luis Rey River is located approximately 0.4 miles southeast of the project site.

According to the Geotechnical Evaluation Report (Appendix F), artificial fill was encountered to depths ranging between 2 to 25.5 feet below existing grade with the average depth across all borings ranging from 10 to 15 feet deep and located within the majority of the project site. Alluvial soils (Quaternary Alluvium) were encountered in six borings to depths ranging between 11 to 46.5 feet below existing grades and located within the central sections of the project site. Tertiary-age Santiago Formation (sedimentary bedrock) was encountered in eight borings at depths between 2 to 26.5 feet below existing grades and located in the northern and southern sections of the project site. The site was previously an alluvial canyon underlain by young to older alluvial deposits and bedrock of the Santiago Formation.

Historical maps indicate that the property was located within a canyon until around 1946, when an earthen dam was constructed, creating a large reservoir. Over time, the reservoir's storage volumes were reduced, and in 1967 the reservoir appears to have been drained and was subsequently filled to create the building pad for the school site. School records indicate the school was built in 1972 and opened in 1980. Buildings first appear in historical aerial photographs in 1978. The buildings were ultimately demolished in 2004 after the buildings were found to be unsafe to withstand an earthquake and modular structures were used until the school closed in 2007. The site now includes remnant pavement, parking lot, and playground areas, as well as curbs, an overgrown sandbox, a shade structure, and a large field regularly mowed (for fire abatement) about every 2.5 months per the school district facilities department (Appendix F).

South Coastal Information Center Records Search Results

As described in Section 4.4, Cultural Resources, Dudek conducted a records search at the South Coastal Information Center (SCIC) for the project site and a 1-mile radius buffer around the project on October 28, 2022 (Confidential Appendix A to Appendix E of this environmental impact report). The records search results indicate that 56 previous cultural resources studies have been conducted within 1 mile of the project site. The SCIC records search also revealed that no cultural resources have been recorded within the project site. The records search identified a total of 32 cultural resources within the 1-mile search radius of the project site (see Table 4.4-2 in Section 4.4). Of the total 32 resources identified in the 1-mile search radius of the project site, 26 are prehistoric resources, 5 are historic resources, and 1 is a multicomponent site. No historic addresses have been recorded within the project site; however, one historic address is located within the within the 1-mile search radius of the project site.

Native American Heritage Commission and Tribal Correspondence

As described in Section 4.4 Cultural Resources, a search of the Native American Heritage Commission (NAHC) Sacred Lands File was requested by Dudek on September 9, 2022, for the project site and a 1-mile buffer. The Sacred Lands File consists of a database of known Native American resources. These resources may not be included in SCIC database. The NAHC replied on November 8, 2022, and the results were negative. The NAHC additionally provided a list of Native American tribes and individuals/organizations with traditional geographic associations that might have knowledge of cultural resources in this area.

Outreach letters were mailed on November 28, 2022, to all Native American group representatives included on the NAHC contact list (Appendix E). The purpose of these letters is to solicit additional information relating to Native American resources that may be impacted by the project. Native American representatives were requested to define a general area where known resources intersect the project site. The Rincon Band of Luiseño Indians responded on December 12, 2022, recommending the presence of a Rincon tribal monitor during the pedestrian survey and a copy of the cultural resources study. The Viejas Band of Kumeyaay Indians responded on December 28, 2022, and requested a Kumeyaay Cultural monitor to be on site during ground-disturbing activity and would like to be informed of any new developments such as inadvertent discovery of cultural artifacts, cremation sites, or human remains. The NAHC correspondence is included in Appendix B to Appendix E.

In compliance with AB 52, the City, as lead agency, is responsible for conducting government-to-government consultation with tribal entities.

Intensive Pedestrian Survey

As described in Section 4.4 Cultural Resources, Dudek archaeologist Makayla Murillo conducted an intensive level pedestrian survey of the project site on September 21, 2022. Saving Sacred Sites Native American monitor Vii Sialoi participated in the pedestrian survey. All survey work was conducted employing standard archaeological procedures and techniques consistent with the Secretary of the Interior Standards. The survey involved walking 15-meter interval survey transects in a north-south direction for the project site. Within the transects, the ground surface was examined for prehistoric artifacts (e.g., flaked stone tools, tool-making debris, stone milling tools, ceramics, fire-affected rock), soil discoloration that might indicate the presence of a cultural midden, soil depressions, features indicative of the current or former presence of structures or buildings (e.g., standing exterior walls, post holes, foundations), and historic artifacts (e.g., metal, glass, ceramics, building materials). Ground disturbances such as burrows, cut banks, and drainages were also visually inspected for exposed subsurface materials.

The entire project site has been entirely disturbed, as evidenced by the presence of paved concrete and asphalt foundations, streetlights, children's sandbox, a standing shade structure, and parking lot associated with the previous public elementary school. Approximately 36% of the project site is paved with asphalt or concrete, while the rest of the project site consists of vegetation, including non-native grass, flat-topped buckwheat, and ice plants. A few non-native trees consisting of palm trees, eucalyptus, and peppertrees are present within the project site.

4.16.2 Regulatory Setting

Federal

National Historic Preservation Act

The National Historic Preservation Act (16 USC 470 et seq.) establishes the federal policy for preservation of historical resources, including archaeological sites, and sets in place a program for the preservation of historic properties by requiring federal agencies to consider effects to significant cultural resources (e.g., historic properties) prior to undertakings.

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of projects on historic properties (resources included in or eligible for the National Register of Historic Places [NRHP]). It also gives the Advisory Council on Historic Preservation and the state historic preservation offices an opportunity to consult.

Executive Order 11593, Protection and Enhancement of the Cultural Environment

Executive Order 11593 (36 FR 8921) (1) orders the protection and enhancement of the cultural environment through requiring federal agencies to administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; (2) initiates measures necessary to direct their policies, plans, and programs in such a way that federally owned sites, structures, and objects of historical, architectural, or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; and (3) in consultation with the Advisory Council on Historic Preservation, institutes procedures to assure that federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archaeological significance (16 USC 470-1).

National Register of Historic Places

The NRHP is the nation's official list of historic places. The National Park Services oversees the register, which requires that a property or resource eligible for listing in the register meet one or more of the following four criteria at the national, state, or local level to ensure integrity and obtain official designation:

- The property is associated with events that have made a significant contribution to the broad patterns of our history.
- The property is associated with the lives of persons significant to our past. Eligible properties based on this criterion are generally those associated with the productive life of the individual in the field in which the person achieved significance.
- The property embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components lack individual distinction.
- The property has yielded, or is likely to yield, information important to prehistory or history.

In addition to meeting at least one of these four criteria, listed properties must also retain sufficient physical integrity of those features necessary to convey historic significance. The register has identified the following seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association.

Properties are nominated to the register by the state historic preservation officer of the state in which the property is located, by the federal preservation officer for properties under federal ownership or control, or by the tribal preservation officer if on tribal lands. Listing in the NRHP provides formal recognition of a property's historic, architectural, or archaeological significance based on national standards used by every state. Once a property is listed in the NRHP, it becomes searchable in the NRHP database of research information. Documentation of a property's historic significance helps encourage preservation of the resource.

State

California Register of Historical Resources

Under the California Environmental Quality Act (CEQA), the term "historical resource" includes but is not limited to "any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California" (California Public Resources Code Section 5020.1[j]). In 1992, the California legislature established the California Register of Historical Resources (CRHR) "to be used by state and local agencies, private groups, and citizens to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change" (California Public Resources Code Section 5024.1[a]). A resource is eligible for listing in the CRHR if the State Historical Resources Commission determines that it is a significant resource and that it meets any of the following NRHP criteria:

- Associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
- Associated with the lives of persons important in our past.
- Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- Has yielded, or may be likely to yield, information important in prehistory or history (California Public Resources Code section 5024.1[c]).

Resources less than 50 years old are not considered for listing in the CRHR but may be considered if it can be demonstrated that sufficient time has passed to understand the historical importance of the resource (see 14 CCR, Section 4852[d][2]).

The CRHR protects cultural resources by requiring evaluations of the significance of prehistoric and historic resources. The criteria for the CRHR are nearly identical to those for the NRHP, and properties listed or formally designated as eligible for listing on the NRHP are automatically listed on the CRHR, as are the state landmarks and points of interest. The CRHR also includes properties designated under local ordinances or identified through local historical resource surveys. The State Historic Preservation Officer maintains the CRHR.

California Environmental Quality Act

As described further below, the following CEQA statutes and CEQA Guidelines are of relevance to the analysis of archaeological and historic resources:

1. California Public Resources Code Section 21083.2(g): Defines "unique archaeological resource."
2. California Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5(a): Define historical resources. In addition, CEQA Guidelines Section 15064.5(b) defines the phrase

“substantial adverse change in the significance of an historical resource” and defines the circumstances when a project would materially impair the significance of a historical resource.

3. California Public Resources Code Section 5097.98 and CEQA Guidelines Section 15064.5(e): Set forth standards and steps to be employed following the accidental discovery of human remains in any location other than a dedicated ceremony.
4. California Public Resources Code Sections 21083.2(b)-(c) and CEQA Guidelines Section 15126.4: Provide information regarding the mitigation framework for archaeological and historic resources, including options of preservation-in-place mitigation measures; preservation-in-place is the preferred manner of mitigating impacts to significant archaeological sites because it maintains the relationship between artifacts and the archaeological context, and may also help avoid conflict with religious or cultural values of groups associated with the archaeological site(s).

Under CEQA, a project may have a significant effect on the environment if it may cause “a substantial adverse change in the significance of an historical resource” (California Public Resources Code Section 21084.1; CEQA Guidelines Section 15064.5[b]). If a site is either listed or eligible for listing in the CRHR, or if it is included in a local register of historic resources or identified as significant in a historical resources survey (meeting the requirements of California Public Resources Code Section 5024.1[q]), it is a “historical resource” and is presumed to be historically or culturally significant for purposes of CEQA (California Public Resources Code Section 21084.1; CEQA Guidelines Section 15064.5[a]). The lead agency is not precluded from determining that a resource is a historical resource even if it does not fall within this presumption (California Public Resources Code Section 21084.1; CEQA Guidelines Section 15064.5[a]).

A “substantial adverse change in the significance of an historical resource” reflecting a significant effect under CEQA means “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired” (CEQA Guidelines Section 15064.5[b][1]; California Public Resources Code Section 5020.1[q]). In turn, the significance of a historical resource is materially impaired when a project:

1. Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register; or
2. Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
3. Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register as determined by a lead agency for purposes of CEQA.

Native American Historic Cultural Sites (California Public Resources Code Section 5097 et seq.)

California Public Resources Code Sections 5097–5097.6 identify that the unauthorized disturbance or removal of archaeological or historical resources located on public lands is a misdemeanor. It prohibits the knowing destruction of objects of antiquity without a permit (express permission) on public lands, and it provides for criminal sanctions.

This section was amended in 1987 to require consultation with the NAHC whenever Native American graves are found. Violations that involve taking or possessing remains or artifacts are felonies.

California Public Resources Code, Section 5097.5, states that “no person shall knowingly and willfully excavate upon, or remove, destroy, injure, or deface, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historic feature situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.”

Assembly Bill 52

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

1. listed or eligible for listing in the CRHR or a local register of historical resources, or
2. determined by a lead agency to be a TCR.

California Native American Graves Protection and Repatriation Act

The California Native American Graves Protection and Repatriation Act (California Repatriation Act) (25 USC, 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.

Local

City of Oceanside General Plan

Cultural resources are addressed in the City of Oceanside General Plan Environmental Resources Management Element and the Land Use Element. The Environmental Resources Management Element identifies several

important cultural sites, including the nearby Mission San Luis Rey, and encourages preservation of such sites when planning development. Specifically, the Environmental Resource Management Element has the following objective for cultural sites (City of Oceanside 2002a):

- Encourage the conservation and protection of significant cultural resources for future scientific, historic, and educational purposes.

In order to achieve this objective, the City will:

1. Encourage the use of “O” zoning and open space easements for the preservation of cultural sites.
2. Encourage private organizations to acquire, restore, and maintain significant historical sites.
3. Encourage investigation by the appropriate groups (i.e., museums, university students, etc.) to explore and record the significant archaeological sites in the areas and to forward this information to appropriate County agencies for inclusion in the San Diego County Natural Resources Inventory.

The Land Use Element provides designations for historic areas in order to preserve cultural resources. The Land Use Element states the following policy relevant to historic sites (City of Oceanside 2002b):

- 1.33 Historic Areas and Sites, Policy A: The City shall utilize adopted criteria, such as the “Mission San Luis Rey Historic Area Development Program and Design Guidelines,” to preserve and further enhance designated historic or cultural resources.

The Land Use Element further contains the following policies regarding cultural resources:

- 3.2A: The City shall encourage open space land use designations and open space land use designations and open space zoning or open space easements for the preservation of cultural resources.
- 3.2B: The City shall encourage the acquisition, restoration, and/or maintenance of significant cultural resources by private organizations.
- 3.2C: Cultural resources that must remain in-situ to preserve their significance shall be preserved intact and interpretive signage and protection shall be provided by project developers.
- 3.2D: An archaeological survey report shall be prepared by a Society of Professional Archaeologists certified archaeologist for a project proposed for grading or development if any of the following conditions are met:
 1. The site is completely or largely in a natural state;
 2. There are recorded sites on nearby properties;
 3. The project site is near or overlooks a water body (creek, stream, lake, freshwater lagoon);
 4. The project site includes large boulders and/or oak trees; or
 5. The project site is located within a half-mile of Mission San Luis Rey.

City of Oceanside Historic Preservation Ordinance

Chapter 14A of the City's Municipal Code, referred to as the Historic Preservation Ordinance, identifies evaluation criteria under which a historical site or area may be designated in Section 14A.6, as follows:

- a) It exemplifies or reflects special elements of the city's cultural, social, economic, political, aesthetic, engineering, or architectural history; or
- b) It is identified with persons or events significant in local, state, or national history; or
- c) It embodies distinctive characteristics of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship; or
- d) It is representative of the notable work of a builder, designer, or architect; or
- e) It is found by the council to have significant characteristics which should come under the protection of this chapter.

4.16.3 Thresholds of Significance

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

1. Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:
 - a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
 - b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

4.16.4 Impacts Analysis

Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

A Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or

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

Under California's AB 52, TCRs are defined as archaeological resources that are eligible for or listed in the CRHR, or resources that the lead agency determines to be a TCR with a substantial burden of evidence. To date, no TCRs have been identified that would be impacted by project implementation. Tribal consultation with the City is ongoing; however, to date, the City received one letter from the Rincon Band of Luiseño Indians on March 9, 2023, recommending tribal monitoring for all ground-disturbing activities.

As described above, outreach letters were mailed on November 28, 2022, to all Native American group representatives included on the NAHC contact list (Appendix E). The purpose of these letters is to solicit additional information relating to Native American resources that may be impacted by the project. Native American representatives were requested to define a general area where known resources intersect the project site. The Rincon Band of Luiseño Indians responded on December 12, 2022, recommending the presence of a Rincon tribal monitor during the pedestrian survey and a copy of the cultural resources study. The Viejas Band of Kumeyaay Indians responded on December 28, 2022, and requested a Kumeyaay Cultural monitor to be on site during ground-disturbing activity and would like to be informed of any new developments such as inadvertent discovery of cultural artifacts, cremation sites, or human remains.

The NAHC correspondence and tribal letters have been forwarded to the City and are included in Appendix B to Appendix E. In compliance with AB 52, the City, as lead agency, is responsible for conducting government to government consultation with tribal entities. No other communications between Dudek and the tribes has occurred since then.

As described in Section 4.4 of this EIR, there is low sensitivity of identifying intact subsurface cultural resources deposits during project implementation. While considered unlikely based on the SCIC records search and correspondence with the tribes, there remains the potential for the project to encounter previously unknown and unanticipated TCRs during construction of the proposed project. Therefore, as recommended in the Negative Cultural Resources Inventory Report (Appendix E), in the event that archaeological resources (sites, features, or artifacts) are exposed during construction activities for the project, potential impacts could occur, and mitigation would be required.

Additionally, although no evidence of human remains was discovered within the project site during the field surveys, and the project site is not used as a cemetery nor otherwise known to contain human remains, this does not preclude finding human remains during project excavation and grading activities. As a standard construction practice, and in accordance with California Health and Safety Code Section 7050.5, if human remains are found,

the County Coroner shall be immediately notified of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are, or are believed to be, Native American, he or she shall notify the NAHC in Sacramento within 24 hours. In accordance with California Public Resources Code Section 5097.98, the NAHC must immediately notify the person or persons it believes to be the Most Likely Descendant from the deceased Native American. The Most Likely Descendant shall complete inspection within 48 hours of being granted access to the site and make recommendations for the treatment and disposition, in consultation with the property owner, of the human remains.

To ensure project development would not result in potential impacts to TCRs or human remains, the project would implement mitigation measures (MM) **CUL-1**, **MM-CUL-2**, and **MM-TCR-1** through **MM-TCR-8**, outlined below. Prior to implementation of the recommendations in the Negative Cultural Resources Inventory Report (Appendix E) and implementation of mitigation measures, potential impacts to TCRs would be **potentially significant**.

4.16.6 Cumulative Analysis

According to CEQA, a significant impact could occur if a project would cause a substantial adverse change in the significance of a TCR, defined in California 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. The cumulative study area includes the project area and all cumulative project sites.

Regarding historic resources, no historic resources exist at the project site. Thus, no historical resources, as defined under CEQA, will be impacted by the project. This includes no direct, indirect, or cumulative impacts. Regarding TCRs, while considered unlikely based on the SCIC records search and correspondence with the tribes, there remains the potential for the project to encounter previously unknown and unanticipated TCRs during construction of the proposed project. Other cumulative projects being analyzed under CEQA would also be required to perform a records search; the City would need to conduct tribal outreach according to AB 52 and/or Senate Bill 18; and potential impacts to TCRs would need to be analyzed and mitigated.

The proposed project would implement **MM-CUL-1**, **MM-CUL-2**, and **MM-TCR-1** through **MM-TCR-8**. These mitigation measures require tribal monitoring during ground disturbance, establish procedures if a TCR is found, and protect human remains. There is the potential for nearby cumulative projects, especially those that would result in ground-disturbing activities that would impact intact native soils, to inadvertently discover and adversely affect historical resources, archaeological resources, or TRCs. Cumulative projects would be required to implement appropriate mitigation measures to reduce potential impacts, as required by state and local laws and regulations. When considered with other foreseeable projects, cumulative impacts would not be cumulatively considerable. Cumulative impacts would be **less than significant**.

4.16.7 Mitigation Measures

Although impacts to TCRs are not anticipated, to ensure project development would not result in potential impacts to tribal cultural resources, the project would implement **MM-CUL-1** and **MM-CUL-2** (as listed in Section 4.4), in addition to the following mitigation measures (**MM-TCR-1** through **MM-TCR-8**):

MM-TCR-1 Prior to the issuance of a Grading Permit, the Applicant/Owner shall enter into a pre-excavation agreement, otherwise known as a Tribal Cultural Resources Treatment and Tribal Monitoring

Agreement with the “Traditionally and Culturally Affiliated (TCA) Native American Monitor associated with a TCA Luiseño Tribe.” A copy of the agreement shall be included in the Grading Plan Submittals for the Grading Permit. The purpose of this agreement shall be to formalize protocols and procedures between the Applicant/Owner and the “Traditionally and Culturally Affiliated (TCA) Native American Monitor associated with a TCA Luiseño Tribe” for the protection and treatment of, including but not limited to, Native American human remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and tribal cultural resources, located and/or discovered through a monitoring program in conjunction with the construction of the proposed project, including additional archaeological surveys and/or studies, excavations, geotechnical investigations, grading, and all other ground disturbing activities. At the discretion of the Luiseño Native American Monitor, artifacts may be made available for 3D scanning/printing, with scanned/printed materials to be curated at a local repository meeting the federal standards of 36CFR79.

- MM-TCR-2 Prior to the issuance of a Grading Permit, the Applicant/Owner or Grading Contractor shall provide a written and signed letter to the City of Oceanside Planning Division stating that a Qualified Archaeologist and Luiseño Native American Monitor have been retained at the Applicant/Owner or Grading Contractor’s expense to implement the monitoring program, as described in the pre-excavation agreement.
- MM-TCR-3 The Qualified Archaeologist shall maintain ongoing collaborative consultation with the Luiseño Native American monitor during all ground disturbing activities. The requirement for the monitoring program shall be noted on all applicable construction documents, including demolition plans, grading plans, etc. The Applicant/Owner or Grading Contractor shall notify the City of Oceanside Planning Division of the start and end of all ground disturbing activities.
- MM-TCR-4 The Qualified Archaeologist and Luiseño Native American Monitor shall attend all applicable pre-construction meetings with the General Contractor and/or associated Subcontractors to present the archaeological monitoring program. The Qualified Archaeologist and Luiseño Native American Monitor shall be present on-site full-time during grubbing, grading and/or other ground altering activities, including the placement of imported fill materials or fill used from other areas of the project site, to identify any evidence of potential archaeological or tribal cultural resources. All fill materials shall be absent of any and all tribal cultural resources.
- MM-TCR-5 In order for potentially significant archaeological artifact deposits and/or cultural resources to be readily detected during mitigation monitoring, a written “Controlled Grade Procedure” shall be prepared by a Qualified Archaeologist, in consultation with the Luiseño Native American monitor, other TCA Luiseño Tribes that have participated in the state-prescribed process for this project, and the Applicant/Owner, subject to the approval of City representatives. The Controlled Grade Procedure shall establish requirements for any ground disturbing work with machinery occurring in and around areas the Qualified Archaeologist and Luiseño Native American monitor determine to be sensitive through the cultural resource mitigation monitoring process. The Controlled Grade Procedure shall include, but not be limited to, appropriate operating pace, increments of removal, weight and other characteristics of the earth disturbing equipment. A copy of the Controlled Grade Procedure shall be included in the Grading Plan Submittals for the Grading Permit.

MM-TCR-6 The Qualified Archaeologist or the Luiseño Native American monitor may halt ground disturbing activities if unknown tribal cultural resources, archaeological artifact deposits or cultural features are discovered. Ground disturbing activities shall be directed away from these deposits to allow a determination of potential importance. Isolates and clearly non-significant deposits will be minimally documented in the field, and before grading proceeds these items shall be secured until they can be repatriated. If items cannot be securely stored on the project site, they may be stored in off-site facilities located in San Diego County.

If the Qualified Archaeologist and Luiseño Native American monitor determine that the unearthed tribal cultural resource, artifact deposits or cultural features are considered potentially significant TCA Luiseño Tribes that have participated in the state-prescribed consultation process for this project shall be notified and consulted regarding the respectful and dignified treatment of those resources. The avoidance and protection of the significant tribal cultural resource and/or unique archaeological resource is the preferable mitigation. If, however, it is determined by the City that avoidance of the resource is infeasible, and it is determined that a data recovery plan is necessary by the City as the Lead Agency under CEQA, TCA Luiseño Tribes that have participated in the state-prescribed consultation process for this project shall be notified and consulted regarding the drafting and finalization of any such recovery plan. For significant tribal cultural resources, artifact deposits or cultural features that are part of a data recovery plan, an adequate artifact sample to address research avenues previously identified for sites in the area will be collected using professional archaeological collection methods. The data recovery plan shall also incorporate and reflect the tribal values of the TCA Luiseño Tribes that have participated in the state-prescribed consultation process for this project. If the Qualified Archaeologist collects such resources, the Luiseño Native American monitor must be present during any testing or cataloging of those resources. Moreover, if the Qualified Archaeologist does not collect the tribal cultural resources that are unearthed during the ground disturbing activities, the Luiseño Native American monitor, may at their discretion, collect said resources and provide them to the appropriate TCA Luiseño Tribe, as determined through the appropriate process, for respectful and dignified treatment in accordance with the Tribe's cultural and spiritual traditions. Ground disturbing activities shall not resume until the Qualified Archaeologist, in consultation with the Luiseño Native American Monitor, deems the cultural resource or feature has been appropriately documented and/or protected.

MM-TCR-7 The landowner shall relinquish ownership of all tribal cultural resources unearthed during the cultural resource mitigation monitoring conducted during all ground disturbing activities, and from any previous archaeological studies or excavations on the project site to the appropriate TCA Luiseño Tribe, as determined through the appropriate process, for respectful and dignified treatment and disposition, including reburial at a protected location on-site, in accordance with the Tribe's cultural and spiritual traditions. All cultural materials that are associated with burial and/or funerary goods will be repatriated to the Most Likely Descendant as determined by the Native American Heritage Commission per California Public Resources Code Section 5097.98. No tribal cultural resources shall be subject to curation.

MM-TCR-8 Prior to the release of the grading bond, a monitoring report and/or evaluation report, if appropriate, which describes the results, analysis and conclusions of the archaeological monitoring program (e.g., data recovery plan) shall be submitted by the Qualified Archaeologist, along with the

Luiseño Native American monitor's notes and comments, to the City of Oceanside Planning Division for approval.

4.16.8 Level of Significance After Mitigation

Project implementation of the recommendations in the Negative Cultural Resources Inventory Report (Appendix E) and implementation of mitigation measures **MM-CUL-1**, **MM-CUL-2**, and **MM-TCR-1** through **MM-TCR-8**, would ensure that potential impacts to TCRs, including human remains, would remain **less than significant**.

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FIGURES

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