

## 4.13 TRIBAL CULTURAL RESOURCES

This section of the Revised Draft Environmental Impact Report (EIR) evaluates the potential for the modified Dana Point Harbor Hotels Project (Modified Project) to impact tribal cultural resources in the City of Dana Point (City). Other potential impacts to cultural resources, including historic and archaeological resources, are evaluated in Section 4.3, Cultural Resources, of this Revised Draft EIR.

Because the Modified Project would be located on the same site as the Original Project, the tribal consultation for the Original Project conducted by the City pursuant to Assembly Bill (AB) 52 would remain applicable for the Modified Project, and no additional consultation is required for the Modified Project. Nevertheless, the same Native American tribes that were contacted during the consultation process for the Original Project were included in the mailing list for the Supplemental Notice of Preparation (NOP), as discussed in Section 4.13.1.2 below.

The analysis in this section summarizes pertinent information and findings in the *Record Search Results for the Dana Point Harbor Hotels Project in Dana Point, Orange County, California* (2020 Record Search Memorandum; LSA, October 2020) provided as Appendix D of the 2021 Draft EIR, as well as the *2024 Record Search Results for the Dana Point Harbor Hotels Project in Dana Point, Orange County, California* (2024 Record Search Memorandum; LSA, 2025) provided as Appendix E to this Revised Draft EIR.

### 4.13.1 Scoping Process

#### 4.13.1.1 Original Project Scoping

The City of Dana Point received eight comment letters during the public review period of the Initial Study/Notice of Preparation (IS/NOP). For copies of the IS/NOP comment letters, refer to Appendix A of this Revised Draft EIR. One comment letter included comments related to tribal cultural resources.

The letter from the California Native American Heritage Commission (NAHC) received on October 7, 2020, suggested that there may be cultural resources sensitive for Native Americans in the vicinity of the project site and recommended Native American consultation with tribes that are culturally affiliated with the project site.

#### 4.13.1.2 Modified Project Scoping

A Supplemental NOP for the Modified Project was circulated for public review from July 19, 2024, through August 19, 2024. The distribution list for the Supplemental NOP included all Native American contacts included in communications regarding the Original Project.

Copies of the Supplemental NOP and comment letters received in response to the Supplemental NOP are included in Appendix A of this Revised Draft EIR. One comment letter included comments related to tribal cultural resources.

The letter from the California NAHC received on July 30, 2024, recommended Native American consultation with tribes that are culturally affiliated with the project site. It should be noted, as

described below, that the consultation process has already been completed pursuant to the requirements of AB 52, and no further consultation is required.

#### 4.13.2 Existing Environmental Setting

The Modified Project would involve ground disturbance activities within the same general area as the Original Project; therefore, the existing environmental setting relative to tribal cultural resources as described below is largely derived from that discussed in the 2021 Draft EIR.

Tribal cultural resources are defined as “sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe.” 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 conduct formal consultations with California Native American tribes during the California Environmental Quality Act (CEQA) process to identify tribal cultural resources that may be subject to significant impacts by a proposed project.

The project site is located at 24800 Dana Point Harbor Drive and is currently developed with the Dana Point Marina Inn on the central portion of the project site and two boater services buildings with surface parking reserved for boaters on the southern portion of the project site.

According to available aerial photographs and historic maps of the project site, the project site was constructed between 1967 and 1977 (Nationwide Environmental Title Research [NETR] 2020). Aerial photographs dated to 1938, 1946, 1952, and 1967 show that the current project site was located offshore, before construction of the harbor. Historic maps dated to 1949, 1959, 1964, and 1970 depict the project site as located offshore. Geotechnical investigations have confirmed that the Dana Point Harbor, including the project site, utilized artificial fill to establish grades for construction of buildings (refer to the Preliminary Geotechnical Investigation [GMU 2019], which remains applicable to the Modified Project based on the findings of the Supplemental Geotechnical Letter; both of which are included as Appendix F to this Revised Draft EIR). Dana Point Harbor in its mostly-current form appears in the 1977 aerial photograph and all more-recent photographs but does not appear in topographic maps until 1978, and later.

#### 4.13.3 Regulatory Setting

This section includes applicable federal, State, regional, and City regulations.

##### 4.13.3.1 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.

#### 4.13.3.2 State Regulations

**Native American Heritage Commission.** In 1976, the California State Government passed AB 4239, creating the 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. They also give 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.** The Native American Historic Resource Protection Act, or AB 52, 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 resources 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.

#### 4.13.3.3 Regional Regulations

There are no regional regulations that are applicable to tribal cultural resources relevant to the Modified Project.

#### 4.13.3.4 Local Regulations

**City of Dana Point General Plan.** The City’s Conservation/Open Space Element (1997) addresses protection of the City’s heritage and cultural resources. The following goal related to cultural resources is presented in the Conservation/Open Space Element:

**Goal 8:** Encourage the preservation of significant historical or culturally significant buildings, sites, or features within the community.

**Dana Point Municipal Code.** Section 9.69.050(b)(7)(B) of the City’s Zoning Code (Title 9) requires the following information related to cultural resources regarding applications for coastal development permits:

“For sites adjacent to, containing or potentially containing cultural resources, an archaeological and/or paleontological survey prepared by a licensed archaeologist/paleontologist shall be required.”

**Dana Point Harbor Revitalization Plan and District Regulations (DPHRP&DR).** Land Use Plan policies for the Dana Point Harbor that relate to tribal cultural resources include “Paleontological and Archaeological Resource Policies” located in Section 8.8 of the DPHRP&DR. Policies 8.8.1-1 through 8.8.1-3 require mitigation for adverse impacts to archaeological resources, recommend archaeological monitoring during grading where necessary, and provide for procedures in case of encountering human remains during ground-disturbing activities. Policy 8.8.1-3 in particular is reflected in Standard Condition (SC) 4.3-2 (SC 4.3-2) included in Section 4.3, Cultural Resources, of this Revised Draft EIR.

#### 4.13.4 Methodology

The Modified Project would be located on roughly the same site as the Original Project, and would involve areas of ground disturbance assessed in the 2021 Draft EIR. Since the AB 52 consultation process was already concluded for the Original Project, as described below, and the Modified Project is considered a modified version of the Original Project rather than a new project altogether, another round of AB 52 consultation is not required. However, the tribal contacts identified in the Tribal Consultation List provided by the NAHC under the Original Project were included in the Supplemental NOP mailing list for the Modified Project, in order to ensure that they were notified of the changes to the Original Project's design proposed under the Modified Project.

In order to identify tribal cultural resources on the project site and analyze potentially significant impacts associated with construction and implementation of the Original Project, the City conducted Native American consultation in accordance with AB 52 requirements.

A Sacred Lands File (SLF) was requested from the NAHC for the Original Project, as was a list of potential Native American contacts for consultation. The search was requested to determine whether there are sensitive or sacred Native American resources on or near the site that could have been affected by the Original Project. In its response to the City on September 9, 2020, the NAHC indicated that the SLF search was positive for the project area. The NAHC recommended contact and consultation with the Juaneño Band of Mission Indians Acjachemen Nation. The NAHC also provided a Tribal Consultation List that included the following 13 Native American representatives to be contacted:

- Sonia Johnston, Chairperson of Juaneño Band of Mission Indians
- Joyce Perry, Tribal Manager of Juaneño Band of Mission Indians Acjachemen Nation-Belardes
- Matias Belardes, Chairperson of Juaneño Band of Mission Indians Acjachemen Nation-Belardes
- Heidi Lucero, Cultural Resources Director of Juaneño Band of Mission Indians Acjachemen Nation-Romero
- Teresa Romero, Chairperson of Juaneño Band of Mission Indians Acjachemen Nation-Romero
- Fred Nelson, Chairperson of La Jolla Band of Luiseño Indians
- Shasta Gaughen, Tribal Historic Preservation Officer for Pala Band of Mission Indians
- Temet Aguilar, Chairperson of Pauma Band of Luiseño Indians
- San Luis Rey Band of Mission Indians Tribal Council
- San Luis Rey Band of Mission Indians
- Lovina Redner, Tribal Chair of Santa Rosa Band of Cahuilla Indians
- Scott Cozart, Chairperson of Soboba Band of Luiseño Indians
- Joseph Ontiveros, Soboba Band of Luiseño Indians

The City sent letters for the purposes of AB 52 consultation to individuals on the City's AB 52 list and those individuals provided on the NAHC list on September 23, 2020. A follow-up email was sent to each letter recipient on October 7, 2020, to confirm receipt of the letters.

The Juaneño Band of Mission Indians Acjachemen Nation-Belardes (Tribe) responded on October 8, 2020, with a request for more information regarding the Original Project. The City provided the Tribe with additional details and the 2020 Record Search Memorandum. Subsequent contact from the Tribe (Joyce Perry) was received by the City on November 10, 2020. On November 24, 2020, the City provided the Tribe with additional information regarding the geology and soils on the site. On December 2, 2020, the Tribe requested monitoring for ground disturbance in areas with artificial fill due to the origin of these imported soils. Based on this request, the City included a standard condition that would require such monitoring (SC 4.3-2) in the 2021 Draft EIR, which would remain applicable to the Modified Project and is included in this Revised Draft EIR. On December 11, 2020, the City provided a proposed standard condition regarding the discovery of human remains (SC 4.3-1)), which would also remain applicable to the Modified Project. On December 15, 2020, the Tribe accepted the condition of approval and requested that Native American monitoring during ground disturbance be included in a separate condition. On February 2, 2021, the City responded to the Tribe with an additional standard condition requiring that an archaeologist be retained prior to grading and archaeological monitoring be conducted for the Original Project. The Tribe responded on February 5, 2021, to request that monitoring include "both a qualified archaeologist and Native Monitor." On March 15, 2021, the City emailed a revised condition to the Tribe, including both archaeological and Native American monitoring, with the option to reduce monitoring if there was a low likelihood of discovering subsurface cultural resources. The Tribe informed the City on March 15, 2021, that it agreed with the revised language included in the condition (SC 4.3-2), and asked that it be included in any monitoring activities.

An email response was received from the San Luis Rey Band of Mission Indians on October 7, 2020, and that email indicated that they would defer to Joyce Perry (Juaneño Band of the Mission Indians Acjachemen Nation-Belardes) for decision-making.

No further responses or requests for consultation were received regarding the Original Project. A record of Native American Consultation efforts related to the Original Project is provided in Appendix P of this Revised Draft EIR.

In addition to AB 52 compliance, records searches and background research were conducted as part of the 2020 Record Search Memorandum prepared for the Original Project. The purpose of these efforts was to identify the location of known cultural resources on the project site. No cultural resources were identified as part of 2020 Record Search Memorandum (refer to Section 4.3, Cultural Resources, of this Revised Draft EIR for further discussion).

Consistent with Section 9.69.050(b)(7)(B) of the City's Zoning Code (Title 9), an updated archaeological resource records search was conducted in November 2024 for the Modified Project, and a 2024 Record Search Memorandum discussing the results of this updated records search was subsequently prepared. The purpose of these efforts was to identify the location of known cultural resources on the project site, including any cultural resources that had been identified since the record search efforts were conducted for the Original Project. Consistent with the findings of the

2020 Record Search Memorandum, the 2024 Record Search Memorandum did not identify the presence of any known cultural resources on the project site.

#### 4.13.5 Thresholds of Significance

The thresholds for tribal cultural resources impacts used in this analysis are consistent with Appendix G of the *State CEQA Guidelines*. The Modified Project may be deemed to have a significant impact with respect to tribal cultural resources if it would:

**Threshold 4.13.1:** 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:

**Threshold 4.13.1(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 4.13.1(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 Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

#### 4.13.6 Project Impacts

**Threshold 4.13.1(i):** **Would the project 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: 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)?**

**No Impact.** The project site is not listed or eligible for listing in the California Register, or in a local register of historical resources. Therefore, because the Modified Project site is not listed or eligible for listing, there would be no impacts associated with Threshold 4.13.1(i). Refer to Section 4.3, Cultural Resources, for detailed information regarding the record search substantiating that no listed properties or resources exist on the project site.

**Threshold 4.13.1(ii):** **Would the project 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: 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 Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.**

**Less Than Significant Impact.** As noted above, a cultural resources record search, an SLF search through the NAHC, and AB 52 Native American consultation were conducted for the Original Project. In addition, an updated cultural resources record search was conducted for the Modified Project in November 2024 as part of this Revised Draft EIR. The purpose of these efforts was to identify known tribal cultural resources on or near the project site. No cultural resources were identified as part of the records search. Further, aerial photographs and historic maps demonstrate that the project site was located offshore before construction of the harbor. Geotechnical investigations have shown that the project site is underlain by artificial fills and marine deposits, which in turn overlie bedrock of the Capistrano Formation (GMU 2019). The depths of these materials vary slightly under each proposed hotel but generally, most of the area of disturbance is underlain by approximately 15 to 30 feet of surficial soils consisting of artificial fill atop marine deposits. A small area near Dana Point Harbor Drive has no fill and consists of Capistrano Formation only.

However, the NAHC SLF search indicated the presence of Native American traditional sites or places in or near the project area. Based on the consultation with the Juaneño Band of Mission Indians Acjachemen Nation described above, monitoring was requested for ground disturbance in areas of artificial fill. While the project site was constructed using imported sediments, based on consultation with the Tribe, there is the potential of encountering tribal cultural resources during ground-disturbing construction activities due to the origin of the imported soils. As described in Section 4.3, Cultural Resources, of this Revised Draft EIR, Program EIR No. 591 included Standard Condition 4.11.1 (SC 4.11-1), which recommended monitoring for archaeological resources where earth-moving or disturbing activities would occur. The monitoring requirements from SC 4.11-1 would also be required for the Modified Project as provided in SC 4.3-2 for ground-disturbing activities within areas that would impact artificial fill. With the implementation of SC 4.3-2, potential impacts to tribal cultural resources under the Modified Project would be less than significant, and no mitigation would be required.

#### **4.13.7 Level of Significance Prior to Mitigation**

Impacts to tribal cultural resources are considered less than significant under the Modified Project, and no mitigation is required.

#### **4.13.8 Standard Conditions and Mitigation Measures**

In the unlikely event that human remains are uncovered, then the Modified Project would comply with existing PRC Section 5097.98 requirements as described in SC 4.3-1, in this Revised Draft EIR in Section 4.3, Cultural Resources. In addition, the Modified Project would comply with SC 4.3-2, also included in Section 4.3, Cultural Resources, which includes conditions to monitor for subsurface archaeological and tribal cultural resources as provided in SC 4.11-1 of Program EIR No. 591.



#### 4.13.9 Level of Significance after Mitigation

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

#### 4.13.10 Cumulative Impacts

As 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. The cumulative impact area for tribal cultural resources for the Modified Project is the City of Dana Point.

Potential impacts of the Modified Project to unknown tribal cultural resources, when combined with the impacts of past, present, and reasonably foreseeable projects in the City of Dana Point, 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 SC 4.3-1 and SC 4.3-2 would ensure that the Modified 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. This conclusion remains consistent with the analysis provided in the 2021 Draft EIR pertaining to the Original Project.

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