

4.16 TRIBAL CULTURAL RESOURCES

4.16.1 Introduction

The section evaluates potential impacts to Native American tribal cultural resources that could result from future housing development on the housing sites facilitated by the Project. Tribal cultural resources include landscapes, sacred places, or objects with cultural value to a California Native American Tribe. Other potential impacts to cultural resources (i.e., prehistoric, historic, and disturbance of human remains) are evaluated in **Section 4.4: Cultural Resources**, and potential impacts to paleontological resources are addressed in **Section 4.6: Geology and Soils**. The analysis consists of a summary of the existing conditions, the regulatory framework, a discussion of the Project's potential impacts on tribal cultural resources, and identification of measures that may avoid and/or reduce impacts, as needed.

4.16.2 Regulatory Setting

Federal

National American Graves Protection and Repatriation Act of 1990

The Native American Graves Protection and Repatriation Act of 1990 describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, referred to collectively in the statute as cultural items, with which they can show a relationship of lineal descent or cultural affiliation. This statute aims to provide greater protection for Native American burial sites and more careful control over the removal of Native American remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands. It requires that Indian tribes or Native Hawaiian organizations be consulted whenever archaeological investigations encounter or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on federal or tribal lands. Excavation or removal of any such items also must be done under procedures required by the Archaeological Resources Protection Act.

State

California Public Resources Code

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

This section was amended in 1987 to require consultation with the Native American Heritage Commission (NAHC) whenever Native American graves are found. Violations for 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.”

Pursuant to PRC Section 21084.2, a “project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.”

PRC Section 21074(a) defines “tribal cultural resources” as either:

- “(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. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.”

PRC Section 21074(b) states that 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.

A unique archaeological resource (PRC §21083.2(g)) or a nonunique archaeological resource (PRC §21083.2(h)) may also be a tribal cultural resource if it conforms with the criteria of PRC Section 21074(a).

Senate Bill 18

Senate Bill (SB) 18 requires that cities and counties contact and consult with tribes before adopting or amending general plans, specific plans, or when designating land as open space. The intent of SB 18 is to establish meaningful consultation between tribal governments and local governments at the earliest possible point in the planning process, to avoid potential conflicts, and to allow tribes to manage and act as caretakers of Native American cultural places. A Native American cultural place is defined in PRC Section 5097.9 as “any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine,” or as “a Native American historic, cultural or sacred site, which is listed or may be eligible for listing in the CRHC...including any historic or prehistoric ruins, any burial ground, or any archaeological or historic site.”

Assembly Bill 52

Assembly Bill (AB) 52 requires that public agencies undertaking CEQA review must consult with California Native American tribes (tribes) during the CEQA process and upon tribal request, begin consultation prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project. Where a tribe requests, in writing, that a public agency inform it of proposed projects, the public agency must notify the tribe within 14 days of determining that a project application is complete or deciding to undertake a project. If the tribe responds by requesting consultation within 30 days of the notification, the lead agency must begin the consultation process within 30 days of receiving the request. In addition, under AB 52, public agencies must evaluate a project’s potential impact on a “tribal cultural

resource”. A tribal cultural resource is defined as a site, feature, place, cultural landscape, sacred place, or object with cultural value to a tribe.

California Health and Safety Code Sections 7050.5 and 7052

California Health and Safety Code (HSC), Section 7050.5, declares that, in the event of the discovery of human remains outside of a dedicated cemetery, all ground disturbance must cease, and the county coroner must be notified. HSC Section 7052 establishes a felony penalty for mutilating, disinterring, or otherwise disturbing human remains, except by relatives. If human remains are encountered during future housing development facilitated by the Project, HSC Section 7050.5 states:

- a) “Every person who knowingly mutilates or disinters, wantonly disturbs, or willfully removes any human remains in or from any location other than a dedicated cemetery without authority of law is guilty of a misdemeanor, except as provided in PRC Section 5097.99.¹ The provisions of this subdivision shall not apply to any person carrying out an agreement developed pursuant to PRC Section 5097.94(l)² or to any person authorized to implement PRC Section 5097.98.³
- b) 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 coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code,⁴ that the remains are not subject to the provisions of Government Code Section 27491⁵ or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in PRC Section 5097.98.⁶ The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative notifies the coroner of the discovery or recognition of the human remains.
- c) If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission (NAHC).⁷

¹ State of California (2011). *PRC Section 5097.99*. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.99.&lawCode=PRC. Accessed November 2023.

² State of California (2019). *PRC Section 5097.94*. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.94.&lawCode=PRC. Accessed November 2023.

³ State of California (2010). *PRC Section 5097.98*. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.98.&lawCode=PRC. Accessed November 2023.

⁴ State of California. (1947). *GC Chapter 10*. https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=GOV&division=2.&title=3.&part=3.&chapter=10.&article=1.&goUp=Y. Accessed November 2023.

⁵ State of California. (2016). *GC Section 27491*. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=27491.&lawCode=GOV. Accessed November 2023.

⁶ State of California (2010). *PRC Section 5097.98*. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5097.98.&lawCode=PRC. Accessed March 2023.

⁷ State of California (1987). *Health and Safety Code Section 7050.5*. http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=7050.5. Accessed November 2023.

California Coastal Act

The California Coastal Act, in part, authorizes the California Coastal Commission (Coastal Commission) to review permit applications for development within the coastal zone and, where necessary, to require reasonable mitigation measures to offset the effects of that development. Permits for development are issued with "special conditions" to ensure the implementation of these mitigation measures. Section 30244 of the Act, "Archaeological or Paleontological Resources," states that: Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer (SHPO), reasonable mitigation measures shall be required. In the City, this is implemented via the certified Local Coastal Program (LCP), which applies to all development located within the portion of the City located in the coastal zone.

Local

Newport Beach City Council Policy Manual

The Newport Beach City County (City Council) Policy Manual identifies policies applicable to cultural resources. These policies are discussed below.

Paleontological and Archaeological Resource Protection Guidelines (K-5). Under this guideline, the City will ensure that potential impacts on paleontological and archaeological resources by public or private development are properly evaluated and mitigated in accordance with the General Plan, Local Coastal Program, and State CEQA Guidelines. The guideline requires development projects to determine if paleontological or archaeological resources exist at or near a project site. If the site is located in the Coastal Zone, the requirements and procedures provided in Municipal Code Section 21.30.105(A), or any successor statute, shall be implemented. If resources are known to exist at or near a project site or if the project could otherwise affect known resources, a preliminary investigation report (PIR) shall be prepared by a qualified professional archaeologist or paleontologist. If the preliminary investigation report concludes that resources are not likely to be at the present at the project site or encountered during construction, no further analysis shall be required. If the preliminary report concludes that resources are present at the site or are likely to be present at the site or may be encountered by project construction, additional investigative work shall be prepared to identify and disclose the potential impacts of the project.

*City of Newport Beach General Plan*⁸

The following General Plan goals and policies that have been adopted by the City for the purpose of avoiding or mitigating an environmental effect are applicable to future development projects associated with the proposed Project. General Plan goals and policies associated with cultural resources are addressed in **Section 4.4: Cultural Resources** and paleontological resources in **Section 4.6: Geology and Soils**.

⁸ City of Newport Beach (2006). *City of Newport Beach General Plan – Historic Resources Element*. [https://www.newportbeachca.gov/PLN/General Plan/COMPLETE FEB 2019/General Plan 2006 Complete.pdf](https://www.newportbeachca.gov/PLN/General%20Plan/COMPLETE_FEB_2019/General_Plan_2006_Complete.pdf). Accessed November 2023.

Historical Resources Element

Goal HR 2: **Identification and protection of important archeological and paleontological resources within the City.**

Policy HR 2.1 **New Development Activities:** Require that, in accordance with CEQA, new development protect and preserve paleontological and archaeological resources from destruction and avoid and mitigate impacts to such resources. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.

Policy HR 2.2 **Grading and Excavation Activities.** Maintain sources of information regarding paleontological and archeological sites and the names and addresses of responsible organizations and qualified individuals, who can analyze, classify, record, and preserve paleontological or archeological findings. Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural, archeological, or paleontological resources. If these resources are found, the applicant shall implement the recommendations of the paleontologist/archeologist, subject to the approval of the City Planning Department.

Policy HR 2.3 **Cultural Organizations.** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow representatives of such groups to monitor grading and/or excavation of development sites.

Policy HR 2.4 **Paleontological or Archaeological Materials.** Require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach, or Orange County, whenever possible.

Natural Resources Element

Goal NR 18: **Protection and preservation of important paleontological and archaeological resources.**

Policy NR 18.1 **New Development.** Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources in accordance with the requirements of CEQA. Through planning policies and permit conditions, ensure the preservation of significant archeological and paleontological resources and require that the impact caused by any development be mitigated in accordance with CEQA.

Policy NR 18.3 **Potential for New Development to Impact Resources.** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.

Policy NR 18.4 **Donation of Materials.** Require new development, where on-site preservation and avoidance are not feasible, to donate scientifically valuable paleontological or

archaeological materials to a responsible public or private institution with a suitable repository, located within Newport Beach or Orange County, whenever possible.

*City of Newport Beach Local Coastal Program: Coastal Land Use Plan*⁹

The Coastal Act requires each local jurisdiction wholly or partly within the coastal zone to prepare an LCP, which is used to carry out California Coastal Act policies and requirements. The City lies partly within the coastal zone. The City's LCP sets forth goals, objectives, and policies that govern the use of land and water in the coastal zone within the City and its Sphere of Influence, with the exception of Newport Coast and Banning Ranch. The City's Coastal Land Use Plan includes the following policies applicable to cultural resources:

- Policy 4.5.1-1** Require new development to protect and preserve paleontological and archaeological resources from destruction, and avoid and minimize impacts to such resources. If avoidance of the resource is not feasible, require an in situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development.
- Policy 4.5.1-2** Require a qualified paleontologist/archeologist to monitor all grading and/or excavation where there is a potential to affect cultural or paleontological resources. If grading operations or excavations uncover paleontological/archaeological resources, require the paleontologist/archeologist monitor to suspend all development activity to avoid destruction of resources until a determination can be made as to the significance of the paleontological/ archaeological resources. If resources are determined to be significant, require submittal of a mitigation plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. Mitigation plans shall include a good faith effort to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, in situ preservation/capping, and placing cultural resource areas in open space.
- Policy 4.5.1-3:** Notify cultural organizations, including Native American organizations, of proposed developments that have the potential to adversely impact cultural resources. Allow qualified representatives of such groups to monitor grading and/or excavation of development sites.
- Policy 4.5.1-4:** Where in situ preservation and avoidance are not feasible, require new development to donate scientifically valuable paleontological or archaeological materials to a responsible public or private institution with a suitable repository, located within Orange County, whenever possible.
- Policy 4.5.1-5:** Where there is a potential to affect cultural or paleontological resources, require the submittal of an archeological/cultural resources monitoring plan that identifies monitoring methods and describes the procedures for selecting archeological and Native American monitors and procedures that will be followed if additional or unexpected archeological/cultural resources are encountered during development of the site. Procedures may include, but are not limited to, provisions for cessation of all

⁹ City of Newport Beach (2016). *City of Newport Beach Coastal Land Use Plan*. <https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/local-coastal-program/coastal-land-use-plan>. Accessed November 2023.

grading and construction activities in the area of the discovery that has any potential to uncover or otherwise disturb cultural deposits in the area of the discovery and all construction that may foreclose mitigation options to allow for significance testing, additional investigation, and mitigation.

City of Newport Beach Municipal Code

Title 21, Chapter 21.30, Section 21.30.105 Cultural Resource Protection.¹⁰ The purpose and intent of this regulation is to ensure that archaeological/paleontological cultural resources are afforded protection on sites known to contain or are suspected of containing archaeological/paleontological cultural resources. This regulation provides for the determination of the nature and extent of on-site archaeological/paleontological cultural resources during the early stages of planning for the development of the site, thereby allowing for a full range of mitigation options. Accordingly, development sites with known or high potential for the presence of archaeological/paleontological cultural resources are required to be analyzed through a comprehensive archaeological research plan (ARP) and implemented through a coastal development permit, prior to consideration of a permit to develop the site.

By this process, the ARP is then used to guide any subsequent development of a site. The ARP, when properly designed and reviewed by qualified archaeologists, along with consultation with Native American groups with ancestral ties to the area can establish whether the site was used in prehistoric times by Native Americans, determine whether evidence of that use remains and provide for the in situ preservation of intact significant resources and other mitigation options to otherwise protect significant cultural resources on site. The regulation also provides procedures for archaeological and Native American monitoring of grading and other activities during project development in order to ensure that any newly discovered cultural resources are protected.

Future housing development facilitated by the Project would be subject to the following performance standards:

- **Archaeological Research Plan.** When a development is proposed in an area where there are known or has potential for archaeological or paleontological resources on the site an ARP shall be prepared by a qualified archaeologist/paleontologist and implemented through a coastal development permit before the submittal of a coastal development permit for the proposed development of the site. The purpose of the ARP is to determine whether or not significant cultural resources are present, determine the boundaries of cultural resources, and provide measures that result in the avoidance and/or minimization of impact to archaeological or paleontological cultural resources present on the site. A coastal development permit is required to implement an ARP since such implementation involves development (e.g., excavating shovel test pits, trenching, etc.) that has the potential to result in significant impacts to known or suspected on-site cultural resources.
- **Monitoring and Mitigation Plan (MMP).** Even after implementation of an approved ARP, prepared in accordance with the above provisions, there is potential for proposed development activity to adversely affect archaeological/paleontological resources, a qualified paleontologist/archeologist shall monitor all grading and/or excavation activities. Therefore, a coastal development permit application for any subsequent development at the site shall include

¹⁰ City of Newport Beach (2021). *City of Newport Beach Municipal Code – 21.30.105 Cultural Resource Protection*. <https://www.codepublishing.com/CA/NewportBeach/#!/NewportBeach21/NewportBeach2130.html#21.30.105>. Accessed November 2023.

the submittal of evidence that the approved ARP, including all mitigation, has been fully implemented. Further, the coastal development permit for subsequent development of the site shall include the requirement for the submittal of a MMP to be implemented during any site grading, utility trenching or any other development activity that has the potential to uncover or otherwise disturb archaeological/cultural resources and shall provide for appropriate mitigation measures for any additional resources that are found. The elements of the MMP shall be consistent with subsection (A)(3)(ii)(A) of this section and specify that sufficient archaeological and Native American monitors must be provided to assure that all activity that has the potential to uncover or otherwise disturb cultural deposits will be monitored at all times while those activities are occurring. The MMP shall be ongoing until grading activities have reached sterile soil.

The MMP shall include demonstration of a good faith effort to avoid impacts to the resources through measures including project redesign, in situ preservation/capping, and placing cultural resource areas in open space; if avoidance of the resource is not feasible, a recovery and/or relocation plan for mitigating the effect of the development shall be required.

4.16.3 Existing Conditions

Ethnography

The following describes the ethnographic setting of the City. Orange County was a contact point between two separate ethnolinguistic groups immediately prior to the arrival of Euro-Americans in California: the Gabrielino/Tongva and the Juaneño/ Acjachemen. These groups, while maintaining their own respective cultural identity, did have similar traditions, beliefs systems, and languages, which were a result of intertribal interactions over several centuries.

Aboriginal hunters and gatherers were first drawn to the area by the rich bounty of the bay and the ocean. These original inhabitants supplemented their diet with a variety of meat from marine resources, including shellfish, fish, and birds and probably ventured out into the ocean in rafts to fish.¹¹ The most recent native people were the Tongva (Gabrielinos) and Acjachemen (Juaneños) tribes, although the boundaries of their tribal territories are unclear. Both the Gabrielino and the Luiseño/Juaneño lay ancestral territorial claims. The territory of the Juaneño may have extended north to the Santa Ana River drainage; however, Gabrielino territory is thought by some to extend south of the Santa Ana River Drainage to Aliso Creek, and possibly even further south. The Gabrielinos and the Juaneños lived in small villages around the bay until the beginning of the Mission period in the 1770s.

Gabrielino/Tongva

Newport Beach was the home of the Gabrielino, at the time of European contact. The Gabrielino and their descendants are those who became associated with Mission San Gabriel Arcángel, which was established in south-central Los Angeles County on September 8, 1771, in what is known today as the San Gabriel Valley. Today, this people group are sometimes referred to as the Tongva, although before the arrival of Euro-Americans, the term originally referred to the inhabitants of the San Gabriel Valley only.

It is believed that the ancestral Gabrielino arrived in the Los Angeles Basin as part of the Shoshonean (Takic speaking) Wedge from the Great Basin region and gradually displaced the indigenous peoples, most

¹¹ City of Newport Beach. (2006) *City of Newport Beach General Plan Update Draft EIR – Cultural Resources*. Pages 4.4-2 – 4.4-3. https://newportbeachca.gov/PLN/General_Plan/GP_EIR/Volume_1/09_Sec4.4_Cultural_Resources.pdf. Accessed November 2023.

likely Hokan speakers. Large, permanent villages were established in the fertile lowlands along rivers and streams and in sheltered areas along the coast. Eventually, Gabrielino territory encompassed the watersheds of the Los Angeles, San Gabriel, Rio Hondo, and Santa Ana Rivers (which includes the greater Los Angeles Basin) to perhaps as far south as Aliso Creek, as well as portions of the San Fernando, San Gabriel, and San Bernardino Valleys. Gabrielino territory also included the islands of San Clemente, San Nicholas, and Santa Catalina. The population may have numbered as many as 10,000 individuals at their peak in the Pre-contact Period.

The Gabrielino's subsistence economy mainly consisted of hunting and gathering. The surrounding environment was rich and varied, and they were able to use resources in the mountains, foothills, valleys, deserts, and coastal areas. As was the case for most native Californians, acorns were the staple food (by the Intermediate Horizon; between 3,000 YBP and 1,350 YBP), supplemented by the roots, leaves, seeds, and fruit of a wide variety of flora (i.e., cactus, yucca, sage, and agave). Fresh and saltwater fish, shellfish, birds, insects, and large and small mammals were exploited.

A wide variety of tools and implements were employed by the Gabrielino to gather, collect, and process food resources. The most important hunting tool was the bow and arrow. Traps, nets, blinds, throwing sticks, and slings were also employed. Fish were an important resource and nets, traps, spears, harpoons, hooks, and poisons were utilized to catch them. Ocean-going plank canoes and tule balsa canoes were used for fishing and for travel by those groups residing near the Pacific Ocean.

The processing of food resources was accomplished in a variety of ways: nuts were cracked with hammer stone and anvil; acorns were ground with mortar and pestle; and seeds and berries were ground with mano and metate. Yucca, a valuable resource in many areas, was eaten by the natives and exploited for its fibers. Strainers, leaching baskets and bowls, knives, bone saws, and wooden drying racks were also employed. Food was consumed from a variety of vessels. Catalina Island steatite was used to make ollas and cooking vessels.

The Gabrielinos were organized into sedentary and semi-sedentary, autonomous villages. Large villages were usually 30 square miles and divided into several hunting, fishing, and collecting areas in different ecological zones. The Gabrielinos likely made seasonal moves to exploit resources outside their villages' territories during several weeks of the year.¹² Gabrielino houses were circular domed structures of willow poles thatched with tule. They were actually quite large and could, in some cases, hold 50 individuals. Other structures served as sweathouses, menstrual huts, and ceremonial enclosures.

Juaneño/Acjachemen

During the Late Prehistoric and Contact Periods (generally extending from the year 750 to Spanish contact in 1769), the Juaneño territory was also located within the Orange County area. As with the Gabrielino, whose name signifies their mission association. The name Juaneño designates those peoples that fell under the control of the Mission at San Juan Capistrano. Specifically, it denotes the indigenous Native Americans living in and near the San Juan and San Mateo creek drainages, who called themselves the Acjachemen.

During the Precontact Period, the Acjachemen population is thought to have numbered more than 3,500. Approximately 1,138 local Native Americans, consisting primarily of Acjachemen but including Gabrielino,

¹² City of Newport Beach (2006). *City of Newport Beach Final General Plan – Harbor and Bay Element*. Pages 4.4-2 – 4.4-3. https://www.newportbeachca.gov/PLN/General_Plan/05_Ch4_Harbor&Bay_web.pdf. Accessed November 2023.

coastal and interior Luiseño, Serrano, and Cahuilla, resided at Mission San Juan Capistrano in 1810. The Mission's death register shows as many as 1,665 native burials in its cemetery by this time, a number in addition to those who died unrecorded at the remaining villages from natural causes and introduced infectious diseases.

Overall, the Acjachemen territory covered the eastern Santa Ana Mountains to the coast and southward to San Juan Capistrano. The majority of the known ethnographic village sites are located primarily in this region. To this day, the San Juan Capistrano area has seen continuous habitation by the Juaneño people. The Juaneño lived in structured villages, populated variously by from 35 to 300 people, consisting of from a single lineage to multiple clans in larger settings. While each village unit maintained economic and social ties to neighboring villages, they also maintained a well-defined resource area.

The Juaneño used a wide variety of resources for their dietary needs. These consisted primarily of plant foods, including seeds, nuts, fruits, tubers, and greens. Marine resources constituted the largest sources of meat and consisted mostly of shellfish and fish. Marine resources were collected from open water, bay, and estuary habitats. Birds and mammals made up most of the remainder of the diet. Many common bird species and most small rodents were exploited where available. Seasonal rounds of exploitation formed the basis for the successful procurement of various food types as evident by the settlement patterns still identifiable today from the remains of simple campsites to complex village sites.

4.16.4 Thresholds of Significance

The City uses the thresholds of significance that are specified in its *State CEQA Guidelines, Appendix G*. Impacts to tribal cultural resources would be significant if the Project would:

- Cause a substantial adverse change in the significance of a tribal cultural resource, 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:
 - 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
 - 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.

4.16.5 Methodology

This analysis considers the *State CEQA Guidelines, Appendix G* thresholds, as described above, in determining whether implementation of future housing development facilitated by the Project would result in the significant impacts on tribal cultural resources. The evaluation was based on a review of regulations and determining their applicability to the Project.

The baseline conditions and impact analyses are based on analysis of review of various data available in public records, including local planning documents. The determination that future housing development facilitated by the Project would or would not result in "substantial" adverse effect on tribal resources considers the relevant policies and regulations established by local and regional agencies, as well as the Project's compliance with these policies.

A Sacred Lands File search was requested from the NAHC on March 5, 2023. The NAHC responded on March 22, 2023, stating that the findings of the search were positive and identified 19 Native American tribal representatives to contact for further information regarding tribal resources.

4.16.6 Project Impacts and Mitigation

Threshold 4.16-1: **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 Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?**

In compliance with SB 18, AB 52, and the NAHC request, on April 10, 2023, the City sent letters to the following Native American tribal representatives that may have knowledge regarding tribal cultural resources in the City of Newport Beach.

- Campo Band of Diegueno Mission Indians, Chairperson Ralph Goff
- Ewiiapaayp Band of Kumeyaay Indians, Chairperson Robert Pinto
- Ewiiapaayp Band of Kumeyaay Indians, Vice Chairperson Michael Garcia
- Gabrieleno Band of Mission Indians - Kizh Nation, Chairperson Andrew Salas
- Gabrieleno/Tongva San Gabriel Band of Mission Indians, Chairperson Anthony Morales
- Gabrielino/Tongva Nation, Chairperson Sandonne Goad
- Gabrielino Tongva Indians of California Tribal Council, Chairperson Robert Dorame
- Gabrielino Tongva Indians of California Tribal Council, Christina Conley, Cultural Resources Administrator
- Gabrielino-Tongva Tribe, Charles Alvarez
- Juaneño Band of Mission Indians Acjachemen Nation, Joyce Perry, Cultural Resources Director
- Juaneño Band of Mission Indians Acjachemen Nation, Chairperson Heidi Lucero
- La Posta Band of Diegueno Mission Indians, Javaughn Miller, Tribal Administrator
- La Posta Band of Diegueno Mission Indians, Chairperson Gwendolyn Parada
- Manzanita Band of Kumeyaay Nation, Chairperson Angela Elliott Santos
- Mesa Grande Band of Diegueno Mission Indians, Chairperson Michael Linton
- Pala Band of Mission Indians, Shasta Gaughen, Tribal Historic Preservation Officer
- Santa Rosa Band of Cahuilla Indians, Tribal Chair Lovina Redner

- Soboba Band of Luiseno Indians, Joseph Ontiveros, Tribal Historic Preservation Officer
- Soboba Band of Luiseno Indians, Chairperson Isaiah Vivanco

Correspondence to and from tribal representatives is included in **Appendix G**. The City received one response. The Gabrieleño Band of Mission Indians – Kizh Nation responded on April 13, 2023 and expressed no concerns regarding the Project given its programmatic scale, but noted that they would request consultation on future projects.

Of the 247 housing sites, all are developed/occupied by structures except 21 sites. Sites 110-118, 120-124, 126-131, and 215 are vacant. Therefore, almost all of the housing sites have been subject to ground disturbing activities. Notwithstanding, previously recorded known cultural resources have been identified within City limits and the NAHC's Sacred Lands File database search was positive indicating known tribal cultural resources are present within the City. Although the majority of the sites have been disturbed, this does not preclude the presence of undiscovered and potentially sensitive tribal cultural resources. Future housing development on the housing sites would involve ground-disturbing activities such as grading and excavation that could directly or indirectly impact tribal cultural resources. Therefore, future housing development facilitated by the Project could cause a substantial adverse change in the significance of a tribal cultural resources on the housing sites.

Future development facilitated by the Project would be subject to City Council Policy K-5, which requires preservation of significant archeological and tribal cultural resources, as set forth in **SC CUL-1**. Further, compliance with General Plan Policy HR 2.1, Policy HR 2.2 and Policy NR 18.1 require new development projects to identify and protect important archaeological resources within the City and these policies are considered applicable to potential Native American tribal cultural resources. General Plan Policy HR 2.1 and Policy NR 18.1 requires that new development protects and preserves archaeological resources from destruction and avoids or mitigates impacts to such resources. General Plan Policy HR 2.2 would require any future development with the potential to affect archaeological resources to have a qualified archeologist on site to monitor all ground-disturbing activities and outlines the procedure if such resources are found. General Plan Policy HR 2.3 and Policy NR 18.3 require the notification of cultural groups to proposed development adversely impacting cultural resources and permitting monitoring during grading. Additionally, Policy HR 2.4 and Policy NR 18.4 require any new development, where on-site preservation is infeasible, to donate archaeological resources to responsible institutions. Compliance with these City policies would ensure that future development facilitated by the Project would protect and preserve archaeological and tribal resources from destruction during new development construction facilitated by the Project.

For those housing sites in the coastal zone, the City's Coastal Land Use Plan (CLUP) includes applicable policies. CLUP Policy 4.5-1 requires an in situ or site-capping preservation plan or a recovery plan for mitigating the effect of the development where avoidance is not feasible. Policy 4.5.1-2 requires monitoring during grading and excavation by a qualified archeologist and describes the process for determination of significance and mitigation should archaeological resource be discovered. Policy 4.5.1-3 requires the notification of cultural organizations of proposed developments that have the potential to adversely impact cultural resources and to allow monitoring during grading and/or excavation. Policy 4.5.1-4 addresses the disposition of archaeological materials when in situ preservation and avoidance are not feasible. Policy 4.5.1-5 requires an archeological/cultural resources monitoring plan that identifies monitoring methods, procedures to be followed should additional or unexpected archeological/cultural resources be encountered during development of the site.

In addition to the aforementioned policies, the City would require that future development comply, as a mitigation measure (or standard condition for by-right projects), with **MM TCR-1** and **MM TCR-2**. **MM TCR-1** requires project-specific applicants to retain a qualified professional and, if necessary, appropriate Native American monitors identified by the applicable tribe (e.g., the Gabrielino Tongva Nation) and/or the NAHC, prior to any earth-disturbing activities to determine if the project would cause a substantial adverse change in the significance of a tribal cultural resources. **MM TCR-2**, which requires all earth-disturbing activity within 100 feet of a tribal cultural resources discovery/find to be halted, the City to be notified, and impacts to any significant resources be mitigated to a less than significant level through data recovery or other methods determined adequate by the appropriate Native American monitors.

It is further noted, all future housing development would also be subject to all regulatory requirements pertaining to tribal cultural resources, including among others compliance with SB 18 and AB 52, as applicable. Following compliance with General Plan policies, **MM TCR-1**, and **MM TCR-2**, the Project's potential impacts associated with causing a substantial adverse change in the significance of tribal cultural resources would be reduced to a less than significant level.

Impact Summary: **Less Than Significant Impact With Mitigation.** The proposed Project would potentially have direct impacts on archaeological resources. This impact would be mitigated to a level considered less than significant with implementation of **MMs TCR-1** and **TCR-2**.

4.16.7 Cumulative Impacts

The anticipated impacts of future housing development on the housing sites facilitated by the Project, in conjunction with cumulative development in the project area, would increase housing development in a largely developed area and could result in impacts to tribal cultural resources. Potential land use impacts are site-specific and would require evaluation on a case-by-case basis at the project level when future housing development on the housing sites is proposed in accordance with the Project. Each cumulative project would be subject to the City's development review process, which would include addressing potential effects on tribal cultural resources. Consequently, future housing development on the housing sites facilitated by the Project would not result in significant environmental impacts to tribal cultural resources, nor would the Project conflict with or obstruct a State or local plan, ordinance, or standards aimed at avoiding or minimizing impacts to tribal cultural resources. Therefore, with the implementation of mitigation and compliance with applicable regulations, the Project would not considerably contribute to a cumulatively considerable impact on tribal cultural resources.

4.16.8 Mitigation Program

General Plan Policies

See **Section 4.16.2: Regulatory Setting** for complete policy text.

Tribal Cultural Resources

- Policy HR 2.1
- Policy HR 2.2
- Policy HR 2.3
- Policy HR 2.4
- Policy NR 18.1
- Policy NR 18.3
- Policy NR 18.4

Coastal Land Use Plan Policies

See **Section 4.16.2: Regulatory Setting** for complete policy text.

Tribal Cultural Resources

- Policy 4.5-1
- Policy 4.5-2
- Policy 4.5-3
- Policy 4.5-4
- Policy 4.5-5

Standard Conditions of Approval

Standard Conditions (SC) **CUL-1** and **SC CUL-2** are applicable. See **Section 4.4: Cultural Resources**.

Mitigation Measures

MM TCR-1: Unanticipated Discovery of Tribal Cultural and Archaeological Resources: Upon discovery of any tribal, cultural, or archaeological resources during ground-disturbing activities for future development facilitated by the Project, the applicant shall immediately cease such activities in the immediate vicinity. The find will then be assessed by a qualified archeologist retained by the applicant and a tribal monitor/consultant approved by the consulting tribe. The applicant shall promptly notify the City Planning Division to the discovery of resources. If the resources are Native American in origin, the consulting tribe shall coordinate with the landowner regarding treatment and curation of these resources. Typically, the tribe will request preservation in place or recovery for educational purposes. At the direction of the qualified archaeologist and tribal monitor/consultant, and in coordination with the Planning Division, work may continue on other parts of the affected site while evaluation and, if necessary, additional protective measures are completed at the affected portion of the site pursuant to State CEQA Guidelines Section 15064.5(f). If a resource is determined by the qualified archaeologist to constitute a “historical resource” or “unique archaeological resource,” time and funding to allow for sufficient implementation of avoidance measures must be made available. The treatment plan established for the resources shall be in accordance with State CEQA Guidelines Section 15064.5(f) for historical resources.

Preservation in place (i.e., avoidance) is the preferred manner of treatment upon identification of unique archeological resources (PRC §21083.2(b)). If preservation in place is not feasible, treatment may include implementation of archaeological data recovery excavations to remove the resource along with subsequent laboratory processing and analysis. All tribal cultural resources shall be returned to the consulting tribe. Any historic archaeological material that is not Native American in origin shall be curated at a public, non- profit institution with a research interest in the materials. Acceptance and curation of the historic archeological materials will be at the discretion of the institution. If no institution accepts the archaeological material, they shall be offered to the consulting tribe or the responsible public or private institution with suitable repository for educational purposes.

MM TCR-2: If evidence of an archaeological site or other suspected historical resource as defined by CEQA Guidelines Section 15064.5, including darkened soil representing past human

activity (“midden”), that could conceal material remains (e.g., worked stone, fired clay vessels, faunal bone, hearths, storage pits, or burials) are discovered during any project-related earth-disturbing activities (including projects that would not encounter undisturbed soils), all earth-disturbing activity within 100 feet of the find shall be halted and the City’s Planning Department shall be notified. The project-level applicant shall retain an archaeologist who meets the U.S. Secretary of the Interior’s Professional Qualifications Standards for Archaeology to assess the significance of the find. Impacts to any significant resources shall be mitigated to a less than significant level through data recovery or other methods determined adequate by the archaeologist and that are consistent with the U.S. Secretary of the Interior’s Standards for Archaeological Documentation. Any identified cultural resources shall be recorded on the appropriate DPR 523 form and filed with the appropriate Information Center.

4.16.9 Level of Significance After Mitigation

With implementation of the mitigation program set forth in this section, potential impacts to tribal cultural resources would be reduced to a level considered less than significant.

4.16.10 References

City of Newport Beach (2006). City of Newport Beach General Plan. Retrieved from:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan>. Accessed November 2023.

City of Newport Beach (2006). City of Newport Beach General Plan Environmental Impact Report.

Retrieved from: <https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/general-plan/general-plan-environmental-impact-repor>. Accessed November 2023.

City of Newport Beach (2016). City of Newport Beach Local Coastal Program Implementation Plan.

Retrieved from:
<https://www.codepublishing.com/CA/NewportBeach/html/pdfs/NewportBeach21.pdf>.
Accessed November 2023.

City of Newport Beach (2016). City of Newport Beach Coastal Land Use Plan – Coastal Resource Protection. Retrieved from:

<https://www.newportbeachca.gov/government/departments/community-development/planning-division/general-plan-codes-and-regulations/local-coastal-program/coastal-land-use-plan>. Accessed November 2023.

City of Newport Beach. City of Newport Beach Municipal Code – 21.30.105 Cultural Resource Protection. Retrieved from:

<https://www.codepublishing.com/CA/NewportBeach/#!/NewportBeach21/NewportBeach2130.html#21.30.105>. Accessed November 2023.

City of Newport Beach. *City Council Policy Manual (Policy K-2 and K-5)*. Retrieved from:
<https://www.newportbeachca.gov/government/city-council/council-policy-manual>. Accessed
November 2023.