

4.5 TRIBAL CULTURAL RESOURCES

This section identifies the known tribal cultural resources on the project site and in the surrounding area and evaluates the potential for changes to such resources that could result from project implementation.

According to California Public Resources Code (PRC) Section 21074 and Chapter 532, Statutes 2014 (i.e., Assembly Bill [AB] 52), “tribal cultural resources” are defined as:

1. Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either: (A) included or determined to be eligible for inclusion in the California Register of Historical Resources (California Register); or (B) included in a local register of historical resources as defined in subdivision (k) of Section 5020.1; or
2. 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 Section 5024.1.

Information in this section is based on the Archaeological Resources Inventory Report (Archaeological Report)¹ and Historic Resources Evaluation (HRE)² prepared for the proposed project by the project sponsor’s consultant (which are included as Appendices B and C, respectively), AB 52 Native American consultation efforts, and the San Rafael General Plan 2040 & Downtown Precise Plan Final EIR.³ The Archaeological Report and HRE were peer reviewed by LSA before being relied on for this EIR.^{4,5,6}

4.5.1 Environmental Setting

4.5.1.1 Prehistory

Studies and analysis of archaeological materials uncovered in the Bay Area indicate that native peoples have occupied the Bay region for over 11,000 years. At the time of the European settlement in the San Francisco Bay Area, San Rafael was part of the Coast Miwok territory. The Coast Miwok were hunter-gatherers who lived in rich environments that allowed for dense populations with complex social structures. They settled in large, permanent villages about which were distributed

¹ Dudek. 2021. *Archaeological Resources Inventory Report for the Northgate Town Square Project, City of San Rafael, California*. November 24.

² Dudek. 2022. *Final Built Environment Inventory and Evaluation Report, Northgate Town Square Project, San Rafael, California*. September.

³ San Rafael, City of. 2021. *San Rafael General Plan 2040 & Downtown Precise Plan Final Environmental Impact Report*. May 21.

⁴ LSA Associates, Inc. 2022a. *Peer Review of an Archaeological Resources Inventory Report prepared by Dudek for the Northgate Town Square Project in San Rafael, Marin County, California (LSA Project No. CSR2001.03)*. January 19.

⁵ LSA Associates, Inc. 2022b. *Peer Review of the March 2022 Built Environment Inventory and Evaluation Report, Northgate Town Square Project, San Rafael, Marin County, California (LSA Project No. CSR2001.03)*. April 14.

⁶ LSA Associates, Inc. 2023. *Built Environment Inventory and Evaluation Report Response Northgate Town Square Project, San Rafael, Marin County, California (LSA Project No.: CSR2001.03)*. April 19.

seasonal camps and task-specific sites. Primary village sites were occupied throughout the year, and other sites were visited to procure resources that were especially abundant or available only during certain seasons. Sites often were situated near fresh water sources and in ecotones where plant life was diverse and abundant.

It is believed that members of the Coast Miwok were the Native Americans who met with both Sir Francis Drake and Sebastian Rodriguez Cermeño during their voyages to California. After those two contacts, the Coast Miwok were left alone for nearly 200 years until the construction of the San Francisco Presidio and Missions Dolores in 1776. The present-day territory of Marin County was first encountered by Spanish Lieutenant Juan de Ayala in 1775 when he led a military reconnaissance expedition into the San Francisco Bay Area.

4.5.1.2 Project Site

Historic aerial photography indicates that the project site was undeveloped prior to construction of the Northgate Mall, which began with grading in 1957. The landform in the area is comprised of Urban land-Xerorthents complex, 0 to 9 percent slopes, which is normally associated with valley floors that have been highly developed. Historically, a drainage to the South Fork Creek passed through the project site. Given the flat topography and proximity to a drainage of the project site, it likely was occupied by a Coast Miwok camp or other activity center and thus would be well suited to support the formation or continued presence of buried archaeological deposits or surface manifestations, but most or all of these would have been disrupted by extensive excavation from the west side of the site and fill on the east side to construct the Northgate Mall.

The project site has been entirely disturbed as a result of construction of the Northgate Mall. The project site is completely developed with buildings, paving, and improved landscaped areas that have resulted in no natural or undisturbed areas left on the project site. The Archaeological Report determined that no known tribal cultural resources are located within the project site.

4.5.1.3 Regulatory Framework

The following discusses applicable laws, standards, and policies related to tribal cultural resources, including those from State and local agencies.

State Regulations. The following State regulations related to tribal cultural resources that would be applicable to the project are described below.

California Health and Safety Code (HSC) Section 7050.5. California HSC Section 7050.5 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 or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the Coroner of the county in which the remains are discovered has determined whether or not the remains are subject to the Coroner's authority. If the human remains are of Native American origin, the County Coroner must notify the Native American Heritage Commission (NAHC) within 24 hours of this identification. The NAHC will identify a Native American Most Likely Descendant (MLD) to

inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods.

Public Resources Code Section 5097.5. PRC Section 5097.5 provides for the protection of cultural resources and prohibits the removal, destruction, injury, or defacement of archaeological features on any lands under the jurisdiction of State or local authorities.

Assembly Bill 52 Tribal Consultation. California PRC Section 21080.3.1 and Chapter 532, Statutes 2014 (i.e., AB 52), require that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. The bill requires a lead agency, prior to determining whether an EIR (among other types of environmental documents) is required for a project, to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the tribe requested the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area; and (2) the tribe requests consultation. The bill specifies examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The bill makes the above provisions applicable to projects that have a Notice of Preparation (NOP) filed on or after July 1, 2015. By requiring the lead agency to consider these effects relative to tribal cultural resources and to conduct consultation with California Native American tribes, this bill imposes a State-mandated local program.

Local Plans and Regulations. The City of San Rafael General Plan 2040 policies, programs, and Municipal Code requirements related to tribal cultural resources that would be applicable to the project are described below.

City of San Rafael General Plan. The following policies of the City of San Rafael General Plan 2040 pertaining to tribal cultural resources would be applicable to the proposed project:

Goal CDP-5: Protection of Cultural Heritage. Protect and maintain San Rafael's historic and archaeological resources as visible reminders of the city's cultural heritage.

Policy CDP-5.14: Tribal Cultural Resources. Coordinate with representatives of the Native American community to protect historic Native American resources and raise awareness of San Rafael's Native American heritage.

Program CDP-5.14A: AB 52 Compliance. Implement the requirements of Assembly Bill 52 by providing opportunities for meaningful input from Native American representatives in the development review process.

Program CDP-5.14B: Protection of Tribal Resources. Incorporate standard approval conditions in future development projects that ensure that Native American resources are protected during construction. In the event tribal resources are discovered, earth-disturbing work must be temporarily suspended pending evaluation by a qualified archaeologist and an appropriate Native American representative. Where appropriate, a mitigation plan shall be developed in accordance with state guidelines and tribal input.

San Rafael Municipal Code. The following chapter of the San Rafael Municipal Code pertaining to tribal cultural resources would be applicable to the proposed project:

Chapter 2.19, Archaeological Resources. Section 2.19.010, Purpose, states that certain lands and geographic areas within the city of San Rafael contain significant archaeological resources, which include deposits and remains of the local Native Americans and other early inhabitants. These deposits and remains represent an important part of the early history of San Rafael and the culture of the Native American community. Without proper regulations and monitoring, continued excavation and grading activities within the city could significantly impact these resources.

In recognizing the importance of protecting significant archaeological resources, the City of San Rafael has determined to:

- Establish a procedure for identifying, when possible, archaeological resources and potential impacts to such resources prior to authorizing excavation and grading activities;
- Provide valuable information and direction to property owners in the community in order to make them aware of these resources;
- Implement measures that would preserve and protect valuable archaeological resources, when there is a potential for encountering such resources;
- Establish a procedure which would ensure that appropriate advisory agencies and organizations are contacted and consulted, when there is a probability that archaeological resources could be encountered during an activity involving grading, excavation, and/or construction; and
- Establish and implement specific protection and preservation measure in the event archaeological resources are encountered during grading, excavation and/or construction.

4.5.2 Impacts and Mitigation Measures

This section discusses potential tribal cultural resources impacts that could result from implementation of the proposed project. The section begins with the criteria of significance, which establish the thresholds used to determine whether an impact is significant. The latter part of this section presents the potential impacts associated with implementation of the proposed project and identifies mitigation measures, as appropriate.

4.5.2.1 Criteria of Significance

The project would have a significant impact related to tribal cultural resources if it would:

Threshold 4.5.1: Cause a substantial adverse change in the significance of a tribal cultural resource, defined in PRC 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, or in a local register of historical resources as defined in PRC 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 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.

4.5.2.2 Project Impacts

The following section discusses the potential tribal cultural resource impacts associated with implementation of the proposed project. Impacts would be the same under the development of Phases 1 and 2; therefore, impacts of phasing are not differentiated in the discussion below and are focused on total project buildout.

Threshold 4.5.1: Adverse Changes to the Significance of a Tribal Cultural Resource. The City has not received any requests from Native American tribes to be notified of projects within the city pursuant to AB 52. On November 30, 2021, the City submitted to the NAHC a request for a list of Native American tribes that could be culturally and traditionally affiliated with the project area and requested a search of the Sacred Lands File (SLF). On February 22, 2022, the NAHC responded with a list of two Native American tribes and indicated that the SLF search was positive with a recommendation to contact the Federated Indians of Graton Rancheria (FIGR). The City notified the FIGR and the Guidiville Indian Rancheria of the proposed project and invited the tribes to consult on the proposed project in a letter dated March 16, 2022. On March 29, 2022, the FIGR responded in writing with a request to consult with the City pursuant to AB 52. No response was received from the Guidiville Indian Rancheria.

The City responded to the FIGR on April 6, 2022 and provided a copy of the Archaeological Report prepared for the proposed project. An initial tribal consultation meeting with the FIGR was held on June 22, 2022. The tribal representatives who attended the initial consultation meeting asked for an overview of the proposed project and to review the conclusions and recommendations from the Archaeological Report. The tribal representatives expressed a concern about the project site being located within a tribally sensitive area. In particular, concerns were raised related to monitoring the site for tribal cultural resources during various phases of construction of the project (i.e., ensuring that monitoring would occur during all potential ground-disturbing activities) and whether a testing program could be implemented after demolition but prior to any ground-disturbing activities (i.e., prior to excavation or grading not related to demolition). This is a potentially significant impact.

In response, on August 29, 2022, the City provided the FIGR with draft mitigation measures designed to reduce the potential impacts identified during the initial consultation meeting. These measures were developed utilizing standards implemented for other development projects within sensitive tribal areas throughout San Rafael and tailored to the project site. The FIGR provided suggested revisions to the mitigation measures on November 3, 2022, which the City concurred with and agreed to implement for the proposed project. On November 28, 2022, the City informed the FIGR

representative in writing that the City considered consultation pursuant to AB 52 to be concluded. No further communications from the FIGR representative were received.

Impact TCR-1 Project ground disturbance has the potential to disturb, damage, or degrade either a tribal cultural resource or the contextual setting of such a resource, resulting in a substantial loss of the resource's cultural value as determined in consultation with the Federated Indians of Graton Rancheria. (S)

Although the project site is fully developed, tribal cultural resources still may exist below the paved areas on the project site that originally experienced limited and shallow soil disturbance, or at a deeper depth below existing buildings with shallow foundations. Additionally, as described in Section 4.6, Geology and Soils, the eastern portion of the site is covered by fill up to 20 feet deep. Placement of fill materials could have removed or dispersed native soils and any associated archaeological materials across the site. While excavation across the entire project site is not anticipated to extend to this depth, excavation could occur to this depth in areas of the project site, especially where basement levels are being removed or utility trenches would be installed. If significant tribal cultural resources are unearthed during project construction, a substantial adverse change in their significance could occur from their demolition, destruction, relocation, or alteration such that the significance of the resources would be materially impaired through loss of information important to the FIGR. The proposed project would have a potentially significant impact on tribal cultural resources unless the measures prescribed under Mitigation Measures TCR-1a and TCR-1b are implemented.

Mitigation Measure TCR-1a Native American Monitoring. Native American monitoring by a representative of the Federated Indians of Graton Rancheria (FIGR) shall be required during all initial ground-disturbing activities on the project site (including building foundation removal). Any excavations that extend below sediments that were previously monitored shall be subject to Native American monitoring.

Monitoring procedures shall follow the Cultural Resources Monitoring Plan prepared under Mitigation Measure CUL-1a as described in Section 4.4 of the EIR. Construction crews shall stop all work within 100 feet of any tribal cultural resource discovery until the find has been assessed by an archaeologist that meets the Secretary of the Interior's Professional Qualifications Standards in archaeology and by FIGR. Native American archaeological materials and tribal cultural resources could include obsidian and chert flaked stone tools (e.g., projectile and dart points), midden (culturally derived darkened soil containing heat-affected rock, artifacts, animal bones, and/or shellfish remains), and/or groundstone implements (e.g., mortars and pestles).

Mitigation Measure TCR-1b Survey of Site by Trained Human Remains Detection Dogs. Prior to the issuance of a grading or building permit, the project sponsor shall provide written evidence to the City's Community

Development Department that a consultant has been retained to conduct a survey of the site using trained human remains detection dogs with an FIGR tribal monitor present. The survey shall be performed after the demolition of structures, structure foundations, and paved areas but prior to when trenching, grading, or earthwork on the project site commences. If the survey results in the identification of an area potentially containing human remains, the area should be avoided. If avoidance of such areas is not feasible, then the City shall require that a professional archaeologist be retained to conduct subsurface testing in the presence of a tribal representative from the FIGR to verify the presence or absence of remains. If human remains are confirmed, then the procedures in Mitigation Measure CUL-1c shall be followed. (LTS)

The mitigation measures described under Mitigation Measures TCR-1a and TCR-1b would ensure that: (1) a tribal monitor from the FIGR would be present during initial ground-disturbing activities, and if tribal cultural resources are identified during these activities, these resources would be evaluated, documented, and studied in accordance with standard archaeological practice and under the supervision of the FIGR; and (2) the project site would be surveyed when bare soil is present, and any areas potentially containing human remains would either be avoided or treated in accordance with appropriate State codes and regulations under the supervision of the FIGR. As such, implementation of these mitigation measures would ensure that the project's potential impacts to tribal cultural resources would be **less than significant with mitigation**.

4.5.2.3 Cumulative Impacts

For tribal cultural resources, the scope for assessing cumulative impacts depends on the nature of the resources and relevant current or probable future projects under review by the City within the vicinity of the project site. The proposed project would have a significant effect on the environment if it would make a cumulatively considerable contribution to a significant cumulative impact on tribal cultural resources.

There are no recent past, current, or probable future projects under City review in the vicinity of the project site that have been determined to affect known tribal cultural resources. However, similar to the proposed project, ground disturbance associated with future projects that could be implemented under buildout of the General Plan could result in potentially significant impacts on previously unidentified tribal cultural resources. However, impacts on resources accidentally discovered during implementation of these future projects would be mitigated to **less than significant** levels with appropriate mitigation measures adopted as conditions of approval that are similar to project Mitigation Measures TCR-1a and TCR-1b. Similar to the proposed project, the City would impose standard conditions related to the accidental discovery of tribal cultural resources that notify and consult with Native American tribes pursuant to AB 52 and require archaeological surveys for all projects subject to CEQA that include ground-disturbing activities. Collectively, probable future projects that may occur in the vicinity—including the proposed project—would not result in a cumulative increase in impacts on tribal cultural resources because these resources would be avoided or otherwise removed, analyzed, and reported (i.e., by a qualified archaeologist).

However, as noted above, the City has identified no such current or probable future projects in the vicinity of the proposed project site. Accordingly, the proposed project would not make a cumulatively considerable contribution to any significant cumulative impacts to tribal cultural resources, and this impact would be **less than significant**.