# 4.4 CULTURAL RESOURCES

This section describes the existing cultural resources of the project site, identifies associated regulatory requirements, evaluates potential impacts, and identifies mitigation measures related to implementation of the proposed Villa Storia Planned Development (PD) Plan (proposed project). The following analysis is based upon the Cultural Resources Survey and Assessment that was prepared for the proposed project by Affinis in 2013 and is incorporated by reference herein (Affinis 2013). The cultural resources report is included in Appendix D of this EIR.

The cultural resources report was based upon archaeological survey, literature and resource studies review, and Native American consultation. Native American monitoring was provided by Saving Sacred Sites.

In addition to the Cultural Resources Survey and Assessment prepared by Affinis in 2013, this section includes information from the Cultural Resources Assessment: CA-SDI-5422 prepared by Helix Environmental Planning in 2015 (Helix Environmental Planning 2015). This additional cultural assessment is included in Appendix D of this EIR.

## 4.4.1 Relevant Plans, Policies, and Ordinances

**Federal**

***National Historic Preservation Act***

The National Historic Preservation Act (NHPA) (16 U.S.C. 470 et seq.) establishes the nation's policy for historic preservation 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 NHPA 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 U.S.C. 470-1).

### *National Register of Historic Places*

The NRHP is the nation's official list of historic places. The register is overseen by the National Park Service and 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: (1) location, (2) design, (3) setting, (4) materials, (5) workmanship, (6) feeling, and (7) 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 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 (express 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 that involve taking or possessing remains or artifacts are felonies.

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."

***California Register of Historical Resources***

The California Office of Historic Preservation maintains the California Register of Historical Resources (CRHR). The CRHR is the authoritative guide to the state's significant historic and archaeological resources. The program provides for the identification, evaluation, registration, and protection of California's historic resources. The CRHR encourages public recognition and protection of resources of architectural, historic, archaeological, and cultural significance; identifies historic resources for state and local planning purposes; determines eligibility for state historic preservation grant funding; and affords certain protection to resources under the California Environmental Quality Act (CEQA).

The CRHR also has established context types to be used when evaluating the eligibility of a property or resource for listing. The four criteria are as follows:

- It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States.
- It is associated with the lives of persons important to local, California, or national history.
- It represents the work of a master, or possesses high artistic values.
- It has yielded, or is likely to yield, information important to prehistory or history of the local area, California, or the nation.

Similar to the NRHP, eligibility for the CRHR requires an establishment of physical integrity, including the seven aspects previously described. The CRHR's list of special considerations is less stringent than the NRHP's, providing allowances for relocated buildings, structures, or objectives as reduced requirements for physical integrity.

### *California Health and Safety Code*

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. 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 shall occur until the county coroner has examined the remains (Section 7050.5b). If the coroner determines or has reason to believe the remains are those of a Native American, the coroner must contact the NAHC within 24 hours (Section 7050.5c). The NAHC will notify a Most Likely Descendant (MLD). With the permission of the landowner, the MLD may inspect the site of discovery. The inspection must be completed within 24 hours of notification of the MLD by the NAHC. The MLD may recommend means of treating or disposing of, with appropriate dignity, the human remains and items associated with Native Americans.

### *California Environmental Quality Act*

CEQA is the principal statute governing environmental review of projects occurring in the State. CEQA requires lead agencies to determine if a proposed project would have a significant effect on archaeological resources (PRC, Sections 21000 et seq.). As defined in Section 21083.2 of the PRC, an EIR shall address issues relating to a "unique" archaeological resource is an archaeological artifact, object, or site, about which it can be clearly demonstrated that without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

- Contains information needed to answer important scientific research questions and there is a demonstrable public interest in that information.
- Has a special and particular quality such as being the oldest of its type or the best available example of its type.
- Is directly associated with a scientifically recognized important prehistoric or historic event or person.

In addition, CEQA Section 15064.5 broadens the approach to CEQA by using the term "historical resource" instead of "unique archaeological resource." The CEQA Guidelines recognize that certain historical resources may also have significance. The Guidelines recognize that a historical resource includes: (1) a resource in the California Register of Historical Resources; (2) a resource included in a local register of historical resources, as defined in PRC Section 5020.1(k) or identified as significant in a historical resource survey meeting the requirements of PRC Section 5024.1(g); and (3) any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant

in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California by the lead agency, provided the lead agency's determination is supported by substantial evidence in light of the whole record.

If a lead agency determines that an archaeological site is a historical resource, the provisions of Section 21084.1 of the PRC and Section 15064.5 of the Guidelines apply. If an archaeological site does not meet the criteria for a historical resource contained in the Guidelines, then the site is to be treated in accordance with the provisions of PRC §21083, which is a unique archaeological resource. The Guidelines note that if an archaeological resource is neither a unique archaeological nor a historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment (14 CCR 15064.5(c)(4)).

**Local**

***City of Oceanside General Plan***

The State of California requires each city within the state to draft and adopt a comprehensive General Plan that provides long term development plans, policies, and goals for the City. Cultural resources are addressed in the 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:

- 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 and requires that archeological surveys be conducted for any proposed developments

within a half mile of Mission San Luis Rey, as is the proposed project site. The Land Use Element states the following policy relevant to historic sites:

- **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.

***Mission San Luis Rey Historic Area Development Program and Design Guidelines***

Adopted by City Council in 1986, the Mission San Luis Rey Historic Area Development Program and Design Guidelines provides long range planning goals, specific design criteria, and guidelines for development proposal reviews within the Historic Area surrounding Mission San Luis Rey and associated facilities. The document "is intended to provide a flexible design framework that will respect and compliment the Mission's historic setting as well as to encourage high quality new development in San Luis Rey" (City of Oceanside 1986). The Historic Area encompasses approximately a one-half mile radius around the Mission San Luis Rey property effectively defining its sphere of influence. Within the Historic Area is the Historic Area Core, which has more specific design and development guidelines intending to reinforce the existing historical character between existing and proposed land uses. The portion of the project site to the west of Academy Road is within the Historic Area Core.

## 4.4.2 Existing Conditions

**Project Area History**

The Late Prehistoric period is represented by the Cuyamaca complex in the southern portion of San Diego County and the San Luis Rey complex in the northern portion of the county. The San Luis Rey complex represents the Shoshonean predecessors of the ethnohistoric Luiseño. The name Luiseño derives from Mission San Luis Rey de Francia and has been used to refer to the Native people associated with that mission.

When it came time to establish a mission between San Diego and San Juan Capistrano, the site on the San Luis Rey River was chosen, and a mission was established there on June 13, 1798 by Padre Fermin Francisco de Lasuen and named for King Louis IX of France. The mission was a self-supporting agricultural community whose economy was based on cattle raising and growing of crops. A large population was supported at the mission and in the surrounding Indian villages.

The history of the San Luis Rey area reflects five periods of occupation: Luiseño Indian, Spanish Mission, Mexican Secularization, American Military, and Twentieth Century Restoration. Native people lived in the San Luis Rey Valley for thousands of years before the Spanish colonial era. Father Antonio Peyri was put in charge of the mission from the day of its founding on June 13,

1798 until his departure in January 1832. During that time the mission became home to approximately 3,000 Indians, who provided labor, including cultivation of much of the mission lands in crops such as grapes, oranges, olives, wheat, and corn. Over 50,000 head of livestock were grazed on mission lands. The mission buildings were constructed of local materials, such as adobe bricks and wooden timbers. By 1830, Mission San Luis Rey was the largest building in California.

When Mexico gained independence from Spain in 1821 the law of secularization was passed, and lands were to be transferred to the Indians. The mission had a series of administrators and in 1833 the California missions were secularized. Following Mexican independence, large tracts of land were claimed as private ranchos; some of that land included mission lands. While prominent citizens were given large land grants, the land never made its way into Indian ownership. Between 1847 and 1857 Mission San Luis Rey was used as an operational base by the U.S. military. Some notable figures who served there included General Stephen W. Kearny, Kit Carson, and the Mormon Battalion. When California became part of the United States in 1850, the Catholic Bishop of California petitioned the U.S. government for return of the missions. In 1865, the mission was returned to the Catholic Church by the order of President Abraham Lincoln. However, after the military vacated Mission San Luis Rey, it lay abandoned until 1892.

From 1892-1912, Fr. Joseph Jeremias O'Keefe repaired the church and rebuilt the permanent living quarters on the foundations of the old mission. Restoration has continued throughout the years since Fr. O'Keefe's death. Included in this has been the partial rebuilding of the quadrangle in 1949 for a Franciscan college which serves today as a Retreat Center. During the 1950s and 1960s the Friars uncovered the soldier's barracks and the lavanderia from layers of dirt accumulated over the years. In 1984 a restoration effort to stabilize and preserve the exterior of the church building was completed. Conservation of painting and sculptures in the museum collection is an ongoing process, and archaeological investigations continue to unearth the past.

Mission San Luis Rey currently operates as a parish church with a parish school. The mission also has a retreat center, and the old cemetery is still in operation. Old Mission San Luis Rey's museum's collection includes artifacts from Native American, Spanish, Mission, Mexican Secularization, and American Military periods. The Mission is listed on the National Register of Historic Places.

The cultural resources report, provided in Appendix D, discusses a more detailed cultural and ethnographic history of the San Diego region and the project site.

**Previous Research**

Portions of the proposed project were surveyed for cultural resources by Caltrans staff in conjunction with the development of State Route 76. Affinis archaeologists surveyed the vast

majority of the property in 1999, however a small piece on the northeastern portion of the project site was not included in that survey.

Records searches conducted at the South Coastal Information Center (SCIC) show a number of archaeological sites recorded in the vicinity, most notably Mission San Luis Rey (CA-SDI-241) and CA-SDI-5422, a large habitation site associated with occupation of the Mission. Other sites in the area include remnants of historic ranches, some including historic structures, as well as Native American habitation sites or camp sites associated with the Mission or the large residential base located in the area prior to the arrival of the Spanish. A portion of CA-SDI-5422 is located within the project site.

For further details on previous excavations of CA-SDI-5422, please refer to the cultural report in Appendix D.

### 4.4.3 Research Methodology

An updated records search was conducted at the SCIC and the Caltrans Extended Phase 1 testing report along with the previous Affinis survey report were reviewed The Native American Heritage Commission (NAHC) was contacted for a Sacred Lands File Check and a list of Native American contacts. Letters were sent to the contacts listed by the NAHC.

The project site was surveyed for cultural resources by Affinis archaeologists Andrew Giletti and Kristina Davison with Ray Castañeda of Savings Sacred Sites (Native American monitor) on December 18, 2012. The project site was walked in parallel transects spaced approximately 10 m apart. Ground visibility was poor to fair over the majority of the property with the southwest corner having the most visible areas of open ground.

### 4.4.4 Thresholds of Significance

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

A. Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5.

B. Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5.

C. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

D. Disturb any human remains, including those interred outside of formal cemeteries.

Under the California Environmental Quality Act (CEQA), any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR Section 4852) including the following:

A. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

B. Is associated with the lives of persons important in our past;

C. 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, or:

D. Has yielded or may be likely to yield information important in prehistory or history.

Archaeological resources are usually assessed as to significance under Criterion D.

## 4.4.5 Impacts Analysis

### *A. Would the project cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?*

The nearest historical resource to the proposed project site is Mission San Luis Rey and associated facilities adjacent to the west of the project site. The project site itself is not considered eligible for or designated as a historical resource and no historical resources exist on site. The Environmental Resource Management Element also identifies Mission San Luis Rey as a prominent historical and cultural resource to the area. CEQA Guidelines Section 15064.5 defines a substantial adverse change in the significance of a historical resource as "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings." The proposed project would be developed on land adjacent to the Mission and not directly on Mission property and therefore would not result in the physical demolition, destruction, relocation, or alteration of Mission San Luis Rey or its immediate surroundings. However, the proposed project site is located within the Mission San Luis Rey Historic area with its section west of Academy Road located within the Historic Area Core. As discussed in Section 4.1, Aesthetics, and Section 4.9, Land Use and Planning, the proposed project would be consistent with the Mission San Luis Rey Historic Area Development Program and

Design Guidelines (which guides development in the Historic Area) and would not substantially impact the significance or use of Mission San Luis Rey. Therefore, impacts would be less than significant.

***B. Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?***

Past studies at various portions of CA-SDI-5422 have shown that site to contain areas of deep deposits and areas containing important archaeological materials; the resources potentially found within the site could contribute important information related to the mission system in California and to Native American cultures. Therefore, CA-SDI-5422 is considered a culturally significant resource under CEQA. However, these areas of concentration lay outside the proposed project boundaries. As found by past surveys, three areas of cultural concentration occur on CA-SDI-5422. Caltrans archaeologists previously conducted an extended Phase 1 testing program at CA-SDI-5422 that included the excavation of 22 backhoe trenches, 9 power auger holes, and 1 shovel test pit within the current project area, as well as a number of backhoe trenches, power auger holes, test units, and shovel test pits in other portions of the site to the west of the project site. Three areas of concentration were noted, none of them within the project site. During the 2012 survey, pottery, flakes, and a core were noted within the mapped boundaries of this site. In addition, small amounts of marine shell were observed in two areas, but the shell was in very disturbed contexts and appeared to be in fill soils. Therefore, the proposed project is not expected to cause a substantial adverse change to a significant and known archaeological resource.

Additional cultural resources fieldwork was conducted at the CA-SDI-5422 site in April 2015. Native American monitoring was provided by Saving Sacred Sites, overseen by Cami Mojado. Six shovel test pit units were placed within the boundaries of CA-SDI-5422 in areas not previously tested by Caltrans archaeologists. Full details regarding each shovel test pit unit can be found in Appendix D of this EIR. Small fragments of burned bone and pottery were found in the upper levels of the first four shovel test pits. It was determined by a forensic anthropologist that none of the excavated bone fragments could be characterized as human. The 2013 study (Affinis) prepared for the project and the 2015 study (Helix) both found limited cultural material within the project site. Some interesting contact period material is present, such as trade beads, Mission-period tile fragments and Native American ceramics that appear to date to the Mission period. However, the material is relatively limited in quantity, and the artifacts recovered during both studies are generally the same.

The Sacred Lands File Check did not indicate the presence of significant cultural resources within the project site. However, representatives of the San Luis Rey Band have indicated that this area is of cultural significance to the Luiseño people. Two written responses have

been received: one from the Pala Tribal Historic Preservation Office, representing the Pala Band of Mission Indians, the other from the Culture Committee of the Rincon Band of Luiseño Indians Both letters indicated that the project is within the tribes' Traditional Use Area and requested that the tribes be kept in the information loop for the project. In addition the tribes recommended archaeological monitoring, due to the proximity of known cultural and historic resources.

Utilizing the geotechnical report prepared for the proposed project by GeoTeck, Inc. (used as the basis for Section 4.5 Geology and Soils, and can be found in Appendix E), colluvial/alluvial soils were found to underlie the undocumented fill on the proposed project site. It must be noted that all areas of past cultural use are of cultural importance to the Luiseño community. This area is of particular importance as part of a larger habitation area despite the lack of archaeological significance of known significant archaeological resources (e.g., CA-SDI-5422) within the project site. Due to the archaeological and cultural sensitivity of the surrounding areas, there is potential for cultural resources to be buried within or beneath the colluvial/alluvial soils on the proposed project site. Therefore, impacts to unknown cultural resources would be potentially significant. Since there is potential for unknown archeological resources to exist in the underlying soils within the proposed project boundaries, a cultural resources monitoring program provided in mitigation measure MM-CUL-1, as recommended by the cultural resources report, shall be implemented. With the implementation of a cultural resources monitoring program, impacts would be reduced to less than significant.

### *C. Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?*

The City's General Plan does not identify any unique geologic features or paleontological resources. However, according to the Geotechnical Evaluation that was prepared for the proposed project by GeoTek, Inc. in 2013 (utilized for Section 4.5, Geology and Soils, and found in Appendix E of this EIR), the underlying geology consists of older alluvium and the Santiago Formation, both of which are considered paleontologically sensitive. While the surface layer of alluvium and fill soils would be considered to have low paleontological potential, earthwork recommendations provided in the Geotechnical investigation indicated that excavation may occur beyond the surface soils into the underlying alluvium and/or Santiago Formation. Therefore, impacts to unknown paleontological resources would be potentially significant. Due to the potential for the occurrence of sensitive paleontological resources within the project site, a Paleontological Resources Mitigation Program (provided as mitigation measure MM-CUL-2 below) shall be implemented prior to each future Development Plan for individual Planning Areas within the project site. With incorporation of MM-CUL-2, impacts to paleontological resources would be less than significant.

***D. Would the project disturb any human remains, including those interred outside of formal cemeteries?***

The project site is not currently used as a cemetery and is not otherwise known to contain human remains. However, this does not preclude finding human remains during project excavation and grading activities. Disturbance of any unknown human remains would be a potentially significant impact. However, as standard construction practice, should any human remains be encountered, State Health and Safe Code Section 7050.5 states that no further disturbance shall occur in the immediate area until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. Consequently, the project's adherence with the State Health and Safety Code and incorporation of mitigation measure MM-CUL-1 would ensure any potential impacts would be less than significant.

## 4.4.6 Mitigation Measures

**MM-CUL-1 Cultural Resources Monitoring Program:** Due to the cultural sensitivity of this area and the potential for buried cultural resources, a monitoring program shall be undertaken for the project. The monitoring program shall consist of the following mitigation measures:

- ~~Prior to implementation of the monitoring, a pre-excavation agreement shall be developed between the appropriate Luiseño tribe[s], the project applicant, and the City of Oceanside~~The developer shall enter into a Pre-Excavation Agreement, otherwise known as a Cultural Resources Treatment and Tribal Monitoring Agreement, with the San Luis Rey Band of Mission Indians prior to the commencement of any ground disturbing activities. This agreement will contain provisons to address the proper treatment of any cultural resources of Luiseño Native American human remains inadvertently uncovered during the course of the project. The agreement will outline the roles and power of the Luiseño Native American monitors;
- ~~The qualified archaeologist and the Native American representative shall attend the pregrading meeting with the contractors to discuss the requirements of the monitoring program~~An archaeologist and Luiseño Native American monitor shall be present at the project's preconstruction meeting to consult with grading and excavation contractors to discuss the requirements of the cultural resources monitoring programs, excavation schedules, and safety issues;
- An archaeologist and a Native American monitor shall be on-site during grading, trenching, and other ground-disturbing activities;

- ~~If archaeological artifact deposits or cultural features are discovered, grading activities shall be directed away from these deposits to allow a determination of potential importance~~Native American monitors and archaeological monitors shall have joint authority to temporarily divert and/or halt construction activities. If cultural resources are discovered during construction, all earth moving activity within and around the immediate discovery area must be diverted until the Luiseño Native American monitor and archaeological monitor can assess the nature and significance of the find. Isolates and clearly non-significant deposits as determined by the archaeologist and Luiseño Native American monitor will be minimally documented in the field, and grading shall proceed. The Luiseño Native American monitors, may in their discretion, collect said resources and provide them to the Tribe for respectful and dignified treatment in accordance with the Tribe's cultural and spiritual traditions~~Isolates and clearly non-significant deposits will be minimally documented in the field, and grading shall proceed~~. For any potentially significant artifact deposits, an adequate artifact sample to address research avenues previously identified for sites in the area will be collected using professional archaeological collection methods;
- ~~If any human remains are discovered, the County Coroner shall be contacted. In the event that the remains are determined to be of Native American origin, the Most Likely Descendant, as identified by the Native American Heritage Commission, shall be contacted in order to determine proper treatment and disposition of the remains per CEQA Guidelines 15064.5(e)~~If suspected Native American human remains are encountered, California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the San Diego County Coroner has made the necessary findings as to origin. Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. Suspected Native American remains shall be examined in the field by a forensic anthropologist and/or forensic osteologist and kept in a secure location at the site. A Luiseño Native American monitor shall be present during the examination of the remains. If the San Diego County Coroner determines the remains to be Native American, the Native American Heritage Commission (NAHC) must be contacted within 24 hours. The NAHC must them immediately notify the "Most Likely Descendant" of receiving notification of the discovery. The Most Likely Descendant shall then make recommendations within 48 hours, and engage in consultation concerning treatment of remains as provided in Public Resources Code 5097.98;

- ~~Recovered artifactual materials shall be cataloged and analyzed~~When cultural resources are discovered during the project and the archaeologist collects such resources, a Luiseño Native American monitor must be present during any testing or cataloging of those resources;
- A report shall be completed describing the methods and results of the monitoring and data recovery program;
- ~~Cultural material collected will be curated at the San Diego Archaeological Center or other appropriate curatorial facility. Alternatively, cultural material may be repatriated to the Tribe[s], as addressed in the pre-excavation agreement.~~
- If human remains, burial items, or items of a sacred or ritual nature are encountered during grading, trenching, and other ground disturbing activities, such items would be repatriated to the Luiseño community or other appropriate Native American tribe. Any other cultural material recovered in conjunction with the project will be permanently curated at a facility meeting the standards of 36 CFR 79 and the State's Guidelines for the Curation of Archaeological Collections (State Department of Parks and Recreation, May 1993). If a tribal facility meeting these standards is not available for curation of the cultural material recovered, cultural material will be curated at the San Diego Archaeological Center or similar appropriate facility;
- If a significant cultural resource(s) and/or unique archaeological resource(s) are unearthed during ground disturbing activities for this project, the San Luis Rey Band of Mission Indians shall be notified and consulted regarding the respectful and dignified treatment of those resources. Pursuant to California Public Resources Code Section 21083.2(b) avoidance is the preferred method of preservation for archaeological and cultural resources. If however, the Applicant is able to demonstrate that avoidance of a significant and/or unique cultural resource is infeasible and a data recovery plan is authorized by the City of Oceanside as the lead agency, the San Luis Rey Band of Mission Indians shall be consulted regarding the drafting and finalization of any such recovery plan;
- In the event that fill is imported into the project area, the fill shall be clean of cultural resources and documented as such. If fill material is to be utilized and/or exported from areas within the project site, then that fill shall be analyzed and confirmed by an archeologist and Luiseño Native American monitor that such fill material does not contain cultural resources;
- If determined by the Luiseno Native American and archaeological monitors that known and/or inadvertently discovered cultural resources may be disturbed, then a controlled grade must be instituted accordingly. Controlled

grading would occur at a deliberate pace, in a specialized manner and work in controlled increments; utilize equipment would need to meet specific requirements regarding weight, attachments and type of wheels; make very shallow grading passes observed and directed by the Luiseno Native American and archaeological monitors.

**MM-CUL-2** **Paleontological Resources Monitoring Program:** After the preparation of final grading plans for each development phase, but prior to the initiation of any site preparation or start of construction, the applicant shall contract with a qualified professional paleontologist or a California Registered Professional Geologist (California RPG) with appropriate paleontological expertise, as defined by the Society of Vertebrate Paleontology's Conformable Impact Mitigation Guidelines Committee (SVP 1995 Guidelines) to implement a paleontological monitoring program. The qualified paleontologist shall be available on-call to the applicant throughout the duration of ground-disturbing activities. At a minimum, the scope of services shall include:

- ***Preparation of a preconstruction paleontological assessment based on final project design*:** The preconstruction assessment shall include a review of information presented in this EIR, a review of fossil locality records, review of geological/geotechnical reports developed to date, and if deemed necessary by the qualified professional paleontologist, a pre-construction site survey. The goal of the preconstruction paleontological assessment shall be to determine with greater precision the depth and extent of geologic units of high paleontological potential (Older alluvium and Santiago Formation) within the areas to be excavated. The results will be documented in a report along with recommendations for appropriate and feasible procedures to avoid or minimize damage to any paleontological resources present. Based on the volume and depth of soil excavations and the professional judgment of the paleontologist, he or she shall make recommendations regarding the need, if any, for paleontological monitoring of ground-disturbing activities, including the construction phases and locations which would require monitoring. The City of Oceanside shall review and approve the report prior to granting final approval of the proposed project.
- ***Paleontological resources training:*** If deemed necessary by the qualified professional paleontologist, all construction forepersons and field supervisors shall be trained in the recognition of potential fossil materials prior to the initiation of any site preparation or start of construction. Training on paleontological resources shall also be provided to all other construction

workers, but may include videotape of the initial training and/or the use of written materials rather than in-person training by the qualified paleontologist. In addition to fossil recognition, the training shall convey procedures to follow if potential fossil materials are encountered by construction crews in the course of earthwork, excavation or grading, as described below.

- ***Assessment and salvage of potential fossil finds*:** If potential fossils are discovered by construction crews or archeological/paleontological monitors, all earthwork or other types of ground disturbance within 50 feet of the find shall stop immediately until the qualified professional paleontologist can assess the nature and importance of the find. Based on the scientific value or uniqueness of the find, the monitor may record the find and allow work to continue, or recommend salvage and recovery of the fossil. The monitor may also propose modifications to the stop-work radius based on the nature of the find, site geology, and the activities occurring on the site. If treatment and salvage is required, recommendations will be consistent with SVP 1995 guidelines and currently accepted scientific practice, and shall be subject to review and approval by the City of Oceanside. If required, treatment for fossil remains may include preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection, and may also include preparation of a report for publication describing the finds. The applicant will be responsible for ensuring that treatment is implemented and report to the City of Oceanside. If no report is required, the applicant will nonetheless ensure that information on the nature, location, and depth of all finds is readily available to the scientific community through university curation or other appropriate means.
- ***Active monitoring of construction sites for paleontological resources, if required*:** Paleontological monitoring will consist of periodically inspecting disturbed, graded, and excavated surfaces, as well as soil stockpiles and disposal sites. The monitor (which will be the professional paleontologist or a designee) will have authority to divert grading or excavation away from exposed surfaces temporarily in order to examine disturbed areas more closely, and/or recover fossils. The monitor will coordinate with the construction manager to ensure that monitoring is thorough but does not result in unnecessary delays. If the monitor encounters a paleontological resource, he or she shall assess the fossil, and record or salvage it, as described above.

### 4.4.7 Level of Significance After Mitigation

With implementation of mitigation measures MM-CUL-1 and MM-CUL-2, all impacts to cultural resources would be less than significant.