

5. Environmental Analysis

5.16 TRIBAL CULTURAL RESOURCES

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 tribal cultural resources in the City of Laguna Niguel (City). The analysis in this section is based on the results of the Native American consultation conducted by the City for purposes of compliance with Assembly Bill 52 and Senate Bill 18, and the analysis is based 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 Draft EIR (Appendix E)

5.16.1 Environmental Setting

5.16.1.1 REGULATORY BACKGROUND

Federal

Archaeological Resources Protection Act

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

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act is a federal law passed in 1990 that mandates museums and federal agencies to return certain Native American cultural items—such as human remains, funerary objects, sacred objects, or objects of cultural patrimony—to lineal descendants or culturally affiliated Indian tribes.

State

California Public Resources Code

Archaeological, paleontological, and historical sites are protected under a wide variety of state policies and regulations in the California Public Resources Code (PRC). In addition, cultural and paleontological 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.

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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.

California Senate Bill 18

Existing law provides limited protection for Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places. These places may include sanctified cemeteries, religious, ceremonial sites, shrines, burial grounds, prehistoric ruins, archaeological or historic sites, Native American rock art inscriptions, or features of Native American historic, cultural, and sacred sites.

Senate Bill (SB) 18 on Traditional Tribal Cultural Places was signed into law in September 2004 and went into effect on March 1, 2005. It places new requirements upon local governments for developments within or near traditional tribal cultural places (TTCP). SB 18 requires local jurisdictions to provide opportunities for involvement of California Native Americans tribes in the land planning process for the purpose of preserving traditional tribal cultural places. The Final Tribal Guidelines recommend that the NAHC provide written information as soon as possible but no later than 30 days after receiving notice of the project to inform the lead agency if the proposed project is determined to be in proximity to a TTCP and another 90 days for tribes to respond to a local government if they want to consult with the local government to determine whether the project would have an adverse impact on the TTCP. There is no statutory limit on the consultation duration. Forty-five days before the action is publicly considered by the local government council, the local government refers action to agencies, following the CEQA public review time frame. The CEQA public distribution list may include tribes listed by the NAHC who have requested consultation or it may not. If consultation occurs and the NAHC, the tribe, and interested parties agree upon the mitigation measures necessary for the proposed project, it would be included in the project's EIR. If both the City and the tribe agree that adequate mitigation or preservation measures cannot be taken, then neither party is obligated to take action.

Per SB 18, the law requires a city or county to consult with the NAHC and any appropriate Native American tribe for the purpose of preserving relevant TTCP prior to the adoption, revision, amendment, or update of a city's or county's general plan. Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, the Final Tribal Guidelines advise that SB 18 requirements extend to specific plans as well, since state planning law requires local governments to use the same process for amendment or adoption of specific plans as general plans (defined in Government Code Section 65453). In addition, SB 18 provides a new definition of TTCP, requiring a traditional association of the site with Native American traditional beliefs, cultural practices, or ceremonies or the site must be shown to actually have been used for activities related to traditional beliefs, cultural practices, or ceremonies. Previously, the site was defined to require only an association with traditional beliefs, practices, lifeways, and ceremonial activities. In addition, SB 18 law also amended Civil Code Section 815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements for the purpose of protecting their cultural places.

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Assembly Bill 52

The Native American Historic Resource Protection Act (AB 52) took effect July 1, 2015, and incorporates tribal consultation and analysis of impacts to tribal cultural resources (TCR) into the CEQA process. It requires TCRs to be analyzed like any other CEQA topic and establishes a consultation process for lead agencies and California tribes. Projects that require a Notice of Preparation of an EIR or Notice of Intent to adopt a ND or MND on or after July 1, 2015, are subject to AB 52. A significant impact on a TCR is considered a significant environmental impact, requiring feasible mitigation measures.

TCRs must have certain characteristics:

- 1) Sites, features, places, cultural landscapes (must be geographically defined), sacred places, and objects with cultural value to a California Native American tribe that are either included or determined to be eligible for inclusion in the California Register of Historic Resources or included in a local register of historical resources. (PRC Section 21074(a)(1))
- 2) The lead agency, supported by substantial evidence, chooses to treat the resource as a TCR. (PRC Section 21074(a)(2))

The first category requires that the TCR qualify as a historical resource according to PRC Section 5024.1. The second category gives the lead agency discretion to qualify that resource—under the conditions that it supports its determination with substantial evidence and considers the resource’s significance to a California tribe. The following is a brief outline of the process (PRC Sections 21080.3.1 to 3.3).

- 1) A California Native American tribe asks agencies in the geographic area with which it is traditionally and culturally affiliated to be notified about projects. Tribes must ask in writing.
- 2) Within 14 days of deciding to undertake a project or determining that a project application is complete, the lead agency must provide formal written notification to all tribes who have requested it.
- 3) A tribe must respond within 30 days of receiving the notification if it wishes to engage in consultation.
- 4) The lead agency must initiate consultation within 30 days of receiving the request from the tribe.
- 5) Consultation concludes when both parties have agreed on measures to mitigate or avoid a significant effect to a TCR, OR a party, after a reasonable effort in good faith, decides that mutual agreement cannot be reached.
- 6) Regardless of the outcome of consultation, the CEQA document must disclose significant impacts on TCRs and discuss feasible alternatives or mitigation that avoid or lessen the impact.

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Health and Safety Code

The discovery of human remains is regulated per California Health and Safety Code Section 7050.5, which states that:

In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation...until the coroner...has determined...that the remains are not subject to...provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible.... The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains. If the coroner determines that the remains are not subject to his or her authority and...has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

5.16.1.2 EXISTING CONDITIONS

Refer to Section 5.4, *Cultural Resources*, of this EIR for further discussion of the tribal cultural resources environmental setting.

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

The site elevation ranges from approximately 305 feet above mean sea level in the southeast corner to approximately 370 feet 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.

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

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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).

Archaeological 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, which is now being used for the proposed project. The study included a search for archeological and historical records by Cogstone on January 26, 2016, at the South Central Coast Information Center, California State University at Fullerton. The records search covered a one-mile radius around the project boundaries. It found 25 cultural resources investigations that have been completed within a one-mile radius of the project area. Of these, four investigations included a portion of the project area, and two are within the project boundaries (see Table 5.16-1).

Table 5.16-1 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 mile
CA-ORA-539	Prehistoric site consisting of a quartz schist slab metate	1976	Within 0.5 mile

Source: Cogstone 2016.

CA-ORA-33 was recorded in 1960 as a prehistoric shell midden site with manos, metate fragments, a stone pendant, scrapers, and choppers. Test excavations in 1960 concluded that the site was a seasonal camp. It is at the southern boundary of the site in an area currently developed as terraced parking lots leading upslope to the existing courthouse facility. Given the prior grading activities that occurred to build the parking lots, it is unlikely that any portion of the site has been preserved.

CA-ORA-131 was recorded in 1963 as a 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 it was destroyed in 1976. The site was at the eastern boundary of the project site. Significant grading and filling previously occurred in this area to level the land for the existing library. The prior grading and filling that occurred 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 currently completely developed.

Two additional cultural resources, CA-ORA-505 and CA-ORA-539, are within the one-mile search radius but outside the project site. 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.

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SB 18 and AB 52 Consultation

In accordance with AB 52 and SB 18 requirements for the former AGORA project, the City sent invitation letters to representatives of the nine Native American contacts provided by the NAHC on January 14, 2016, formally inviting tribes to consult with the City on the AGORA project. The intent of the consultations are to provide an opportunity for interested Native American contacts to work with the City during the project planning process to identify and protect tribal cultural resources. Joyce Stanfield Perry, Tribal Manager of the Juaneño Band of Mission Indians Acjachemen Nation, responded on March 9, 2016, stating that the tribe has reviewed the project documents and has no concerns regarding the project and its impacts on their cultural resources (see Appendix M). No other tribes responded to the City's notification letter in 2016 for the former AGORA project.

In accordance with AB 52 and SB 18 requirements for the proposed project, the City requested a Sacred Lands File search from the NAHC and received a response on October 8, 2019, provided in Appendix M of this EIR. The NAHC responded with an updated consultation list of tribes with traditional lands or cultural places within the boundaries of the project and Orange County. The City sent letters to the 24 tribal contacts on the NAHC list on October 25, 2019, notifying them of the proposed project and requesting comments or concerns for the project area. Two tribes sent responses: the Pala Band of Mission Indians and the Agua Caliente Band of Cahuilla Indians.

In a letter dated December 4, 2019, 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 (see Appendix M of this EIR).

In an email received by the City on November 6, 2019, 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 located within the Tribe's Traditional Use Area. Therefore, they defer to the other tribes in the area, and the letter concluded their consultation effort.

No other comments were received for the proposed project.

5.16.2 Thresholds of Significance

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:

- TCR-1 Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code § 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:
- i) 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

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- ii) 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 § 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code § 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

5.16.3 Plans, Programs, and Policies

PPP CUL-1 California Health and Safety Code Section 7050.5 requires that if human remains are discovered within the proposed project site, disturbance of the site shall halt and remain halted until the coroner has investigated the circumstances, manner, and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative. If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes or 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.

5.16.4 Environmental Impacts

5.16.4.1 IMPACT ANALYSIS

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

Impact 5.16-1: The proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource that is:

i) 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). [Threshold TCR-1.i]

ii) determined by the lead agency to be significant pursuant to criteria in Public Resources Code section 5024.1(c). [Threshold TCR-1.ii]

A Sacred Land Files 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. On October 8, 2019, the NAHC sent an updated consultation list of tribes with traditional lands or cultural places within the boundaries of 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 listed by the NAHC notifying them of the proposed project and requesting comments or concerns for the project area. The City received letter responses from the Pala Band of Mission Indians and Agua Caliente Band of Cahuilla Indians (see Appendix M). Follow-up calls were conducted by the City for all other Native American contacts. In total, two tribes responded—the Pala Band of Mission Indians and the Agua Caliente Band of Cahuilla Indians. As described in 5.16.1.2, *Existing Conditions*,

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the tribes did not identify tribal cultural resources within the project area, and they deferred to tribal groups in closer proximity to the project site.

There are two recorded cultural resources in the project site—CA-ORA-33 and CA-ORA-131. CA-ORA-33 was recorded in 1960 as a prehistoric shell midden site determined to be a seasonal camp. Site surveys in 2008 yielded no trace of the site and noted that the site is within the existing terraced parking lots leading upslope to the current courthouse facility. Given the grading activities to build the existing parking lots, it is unlikely that any portion of the site survived. CA-ORA-131 was recorded in 1963 as a prehistoric site and was recorded as being destroyed in 1976. Site surveys in 2008 found that significant grading and filling took place in this area to level the land for the current library, making it improbable that any portion of the site was preserved. Overall, the two sites previously present in the project site no longer exist, but are completely covered by the urban built environment.

Although the known subsurface resources identified within the project site were determined to no longer exist, there is potential for unknown subsurface resources that qualify as tribal cultural resources in the project site. The presence of previously recorded prehistoric archaeological sites in the vicinity suggests the potential for undiscovered archaeological resources within the project site. If buried significant tribal cultural resources are encountered during project construction, significant impacts could occur.

Level of Significance before Mitigation: Potentially Significant.

5.16.5 Cumulative Impacts

Cumulative impacts to tribal cultural resources occur when the impacts of the proposed project, in conjunction with past, existing, and other foreseeable projects and development in the region, result in multiple and/or cumulative impacts to tribal cultural resources in the area. Each future project in the City will be required to evaluate that project's impacts to site-specific tribal cultural resources as part of the CEQA review, including tribal consultation as required by AB 52 and SB 18, if applicable. Where significant impacts to tribal cultural resources are identified, projects would be required to either avoid impacts or implement feasible mitigation measures to reduce impacts. Additionally, the project is located in a previously disturbed area with no known tribal cultural resources and mitigation measures to prevent impacts to unknown tribal cultural resources and thus would not cause a cumulatively considerable impact.

5.16.6 Level of Significance Before Mitigation

Upon implementation of regulatory requirements and standard conditions of approval, these impacts would be **potentially significant**:

- **Impact 5.16-1:** Development of the proposed project has the potential to unearth unknown tribal cultural resources.

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5.16.7 Mitigation Measures

Implementation of Mitigation Measure CUL-1 would be required (see Section 5.4, *Cultural Resources*, for full mitigation text).

5.16.8 Level of Significance After Mitigation

With incorporation of mitigation measure CUL-1, Impact 5.16-1 would be less than significant.

5.16.9 References

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

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