

## 5. Environmental Analysis

### 5.8 TRIBAL CULTURAL RESOURCES

Tribal Cultural Resources (TCRs) include landscapes, sacred places, or objects with a cultural value to a California Native American tribe. This section of the Draft Environmental Impact Report (EIR) evaluates the potential for the proposed project to impact TCRs. Potential impacts to other cultural resources (i.e., historic, archaeological, and disturbance of human remains) are evaluated in Section 5.2, *Cultural and Paleontological Resources*.

The analysis in this section is based in part on the following information:

- *Phase I Archaeological and Historic Resources Assessment Riverside Unified School District: Eastside School Project City of Riverside, Riverside County, California*, FirstCarbon Solutions, August 12, 2022.

A complete copy of this study is in Appendix D of this Draft EIR.

#### 5.8.1 Environmental Setting

##### 5.8.1.1 REGULATORY BACKGROUND

###### Federal

###### *Archaeological Resources Protection Act*

The Archaeological Resources Protection Act (US 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 Native American lands.

###### *Native American Graves Protection and Repatriation Act*

The Native American Graves Protection and Repatriation Act (US Code, Title 25, Sections 3001 et seq.) is a federal law passed in 1990 that established 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.

###### State

###### *California Public Resources Code*

Archaeological resources are protected pursuant to a wide variety of state policies and regulations under the California Public Resources Code (PRC). In addition, cultural resources are recognized as a nonrenewable resource and therefore receive protection under the PRC and California Environmental Quality Act (CEQA).

PRC Sections 5097.9 to 5097.991 protect Native American historical and cultural resources and sacred sites and identify the powers and duties of the Native American Heritage Commission (NAHC). They also require notification to descendants regarding Native American human remains and provide for treatment and disposition of human remains and associated grave goods.

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#### *California Health and Safety Code*

California Health and Safety Code Section 7050.5 requires that if human remains are discovered on the project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation into the circumstances, manner, and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative. If the coroner determines that the remains are not subject to his or her authority and recognizes or has reason to believe the human remains are those of a Native American, he or she shall contact, by telephone within 24 hours, the NAHC.

#### *California Register of Historical Resources*

The California Register of Historical Resources is the state version of the National Register of Historic Places (see also Section 5.3, *Cultural and Paleontological Resources*). It was enacted in 1992 and became official January 1, 1993. The California Register was established to serve as an authoritative guide to the state's significant historical and archaeological resources. Resources that may be eligible for listing include buildings, sites, structures, objects, and historic districts. According to subsection (c) of PRC Section 5024.1, a resource may be listed as a historical resource in the California Register if it meets any of the four National Register criteria.

#### *California Senate Bill 18*

Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places may include sanctified cemeteries, religious, ceremonial sites, shrines, burial grounds, prehistoric ruins, archaeological or historic sites, Native American rock art inscriptions, or features of Native American historic cultural and sacred sites. Senate Bill (SB) 18 was signed into law in September 2004 and went into effect on March 1, 2005. It placed new requirements on local governments for developments within or near "traditional tribal cultural places" (TTCP). SB 18 requires local jurisdictions to provide opportunities for the involvement of California Native American tribes in the land planning process for the purpose of preserving TTCPs. The Final Tribal Guidelines recommend that the NAHC provide written information as soon as possible but no later than 30 days after receiving a request to inform the lead agency if the proposed project is determined to be in proximity to a TTCP and another 90 days for tribes to respond to a local government if they want to consult to determine whether the project would have an adverse impact on the TTCP. There is no statutory limit on the consultation duration. Forty-five days before the action is publicly considered by the local government council, the local government refers action to agencies, following the CEQA public review time frame. The CEQA public distribution list may include tribes listed by the NAHC who have requested consultation, or it may not.

SB 18 is triggered before the adoption, revision, amendment, or update of a city's or county's general plan. Because the proposed project does not require these discretionary actions from the City of Riverside, the proposed project is not subject to SB 18.

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#### *Assembly Bill 52*

The Native American Historic Resource Protection Act (AB 52) took effect July 1, 2015, and incorporates tribal consultation and analysis of impacts to TCR into the CEQA process. It requires that impacts to TCRs be analyzed like any other CEQA topic and establishes a consultation process for lead agencies and California tribes. Projects that require a Notice of Preparation of an EIR or Notice of Intent to adopt a negative declaration (ND) or mitigated negative declaration (MND) are subject to AB 52.

Under AB 52, TCR is defined sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either included or eligible for inclusion in the California Register of Historical Resources or included in a local register of historical resources. Or the lead agency, supported by substantial evidence, chooses at its discretion to treat the resource as a historical resource.

AB 52 requires consultation with tribes at an early stage to determine whether the project would have an adverse impact on TCRs and to define mitigation to protect them. Within 14 days of deciding to undertake a project or determining that a project application is complete, the lead agency must provide formal written notification to all tribes who have requested it. The tribes have 30 days after receiving the notification to respond if they wish to engage in consultation. The lead agency must initiate consultation within 30 days of receiving the request from a tribe.

AB 52 requires that the California Native American tribes first need to formally request to be notified of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe. The District received formal requests from the Gabrieleño band of Mission Indians – Kizh Nation and the Pechanga Cultural Resources of the Temecula Band of Luiseño Mission Indians (Pechanga Tribe). The District sent the notification letters to the Kizh Nation and the Pechanga Tribe on May 12, 2021, via certified mail. The Kizh Nation responded on May 20, 2021, via email that they would like to consult on the project, but rescinded their request on May 21, 2021, stating that they do not have any further concerns and there will be no need for consultation. As of July 18, 2022, the Pechanga Tribe did not respond to the District's notification and did not request a consultation.

#### **5.8.1.2 EXISTING CONDITIONS**

A sacred lands file search was conducted by the NAHC for the project site. The NAHC responded on November 12, 2020, and indicated that there are no sacred lands or resources known within the project site (FCS 2022). The NAHC response included a list of 30 tribal representatives available for consultation who may have additional knowledge of the project area. To ensure that all Native American knowledge and concerns over potential TCRs that may be affected by the proposed project are addressed, a letter containing project information requesting any additional information was sent to each tribal representative on November 21, 2020. Responses were received on November 23 and 24, 2020, from the San Manuel Band of Mission Indians and Quechan Tribe of the Fort Yuma Reservation, respectively, indicating that they have no comment. The Rincon Band of Luiseño Indians (Rincon Band) responded on November 24, 2020, indicating that they do not have knowledge of cultural resources within the project area; however, this does not mean that none exist, therefore, they recommended an archaeological record search be conducted and requested a

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copy for the tribe. The Agua Caliente Band of Cahuilla Indians (ACBCI) responded on December 14, 2020, indicating that the project site is not within the boundaries of the ACBCI Reservation, but is within the tribe's traditional use area. ACBCI requested the following:

- Cultural resources inventory of the project area by a qualified archaeologist prior to any development activities in this area.
- A copy of the records search with associated survey reports and site records from the information center.
- Copies of any cultural resource documentation (report and site records) generated in connection with this project.

### 5.8.2 Thresholds of Significance

According to Appendix G of the CEQA Guidelines, a project would normally have a significant effect on the environment if the project would:

- TCR-1 Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code 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:
- i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or
  - 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 Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

### 5.8.3 Plans, Programs, and Policies

Plans, programs, and policies (PPP), including applicable regulatory requirements and conditions of approval for TCRs, are as follows .

- PPP TCR-1 Pursuant to California Health and Safety Code Section 7050.5, if human remains are discovered on the project site, disturbance of the site shall halt and remain halted until the coroner has conducted an investigation. 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 the NAHC by telephone within 24 hours.

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#### 5.8.4 Environmental Impacts

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

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**Impact 5.8-1:** The proposed project would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 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). [Threshold TCR-1.i]

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As discussed in Section 5.2, Cultural Resources, of this Draft EIR, the project site contains historical resources under the NRHP and CRHR criteria. The proposed project would retain historical resources pertaining to excellent example of Craftsman style and Art Modern style architecture but could result in removal of a historically significant building as it relates to early 1920s social and economic history of Riverside. Although the proposed project would result in significant and unavoidable impacts to an NRHP- and CRHR-eligible historical resource, the effects are not related to TCR defined in PRC Section 21074. Therefore, no impact would occur.

*Level of Significance Before Mitigation:* No impact.

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**Impact 5.8-2:** The proposed project could cause a substantial adverse change in the significance of a tribal cultural resource that is determined by the lead agency to be significant pursuant to criteria in Public Resources Code Section 5024.1(c). [Threshold TCR-1.ii]

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The project site is developed with a high school, residential, commercial, park uses, and is surrounded by various urban uses. The NAHC's sacred lands file search result was negative. Thirty tribes from the NAHC's contact list were contacted for information related to TCRs in the project site. A TCR is a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is either in or eligible for inclusion in the California Register of Historical Resources or is a resource that the lead agency, at its discretion and supported by substantial evidence, determines should be treated as a TCR (PRC Sections 21074[a][1], [2]). Out of the 30 tribes that received inquiries about the proposed project, 4 responded—San Manuel Band of Mission Indians, the Quechan Tribe of the Fort Yuma Reservation, the Rincon Band of Luiseño Indians, and the ACBCI. The San Manuel Band of Mission Indians and Quechan Tribe of the Fort Yuma Reservation indicated that they have no comments.

The Rincon Band indicated that the project site is within the territory of the Luiseño people and within Rincon's special area of historic interest, although they do not have knowledge of cultural resources within the project area, this does not mean that none exist; therefore, they recommended an archaeological record search be conducted and requested that a copy sent to the tribe. An archaeological record search was conducted for the proposed project through the Eastern Information Center and the result indicated that there are no archaeological records identified for the project site. All results were related to historical resources. A copy of this record search result was sent to the Rincon Band on July 17, 2022 via email.

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The ACBCI indicated that while the project site is not within the boundaries of the ACBCI reservation, it is within the tribe's traditional use area; therefore, they requested the following:

- Cultural resources inventory of the project area by a qualified archaeologist prior to any development activities in this area.
- A copy of the records search with associated survey reports and site records from the information center.
- Copies of any cultural resource documentation (report and site records) generated in connection with this project.

The District has engaged a qualified archaeologist to conduct a record search, including archaeological resources, and a pedestrian survey, which did not identify any archaeological resources. However, because there is a possibility of unanticipated and accidental discovery of archaeological resources during ground-disturbing activities such as grading and excavation, Mitigation Measure CUL-2 has been incorporated to reduce potential impacts to a less-than-significant level. A copy of the records search result from the Eastern Information Center was sent to the ACBCI on July 17, 2022. ACBCI is included in the distribution list for this Draft EIR, and the Phase I Archaeological and Historic Resources Assessment prepared for the proposed project (Appendix D to the Draft EIR), which includes the results of the archaeological pedestrian survey and the cultural records search result, would be sent to them as part of the Notice of Availability.

Note that the Rincon Band and ACBCI who requested copies of the records search results are not the tribes who formally requested to be notified per AB 52. To the Gabrieleño Band of Mission Indians – Kizh Nation and the Pechanga Cultural Resources of the Temecula Band of Luiseño Mission Indians, who requested to be notified per AB 52, the District initiated the requested consultation by sending certified mail on May 12, 2021. The Kizh Nation responded on May 20, 2021, via email that they would like to consult on the project, but rescinded their request on May 21, 2021, stating that they do not have any further concerns and there will be no need for consultation. As of July 18, 2022, the Pechanga Tribe did not respond to the District's notification and did not request a consultation.

The project site is within the territory of the Luiseño people and within the Rincon Band's specific area of historic interest, and although the Rincon Band does not have any knowledge of cultural resources within the project area, they indicated that the lack of knowledge does not mean that none exist. Although the results of the pedestrian survey and the cultural records search did not identify any archaeological resources within the project site, and the NAHC indicated negative sacred lands file search result, the Phase I Assessment concluded that during ground-disturbing activities, previously unidentified archaeological and/or TCR could be encountered. Therefore, ground-disturbing activities could potentially unearth subsurface TCRs. The potential encounter and disturbance of TCRs could cause a substantial adverse change in the significance of the resource(s) if not mitigated.

***Level of Significance Before Mitigation:*** Potentially significant impact.

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### 5.8.5 Cumulative Impacts

TCRs may be found throughout Riverside, but information about them is much more difficult to obtain than for most archaeological resources. Identification of TCRs requires coordination with Native American tribes, and their precise location is often difficult to determine because they may only be documented through the oral history of the tribe. As with the proposed project, each project to occur within the City of Riverside is required to comply with AB 52 and PRC Section 21083.2(i), which addresses accidental discoveries of archaeological sites and resources, including TCRs; therefore, any discoveries of TCRs caused by the project or related projects would be mitigated to a less-than-significant level. With mitigation, individual impacts to TCRs would be reduced to a less-than-significant level; therefore, project impacts would not be cumulatively considerable.

### 5.8.6 Level of Significance Before Mitigation

The following impact would be less than significant: Impact 5.8-1.

Without mitigation, the following impacts would be **potentially significant**:

- **Impact 5.8-2** Project implementation could result in an adverse change in Native American resources during ground-disturbing construction activities.

### 5.8.7 Mitigation Measures

#### Impact 5.8-2

Mitigation Measure CUL-2 in Section 5.2, *Cultural and Paleontological Resources*, also reduces impacts to TCR. In addition, the following mitigation measure is specific to potential TCR impacts of the proposed project.

TCR-1        During grading and site preparation activities, the construction contractor retained by the Riverside Unified School District (RUSD) shall monitor all ground-disturbing construction activities. In the event that any pre-contact and/or historic-era cultural resources are inadvertently unearthed, work shall be halted immediately within 60 feet of the discovery and the construction contractor shall inform the project manager of the RUSD. Construction activities may continue in other areas. As detailed in Mitigation Measure CUL-2, the District shall retain a qualified archaeologist that meets the Secretary of the Interior's Standards and Guidelines for Professional Qualifications in Archaeology to analyze the significance of the discovery. Additionally, the Rincon Band of Luiseño Indians shall be contacted and provided information regarding the nature of the find, so as to provide tribal input with regards to significance and treatment. If the resources are Native American in origin and deemed significant as defined by California Environmental Quality Act Guidelines, a cultural resources monitoring and treatment plan shall be prepared by a qualified archaeologist in coordination with the consulting tribe and all subsequent finds shall be subject to the plan. The plan shall allow for a monitor to be present that represents the consulting tribe for the remainder of the project development, should the consulting

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tribe elect to place a monitor on-site. The plan will outline the treatment plan for the find to retain it/them in the form and/or manner the consulting tribe deems appropriate for educational, cultural, and/or historic purposes.

The District shall disseminate any and all archaeological/cultural documents created as part of the proposed project (isolated records, site records, survey reports, testing reports, etc.) to the consulting tribe and the District shall, in good faith, consult with the consulting tribe through the project development. Preservation in place (i.e., avoidance) shall be the preferred manner of treatment.

#### 5.8.8 Level of Significance After Mitigation

Because the proposed project would require ground-disturbing activities for construction, there is potential to uncover TCRs. Mitigation Measure TCR-1 would reduce potential impacts associated with TCRs to a level that is less than significant. Mitigation Measure CUL-2 will also require inadvertent discovery of cultural resources to be evaluated by a qualified archaeologist and treated in accordance with Section 15064.5 of the CEQA Guidelines. Therefore, no significant unavoidable adverse impacts relating to TCRs remain.

#### 5.8.9 References

FirstCarbon Solutions (FCS). 2022, August 12. Phase I Archaeological and Historic Resources Assessment, Riverside Unified School District: Eastside School Project City of Riverside, Riverside County, California.