

Section 3.7

Tribal Cultural Resources

3.7.1 Introduction

This section analyzes the proposed project's impacts on tribal cultural resources, including impacts from both construction and operational activities. As part of this analysis, the section describes the general approach and methodology, regulatory framework, environmental setting, and significance criteria used to evaluate the proposed project's effects on tribal cultural resources.

Comments received in response to the NOP included one comment letter related to tribal cultural resources. Specifically, the State of California Native American Heritage Commission (NAHC) provided guidance on compliance with Assembly Bill 52 (AB 52),¹ which established a new category of resources in CEQA called "tribal cultural resources." AB 52 also amended CEQA to create a process through which lead agencies notify and consult with California Native American tribes regarding project related impacts to tribal cultural resources, as defined in the statute. The AB 52 process is described in detail in Section 3.7.3 below. The NAHC NOP comment letter also provided guidance on Senate Bill 18 (SB 18) which requires local governments to contact, provide notice to, refer plans to, and consult with California Native American tribal governments prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. As the proposed project does not involve a general plan or a specific plan amendment, or the designation of open space, it is not subject to the requirements of SB 18. A copy of the NOP comment letter from the NAHC is provided in Appendix R-A.

Within the CEQA context, it is important to understand the distinction and relationship between *tribal cultural resources*, on one hand, and *archaeological resources*, on the other. Tribal cultural resources are those resources that a tribe or group of tribes considers significant or culturally important from a tribal perspective. For this reason, CEQA now requires that lead agencies consult with interested tribes to determine (i) whether such resources exist on a project site; (ii) whether they are significant; (iii) whether they will be adversely affected by the proposed project; and (iv) the best means to mitigate the anticipated impact and protect the resources in question (See Public Resources Code Section 21080.3.2). Provided the lead agency and the affected tribes agree to a mitigation plan, that plan will be included in the EIR and incorporated into the project's overall mitigation monitoring and reporting program (MMRP) (See Public Resources Code Sections 21082.3(a) and (b)). If, however, the lead agency and the affected tribe(s) cannot agree on mitigation for the identified significant effects on tribal cultural resources, the lead agency may independently devise and adopt mitigation measures to address the impacts in question. Such measures must generally conform to the policies, preferences, and examples set forth in Public Resources Code Section 21084.3. Examples of acceptable mitigation include preserving the resource in place; treating the resource with culturally appropriate dignity by protecting the cultural character and integrity of the resource, protecting the traditional use of the resource, and

¹ Codified at Public Resources Code Sections 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3.

protecting the confidentiality of the resource; placing the resource in a permanent conservation easement; and protecting the resource by other feasible means (Public Resources Code Section 21084.3(b)).

Archaeological resources, by contrast, are identified through an archaeological analysis using standard archaeological techniques. In some cases, the archaeological resources on a given site will be related to Native American Indians, in which case the resources may be considered a tribal cultural resource as well. In any event, however, significant archaeological resources must be assessed and mitigated pursuant to the standards and rules set forth in the State CEQA Guidelines, including State CEQA Guidelines Section 15126.4. The standards and rules differ somewhat from those that apply to tribal cultural resources.

Because tribal cultural resources and archaeological resources are treated slightly differently under CEQA, this EIR includes a separate analysis for each. The reader will note, however, that in some cases the same physical resource may qualify as both a tribal cultural resource and an archaeological resource and, as such, is addressed in both sections of the Recirculated Draft EIR.

3.7.2 General Approach and Methodology

A Sacred Lands File records search for the project site was requested from the California Native American Heritage Commission (NAHC) to determine whether any Native American cultural resources in the NAHC database were located within the project site or within a half-mile radius. A Sacred Lands File records search is one tool a lead agency can use to determine whether tribal cultural resources may exist within the vicinity of a project. The results of the Sacred Lands File records search are discussed in Section 3.7.4.1.1 below.

As discussed in Section 3.7.3 below, AB 52 establishes a consultation process between California Native American tribal governments and lead agencies applicable to any project for which a NOP, Notice of Intent to Adopt a Mitigated Negative Declaration, or Notice of Intent to Adopt a Negative Declaration is filed on or after July 1, 2015. When SDCRAA initiated preparation of the NOP for the proposed project, SDCRAA had not received a written request from any tribe indicating its wish to be notified of projects within its traditionally and culturally affiliated areas, as required by Public Resources Code Section 21080.3.1(b). Nevertheless, commensurate with the intent of AB 52, SDCRAA sent letters of “Formal Notification of Consultation Opportunity Pursuant to Public Resources Code Section 21080.3.1” via certified mail on January 19, 2018 to representatives of the thirteen Native American tribes identified by the NAHC as being culturally affiliated to the project area. The results of the AB 52 consultation process are discussed in Section 3.7.4.2 below.

3.7.3 Regulatory Framework

Assembly Bill 52

AB 52, approved by Governor Brown on September 25, 2014, establishes a new category of resources in CEQA called “tribal cultural resources” that considers tribal cultural values in addition to scientific and archaeological values, when determining impacts and mitigation. Further, AB 52 establishes a consultation process between California Native American tribal governments and lead agencies applicable to any project for which a Notice of Preparation, Notice of Intent to Adopt a Mitigated Negative Declaration, or Notice of Intent to Adopt a Negative Declaration is filed on or after July 1, 2015.

Section 1 of AB 52 states the legislature's intent as follows:

"In recognition of California Native American tribal sovereignty and the unique relationship of California local governments and public agencies with California Native American tribal governments, and respecting the interests and roles of project proponents, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:

- (1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.
- (2) Establish a new category of resources in the California Environmental Quality Act called "tribal cultural resources" that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.
- (3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.
- (4) Recognize that California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.
- (5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decision-making body of the lead agency.
- (6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with § 21000) of the Public Resources Code).
- (7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce the potential for delay and conflicts in the environmental review process.

(8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.

(9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment.”²

Tribal cultural resources, as defined in Public Resources Code Section 21074, are a site, feature, place, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is either:

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

The specific steps and timelines governing the notice and consultation process under AB 52 are as follows:

“1) The Native American Heritage Commission will provide each tribe with a list of all public agencies that may be lead agencies under CEQA within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the Tribe may request consultation. This list must be provided on or before July 1, 2016 (Public Resources Code Section 5097.94(m)).

2) If a tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written request to the relevant lead agency (Public Resources Code Section 21080.3.1(b)).

3) Within 14 days of determining that a private project application is complete, or to undertake a public agency project, the lead agency must provide formal notification, in writing, to the tribes that have requested notification of proposed projects as described in step 2, above. The 14-day notification must include a description of the project, its location, and must state that the tribe has 30 days to request consultation.

4) If it wishes to engage in consultation on the project, the tribe must respond to the lead agency within 30 days of receipt of the formal notification described in step 3, above. The tribe’s response must designate a lead contact person. If the tribe does not designate a lead contact person, or designates multiple people, the lead agency shall defer to the

²State of California, Governor’s Office of Planning and Research. Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA. June 2017. Available: <http://nahc.ca.gov/wp-content/uploads/2017/06/Technical-Advisory-AB-52-and-Tribal-Cultural-Resources-in-CEQA.pdf>.

individual listed on the contact list maintained by the Native American Heritage Commission.

5) The lead agency must begin the consultation process with the tribes that have requested consultation within 30 days of receiving the request for consultation.

6) Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached (Public Resources Code Section 21080.3.2(b)(1) and (2)). Note that consultation can also be ongoing throughout the CEQA process.”³

3.7.4 Environmental Setting

3.7.4.1 Archaeological Resources

As discussed in Section 3.6, Cultural Resources, as part of the cultural resource investigation for the proposed project, the project archaeologist reviewed archaeological records maintained by the South Coastal Information Center (SCIC) at San Diego State University (SDSU). Through this review, the archaeologist was able to assess previous archaeological studies and identify any previously recorded historic resources within the project boundaries or in the immediate vicinity. The records review indicated that 25 cultural resource studies have included various portions of the Area of Potential Effect (APE), in which 24 historic resources have been recorded within the APE boundaries along with one historic address. The Class III pedestrian survey conducted for the investigation found that nine historic structures are present within the APE, including three structures determined eligible for listing on the California Register of Historical Resources (CRHR) and the National Register of Historic Places (NRHP). The aforementioned records review and pedestrian survey found only historic resources to be present, and no record or evidence of unique archaeological resources being located at or near the project site.

3.7.4.1.1 Sacred Lands File Search

As noted in Section 3.7.2, a Sacred Lands File records search for the project site was requested by Brian F. Smith & Associates, Inc. (BFSA) from the NAHC. On July 28, 2017, the NAHC responded stating it had completed the Sacred Land File records search and found none. The NAHC also noted, however, that the area is culturally sensitive and that the absence of resource information in the Sacred Lands File inventory does not preclude the discovery of cultural resources within any project area. The NAHC response letter also included a list of tribes culturally affiliated to the project area with a suggestion to contact the listed tribes. In accordance with the recommendations of the NAHC, BFSA contacted all tribal representatives listed in the NAHC response letter. As of the date of this EIR, one response has been received. The Viejas Band of Kumeyaay Indians (“Viejas”) indicated that the project area has cultural significance or ties to the tribe, and requested that a Kumeyaay Cultural Monitor be on-site for all ground-disturbing activities. The letter from Viejas

³ State of California, Governor’s Office of Planning and Research, Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA, June 2017. Available: <http://nahc.ca.gov/wp-content/uploads/2017/06/Technical-Advisory-AB-52-and-Tribal-Cultural-Resources-in-CEQA.pdf>.

did not, however, contain information or a statement that the site of the proposed project, or the airport as a whole, constitutes a tribal cultural resource, as that term is defined under CEQA.

3.7.4.2 AB 52 Tribal Consultation

As discussed in Section 3.7.2 above, when SDCRAA initiated preparation of the NOP for the proposed project, SDCRAA had not received a written request from any tribe indicating its wish to be notified of projects within its traditionally and culturally affiliated areas, as required by Public Resources Code Section 21080.3.1(b). Nevertheless, commensurate with the intent of AB 52, SDCRAA sent letters of “Formal Notification of Consultation Opportunity Pursuant to Public Resources Code Section 21080.3.1” via certified mail on January 19, 2018 to representatives of the thirteen Native American tribes identified by the NAHC as being culturally affiliated to the project area. Each Native American representative listed was sent a project notification letter and map and was informed that, pursuant to Public Resources Code Section 21080.3.1(b), the tribe had 30 days from receipt of the letter to request consultation, in writing, with SDCRAA. The notification letters also provided the option for the tribes to provide a comment letter in lieu of consultation.

Representatives from two of the thirteen Native American tribes notified sent letters to SDCRAA requesting consultation regarding the proposed project: Ms. Lisa Cumper, Tribal Historic Preservation Officer for the Jamul Indian Village (JIV), which is affiliated with the Kumeyaay Indians, and Ray Teran, Resource Management of the Viejas Band of Kumeyaay Indians. The results of the AB 52 consultation between SDCRAA and JIV and Viejas are discussed below.

On February 9, 2018 SDCRAA received a letter from JIV requesting consultation. The letter did not identify any known tribal cultural resources that may be affected by the proposed project, but did state that tribal cultural resources may be present in and around the project site and, as such, requested that consultation include discussion of mitigation to avoid and preserve tribal cultural resources. The JIV letter also requested that SDCRAA provide any previous cultural resources assessments completed that include the proposed project’s APE. On March 28, 2018, Lynda Tamura, Assistant Airport Planner with SDCRAA, sent an email to Ms. Cumper of the JIV responding to the request for tribal consultation and seeking to arrange a time and location to meet for further consultation. A meeting date for consultation between JIV representatives and SDCRAA staff was scheduled for April 3, 2018 at the SDCRAA Administration Building. On March 30, 2018, Julie Gaa of JBG Environmental Consulting, on behalf of SDCRAA, sent the complete cultural resources records review results for the proposed project to Ms. Cumper via email. On April 2, 2018, Ms. Cumper sent a letter to SDCRAA indicating that although the project site is not within the boundaries of a recognized JIV Reservation, it is within the boundaries of the territory that JIV considers its Traditional Use Area and, as such, JIV recommended Kumeyaay Native American Monitoring for the proposed project. Due to scheduling conflicts, the consultation meeting scheduled for April 3, 2018 was mutually cancelled on April 2, 2018.

On April 4, 2018, Ms. Cumper provided a letter, via email, to SDCRAA indicating that the JIV Tribal Historic Preservation Office had reviewed the cultural resources information provided by SDCRAA and determined that the proposed project does not appear to affect tribal cultural resources within the JIV’s Traditional Use Area. Ms. Cumper then stated that the JIV is no longer seeking consultation with the SDCRAA for the proposed project. Therefore, formal consultation with the JIV, which was

initiated to fulfill the intent of Public Resources Code Section 21080.3.1(b), concluded on April 4, 2018.

On January 25, 2018, Viejas sent a letter to SDCRAA stating the project site has cultural significance or ties to Viejas. The letter did not identify any known tribal cultural resources that may be affected by the proposed project, but did state that Viejas is requesting a Kumeyaay Cultural Monitor be present onsite during ground disturbing activities for the proposed project. On March 28, 2018, Lynda Tamura, Assistant Airport Planner with SDCRAA, sent an email to Mr. Teran of Viejas responding to the Viejas letter of January 25, 2018, seeking to arrange a time and location to meet for further consultation. On April 3, 2018, SDCRAA and its consultants, BFSa and CDM Smith, met with representatives of Viejas to discuss the proposed project and obtain input from Viejas regarding potential project-related impacts to tribal cultural resources.

Notwithstanding that no known tribal cultural resources have been identified at the project site, the SDCRAA has agreed to grant Viejas' request to have a Kumeyaay Cultural Monitor onsite to observe ground disturbing activities. To this end, the SDCRAA will incorporate the following measures into the construction program requirements for the proposed project:

1. In consultation with the Viejas Tribal Government, the San Diego County Regional Airport Authority has agreed to respect the cultural perspective of the Native American community that the SDIA property was part of the traditional use area for Native Americans during the prehistoric habitation of the bay area. Because of the Native American history in the area, the San Diego County Regional Airport Authority will accommodate the request by the Viejas Tribal Government that a Kumeyaay Cultural Monitor be present during excavation activities associated with implementation of the San Diego International Airport - Airport Development Plan. This Excavation Monitoring will be limited to those areas of the construction project that are located beneath the modern dredge and fill soils that were imported to this location to create the airport. Monitoring the excavation of any soil associated with imported fill material will not be required.
2. The Excavation Monitoring will be conducted in the area designated for the Airport Development Plan, which includes the replacement of Terminal 1, a new parking facility, and associated roadway and aircraft apron improvements that are within the planning jurisdiction of the San Diego County Regional Airport Authority. Native American monitoring will always be conducted in conjunction with archaeological monitoring, and a qualified archaeologist will be responsible for the determination of when appropriate soil horizons are encountered that would necessitate Native American and archaeological monitoring.
3. The Excavation Monitoring will be conducted within the areas identified in Figure 2-11 Proposed Project Phase 1a Development Concept and Figure 2-12 Proposed Project Phase 1b Development Concept.
4. The specifics of the Excavation Monitoring program will be described in a Memorandum of Agreement, which will be prepared and agreed to by the San Diego County Regional Airport Authority and the Viejas Tribal Government.

As indicated above, no known tribal cultural resources were identified by Viejas during the April 3, 2018 meeting; however, the SDCRAA has agreed to the Viejas request that a Kumeyaay Cultural Monitor be present onsite during ground disturbing activities for the proposed project. Therefore, formal consultation with Viejas, which was initiated to fulfill the intent of Public Resources Code Section 21080.3.1(b), concluded on May 15, 2018.

3.7.5 Thresholds of Significance

The following significance criterion for tribal cultural resources is derived from Appendix G of the State CEQA Guidelines. Under this criterion, the proposed project would result in a significant impact associated with tribal cultural resources if it would:

- Impact 3.7-1** 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, or cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:
- 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
 - 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.

3.7.6 Project Impacts

3.7.6.1 Impact 3.7-1

Summary Conclusion for Impact 3.7-1: The proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074. As such, and as further described below, this would be a *less than significant impact* for construction. There would be *no impact* to tribal cultural resources from project operations.

3.7.6.1.1 Construction

As noted in Section 3.7.4 above, there are no known tribal cultural resources, as defined in Public Resources Code Section 21074, on the project site. As such, the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074. Thus, impacts on tribal cultural resources from construction of the proposed project would be *less than significant*.

Based on formal consultation with Viejas described above in Section 3.7.4.2, ground disturbance associated with construction of the proposed project could disturb previously unidentified tribal cultural resources on the project site. To address this contingency, the SDCRAA has voluntarily

agreed to implement Excavation Monitoring as part of the construction program for the proposed project. Under the agreed-upon Excavation Monitoring program, a Kumeyaay Cultural Monitor will be present onsite during ground disturbing activities that involve soils that are not previously dredged/filled materials below the airport for the proposed project. Such monitoring would serve to address the potential, if any, for tribal cultural resources to be unexpectedly encountered during project-related excavation activities.

3.7.6.1.2 Operations

Operation of the proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074. Thus, there would be **no impact** on tribal cultural resources from project operations.

3.7.6.1.3 Mitigation Measures

No mitigation is required for construction or operations.

3.7.6.1.4 Significance of Impact After Mitigation

As indicated above, no mitigation is required relative to this impact. The project would result in a **less than significant impact** for construction and **no impact** for operations.

3.7.7 Summary of Impact Determinations

Table 3.7-1 summarizes the impact determinations of the proposed project related to tribal cultural resources, as described above in the detailed discussion in Section 3.7.6. Identified potential impacts are based on the significance criteria presented in Section 3.7.5, the information and data sources cited throughout Section 3.7, and the professional judgment of the report preparers, as applicable.

Table 3.7-1: Summary Matrix of Potential Impacts and Mitigation Measures Associated with the Proposed Project Related to Tribal Cultural Resources

Environmental Impacts	Impact Determination	Mitigation Measures	Impacts after Mitigation
Impact 3.7-1: The proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074. As such, this would be a <i>less than significant impact</i> for construction. There would be <i>no impact</i> to tribal cultural resources from project operations.	Construction: Less than Significant Operation: No Impact	No mitigation is required	Construction: Less than Significant Operation: No Impact

3.7.7.1 Mitigation Measures

No mitigation is required for construction or operations.

3.7.8 Significant Unavoidable Impacts

There would be no significant and unavoidable impacts to tribal cultural resources associated with construction and operation of the proposed project.