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# **Appendix D**

## Cultural Resources Inventory Report



December 1, 2022

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City of San Marcos  
1 Civic Center Drive  
San Marcos, California 92069

***Subject: Cultural Resource Inventory Report for the Pacific GPA/Rezone Project,  
City of San Marcos, California***

Dear Ms. Saima Qureshy:

This letter documents the negative cultural resources inventory conducted by Dudek for the Pacific GPA/Rezone Project (Project), located in the City of San Marcos, San Diego County, California (Figure 1). The City of San Marcos (City) is the Lead Agency for compliance with the California Environmental Quality Act (CEQA). This report was prepared by Dudek archaeologist Matthew DeCarlo, M.A., who meets the Secretary of the Interior's Standards for archaeology.

A South Coastal Information Center (SCIC) records search identified no previously recorded cultural resources within the Project's area of potential effect (APE). A Native American Heritage Commission (NAHC) Sacred Lands File (SLF) search does not indicate the presence of any Tribal Cultural Resources (TCR) or sacred sites within the Project APE. An intensive pedestrian survey of the Project did not identify any cultural resources within the Project APE. Native American outreach and Native American consultation with the City, however, indicate the possible presence of buried TCRs.

The approximately 33.2-acre Project APE is currently unused with evidence of disturbances including dirt roads and mounds of excavated soil. Though undeveloped, the Project APE is immediately adjacent to light industrial and commercial development. Due to the negative archival search, previous survey, Native American outreach, and survey results, Dudek does not recommend cultural resources monitoring for the proposed Project. Ground disturbance is unlikely to impact cultural resources; however, if cultural resources are encountered during future projects, ground-disturbing work should be immediately halted in the area and a qualified archaeologist should be retained to evaluate this resource.

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## **PROJECT DESCRIPTION AND LOCATION**

The 33.2-acre project site is an infill site located in the western portion of the City of San Marcos (City), at the northwest corner of S. Las Posas Road and Linda Vista Drive, comprised of Assessor's Parcel Numbers 219-222-01, 219-222-02, 219-222-03, and 219-222-04. La Mirada Drive abuts the site's northern boundary, while South Pacific Street abuts the property's western boundary. The Grand Plaza shopping center is located directly across Las Posas Road to the east. Light industrial uses are adjacent to the site's northern, southern, and western boundary, and Bradley Park is located across from the site's southwestern corner. Single- and multi-family residential uses are located to the west and south of Bradley Park.

The project consists of 449 residential units, including a mix of apartments, rowhomes, villas, and affordable flats on approximately 15.09 acres of the 33.2-acre project site. Proposed residential units would include a mix of apartments within a five-story podium building, three-story rowhomes, three-story villas, and affordable flats within a four-story building. The project includes a total of 927 parking spaces and 134,985 square feet of common open space area. 68 of the 449 total units (15% of the total) would be designated as deed-restricted affordable units (alternatively, the project reserves the option to contribute to the affordable housing fund by paying the in-lieu fee). The proposed project also includes landscaping, bio-retention areas, and circulation improvements. The remaining approximately 17.94 acres of the 33.2-acre project site would be preserved and restored as open space and habitat area. The proposed project would have a density of approximately 13.5 dwelling units per acre, including the open space and habitat area.

The project proposes a General Plan Amendment, Rezone, Specific Plan, Tentative Map, and Multi-Family Site Development Plan. The General Plan Amendment and Rezone would change the General Plan designation and Zoning from Industrial (I) to Specific Plan Area (SPA). The Specific Plan has been prepared with the intent to provide a comprehensive plan to ensure the efficient development of a new residential community. The Specific Plan serves as both a policy document and a regulatory document for the systematic implementation of the policies and goals of the General Plan. The Tentative Map presents specific lot configurations for the site. The Multi-Family Site Development Plan will configure the site for multi family dwelling units, street configuration, infrastructure, recreational open space, and private open space.

As part of the project, additional pedestrian connectivity would be provided along three of the adjacent street frontages. The project would provide a 6-foot sidewalk and Class II buffered bike lane along the project's frontage on Pacific Street; the project would provide a

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12-foot urban trail (shared use path) along the project’s frontage on Linda Vista Drive; and the project would also provide a 12-foot urban trail (shared use path) along the project’s frontage on La Mirada Drive. In addition to the proposed sidewalk and trail connections, the project would add a bus stop and shelter with a bus turnout along South Las Posas Road adjacent to the development area and would install a 4-way traffic signal at the intersection of Linda Vista Drive and Pacific Street. Furthermore, the project would upsize approximately 1,458-feet of existing water pipe from 8-inches to 12-inches and would convert approximately 1,400-feet of existing overhead power lines to underground along La Mirada.

The property is mapped on Section 16 of Township 12 South, Range 3 West on the United States Geological Survey (USGS) 7.5' San Marcos Quadrangle. The Project APE includes the entire 33.2-acre Project site.

## **REGULATORY BACKGROUND**

The City of San Marcos (City) is the Lead Agency for compliance with the California Environmental Quality Act (CEQA). This study is compliant with cultural resource regulations that apply to the Project APE including provisions for the California Register of Historic Resources (CRHR), the California Native American Graves Protection and Repatriation Act, CEQA, California Health and Safety Code section 7050.5, Assembly Bill Number 52 (AB 52), and the City’s General Plan.

### **State Level Regulations**

#### **The California Register of Historic Resources (Public Resources Code section 5020 et seq.)**

In California, the term “historical resource” includes but is not limited to “any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California” (California Public Resources Code section 5020.1(j)). In 1992, the California legislature established CRHR “to be used by state and local agencies, private groups, and citizens to identify the state’s historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change” (California Public Resources Code section 5024.1(a)). A resource is eligible for listing in the CRHR if the State Historical Resources Commission determines that it is a significant resource and that it meets any of the following National Register of Historic Places (NRHP) criteria (California Public Resources Code section 5024.1(c)):

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1. Associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
2. Associated with the lives of persons important in our past.
3. 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.
4. Has yielded, or may be likely to yield, information important in prehistory or history.

Resources less than 50 years old are not considered for listing in the CRHR, but may be considered if it can be demonstrated that sufficient time has passed to understand the historical importance of the resource (see 14 CCR, section 4852(d)(2)).

The CRHR protects cultural resources by requiring evaluations of the significance of prehistoric and historic resources. The criteria for the CRHR are nearly identical to those for the NRHP, and properties listed or formally designated as eligible for listing on the NRHP are automatically listed on the CRHR, as are the state landmarks and points of interest. The CRHR also includes properties designated under local ordinances or identified through local historical resource surveys. The State Historic Preservation Officer (SHPO) maintains the CRHR.

#### **Native American Historic Cultural Sites (California Public Resources Code section 5097 et seq.)**

State law addresses the disposition of Native American burials in archaeological sites and protects such remains from disturbance, vandalism, or inadvertent destruction; establishes procedures to be implemented if Native American skeletal remains are discovered during construction of a project; and establishes the Native American Heritage Commission (NAHC) to resolve disputes regarding the disposition of such remains. In addition, the Native American Historic Resource Protection Act makes it a misdemeanor punishable by up to 1 year in jail to deface or destroy Native American historic or cultural site that is listed or may be eligible for listing in the CRHR.

#### **California Environmental Quality Act**

As described further below, the following CEQA statutes and CEQA Guidelines are of relevance to the analysis of archaeological and historic resources:

1. California Public Resources Code section 21083.2(g): Defines "unique archaeological resource."

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2. California Public Resources Code section 21084.1 and CEQA Guidelines section 15064.5(a): Define historical resources. In addition, CEQA Guidelines section 15064.5(b) defines the phrase “substantial adverse change in the significance of an historical resource;” it also defines the circumstances when a project would materially impair the significance of a historical resource.
3. California Public Resources Code section 5097.98 and CEQA Guidelines section 15064.5(e): Set forth standards and steps to be employed following the accidental discovery of human remains in any location other than a dedicated ceremony.
4. California Public Resources Code sections 21083.2(b)-(c) and CEQA Guidelines section 15126.4: Provide information regarding the mitigation framework for archaeological and historic resources, including options of preservation-in-place mitigation measures; preservation-in-place is the preferred manner of mitigating impacts to significant archaeological sites because it maintains the relationship between artifacts and the archaeological context, and may also help avoid conflict with religious or cultural values of groups associated with the archaeological site(s).

Under CEQA, a project may have a significant effect on the environment if it may cause “a substantial adverse change in the significance of an historical resource” (California Public Resources Code section 21084.1; CEQA Guidelines section 15064.5(b)). If a site is either listed or eligible for listing in the CRHR, or if it is included in a local register of historic resources, or identified as significant in a historical resources survey (meeting the requirements of California Public Resources Code section 5024.1(q)), it is a “historical resource” and is presumed to be historically or culturally significant for purposes of CEQA (California Public Resources Code section 21084.1; CEQA Guidelines section 15064.5(a)). The lead agency is not precluded from determining that a resource is a historical resource even if it does not fall within this presumption (California Public Resources Code section 21084.1; CEQA Guidelines section 15064.5(a)).

A “substantial adverse change in the significance of an historical resource” reflecting a significant effect under CEQA means “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired” (CEQA Guidelines section 15064.5(b)(1); California Public Resources Code section 5020.1(q)). In turn, the significance of a historical resource is materially impaired when a project:

1. Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register; or

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2. Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
3. Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register as determined by a lead agency for purposes of CEQA.

### **California Health and Safety Code section 7050.5**

California law protects Native American burials, skeletal remains, and associated grave goods, regardless of their antiquity, and provides for the sensitive treatment and disposition of those remains. Health and Safety Code section 7050.5 requires that if human remains are discovered in any place other than a dedicated cemetery, no further disturbance or excavation of the site or nearby area reasonably suspected to contain human remains shall occur until the County coroner has examined the remains (section 7050.5b). If the coroner determines or has reason to believe the remains are those of a Native American, the coroner must contact the NAHC within 24 hours (section 7050.5c). The NAHC will notify the Most Likely Descendant. With the permission of the landowner, the Most Likely Descendant may inspect the site of discovery. The inspection must be completed within 24 hours of notification of the Most Likely Descendant by the NAHC. The Most Likely Descendant may recommend means of treating or disposing of, with appropriate dignity, the human remains and items associated with Native Americans.

### **Senate Bill 18**

Senate Bill 18 amended Section 65351 of the Government Code and applies to the adoption or amendment of any general plan or specific plan or designating land as open space in order to preserve or mitigate impacts to specified Native American places, features and objects that are located within the agencies jurisdiction. Senate Bill 18 dictates the following:

During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.



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## **Assembly Bill 52**

California Assembly Bill 52, which took effect July 1, 2015, establishes a consultation process between California Native American Tribes and lead agencies in order to address tribal concerns regarding project impacts and mitigation to “tribal cultural resources” (TCR). Public Resources Code section 21074(a) defines TCRs and states that a project that has the potential to cause a substantial adverse change to a TCR is a project that may have an adverse effect on the environment. A TCR is defined as a site, feature, place, cultural landscape, sacred place, and object with cultural value to a California Native American tribe that is either:

1. listed or eligible for listing in the CRHR or a local register of historical resources, or
2. determined by a lead agency to be a TCR.

## **Traditional Cultural Properties**

### ***Native American Heritage Values***

Federal and state laws mandate that consideration be given to the concerns of contemporary Native Americans with regard to potentially ancestral human remains associated funerary objects, and items of cultural patrimony. Consequently, an important element in assessing the significance of the study site has been to evaluate the likelihood that these classes of items are present in areas that would be affected by the proposed Project.

Also potentially relevant to prehistoric archaeological sites is the category termed Traditional Cultural Properties in discussions of cultural resource management (CRM) performed under federal auspices. According to Patricia L. Parker and Thomas F. King (1998), “Traditional” in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in a community’s historically rooted beliefs, customs, and practices. Examples of properties possessing such significance include:

1. A location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;
2. A rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents;
3. An urban neighborhood that is the traditional home of a particular cultural group, and that reflects its beliefs and practices;

4. A location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and
5. A location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity.

### **Guidelines for Determining Significance**

According to CEQA (§15064.5b), a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. CEQA defines a substantial adverse change:

Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

The significance of an historical resource is materially impaired when a project:

- Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in, the CRHR; or
- Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
- Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its eligibility for inclusion in the CRHR as determined by a lead agency for purposes of CEQA.

Section 15064.5(c) of CEQA applies to effects on archaeological sites and contains the following additional provisions regarding archaeological sites:

- When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

- If a lead agency determines that the archaeological site is a historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.
- If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archaeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c–f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.
- If an archaeological resource is neither a unique archaeological nor a historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or Environmental Impact Report (EIR), if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

Section 15064.5(d) and (e) contain additional provisions regarding human remains. Regarding Native American human remains, paragraph (d) provides:

When an initial study identifies the existence of, or the probable likelihood of, Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code SS5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:

1. The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5); and
2. The requirement of CEQA and the Coastal Act.

Under CEQA, an EIR is required to evaluate any impacts on unique archaeological resources (California Public Resources Code section 21083.2.) A “unique archaeological resource” is defined as:

[A]n archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

1. Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
2. Has a special and particular quality such as being the oldest of its type or the best available example of its type.
3. Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(California Public Resources Code section 21083.2(g)). An impact to a non-unique archaeological resource is not considered a significant environmental impact and such non-unique resources need not be further addressed in the EIR (Public Resources Code section 21083.2(a); CEQA Guidelines section 15064.5(c)(4)).

As stated above, CEQA contains rules for mitigation of “unique archaeological resources.” For example, “[i]f it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

1. Planning construction to avoid archaeological sites.
2. Deeding archaeological sites into permanent conservation easements.
3. Capping or covering archaeological sites with a layer of soil before building on the sites.
4. Planning parks, greenspace, or other open space to incorporate archaeological sites.” (Pub. Resources Code section 21083.2(b)(1)-(4).)

Public Resources Code section 21083.2(d) states that “[e]xcavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.”

The rules for mitigating impacts to archaeological resources to qualify as “historic resources” are slightly different. According to CEQA Guidelines section 15126.4(b), “[p]ublic agencies should,

whenever feasible, seek to avoid damaging effects on any historic resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

- A. Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.
- B. Preservation in place may be accomplished by, but is not limited to, the following:
  - 1. Planning construction to avoid archaeological sites;
  - 2. Incorporation of sites within parks, greenspace, or other open space;
  - 3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site[; and]
  - 4. Deeding the site into a permanent conservation easement.

Thus, although section 21083.2 of the Public Resources Code, in addressing “unique archaeological sites,” provides for specific mitigation options “in no order of preference,” CEQA Guidelines section 15126.4(b), in addressing “historical resources of an archaeological nature,” provides that “[p]reservation in place is the preferred manner of mitigating impacts to archaeological sites.”

Under CEQA, “[w]hen data recovery through excavation is the only feasible mitigation,” the lead agency may cause to be prepared and adopt a “data recovery plan,” prior to any excavation being undertaken. The data recovery plan must make “provision for adequately recovering the scientifically consequential information from and about the historic resource.” (CEQA Guidelines section 15126.4(b)(3)(C).) The data recovery plan also “must be deposited with the California Historical Resources Regional Information Center.” (*Ibid.*) Further, “[i]f an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.” (*Ibid.*)

However, “[d]ata recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historic resource, provided that determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.” (CEQA Guidelines section 15126.4(b)(3)(D).)

## City of San Marcos General Plan

Chapter 4 of the City’s General Plan (adopted in 2012 and updated in 2013) describes the City’s cultural and paleontological resources, regulatory framework, and policies and plans to protect such resources (City of San Marcos 2013). The planning goals and policies are described below.

The City's General Plan Open Space and Conservation Element identifies goals and policies aimed at preserving cultural and historic resources. The City’s goal is to “continue to identify and evaluate cultural, historical, archaeological, paleontological, and architectural resources for protection from demolition and inappropriate actions” in compliance with CEQA guidelines (City of San Marcos 2013).

## SCIC RECORDS SEARCH

Dudek requested a records search from the SCIC for the Project APE and a one-mile buffer on March 13, 2021. SCIC responded with the results of the records search on March 16, 2021. The records search revealed that 69 previous cultural resources studies have been completed within 1-mile of the Project APE (Confidential Appendix A – SCIC Record Search Results). Seven of these previous studies intersect the current Project APE. One study (Huey 1992), consisted of a records search, archival review, and a pedestrian survey of the entire current Project APE. Huey (1992) identified no cultural resources within the Project APE.

The SCIC records search also revealed that no cultural resources have been recorded within the Project APE. The records search did identify 19 cultural resources and two historic addresses within 1-mile of the Project APE (Table 1. Resources within 1-mile of Project APE). The closest resources to the Project APE are P-37-011663 and P-37-012735, both consisting of highly disturbed prehistoric artifact scatters located 0.4 miles from the Project APE. The results of the records search and all DPR forms are located in Confidential Appendix A – SCIC Records Search Results.

**Table 1. Resources within 1-mile of Project APE**

Primary No	Trinomial	Era	Description	Proximity
P-37-005583	CA-SDI-005583	Prehistoric	Lithic scatter	Within 1-mile
P-37-005584	CA-SDI-005584	Prehistoric	Lithic scatter and bedrock milling feature	Within 1-mile
P-37-005633	CA-SDI-005633	Prehistoric	Possible habitation site	Within 1-mile
P-37-005641	CA-SDI-005641	Multicomponent	Habitation site and historic refuse scatter	Within 1-mile
P-37-005642	CA-SDI-005642	Prehistoric	Artifact scatter	Within 1-mile
P-37-005647	CA-SDI-005647	Prehistoric	Lithic scatter and bedrock milling	Within 1-mile



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Primary No	Trinomial	Era	Description	Proximity
P-37-011663	CA-SDI-011663	Prehistoric	Reported lithic scatter	Within 1-mile
P-37-012592	CA-SDI-012592	Multicomponent	Lithic scatter, bedrock milling, and historic refuse scatter	Within 1-mile
P-37-012593	CA-SDI-012593	Multicomponent	Lithic scatter, bedrock milling, and historic refuse scatter	Within 1-mile
P-37-012594	CA-SDI-012594	Historic	Refuse scatter	Within 1-mile
P-37-012595	CA-SDI-012595	Prehistoric	Bedrock milling feature	Within 1-mile
P-37-012735	CA-SDI-012735	Prehistoric	Lithic scatter	Within 1-mile
P-37-014950	-	Prehistoric	Isolated scraper	Within 1-mile
P-37-015064	-	Prehistoric	Isolated handstone	Within 1-mile
P-37-015162	-	Prehistoric	Isolated flake	Within 1-mile
P-37-030252	-	Historic	Historic building	Within 1-mile
P-37-032160	CA-SDI-020363	Prehistoric	Habitation site	Within 1-mile
P-37-033557	-	Historic	Highway 395	Within 1-mile
P-37-039088	CA-SDI-022954	Historic	Historic refuse	Within 1-mile
0 S RANCHO SANTA FE RD	-	Historic	Historic building	Within 1-mile
918 DISCOVERY STREET	-	Historic	Historic building	Within 1-mile

## ARCHIVAL RESEARCH

In addition to the SCIC records search, Dudek conducted an on-line review of historic aerial photographs of the Project APE and general vicinity, to help determine the possible development and land use of the Project APE in the past. The historic aerial photographs available from the website HistoricAerials.com by Nationwide Environmental Title Research, LLC (NETR), demonstrates that development of the area surrounding the Project APE started after 1967 (NETR 2021). By 1978, dirt roads traverse the Project APE. The 1982 aerial photograph shows some clearing and leveling in the northeast corner of the Project APE. The 1989 aerial photograph shows that the eastern border of the Project APE was leveled and cleared. The review of the historic aerial images demonstrate that, besides unofficial dirt roads and some limited clearing, there has been no development of the Project APE.

## NAHC AND NATIVE AMERICAN OUTREACH LETTERS

Dudek requested a NAHC search of the SLF on March 12, 2021 for the Project APE and a 1-mile buffer. The SLF consists of a database of known Native American resources. These resources may not be included in SCIC database. The NAHC replied on March 24, 2021 and reported that

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the SLF did not identify any known Native American cultural resources within the Project APE or the surrounding one-mile buffer (Appendix B – Tribal Correspondence). The NAHC additionally provided a list of Native American tribes and individuals/organizations with traditional geographic associations that might have knowledge of cultural resources in this area.

Outreach letters were mailed on March 30, 2021 to all Native American group representatives included on the NAHC contact list (Appendix B – Tribal Correspondence). These letters attempted to solicit additional information relating to Native American resources that may be impacted by the Project. Native American representatives were requested to define a general area where known resources intersect the Project APE. To date, two responses have been received. The first response is from the Rincon Band of Luiseño Indians stating the project site is located within the Band’s specific Area of Historic Interest, and requests a survey of the property, a professional tribal monitor during the survey, a copy of the final study for review and comment, and request for further consultation with the City. The second response is from the Viejas Band of Kumeyaay Indians, stating the project site has cultural significance or ties to the Kumeyaay Nation and recommends notifying the San Pasqual Band of Mission Indians, requests all CEQA, National Environmental Policy Act, and Native American Graves Protection and Repatriation Act regulations be followed, and requests immediate contact of San Pasqual Band of Mission Indians on any changes or inadvertent discoveries. Two San Pasqual Band representatives were included in Dudek’s Native American outreach but no responses were received.

In compliance with Assembly Bill 52 and Senate Bill 18, the City, as lead agency, is responsible for conducting government to government consultation with pertinent tribal entities. During consultation, Cheryl Madrigal, Tribal Historic Preservation Officer for Rincon Band, shared concerns with the City that the Project APE might have been a prehistoric meeting location. Ms. Madrigal, Dudek representatives, and City representatives met on the Project APE on July 12, 2022. They discussed the Project details and Ms. Madrigal stated that she would share her recommendations with the City via email. The City also negotiated and agreed with Tribal representative to mitigation measures to protect unknown TCRs that may be buried within the Project APE.

## **INTENSIVE PEDESTRIAN SURVEY**

Dudek archaeologist David Faith conducted a pedestrian survey of the proposed Project APE on March 23, 2021. The Project APE was undeveloped but surrounded by numerous industrial buildings. Portions of the Project APE have been previously disturbed, as evidenced by the presence of several dirt roads with deep ruts and numerous well-worn foot paths. There are also several dirt mound disturbances in the northern section of the Project APE, adjacent to La Mirada Drive. There are many small, undulating knolls throughout the Project APE but the terrain largely slopes downhill to the southeast. There is a pocket of dense vegetation in the



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northeastern corner of the Project APE, with numerous bushes greater than 6 feet high and thick coastal scrub. The survey transects through the thickest vegetation were conducted in a non-linear manner. There is also a seasonal north-south trending drainage ditch in the southern portion of the Project APE, adjacent South Las Posas Road. Outside of the thick vegetation and drainage, ground visibility throughout the Project APE is optimal. Modern debris from illegal dumping is visible throughout the Project APE with the bulk of the debris located closer to the surrounding roads. The pedestrian survey was conducted utilizing formal transects at 15-meter intervals, except as mentioned above. Deviations from transects also occurred to inspect exposed sediments and animal burrows throughout the Project APE. The pedestrian survey did not identify any cultural resources within the Project APE.

## **SUMMARY AND MANAGEMENT CONSIDERATIONS**

Dudek's cultural resources inventory for the Project did not identify any cultural resources within the Project APE. The negative results of the SCIC records search, previous pedestrian survey (Huey 1992), NAHC SLF Search, Native American outreach, and intensive-level survey, suggest that no known cultural resources will be impacted by any future Projects. Dudek does not recommend cultural resources monitoring or any other cultural resource efforts for the Project. However, following Native American consultation pursuant to AB 52 and SB 18, the City has negotiated the following mitigation measures with consulting tribes to assure identification and appropriate handling of TCRs.

**TCR-1: Pre-Excavation Agreement:** Prior to the issuance of a Grading Permit, or ground disturbing activities, the Applicant/Owner shall enter into a Tribal Cultural Resources Treatment and Repatriation Agreement (Pre-Excavation Agreement) with a Traditionally and Culturally Affiliated Native American Tribe (TCA Tribe), identified in consultation with the City. The purpose of the Pre-Excavation Agreement shall be to formalize protocols and procedures between the Applicant/Owner and the TCA Tribe for the protection, treatment, and repatriation of Native American human remains, funerary objects, cultural and/or religious landscapes, ceremonial items, traditional gathering areas, and other tribal cultural resources. Such resources may be located within and/or discovered during ground disturbing and/or construction activities for the proposed project, including any additional culturally appropriate archaeological studies, excavations, geotechnical investigations, grading, preparation for wet and dry infrastructure, and other ground disturbing activities. Any project-specific Monitoring Plans and/or excavation plans prepared by the project archaeologist shall include the TCA Tribe requirements for protocols and protection of tribal cultural resources that were agreed to during the tribal consultation.

The landowner shall relinquish ownership of all non-burial related tribal cultural resources collected during construction monitoring and from any previous

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archaeological studies or excavations on the project site to the TCA Tribe for proper treatment and disposition per the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The requirement and timing of such release of ownership, and the recipient thereof, shall be reflected in the Pre-Excavation Agreement. If the TCA Tribe does not accept the return of the cultural resources, then the cultural resources will be subject to curation.

**TCR-2: Construction Monitoring:** Prior to the issuance of a Grading Permit or ground disturbing activities, the Applicant/Owner or Grading Contractor shall provide written documentation (either as signed letters, contracts, or emails) to the City's Planning Division stating that a Qualified Archaeologist and Traditionally and Culturally Affiliated Native American monitor (TCA Native American monitor) have been retained at the Applicant/Owner or Grading Contractor's expense to implement the construction monitoring program, as described in the Pre-Excavation Agreement.

The Qualified Archaeologist and TCA Native American monitor shall be invited to attend all applicable pre-construction meetings with the General Contractor and/or associated subcontractors to present the construction monitoring program. The Qualified Archaeologist and TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that occur in areas of native soil or other permeable natural surfaces that have the potential to unearth any evidence of potential archaeological resources or tribal cultural resources. In areas of artificial paving, the Qualified Archaeologist and TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that have the potential to disturb more than six inches below the original pre-project ground surface to identify any evidence of potential archaeological or tribal cultural resources. No monitoring of fill material, existing or imported, will be required if the General Contractor or developer can provide documentation to the satisfaction of the City that all fill materials being utilized at the site are either: 1) from existing commercial (previously permitted) sources of materials; or 2) are from private or other non-commercial sources that have been determined to be absent of tribal cultural resources by the Qualified Archaeologist and TCA Native American monitor.

The Qualified Archaeologist and TCA Native American monitor shall maintain ongoing collaborative coordination with one another during all ground disturbing activities. The requirement for the construction monitoring program shall be noted on all applicable construction documents, including demolition plans, grading plans, etc. The Applicant/Owner or Grading Contractor shall provide written notice to the Planning Division and the TCA Tribe, preferably through e-mail, of the start and end of all ground disturbing activities.

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Prior to the release of any grading bonds, or prior to the issuance of any project Certificate of Occupancy, an archaeological monitoring report, which describes the results, analysis, and conclusions of the construction monitoring shall be submitted by the Qualified Archaeologist, along with any TCA Native American monitor's notes and comments received by the Qualified Archaeologist, to the Planning Division Manager for approval. Once approved, a final copy of the archaeological monitoring report shall be retained in a confidential City project file and may be released, as a formal condition of Assembly Bill (AB) 52 consultation, to Rincon Band of Luiseño Indians and San Pasqual Band of Mission Indians or any parties involved in the project specific monitoring or consultation process. A final copy of the report, with all confidential site records and appendices, will also be submitted to the South Coastal Information Center after approval by the City.

**TCR-3: Unanticipated Discovery Procedures:** Both the Qualified Archaeologist and the TCA Native American monitor may temporarily halt or divert ground disturbing activities if potential archaeological resources or tribal cultural resources are discovered during construction activities. Ground disturbing activities shall be temporarily directed away from the area of discovery for a reasonable amount of time to allow a determination of the resource's potential significance. Isolates and clearly non-significant archaeological resources (as determined by the Qualified Archaeologist, in consultation with the TCA Native American monitor) will be minimally documented in the field. All unearthed archaeological resources or tribal cultural resources will be collected, temporarily stored in a secure location (or as otherwise agreed upon by the Qualified Archaeologist and the TCA Tribe), and repatriated according to the terms of the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction.

If a determination is made that the archaeological resources or tribal cultural resources are considered potentially significant by the Qualified Archaeologist, the TCA Tribe, and the TCA Native American monitor, then the City and the TCA Tribe shall determine, in consultation with the Applicant/Owner and the Qualified Archaeologist, the culturally appropriate treatment of those resources.

If the Qualified Archaeologist, the TCA Tribe, and the TCA Native American monitor cannot agree on the significance or mitigation for such resources, these issues will be presented to the Planning Division Manager for decision. The Planning Division Manager shall make a determination based upon the provisions of CEQA and California Public Resources Code Section 21083.2(b) with respect to archaeological resources and California Public Resources Section 21704 and 21084.3 with respect to tribal cultural resources, and shall take into account the religious beliefs, cultural beliefs, customs, and practices of the TCA Tribe.

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All sacred sites, significant tribal cultural resources, and/or unique archaeological resources encountered within the project area shall be avoided and preserved as the preferred mitigation. If avoidance of the resource is determined to be infeasible by the City as the Lead Agency, then the City shall require additional culturally appropriate mitigation to address the negative impact to the resource, such as, but not limited to, the funding of an ethnographic study and/or a data recovery plan, as determined by the City in consultation with the Qualified Archaeologist and the TCA Tribe. The TCA Tribe shall be notified and consulted regarding the determination and implementation of culturally appropriate mitigation and the drafting and finalization of any ethnographic study and/or data recovery plan, and/or other culturally appropriate mitigation. Any archaeological isolates or other cultural materials that cannot be avoided or preserved in place as the preferred mitigation shall be temporarily stored in a secure location on site (or as otherwise agreed upon by the Qualified Archaeologist and TCA Tribe), and repatriated according to the terms of the Pre-Excavation Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The removal of any artifacts from the project site will be inventoried with oversight by the TCA Native American monitor.

If a data recovery plan is authorized as indicated above and the TCA Tribe does not object, then an adequate artifact sample to address research avenues previously identified for sites in the area will be collected using professional archaeological collection methods. If the Qualified Archaeologist collects such resources, the TCA Native American monitor must be present during any testing or cataloging of those resources. Moreover, if the Qualified Archaeologist does not collect the cultural resources that are unearthed during the ground disturbing activities, the TCA Native American monitor may, at their discretion, collect said resources for later reburial or storage at a local curation facility, as described in the Pre-Excavation Agreement.

In the event that curation of archaeological resources or tribal cultural resources is required by a superseding regulatory agency, curation shall be conducted by an approved local facility within San Diego County and the curation shall be guided by California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections. The City shall provide the Applicant/Owner final curation language and guidance on the project grading plans prior to issuance of the grading permit, if applicable, during project construction. The Applicant/Owner shall be responsible for all repatriation and curation costs and provide to the City written documentation from the TCA Tribe or the curation facility, whichever is most applicable, that the repatriation and/or curation have been completed.

**TCR-4: Human Remains:** As specified by California Health and Safety Code Section 7050.5, if human remains, or remains that are potentially human, are found on the project

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site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Medical Examiner's Office by telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the Qualified Archaeologist and/or the TCA Native American monitor) shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98.

If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the Qualified Archaeologist and/or the TCA Native American monitor), and consultation and treatment could occur as prescribed by law. As further defined by State law, the Medical Examiner will determine within two working days of being notified if the remains are subject to his or her authority. If the Medical Examiner recognizes the remains to be Native American, and not under his or her jurisdiction, then he or she shall contact the Native American Heritage Commission by telephone within 24 hours. The Native American Heritage Commission will make a determination as to the Most Likely Descendent, who shall be afforded 48 hours from the time access is granted to the discovery site to make recommendations regarding culturally appropriate treatment.

If suspected Native American remains are discovered, the remains shall be kept in situ (in place) until after the Medical Examiner makes its determination and notifications, and until after the Most Likely Descendent is identified, at which time the archaeological examination of the remains shall only occur on site in the presence of the Most Likely Descendent. The specific locations of Native American burials and reburials will be proprietary and not disclosed to the general public. According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). In the event that the Applicant/Owner and the Most Likely Descendant are in disagreement regarding the disposition of the remains, State law will apply, and the mediation process will occur with the NAHC. In the event that mediation is not successful, the landowner shall rebury the remains at a location free from future disturbance (see Public Resources Code Section 5097.98(e) and 5097.94(k)).

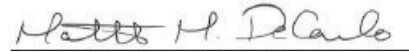
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Should you have any questions relating to this report and its findings please do not hesitate to contact Dudek directly.

Respectfully Submitted,



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*Att: Figure 1. Project Location Map  
Confidential Appendix A: SCIC Record Search Results  
Appendix B: Native American Correspondence*

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## REFERENCES

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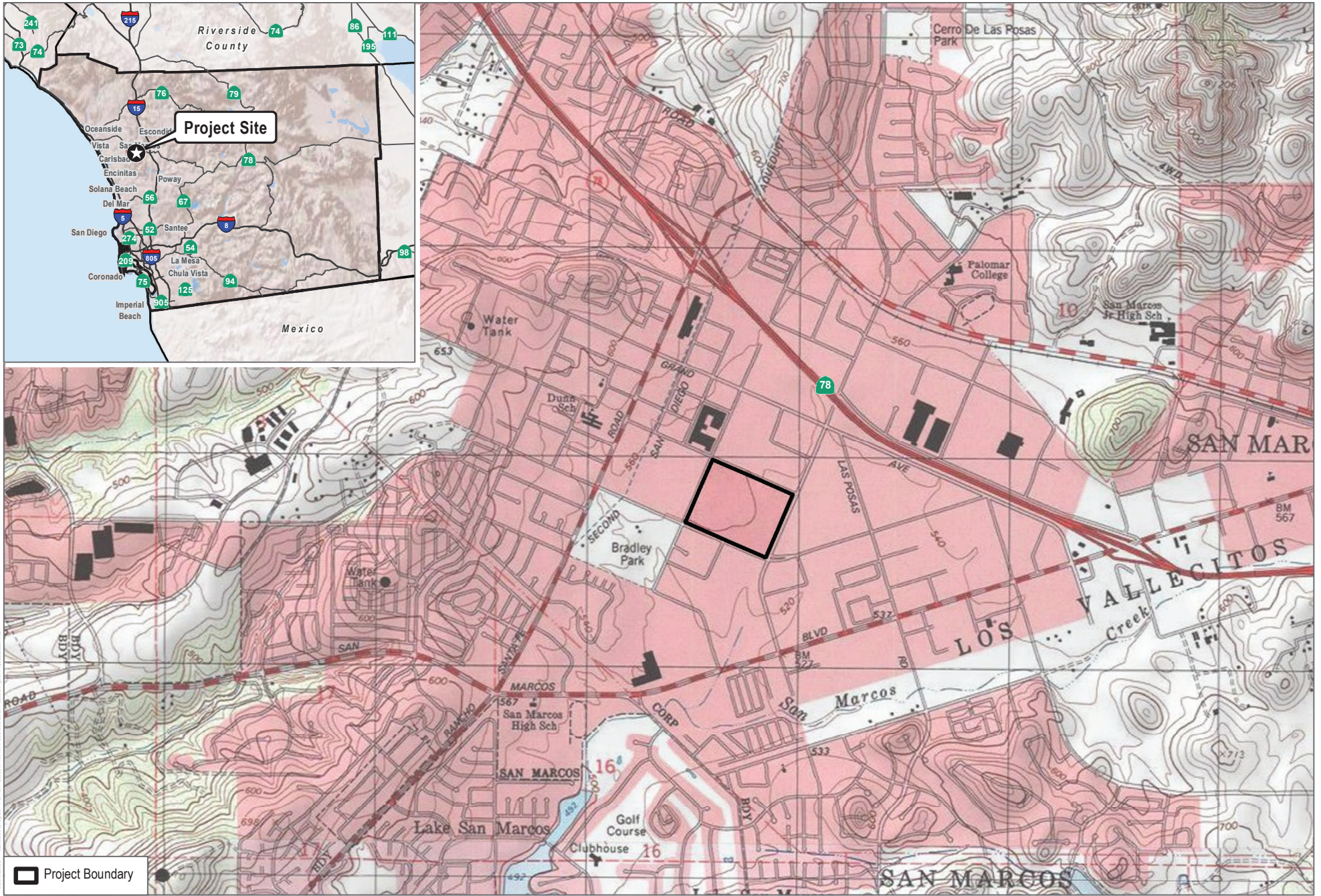
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SOURCE: USGS 7.5-Minute Serues San Marcos Quadrangle

**FIGURE 1**  
Project Location  
Pacific GPA/Rezone EIR



