

5. Environmental Analysis

5.4 CULTURAL RESOURCES

Cultural resources comprise archaeological and historical resources. Archaeology studies human artifacts, such as places, objects, and settlements that reflect group or individual religious, cultural, or everyday activities. Historical resources include sites, structures, objects, or places that are at least 50 years old and are significant for their engineering, architecture, cultural use or association, etc. In California, historic resources cover human activities over the past 12,000 years. Cultural resources provide information on scientific progress, environmental adaptations, group ideology, or other human advancements. This section of the Draft Environmental Impact Report (DEIR) evaluates the potential for implementation of the Laguna Niguel City Center Mixed Use Project (proposed project) to impact cultural resources in the City of Laguna Niguel (City). Tribal Cultural Resources are analyzed in Section 5.16. The analysis in this section is based in part on the following information:

- *Cultural Resources Summary for the Agora Downtown Laguna Niguel Project*, Cogstone, March 30, 2016.

A complete copy of this study is in the technical appendices of this DEIR (Appendix E).

5.4.1 Environmental Setting

5.4.1.1 REGULATORY BACKGROUND

Federal

Archaeological Resources Protection Act

The Archaeological Resources Protection Act of 1979 regulates the protection of archaeological resources and sites on federal and Indian lands.

National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA) coordinates public and private efforts to identify, evaluate, and protect the nation's historic and archaeological resources. The act authorized the National Register of Historic Places, which lists districts, sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture.

Section 106 (Protection of Historic Properties) of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties. Section 106 Review ensures that historic properties are considered during federal project planning and implementation. The Advisory Council on Historic Preservation, an independent federal agency, administers the review process with assistance from state historic preservation offices.

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State

California Public Resources Code and Health and Safety Code

Archaeological and historical sites are protected under a wide variety of state policies and regulations in the California Public Resources Code (PRC) and California Health and Safety Code (HSC). In addition, cultural resources are recognized as nonrenewable resources and receive protection under the PRC and CEQA.

PRC Sections 5020 to 5029.5 continued the former Historical Landmarks Advisory Committee as the State Historical Resources Commission. The commission oversees the administration of the California Register of Historical Resources and is responsible for designating State Historical Landmarks and Historical Points of Interest.

PRC Sections 5079 to 5079.65 define the functions and duties of the Office of Historic Preservation, which administers federal- and state-mandated historic preservation programs in California as well as the California Heritage Fund.

PRC Sections 5097.9 to 5097.991 provide protection to Native American historical and cultural resources and sacred sites; identify the powers and duties of the Native American Heritage Commission (NAHC); require that descendants be notified when Native American human remains are discovered; and provide for treatment and disposition of human remains and associated grave goods.

HSC Sections 7050.5 to 7055 protects human remains from disturbance and desecration. In particular, HSC Section 7050.5 requires that if human remains are accidentally discovered, the county coroner must be contacted. If the coroner determines the remains are Native American, the coroner must contact that Native American Heritage Commission within 24 hours.

Local

Laguna Niguel General Plan

The Open Space, Parks, and Conservation Element of the Laguna Niguel General Plan discusses the conservation of cultural and historical resources and identifies the following goal and policies relating to cultural resources.

- **Goal 7:** Recognize significant cultural sites or features within the community.
 - **Policy 7.1.** Review the technical data on sensitive cultural resources for all new development proposals.
 - **Policy 7.2.** Require mitigation of impacts to significant areas of archaeological and paleontological resources.
 - **Policy 7.3.** Preserve uncovered resources in their natural state, as much as feasible to assure their preservation and availability for later study. Require that uncovered resources are documented and retained in an appropriate museum or other institution.

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5.4.1.2 EXISTING CONDITIONS

Natural Setting

The project site is in southern Orange County within the cismontane portion of the Peninsular Ranges geomorphic province of southern California. The Peninsular Ranges are formed by the San Jacinto Mountains, Santa Rosa Mountains, and Laguna Mountains through the San Joaquin Hills.

Aliso Creek flows northeast-southwest north of the project site; Sulphur Creek also flows northeast-southwest northeast of the project site; and Salt Creek flows southerly south of the site.

The site elevation ranges from approximately 305 feet above mean sea level (amsl) in the southeast corner to approximately 370 feet amsl in the western portion of the site, with an average grade of 4.5 percent. An east-west ridgeline runs throughout the northern third of the property at an elevation of 370 feet amsl.

The majority of the site consists of sedimentary deposits of the marine Late Miocene Capistrano Formation. Portions of the lower-lying northeastern project area may have surface deposits of younger terrestrial Quaternary Alluvium (Orange 2008).

Cultural Setting

Laguna Niguel, including the project site, is situated in a region that was inhabited by the Luiseño and Gabrieleño Native American groups. The Luiseño occupied approximately 1,500 square miles of the southern California coast—from the Santiago Peak to the north, the Palomar Mountains to the east, and San Luis Rey River to the south.

The Luiseño and the Gabrieleño have a history of interaction and border one another's territories at Aliso Creek, just north of the project site. Gabrieleño territory encompassed over 1,500 square miles and included the San Fernando Valley, San Gabriel Valley, and Los Angeles-Santa Ana River Plain. They also occupied the islands of Santa Catalina, San Clemente, and San Nicholas (Orange 2008).

Cultural Resources

The project footprint is inclusive of a previously proposed project, the AGORA Arts District Downtown (AGORA) project, which was not implemented. A cultural resources study was completed for the AGORA project that included a records search and literature review for archeological and historical records. The records search of the California Historical Resources Information System (CHRIS) was conducted by Cogstone on January 26, 2016, at the South Central Coast Information Center (SCCIC), California State University at Fullerton. The records search covered a one-mile radius around the project boundaries. The records search results indicate that 25 cultural resources investigations have been completed previously within a one-mile radius of the project area. Of these, four investigations included a portion of the project area.

The records search results indicate that four cultural resources were previously recorded within one mile of the project site, and two are within the project boundaries (see Table 5.4-1). CA-ORA-33 was recorded in 1960 as a prehistoric shell midden site with manos, metate fragments, a stone pendant, scrapers, and choppers present.

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Test excavations in 1960 concluded that the site was a seasonal camp. It is at the southern boundary of the site. Given the grading activities that occurred to build the existing parking lots, it is unlikely that any portion of the site has been preserved.

Table 5.4-1 Previously Recorded Resources Within a One-Mile Radius of the Project Area

Trinomial	Description	Year	Distance from Project Site
CA-ORA-33	Prehistoric shell midden site with manos, metate fragments, a stone pendant, scrapers, and choppers present. Test excavations in 1960 concluded that the site was a seasonal camp. Location covered by urban built environment.	1960	Within project site, at southern boundary
CA-ORA-131	Prehistoric site. The site record contains minimal details except to note that surface finds indicate that the site is a good prospect for excavation and that the site was destroyed in 1976. Location covered by urban built environment.	1963	Within project site, at eastern boundary
CA-ORA-505	Prehistoric site consisting of a dark midden with flake waste.	1975	Within 1.0 mile
CA-ORA-539	Prehistoric site consisting of a quartz schist slab metate	1976	Within 0.5 mile
Source: Cogstone 2016.			

CA-ORA-131 was recorded in 1963 as a prehistoric site. The site record contains minimal details but states that the resource CA-ORA-131 was destroyed in 1976. The site was at the eastern boundary of the project site. Significant grading and filling have taken place in this area to fill and relocate the creek and to level the land for the library and other development. The grading and filling in the location of CA-ORA-131 makes it improbable that any portion of the site is preserved. The locations of these two known sites are completely developed.

Two additional cultural resources, CA-ORA-505 and CA-ORA-539, are within the one-mile search radius but outside the project area. CA-ORA-505 is a prehistoric site consisting of a dark midden with flake waste. CA-ORA-539 is a prehistoric site consisting of a quartz schist slab metate.

In addition to the records at the SCCIC, a variety of sources were consulted by Cogstone in January 2016 to obtain information regarding the project area. Sources include the National Register of Historic Places, California Register of Historical Resources, California Historical Resources Inventory, California Historical Landmarks, California Points of Historical Interest, and the Bureau of Land Management's General Land Office. The General Land Office's records show that one land patent was granted in 1873 to multiple individuals, including Juan Avilar and the Sanchez family.

Sacred Lands File Search

The NAHC maintains a confidential Sacred Lands File that with sites of traditional, cultural, or religious value to the Native American community. A Sacred Lands File search request was submitted to the NAHC to inquire about the presence/absence of sacred or religious sites in the vicinity of the project area for the AGORA project. On January 28, 2016, the NAHC responded that there are no sacred lands within the project area or a half-mile radius. The City submitted an updated project description for the proposed project to the NAHC on September 25, 2019. The NAHC responded on October 8, 2019, with an updated consultation list of tribes with traditional lands or cultural places within the boundaries of the project and Orange County. The NAHC

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response also included AB 52 and SB 18 requirements and guidelines. Two tribes sent responses: the Pala Band of Mission Indians and the Agua Caliente Band of Cahuilla Indians.

The Pala Band of Mission Indians stated that a check of their cultural registry revealed that this project is not within the recognized Pala Indian Reservation or the boundaries of the territory that the tribe considers its traditional use area. Therefore, they defer to the other tribes in the area, and the letter concluded their consultation effort.

The Agua Caliente Band of Cahuilla Indians noted that a check of the tribal historic preservation office's cultural registry revealed that this project is not within the tribe's traditional use area. Therefore, they defer to the other tribes in the area, and the letter concluded their consultation effort.

5.4.2 Thresholds of Significance

CEQA Guidelines Section 15064.5 provides direction on determining significance of impacts to archaeological and historical resources. Generally, a resource shall be considered a "historical resource" if the resource meets the criteria for listing on the California Register of Historical Resources:

- Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
- Is associated the with lives of persons important in our past.
- Embodies the distinctive characteristics of a type, period, region or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- Has yielded, or may be likely to yield, information important in prehistory or history. (PRC § 5024.1; 14 CCR § 4852)

A "historical resource" also generally includes 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). In addition, any object, building, structure, site, area, place, record, or manuscript that is historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered a historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record.

The fact that a resource is not listed in the California Register of Historical Resources, not determined to be eligible for listing, or not included in a local register of historical resources does not preclude a lead agency from determining that it may be a historical resource.

CEQA also protects unique archeological resources. "Unique archaeological resource" means 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:

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

According to Appendix G of the CEQA Guidelines and the City's CEQA Manual, a project would normally have a significant effect on the environment if the project would:

- C-1 Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5. Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.
- C-2 Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5.
- C-3 Disturb any human remains, including those interred outside of dedicated cemeteries.

5.4.3 Plans, Programs, and Policies

- PPP CUL-1 In accordance with California Health and Safety Code, Section 7050.5, if human remains are found, the County Coroner shall be notified within 24 hours of the discovery. No further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains shall occur until the County Coroner has determined, within two working days of notification of the discovery, the appropriate treatment and disposition of the human remains. If the County Coroner determines that the remains are or believed to be Native American, s/he shall notify the Native American Heritage Commission (NAHC) in Sacramento within 48 hours. In accordance with California Public Resources Code, Section 5097.98, the NAHC must immediately notify the persons it believes to be the most likely descended from the deceased Native American. The descendants shall complete their inspection within 48 hours of being granted access to the site. The designated Native American representative would then determine, in consultation with the property owner, the disposition of the human remains.

5.4.4 Environmental Impacts

5.4.4.1 METHODOLOGY

Previous Studies

An EIR was prepared in 2008 for the South Court Facility project within the project site. The 2008 South Court Facility project was not implemented; however, a cultural resources study was completed for the 2008 project.

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The previous cultural resources study included a records search and field reconnaissance of the project site on June 14, 2006. No cultural resources were observed during the pedestrian survey.

As described above in 5.4.1.2, *Existing Conditions*, the project footprint is inclusive of a previously proposed project, the AGORA project, which was not implemented. A cultural resources study was completed on March 30, 2016, for the AGORA project that included a records search and literature review for archeological and historical records.

Cultural Resources Records Search

A search of the CHRIS at the SCCIC, California State University at Fullerton, was conducted as part of Cogstone's March 2016 Cultural Resources Summary. The record search reviewed the project site and a one-mile radius around the project site.

In addition to the records at the SCCIC, a variety of sources were consulted by Cogstone in January 2016 to obtain information regarding the project area. Sources include the National Register of Historic Places, California Register of Historical Resources, California Historical Resources Inventory, California Historical Landmarks, California Points of Historical Interest, the Bureau of Land Management's General Land Office records.

Sacred Lands File Search

As described above, a Sacred Land Files request was submitted to the NAHC on January 28, 2016, to inquire about the presence/absence of sacred or religious sites in the vicinity of the project area for the AGORA project. The City submitted an updated project description for the proposed project to the NAHC on September 25, 2019. The NAHC responded on October 8, 2019, with an updated consultation list of tribes with traditional lands or cultural places within the boundaries of the project and Orange County. In accordance with AB 52 and SB 18 requirements, on October 25, 2019, the City sent certified letters to 24 Native American contacts provided by the NAHC notifying them of the proposed project and requesting comments or concerns for the project area.

5.4.4.2 IMPACT ANALYSIS

The following impact analysis addresses thresholds of significance. The applicable thresholds are identified in brackets after the impact statement.

Impact 5.4-1: Development of the project would not impact an identified historic resource pursuant to Section 15064.5. [Threshold C-1]

The CEQA Guidelines Section 15064.5 defines historic resources as resources listed or determined to be eligible for listing by the State Historical Resources Commission, a local register of historical resources, or the lead agency. Generally, a resource is considered "historically significant" if it meets one of the following criteria:

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

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- Is associated with the lives of persons important in our past.
- Embodies the distinctive characteristics of a type, period, region or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- Has yielded, or may be likely to yield, information important in prehistory or history.

The records search conducted for the project site identified two previously recorded cultural resources within the project site—CA-ORA-33 and CA-ORA-131. The pedestrian survey and cultural resources study conducted for the project site determined that CA-ORA-33 and CA-ORA-131 are no longer extant and are completely covered by urban built environment. No built historical resources are recorded at the project site.

Although it was determined that the known subsurface resources identified within the project site no longer exist, unknown subsurface resources that qualify as historical resources could still exist within the project site. The presence of previously recorded prehistoric archaeological sites in the vicinity of the project suggests the potential for buried, unknown archaeological resources within the project site. If subsurface archaeological resources are present within the project site, they may qualify as historical resources pursuant to CEQA and could be subject to potential impacts as result of project implementation. Therefore, the project has the potential to cause a substantial change in the significance of a historical resource. Mitigation Measure CUL-1 would require archaeological monitoring during construction in native soils, and appropriate treatment of unearthed historical resources during construction. Potential impacts to unknown historical resources would be mitigated to less than significant through the implementation of Mitigation Measure CUL-1.

Level of Significance Before Mitigation: Potentially Significant.

Impact 5.4-2: Development of the project could impact archaeological resources. [Threshold C-2]

The Cultural Resources Summary identifies four records within one mile of the project site (refer to Table 5.4-1, above). Of the four records, two recorded cultural resources are on the project site—CA-ORA-33 and CA-ORA-131 (Cogstone 2016).

Resource CA-ORA-33 was recorded in 1960 as a prehistoric shell midden site with manos, metate fragments, a stone pendant, scrapers, and choppers, part of a seasonal camp. Site surveys in 2008 yielded no trace of the site and noted that the site is in the terraced parking lots leading upslope to the courthouse facility. Given the grading activities needed to build the existing parking lots, it is unlikely that any portion of the Resource CA-ORA-33 site has been preserved.

Resource CA-ORA-131 was recorded in 1963 as a prehistoric site; however, the site was destroyed in 1976. Site surveys in 2008 found that significant grading and filling took place in this area to fill and relocate the creek and to level the land for the current library and other development, which makes it improbable that any part of the Resource CA-ORA-131 site was preserved. Overall, the two resources previously present in the project site no longer exist, and those sites are completely developed.

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Nevertheless, portions of the project site have not been excavated or graded. Construction of the proposed project would require earthwork activities, such as grading, to ensure the proper base and slope for the proposed buildings. The potential exists that archeological resources may be unearthed. Therefore, development of the proposed project has the potential to result in a significant impact on unique archeological resources. Mitigation Measure CUL-1 would require archaeological monitoring during construction in native soils, and appropriate treatment of unearthed archaeological resources during construction. Potential impacts to unknown unique archaeological resources would be mitigated to less than significant through the implementation of Mitigation Measure CUL-1.

Level of Significance Before Mitigation: Potentially Significant.

Impact 5.4-3: Grading activities would not disturb human remains. [Threshold C-3]

There is no indication from either the archival research results or the archaeological survey that any particular location within the project area has been used for human burial purposes in the recent or distant past. Construction of the proposed project would require earthwork activities, such as grading, to ensure the proper base and slope for the proposed buildings. If human remains are discovered during project construction activities, they could be damaged or disturbed, which would be a significant impact. California Health and Safety Code Section 7050.5, CEQA Section 15064.5, and PRC Section 5097.98 mandate procedures in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery. Specifically, California Health and Safety Code Section 7050.5 requires that if human remains are discovered within the project site, disturbance of the site shall remain halted until the coroner has conducted an investigation into the circumstances, manner, and cause of death, and made recommendations concerning the treatment and disposition of the human remains to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the PRC. If the coroner determines that the remains are not subject to his or her authority and if the coroner has reason to believe the human remains to be those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission. Although soil-disturbing activities associated with the proposed project could result in the discovery of human remains, compliance with existing law would ensure no significant impacts to human remains.

Level of Significance Before Mitigation: With the implementation of PPP CUL-1, Impact 5.4-3 would be less than significant.

5.4.5 Cumulative Impacts

Development of the proposed project and related projects have the potential to encounter and potentially degrade historic resources, cultural resources, and human remains. However, similar to the proposed project, each related project would be expected to comply with PRC Section 15064.5, perform site-specific cultural analyses, implement mitigation measures if needed, and comply with other applicable regulatory compliance measures. The proposed project site does not contain any known historical and/or archeological resources or human remains. However, because the proposed project would conduct earthwork activities on previously undisturbed portions of the project site, the proposed project would require mitigation measures to minimize

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its impact to potential archeological materials to a less than significant level and reduce the potential for the project to contribute to cumulative impacts to cultural resources. Therefore, the project's contribution to cumulative cultural resource impacts would be considered less than cumulatively considerable, and the project's impacts would be less than significant.

5.4.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, impacts to unknown human remains would be less than significant: 5.4-3.

Without mitigation, these impacts would be **potentially significant**:

- **Impact 5.4-1** Development of the proposed project has the potential to unearth unknown historical resources.
- **Impact 5.4-2** Development of the proposed project has the potential to unearth unknown archeological resources.

5.4.7 Mitigation Measures

Impacts 5.4-1 and 5.4-2

CUL-1 Prior to the issuance of grading permits, and for any subsequent permit involving excavation to increased depths, the project applicant shall provide a letter to the City of Laguna Niguel from a qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards. The letters shall state that the applicant has retained this individual, and that the consultant will monitor all grading and other significant ground-disturbing activities in native soil. During initial monitoring, if the qualified archaeologist can demonstrate that the level of monitoring should be reduced or discontinued, or if the qualified archaeologist can demonstrate a need for continuing monitoring, the qualified archaeologist, in consultation with the Laguna Niguel Planning Division, may adjust the level of monitoring to circumstances as warranted. In the event archaeological resources are discovered during ground-disturbing activities, the archeological monitor shall have the authority to halt any activities that may adversely impact potentially significant cultural resources until they can be formally evaluated. Suspension of ground disturbances in the vicinity of the discoveries shall not be lifted until the archaeological monitor has evaluated discoveries to assess whether they are classified as significant cultural resources, pursuant to the California Environmental Quality Act (CEQA) and determined construction activities can resume without damaging resources.

If archaeological resources are discovered, the archeologist shall assess the most appropriate treatment for the resources, prioritizing preservation in place. When data recovery through excavation is the only feasible treatment method, the archeologist shall prepare a data recovery plan with provisions for adequately recovering the scientifically consequential information

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from and about the historical resource and shall deposit studies with the California Historical Resources Regional Information Center. Recovered archeological resources shall be offered to a repository with a retrievable collection system and an educational and research interest in the materials, such as the John D. Cooper Center or California State University, Fullerton, or a responsible public or private institution with a suitable repository willing to and capable of accepting and housing the resource. If no museum or repository willing to accept the resource is found, the resource shall be considered the property of the City and may be stored, disposed of, transferred, exchanged, or otherwise handled by the City at its discretion.

If significant Native American cultural resources are discovered for which a treatment plan must be prepared the project applicant or the archaeologist on call shall contact the applicable Native American tribal contact(s). If requested by the Native American tribe(s), the project applicant or archaeologist on call shall, in good faith, consult on the discovery and its disposition (e.g., avoidance, preservation, reburial, return of artifacts to tribe).

5.4.8 Level of Significance After Mitigation

With incorporation of mitigation measure CUL-1, Impacts 5.4-1 and 5.4-2 would be less than significant.

5.4.9 References

Cogstone. 2016, March 30. Cultural Resources Summary for the Agora Downtown Laguna Niguel Project. (DEIR Appendix E).

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