

4.16 TRIBAL CULTURAL RESOURCES

This section describes the existing setting for tribal cultural resources, identifies associated regulatory requirements, evaluates potential impacts, and establishes mitigation measures related to implementation of the Cypress Point project (proposed project). This analysis is based on the following, as well as Assembly Bill (AB) 52 consultation between the City and interested tribes:

- Cultural Resources Survey Report for the Cypress Point Project, City of Oceanside, California, prepared by Brian F. Smith and Associates, Inc. in September 2020 (included as Appendix D of this EIR)
- A Phase I and II Cultural Resources Study for the Cypress Point Project, City of Oceanside, California, prepared by Brian F. Smith and Associates, Inc. in October 2020 (included as Appendix E of this EIR)

4.16.1 Existing Conditions

The project area lies within the city of Oceanside, located directly west of the terminus of Aspen Street along the southern bank of the San Luis Rey River and north of Highway 76. Vegetation consists of native grasses throughout the project area overlying Tujunga sandy deposits, 0 to 5 percent slopes. The project property has been previously graded and elevations range from 44 to 51 feet above mean sea level (AMSL).

4.16.1.1 Cultural Setting

The project is located along the southern bank of the San Luis Rey River, which would have provided a rich and varied food resource that was less subject to the debilitating effects of limited seasonal rainfall than the inland areas of San Diego County. At the time of the first European colonization (1769), and for a period of time thereafter, Native American people used resources from the bay and adjacent wetland areas. The cultures that have been identified in the general vicinity of the project consist of possible Paleo Indian manifestation of the San Dieguito Complex, the Archaic and Early Milling Stone horizons represented by the La Jolla Complex, and the Late Prehistoric Kumeyaay culture. The prehistory of the region is divided into four major periods: Early Man (Prior to 8500 B.C.), Paleo Indian Period (8500 to 6000 B.C.), Early Archaic (6000 B.C. to A.D. 0), and Late Prehistoric (0 A.D. to 1769). The area was then used for ranching and farming following the Hispanic intrusion into the region and extending into the historic period. The historic period is also divided into four major periods: Exploration Period (1530 to 1769), Spanish Colonial Period (1769 to 1821), Mexican Period (1821 to 1846), and Anglo-American Period (1846 to Present). The prehistory and historic periods of the region are described in detail in Appendix D and E of this EIR.

South Coastal Information Center Records Search Results

As described in Chapter 4.4 Cultural Resources of this EIR, a records search of the project APE and the surrounding 1-mile radius around the project was conducted by Brian F. Smith and Associates, Inc. (BFSA) staff at the South Coastal Information Center (SCIC) at San Diego State University to identify previously discovered archaeological sites in the project area, and a Sacred Lands file (SLF) search was requested from the Native American Heritage Commission (NAHC) to list potentially sacred or ceremonial sites or landforms on or near the project site. In addition to a review of previously prepared site records and reports, the records search also involved review of historical maps of the project site and vicinity; ethnographies; the National Register of Historic Places (NRHP); the Office of Historical Preservation (OHP) Built Environmental Resources Directory (BERD); and land patent records, held by the Bureau of Land Management (BLM) and accessible through the BLM General Land Office website, were also reviewed for pertinent project information.

The records searches indicated that 101 previous studies have been performed in the 1-mile records search area and six of these reports included portions of the subject property. The reports identified during the SCIC record search for the project site are presented in Table 4.4-2 in Section 4.4 of this EIR. Refer to Appendix D of this EIR for the complete record search results.

SCIC records indicate that no previously recorded cultural resources are located within the project APE. However, the records indicate that 21 cultural resources have been recorded within the 1-mile search radius. Of the previously recorded resources, nine are prehistoric, eight are historic, and four are a multicomponent. The prehistoric sites include seven lithic and shell scatters, one bedrock milling feature site, and one shell isolate. The historic resources include Mission San Luis Rey de Francia, adobe ruins and adobe ruins with historic refuse or a cistern, a historic ranch complex, El Camino Real, a historic refuse scatter, and the San Luis Rey Wastewater Treatment Plant. The multicomponent sites include prehistoric occupation sites with historic refuse deposits and a historic ranch complex with a prehistoric shell and fire-affected rock scatter. The cultural resources identified during the SCIC records search for the current project are listed in Table 4.4-3 in Section 4.4 of this EIR.

Additionally, the SCIC Records indicate the presence of a total of six previously recorded historic addresses within 1-mile search radius. None of the previously recorded historic addresses are identified within the project APE or are located adjacent to the APE. Refer to Appendix D for the complete list of historic addresses.

Phase I and II Cultural Resources Surveys

As described in Chapter 4.4 Cultural Resources of this EIR, the Phase I and II Cultural Resources assessment was conducted by Brian F. Smith and Associates, Inc. (BFSA) as part of the environmental clearance required for the proposed project. The Phase I cultural resource survey of

the project site consisted of institutional records searches, a pedestrian archaeological survey of the project, and preparation of Cultural Resources Survey Report. Principal Investigator Brian F. Smith, M.A. from BFSA directed the cultural resources study for the project. The initial archaeological survey (Phase I survey) was conducted on September 14, 2020 by Senior Archaeologist Tracy A. Stropes, M.A., RPA with participation by Cami Mojado from the San Luis Rey Band of Mission Indians. During the pedestrian survey, it was noted that the topography of the project site was generally flat and previously graded. Including the previous grading of the property, disturbances include two man-made trenches and three dirt walking paths. The trenches, located at the north and south of the property, are a result of drainage pipelines between the nearby neighborhood and the San Luis Rey River channel. The southernmost trench runs east to west along the southern project boundary and the northernmost trench runs southeast and northwest across the northern third of the project. The three dirt walking paths are located along the southern project boundary and running northeast to southwest along the northern third of the property. Additionally, the majority of the property was covered in dense, low-lying grasses. In areas obscured by dense vegetation, ground visibility was considered poor, which in turn hindered the possibility of identifying cultural resources. Parallel survey transects spaced at approximately 10-meter intervals were utilized throughout the entire project and photographs were taken to document project conditions (photographs are included as part of Appendix E to this EIR). During the archaeological field survey, an unconsolidated scatter of prehistoric shell was identified in the northern portion of the project. The marine shell was observed within previously impacted soil brought up to the surface by the development of a drainage ditch that runs northwest to southeast across the northern portion of the parcel. The presence of the prehistoric material indicated a potential for subsurface deposits to also be present.

To investigate the potential for buried deposits across the project, BFSA archaeologists Clarence Hoff and James Shrieve conducted a testing and evaluation program and trench sampling program on October 14, 2020 with participation by Banning Taylor from the San Luis Rey Band of Mission Indians (Phase II survey). Thirteen (13) test trenches were mechanically excavated and screened to determine if cultural resources were present within the subsurface portion of the property. The testing program was conducted prior to grading in order to facilitate the identification of any significant subsurface archaeological deposits and, if significant deposits or features were identified, to outline measures needed to achieve the mitigation of impacts. Of the 13 trenches excavated as part of the testing program, six trenches (trenches 2, 5, 6, 8, 9, and 10) produced only recovered 20 fragments of marine shell (21.2 grams identified as *Argopecten* sp., *Chione* sp., *Ostrea* sp., and *Donax* sp.) and one piece of prehistoric ceramic (refer Table 4.4-1 in Section 4.4 of this EIR). The majority of the materials were recovered between zero and 60 centimeters in depth, which corresponds to the stratigraphic observations for the trenches across the property. It is clear that the majority of the artifacts identified were concentrated between 30- and 60-centimeter levels. No midden soils were encountered.

It was determined that the artifacts recovered from the project site constitute too small of a collection for broad research questions to be applied. Furthermore, the materials observed in the trenches are interpreted as potentially being a secondary deposition that resulted from historic flooding episodes along the San Luis Rey River. This limited deposition has also been heavily modified by the historic development of the property as early as 1953. Such disturbance has removed any *in situ* provenience information from the collection and, as such, these materials represent only minimum research value and are not considered to be indicative of a significant prehistoric deposit (Appendix E).

Native American Correspondence

As described in Chapter 4.4 Cultural Resources of this EIR, BFSA requested a search of the Native American Heritage Commission (NAHC) Sacred Lands File (SLF) to list potentially sacred or ceremonial sites or landforms on or near the project. The SLF search returned positive results and the NAHC requested that the San Luis Rey Band of Mission Indians be contacted for more information. BFSA thereafter reached out to the San Luis Rey Band, and Cami Mojado, representing the San Luis Rey Band, participated in the archaeological survey of the Cypress Point Project on September 14, 2020 as described above (Phase I Survey). At that time, Ms. Mojado expressed concerns about the project due to its location along the southern bank of the San Luis Rey River, which is traditionally known to the Native peoples of the region as *Quechla*. Prehistorically, *Quechla*, which generally refers to the San Luis Rey River watershed and the people who lived there, was a valuable water source for the native inhabitants of the region and to this day, provides water to five southern Native American tribes that live on or near its banks, including the Rincon, La Jolla, Pauma, Pala, and San Pasqual bands. Due to the project's immediate proximity to *Quechla*, Ms. Mojado noted the potential for buried cultural deposits along the floodplain and expressed interest in a trenching program to examine areas in the project for any buried cultural resources that may be present. The trenching program was subsequently conducted on October 14, 2020 with participation by Banning Taylor from the San Luis Rey Band of Mission Indians (Phase II Survey) (Appendix E).

AB 52 Consultation

The City had requested a consultation list from the NAHC of tribes that are traditionally and culturally affiliated with the geographic area, to include in the AB 52 consultation process. Based on the information provided in the NAHC response letter dated May 19, 2021, outreach letters were mailed on May 20, 2021 to 25 applicable Native American group representatives to solicit additional information about known Native American resources. To date, four responses have been received from representatives of tribes. These responses are summarized below:

- Viejas Tribal Government (May 26, 2021) – Ray Teran, the Resource Management Director for the Viejas Band of Kumeyaay Indians, acknowledged review of the project

and determined that the project site has a cultural significance or ties to the Kumeyaay Nation, and recommended notifying the San Pasqual Band of Mission Indians. Per the recommendation, the City reached out to the San Pasqual Band of Mission Indians on May 20, 2021, and the San Pasqual Band of Mission Indians signed for the certified mail on May 24, 2021.

- Rincon Band of Luiseño Indians (June 16, 2021) – Cheryl Madrigal, the Cultural Resource Manager for the Rincon Band of Luiseño Indians, acknowledged notification of the project and requested consultation with the City to assess potential impacts to cultural resources, as the identified project site is located within the Traditional Use Area of the Luiseño people and within the Band’s specific Area of Historic Interest. As part of this initial letter, copies of existing documents pertaining to the project including record search results, the geotechnical report, and grading plans were requested for review prior to consultation. The City provided the requested documents to Ms. Madrigal on June 17, 2021. Consultation was held between Ms. Madrigal and the City on June 30, 2021 via Zoom, and in a follow-up letter to the City from Ms. Madrigal on July 15, 2021, it was confirmed that the Rincon Band was in agreement with the proposed measures outlined in the provided documents which include archaeological and tribal monitoring, a monitoring report, and protocols for discovery of cultural material and human remains. Final requests from the Rincon Band are that the measures will accommodate for reburial on-site as preferred method for any cultural material discovered throughout the duration of the project, and that all excavated materials from the Phase I and II Cultural Resources Study be reburied on-site. To conclude this July 15, 2021 letter, Rincon Band confirmed no further comments or concerns, and that consultation is considered concluded at this time.

In response to Rincon’s final request of re-burial of excavated materials from the Phase I and II Cultural Resources Survey Report, Brian Smith & Associates, Inc. confirmed with the Rincon Band in a letter dated July 29, 2021, that the small quantity of artifacts recovered during the testing process will be combined with any cultural materials recovery during the monitoring of grading and will be reburied on the property in a location that will either be in a park or in an open space area. The final location for repatriation and reburial of any cultural materials from the property will be determined with the Native American representatives present at the time of the grading of the property.

In a follow-up response to Rincon’s final request, a letter prepared by Brian Smith & Associates, Inc. on August 30, 2021 stated that the small frequency of materials collected as a result of the testing program are currently stored at the offices of Brian F. Smith and Associates, Inc., and given the small quantity of artifacts dispersed across the project and the information generated by the testing program, the evaluation was reached that the project does not appear to contain any potentially significant cultural features or deposits. However, due to the presence of a limited shell scatter, the potential exists to discover

additional prehistoric deposits on the property and as a result, monitoring during ground-disturbing activities by a qualified archaeologist and Native American representative has been recommended to ensure that if buried features (i.e., human remains, hearths, or cultural deposits) are present, they will be handled in a timely and proper manner. As a result, it is standard archaeological protocol to repatriate all materials at the conclusion of the monitoring program to ensure that any additional materials recovered may be combined with the test materials for a single repatriation. As confirmed in the previous response on July 29, 2021, the final location of the repatriation will be determined in consultation with the Native American representatives present at the time of the grading of the property, the project proponent and consulting archaeologist and will include a location that will either be in a park or in an open space area.

- San Luis Rey Band of Mission Indians (June 17, 2021) – Cami Mojado, the Cultural Resources Manager for the San Luis Rey Band of Mission Indians, acknowledged notification of the project and requested tribal consultation, and review of any cultural resources assessments that have been completed for the project. The City reached out twice via email to Cami Mojado of the San Luis Rey Band of Mission Indians initiating consultation, prior to scheduling a consultation meeting. Consultation was held between Cami Mojado and the City on August 12, 2021 via Skype, and consultation is considered ongoing.
- Jamul Indian Village of California (July 22, 2021) – Lisa Cumper, Cultural Resources Manager for the Jamul Indian Village of California, acknowledged notification of the project and confirmed that the project is not within the boundaries of the recognized Jamul Indian Reservation. The letter recommends that a Kumeyaay Native American Monitor be present for any ground disturbance, but that the tribe has no objection to the continuation of the project activities as currently planned, and defer to the San Pasqual Band of Mission Indians.

Under CEQA, the lead agency is required to perform formal government-to-government consultation with Native American tribes under Assembly Bill 52 (AB 52). AB 52 is applicable to projects that have a notice of preparation or a notice of negative declaration on or after July 1, 2015. As outlined above, notification to tribes was completed for AB 52 and two responses have been received regarding tribal consultation. Consultation with the Rincon Band has been deemed complete as of July 15, 2021.

4.16.2 Regulatory Setting

Federal

National Historic Preservation Act

The National Historic Preservation Act (NHPA) (16 USC 470 et seq.) establishes the federal policy for preservation of historical resources, including archaeological sites, and sets in place a program

for the preservation of historic properties by requiring federal agencies to consider effects to significant cultural resources (e.g., historic properties) prior to undertakings.

Section 106 of the NHPA requires federal agencies to take into account the effects of projects on historic properties (resources included in or eligible for the 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 Federal Register 8921) (1) orders the protection and enhancement of the cultural environment through requiring federal agencies to administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; (2) initiates measures necessary to direct their policies, plans, and programs in such a way that federally owned sites, structures, and objects of historical, architectural, or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; and (3) in consultation with the Advisory Council on Historic Preservation, institutes procedures to assure that federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archaeological significance (16 USC 470-1).

National Register of Historic Places

The NRHP is the nation's official list of historic places. The 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 Register of Historical Resources and the California Environmental Quality Act

CEQA requires that all private and public activities not specifically exempted be evaluated against the potential for environmental damage, including effects to historical resources. Historical resources are recognized as part of the environment under CEQA. The act defines historical resources as “any object, building, structure, site, area, or place that is historically significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California” (California Public Resources Code, Section 5020.1[j]).

Lead agencies have a responsibility to evaluate historical resources against the California Register of Historical Resources (CRHR) criteria prior to making a finding as to a proposed project's impacts to historical resources. Mitigation of adverse impacts is required if the proposed project will cause substantial adverse change. Substantial adverse change includes demolition, destruction, relocation, or alteration such that the significance of a historical resource would be impaired. While demolition and destruction are fairly obvious significant impacts, it is more difficult to assess when change, alteration, or relocation crosses the threshold of substantial adverse change. The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of a historical resource that convey its historical significance (i.e., its character-defining features) is considered to materially impair the resource's significance. The CRHR is used in the consideration of historical resources relative to significance for purposes of CEQA. The CRHR includes resources listed in or formally determined eligible for listing in the National Register of Historic Places (NRHP) and some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the CRHR, and are presumed to be significant resources for purposes of CEQA unless a preponderance of evidence indicates otherwise.

Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the CRHR (California Public Resources Code, Section 5024.1; 14 CCR 4852), which include the following:

- 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; or
- It is associated with the lives of persons important to local, California, or national history; or
- It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values; or
- It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Senate Bill 18

The Traditional Tribal Cultural Places Bill of 2004 (SB 18) requires local governments to consult with Native American tribes during the project planning process. The intent of this legislation is to encourage consultation and assist in the preservation of “Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance” (County of San Diego 2007). The purpose of this consultation is to protect the identity of the cultural place and to develop appropriate and dignified treatment of the cultural resource. The consultation is required whenever a General Plan, General Plan Amendment, Specific Plan, Specific Plan Amendment, or Open Space Element is proposed for adoption. As part of the planning process, California Native American tribes must be given the opportunity to consult with the lead agency for the purpose of preserving, mitigating impacts to, and identifying cultural places.

Assembly Bill 52

AB 52, which took effect July 1, 2015, establishes a consultation process between California Native American tribes and lead agencies in order to address tribal concerns regarding project impacts and mitigation to tribal cultural resources (TCRs). Public Resources Code, Section 21074(a) defines TCRs and states that a project that has the potential to cause a substantial adverse change to a TCR is a project that may have an adverse effect on the environment. A TCR is defined as a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either (1) listed or eligible for listing in the CRHR or a local register of historical resources, or (2) determined by a lead agency to be a TCR.

Native American Historic Resource Protection Act

State law addresses the disposition of Native American burials in archaeological sites, and protects such remains from disturbance, vandalism, or inadvertent destruction; establishes procedures to be

implemented if Native American skeletal remains are discovered during construction of a project; and establishes the NAHC to resolve disputes regarding the disposition of such remains. In addition, the Native American Historic Resource Protection Act (PRC Section 5097 et seq.) makes it a misdemeanor punishable by up to one year in jail to deface or destroy a Native American historic or cultural site that is listed or may be eligible for listing in the California Register of Historical Resources.

California Native American Graves Protection and Repatriation Act

The California Native American Graves Protection and Repatriation Act (California Repatriation Act) (25 U.S.C., Chapter 32), enacted in 2001, requires all state agencies and museums that receive state funding and that have possession or control over collections of human remains or cultural items, as defined, to complete an inventory and summary of these remains and items on or before January 1, 2003, with certain exceptions. The California Repatriation Act also provides a process for the identification and repatriation of these items to the appropriate tribes.

California Health and Safety Code Section 7050.5

California law protects Native American burials, skeletal remains, and associated grave goods, regardless of their antiquity, and provides for the sensitive treatment and disposition of those remains. California Health and Safety Code Section 7050.5 requires that if human remains are discovered in any place other than a dedicated cemetery, no further disturbance or excavation of the site or nearby area reasonably suspected to contain human remains can occur until the County Coroner has examined the remains (Section 7050.5b). If the coroner determines or has reason to believe that the remains are those of a Native American, the coroner must contact the NAHC within 24 hours (Section 7050.5c). The NAHC will notify the most likely descendant, and with the permission of the landowner, the most likely descendant may inspect the site of discovery. The inspection must be completed within 24 hours of notification of the most likely descendant by the NAHC. The most likely descendant may recommend means of treating or disposing of, with appropriate dignity, the human remains and items associated with Native Americans.

Local

City of Oceanside General Plan

Cultural resources are addressed in the 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 of Oceanside (City) will:

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

The Land Use Element provides designations for historic areas in order to preserve cultural resources. The Land Use Element states the following policy relevant to historic sites:

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

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

- **3.2A:** The City shall encourage open space land use designations and open space land use designations and open space zoning or open space easements for the preservation of cultural resources.
- **3.2B:** The City shall encourage the acquisition, restoration, and/or maintenance of significant cultural resources by private organizations.
- **3.2C:** Cultural resources that must remain in-situ to preserve their significance shall be preserved intact and interpretive signage and protection shall be provided by project developers.
- **3.2D:** An archaeological survey report shall be prepared by a Society of Professional Archaeologists certified archaeologist for a project proposed for grading or development if any of the following conditions are met:
 1. The site is completely or largely in a natural state;
 2. There are recorded sites on nearby properties;

3. The project site is near or overlooks a water body (creek, stream, lake, freshwater lagoon);
4. The project site includes large boulders and/or oak trees; or
5. The project site is located within a half-mile of Mission San Luis Rey.

City of Oceanside Historic Preservation Ordinance

Chapter 14A of the City’s Municipal Code, referred to as the Historic Preservation Ordinance, identifies evaluation criteria under which a historical site or area may be designated in Section 14A.6, as follows (City of Oceanside 2018):

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

4.16.3 Thresholds of Significance

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

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

4.16.4 Impacts Analysis

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

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

As described in Section 4.16.1 above, the SCIC Records indicate the presence of a total of six previously recorded historic addresses within 1-mile search radius of the project site. None of the previously recorded historic addresses are identified within the project APE or are located adjacent to the APE. A complete list of historic addresses identified in the records search is provided in Appendix D to this EIR. As there are no historic-era structures eligible for listing under NRHP/CRHR or locally within the project APE, project impacts related to historic resources are determined to be **less than significant**.

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

As described in Section 4.16.1 above, consultation and coordination has been initiated with tribes affiliated with the project area, to identify any potential tribal cultural resources located on the site or in the project vicinity. No known significant tribal cultural resources in the project APE have been identified through AB 52 consultation with tribal representatives, or record searches.

As described above and as analyzed in Chapter 4.4 of this EIR, the Phase I and II cultural resources study for the Cypress Point Project was conducted in conformance with Section 21083.2 of the California Public Resources Code and CEQA. The survey and archaeological testing program for the Cypress Point Project resulted in the identification of a diffuse and disturbed prehistoric shell scatter. All of the materials are likely related to the general prehistoric occupation of the San Luis Rey River region known to the San Luis Rey Band of Mission Indians as Quechla. Given the small quantity of artifacts dispersed across the project and the information generated by the testing program, the evaluation was reached that the project does not appear to contain any potentially significant cultural features or deposits. Based upon the documentation of only a sparse prehistoric shell deposit across the property, the proposed development would not result in adverse impacts to significant cultural resources, as defined in the California Code of Regulations, Section 15064.5 (Appendix E).

Although no known significant tribal cultural resources have been identified on the project site or within the project APE, this does not preclude finding unknown tribal cultural resources or human remains during project excavation and grading activities. Disturbance of any unknown tribal cultural resources or human remains would be a potentially significant impact. However, implementation of mitigation measures **MM-CUL-1** through **MM-CUL-9** previously identified in Chapter 4.4, Cultural Resources, of this EIR, would ensure potential impacts to tribal cultural resources, including human remains would be reduced to a level of **less than significant**.

4.16.5 Mitigation Measures

Impacts related to Tribal Cultural Resources are determined to be less than significant with implementation of mitigation measures **MM-CUL-1** through **MM-CUL-9** identified in Chapter 4.4, Cultural Resources, of this EIR. No other mitigation is required.

4.16.6 Level of Significance After Mitigation

Although no known significant tribal cultural resources have been identified on the project site or within the project APE, implementation of mitigation measures **MM-CUL-1** through **MM-CUL-9** previously identified in Chapter 4.4, Cultural Resources, of this EIR, would ensure potential impacts to tribal cultural resources, including human remains would remain at a level of **less than significant**.