

4.13 Tribal Cultural Resources

This section of the Draft Environmental Impact Report (Draft EIR) evaluates the potential for the proposed Project to impact tribal cultural resources in the City. Other potential impacts to cultural resources, including historic and archaeological resources, are evaluated in Section 4.4, Cultural Resources, of this Draft EIR. The analysis in this section summarizes pertinent information and findings in the *Cultural Resources Assessment* dated September 8, 2021, prepared by Duke CRM provided in Appendix E of this Draft EIR, and Assembly Bill (AB) 52 (Pub. Resources Code, §§ 5097.94, 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, 21084.3) consultation between the City and tribes. As discussed further below, on June 19, 2021, the City notified the Native American Heritage Commission (NAHC) and California Native American Tribes who have registered with the City to be notified in accordance with AB 52. The two registered tribes include the Juaneño Band of Mission Indians Acjachemen Nation; Belardes and Romero. Both tribes have requested consultation as presented in Appendix E. Consultation with the Juaneño Band of Mission Indians Acjachemen Nation; Belardes and Romero began on August 17, 2021 and concluded on March 1, 2022. The parties agreed to measures to mitigate or avoid potentially significant effects, if significant effects exist, on a tribal cultural resource, thereby concluding consultation. (Pub. Resources Code, § 21080.3.2, subd. (b)(1).)

4.13.1 Setting

Tribal cultural resources are defined as “sites, features, places, cultural landscapes, 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 Historical Resources or included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.” (Pub. Resources Code, § 21074.) Additionally, a lead agency can, at its discretion and supported by substantial evidence, choose to treat a resource as a tribal resource. AB 52 requires lead agencies to begin formal consultations with California Native American tribes who have registered with the City to be notified and who have timely requested consultation in accordance with AB 52 before releasing a draft EIR and to identify tribal cultural resources that may be subject to significant impacts by a proposed Project.

4.13.2 Existing Site Conditions

The Project site was previously part of a larger landslide area and is currently vacant. In order to stabilize and remediate the landslide area, the slope was graded, terrace drains installed, and Acacia species and scattered laurel sumac (*Malosma laurina*) planted for erosion control. The Project site also contains remnant streets and associated infrastructure.

Contact with Interested Parties

On behalf of the City, DUKE CRM contacted appropriate tribes as part of the AB 52 consultation process. The AB 52 letters were sent out on June 19, 2021 to 10 tribes. As a result of the consultation offer, the two tribes listed below requested consultation on the Project:

- Juaneno Band of Mission Indians Acjachemen Nation - Belardes
- Juaneno Band of Mission Indians Acjachemen Nation - Romero

Consultation with the Juaneño Band of Mission Indians Acjachemen Nation; Belardes and Romero concluded on March 1, 2022. Documentation of consult offers to Native American tribes is presented in Appendix E of this EIR.

Tribal Cultural Resources

Archaeological investigations along coastal Southern California have produced a diverse range of human occupation, extending from approximately 10,000 years ago beginning with the early Holocene into the ethnohistoric and historic periods. The Project site is approximately 1 mile east of Aliso Creek, traditionally noted as an ethnographic transition zone between the Gabrieleño and Juaneño Native American groups. Traditional definitions of Gabrieleño territory include the watersheds of the San Gabriel, Santa Ana, and Los Angeles Rivers; portions of the Santa Monica and the Santa Ana Mountains; the Los Angeles Basin; the coast from Aliso Creek to Topanga Creek; and San Clemente, San Nicolas, and Santa Catalina Islands.

The Project site was originally developed in 1979 as a 41-unit townhome project that was severely damaged as part of the Via Estoril Landslide in 1998 and subsequently demolished. In addition to demolition of the residential structures, remedial mass grading of the site and installation of proper buttresses and erosion control facilities were installed.

4.13.3 Related Policies and Regulations

Federal Regulations

Archaeological Resources Protection Act

The Archaeological Resources Protection Act was enacted in 1979 with the purpose of securing the protection of archaeological resources and sites on public lands and Native American lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) was passed in 1990 with the purpose of outlining a process for 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, and culturally affiliated Native American tribes.

NAGPRA also establishes procedures for the inadvertent discovery or planned excavation of Native American cultural items on federal or tribal lands. While these provisions do not apply to discovery or excavations on private or State lands, the collections portions of NAGPRA may apply to cultural items if they are under the control of an institution that receives federal funding. NAGPRA also makes it a criminal offense to traffic in either Native American human remains without right of possession or cultural items obtained in violation of NAGPRA.

State Regulations

Native American Heritage Commission

In 1976, the California State Government passed AB 4239, creating the Native American Heritage Commission (NAHC). The NAHC is responsible for identifying and categorizing Native American cultural resources as well as preventing damage to designated sacred sites and associated artifacts and remains. Legislation passed in 1982 authorized the NAHC to identify a Most Likely Descendant (MLD) when Native American remains are found outside the boundaries of a designated cemetery. An MLD has the authority to make recommendations in regard to the treatment and disposition of the discovered remains.

California Public Resources Code Sections 5097.9–5097.991

California Public Resources Code (PRC) Sections 5097.9–5097.991 provide protection to Native American historical and cultural resources (including sanctified cemeteries, places of worship, religious sites, or sacred shrines) and sacred sites and gives the NAHC enforcement authority.

Specifically, California PRC Section 5097.98 outlines procedures that must be followed in the event that human remains are discovered. The County Coroner shall make a determination within two working days from the time the person responsible for the excavation, or designee, notifies the County Coroner of the discovery or recognition of the human remains. If the County Coroner identifies the remains to be of Native American origin or has reason to believe that the remains are those of Native American origin, the County Coroner must contact the California NAHC within 24 hours. The NAHC representative will then alert a Native American MLD to conduct an inspection of the site and to determine the ensuing course of treatment and action. Additionally, State CEQA Guidelines Section 15064.5 sets forth a procedure if human remains are found on land outside of federal jurisdiction.

Health and Safety Code Section 7050.5

Section 7050.5 of the California Health and Safety Code protects Native American burials, remains, and associated grave artifacts in the event that they are discovered in any location other than a designated cemetery. The Health and Safety Code mandates the immediate stop of excavation in the site as well as any adjacent or overlying area where the remains or associated items are found, and provides for the sensitive disposition of those remains. Should remains be discovered, the County Coroner must determine that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related 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 for the excavation, or designee, in the manner provided in PRC Section 5097.98.

The Native American Historic Resource Protection Act (AB 52)

The Native American Historic Resource Protection Act, or AB 52 (Pub. Resources Code, §§ 5097.94, 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, 21084.3), defines guidelines for reducing conflicts between Native Americans and development projects and activities. Projects are subject to AB 52 if a notice of preparation for an EIR is filed or a notice of intent to adopt a Negative Declaration or Mitigated Negative Declaration is filed on or after July 1, 2016. “Tribal cultural resources” are protected under CEQA and are defined as a site, feature, place, cultural landscape (must include the size and scope of landscape), sacred place, or object with a cultural value to a California Native American tribe that is either included or eligible for inclusion in the California Register of Historical Resources (California Register), or included in a local register of historical resources. At the lead agency’s discretion, a resource can be treated as a tribal cultural resource if a Native American Tribe provides substantial evidence. Additionally, AB 52 allows tribes to engage in consultation with lead agencies and sets guidelines for such consultation. Consultation is considered concluded when the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or when a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code, § 21080.3.2, subd. (b).)

Local Regulations

Laguna Niguel General Plan

Open Space/Parks/Conservation Element

The Laguna Niguel General Plan (LNGP) contains goals, policies, and plans that are intended to guide land use and development decisions. The Open Space/Parks/Conservation Element was designed to ensure the conservation of important historical, archaeological, and paleontological resources. Relevant policies are listed below.

Goal 7.0: 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 institution.

Development proposals will be assessed for potential impacts on archaeological resources according to CEQA requirements. The City will require that significant impacts either be avoided or mitigated, which may involve further investigation and resource recovery.

4.13.4 Thresholds of Significance

Criteria for determining the significance of impacts related to tribal cultural resources are based on criteria contained in Appendix G of the State CEQA Guidelines and the City's CEQA Manual. The proposed Project could have a significant impact on the environment if it would result in any of the following.

Threshold TRC-1 *Result in a significant impact if the Project would 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 either:*

- 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.*

Methodology

In accordance with AB 52, Native American consultation has been conducted to assist in the identification of potential impacts to tribal cultural resources as described in this chapter. Such impacts are assessed based on the potential to significantly affect existing known and unknown tribal cultural resources. The process entails identifying significant tribal cultural resources and whether the Project would cause a substantial adverse change in the significance of the resource. Examples of substantial adverse changes include physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the resource would be materially impaired.

4.13.5 Project Design Features and Standard Conditions of Approval

There are no Project Design Features or Standard Conditions of Approval required for the Project and as no impact was indicated.

4.13.6 Environmental Impact Evaluation

Threshold TRC-1 *Result in a significant impact if the Project would 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 either:*

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).

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.

Less Than Significant Impact with Mitigation. The Project site is not listed or eligible for listing in the California Register, or in a local register of historical resources. As previously discussed in Section 4.4, *Cultural Resources*, detailed information regarding the record search indicates that no listed properties or resources exist on the Project site. Therefore, the Project would not impact tribal cultural resources as addressed in Threshold TRC-1(a), and no mitigation is required.

As noted above, a cultural resource record search through SCCIC and an AB 52 Native American consultation were conducted for the proposed Project. The purpose of these efforts was to identify known tribal cultural resources on or near the Project site.

Three cultural resources were identified by SCCIC as part of the records search. All were prehistoric, with two having no exact location. These resources are shown in Table 4.13-2.

Table 4.13-1. Cultural Resources within 1/2-Mile of the Project Boundary

Resource No.	Resource Type	Description	Eligibility Status	Distance and Direction
P-30-000033	Prehistoric	Shell Midden	Unknown	Unknown
P-30-000131	Prehistoric	Bedrock Mortar Site	Unknown	980 Northwest
P-36-000539	Prehistoric	One Quartzite Metate	Unknown	Unknown

The SCCIC also identified a total of seven cultural resource reports completed for projects within 1/2-mile of the Project site. Although two of the reports cover a portion of the Project site, neither of the surveys conducted as part of the reports revealed any archaeological resources. Table 4.13-2 summarizes the reports recorded near the Project site.

Table 4.13-2. Cultural Reports within 1/2-Mile of the Project Boundary

Report No.	Year	Report Title	Authors	Year
OR-00108	1976	Archaeological Survey Report on 4.78 Acres of Land Located in the Laguna Niguel Area of the County of Orange, California	Roger J. Desautels	1976
OR-00237	1976	Report of the Results of an Archaeological Survey for a Project Located in Laguna Niguel, California.	John T. Craib	1976
OR-00255	1977	Archaeological Report on the Aliso Creek Corridor- Planning Units 2 & 3 Orange County, California	Anonymous	1977
OR-00549	1976	Archaeological Survey and Resource Assessment of a Portion of Laguna Niguel, Orange County, California	Clay A. Singer	1976
OR-00580	1977	The Aliso Creek Watershed, Orange County, California a Proposal for Creating an Archaeological District for the National Register of Historic Places and a Suggested Research and Study Design	Anonymous	1977
OR-01183	1991	A Cultural Resources Reconnaissance of the Hon Property O Approximately 60.9 Acres Located in Laguna Niguel, Orange County, California	Juanita R. Shinn	1991
OR-01712	1963	Archaeological Investigations at Laguna Niguel, Orange County	Alma C. Lytton	1963

Per AB 52 requirements, the City asked the NAHC to conduct a record search of the Sacred Lands File (SLF) and identify known tribal cultural resources and recommended tribal contacts applicable to the Project. The NAHC recommended contact with 10 Native American groups/individuals. Of the 10 contacted, the following two requested further consultation:

- Juaneno Band of Mission Indians Acjachemen Nation - Belardes
- Juaneno Band of Mission Indians Acjachemen Nation - Romero

As discussed in Chapter 4.6, *Geology and Soils*, grading of the Project site will result in minimal disturbance to native soils. This is due to a substantial amount of earthwork was conducted on the site as part of the original development in 1979 and during the grading activities that took place between 1998 and 2000 after the Via Estoril Landslide to secure the slope. Results from prior surveys and archaeological reports conducted on the Project site were negative for cultural resources. As a result, the Project is considered to have a low potential to impact prehistoric and historic cultural resources, including tribal cultural resources. The Juaneno Band of Mission Indians, Acjachemen Nation-Belardes request that a representative from the Juaneno Band of Mission Indians, Acjachemen Nation-Belardes be retained to provide cultural resources awareness training and spot check monitoring up to 10 hours per week during ground disturbing activities, which are included as **Mitigation Measure MM TCR-1 and Mitigation Measure MM TRC-2** as described below. As a result, impacts to tribal cultural resources are considered less than significant with mitigation implemented.

Even though it is extremely unlikely that tribal cultural resources would be impacted, there is a potential for unknown tribal cultural resources to be unearthed if ground disturbing activities change, resulting in a potential impact requiring mitigation. **Mitigation Measure MM TCR-3** would be required in order to halt activities, assess the significance of the unearthed resources, and determine final disposition of the resource as appropriate. With the implementation of **MM TCR-1** through **MM TCR-3** impacts to tribal cultural resources would be less than significant.

4.13.7 Cumulative Impacts

Less than Significant Impact with Mitigation. Defined in Section 15130 of the State CEQA Guidelines, cumulative impacts are the incremental effects of an individual project when viewed in connection with the effects of past, current, and probable future projects in the City.

Potential impacts of the proposed Project to unknown tribal cultural resources, when combined with the impacts of past, present, and reasonably foreseeable projects in the City, could contribute to a cumulatively significant impact due to the overall loss of archaeological artifacts and cultural resources unique to the region. However, each development proposal received by the City is required to undergo environmental review pursuant to CEQA. If there were any potential for significant impacts to archaeological or tribal cultural resources, an investigation would be required to determine the nature and extent of the resources and identify appropriate mitigation measures. When resources are assessed and/or protected as they are discovered, impacts to these resources are less than significant.

As such, implementation of **MM TCR-1** through **MM TCR-3** would ensure that the proposed Project, in conjunction with other development in the City would not result in a significant cumulative impact to unique tribal cultural resources and previously undiscovered buried human remains.

4.13.8 Summary of Mitigation Measures

CEQA Guidelines Section 15126.4 requires EIRs to describe feasible measures that can minimize significant impacts. The following mitigation measure has been evaluated for feasibility and is incorporated in order to reduce potentially significant impacts related to tribal cultural resources.

MM TCR-1 An archaeologist shall be retained by the Applicant to conduct cultural resources awareness training prior to any ground disturbance related to construction.

MM TRC-2 An archaeological monitor shall conduct spot-check monitoring, up to 10 hours per week, during ground disturbing activities related to construction. If any artifacts are discovered, a member of the Juaneno Band of Mission Indians, Acjachemen Nation- Belardes shall be contacted immediately. The archaeologist and Acjachemen Nation shall consult to determine the nature and significance of the discovery and make recommendations to the Applicant and City for further cultural resource efforts.

MM TCR-3 If human remains are encountered, State Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner must be notified of the find immediately. If the remains are determined to be prehistoric, the County Coroner will notify the Native American Heritage Commission (NAHC), which will determine and notify a Most Likely Descendant (MLD). With the permission of the landowner or his/her authorized representative, the MLD may inspect the site of the discovery. The MLD shall complete the inspection within 48 hours of notification by the NAHC. The MLD may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

4.13.9 Significant Environmental Impacts

The proposed Project would result in **less than significant** impacts with respect to tribal cultural resources.

4.13.10 References

14 CCR 15000–15387 and Appendix A–L. Guidelines for Implementation of the California Environmental Quality Act, as amended.

City of Laguna Niguel. February 2022. City of Laguna Niguel CEQA Manual.

City of Laguna Niguel. 1992. General Plan for the City of Laguna Niguel. Available: <http://cityoflaguneniguel.org/DocumentCenter/Home/View/1886>. (Accessed: August 11, 2021.)

City of Laguna Niguel. 2021. City of Laguna Niguel 2021–2029 Housing Element. Available: <https://www.cityoflaguneniguel.org/1352/Housing-Element-Update>. Last revised: October 2021. (Accessed February 22, 2022).

Correspondences with Juaneño Band of Mission Indians, Acjachemen Nation.

DUKE CRM. September 8, 2021. Cultural Resources Assessment for the Cove, City of Laguna Niguel, Orange County, California.

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