

## **2.7 Tribal Cultural Resources**

This section provides a Project-specific analysis of the potential impacts to tribal cultural resources from implementation of the Project. The potential historical and archaeological resource impacts are evaluated in a report titled “Cultural Resources Study for Questhaven 64 Project” prepared by Brian F. Smith and Associates (BFSA) in February 2021 and appended to this EIR as *Appendix C1*. Tribal cultural resources are informed through a tribal consultation process undertaken by and between the County of San Diego and consulting Native American tribes. An NOP for the Project was released for public review on September 1, 2022 and an EIR Scoping Meeting consistent with County of San Diego best practices was held on September 20, 2022. Six comment letters related to tribal cultural resources were received. The Campo Band of Mission Indians (received September 14, 2022), the Barona Band of Mission Indians (received September 8, 2022), The Rincon Band of Luiseño Indians (received September 27, 2024), the San Pasqual Band of Mission Indians (received September 20, 2022), and the Agua Caliente Band of Cahuilla Indians (received September 26, 2022) requested tribal consultation. The Native American Heritage Commission (received September 9, 2022) noted that the Project is subject to AB 52.

It should be noted that confidential information has been redacted from *Appendix C1* for purposes of public review. In addition, much of the written and oral communication between Native American tribes and the County of San Diego, and BFSA is considered confidential in respect to places that have traditional tribal cultural significance (Gov. Code § 65352.4), and although relied upon in part to inform the preparation of this EIR section, those communications are treated as confidential and are not available for public review. Under existing law, environmental documents must not include information about the location of archeological sites or sacred lands or any other information that is exempt from public disclosure pursuant to the Public Records Act (Cal. Code Regs. § 15120(d)).

### **2.7.1 Existing Conditions**

The Project site is located south of San Marcos Creek and San Elijo Road and primarily includes gently sloping to steep terrain that ranges from relatively flat near the northern boundary to ridges and hillsides near the property’s southern boundary. Topographic elevations within the Project site range from a low elevation of 490 above mean sea level (amsl) in the southeastern drainage to a high of 930 amsl near the southwestern property boundary. Overall, the Project site gently slopes upward from north to southwest. The property is currently undeveloped and has been previously disturbed by the establishment of dirt roads, agricultural uses, general weed abatement activity, and the construction of roads to the north and east. The least amount of disturbance was noted in the southwestern portion of the site.

The Project site is within the Kumeyaay and Luiseño traditional use areas. The Native American perspective is that these Tribes have been in the Project area from the beginning, as described by their oral histories. Similarly, the tribes do not necessarily agree with the distinction that is made between different archaeological cultures or periods, such as “La Jolla” or “San Dieguito.” Instead, the Tribes

believe that there is a continuum of ancestry, from the first people to the present Native American populations of San Diego County.

Three resources (SDI-9847, SDI-11,442, and SDI-22924) were identified within the Project area of potential effect (APE) through the records search and the field survey. Two resources (SDI-9847 and SDI-11,442) could not be located during the survey and were determined to be no longer existent. Archaeological resources and historic resources are located in the vicinity of the Project site and include prehistoric quarries, prehistoric habitation sites, bedrock milling feature sites, lithic scatters, historic road alignment segment, historic rock retaining wall, and historic mine. For a background context of the cultural history for the Project site and surrounding area, see refer to the Project's Cultural Resource Study included in this EIR as *Appendix C1*.

### Archaeological Resources Context

For the region, it is generally accepted that the earliest identifiable culture in the archaeological record is represented by the material remains of the Paleo Indian Period San Dieguito Complex. The San Dieguito Complex was thought to represent the remains of a group of people who occupied sites in this region between 10,500 and 8,000 years before present (YBP), and who were related to or contemporaneous with groups in the Great Basin. For additional information regarding the archaeological resources context, please refer to the Project's Cultural Resources Study, included in this EIR as *Appendix C1*.

#### **2.7.1.1 Methodology**

The cultural resources study appended to this EIR as *Appendix C1* includes the results of an institutional records search, an intensive historic and archaeological resource survey of the Project site, and the detailed recordation of all identified archaeological sites. This study was conducted in conformance with County of San Diego environmental guidelines, Section 21083.2 of the California Public Resources Code (PRC), and CEQA. Statutory requirements of CEQA (Section 15064.5) were followed for the identification of each cultural resource, in addition to the County of San Diego RPO. Specific definitions for archaeological resource type(s) used in *Appendix C1* and this EIR section are those established by the State Historic Preservation Office (SHPO 1995). In addition, pursuant to Assembly Bill 52 (AB 52), government-to-government consultation was conducted with local tribes that are culturally affiliated with the Project site. The results of Native American consultation are discussed below.

### Records Search

An archaeological records search for a one-mile radius around the Project site was conducted by the South Coastal Information Center (SCIC) at San Diego State University (SDSU). The SCIC reported that 20 archaeological sites were recorded within the one-mile search radius around the Project site, with two sites recorded within the Project boundaries, which are described below. The remaining 18 cultural resource locations include one historic road alignment segment, one historic rock retaining

wall, one historic mine, three prehistoric quarries, two prehistoric habitation sites, five bedrock milling feature sites, and five lithic scatters.

### Field Investigation

The information below provides the pertinent field results for the evaluation of significance of the Project's potential impacts to cultural resources. A testing program was implemented for archaeological resource sites that were previously recorded and for previously unrecorded sites in accordance with County of San Diego guidelines and site evaluation protocols on June 24, 2020. Alyssa Contreras, a Kumeyaay Native American representative from Red Tail Environmental was involved in the testing program. The potential for subsurface deposits was assessed through shovel test pit (STP) excavations at SDI-9847, SDI-11,442, and SDI-22,924. No significant historical resources were identified as being located on the Project site in the records search and during field surveys.

#### Site SDI-9847

Site SDI-9847 is located on the Project site and was originally recorded as an artifact scatter of five flake-based tools and one piece of debitage by Craig F. Woodman in 1983. The site location was revisited by BFSA during the current survey, but the cultural materials were not relocated. To determine if cultural resources had been buried or masked within the mapped location of the resource, five STPs were excavated to 50 centimeters across the site. The diameter of each STP averaged about 30 centimeters. No prehistoric or historic artifacts were recovered, and no culturally modified soil was observed.

The native soil across Site SDI-9847 includes a compact, brown, silty clay ranging between zero and 50 centimeters in depth, which became more compacted in the lower levels. Since no artifacts were recovered and no culturally modified soil was observed, the results of the subsurface excavations indicate that there is no subsurface component to the site. The testing program provided limited information, which facilitated the evaluation of SDI-9847 as a location of limited archaeological significance, as defined by the County of San Diego Archaeological and Historic Resources Guidelines. The site does not represent the level of focused prehistoric activity that would correspond to a prehistoric occupation site. Instead, the site is classified as a previously impacted artifact scatter that no longer retains a surface component, displays no evidence of a subsurface component, exhibits reduced integrity due to use of the land, and, therefore, no residual research potential following the data collection efforts during the current testing program. Site SDI-9847 is not a significant resource as defined by CEQA.

#### Site SDI-11,442

Site SDI-11,442 is located on the Project site and was previously recorded as a multicomponent site that included a prehistoric temporary camp with shell, lithics, and tools, as well as a historic refuse scatter (Pignuolo and Gallegos 1990). Site SDI-11,442 was revisited by PanGIS, Inc. in 2015 (Cordova

2015), who was only able to relocate the historic refuse scatter. The site location was revisited by BFSAs during the current survey, but no cultural materials were relocated. In order to determine if cultural resources had been buried or masked within the mapped location of the resource, four STPs were excavated to 50 centimeters across the site. The diameter of each STP averaged about 30 centimeters. No prehistoric or historic artifacts were recovered, and no culturally modified soil was observed.

The native soil across the site includes a compact, brown, silty clay with intermittent nodules ranging between zero and 50 centimeters in depth, which became more compacted in the lower levels. Since no artifacts were recovered and no culturally modified soil was observed, the results of the subsurface excavations indicate that there is no subsurface component to the site. The testing program provided limited information, which facilitated the evaluation of the portion of SDI-11,442 recorded within the Project site as a location of limited archaeological significance, as defined by the County of San Diego Archaeological and Historic Resources Guidelines. The site does not represent the level of focused prehistoric activity that would correspond to a prehistoric occupation site. Instead, the site is classified as a previously impacted habitation site that no longer retains a surface component, displays no evidence of a subsurface component, exhibits reduced integrity due to use of the land, and, therefore, no residual research potential following the data collection efforts during the current testing program. Site SDI-11,442 is not a significant resource as defined by CEQA.

#### Site SDI-22,924

Site SDI-22,924 was identified by BFSAs as part of the field survey conducted in 2020/21. The site consists of two pieces of debitage and a lithic adze. In order to test the presence or absence of a subsurface component, five STPs were excavated to 50 centimeters across the site. The diameter of each STP averaged about 30 centimeters. No prehistoric or historic artifacts were recovered, and no culturally modified soil was observed.

The native soil across the site includes a compact, pale brown, silty clay with intermittent, sub-angular nodules ranging between zero and 50 centimeters in depth, which became more compacted in the lower levels. Since no artifacts were recovered and no culturally modified soil was observed, the results of the subsurface excavations indicate that there is no subsurface component to the site. The testing program has provided limited information, which facilitated the evaluation of SDI-22,924 as a location of limited archaeological significance, as defined by the County of San Diego Archaeological and Historic Resources Guidelines. The site does not represent the level of focused prehistoric activity that would correspond to a prehistoric occupation site. Instead, the site is classified as a limited artifact scatter that retains a limited surface component, displays no evidence of a subsurface component, exhibits reduced integrity due to use of the land, and, therefore, no residual research potential following the data collection efforts during the current testing program. Site SDI-22,924 is not a significant resource as defined by CEQA.

### Field Survey Results

The survey methodology employed during the BfSA field investigation followed standard archaeological field procedures and was sufficient to accomplish a thorough assessment of the Project site. The survey process was limited in some areas by ground cover, particularly in the southern portion of the Project site where heavy vegetation obscured the ground surface and prevented the observation of any artifacts that might be otherwise visible.

In general, the property follows a gradual downward slope from the southwestern reaches of the property to the northeastern terminus. The archaeological survey of the property was an intensive reconnaissance consisting of a series of parallel survey transects spaced at approximately five-meter intervals. All potentially sensitive areas where cultural resources might be located were closely inspected. During the archaeological survey, one previously unrecorded archaeological site (SDI-22,924) was identified and the recorded locations of sites SDI-9847 and SDI-11,442 were visited. However, no surface evidence of previously recorded sites SDI-9847 and SDI-11,442 could be relocated. Despite this, the recorded locations of the sites identified by the SCIC were tested to search for buried evidence of these sites.

In summary, archaeological investigations at SDI-9847 and SDI-11,442 did not identify any archaeological materials at the recorded site locations within the Project site. The resources previously reported at these sites have likely been moved, buried, or destroyed as a result of previous agricultural activities and/or development to the north and east of the property. Site SDI-22,924 contained a limited surface artifact scatter. However, subsurface testing at the site did not identify any additional archaeological materials associated with the surface scatter.

### Native American Consultation

California AB 52 (2014) Chapter 532 amended and added sections to the California Public Resources Code relating to Native Americans and tribal cultural resources. By considering tribal cultural resources early in the CEQA process, the legislature intended to ensure that local and Tribal governments, public agencies, and project proponents would have information available early in the project planning process to identify and address potential adverse impacts to Tribal Cultural Resources (TCRs).

The Public Resources Code now establishes that “[a] project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” (Pub. Resources Code, § 21084.2.) To help determine whether a project may have such an effect, the Public Resources Code requires a lead agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project.

Based upon the Sacred Lands File search conducted in 2020 by the NAHC, no sacred sites, TCRs, or Traditional Cultural Landscapes (TCLs) are known to exist within the Project site boundaries and the NAHC returned negative results in the larger Rancho Santa Fe Quadrangle. During the archaeological evaluation conducted by BFSA in 2020/21, no artifacts or remains were identified or recovered that could be reasonably associated with such practices.

For the proposed Project, the County of San Diego invited tribes to consult on the Project. Fourteen tribes (Barona, Campo, Jamul, Kwaaymii, Manzanita, Pala, Pechanga, Rincon, San Luis Rey, San Pasqual, Santa Ysabel, Soboba, Sycuan, and Viejas) were contacted on October 5, 2022. Three tribes (Campo, Rincon, and Viejas) requested consultation. The County requested meeting dates with Viejas on multiple occasions with no response. As such, consultation with Viejas was concluded due to lack of response. The County has consulted with Campo and Rincon.

Campo requested to be the Native American monitor for the survey; however, it was already completed at the time of the request. A Native American monitor from Redtail Environmental was involved in the field survey. They requested that the Project be redesigned to avoid the resources or that artifacts be relocated onsite. The Project would be required to implement mitigation measure M-CR-1, which requires implementation of an Archaeological and Tribal monitoring program that would establish protocol for the treatment of any artifacts found during Project grading.

Rincon had concerns about site testing and mapping of SDI-4495/SDI-4499, an existing cluster of resources mapped off-site approximately 800 feet northeast of the Project site. Consultation is ongoing with Campo and Rincon.

No TCRs were identified on the Project site during consultation. During consultation, Rincon identified TCRs outside of the Project boundary, with the nearest mapped resource located approximately 800 feet northeast of the Project site on an off-site property.

### ***2.7.1.2 Regulatory Setting***

#### Federal

##### *National Historic Preservation Act (NHPA)*

The National Historic Preservation Act (NHPA) was passed in 1966 and set the foundation for much of the more specific legislation that guides cultural resource protection and management in local jurisdictions such as the County of San Diego. The Act established an Advisory Council on Historic Preservation to help implement and monitor it. Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties (both prehistoric and historic resources) and allow the Advisory Council a reasonable opportunity to comment on such undertakings. The goal of the Section 106 process is to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

*National Register of Historic Places (NRHP)*

Developed in 1981, the National Register of Historic Places (NRHP) is an authoritative guide to be used by Federal, State, and local governments, private groups and citizens to identify the Nation's cultural resources and to indicate what properties should be considered for protection from destruction or impairment. Listing in the NRHP provides formal recognition of a property's historical, architectural, or archaeological significance based on national standards. Cultural resources may be considered eligible for listing if they possess integrity of location, design, setting, materials, workmanship, feeling, and association. The criteria for determining eligibility are essentially the same in content and order as those outlined in CEQA. National Register listing places no obligation on private property owners. There are no restrictions on the use, treatment, transfer, or disposition of private property.

State

Section 15064.5 of the CEQA Guidelines, as amended, and the County guidelines, state that a cultural resource would be considered significant if it is:

1. A resource listed in or determined to be eligible by the State Historical Resources Commission for listing in, the California Register (PRC §5024.1; Title 14 California Code of Regulations [CCR], Section 4850 et seq.).
2. A resource included in the local register of historical resources, as defined in Section 5020.1(k) of the PRC or identified as significant in an historical resource survey meeting the requirements of Section 5024.1(g) of the PRC, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.
3. Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (PRC Section 5024.1, Title 14 CCR, Section 4852), including the following:
  - A. Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
  - B. Is associated with the lives of persons important in our past;
  - C. 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; or
  - D. Has yielded, or may be likely to yield, information important in prehistory or history.

4. The fact that a resource is not listed in the California Register, determined not to be eligible for listing in the California Register, not included in a local register of historical resources (pursuant to Section 5020.1[k] of the PRC), and not identified in an historical resources survey (meeting the criteria in Section 5024.1[g] of the PRC) does not preclude a lead agency from determining that the resource may be an historical resource as defined in PRC Sections 5020.1(i) or 5024.1.

In accordance with CEQA, cultural resources must be assessed for project-related actions that could directly or indirectly impact them. Under this scenario, impacts to cultural resources not deemed important according to the above criteria would be considered less than significant. A summary of on-site and off-site cultural resources is provided in Section 2.4.2, along with a determination as to the significance of the impact pursuant to Section 15064.5 of the CEQA Guidelines.

#### California Register of Historical Resources (CRHR)

The California Register of Historical Resources (CRHR) is an authoritative guide for use by State and local agencies, private groups, and citizens to identify the State's historical resources. An historical resource can include any object, building, structure, site, area, or place that is determined to be historically or archaeologically significant. The CRHR also identifies historical resources for State and local planning purposes, determines eligibility for State historic preservation grant funding, and provides a certain measure of protection under CEQA, including Traditional Cultural Properties.

#### California Assembly Bill 52

California AB 52 states that current California law provides a limited measure of protection for sites, features, places, objects, and landscapes with cultural value to California Native American tribes; including sacred places, including, but not limited to, places of worship, religious or ceremonial sites, and sacred shrines. In recognition of their governmental status, AB 52 requires a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the CEQA environmental review process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decision-making body of the lead agency.

#### Local

##### *San Diego County General Plan*

The General Plan (2011a) contains a series of policies in the Conservation and Open Space Element relevant to archaeological and historical resources, human remains, and paleontological resources.



*Grading, Clearing, and Watercourses Ordinance*

Section 87.429 of the County’s Grading and Clearing Ordinance requires that grading operations cease if human remains or Native American artifacts are found; and Section 87.216(a)(7) requires changes to grading plans/operations if it is determined that previously unknown historical resources or unique archaeological resources may be located on the site, and a modification is necessary to prohibit grading in the area of the resources so as to preserve the resources, or to redirect proposed grading so as to avoid the location of such resources until they can be retrieved, or potential impacts to them have been appropriately mitigated.

Section 87.430 of the Ordinance provides that the County official (e.g., permit compliance coordinator) may require a paleontological monitor during all or selected grading operations, to monitor for the presence of paleontological resources. If fossils greater than 12 inches in any dimension are encountered, then all grading operations in the area of discovery must be suspended immediately and not resumed until authorized by the County official. The Grading Ordinance also requires immediate notification of the County official regarding the discovery. The County official must determine the appropriate resource recovery operation, which the permittee must carry out prior to the County official’s authorization to resume normal grading operations.

*Resource Protection Ordinance*

The County of San Diego’s Resource Protection Ordinance (RPO) protects significant cultural resources. The RPO defines “Significant Prehistoric or Historic Sites” as follows:

Sites that provide information regarding important scientific research questions about prehistoric or historic activities that have scientific, religious, or other ethnic value of local, regional, State, or federal importance. Such locations shall include, but not be limited to:

1. Any prehistoric or historic district, site, interrelated collection of features or artifacts, building, structure, or object either:
  - a. Formally determined eligible or listed in the NRHP by the Keeper of the National Register; or
  - b. To which the Historic Resource (“H” Designator) Special Area Regulations have been applied; or
2. One-of-a-kind, locally unique, or regionally unique cultural resources which contain a significant volume and range of data and materials; and
3. Any location of past or current sacred religious or ceremonial observances, which is either:
  - a. Protected under Public Law 95-341, the American Indian Religious Freedom Act or Public Resources Code Section 5097.9, such as burial(s), pictographs, petroglyphs, solstice observatory sites, sacred shrines, religious ground figures, or
  - b. Other formally designated and recognized sites, which are of ritual, ceremonial, or sacred value to any prehistoric or historic ethnic group.

The RPO does not allow non-exempt activities or uses damaging to significant prehistoric or historic lands on properties under County of San Diego jurisdiction. The only exempt activity is scientific investigation authorized by the County. All discretionary projects are required to be in conformance with applicable County of San Diego standards related to cultural resources, including the noted RPO criteria for prehistoric and historic sites. Non-compliance would result in a project that is inconsistent with the County's standards.

## **2.7.2 Analysis of Project Effects and Determinations as to Significance**

### ***2.7.2.1 Tribal Cultural Resources***

#### Guideline for the Determination of Significance

For the purposes of this EIR, a significant impact to tribal cultural resources would occur if the Project would:

- Cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC Section 21074 as a site, feature, place, [or] 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 PRC 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 PRC Section 5024.1. In applying the criteria set forth in subdivision (c) of PRC Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

#### Guidelines Source

This guideline is derived from CEQA Guidelines Appendix G. A project that would have a substantial adverse impact (direct, indirect, cumulative) on the significance of tribal cultural resources as defined by this guideline would be considered to result in a significant impact.

#### Analysis

No evidence of TCRs was discovered during the records search, literature review, field survey, or testing program. Although concerns were raised during AB 52 consultation, the Tribes did not classify the identified archaeological resources as TCRs. However, there is a potential for the Project site to contain unidentified subsurface TCRs. Therefore, ground-disturbing activities resulting from the Project's construction have the potential to impact previously undiscovered TCRs. If such resources

are encountered during construction and are considered important TCRs according to the consulting tribe(s), impacts would be significant prior to mitigation (**Significant Direct Impact TCR-1**).

### 2.7.3 Cumulative Impact Analysis

#### Tribal Cultural Resources

TCRs were not identified by the consulting tribes during AB 52 consultation. As such, the Project would not result in any cumulatively considerable impacts to known TCRs and would not cause a substantial adverse change in the significance of a known TCR pursuant to California Code of Regulation, Section 21074. However, there is a possibility that previously undiscovered subsurface TCRs may be impacted by Project-related ground disturbing construction activities. Other cumulative developments resulting from buildout of the San Diego County General Plan and the general plans of cities within the County also have the potential to result in impacts to TCRs, including resources that may be buried beneath the ground surface. As such, the Project's potential impacts to previously undiscovered TCRs would be cumulatively considerable prior to mitigation (**Significant Cumulatively Considerable Impact TCR-1**).

### 2.7.4 Significance of Impacts Prior to Mitigation

***Significant Direct and Cumulatively Considerable Impact TCR-1:*** Project-related grading activities have the potential to encounter and impact previously undiscovered TCRs that could be determined to be important TCRs according to the criteria listed in PRC Section 21074.

### 2.7.5 Mitigation

Section 2.2, *Cultural Resources*, provides the following Mitigation Measure:

**M-CR-1:** Prior to issuance of grading permits, the Project applicant shall enter into a Treatment Agreement and Preservation Plan with consulting tribe(s) and implement an Archaeological and Tribal Monitoring Program during earth disturbing activities. The Treatment Agreement and Preservation Plan and Archeological and Tribal Monitoring Program shall be provided to the County Archeologist for review and approval prior to issuance of the grading permit.

### 2.7.6 Conclusion

**Less-than-Significant Impact CR-1 with Mitigation:** If Project-related grading activities encounter TCRs that are determined to be important to consulting tribes according to the criteria listed in PRC Section 21074, implementation of Mitigation Measure M-CR-1 would ensure that the resources are appropriately identified and treated to reduce impacts to less-than-significant.