

4.16 TRIBAL CULTURAL RESOURCES

This chapter describes the regulatory framework and existing conditions of the City of San Mateo Environmental Impact Report (EIR) Study Area and evaluates the potential tribal cultural resources impacts from adopting and implementing the proposed General Plan 2040 and proposed Climate Action Plan update, and from future development and activities that could occur under the proposed project. A summary of the relevant regulatory framework and existing conditions is followed by a discussion of potential impacts and cumulative impacts related to implementation of the proposed project.

4.16.1 ENVIRONMENTAL SETTING

4.16.1.1 REGULATORY FRAMEWORK

Federal Regulations

Archaeological Resources Protection Act

The Archaeological Resources Protection Act (United States Code, Title 16, Sections 470aa–mm) became law on October 31, 1979, and has been amended four times. It regulates the protection of archaeological resources and sites that are on federal and Indian lands.

Native American Graves Protection and Repatriation Act

Native American Graves Protection and Repatriation Act (NAGPRA), Title 25, United States Code (1990), defines “cultural items,” “sacred objects,” and “objects of cultural patrimony;” establishes an ownership hierarchy; provides for review; allows excavation of human remains, stipulates return of the remains according to ownership; sets penalties for violations; calls for inventories; and provides for return of specified cultural items.

State Regulations

California Public Resources Code

Archaeological resources are protected pursuant to a wide variety of state policies and regulations enumerated under the California Public Resources Code. Cultural resources are recognized as a nonrenewable resource and therefore receive protection under the California Public Resources Code (PRC) and CEQA.

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.

TRIBAL CULTURAL RESOURCES

California Health and Safety Code

The discovery of human remains is regulated by 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.¹

California Senate Bill 18

California Government Code Section 65352.3-5, formerly known as Senate Bill (SB) 18, states that prior to the adoption or amendment of a city or county's general plan, or specific plans, the city or county shall consult with California Native American tribes that are on the contact list maintained by the NAHC. The intent of this legislation is to preserve or mitigate impacts on places, features, and objects, as defined in PRC 5097.9 and PRC 5097.993, that are within the city or county's jurisdiction. The bill also states that the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects identified by Native American consultation. Government Code 65362.3-5 applies to all general and specific plans and amendments proposed after March 1, 2005.

Assembly Bill 52

Assembly Bill (AB) 52, the Native American Historic Resource Protection Act, sets forth a proactive approach intended to reduce the potential for delay and conflicts between Native American and development interests. Projects subject to AB 52 are those that file a notice of preparation for an EIR or notice of intent to adopt a negative or mitigated negative declaration on or after July 1, 2016. AB 52 adds tribal cultural resources to the specific cultural resources protected under CEQA. Under AB 52, a tribal cultural resource is defined as a site, feature, place, cultural landscape (must be geographically defined in terms of size and scope), sacred place, or object with cultural value to a California Native American tribe that is either included or eligible for inclusion in the California Register or included in a local register of historical resources. A Native American Tribe or the lead agency, supported by substantial evidence, may choose at its discretion to treat a resource as a tribal cultural resource. AB 52 also

¹ California Health and Safety Code, Division 7, *Dead Bodies*, Part 1, *General Provisions*, Chapter 2, *General Provisions*, Section 7050.5(b), https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=7.&title=&part=1.&chapter=2.&article= accessed August 18, 2022.

TRIBAL CULTURAL RESOURCES

mandates lead agencies to consult with tribes, if requested by the tribe, and sets the principles for conducting and concluding consultation.

Government Code Section 65092

When there is a public hearing, a notice will be sent 10 days in advance to any Native American tribes who are on the contact list and filed a written request for notice. The contact list is maintained by the Native American Heritage Commission.

4.16.1.2 EXISTING CONDITIONS

San Mateo was initially the home of the Ohlone Indians. The Ramaytush Ohlone population numbered about 2,000 prior to the arrival of the Spanish in 1769.² They lived in approximately ten tribes, and villages were organized around watersheds where there was a great abundance of resources. It is known that the Ohlone congregated near San Mateo Creek and the Bay Marshes.³

A sacred lands file search conducted by the NAHC for the project area did not identify any sacred lands. The NAHC identified eight local Native American representatives from the following six tribes as potentially having local knowledge:

- Amah Mutsun Tribal Band of Mission San Juan Bautista
- Costanoan Rumsen Carmel Tribe
- Indian Canyon Mutsun Band of Costanoan
- Muwekma Ohlone Indian Tribe of the SF Bay Area
- The Ohlone Indian Tribe
- Wuksache Indian Tribe/Eshom Valley Band

The City notified all eight tribal representatives about the proposed project on April 22, 2022, and asked for information about potential resources at or near the project site. A consultant group, Kanyon Konsulting, LLC, on behalf of the Indian Canyon Mutsun Band of Costanoan Ohlone People responded, requesting consultation and providing recommendations for development project specific mitigation and monitoring measures. The representative also recommended having a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities, conducting a Cultural Sensitivity Training at the beginning of each project, and approaches to promoting indigenous cultural awareness/history. On acknowledgement of receipt and offer to discuss any further comments or questions from the City, there was no further communications from the representative. No responses were received from the other tribes.

4.16.2 STANDARDS OF SIGNIFICANCE

The proposed project would result in a significant tribal cultural resources impact if it would:

² County of San Mateo, The Ramaytush Ohlone, The First People to Call the Peninsula Home, <https://www.arcgis.com/apps/Cascade/index.html?appid=ff1475b14956474989181b48dbadd487>, accessed July 29, 2022.

³ City of San Mateo, amended April 2011. *2030 General Plan, Conservation and Open Space Element*.

TRIBAL CULTURAL RESOURCES

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: 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 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.
2. In combination with past, present, and reasonably foreseeable projects, result in cumulative tribal cultural resources impacts in the area.

4.16.3 IMPACT DISCUSSION

TCR-1	The proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource.
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As previously described in Section 4.16.1.1, *Regulatory Framework*, a tribal cultural resource is defined under AB 52 as a site, feature, place, cultural landscape that is geographically defined in terms of size and scope, sacred place, or object with cultural value to a California Native American tribe that is either included or eligible for inclusion in the California Register or included in a local register of historical resources, or if the City of San Mateo, acting as the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a tribal cultural resource.⁴

Impacts from potential future development in the EIR Study Area could impact unknown archaeological resources, including Native American artifacts and human remains. As discussed above under Section 4.16.1.2, *Existing Conditions*, the sacred lands file search conducted by the NAHC for the project area did not identify any sacred lands. The Indian Canyon Mutsun Band of Costanoan was the only tribe to respond to the City's request for information about potential resources at or near the project site and wished to initiate consultation. The tribe also recommended having a Native American Monitor and an Archaeologist be present on-site at all times during any/all ground disturbing activities, conducting a Cultural Sensitivity Training at the beginning of each project, and approaches to promoting indigenous cultural awareness/history.

The Community Design and Historic Resources (CD) Element of the proposed General Plan provides guidance for the development and physical form of San Mateo and includes actions to help preserve the City's historic resources as well as tribal cultural resources. The following General Plan 2040 goal, policies, and action would serve to minimize potential adverse impacts on tribal cultural resources:

⁴ Public Resources Code Sections 21074(a)(1) and (2).

TRIBAL CULTURAL RESOURCES

- **Goal CD-4:** Protect archaeological and paleontological resources and resources that are culturally significant to Native American tribes and acknowledge San Mateo’s past as indigenous land. Encourage development projects to recognize historical tribal lands.
 - **Policy CD 4.1: Archaeological Resources Protection.** Preserve, to the maximum extent feasible, archaeological sites with significant cultural, historical, or sociological merit for present-day residents or Native American tribes.
 - **Policy CD 4.2: Tribal Cultural Resources.** Preserve areas that have identifiable and important tribal cultural resources and comply with appropriate State and federal standards to evaluate and mitigate impacts to cultural resources, including tribal, historic, archaeological, and paleontological resources.
 - **Policy CD 4.3: Tribal Consultation.** Consult with Native American representatives, including through early coordination, to identify locations of importance to Native Americans, including archaeological sites, sacred sites, traditional cultural properties, and other types of tribal cultural resources. Respect tribal concerns if a tribe has a religious prohibition against revealing information about specific practices or locations.
 - **Policy CD 4.4: Potential Archaeological Impacts.** Consistent with the California Environmental Quality Act (CEQA), prior to construction, consult the California Archaeological Inventory Northwest Information Center for project-specific reviews to evaluate the potential for impact on archaeological resources and determine whether or not further study is warranted.
 - **Policy CD 4.5: On-Site Mitigation.** If development could affect a tribal cultural resource or archaeological resource, require the developer to contact an appropriate tribal representative to train construction workers on appropriate avoidance and minimization measures, requirements for confidentiality and culturally appropriate treatment, other applicable regulations, and consequences of violating State laws and regulations.
 - **Action CD 4.7: Preconstruction Investigations.** Consistent with CEQA, establish specific procedures for preconstruction investigation of high- and medium-sensitivity sites identified in the 1983 Chavez investigation, unless superseded by more recent investigations, to assist property owners, developers, and the City in making decisions when archaeological resources may be affected.
 - **Action CD 4.8: Archaeological Sensitivity Data.** Update and maintain the City’s data on areas with high archaeological sensitivity.

Compliance with existing federal, State, and local laws and regulations, and the proposed General Plan goal, policies, and actions listed above, would protect unrecorded tribal cultural resources in the EIR Study Area by providing for the early detection of potential conflicts between development and resource protection, and by preventing or minimizing the material impairment of the ability of archaeological deposits to convey their significance through excavation or preservation. Impacts would therefore be *less than significant*.

Significance without Mitigation: Less than significant.

TRIBAL CULTURAL RESOURCES

TCR-2 The proposed project would not, in combination with past, present, and reasonably foreseeable projects, result in cumulative tribal cultural resources impacts in the area.

Cumulative impacts to tribal cultural resources occur when a series of actions leads to adverse effects on local Native American tribes or tribal lands. No tribal cultural resources have been identified in the EIR Study Area. Further, in association with CEQA review, future AB 52 consultations with Native American tribes to identify tribal cultural resources would be required for projects that have the potential to cause significant impacts to tribal cultural resources.

As discussed in Chapter 4.4, *Cultural Resources*, of this Draft EIR, the proposed project would comply with federal and State laws protecting cultural resources. Compliance with existing federal, State, and local laws and regulations, and the proposed General Plan goals, policies, and actions would ensure that tribal cultural resources, if discovered on future development project sites, are protected and handled appropriately. Therefore, cumulative impacts to tribal cultural resources would be *less than significant*.

Significance without Mitigation: Less than significant.